

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Hon. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2016-002192
Civil Action Nos. 2012-CP-08-2618 & 2012-CP-08-3478

RECEIVED
MAR 21 2018
SC Court of Appeals

Bank of North Carolina Respondent

v.

Anthony M. Whitfield & Cindy Whitfield Defendants

Of whom Anthony M. Whitfield is the Appellant and Cindy Whitfield is a Respondent.

Anthony Whitfield Appellant

v.

David Swanson Respondent

AMENDED RECORD ON APPEAL

ALL COUNSEL of RECORD:

FOR THE APPELLANT

ANTHONY M. WHITFIELD:

Andrew J. McCumber, Esquire
Daniel S. Slotchiver, Esquire
SLOTCHIVER & SLOTCHIVER, LLP
44 State Street
Charleston, SC 29401
Telephone: (843) 577-6531

Brent S. Halversen, Esquire
HALVERSEN & ASSOCIATES, LLC
171 Church Street, Suite 330
Charleston, SC 29401
Telephone: (843) 284-5790

FOR RESPONDENT

DAVID SWANSON:

Steven Kropski, Esquire
Mike McCall, Esquire
David Overstreet, Esquire
EARHART OVERSTREET, LLC
Post Office Box 22528
Charleston, SC 29413
Telephone: (843) 972-9400

FOR RESPONDENT

CINDY WHITFIELD:

Paul B. Ferrara, III, Esquire
FERRARA LAW FIRM, PLLC
2300 Otranto Road
North Charleston, SC 29406
Telephone: (843) 569-5911

FOR RESPONDENT

BANK OF NORTH CAROLINA:

Brian C. Duffy, Esquire
Blake A. McKie, Esquire
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, SC 29401
Telephone: (843) 720-2044

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-08-2618

Bank of North Carolina
Anthony Whitfield, Third Party Plaintiff
PLAINTIFF(S)

Whitfield, et al.
David Swanson, Third Party Defendant
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
	or	
	<input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 12(d), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

16 SEP 29 PM 4: 12
 FILED
 CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Third Party Defendant's Motion to Reconsider Granted.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]

 2060

9/21/2016

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Bank of North Carolina,

Plaintiff,

vs.

Anthony Whitfield and Cindy Whitfield,

Defendants,

Anthony Whitfield,

Third Party Plaintiff,

vs.

David Swanson,

Third Party Defendant.

) IN THE COURT OF COMMON PLEAS
) IN THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2012-CP-08-2618

**ORDER GRANTING MOTION TO
RECONSIDER**

BERKELEY COUNTY COURT

16 SEP 29 PM 4: 12

FILED

This matter comes before the Court on Third-Party Defendant David Swanson's motion to reconsider filed July 18, 2016 requesting reconsideration of the Court's June 30, 2016 order denying his motion to dismiss. A hearing was held on September 20, 2016. Counsel for Plaintiff Bank of North Carolina, Defendant Anthony Whitfield, and Third-Party Defendant David Swanson were present. For the reasons set forth herein, Third Party-Defendant Swanson's motion is granted.

Introduction

This lawsuit is one of six foreclosure actions filed by Bank of North Carolina against Anthony Whitfield. Two actions are pending in Berkeley County: Case Nos. 2012-CP-08-2618, and 2012-CP-08-3478; three are pending in Dorchester County: Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793; and one is pending in Charleston County: Case No. 2012-

RAC

CP-10-5887. Defendant Whitfield initially asserted claims against David Swanson in the Charleston County action alleging causes of action for abuse of process and civil conspiracy, and subsequently asserted identical claims against Mr. Swanson in each of the five remaining foreclosure actions.

Mr. Swanson is an attorney at Haynsworth Sinkler Boyd, P.A. The claims against him arise out of advice he gave the bank concerning the renewal of the loan on the property that is the subject of the Charleston County foreclosure action, which is referred to in the pleadings as the "Black Rush Property." Defendant Whitfield alleges that Mr. Swanson never actually provided the advice to the bank, but conspired with the bank to fabricate a defense to Defendant Whitfield's counterclaims by providing deposition testimony in which he substantiated a conversation that he had with a bank employee. These allegations form the basis of Defendant Whitfield's claims against Mr. Swanson in each of the six foreclosure actions.

Defendant Swanson moved to dismiss the claims against him pursuant to Rules 12(b)(8) and 12(f) of the South Carolina Rules of Civil Procedure on grounds that another action is pending between the same parties for the same claim. Defendant Swanson also moved to dismiss the claims against him in Berkeley County Case No. 2012-CP-08-3478, and Dorchester County Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793 on the same grounds.

The Court heard Defendant Swanson's motions to dismiss in this action and Berkeley County Case No. 2012-CP-08-3478 on June 27, 2016. Counsel for Bank of North Carolina, Anthony Whitfield, and David Swanson were present, and the Court was presented with copies of the pleadings from the Charleston County foreclosure action. The Court denied the motions by way of Form 4 orders entered on June 30, 2016. On July 11, 2016, Defendant Swanson served motions to reconsider in both Berkeley County actions, attaching as exhibits three orders granting

RW/2

Defendant Swanson's motions to dismiss in Dorchester County Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793.

Findings and Conclusions

Pursuant to Rule 59(e), SCRCF, a party may request that a trial court reconsider its prior ruling where the party believes the trial court misunderstood, failed to fully consider, or overlooked an argument or issue. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772, 780 (2004). Upon this Court's review and consideration of the parties' arguments and submissions, the pleadings in this action and the related foreclosure actions, and the applicable law regarding the motion to dismiss, the Court finds that reconsideration is warranted.

Rule 12(b)(8) of the South Carolina Rules of Civil Procedure provides that a defendant may seek dismissal of an action when "another action is pending between the same parties for the same claim." In considering a motion to dismiss under Rule 12(b)(8), courts must consider both the identity of the parties and the identity of the claims. Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Ct. App. 2010). In order to warrant dismissal pursuant to Rule 12(b)(8), "the claim must be precisely or substantially the same in both proceedings. . . ." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524, 532 (Ct. App. 2009); *see also* Freemantle v. Preston, 398 S.C. 186, 728 S.E.2d 40, 45 (2012).

The Court has reviewed copies of the pleadings in the related foreclosure actions, including the Charleston County action that is the subject of the Black Rush Property. The Court finds that it is appropriate to take judicial notice of these pleadings in considering whether dismissal is warranted under Rule 12(b)(8), SCRCF.

Upon further review and consideration, the Court finds the claims asserted against David Swanson in this action should be dismissed pursuant to Rule 12(b)(8). The Court finds that the

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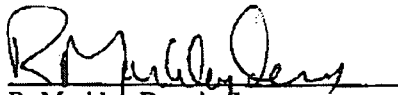
parties to the subject claims in this action and the Charleston County action are identical, and that the claims against David Swanson are substantially the same, if not identical, in both proceedings. Compare Def.'s Fifth Am. Answer, Berkeley Co. Case No. 2014-CP-08-2618, ¶¶ 55-72 with Def.'s Fifth Am. Answer, Charleston Co. Case No. 2012-CP-10-5887, ¶¶ 65-82. In both actions, Defendant Whitfield seeks to hold Mr. Swanson liable for abuse of process and civil conspiracy for the same alleged conduct—providing deposition testimony in which he substantiated a conversation that he had with a bank employee. The Court further observes that these claims were first asserted against Mr. Swanson in the Charleston County action, and that Mr. Swanson has not filed a Rule 12(b)(8) motion to dismiss in the Charleston County action.

Based upon the foregoing, the Court finds that with respect to the claims Defendant Whitfield has asserted against David Swanson in this action, another action is pending between the same parties for the same claims and that dismissal is warranted pursuant to Rule 12(b)(8), SCRPC.

Accordingly, Defendant David Swanson's motion to reconsider is GRANTED and the claims asserted against him in this action are hereby DISMISSED.

IT IS SO ORDERED.

This 21st day of September, 2016


R. Markley Dennis, Jr.
Circuit Court Judge

Moncks Corner, South Carolina

RMJ 4

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-08-3478

Bank of North Carolina
Anthony Whitfield, Third Party Plaintiff
PLAINTIFF(S)

Whitfield, et al.
David Swanson, Third Party Defendant
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

FILED
 18 SEP 29 PM 4:10
 BERKELEY COUNTY CLERK

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Third Party Defendant's Motion to Reconsider Granted.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
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R. Muller

2060

9/21/2016 *END*
~~7/29/2014~~

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS
) IN THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2012-CP-08-3478

Bank of North Carolina,

Plaintiff,

vs.

Anthony Whitfield and Cindy Whitfield,

Defendants,

Anthony Whitfield,

Third Party Plaintiff,

vs.

David Swanson,

Third Party Defendant.

**ORDER GRANTING
MOTION TO RECONSIDER**

BERKELEY COUNTY CLERK

16 SEP 29 PM 4:13

FILED

This matter comes before the Court on Third-Party Defendant David Swanson's motion to reconsider filed July 18, 2016 requesting reconsideration of the Court's June 30, 2016 order denying his motion to dismiss. A hearing was held on September 20, 2016. Counsel for Plaintiff Bank of North Carolina, Defendant Anthony Whitfield, and Third-Party Defendant David Swanson were present. For the reasons set forth herein, Third Party-Defendant Swanson's motion is granted.

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Redy 2

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Findings and Conclusions

Pursuant to Rule 59(e), SCRCP, a party may request that a trial court reconsider its prior ruling where the party believes the trial court misunderstood, failed to fully consider, or overlooked an argument or issue. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772, 780 (2004). Upon this Court's review and consideration of the parties' arguments and submissions, the pleadings in this action and the related foreclosure actions, and the applicable law regarding the motion to dismiss, the Court finds that reconsideration is warranted.

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The Court has reviewed copies of the pleadings in the related foreclosure actions, including the Charleston County action that is the subject of the Black Rush Property. The Court finds that it is appropriate to take judicial notice of these pleadings in considering whether dismissal is warranted under Rule 12(b)(8), SCRCP.

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AND/3

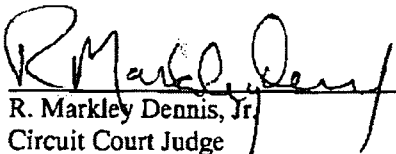
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Based upon the foregoing, the Court finds that with respect to the claims Defendant Whitfield has asserted against David Swanson in this action, another action is pending between the same parties for the same claims and that dismissal is warranted pursuant to Rule 12(b)(8), SCRPC.

Accordingly, Defendant David Swanson's motion to reconsider is GRANTED and the claims asserted against him in this action are hereby DISMISSED.

IT IS SO ORDERED.

This 21st day of September, 2016


R. Markley Dennis, Jr.
Circuit Court Judge

Moncks Corner, South Carolina

Dennis 4

STATE OF SOUTH CAROLINA
 COUNTY OF BERKELEY
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-08-2618

Harbor National Bank, et al

Anthony M. Whitfield, et al

FILED
 16 JUN 30 PM 1:32

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	JUDITH BROWN CLERK OF COURT BERKELEY COUNTY, S.C.	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
		or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Defendant's Motion to Strike or Dismiss Third Party Complaint, filed on 4/7/16, is DENIED

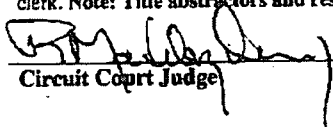
ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


 Circuit Court Judge

2060
 Judge Code

6/28/16
 Date

For Clerk of Court Office Use Only

STATE OF SOUTH CAROLINA
 COUNTY OF BERKELEY
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-08-3478

FILED

Harbor National Bank, et al

Anthony M. Whitfield, et al

16 JUN 30 PM 1:32

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	LARRY B. BROWN CLERK OF COURT BERKELEY COUNTY, S.C.	Attorney for : <input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
		or	
		<input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Defendant's Motion to Strike or Dismiss Third Party Complaint, filed on 4/11/16, is DENIED

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Anthony M. Whitfield
 Circuit Court Judge

2060 6/28/16
 Judge Code Date

For Clerk of Court Office Use Only

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-08-2618

HARBOR NATIONAL BANK,)
)
Plaintiff,)

vs.)

ANTHONY WHITFIELD, CINDY)
WHITFIELD, AND DAVID SWANSON)
)
Defendant.)

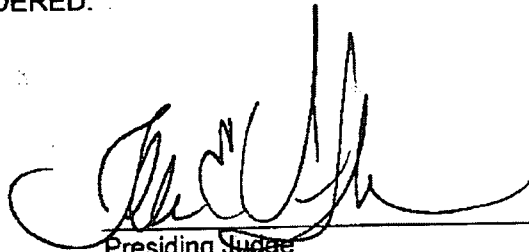
CONSENT ORDER ON MOTION TO
AMEND FILED JUNE 25, 2015

FILED
16 JAN 27 PM 4:51
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

This matter comes before the Court on Defendant's Motion to Amend his Answer and Counterclaims, filed on or about June 25, 2015. It appearing that the parties have negotiated and agreed to the filing of an amended pleading denying certain claims, and, allowing others. Now, therefore, it is

ORDERED that Defendant's Motion to Amend is granted in part and denied in part as stated herein. Defendant may file and serve an Amended Answer in the form attached hereto as Exhibit "1".

AND IT IS SO ORDERED.



Presiding Judge
Ninth Judicial Circuit

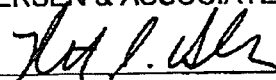
This 26th day of JANUARY, 2016.
Orangeburg, South Carolina
Monks Corn

MC

DAJ

WE SO MOVE.

HALVERSEN & ASSOCIATES, LLC

By: 

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

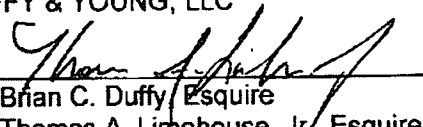
Attorney for the Plaintiff

January 13th, 2016
Charleston, South Carolina

WE SO CONSENT.

DUFFY & YOUNG, LLC

By:


Brian C. Duffy, Esquire
Thomas A. Limehouse, Jr., Esquire
96 Broad Street
Charleston, SC 29401

January __, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF BERKELEY)

Harbor National Bank,)

Plaintiff(s))

CIVIL ACTION COVERSHEET)

vs.)

2012-CP-08- 2418)

Anthony M. Whitfield,)

Defendant(s))

(Please Print)

Submitted By: Robert A. Bernstein
BERNSTEIN & BERNSTEIN, P.A.
Address: Post Office Box 20519
Charleston, SC 29413-0519

SC Bar #: 0677
Telephone #: (843) 529-1111
Fax #: (843) 529-0035
Other:
E-mail: rbernstein@bernsteinpa.com

2012 SEP - 7 AM 11:53
FILED
CLERK OF COURT
BERKELEY COUNTY

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR (Proof of ADR/Exemption Attached).

NATURE OF ACTION (check one box below)

- | | | | |
|---|---|--|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case#
20 -CP - <input type="checkbox"/> Notice/File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input checked="" type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drivers License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Other (799) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil(910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Workers' Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm. (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex/Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of-State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-Country Action (660) <input type="checkbox"/> Sexual Predator (610) | | | |

Submitting Party Signature: Robert A. Bernstein

Date: September 5, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions**

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Harbor National Bank,
Plaintiff,

v.

Anthony M. Whitfield.,
Defendant.

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2012-CP-08-26/8

SUMMONS

MAIRY J. PROCKMAN
CLERK OF COURT
BERKELEY COUNTY, SC
2012 SEP -7 AM 11:56
FILED

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to serve an Answer to the allegations of the Complaint, which is hereby served upon you, within thirty (30) days of the date of service hereof; Your Answer shall be served upon the Clerk of this Court and upon the subscriber at his office, 5418-B Rivers Avenue, North Charleston, South Carolina 29406-6165; If you fail to respond within the time aforesaid, the Plaintiff will take judgment against you by default for the relief demanded in the Complaint.

BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519
Charleston, SC 29413-0519
(843) 529-1111
(843) 529-0035 (fax)
ATTORNEYS FOR THE PLAINTIFF

September 5, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2012-CP-08- 2618

Harbor National Bank,
Plaintiff,

v.

Anthony M. Whitfield,
Defendant.

COMPLAINT
(Foreclosure of Real Estate)
(Action On Note)

(Non-Jury)

MARY F. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2012 SEP -7 AM 11:56

FILED

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

D 1. The Plaintiff is a national banking organization organized and existing pursuant to the laws of the United States of America, with its principal place of business located in South Carolina.

A 2. Defendant Anthony M. Whitfield is a citizen and resident of the County of Charleston, State of South Carolina.

9AB #1 A 3. The real property hereinafter described, which is the subject of this action, is situated and located in Berkeley County, South Carolina.

4. All parties hereto and all matters herein are within the jurisdiction of this Court.

FOR A FIRST CAUSE OF ACTION
(Action on Note)

5. Heretofore, on or about April 13, 2007, for value received the Defendant Anthony M. Whitfield executed and delivered to Harbor National Bank, a certain Promissory Note, Loan No. 40031700 a copy of which is attached hereto as Exhibit "A" and made a part hereof by reference, by

which, according to the terms and conditions set out therein, Anthony M. Whitfield promised to pay to Harbor National Bank the sum of Ninety Thousand and no/100 (\$90,000.00) Dollars, together with interest thereon at the rate of 7.5 % per annum on the unpaid balance, with a maturity date of April 13, 2012.

D 6. The payment due under the Note referred to in the preceding paragraph is in default, and the conditions of said Note have been broken.

D 7. Defendant Anthony M. Whitfield has committed an act of default under the aforesaid Note.

A 8. The Plaintiff has made demand upon Defendant Anthony M. Whitfield to pay the entire amount due under the Note, but the said Defendant has failed and refused to make such payment.

D 9. The failure of Defendant Anthony M. Whitfield to make payment of the balance due constitutes a breach of the Note.

D 10. Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note as August 17, 2012, the principal sum of Eighty-Five Thousand, Two Hundred Sixty-Nine and 58/100 (\$85,269.58) Dollars, accumulated interest of One Thousand, Nine Hundred Eighty-Two and 29/100 (\$1,982.29) Dollars, and interest continuing to accumulate at the current rate of \$33.16 per diem from August 17, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

D 11. Plaintiff has retained and employed Bernstein & Bernstein, P.A. for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable attorneys' fees incurred with respect to this action.

RAB
#2

12. By reason of the aforesaid breach of contract, the Plaintiff has suffered damages in the amount of Eighty-Five Thousand, Two Hundred Sixty-Nine and 58/100 (\$85,269.58) Dollars, accumulated interest of One Thousand, Nine Hundred Eighty-Two and 29/100 (\$1,982.29) Dollars, and interest continuing to accumulate at the current rate of \$33.16 per diem from August 17, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

FOR A SECOND CAUSE OF ACTION
(Mortgage Foreclosure)

13. The allegations of paragraphs One (1) through Twelve (12) of this Complaint are realleged as if repeated herein verbatim.

14. To further secure his obligation under the aforesaid Promissory Note, on April 13, 2007, Anthony M. Whitfield executed a Real Estate Mortgage, whereby to secure the liability under the Promissory Note and any further advances thereof, a mortgage was granted to and upon the following described property, to wit:

243
#3

All that certain piece, parcel or lot of land, with improvemets thereon, situate, lying and being in th County of Berkeley, State of South Carolina, the same being shown and designated as Lot No. 6, Block F, Okatee Subdivision, on a Plat entitled "Okatee, Berkeley County, State of South Carolina" prepared by C. Roger Jennings, RLS, dated May 21, 1975 and filed in the "File Cabinet" in the Office of the Register of Deeds for Berkeley County, South Carolina. Reference is had to said Plat for more complete and accurate description of subject property as to metes, bounds and measurements.

Being the same premises as conveyed to Anthony M. Whitfield by Master Deed of Master of Equity for Berkeley County recorded May 3, 2006 in Book 583, Page 22 in the RMC Office for Berkeley County.

TMS #223-13-02-020

Address: 110 Mepkin Drive, Summerville, SC 29483

(hereinafter referred to as the PROPERTY); a true and correct copy of the said Mortgage is attached hereto as Exhibit "B."

A 15. On April 18, 2007, the said Mortgage was recorded in the Office of the Register of Mesne Conveyances for Berkeley County in Book 6498, at page 18.

A 16. According to the terms and conditions of the aforesaid Real Estate Mortgage, it is provided that in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable without notice, at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all cost of collection, including a reasonable attorney's fees, shall become an obligation of the Defendant Anthony M. Whitfield, to be secured by the said mortgage as part of the debt secured thereby.

A 17. Further, under the terms and conditions of the said Mortgages, it was agreed that the mortgagor would pay all taxes, assessments, water rates, other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if the mortgagor failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

A 18. According to the terms of the said Mortgages, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default thereunder, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, were given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as Receiver, shall apply the residue of the rents, issues and profits toward the debt secured by said mortgage.

19. The payments due under said Note is due and has been in default since April 13, 2012, and the conditions of said mortgage have been broken.

20. The entire balance of said indebtedness due and payable, and that there is due on said note as of August 17, 2012, the sum of Eighty-Five Thousand, Two Hundred Sixty-Nine and 58/100 (\$85,269.58) Dollars, accumulated interest of One Thousand, Nine Hundred Eighty-Two and 29/100 (\$1,982.29) Dollars, and interest continuing to accumulate at the current rate of \$33.16 per diem from August 17, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

21. Plaintiff has retained and employed Bernstein & Bernstein, P.A. for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable attorneys' fees incurred with respect to this action.

22. The Plaintiff is entitled to an Order foreclosing the mortgage upon the PROPERTY, and the proceeds of the said foreclosure to be distributed first to the costs and expenses of the sale thereof, second to be applied against accrued principal and interest under the Note and mortgage, third to payment of the costs, expenses and reasonable attorneys fees incurred by the Plaintiff in prosecuting this foreclosure action, and the Court should thereafter pay any excess proceeds of sale to such claimants in such priorities as their interests may appear.

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#5

FOR A THIRD CAUSE OF ACTION
(Appointment of Receiver)

23. The allegations of Paragraphs One (1) through Twenty-Two (22) of this Complaint are realleged as if repeated herein verbatim.

24. To further secure his obligation under the aforesaid Promissory Note, on April 23,

2007, Anthony M. Whitfield executed an Assignment of Leases and Rents, whereby to secure the liability under the Promissory Note and any further advances thereof, the Defendant assigned all leases and rents from the subject PROPERTY to the Plaintiff; a true and correct copy of the said Assignment of Leases and Rents is attached hereto as Exhibit "C."

A 25. On April 18, 2007, the said Assignment of Leases and Rents was recorded in the Office of the Register of Deeds for Berkeley County in Book 6498, at Page 28.

26. According to the terms of the said Assignment of Leases and Rents, and as additional security, the Defendant assigned all rents, issues and profits of the PROPERTY from and after any default thereunder, and should legal proceedings be instituted pursuant to said Assignment of Leases and Rents, the Plaintiff were given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as Receiver, shall apply the residue of the rents, issues and profits toward the secured debt.

RAB
HC
D 27. The payments due under said Note is due and has been in default since April 3, 2012, and the conditions of said Assignment of Leases and Rents have been broken.

28. The entire balance of said indebtedness due and payable, and that there is due on said note as of August 17, 2012, the sum of Eighty-Five Thousand, Two Hundred Sixty-Nine and 58/100 (\$85,269.58) Dollars, accumulated interest of One Thousand, Nine Hundred Eighty-Two and 29/100 (\$1,982.29) Dollars, and interest continuing to accumulate at the current rate of \$33.16 per diem from August 17, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

29. The Plaintiff is entitled to have a Receiver appointed for the PROPERTY to collect

all income from the said PROPERTY, to pay expenses associated therewith, including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt hereunder.

WHEREFORE, the Plaintiff prays for judgment as follows:

(1) Under the First Cause of Action, for judgment against Defendant Anthony M. Whitfield in the amount of Eighty-Five Thousand, Two Hundred Sixty-Nine and 58/100 (\$85,269.58) Dollars, accumulated interest of One Thousand, Nine Hundred Eighty-Two and 29/100 (\$1,982.29) Dollars, with interest continuing to accumulate at the current rate of \$33.16 per diem from August 17, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees;

(2) Under the Second Cause of Action, that

(a) That the amount due upon the said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorneys fees and the costs of this action.

(b) That the Plaintiff's Mortgage be declared a first lien and that Plaintiff has judgment of foreclosure for the amount found to be due and owing under the promissory note, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, and the costs of this action.

(c) That the PROPERTY be sold under the direction of this Court, the equities of redemption are barred, and that the proceeds of sale are applied as follows:

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

Second, to the payment and discharge of the amount due on the Plaintiff's Note and Mortgage, with the costs and disbursements of this action together with attorneys' fees, and

Third, the surplus, if any, be distributed according to law; and

3) Under the Third Cause of Action, for the Appointment of a Receiver to collect all income from the said PROPERTY, to pay expenses associated therewith, including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt; and

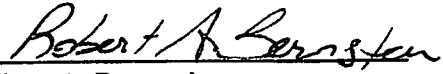
RAB
#7

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

#8

September 5, 2012
Charleston, South Carolina

BERNSTEIN & BERNSTEIN, P.A.



Robert A. Bernstein
Post Office Box 20519
Charleston, SC 29413-0519
(843) 529-1111
(843) 529-0035 (fax)
ATTORNEYS FOR THE PLAINTIFF

ANTHONY M. WHITFIELD 2141 DORCHESTER ROAD NORTH CHARLESTON, SC 29405 BORROWER'S NAME AND ADDRESS <small>"I include each borrower above, jointly and severally."</small>	Harbor National Bank 1503 Old Towns Road Charleston, SC 29407 LENDER'S NAME AND ADDRESS <small>"You" means the lender, its successors and assigns.</small>	247-66-7213 Loan Number <u>400031700</u> Date <u>04/13/2007</u> Maturity Date <u>04/13/2012</u> Loan Amount <u>\$ 20,000.00</u> Renewal Of _____
---	--	---

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of Ninety Thousand Dollars Dollars \$ 90,000.00

Single Advance: I will receive all of this principal sum on 04/13/2007. No additional advances are contemplated under this note.
 Multiple Advances: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.
 Conditions: The conditions for future advances are _____

Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____
 Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 04/13/2007 at the rate of 7.500 % per year until Maturity

Variable Rate: This rate may then change as stated below.
 Index Rate: The future rate will be _____ the following index rate: _____

No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.
 Frequency and Timing: The rate on this note may change as often as _____
 A change in the interest rate will take effect _____

Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %.
 The rate may not change more than _____ % each _____

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:
 The amount of each scheduled payment will change. The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a Actual/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:
 on the same fixed or variable rate basis in effect before maturity (as indicated above).
 at a rate equal to 14.000%

LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the payment amount with a minimum of \$20.00

ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which are are not included in the principal amount above: APPRAISAL FEE \$325, ORIGINATOR FEE \$450, FLOOD SEARCH \$15

PAYMENTS: I agree to pay this note as follows:
 Interest: I agree to pay accrued interest _____
 Principal: I agree to pay the principal _____

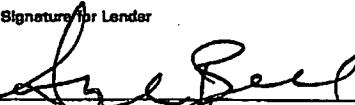
Installments: I agree to pay this note in 60 payments. The first payment will be in the amount of \$ 536.14 and will be due 05/13/2007. A payment of \$ 536.14 will be due on the 13th day of each Month thereafter. The final payment of the entire unpaid balance of principal and interest will be due April 13, 2012


ADDITIONAL TERMS: _____

SECURITY: This note is separately secured by (describe separate document by type and date):
MORTGAGE AND ASSIGNMENT OF LEASES & RENTS OF EVEN DATE LOCATED AT 110 NEEPERN DR., SUMMERVILLE, SC
(This section is for your internal use. Failure to file a separate security document does not mean the agreement will not secure this note.)

PURPOSE: The purpose of this loan is TO REFINANCE RENTAL PROPERTY LOCATED AT 110 NEEPERN DR., SUMMERVILLE, SC

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

Signature for Lender

 Angela Bell
 Commercial Lender


 ANTHONY M. WHITFIELD

POST A
 10001

Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 294616120

00012599 Vol: 6498 Pg: 18



53 2007 0001 2599

Instrument Number: 2007-00012599

As
Mortgage

Recorded On: April 18, 2007

Parties: WHITFIELD ANTHONY M
To
HARBOR NATIONAL BANK

Billable Pages: 5

Recorded By: CLAYPOOLE, J. STANLEY

Num Of Pages: 10

Comment:

**** Examined and Charged as Follows: ****

Mortgage 15.00
Recording Charge: 15.00

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Berkeley County, SC

File Information:

Document Number: 2007-00012599
Receipt Number: 114724
Recorded Date/Time: April 18, 2007 01:08:01P
Book-Vol/Pg: Bk-R VI-6498 Pg-18
Cashier / Station: B Edgerton / Cash Station 8

Record and Return To:

CLAYPOOLE, J. STANLEY
2155 NORTH PARK LANE
N. CHARLESTON SC 29406



Cynthia B. Forte

Cynthia B Forte - Register of Deeds

Page 1 of 10

RETURN TO:
J. STANLEY CLAYPOOLE, PA
2155 NORTHPARK LANE
NORTH CHARLESTON, S.C. 29406

Doc # 00012599

00012599 Vol: 6498 Ps: 19

This document was prepared by (name, address, phone):

Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE (With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 04/13/2007 and the parties and their addresses are as follows:

MORTGAGOR: ANTHONY M WHITFIELD
2141 DORCHESTER ROAD
NORTH CHARLESTON, SC 29405

Refer to the Addendum which is attached and incorporated herein for additional Mortgages.

LENDER: Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:

SEE ATTACHED EXHIBIT 'A'

The property is located in BERKLEY at 110 MEEKIN
(County)
DRIVE, SUMMERVILLE, South Carolina 29483
(Address) (City) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT (NOT FOR FRMA, FRMC, FHA OR VA USE, AND NOT FOR CONSUMER PURPOSES)

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EXHIBIT B
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3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 90,000.00 . This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.
4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:
- The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., borrower's name, note amount, interest rate, maturity date):
One note of even date in the principal amount of 90,000.00 with final payment due 04/13/2012
 - All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
 - All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
 - All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
 - Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.
- If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.
5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
- To make all payments when due and to perform or comply with all covenants.
 - To promptly deliver to Lender any notices that Mortgagor receives from the holder.
 - Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

- 10. TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.
- 11. ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:
- Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
 - The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
 - Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.
- 12. PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

- 13. AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

- 14. ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property):
- Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
 - Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

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any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

16. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

16. DEFAULT. Mortgagor will be in default if any of the following occur:

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgage is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has

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characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. INSURANCE. Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

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Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. NO ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

25. APPLICABLE LAW; SEVERABILITY; INTERPRETATION. This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. WAIVER OF HOMESTEAD. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. U.C.C. PROVISIONS. If checked, the following are applicable to, but do not limit, this Mortgage:

- Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

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- Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

29. OTHER TERMS. If checked, the following are applicable to this Mortgage:

- Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**
- Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- Additional Terms.**

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

Actual authority was granted to the parties signing below by resolution signed and dated _____.

Entity Name: _____

Entity Name: _____

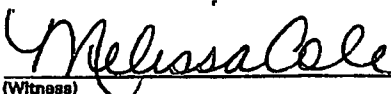


 (Signature) ANTHONY J. WHITFIELD (Date) 04/13/2007 (Seal)

 (Signature) _____ (Date) _____ (Seal)

Signed, Sealed and delivered in the presence of:

 (Witness)



 (Witness)

Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

PROBATE:

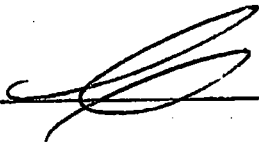
STATE OF South Carolina, COUNTY OF Charleston } ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 13th day

of April, 2007

Melissa Cole
Notary Public for South Carolina



My commission expires: 06/20/2015

Exhibit "A"

ALL that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Berkeley, State of South Carolina, the same being shown and designated as Lot No. 6, Block F, Okatee Subdivision, on a Plat entitled "Okatee, Berkeley County, State of South Carolina" prepared by C. Roger Jennings, RLS, dated May 21, 1975 and filed in the "File Cabinet" in the Office of the Register of Deeds for Berkeley County, South Carolina. Reference is had to said plat for a more complete and accurate description of subject property as to metes, bounds, and measurements.

BEING the same premises as conveyed to the Mortgagor herein by Master Deed of Master of Equity for Berkeley County recorded May 3, 2006 in Book 5583, Page 22 in the RMC Office for Berkeley County.

TMS # 223-13-02-020

Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 294616120

00012600 Vol: 6498 Pg: 28

07-0514



Instrument Number: 2007- 00012600

As

Recorded On: April 18, 2007

Assignment of Lease

Parties: WHITFIELD ANTHONY M

To

HARBOR NATIONAL BANK

Billable Pages: 4

Recorded By: CLAYPOOLE, J. STANLEY

Num Of Pages: 9

Comment:

**** Examined and Charged as Follows: ****

Assignment of Lease	14.00
Recording Charge:	14.00

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Berkeley County, SC

File Information:

Document Number: 2007- 00012600
Receipt Number: 114724
Recorded Date/Time: April 18, 2007 01:08:43P
Book-Vol/Pg: Bk-R VI-6498 Pg-28
Cashier / Station: B Edgerton / Cash Station 8

Record and Return To:

CLAYPOOLE, J. STANLEY
2155 NORTHPARK LANE
N. CHARLESTON SC 29406



Cynthia B. Forte

Cynthia B Forte - Register of Deeds

Page 1 of 9

RETURN TO:
J. STANLEY CLAYPOOLE, PA
2155 NORTHPARK LANE
NORTH CHARLESTON, S.C. 29406

00012600 Vol: 6498 Ps: 29

_____ State of South Carolina _____ Space Above This Line For Recording Data _____

This document was prepared by (name, address, phone number): Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

(843) 852-6400

ASSIGNMENT OF LEASES AND RENTS

1. **DATE AND PARTIES.** The date of this Assignment of Leases and Rents (Assignment) is 04/13/2007. The parties and their addresses are:

ASSIGNOR: ANTHONY M WHITFIELD
2141 DORCHESTER ROAD
NORTH CHARLESTON, SC 29405

Refer to the Addendum that is attached and incorporated herein for additional Assignors.

LENDER: Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

2. **ASSIGNMENT OF LEASES AND RENTS.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Assignor's performance under this Assignment, Assignor irrevocably assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (all referred to as Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including any extensions, renewals, modifications or replacements (all referred to as Leases).

B. Rents, issues and profits (all referred to as Rents), including but not limited to security deposits, minimum rent, percentage rent, additional rent, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Assignor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property.

C. The term Property as used in this Assignment shall include the following described real property:

SEE ATTACHED EXHIBIT 'A'

The Property is located in BERKELEY County at
110 MEPKIN DRIVE SUMMERVILLE, SC 29483 (Address, City, State,
 ZIP Code).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Assignment at any one time will not exceed \$ 90,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Assignment. Also, this limitation does not apply to advances made under the terms of this Assignment to protect Lender's security and to perform any of the covenants contained in this Assignment. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.
4. **SECURED DEBTS.** This Assignment will secure the following Secured Debts:
- A. **Specific Debts.** The following debts and all extensions, renewals, refinancings, modifications and replacements. (Include items such as borrowers' names, note amounts, interest rates, maturity dates, etc.)
- One or more of the debts secured by this Assignment contains a future advance provision.
- B. **All Debts.** All present and future debts from Assignor and _____
- to Lender, even if this Assignment is not specifically referenced or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Assignment, each agrees that it will secure debts incurred either individually or with others who may not sign this Assignment. Nothing in this Assignment constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. In the event that Lender fails to provide notice of the right of rescission, Lender waives any subsequent security interest in the Assignor's principal dwelling that is created by this Assignment. This Assignment will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Assignment will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.
- C. **Sums Advanced.** All sums advanced and expenses incurred by Lender under the terms of this Assignment.
5. **PAYMENTS.** Assignor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Assignment.
6. **COLLECTION OF RENTS.** Assignor may collect, receive, enjoy and use the Rents so long as Assignor is not in default. Assignor will not collect in advance any Rents due in future lease periods, unless Assignor first obtains Lender's written consent. Upon default, Assignor will receive any Rents in trust for Lender and Assignor will not commingle the Rents with any other funds. When Lender so directs, Assignor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Assignor agrees that this Assignment is immediately effective between Assignor and Lender and effective as to third parties on the recording of this Assignment.
7. **WARRANTIES AND REPRESENTATIONS.** To induce Lender to enter into the Loan, Assignor makes these representations and warranties for as long as this Assignment is in effect.
- A. **Power.** Assignor is duly organized, validly existing and in good standing under the laws in the jurisdiction where Assignor was organized and is duly qualified, validly existing and in good standing in all jurisdictions in which Assignor operates or Assignor owns or leases property. Assignor has the power and authority to enter into this transaction and to carry on Assignor's business or activity as now conducted.
- B. **Authority.** The execution, delivery and performance of this Assignment and the obligation evidenced by this Assignment: are within Assignor's duly authorized powers; has received all necessary governmental approval; will not violate any provision of law or order of court or governmental agency; and will not violate any agreement to which Assignor is a party or to which Assignor is or any of Assignor's property is subject.

- C. **Name and Place of Business.** Other than previously disclosed in writing to Lender, Assignor has not changed Assignor's name or principal place of business within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Assignor does not and will not use any other name and will preserve Assignor's existing name, trade names and franchises.
- D. **Ownership or Lease of Property.** Assignor owns or leases all property that Assignor needs to conduct Assignor's business and activities. All of Assignor's property is free and clear of all liens, security interests, encumbrances and other adverse claims and interests, except those Lender previously agreed to in writing.
- E. **Compliance with Laws.** Assignor is not violating any laws, regulations, rules, orders, judgments or decrees applicable to Assignor or Assignor's property, except for those that Assignor is challenging in good faith through proper proceedings after providing adequate reserves to fully pay the claim and its challenge should Assignor lose.
- F. **Title.** Assignor has good title to the Leases, Rents and Property and the right to assign, grant, bargain, convey and mortgage to Lender as additional security the Leases and Rents, and no other person has any right in the Leases and Rents.
- G. **Recordation.** Assignor has recorded the Leases as required by law or as otherwise prudent for the type and use of the Property.
- H. **Default.** No default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Assignor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Assignor or any party to the Lease defaults or fails to observe any applicable law, Assignor will promptly notify Lender.
- I. **Lease Modification.** Assignor has not sublet, modified, extended, canceled, or otherwise altered the Leases, or accepted the surrender of the Property covered by the Leases (unless the Leases so required).
- J. **Encumbrance.** Assignor has not assigned, compromised, subordinated or encumbered the Leases and Rents.
8. **COVENANTS.** Assignor agrees to the following covenants:
- A. **Rent Abatement and Insurance.** When any Lease provides for an abatement of Rents due to fire, flood or other casualty, Assignor will insure against this risk of loss with a policy satisfactory to Lender. Assignor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.
- B. **Copies of Leases.** Assignor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed.
- C. **Right to Rents.** Immediately after the execution of this Assignment, Assignor will notify all current and future tenants and others obligated under the Leases of Lender's right to the Leases and Rents, and will request that they immediately pay all future Rents directly to Lender when Assignor or Lender asks them to do so.
- D. **Accounting.** When Lender requests, Assignor will provide to Lender an accounting of Rents, prepared in a form acceptable to Lender, subject to generally accepted accounting principles and certified by Assignor or Assignor's accountant to be current, accurate and complete as of the date requested by Lender.
- E. **Lease Modification.** Assignor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so required) without Lender's written consent.
- F. **Encumbrance.** Assignor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent.
- G. **Future Leases.** Assignor will not enter into any future Leases without prior written consent from Lender. Assignor will execute and deliver such further assurances and assignments as to these future Leases as Lender requires from time to time.
- H. **Personal Property.** Assignor will not sell or remove any personal property on the Property, unless Assignor replaces this personal property with like kind for the same or better value.
- I. **Prosecution and Defense of Claims.** Assignor will appear in and prosecute its claims or defend its title to the Leases and Rents against any claims that would impair Assignor's interest under this Assignment and, on Lender's request, Assignor will also appear in any action or proceeding on behalf of Lender. Assignor agrees to assign to Lender, as requested by Lender, any right, claims or defenses which Assignor may have against parties who supply labor or materials to improve or maintain the leaseholds subject to the Leases and/or the Property.
- J. **Liability and Indemnification.** Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses or damages due to Lender's gross negligence or intentional torts to the extent permitted by law. Otherwise, Assignor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.
- K. **Leasehold Estate.** Assignor will not cause or permit the leasehold estate under the Leases to merge with Assignor's reversionary interest, and agrees that the Leases shall remain in full force and effect regardless of any merger of the Assignor's interests and of any merger of the interests of Assignor and any party obligated under the Leases.
- L. **Insolvency.** Lender will be the creditor of each tenant and of anyone else obligated under the Leases who is subject to an assignment for the benefit of creditors, an insolvency, a dissolution or a receivership proceeding, or a bankruptcy.

(page 3 of 7)

9. **TRANSFER OF AN INTEREST IN THE ASSIGNOR.** If Assignor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if:
- A beneficial interest in Assignor is sold or transferred.
 - There is a change in either the identity or number of members of a partnership or similar entity.
 - There is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity.
- However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Assignment.
10. **DEFAULT.** Assignor will be in default if any of the following occur with regard to the Secured Debts that are secured by this Assignment:
- Payments.** Assignor fails to make a payment in full when due.
 - Insolvency or Bankruptcy.** Assignor makes an assignment for the benefit of creditors or becomes insolvent, either because Assignor's liabilities exceed Assignor's assets or Assignor is unable to pay Assignor's debts as they become due; or Assignor petitions for protection under federal, state or local bankruptcy, insolvency or debtor relief laws, or is the subject of a petition or action under such laws and fails to have the petition or action dismissed within a reasonable period of time not to exceed 60 days.
 - Death or Incompetency.** If Assignor is an individual, Assignor dies or is declared legally incompetent.
 - Business Termination.** If Assignor is not an individual, Assignor merges, dissolves, reorganizes or ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.
 - Failure to Perform.** Assignor fails to perform any condition or to keep any promise or covenant of this Assignment, any other document evidencing or pertaining to the Loan, or any other debt or agreement Assignor has with Lender.
 - Misrepresentation.** Assignor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
 - Property Transfer.** Assignor transfers all or a substantial part of Assignor's money or property.
 - Property Value.** The value of the Property declines or is impaired.
 - Name Change.** Assignor changes Assignor's name or assumes an additional name without notifying Lender before making such a change.
 - Material Change.** Without first notifying Lender, there is a material change in Assignor's business, including ownership, management, and financial conditions.
 - Insecurity.** Lender reasonably believes that Lender is insecure.
11. **REMEDIES.** After Assignor defaults, and after Lender gives any legally required notice and opportunity to cure the default, Lender may at Lender's option do any one or more of the following:
- Acceleration.** Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due.
 - Additional Security.** Lender may demand additional security or additional parties to be obligated to pay the Secured Debts.
 - Sources.** Lender may use any and all remedies Lender has under the state law where the Property is located or federal law or in any instrument evidencing or pertaining to the Secured Debts.
 - Insurance Benefits.** Lender may make a claim for any and all insurance benefits or refunds that may be available on Assignor's default.
 - Payments Made On Assignor's Behalf.** Amounts advanced on Assignor's behalf will be immediately due and may be added to the Secured Debts.
 - Rents.** Lender may terminate Assignor's right to collect Rents and directly collect and retain Rents in Lender's name without taking possession of the Property and to demand, collect, receive, and sue for the Rents, giving proper receipts and releases. In addition, after deducting all reasonable expenses of collection from any collected and retained Rents, Lender may apply the balance as provided for by the Secured Debts.
 - Entry.** Lender may enter, take possession, manage and operate all or any part of the Property; make, modify, enforce or cancel or accept the surrender of any Leases; obtain or evict any tenants and licensees; increase or reduce Rents; decorate, clean and make repairs or do any other act or incur any other cost Lender deems proper to protect the Property as fully as Assignor could do. Any funds collected from the operation of the Property may be applied in such order as Lender may deem proper, including, but not limited to, payment of the following: operating expenses, management, brokerage, attorneys' and accountants' fees, the Secured Debts, and toward the maintenance of reserves for repair or replacement. Lender may take such action without regard to the adequacy of the security, with or without any action or proceeding, through any person or agent, or receiver to be appointed by a court, and irrespective of Assignor's possession. The collection and application of the Rents or the entry upon and taking possession of the Property as set out in this section shall not cure or waive any notice of default under the Secured Debts, this Assignment, or invalidate any act pursuant to such notice. The enforcement of such remedy by Lender, once exercised, shall continue for so long as Lender shall elect, notwithstanding that such collection and application of Rents may have cured the original default.

H. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

12. **APPOINTMENT OF A RECEIVER.** On or after an Assignor's default, Assignor agrees to Lender making an application to the court for an appointment of a receiver for the benefit of Lender to take possession of the Property and the Leases, with the power to receive, collect and apply the Rents. Any Rents collected will be applied as the court authorizes to pay taxes, to provide insurance, to make repairs and to pay costs or any other expenses relating to the Property, the Leases and Rents, and any remaining sums shall be applied to the Secured Debts. Assignor agrees that this appointment of a receiver may be without giving bond, without reference to the then-existing value of the Property, and without regard to the insolvency of any person liable for any of the Secured Debts.
13. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** To the extent permitted by law, Assignor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Assignment. Unless the applicable law that governs this Assignment is North Dakota, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. These expenses will bear interest from the date of payment until paid in full at the contract interest rate then in effect for the Loan. To the extent permitted by the United States Bankruptcy Code, Assignor agrees to pay the reasonable attorneys' fees Lender incurs to collect this Assignment as awarded by any court exercising jurisdiction under the Bankruptcy Code.
14. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste," "hazardous substance," or "regulated substances" under any Environmental Law.

Assignor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Assignor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Assignor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Assignor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Assignor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Assignor or any tenant of any Environmental Law. Assignor will immediately notify Lender in writing as soon as Assignor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Except as previously disclosed and acknowledged in writing to Lender, Assignor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.
- F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Assignor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Assignor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Assignor and any tenant are in compliance with applicable Environmental Law.

(page 5 of 7)

- I. Upon Lender's request and at any time, Assignor agrees, at Assignor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Assignor's obligations under this section at Assignor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Assignor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses to the extent permitted by law, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Assignment and in return Assignor will provide Lender with collateral of at least equal value to the Property secured by this Assignment without prejudice to any of Lender's rights under this Assignment.
- L. Notwithstanding any of the language contained in this Assignment to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Assignment regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.
- 15. TERM.** This Assignment will remain in full force and effect until the Secured Debts are paid or otherwise discharged and Lender is no longer obligated to advance funds under any loan or credit agreement which is a part of the Secured Debts. If any or all payments of the Secured Debts are subsequently invalidated, declared void or voidable, or set aside and are required to be repaid to a trustee, custodian, receiver or any other party under any bankruptcy act or other state or federal law, then the Secured Debts will be revived and will continue in full force and effect as if this payment had not been made.
- 16. CO-SIGNERS.** If Assignor signs this Assignment but does not sign the Secured Debts, Assignor does so only to assign Assignor's interest in the Property to secure payment of the Secured Debts and Assignor does not agree to be personally liable on the Secured Debts. If this Assignment secures a guaranty between Lender and Assignor, Assignor agrees to waive any rights that may prevent Lender from bringing any action or claim against Assignor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.
- 17. WAIVERS.** Except to the extent prohibited by law, Assignor waives all homestead exemption rights relating to the Property.
- 18. U.C.C. PROVISIONS.**
- Construction Loan.** This Assignment secures an obligation incurred for the construction of an improvement on the Property.
- 19. OTHER TERMS.** If checked, the following are applicable to this Assignment:
- Line of Credit.** The Secured Debts include a revolving line of credit provision. Although the Secured Debts may be reduced to a zero balance, this Assignment will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.
- Additional Terms.**
- 20. APPLICABLE LAW.** This Assignment is governed by the laws of South Carolina, except to the extent otherwise required by the laws of the jurisdiction where the Property is located, and the United States of America.
- 21. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** Each Assignor's obligations under this Assignment are independent of the obligations of any other Assignor. Lender may sue each Assignor individually or together with any other Assignor. Lender may release any part of the Property and Assignor will still be obligated under this Assignment for the remaining Property. The duties and benefits of this Assignment will bind and benefit the successors and assigns of Lender and Assignor.
- 22. AMENDMENT, INTEGRATION AND SEVERABILITY.** This Assignment may not be amended or modified by oral agreement. No amendment or modification of this Assignment is effective unless made in writing and executed by Assignor and Lender. This Assignment is the complete and final expression of the agreement. If any provision of this

Assignment is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

23. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Assignment.

24. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail and by registered or certified mail, return receipt requested, to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one party will be deemed to be notice to all parties. Assignor will inform Lender in writing of any change in Assignor's name, address or other application information. Assignor will provide Lender any financial statements or information Lender requests. All financial statements and information Assignor gives Lender will be correct and complete. Assignor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Assignor's obligations under this Assignment and to confirm Lender's lien status on any Property. Time is of the essence.

25. SIGNATURES. By signing under seal, Assignor agrees to the terms and covenants contained in this Assignment. Assignor also acknowledges receipt of a copy of this Assignment.

(Entity Name)

Anthony M. Whitfield (Seal)
(Signature) ANTHONY M. WHITFIELD

(Signature)

Signed, sealed and delivered in the presence of:

[Signature]
(Witness)

Melissa Cole
(Witness)

PROBATE:

STATE OF South Carolina, COUNTY OF Charleston) ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Assignor (and each Assignor if more than one) sign, seal and deliver the foregoing Assignment and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 13th day

of April, 2007.

Melissa Cole (Seal)
Notary Public for South Carolina

[Signature]

My commission expires: 06/20/2015

Exhibit "A"

ALL that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Berkeley, State of South Carolina, the same being shown and designated as Lot No. 6, Block F, Okatee Subdivision, on a Plat entitled "Okatee, Berkeley County, State of South Carolina" prepared by C. Roger Jennings, RLS, dated May 21, 1975 and filed in the "File Cabinet" in the Office of the Register of Deeds for Berkeley County, South Carolina. Reference is had to said plat for a more complete and accurate description of subject property as to metes, bounds, and measurements.

BEING the same premises as conveyed to the Mortgagor herein by Master Deed of Master of Equity for Berkeley County recorded May 3, 2006 in Book 5583, Page 22 in the RMC Office for Berkeley County.

TMS # 223-13-02-020

Common Pleas

Clerk : Mary P. Brown
300 B California Avenue
Moncks Corner, SC 29461
(843) 719-4400

DUPLICATE

Received From: Bernstein, Robert Alan
PO Box 20519
Charleston, SC 294130519

Date: 9/7/2012
Receipt #: 6040867
Clerk: COCRKW

Paying for: Harbor National Bank,

Transaction Type: Payment

Payment Type: Check \$150.00

Total Paid: \$150.00

Reference #: 18820

Comment: Non-Refundable

Case #	Caption	Previous Balance	Amount Paid	Balance Due	S/T
2012CP0802618	Harbor National Bank VS Anthony M Whitfield	\$150.00	\$150.00	\$0.00	420



Total Cases:	1	\$150.00	\$150.00	\$0.00
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 Harbor National Bank,)
)
 Plaintiff,)
)
 v.)
)
 Anthony M. Whitfield,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 CASE NUMBER: 2012-CP-08-3478

SUMMONS

Jw
 FILED
 2012 DEC -7 PM 4:13
 MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to serve an Answer to the allegations of the Complaint, which is hereby served upon you, within thirty (30) days of the date of service hereof; Your Answer shall be served upon the Clerk of this Court and upon the subscriber at his office, 5418-B Rivers Avenue, North Charleston, South Carolina 29406-6165; If you fail to respond within the time aforesaid, the Plaintiff will take judgment against you by default for the relief demanded in the Complaint.

BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
 Post Office Box 20519
 Charleston, SC 29413-0519
 (843) 529-1111
 (843) 529-0035 (fax)

ATTORNEYS FOR THE PLAINTIFF

December 4, 2012
 Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Harbor National Bank,

Plaintiff,

v.

Anthony M. Whitfield ,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2012-CP-08- 3478

COMPLAINT
(Foreclosure of Real Estate)
(Action On Note)

(Non-Jury)

2012 DEC -7 PM 4:13
MAURY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC
FILED

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

1. The Plaintiff is a national banking organization organized and existing pursuant to the laws of the United States of America, with its principal place of business located in South Carolina.
2. Defendant Anthony M. Whitfield is a citizen and resident of the County of Charleston, State of South Carolina.
3. The real property hereinafter described, which is the subject of this action, is situated and located in Berkeley County, South Carolina.
4. All parties hereto and all matters herein are within the jurisdiction of this Court.

FOR A FIRST CAUSE OF ACTION
(Action on Note)

5. Heretofore, on or about October 9, 2007, for value received the Defendant Anthony M. Whitfield executed and delivered to Harbor National Bank, a certain Promissory Note, Loan No. 40046800, a copy of which is attached hereto as Exhibit "A" and made a part hereof by reference,

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by which, according to the terms and conditions set out therein, Anthony M. Whitfield promised to pay to Harbor National Bank the sum of One Hundred Forty Thousand and no/100 (\$140,000.00) Dollars, together with interest thereon at the rate of 7.25 % per annum on the unpaid balance, with a maturity date of October 13, 2012.

6. The payment due under the Note referred to in the preceding paragraph is in default, and the conditions of said Note have been broken.

7. Defendant Anthony M. Whitfield has committed an act of default under the aforesaid Note.

8. The Plaintiff has made demand upon Defendant Anthony M. Whitfield to pay the entire amount due under the Note, but the said Defendant has failed and refused to make such payment.

9. The failure of Defendant Anthony M. Whitfield to make payment of the balance due constitutes a breach of the Note.

10. Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note as November 30, 2012, the principal sum of One Hundred Thirty-Two Thousand, One Hundred Seventy-Eight and 17/100 (\$132,178.17) Dollars, accumulated interest of Two Thousand, Four Hundred Seventy-Five and 59/100 (\$2,475.59) Dollars, late fees of \$48.30, and interest continuing to accumulate at the current rate of \$26.6192 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

11. Plaintiff has retained and employed Bernstein & Bernstein, P.A. for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable

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attorneys' fees incurred with respect to this action.

12. By reason of the aforesaid breach of contract, the Plaintiff has suffered damages in the amount of One Hundred Thirty-Two Thousand, One Hundred Seventy-Eight and 17/100 (\$132,178.17) Dollars, accumulated interest of Two Thousand, Four Hundred Seventy-Five and 59/100 (\$2,475.59) Dollars, late fees of \$48.30, and interest continuing to accumulate at the current rate of \$26.6192 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

FOR A SECOND CAUSE OF ACTION
(Mortgage Foreclosure)

13. The allegations of paragraphs One (1) through Twelve (12) of this Complaint are realleged as if repeated herein verbatim.

14. To further secure his obligation under the aforesaid Promissory Note, on October 9, 2007, Anthony M. Whitfield executed a Real Estate Mortgage, whereby to secure the liability under the Promissory Note and any further advances thereof, a mortgage was granted to and upon the following described property, to wit:

ALL that certain lot, piece or parcel of land, together with the buildings and improvements thereon, situate, lying and being in the City of Goose Creek, Berkeley County, State of South Carolina, and designated as **Lot 12, Block D, Tall Pines Subdivision, Section Two**, on a plat dated March 26, 1975, made by Harold J. Leamond, P.E. and L.S., and recorded in the RMC Office for Berkeley County in Plat Book V, Page 114. Said lot having such size, shape, dimensions buttings and boundings as will more fully appear by reference to said plat.

Being the same premises as conveyed to Anthony M. Whitfield by Robert E. Watson, Master in Equity for Berkeley County dated March 14, 2007 and recorded in the Berkeley County Register of Deeds Office in Book 6470 at Page 325.

TMS # 242-03-03-042

Address: 308 Shortleaf Drive, Ladson Creek, SC 29446

(hereinafter referred to as the SHORTLEAF DRIVE PROPERTY); a true and correct copy of the said Mortgage is attached hereto as Exhibit "B."

15. On October 17, 2007, the said Mortgage was recorded in the Office of the Register of Deeds for Berkeley County in Book 6926, at page 119.

16. According to the terms and conditions of the aforesaid Real Estate Mortgage, it is provided that in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable without notice, at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all cost of collection, including a reasonable attorney's fees, shall become an obligation of the Defendant Anthony M. Whitfield, to be secured by the said mortgage as part of the debt secured thereby.

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

18. According to the terms of the said Mortgages and the Assignment of Leases and Rents, and as additional security, the Defendant assigned all rents, issues and profits of the mortgaged premises from and after any default thereunder, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, were given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as Receiver, shall apply the residue of the

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rents, issues and profits toward the debt secured by said mortgage.

19. The payment due under said Note is due and has been in default since October 13, 2012, and the conditions of said mortgage have been broken.

20. The entire balance of said indebtedness due and payable, and that there is due on said note as of November 30, 2012, the sum of One Hundred Thirty-Two Thousand, One Hundred Seventy-Eight and 17/100 (\$132,178.17) Dollars, accumulated interest of Two Thousand, Four Hundred Seventy-Five and 59/100 (\$2,475.59) Dollars, late fees of \$48.30, and interest continuing to accumulate at the current rate of \$26.6192 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

21. Plaintiff has retained and employed Bernstein & Bernstein, P.A. for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable attorneys' fees incurred with respect to this action.

22. The Plaintiff is entitled to an Order foreclosing the mortgage upon the SHORTLEAF DRIVE PROPERTY, and the proceeds of the said foreclosure to be distributed first to the costs and expenses of the sale thereof, second to be applied against accrued principal and interest under the Note and mortgage, third to payment of the costs, expenses and reasonable attorneys fees incurred by the Plaintiff in prosecuting this foreclosure action, and the Court should thereafter pay any excess proceeds of sale to such claimants in such priorities as their interests may appear.

FOR A THIRD CAUSE OF ACTION
(Appointment of Receiver)

23. The allegations of Paragraphs One (1) through Twenty-Two (22) of this Complaint are realleged as if repeated herein verbatim.

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24. To further secure his obligation under the aforesaid Promissory Note, on October 9, 2007, Anthony M. Whitfield executed an Assignment of Leases and Rents, whereby to secure the liability under the Promissory Note and any further advances thereof, the Defendant assigned all leases and rents from the subject PROPERTY to the Plaintiff; a true and correct copy of the said Assignment of Leases and Rents is attached hereto as Exhibit "C."

25. On October 17, 2007, the said Assignment of Leases and Rents was recorded in the Office of the Register of Deeds for Berkeley County in Book 6926, at Page 129.

26. According to the terms of the said Assignment of Leases and Rents, and as additional security, the Defendant assigned all rents, issues and profits of the SHORTLEAF DRIVE PROPERTY from and after any default thereunder, and should legal proceedings be instituted pursuant to said Assignment of Leases and Rents, the Plaintiff were given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as Receiver, shall apply the residue of the rents, issues and profits toward the secured debt.

27. The payments due under said Note is due and has been in default since October 13, 2012, and the conditions of said Assignment of Leases and Rents have been broken.

28. The entire balance of said indebtedness is due and payable, and that there is due on said note as of November 30, 2012, the sum of One Hundred Thirty-Two Thousand, One Hundred Seventy-Eight and 17/100 (\$132,178.17) Dollars, accumulated interest of Two Thousand, Four Hundred Seventy-Five and 59/100 (\$2,475.59) Dollars, late fees of \$48.30, and interest continuing to accumulate at the current rate of \$26.6192 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

29. The Plaintiff is entitled to have a Receiver appointed for the SHORTLEAF DRIVE PROPERTY to collect all income from the said PROPERTY, to pay expenses associated therewith, including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt hereunder.

FOR A FOURTH CAUSE OF ACTION
(Action on Note)

30. Heretofore, on or about October 9, 2007, for value received the Defendant Anthony M. Whitfield executed and delivered to Harbor National Bank, a certain Promissory Note, Loan No. 40046900, a copy of which is attached hereto as Exhibit "D" and made a part hereof by reference, by which, according to the terms and conditions set out therein, Anthony M. Whitfield promised to pay to Harbor National Bank the sum of One Hundred Thirty-Five Thousand and no/100 (\$135,000.00) Dollars, together with interest thereon at the rate of 7.25 % per annum on the unpaid balance, with a maturity date of October 13, 2012.

31. The payment due under the Note referred to in the preceding paragraph is in default, and the conditions of said Note have been broken.

32. Defendant Anthony M. Whitfield has committed an act of default under the aforesaid Note.

33. The Plaintiff has made demand upon Defendant Anthony M. Whitfield to pay the entire amount due under the Note, but the said Defendant has failed and refused to make such payment.

34. The failure of Defendant Anthony M. Whitfield to make payment of the balance due constitutes a breach of the Note.

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35. Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note as November 30, 2012, the principal sum of One Hundred Twenty-Seven Thousand, Four Hundred Fifty-Seven and 67/100 (\$127,457.67) Dollars, accumulated interest of Two Thousand, Three Hundred Eighty-Seven and 18/100 (\$2,387.18) Dollars, late fees of \$46.57, and interest continuing to accumulate at the current rate of \$25.6686 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

36. Plaintiff has retained and employed Bernstein & Bernstein, P.A. for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable attorneys' fees incurred with respect to this action.

37. By reason of the aforesaid breach of contract, the Plaintiff has suffered damages in the amount of One Hundred Twenty-Eight Thousand, Two Hundred Sixty-Three and 84/100 (\$127,457.67) Dollars, accumulated interest of Two Thousand, Three Hundred Eighty-Seven and 18/100 (\$2,387.18) Dollars, and interest continuing to accumulate at the current rate of \$25.6686 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

FOR A FIFTH CAUSE OF ACTION
(Mortgage Foreclosure)

38. The allegations of paragraphs Thirty (30) through Thirty-Seven (37) of this Complaint are realleged as if repeated herein verbatim.

39. To further secure his obligation under the aforesaid Promissory Note, on October 9, 2007, Anthony M. Whitfield executed a Real Estate Mortgage, whereby to secure the liability under

the Promissory Note and any further advances thereof, a mortgage was granted to and upon the following described property, to wit:

ALL that certain lot, piece or parcel of land, situate, lying and being in the Town of Goose Creek, Berkeley County, State of South Carolina, and being shown and designated as **Lot 10, Block C** on a Plat of **CAMELOT VILLAGE, SECTION 4**, dated December 1966 by C. Roger Jennings, and recorded in the RMC Office for Berkeley County in Plat Book S, Page 32; the premises herein conveyed having such size, shape, dimensions, buttings and boundings as will be shown by reference to the aforesaid plat.

Being the same premises as conveyed to Anthony M. Whitfield by deed of Robert E. Watson, Master in Equity for Berkeley County dated January 29, 2007 and recorded in the Berkeley County Register of Deeds in Book 6303 at Page 266.

TMS # 243-12-04-044

Address: 118 Clay Street, Goose Creek, SC 29445

(hereinafter referred to as the CLAY STREET PROPERTY); a true and correct copy of the said Mortgage is attached hereto as Exhibit "E."

40. On October 17, 2007, the said Mortgage was recorded in the Office of the Register of Deeds for Berkeley County in Book 6926, at page 100.

41. According to the terms and conditions of the aforesaid Real Estate Mortgage, it is provided that in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable without notice, at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all cost of collection, including a reasonable attorney's fees, shall become an obligation of the Defendant Anthony M. Whitfield, to be secured by the said mortgage as part of the debt secured thereby.

42. Further, under the terms and conditions of the said Mortgages, it was agreed that the mortgagor would pay all taxes, assessments, water rates, other governmental or municipal charges,

finances or impositions for which provisions were not otherwise made, and if the mortgagor failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

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

44. The payment due under said Note is due and has been in default since October 13, 2012, and the conditions of said mortgage have been broken.

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45. The entire balance of said indebtedness due and payable, and that there is due on said note as of November 30, 2012, the sum of One Hundred Twenty-Eight Thousand, Two Hundred Sixty-Three and 84/100 (\$127,457.67) Dollars, accumulated interest of Two Thousand, Three Hundred Eighty-Seven and 18/100 (\$2,387.18) Dollars, late fees of \$46.57, and interest continuing to accumulate at the current rate of \$25.6686 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

46. Plaintiff has retained and employed Bernstein & Bernstein, P.A. for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable attorneys' fees incurred with respect to this action.

47. The Plaintiff is entitled to an Order foreclosing the mortgage upon the CLAY

STREET PROPERTY, and the proceeds of the said foreclosure to be distributed first to the costs and expenses of the sale thereof, second to be applied against accrued principal and interest under the Note and mortgage, third to payment of the costs, expenses and reasonable attorneys fees incurred by the Plaintiff in prosecuting this foreclosure action, and the Court should thereafter pay any excess proceeds of sale to such claimants in such priorities as their interests may appear.

FOR A SIXTH CAUSE OF ACTION
(Appointment of Receiver)

48. The allegations of Paragraphs Thirty (30) through Forty-Seven (47) of this Complaint are realleged as if repeated herein verbatim.

49. To further secure his obligation under the aforesaid Promissory Note, on October 9, 2007, Anthony M. Whitfield executed an Assignment of Leases and Rents, whereby to secure the liability under the Promissory Note and any further advances thereof, the Defendant assigned all leases and rents from the subject PROPERTY to the Plaintiff; a true and correct copy of the said Assignment of Leases and Rents is attached hereto as Exhibit "F."

50. On October 17, 2007, the said Assignment of Leases and Rents was recorded in the Office of the Register of Deeds for Berkeley County in Book 6926, at Page 110.

51. According to the terms of the said Assignment of Leases and Rents, and as additional security, the Defendant assigned all rents, issues and profits of the CLAY STREET PROPERTY from and after any default thereunder, and should legal proceedings be instituted pursuant to said Assignment of Leases and Rents, the Plaintiff were given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as Receiver, shall apply the residue of the rents, issues

and profits toward the secured debt.

52. The payments due under said Note is due and has been in default since October 13, 2012, and the conditions of said Assignment of Leases and Rents have been broken.

53. The entire balance of said indebtedness is due and payable, and that there is due on said note as of November 30, 2012, the sum of One Hundred Twenty-Seven Thousand, Four Hundred Fifty-Seven and 67/100 (\$127,457.67) Dollars, accumulated interest of Two Thousand, Three Hundred Eighty-Seven and 18/100 (\$2,387.18) Dollars, late fees of \$46.57, and interest continuing to accumulate at the current rate of \$25.6686 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

54. The Plaintiff is entitled to have a Receiver appointed for the CLAY STREET PROPERTY to collect all income from the said PROPERTY, to pay expenses associated therewith, including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt hereunder.

FOR A SEVENTH CAUSE OF ACTION
(Action on Note)

30 55. Heretofore, on or about October 9, 2007, for value received the Defendant Anthony M. Whitfield executed and delivered to Harbor National Bank, a certain Promissory Note, Loan No. 40047000, a copy of which is attached hereto as Exhibit "G" and made a part hereof by reference, by which, according to the terms and conditions set out therein, Anthony M. Whitfield promised to pay to Harbor National Bank the sum of One Hundred Thirty-Seven Thousand and no/100 (\$137,000.00) Dollars, together with interest thereon at the rate of 7.25 % per annum on the unpaid balance, with a maturity date of October 13, 2012.

31 56. The payment due under the Note referred to in the preceding paragraph is in default, and the conditions of said Note have been broken.

32 57. Defendant Anthony M. Whitfield has committed an act of default under the aforesaid Note.

33 58. The Plaintiff has made demand upon Defendant Anthony M. Whitfield to pay the entire amount due under the Note, but the said Defendant has failed and refused to make such payment.

34 59. The failure of Defendant Anthony M. Whitfield to make payment of the balance due constitutes a breach of the Note.

35 60. Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note as November 30, 2012, the principal sum of One Hundred Twenty-Nine Thousand, Three Hundred Forty-Five and 91/100 (\$129,345.91) Dollars, accumulated interest of Two Thousand, Four Hundred Twenty-Two and 54/100 (2,422.54) Dollars, late fees of \$47.26, and interest continuing to accumulate at the current rate of \$26.0488 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

36 61. Plaintiff has retained and employed Bernstein & Bernstein, P.A. for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable attorneys' fees incurred with respect to this action.

37 62. By reason of the aforesaid breach of contract, the Plaintiff has suffered damages in the amount of One Hundred Twenty-Nine Thousand, Three Hundred Forty-Five and 91/100 (\$129,345.91) Dollars, accumulated interest of Two Thousand, Four Hundred Twenty-Two and

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54/100 (2,422..54) Dollars, late fees of \$47.26, and interest continuing to accumulate at the current rate of \$26.0488 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

FOR A EIGHTH CAUSE OF ACTION
(Mortgage Foreclosure)

38 63. The allegations of paragraphs Fifty-Five (55) through Sixty-Two (62) of this Complaint are realleged as if repeated herein verbatim.

39 64. To further secure his obligation under the aforesaid Promissory Note, on October 9, 2007, Anthony M. Whitfield executed a Real Estate Mortgage, whereby to secure the liability under the Promissory Note and any further advances thereof, a mortgage was granted to and upon the following described property, to wit:

ALL that certain lot, piece or parcel of land, together with the buildings and improvements thereon, situate, lying and being in the City of Goose Creek, Berkeley County, State of South Carolina, in Crowfield Plantation, The Commons, and being shown and designated as Lot 5, Block U, on that certain plat entitled "Plat Showing the Commons Subdivision, Phase IV, Property of Westvaco Development Corporation, Located in Crowfield Plantation, City of Goose Creek, Berkeley County, South Carolina," dated March 20, 1990 and prepared by Charles W. Shaver, S.C., Reg. P.E. & L.S., said plat being recorded March 21, 1990 in the RMC Office for Berkeley County, South Carolina in Plat Cabinet I, Page 72. Said lot having such size, shape, metes, bounds and dimensions as shown on said plat, reference to which is hereby made for a more complete description.

Being the same premises as conveyed to Anthony M. Whitfield by Robert E. Watson, Master in Equity for Berkeley County dated April 12, 2007 and recorded in Book 6486, Page 24 in the RMC Office for Berkeley County.

TMS # 234-14-07-018

Address: 109 Mallory Drive, Goose Creek, SC 29445

(hereinafter referred to as the MALLORY DRIVE PROPERTY); a true and correct copy of the said

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Mortgage is attached hereto as Exhibit "H."

40 65. On October 17, 2007, the said Mortgage was recorded in the Office of the Register of Deeds for Berkeley County in Book 6926, at page 138.

41 66. According to the terms and conditions of the aforesaid Real Estate Mortgage, it is provided that in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable without notice, at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all cost of collection, including a reasonable attorney's fees, shall become an obligation of the Defendant Anthony M. Whitfield, to be secured by the said mortgage as part of the debt secured thereby.

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

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

44 69. The payment due under said Note is due and has been in default since October 13,

2012, and the conditions of said mortgage have been broken.

45 70. The entire balance of said indebtedness due and payable, and that there is due on said note as of November 30, 2012, the sum of One Hundred Twenty-Nine Thousand, Three Hundred Forty-Five and 91/100 (\$129,345.91) Dollars, accumulated interest of Two Thousand, Four Hundred Twenty-Two and 54/100 (2,422.54) Dollars, late fees of \$47.26, and interest continuing to accumulate at the current rate of \$26.0488 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

76 71. Plaintiff has retained and employed Bernstein & Bernstein, P.A. for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable attorneys' fees incurred with respect to this action.

42 72. The Plaintiff is entitled to an Order foreclosing the mortgage upon the MALLORY DRIVE PROPERTY, and the proceeds of the said foreclosure to be distributed first to the costs and expenses of the sale thereof, second to be applied against accrued principal and interest under the Note and mortgage, third to payment of the costs, expenses and reasonable attorneys fees incurred by the Plaintiff in prosecuting this foreclosure action, and the Court should thereafter pay any excess proceeds of sale to such claimants in such priorities as their interests may appear.

FOR A NINTH CAUSE OF ACTION

(Appointment of Receiver)

48 73. The allegations of Paragraphs Fifty-Five (80) through Seventy-Two (72) of this Complaint are realleged as if repeated herein verbatim.

49 74. To further secure his obligation under the aforesaid Promissory Note, on October 9, 2007, Anthony M. Whitfield executed an Assignment of Leases and Rents, whereby to secure the

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liability under the Promissory Note and any further advances thereof, the Defendant assigned all leases and rents from the subject PROPERTY to the Plaintiff; a true and correct copy of the said Assignment of Leases and Rents is attached hereto as Exhibit "I."

50 75. On October 17, 2007, the said Assignment of Leases and Rents was recorded in the Office of the Register of Deeds for Berkeley County in Book 6926, at Page 148.

51 76. According to the terms of the said Assignment of Leases and Rents, and as additional security, the Defendant assigned all rents, issues and profits of the MALLORY DRIVE PROPERTY from and after any default thereunder, and should legal proceedings be instituted pursuant to said Assignment of Leases and Rents, the Plaintiff were given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as Receiver, shall apply the residue of the rents, issues and profits toward the secured debt.

RAB #17 52 77. The payments due under said Note is due and has been in default since October 13, 2012, and the conditions of said Assignment of Leases and Rents have been broken.

53 78. The entire balance of said indebtedness is due and payable, and that there is due on said note as of November 30, 2012, the sum of One Hundred Twenty-Nine Thousand, Three Hundred Forty-Five and 91/100 (\$129,345.91) Dollars, accumulated interest of Two Thousand, Four Hundred Twenty-Two and 54/100 (2,422..54) Dollars, late fees of \$47.26, and interest continuing to accumulate at the current rate of \$26.0488 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

54 79. The Plaintiff is entitled to have a Receiver appointed for the MALLORY DRIVE PROPERTY to collect all income from the said PROPERTY, to pay expenses associated therewith,

including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt hereunder.

WHEREFORE, the Plaintiff prays for judgment as follows:

(1) Under the First Cause of Action, for judgment against Defendant Anthony M. Whitfield in the amount of One Hundred Thirty-Two Thousand, One Hundred Seventy-Eight and 17/100 (\$132,178.17) Dollars, accumulated interest of Two Thousand, Four Hundred Seventy-Five and 59/100 (\$2,475.59) Dollars, late fees of \$48.30, and interest continuing to accumulate at the current rate of \$26.6192 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees;

(2) Under the Second Cause of Action, that

(a) That the amount due upon the said Note and Mortgage against the SHORTLEAF DRIVE PROPERTY held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorneys fees and the costs of this action.

(b) That the Plaintiff's Mortgage against the SHORTLEAF DRIVE PROPERTY be declared a first lien and that Plaintiff has judgment of foreclosure for the amount found to be due and owing under the promissory note, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, and the costs of this action.

(c) That the SHORTLEAF DRIVE PROPERTY be sold under the direction of this Court, the equities of redemption are barred, and that the proceeds of sale are applied as follows:

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

Second, to the payment and discharge of the amount due on the Plaintiff's Note and Mortgage, with the costs and disbursements of this action together with attorneys' fees, and

Third, the surplus, if any, be distributed according to law; and

3) Under the Third Cause of Action, for the Appointment of a Receiver to collect all income from the said SHORTLEAF DRIVE PROPERTY, to pay expenses associated therewith,

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including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt; and

(4) Under the Fourth Cause of Action, for judgment against Defendant Anthony M. Whitfield in the amount of One Hundred Twenty-Seven Thousand, Four Hundred Fifty-Seven and 67/100 (\$127,457.67) Dollars, accumulated interest of Two Thousand, Three Hundred Eighty-Seven and 18/100 (\$2,387.18) Dollars, late fees of \$46.57, and interest continuing to accumulate at the current rate of \$25.6686 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees;

(5) Under the Fifth Cause of Action, that

(a) That the amount due upon the said Note and Mortgage against the CLAY STREET PROPERTY held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorneys fees and the costs of this action.

(b) That the Plaintiff's Mortgage against the CLAY STREET PROPERTY be declared a first lien and that Plaintiff has judgment of foreclosure for the amount found to be due and owing under the promissory note, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, and the costs of this action.

(c) That the CLAY STREET PROPERTY be sold under the direction of this Court, the equities of redemption are barred, and that the proceeds of sale are applied as follows:

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

Second, to the payment and discharge of the amount due on the Plaintiff's Note and Mortgage, with the costs and disbursements of this action together with attorneys' fees, and

Third, the surplus, if any, be distributed according to law; and

(6) Under the Sixth Cause of Action, for the Appointment of a Receiver to collect all income from the said CLAY STREET PROPERTY, to pay expenses associated therewith, including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt; and

(7) Under the Seventh Cause of Action, for judgment against Defendant Anthony M. Whitfield in the amount of One Hundred Twenty-Nine Thousand, Three Hundred Forty-Five and

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91/100 (\$129,345.91) Dollars, accumulated interest of Two Thousand, Four Hundred Twenty-Two and 54/100 (2,422..54) Dollars, late fees of \$47.26, and interest continuing to accumulate at the current rate of \$26.0488 per diem from November 30, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees;

(8) Under the Eighth Cause of Action, that

(a) That the amount due upon the said Note and Mortgage against the MALLORY DRIVE PROPERTY held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorneys fees and the costs of this action.

(b) That the Plaintiff's Mortgage against the MALLORY DRIVE PROEPRTY be declared a first lien and that Plaintiff has judgment of foreclosure for the amount found to be due and owing under the promissory note, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, and the costs of this action.

(c) That the MALLORY DRIVE PROPERTY be sold under the direction of this Court, the equities of redemption are barred, and that the proceeds of sale are applied as follows:

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


Second, to the payment and discharge of the amount due on the Plaintiff's Note and Mortgage, with the costs and disbursements of this action together with attorneys' fees, and

Third, the surplus, if any, be distributed according to law; and

9) Under the Ninth Cause of Action, for the Appointment of a Receiver to collect all income from the said PROPERTY, to pay expenses associated therewith, including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt; and

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

BERNSTEIN & BERNSTEIN, P.A.


Robert A. Bernstein
Post Office Box 20519
Charleston, SC 29413-0519
(843) 529-1111
(843) 529-0035 (fax)
ATTORNEYS FOR THE PLAINTIFF

December 4, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-08-2618

HARBOR NATIONAL BANK,)
Plaintiff,)

vs.)

ANTHONY WHITFIELD, CINDY)
WHITFIELD, AND DAVID SWANSON)
Defendant.)

**DEFENDANT'S FIFTH AMENDED
ANSWER, AFFIRMATIVE DEFENSES
AND COUNTERCLAIMS**

(Breach of Contract, Negligent
Misrepresentation, Fraud in the
Inducement, Unfair Trade Practices,
Promissory Estoppel, Tortious
Interference with Prospective Contractual
Relations, and Breach of Contract
Accompanied by Fraudulent Act, Abuse
of Process, Civil Conspiracy, and
Equitable Indemnification)

(Jury Trial Demanded)

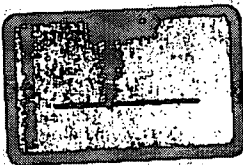
TO: ROBERT A. BERNSTEIN, ATTORNEY FOR PLAINTIFF

Comes now Defendant, Anthony Whitfield (hereinafter, "Mr. Whitfield") and responds to the allegations of Plaintiff's Complaint as follows:

1. Mr. Whitfield admits the allegations of Paragraphs 2, 3, 8, 14, 15, 16, 17, 18 and 25.

2. Mr. Whitfield denies, the allegations of Paragraphs 13 and 23 to the extent such Paragraphs reference previous allegations which are herein denied.

3. Mr. Whitfield admits the allegations of Paragraph 5, but denies that he chose the stated interest rate and alleges that at all material times Plaintiff



represented the maturity date of the loan would be automatically extended by Plaintiff.

4. Mr. Whitfield admits an assignment was made but denies the event of default as alleged in Paragraph 24, 26 and 29.

5. Mr. Whitfield denies Paragraphs 1, 4, 6, 7, 9, 10, 11, 12, 19, 20, 21, 22, 27 and 28.

6. Mr. Whitfield denies each and every allegation not specifically enumerated herein.

FIRST AFFIRMATIVE DEFENSE

7. Plaintiff's claims to foreclose on the 2007 Mortgage should be waived, estopped, barred, and/or dismissed as Defendant made all payments as was required under the Note and was told by Plaintiff numerous times that the April 13, 2012 maturity date as referenced in the Note would be automatically extended.

SECOND AFFIRMATIVE DEFENSE

8. Plaintiff's claims in equity are barred by the doctrine of unclean hands and equitable estoppel.

THIRD AFFIRMATIVE DEFENSE

9. Plaintiff's action should be barred by the doctrine of unconscionability, fraud and duress.

FOURTH AFFIRMATIVE DEFENSE

10. Upon information and belief, the subject note attempted to be foreclosed upon is not the original note and therefore Plaintiff does not have

standing pursue this foreclosure action.

COUNTERCLAIMS

Factual Allegations

11. In 2006, Mr. Whitfield approached Charlie Rivers (hereinafter, "Mr. Rivers") of Harbor National Bank to purchase and refinance certain real estate in the lowcountry counties of Berkeley, Dorchester and Charleston. Mr. Rivers previously helped Mr. Whitfield refinance over 25 loans when Mr. Rivers was a loan officer with Southtrust Bank. These loans always had 30 year terms and never had balloon payments or required refinancing or re-approval.

12. Mr. Rivers promised Mr. Whitfield the same loans as he was previously given by Mr. Rivers, to-wit, 30 year loans with the best rate possible, with a ½ point origination fee. There was no mention of balloon payments or re-qualification anytime during the 30 year loans. After a review of Mr. Whitfield's financial condition, Mr. Rivers approved \$1.5 million in loans to refinance rental properties. At the time, Mr. Whitfield made clear to Mr. Rivers that the loans could not have demand features or have a balloon payment. Mr. Rivers agreed.

13. In reliance on Mr. Rivers' representations, Mr. Whitfield purchased the property at 110 Mepkin Drive, Summerville, SC 29483 (hereinafter, "the Subject Property").

14. On or about March 27, 2007 Mr. Whitfield was provided documentation from Plaintiff stating that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating

rate of prime minus ¼ % (See Exhibit "A" attached hereto).

15. Despite being provided documentation by Plaintiff that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ %, Mr. Whitfield was provided the higher 7.5% rate as opposed to the lower floating rate of prime minus ¼ %.

16. Despite being provided documents at the closing with a April 13, 2012 maturity date on some of the loans, Mr. Whitfield was assured numerous times by loan officer Angela Bell that the maturity date was just a formality and in fact was just a renewal date and would be extended automatically with only adjustments of interest without any re-qualifying or costs to extend. Despite making such assurances to Mr. Whitfield, loan officer Angela Bell determined as early as 2010 that the loans would not be renewed as she felt Mr. Whitfield was not providing financial information to her. At the time she indicated she needed to "grease the wheel" with Mr. Whitfield's accountant so the accountant would tell her more information about Mr. Whitfield's financial status.

17. Because of Ms. Bell's assurances and representations, Mr. Whitfield made payments on the loan for the subject property from the origination of the loan every month until the renewal date.

18. In January, 2012, Plaintiff asked Mr. Whitfield for a copy of his recent tax returns so that the loan could be automatically extended. As late as February 6, 2012, loan officer Angela Bell sent an email to Mr. Whitfield asking him for tax information to work on the "renewals." On February 21, 2012, Mr. Whitfield informed loan officer Angela Bell that he was under some financial pressure, that his health was suffering, and that he wanted interest rates on par with the other mortgages he held with other banks. The

following day, Ms. Bell informed Harbor National Bank personnel (but not Mr. Whitfield) that she was going to let Mr. Whitfield know that she would be asking him to move the loans. Although she informed others of her intention not to renew the loans, Ms. Bell never told Mr. Whitfield that he needed to move the loans- at any point in time. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible.

19. One week later, on February 28, 2012 loan officer Angela Bell wrote Mr. Whitfield to let him know that she would have to have his 2010 tax returns in order to request approval for renewal of his upcoming maturing loans. On April 2, 2012, Mr. Whitfield informed loan officer Angela Bell that his 2010 tax returns were complete and that he urgently wanted his loans modified since the rates were extremely high, and that his health had been an issue. After receiving the information about receiving the tax returns, the following day loan officer Angela Bell told a senior credit analyst at Harbor National Bank, "I'm just glad the threats of no renewals finally worked." Five days later, on April 8, 2012, Mr. Whitfield suffered a heart attack.

20. Despite making assurances the loans would renew, two notes (732 Gahagan and 110 Mepkin) matured on April 13, 2012 without having been renewed by the Plaintiff. On June 21, 2012 Charlie Rivers orally agreed to modify the notes and specifically agreed to: (a) extend the notes for a 25 year amortization with another 5 year maturity; (b) eliminate the need for any principal pay downs; (c) eliminate the need for additional collateral to secure the notes; (d) eliminate the need to cross collateralize the loans; (e) waive the default interest rate of 14%; (f) back date the rate of 4.75% to the maturity of the April 13, 2012 maturities; and (g) credit Mr. Whitfield's overpayment of

interest.

21. On June 26, 2012, Harbor National Bank vice president Scott Warren signed a loan commitment letter to Mr. Whitfield outlining the terms and conditions of the renewals of all Mr. Whitfield's loans held by Harbor National Bank. The proposed new loans dropped the interest rate to 4.75% and extended the maturities another 5 years. (See loan commitment, attached hereto as Exhibit "B"). On the same day, Mr. Whitfield was given drafts of new notes to sign for the closing which was to be held on June 28, 2012. The new documents contained clauses that all of Mr. Whitfield's properties would be cross collateralized, despite Mr. River's agreement and assurances not to cross collateralize the properties (See Paragraph 20 (d) herein).

22. In reliance upon Mr. Warren's June 26, 2012 commitment letter, Mr. Whitfield attended a scheduled closing at attorney Mark Weeks' law office. At the closing, Mr. Warren informed Mr. Whitfield that a signed endorsement from a title company was needed so that Mr. Whitfield's ex-spouse Cindy Whitfield would not be required to sign the loan documents for one of the properties that Cindy Whitfield resided in (hereinafter, the "Black Rush Property")¹. At a certain point, Mr. Whitfield was informed by the closing attorney that the endorsement could not be procured, that Mrs. Whitfield was refusing to sign the mortgage to the Black Rush Property, and Mr. Warren proposed that it would only be possible to close two of the subject properties - Mepkin and Gahagan, but that if the Black Rush Property ultimately couldn't be closed, all properties including Mepkin and Gahagan would have to be foreclosed upon.

¹ Plaintiff also attempted to procure a "Business Purpose Statement" from Mr. Whitfield indicating that the property was to be used in Mr. Whitfield's business despite having previous knowledge that the Black Rush Property was in a fact residential property for Mr. Whitfield's ex-wife Cindy Whitfield.

23. Despite Harbor National Bank's representations that a title endorsement was required to renew the Black Rush Property, Mr. Whitfield has subsequently learned that no such endorsement was required from the title company. Moreover, Harbor National Bank failed to renew any of the loans listed in the June 26, 2012 commitment letter despite agreeing to do so, willfully breaching their agreements, and causing Mr. Whitfield damages as to be determined by the trier of fact.

FOR A FOR FIRST COUNTERCLAIM
(Breach of Contract)

24. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

25. As described above, Plaintiff indicated before and after the origination of the loan, verbally and in writing, that the loan to the Subject Property would be automatically renewed.

26. Despite repeatedly making these representations and reassurances, Plaintiff failed to renew the loan and instead declared Mr. Whitfield to be in default despite being paid all monthly installments on time, as and when due, breaching their agreement with Mr. Whitfield.

27. Although Plaintiff ultimately promised in writing to renew the loan on June 26, 2012, Plaintiff refused to close the loan on June 28, 2012, as described above, breaching the terms of the offer contained in the writing. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligent Misrepresentation)

28. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

29. As described above, Harbor National Bank made affirmative representations to Mr. Whitfield that: (1) the initial loans would be 30 year loans; (2) the maturity date referenced in the Note was simply a renewal date; and (3) the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with a new maturity date of July 10, 2017.

30. Plaintiff knew these representations were false, misleading, and incomplete when they were made. Such representations were (1) false, misleading and incomplete when made; (2) were made for a pecuniary interest of the Plaintiff; (3) the Plaintiff owed a duty of care to convey truthful information to Mr. Whitfield; (4) the Plaintiff breached that duty by failing to exercise due care; (5) Mr. Whitfield was unaware that the representations were false - and had no reason to suspect they were false as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his financial detriment as outlined above. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of

punitive damages.

FOR A THIRD CAUSE OF ACTION
(Fraud in the Inducement)

31. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

32. At or about the time of the initial loan originations, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity date referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017. Such representations were false, incomplete and misleading when made, were material, were known by the Plaintiff to be false, misleading and incomplete, and were intended to be relied upon.

33. Mr. Whitfield was unaware that the representations were false and had no reason to suspect they were false, as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his detriment financial as outlined above. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible. At a minimum, the Plaintiff should have relayed their concerns about renewals as early as documentary evidence suggest Harbor National Bank had a concern, to-wit, the year 2010.

34. These false representations were made to induce the Mr. Whitfield to enter

a high cost loan, and were made by the Plaintiff with the knowledge of their falsity.

35. Mr. Whitfield reasonably relied on the material representations of Plaintiff and had no knowledge the representations made by the Plaintiff were false and the Mr. Whitfield was, therefore, fraudulently induced by the Plaintiff to enter into the high cost loan.

36. Mr. Whitfield made a mistake in entering into the loan, which mistake was unilateral. Mr. Whitfield was fraudulently induced by the Plaintiff to make the unilateral mistake as a direct, proximate and foreseeable result of the fraud, deceit, misrepresentation, and active concealment perpetrated upon Mr. Whitfield by the Plaintiff.

37. Subsequent to the origination of the loan, Mr. Whitfield has been informed and now believes that the Plaintiff misrepresented the terms of the loan, verbally and in writing by (1) not receiving 30 year loans, (2) representing that the maturity date was simply a renewal date; and (3) charging, and refusing to change, the interest rate of 7.5%. The Plaintiff also made representations, and an offer, to renew the loans at 4.75% with a new maturity date of July 10, 2017 as agreed. As such, Mr. Whitfield is entitled to avoid or rescind the loan and to be returned to the status quo ante whereby the Plaintiff returns to Mr. Whitfield all monies paid by Mr. Whitfield in exchange for Mr. Whitfield returning the amount of the loan proceeds to the Plaintiff. In addition thereto, Mr. Whitfield is entitled to all incidental, consequential, direct and indirect damages proximately caused by Plaintiff when they fraudulently induced Mr. Whitfield to enter into the loan transaction. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an

award of punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Violation of Federal Trade Commission Act Section 5(a) 15 U.S.C. §45)
(As made applicable through SC Code §39-5-10 et.seq.)

38. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

39. As stated above, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity dates referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also represented, and made an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017.

40. Plaintiff's acts enumerated above constitute "unfair or deceptive acts or practices in or affecting commerce," as those terms are defined in the Act. This prohibition applies to all persons engaged in commerce, including banks. An act or practice is unfair where it: (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers and; (3) is not outweighed by countervailing benefits to consumers or to competition. In this case, Plaintiff's actions discussed above have caused substantial injury to Mr. Whitfield.

41. An act or practice is deceptive where: (1) a representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances and; (3) the misleading representation, omission, or practice is material.

In this case, Plaintiff's actions were deceptive because Plaintiff clearly misrepresented that the loans would be renewed. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Promissory Estoppel / Detrimental Reliance)

42. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

43. Mr. Whitfield relied on the promises of Angela Bell, Charlie Rivers, and Scott Warren to renew and modify the loans.

44. These promises were unambiguous in their terms and were relied upon by Mr. Whitfield. In particular, there were no contingencies placed upon the June 26, 2012 written offer to renew any of the loans as title insured first mortgages were already in place on the subject properties.

45. The reliance by Mr. Whitfield regarding renewing the loans was more than expected and more than foreseeable by Harbor National Bank.

46. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Tortious Interference with Prospective Contractual Relations)

47. Mr. Whitfield hereby incorporates the allegations of the foregoing

.. .
paragraphs as if fully restated herein.

48. The acts of Plaintiff described herein constituted an interference with Mr. Whitfield's business, were without justification, were done with improper purpose and motive, knowing it would place Mr. Whitfield under duress when filing these unfounded legal proceedings and knowing that it would interfere with Mr. Whitfield's ability to sell and/or rent the subject property.

49. As a result of Plaintiff's actions Mr. Whitfield has lost the ability to enter into contracts with identifiable prospective buyers and/or renters of the subject property. As a direct and proximate result of the Plaintiff's actions, Mr. Whitfield has suffered special damages including but not limited to a diminished value of their property in the eyes of third parties, loss of income and loss of profits.

50. Plaintiff's actions proximately caused actual, consequential, and special damages, including but not limited to: a) inability to sell the subject property to third parties who met requirements for sale and/or rental of the subject property; b) foreclosure proceedings having been instituted on the subject property; c) a diminished value of the subject property in the eyes of third parties; d) damage to Mr. Whitfield's reputation and business standing in the real estate profession; e) financial damage to Mr. Whitfield's business because of time spent away to defend these charges, f) financial damage for his inability to sell the subject property following filing of the lis pendens and lawsuit, g) attorneys' fees and costs incurred; h) time spent away from work as a result of the lis pendens and lawsuit, i) emotional distress to Mr. Whitfield, j) injury to his health and mental pain and suffering.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

51. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

52. As stated above, Mr. Rivers made an agreement to renew the loans at the June 21, 2012 meeting with Mr. Whitfield.

53. Plaintiff breached the agreement with Mr. Whitfield by failing to close the renewal of the loan which is the subject of this lawsuit. Such breach was made with the fraudulent intent of never actually intending to close the renewal when that representation was made, and such fraudulent intent was manifested by the fraudulent act of claiming a title endorsement was required to renew the loan when in fact one was never needed.

54. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR AN EIGHTH CAUSE OF ACTION
(Abuse of Process as to David Swanson and BNC Bancorp through its employee/agent
Scott Warren)

55. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

56. Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

57. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

58. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

59. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact evidence shows it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

60. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

61. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

62. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given. The acts described above and herein have caused damage to Mr. Whitfield by incurring actual damages, both mental and pecuniary, including by way of example only and without limitation: loss of time, injury to property and financial standing, shame, mortification, mental anguish, mental pain and suffering, emotional distress, loss of enjoyment of life, injury to feelings, an overall degradation of health, and was hindered from, and will continue to be hindered from attending to his usual duties and affairs of life, as a direct and proximate result of the aforesaid conduct of Harbor National Bank, in an exact amount of actual, consequential and special damages as to be determined by a trier of fact.

FOR A NINTH CAUSE OF ACTION

(Civil Conspiracy as to David Swanson and BNC Bancorp through its employee/agent Scott Warren)

63. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

64. As alleged above, Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

65. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

66. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

67. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

68. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

69. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

70. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given.

71. Mr. David Swanson's actions described above and herein were made for his own personal interest as they were performed outside the scope of his law firm's representation of Harbor National Bank.

72. The actions of David Swanson and Scott Warren as alleged above and herein constitute an combination of two or more persons that was done with the purpose of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield which has caused him special damages, beyond damages specified in his other causes of action for having to incur attorney's fees and costs associated with Harbor National Bank's advice of counsel defense which should never have been incurred.

FOR A TENTH CAUSE OF ACTION
(Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield)

73. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

74. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, such liability would be a proximate result of the wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield

and/or her agents in failing to give her permission and/or authorization to renew the loan for the subject property located at 1055 Black Rush Circle, Mount Pleasant, South Carolina, said demand being made as a defense of Harbor National Bank to close all of the renewal loans set forth in Exhibit "C".

75. Specifically, the closing attorney Mark Weeks and Mr. Whitfield's previous counsel Lauren Felder have stated that Mrs. Cindy Whitfield's counsel Stanley Jaskiewicz was contacted regarding procuring her consent for the renewal of the Black Rush Property. Lauren Felder was advised by either Stanley Jaskiewicz or his paralegal Dena Hardison that Mrs. Cindy Whitfield, "would not sign off on the mortgage as Mr. Whitfield was solely responsible under the Final Family Court Order." Additionally, Mrs. Cindy Whitfield was told by Mr. Jaskiewicz' paralegal Dena Hardison that, "he [Mr. Whitfield] could not refinance my home or borrow the equity in it as he would be putting another nail in his coffin." According to Mrs. Whitfield, Ms. Dena Hardison gave her this advice before the closing² and was also told by Ms. Hardison not to, "do anything until I talk to Stan," regarding gaining access to her home for an appraisal. According to Mrs. Whitfield, Mr. Jaskiewicz never called her back regarding any issues related to procuring her consent to renew her home.

76. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, these wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents have damaged Mr. Whitfield, including but not limited to consequential and special damages, and the

² Mrs. Whitfield indicated this statement was made by Ms. Hardison at the time the appraiser was attempting to gain access to Mrs. Whitfield's home-- in May and June of 2012. Correspondence was sent to Stanley Jaskiewicz advising him of appraisal access issue on June 11, 2012.

imposition of attorney's fees and costs in defending the foreclosure and prosecuting the Counterclaims as alleged herein. Mr. Whitfield and Mrs. Cindy Whitfield had a special relationship by virtue of their continuing family court obligations that would support a claim for indemnity against Mrs. Cindy Whitfield. Moreover, Mr. Whitfield is wholly without fault for Cindy Whitfield failing to provide her permission and/or authorization to renew the loan for the Black Rush Property.

77. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, Mr. Whitfield would be entitled to be equitably indemnified for such liability from Cindy Whitfield for any liability that Mr. Whitfield is found to have incurred to the Plaintiff such that Mr. Whitfield would be entitled to recover his consequential and special damages, attorney's fees and costs, monies adjudged owed to the Plaintiff and/or monies expended by way of settlement of Plaintiff's claims as a result of Cindy Whitfield and/or her agents wrongful acts, breach of duties, omissions, and/or negligence as afore-described.

WHEREFORE, Defendants prays for relief as set forth below together with such further relief as this court deems just:

- a. Actual damages;
- b. Statutory damages;
- c. Treble Damages
- d. Disgorgement of profits;
- e. Restitution;
- f. Rescission;
- g. Injunctive relief; and

h. Attorneys' fees and costs

DEMAND FOR JURY TRIAL

Mr. Whitfield demands a jury trial on all counts stated above. These causes of action must be tried before any equitable causes of action asserted by either party can be disposed of. See Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994)

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: _____
Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com
Attorneys for the Defendant

_____, 2016.
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that I served the foregoing Fifth Amended Answer, Affirmative Defenses and Counterclaims upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this _____ day of January, 2016.

HALVERSEN & ASSOCIATES, LLC

By: _____

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Charleston, SC
January .2016

COUNTY OF BERKELEY

BANK OF NORTH CAROLINA,

Plaintiff,

vs.

ANTHONY WHITFIELD, CINDY
WHITFIELD, AND DAVID SWANSON

Defendant.

FOR THE NINTH JUDICIAL DISTRICT

CASE NO. 2012-CP-08-2618

FILED
8 AM 11:36
X P. SROON
CLERK OF COURT
COUNTY OF BERKELEY

**DEFENDANT'S FIFTH AMENDED
ANSWER, AFFIRMATIVE DEFENSES
AND COUNTERCLAIMS**

(Breach of Contract, Negligent
Misrepresentation, Fraud in the
Inducement, Unfair Trade Practices,
Promissory Estoppel, Tortious
Interference with Prospective Contractual
Relations, and Breach of Contract
Accompanied by Fraudulent Act, Abuse
of Process, Civil Conspiracy, and
Equitable Indemnification)

(Jury Trial Demanded)

TO: ROBERT A. BERNSTEIN, ATTORNEY FOR PLAINTIFF

Comes now Defendant, Anthony Whitfield (hereinafter, "Mr. Whitfield") and
responds to the allegations of Plaintiff's Complaint as follows:

1. Mr. Whitfield admits the allegations of Paragraphs 2, 3, 8, 14, 15, 16,
17, 18 and 25.

2. Mr. Whitfield denies, the allegations of Paragraphs 13 and 23 to the
extent such Paragraphs reference previous allegations which are herein
denied.

3. Mr. Whitfield admits the allegations of Paragraph 5, but denies that
he chose the stated interest rate and alleges that at all material times Plaintiff

BH

Plaintiff.

4. Mr. Whitfield admits an assignment was made but denies the event of default as alleged in Paragraph 24, 26 and 29.

5. Mr. Whitfield denies Paragraphs 1, 4, 6, 7, 9, 10, 11, 12, 19, 20, 21, 22, 27 and 28.

6. Mr. Whitfield denies each and every allegation not specifically enumerated herein.

FIRST AFFIRMATIVE DEFENSE

7. Plaintiff's claims to foreclose on the 2007 Mortgage should be waived, estopped, barred, and/or dismissed as Defendant made all payments as was required under the Note and was told by Plaintiff numerous times that the April 13, 2012 maturity date as referenced in the Note would be automatically extended.

SECOND AFFIRMATIVE DEFENSE

8. Plaintiff's claims in equity are barred by the doctrine of unclean hands and equitable estoppel.

THIRD AFFIRMATIVE DEFENSE

9. Plaintiff's action should be barred by the doctrine of unconscionability, fraud and duress.

FOURTH AFFIRMATIVE DEFENSE

10. Upon information and belief, the subject note attempted to be foreclosed upon is not the original note and therefore Plaintiff does not have

COUNTERCLAIMS

Factual Allegations

11. In 2006, Mr. Whitfield approached Charlie Rivers (hereinafter, "Mr. Rivers") of Harbor National Bank to purchase and refinance certain real estate in the lowcountry counties of Berkeley, Dorchester and Charleston. Mr. Rivers previously helped Mr. Whitfield refinance over 25 loans when Mr. Rivers was a loan officer with Southtrust Bank. These loans always had 30 year terms and never had balloon payments or required refinancing or re-approval.

12. Mr. Rivers promised Mr. Whitfield the same loans as he was previously given by Mr. Rivers, to-wit, 30 year loans with the best rate possible, with a ½ point origination fee. There was no mention of balloon payments or re-qualification anytime during the 30 year loans. After a review of Mr. Whitfield's financial condition, Mr. Rivers approved \$1.5 million in loans to refinance rental properties. At the time, Mr. Whitfield made clear to Mr. Rivers that the loans could not have demand features or have a balloon payment. Mr. Rivers agreed.

13. In reliance on Mr. Rivers' representations, Mr. Whitfield purchased the property at 110 Mepkin Drive, Summerville, SC 29483 (hereinafter, "the Subject Property").

14. On or about March 27, 2007 Mr. Whitfield was provided documentation from Plaintiff stating that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating

15. Despite being provided documentation by Plaintiff that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus $\frac{1}{4}$ %, Mr. Whitfield was provided the higher 7.5% rate as opposed to the lower floating rate of prime minus $\frac{1}{4}$ %.

16. Despite being provided documents at the closing with a April 13, 2012 maturity date on some of the loans, Mr. Whitfield was assured numerous times by loan officer Angela Bell that the maturity date was just a formality and in fact was just a renewal date and would be extended automatically with only adjustments of interest without any re-qualifying or costs to extend. Despite making such assurances to Mr. Whitfield, loan officer Angela Bell determined as early as 2010 that the loans would not be renewed as she felt Mr. Whitfield was not providing financial information to her. At the time she indicated she needed to "grease the wheel" with Mr. Whitfield's accountant so the accountant would tell her more information about Mr. Whitfield's financial status.

17. Because of Ms. Bell's assurances and representations, Mr. Whitfield made payments on the loan for the subject property from the origination of the loan every month until the renewal date.

18. In January, 2012, Plaintiff asked Mr. Whitfield for a copy of his recent tax returns so that the loan could be automatically extended. As late as February 6, 2012, loan officer Angela Bell sent an email to Mr. Whitfield asking him for tax information to work on the "renewals." On February 21, 2012, Mr. Whitfield informed loan officer Angela Bell that he was under some financial pressure, that his health was suffering, and that he wanted interest rates on par with the other mortgages he held with other banks. The

that she was going to let Mr. Whitfield know that she would be asking him to move the loans. Although she informed others of her intention not to renew the loans, Ms. Bell never told Mr. Whitfield that he needed to move the loans- at any point in time. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible.

19. One week later, on February 28, 2012 loan officer Angela Bell wrote Mr. Whitfield to let him know that she would have to have his 2010 tax returns in order to request approval for renewal of his upcoming maturing loans. On April 2, 2012, Mr. Whitfield informed loan officer Angela Bell that his 2010 tax returns were complete and that he urgently wanted his loans modified since the rates were extremely high, and that his health had been an issue. After receiving the information about receiving the tax returns, the following day loan officer Angela Bell told a senior credit analyst at Harbor National Bank, "I'm just glad the threats of no renewals finally worked." Five days later, on April 8, 2012, Mr. Whitfield suffered a heart attack.

20. Despite making assurances the loans would renew, two notes (732 Gahagan and 110 Mepkin) matured on April 13, 2012 without having been renewed by the Plaintiff. On June 21, 2012 Charlie Rivers orally agreed to modify the notes and specifically agreed to: (a) extend the notes for a 25 year amortization with another 5 year maturity; (b) eliminate the need for any principal pay downs; (c) eliminate the need for additional collateral to secure the notes; (d) eliminate the need to cross collateralize the loans; (e) waive the default interest rate of 14%; (f) back date the rate of 4.75% to the maturity of the April 13, 2012 maturities; and (g) credit Mr. Whitfield's overpayment of

21. On June 26, 2012, Harbor National Bank vice president Scott Warren signed a loan commitment letter to Mr. Whitfield outlining the terms and conditions of the renewals of all Mr. Whitfield's loans held by Harbor National Bank. The proposed new loans dropped the interest rate to 4.75% and extended the maturities another 5 years. (See loan commitment, attached hereto as Exhibit "B"). On the same day, Mr. Whitfield was given drafts of new notes to sign for the closing which was to be held on June 28, 2012. The new documents contained clauses that all of Mr. Whitfield's properties would be cross collateralized, despite Mr. River's agreement and assurances not to cross collateralize the properties (See Paragraph 20 (d) herein).

22. In reliance upon Mr. Warren's June 26, 2012 commitment letter, Mr. Whitfield attended a scheduled closing at attorney Mark Weeks' law office. At the closing, Mr. Warren informed Mr. Whitfield that a signed endorsement from a title company was needed so that Mr. Whitfield's ex-spouse Cindy Whitfield would not be required to sign the loan documents for one of the properties that Cindy Whitfield resided in (hereinafter, the "Black Rush Property")¹. At a certain point, Mr. Whitfield was informed by the closing attorney that the endorsement could not be procured, that Mrs. Whitfield was refusing to sign the mortgage to the Black Rush Property, and Mr. Warren proposed that it would only be possible to close two of the subject properties - Mepkin and Gahagan, but that if the Black Rush Property ultimately couldn't be closed, all properties including Mepkin and Gahagan would have to be foreclosed upon.

¹ Plaintiff also attempted to procure a "Business Purpose Statement" from Mr. Whitfield indicating that the property was to be used in Mr. Whitfield's business despite having previous knowledge that the Black Rush Property was in a fact residential property for Mr. Whitfield's ex-wife Cindy Whitfield.

was required to renew the Black Rush Property, Mr. Whitfield has subsequently learned that no such endorsement was required from the title company. Moreover, Harbor National Bank failed to renew any of the loans listed in the June 26, 2012 commitment letter despite agreeing to do so, willfully breaching their agreements, and causing Mr. Whitfield damages as to be determined by the trier of fact.

FOR A FOR FIRST COUNTERCLAIM
(Breach of Contract)

24. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

25. As described above, Plaintiff indicated before and after the origination of the loan, verbally and in writing, that the loan to the Subject Property would be automatically renewed.

26. Despite repeatedly making these representations and reassurances, Plaintiff failed to renew the loan and instead declared Mr. Whitfield to be in default despite being paid all monthly installments on time, as and when due, breaching their agreement with Mr. Whitfield.

27. Although Plaintiff ultimately promised in writing to renew the loan on June 26, 2012, Plaintiff refused to close the loan on June 28, 2012, as described above, breaching the terms of the offer contained in the writing. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligent Misrepresentation)

28. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

29. As described above, Harbor National Bank made affirmative representations to Mr. Whitfield that: (1) the initial loans would be 30 year loans; (2) the maturity date referenced in the Note was simply a renewal date; and (3) the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with a new maturity date of July 10, 2017.

30. Plaintiff knew these representations were false, misleading, and incomplete when they were made. Such representations were (1) false, misleading and incomplete when made; (2) were made for a pecuniary interest of the Plaintiff; (3) the Plaintiff owed a duty of care to convey truthful information to Mr. Whitfield; (4) the Plaintiff breached that duty by failing to exercise due care; (5) Mr. Whitfield was unaware that the representations were false - and had no reason to suspect they were false as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his financial detriment as outlined above. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of

FOR A THIRD CAUSE OF ACTION
(Fraud in the Inducement)

31. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

32. At or about the time of the initial loan originations, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity date referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017. Such representations were false, incomplete and misleading when made, were material, were known by the Plaintiff to be false, misleading and incomplete, and were intended to be relied upon.

33. Mr. Whitfield was unaware that the representations were false and had no reason to suspect they were false, as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his detriment financial as outlined above. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible. At a minimum, the Plaintiff should have relayed their concerns about renewals as early as documentary evidence suggest Harbor National Bank had a concern, to-wit, the year 2010.

34. These false representations were made to induce the Mr. Whitfield to enter

35. Mr. Whitfield reasonably relied on the material representations of Plaintiff and had no knowledge the representations made by the Plaintiff were false and the Mr. Whitfield was, therefore, fraudulently induced by the Plaintiff to enter into the high cost loan.

36. Mr. Whitfield made a mistake in entering into the loan, which mistake was unilateral. Mr. Whitfield was fraudulently induced by the Plaintiff to make the unilateral mistake as a direct, proximate and foreseeable result of the fraud, deceit, misrepresentation, and active concealment perpetrated upon Mr. Whitfield by the Plaintiff.

37. Subsequent to the origination of the loan, Mr. Whitfield has been informed and now believes that the Plaintiff misrepresented the terms of the loan, verbally and in writing by (1) not receiving 30 year loans, (2) representing that the maturity date was simply a renewal date; and (3) charging, and refusing to change, the interest rate of 7.5%. The Plaintiff also made representations, and an offer, to renew the loans at 4.75% with a new maturity date of July 10, 2017 as agreed. As such, Mr. Whitfield is entitled to avoid or rescind the loan and to be returned to the status quo ante whereby the Plaintiff returns to Mr. Whitfield all monies paid by Mr. Whitfield in exchange for Mr. Whitfield returning the amount of the loan proceeds to the Plaintiff. In addition thereto, Mr. Whitfield is entitled to all incidental, consequential, direct and indirect damages proximately caused by Plaintiff when they fraudulently induced Mr. Whitfield to enter into the loan transaction. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an

FOR A FOURTH CAUSE OF ACTION

(Violation of Federal Trade Commission Act Section 5(a) 15 U.S.C. §45)
(As made applicable through SC Code §39-5-10 et.seq.)

38. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

39. As stated above, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity dates referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also represented, and made an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017.

40. Plaintiff's acts enumerated above constitute "unfair or deceptive acts or practices in or affecting commerce," as those terms are defined in the Act. This prohibition applies to all persons engaged in commerce, including banks. An act or practice is unfair where it: (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers and; (3) is not outweighed by countervailing benefits to consumers or to competition. In this case, Plaintiff's actions discussed above have caused substantial injury to Mr. Whitfield.

41. An act or practice is deceptive where: (1) a representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances and; (3) the misleading representation, omission, or practice is material.

that the loans would be renewed. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Promissory Estoppel / Detrimental Reliance)

42. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

43. Mr. Whitfield relied on the promises of Angela Bell, Charlie Rivers, and Scott Warren to renew and modify the loans.

44. These promises were unambiguous in their terms and were relied upon by Mr. Whitfield. In particular, there were no contingencies placed upon the June 26, 2012 written offer to renew any of the loans as title insured first mortgages were already in place on the subject properties.

45. The reliance by Mr. Whitfield regarding renewing the loans was more than expected and more than foreseeable by Harbor National Bank.

46. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Tortious Interference with Prospective Contractual Relations)

47. Mr. Whitfield hereby incorporates the allegations of the foregoing

48. The acts of Plaintiff described herein constituted an interference with Mr. Whitfield's business, were without justification, were done with improper purpose and motive, knowing it would place Mr. Whitfield under duress when filing these unfounded legal proceedings and knowing that it would interfere with Mr. Whitfield's ability to sell and/or rent the subject property.

49. As a result of Plaintiff's actions Mr. Whitfield has lost the ability to enter into contracts with identifiable prospective buyers and/or renters of the subject property. As a direct and proximate result of the Plaintiff's actions, Mr. Whitfield has suffered special damages including but not limited to a diminished value of their property in the eyes of third parties, loss of income and loss of profits.

50. Plaintiff's actions proximately caused actual, consequential, and special damages, including but not limited to: a) inability to sell the subject property to third parties who met requirements for sale and/or rental of the subject property; b) foreclosure proceedings having been instituted on the subject property; c) a diminished value of the subject property in the eyes of third parties; d) damage to Mr. Whitfield's reputation and business standing in the real estate profession; e) financial damage to Mr. Whitfield's business because of time spent away to defend these charges, f) financial damage for his inability to sell the subject property following filing of the lis pendens and lawsuit, g) attorneys' fees and costs incurred; h) time spent away from work as a result of the lis pendens and lawsuit, i) emotional distress to Mr. Whitfield, j) injury to his health and mental pain and suffering.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

51. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

52. As stated above, Mr. Rivers made an agreement to renew the loans at the June 21, 2012 meeting with Mr. Whitfield.

53. Plaintiff breached the agreement with Mr. Whitfield by failing to close the renewal of the loan which is the subject of this lawsuit. Such breach was made with the fraudulent intent of never actually intending to close the renewal when that representation was made, and such fraudulent intent was manifested by the fraudulent act of claiming a title endorsement was required to renew the loan when in fact one was never needed.

54. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR AN EIGHTH CAUSE OF ACTION
(Abuse of Process as to David Swanson and BNC Bancorp through its employee/agent Scott Warren)

55. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

56. Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

58. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

59. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact evidence shows it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

60. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

62. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given. The acts described above and herein have caused damage to Mr. Whitfield by incurring actual damages, both mental and pecuniary, including by way of example only and without limitation: loss of time, injury to property and financial standing, shame, mortification, mental anguish, mental pain and suffering, emotional distress, loss of enjoyment of life, injury to feelings, an overall degradation of health, and was hindered from, and will continue to be hindered from attending to his usual duties and affairs of life, as a direct and proximate result of the aforesaid conduct of Harbor National Bank, in an exact amount of actual, consequential and special damages as to be determined by a trier of fact.

FOR A NINTH CAUSE OF ACTION

(Civil Conspiracy as to David Swanson and BNC Bancorp through its employee/agent
Scott Warren)

63. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

64. As alleged above, Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

65. Mr. Swanson stated that the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

66. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

67. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

68. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

69. The sworn testimony stated that the defendant was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

70. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given.

71. Mr. David Swanson's actions described above and herein were made for his own personal interest as they were performed outside the scope of his law firm's representation of Harbor National Bank.

72. The actions of David Swanson and Scott Warren as alleged above and herein constitute an combination of two or more persons that was done with the purpose of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield which has caused him special damages, beyond damages specified in his other causes of action for having to incur attorney's fees and costs associated with Harbor National Bank's advice of counsel defense which should never have been incurred.

FOR A TENTH CAUSE OF ACTION
(Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield)

73. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

74. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, such liability would be a proximate result of the wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield

for the subject property located at 1055 Black Rush Circle, Mount Pleasant, South Carolina, said demand being made as a defense of Harbor National Bank to close all of the renewal loans set forth in Exhibit "C".

75. Specifically, the closing attorney Mark Weeks and Mr. Whitfield's previous counsel Lauren Felder have stated that Mrs. Cindy Whitfield's counsel Stanley Jaskiewicz was contacted regarding procuring her consent for the renewal of the Black Rush Property. Lauren Felder was advised by either Stanley Jaskiewicz or his paralegal Dena Hardison that Mrs. Cindy Whitfield, "would not sign off on the mortgage as Mr. Whitfield was solely responsible under the Final Family Court Order." Additionally, Mrs. Cindy Whitfield was told by Mr. Jaskiewicz' paralegal Dena Hardison that, "he [Mr. Whitfield] could not refinance my home or borrow the equity in it as he would be putting another nail in his coffin." According to Mrs. Whitfield, Ms. Dena Hardison gave her this advice before the closing² and was also told by Ms. Hardison not to, "do anything until I talk to Stan," regarding gaining access to her home for an appraisal. According to Mrs. Whitfield, Mr. Jaskiewicz never called her back regarding any issues related to procuring her consent to renew her home.

76. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, these wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents have damaged Mr. Whitfield, including but not limited to consequential and special damages, and the

² Mrs. Whitfield indicated this statement was made by Ms. Hardison at the time the appraiser was attempting to gain access to Mrs. Whitfield's home-- in May and June of 2012. Correspondence was sent to Stanley Jaskiewicz advising him of appraisal access issue on June 11, 2012.

Counterclaims as alleged herein. Mr. Whitfield and Mrs. Cindy Whitfield had a special relationship by virtue of their continuing family court obligations that would support a claim for indemnity against Mrs. Cindy Whitfield. Moreover, Mr. Whitfield is wholly without fault for Cindy Whitfield failing to provide her permission and/or authorization to renew the loan for the Black Rush Property.

77. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, Mr. Whitfield would be entitled to be equitably indemnified for such liability from Cindy Whitfield for any liability that Mr. Whitfield is found to have incurred to the Plaintiff such that Mr. Whitfield would be entitled to recover his consequential and special damages, attorney's fees and costs, monies adjudged owed to the Plaintiff and/or monies expended by way of settlement of Plaintiff's claims as a result of Cindy Whitfield and/or her agents wrongful acts, breach of duties, omissions, and/or negligence as afore-described.

WHEREFORE, Defendants prays for relief as set forth below together with such further relief as this court deems just:

- a. Actual damages;
- b. Statutory damages;
- c. Treble Damages
- d. Disgorgement of profits;
- e. Restitution;
- f. Rescission;
- g. Injunctive relief; and

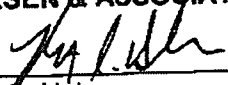
DEMAND FOR JURY TRIAL

Mr. Whitfield demands a jury trial on all counts stated above. These causes of action must be tried before any equitable causes of action asserted by either party can be disposed of. See Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994)

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: _____


Brent G. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com
Attorneys for the Defendant

March 4th, 2016.
Charleston, South Carolina

I certify that I served the foregoing Fifth Amended Answer, Affirmative Defenses and Counterclaims upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this 4th day of March, 2016.

HALVERSEN & ASSOCIATES, LLC

By: *Brent S. Halversen*

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Charleston, South Carolina
March 4th, 2016

2016 MAR -8 AM 11:36
MARY P. BROWN
CLERK OF COURT
COURT OF COMMON PLEAS
COLUMBIA, SC

F-11 ETR
JK

COUNTY OF BERKELEY

BANK OF NORTH CAROLINA,

Plaintiff,

vs.

ANTHONY WHITFIELD, CINDY
WHITFIELD, AND DAVID SWANSON

Defendants.

CASE NO. 2012-CP-08-3478

FILED
16 FEB 37 AM 11:35
MARY R BROWN
CLERK OF COURT
BERKELEY COUNTY, CA
DATE CANCELLED

**DEFENDANT'S FOURTH AMENDED
ANSWER, AFFIRMATIVE DEFENSES
AND COUNTERCLAIMS**

(Breach of Contract, Negligent
Misrepresentation, Fraud in the
Inducement, Unfair Trade Practices,
Promissory Estoppel, Tortious
Interference with Prospective Contractual
Relations, and Breach of Contract
Accompanied by Fraudulent Act, Abuse
of Process, Civil Conspiracy, and
Equitable Indemnity))

(Jury Trial Demanded)

FILED KOC

2016 MAR -8 AM 11:35

MARY R BROWN
CLERK OF COURT
BERKELEY COUNTY, CA

TO: ROBERT A. BERNSTEIN, ATTORNEY FOR PLAINTIFF

Comes now Defendant, Anthony Whitfield (hereinafter, "Mr. Whitfield") and responds to the allegations of Plaintiff's Complaint as follows:

1. Mr. Whitfield admits the allegations of Paragraphs 2, 3, 8, 14, 15, 16, 17, 18, 25, 33, 39, 40, 41, 42, 43, 50, 58, 64, 65, 66, 67, 68 and 75.
2. Mr. Whitfield denies, the allegations of Paragraphs 13, 23, 38, 48, 63 and 73, to the extent such Paragraphs reference previous allegations which are herein denied.
3. Mr. Whitfield admits the allegations of Paragraph 5, 30 and 55 but denies that he chose the stated interest rate and alleges that at all material

B4

extended by Plaintiff.

4. Mr. Whitfield admits an assignment was made but denies the event of default as alleged in Paragraph 24, 26, 29, 49, 51, 54, 74, 76 and 79.

5. Mr. Whitfield denies Paragraphs 1, 4, 6, 7, 9, 10, 11, 12, 19, 20, 21, 22, 27, 28, 31, 32, 34, 35, 36, 37, 44, 45, 46, 47, 52, 53, 56, 57, 59, 60, 61, 62, 69, 70, 71, 72, 77 and 78.

6. Mr. Whitfield denies each and every allegation not specifically enumerated herein.

FIRST AFFIRMATIVE DEFENSE

7. Plaintiff's claims to foreclose on the 2007 Mortgage should be waived, estopped, barred, and/or dismissed as Defendant made all payments as was required under the Note and was told by Plaintiff numerous times that the October 13, 2012 maturity date as referenced in the Note would be automatically extended.

SECOND AFFIRMATIVE DEFENSE

8. Plaintiff's claims in equity are barred by the doctrine of unclean hands and equitable estoppel.

THIRD AFFIRMATIVE DEFENSE

9. Plaintiff's action should be barred by the doctrine of unconscionability, fraud and duress.

FOURTH AFFIRMATIVE DEFENSE

10. Upon information and belief, the subject notes attempted to be

standing pursue this foreclosure action.

COUNTERCLAIMS

Factual Allegations

11. In 2006, Mr. Whitfield approached Charlie Rivers (hereinafter, "Mr. Rivers") of Harbor National Bank to purchase and refinance certain real estate in the lowcountry counties of Berkeley, Dorchester and Charleston. Mr. Rivers previously helped Mr. Whitfield refinance over 25 loans when Mr. Rivers was a loan officer with Southtrust Bank. These loans always had 30 year terms and never had balloon payments or required refinancing or re-approval.

12. Mr. Rivers promised Mr. Whitfield the same loans as he was previously given by Mr. Rivers, to-wit, 30 year loans with the best rate possible, with a ½ point origination fee. There was no mention of balloon payments or re-qualification anytime during the 30 year loans. After a review of Mr. Whitfield's financial condition, Mr. Rivers approved \$1.5 million in loans to refinance rental properties. At the time, Mr. Whitfield made clear to Mr. Rivers that the loans could not have demand features or have a balloon payment. Mr. Rivers agreed.

13. In reliance on Mr. Rivers' representations, Mr. Whitfield purchased the properties located at 308 Shortleaf Drive, 118 Clay Street, and 109 Mallory Drive (hereinafter, "the Subject Properties").

14. On or about March 27, 2007 Mr. Whitfield was provided documentation from Plaintiff stating that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating

15. Despite being provided documentation by Plaintiff that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus $\frac{1}{4}$ %, Mr. Whitfield was provided the higher 7.5% rate as opposed to the lower floating rate of prime minus $\frac{1}{4}$ %.

16. Despite being provided documents at the closing with a April 13, 2012 maturity date on some of the loans, Mr. Whitfield was assured numerous times by loan officer Angela Bell that the maturity date was just a formality and in fact was just a renewal date and would be extended automatically with only adjustments of interest without any re-qualifying or costs to extend. Despite making such assurances to Mr. Whitfield, loan officer Angela Bell determined as early as 2010 that the loans would not be renewed as she felt Mr. Whitfield was not providing financial information to her. At the time she indicated she needed to "grease the wheel" with Mr. Whitfield's accountant so the accountant would tell her more information about Mr. Whitfield's financial status.

17. Because of Ms. Bell's assurances and representations, Mr. Whitfield made payments on the loan for the subject properties from the origination of the loan every month until the renewal date.

18. In January, 2012, Plaintiff asked Mr. Whitfield for a copy of his recent tax returns so that the loan could be automatically extended. As late as February 6, 2012, loan officer Angela Bell sent an email to Mr. Whitfield asking him for tax information to work on the "renewals." On February 21, 2012, Mr. Whitfield informed loan officer Angela Bell that he was under some financial pressure, that his health was suffering, and that he wanted interest rates on par with the other mortgages he held with other banks. The

that she was going to let Mr. Whitfield know that she would be asking him to move the loans. Although she informed others of her intention not to renew the loans, Ms. Bell never told Mr. Whitfield that he needed to move the loans- at any point in time. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible.

19. One week later, on February 28, 2012 loan officer Angela Bell wrote Mr. Whitfield to let him know that she would have to have his 2010 tax returns in order to request approval for renewal of his upcoming maturing loans. On April 2, 2012, Mr. Whitfield informed loan officer Angela Bell that his 2010 tax returns were complete and that he urgently wanted his loans modified since the rates were extremely high, and that his health had been an issue. After receiving the information about receiving the tax returns, the following day loan officer Angela Bell told a senior credit analyst at Harbor National Bank, "I'm just glad the threats of no renewals finally worked." Five days later, on April 8, 2012, Mr. Whitfield suffered a heart attack.

20. Despite making assurances the loans would renew, two notes (732 Gahagan and 110 Mepkin) matured on April 13, 2012 without having been renewed by the Plaintiff. On June 21, 2012 Charlie Rivers orally agreed to modify the notes and specifically agreed to: (a) extend the notes for a 25 year amortization with another 5 year maturity; (b) eliminate the need for any principal pay downs; (c) eliminate the need for additional collateral to secure the notes; (d) eliminate the need to cross collateralize the loans; (e) waive the default interest rate of 14%; (f) back date the rate of 4.75% to the maturity of the April 13, 2012 maturities; and (g) credit Mr. Whitfield's overpayment of

21. On June 26, 2012, Harbor National Bank vice president Scott Warren signed a loan commitment letter to Mr. Whitfield outlining the terms and conditions of the renewals of all Mr. Whitfield's loans held by Harbor National Bank. The proposed new loans dropped the interest rate to 4.75% and extended the maturities another 5 years. (See loan commitment, attached hereto as Exhibit "B"). On the same day, Mr. Whitfield was given drafts of new notes to sign for the closing which was to be held on June 28, 2012. The new documents contained clauses that all of Mr. Whitfield's properties would be cross collateralized, despite Mr. River's agreement and assurances not to cross collateralize the properties (See Paragraph 20 (d) herein).

22. In reliance upon Mr. Warren's June 26, 2012 commitment letter, Mr. Whitfield attended a scheduled closing at attorney Mark Weeks' law office. At the closing, Mr. Warren informed Mr. Whitfield that a signed endorsement from a title company was needed so that Mr. Whitfield's ex-spouse Cindy Whitfield would not be required to sign the loan documents for one of the properties that Cindy Whitfield resided in (hereinafter, the "Black Rush Property")¹. At a certain point, Mr. Whitfield was informed by the closing attorney that the endorsement could not be procured, that Mrs. Whitfield was refusing to sign the mortgage to the Black Rush Property, and Mr. Warren proposed that it would only be possible to close two of the subject properties - Mepkin and Gahagan, but that if the Black Rush Property ultimately couldn't be closed, all properties including Mepkin and Gahagan would have to be foreclosed upon.

¹ Plaintiff also attempted to procure a "Business Purpose Statement" from Mr. Whitfield indicating that the property was to be used in Mr. Whitfield's business despite having previous knowledge that the Black Rush Property was in a fact residential property for Mr. Whitfield's ex-wife Cindy Whitfield.

was required to renew the Black Rush Property, Mr. Whitfield has subsequently learned that no such endorsement was required from the title company. Moreover, Harbor National Bank failed to renew any of the loans listed in the June 26, 2012 commitment letter despite agreeing to do so, willfully breaching their agreements, and causing Mr. Whitfield damages as to be determined by the trier of fact.

FOR A FOR FIRST COUNTERCLAIM
(Breach of Contract)

24. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

25. As described above, Plaintiff indicated before and after the origination of the loan, verbally and in writing, that the loan to the Subject Properties would be automatically renewed.

26. Despite repeatedly making these representations and reassurances, Plaintiff failed to renew the loan and instead declared Mr. Whitfield to be in default despite being paid all monthly installments on time, as and when due, breaching their agreement with Mr. Whitfield.

27. Although Plaintiff ultimately promised in writing to renew the loan on June 26, 2012, Plaintiff refused to close the loan on June 28, 2012, as described above, breaching the terms of the offer contained in the writing. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligent Misrepresentation)

28. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

29. As described above, Harbor National Bank made affirmative representations to Mr. Whitfield that: (1) the initial loans would be 30 year loans; (2) the maturity date referenced in the Note was simply a renewal date; and (3) the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with a new maturity date of July 10, 2017.

30. Plaintiff knew these representations were false, misleading, and incomplete when they were made. Such representations were (1) false, misleading and incomplete when made; (2) were made for a pecuniary interest of the Plaintiff; (3) the Plaintiff owed a duty of care to convey truthful information to Mr. Whitfield; (4) the Plaintiff breached that duty by failing to exercise due care; (5) Mr. Whitfield was unaware that the representations were false - and had no reason to suspect they were false as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his financial detriment as outlined above. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of

FOR A THIRD CAUSE OF ACTION
(Fraud in the Inducement)

31. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

32. At or about the time of the initial loan originations, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity date referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017. Such representations were false, incomplete and misleading when made, were material, were known by the Plaintiff to be false, misleading and incomplete, and were intended to be relied upon.

33. Mr. Whitfield was unaware that the representations were false and had no reason to suspect they were false, as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his detriment financial as outlined above. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible. At a minimum, the Plaintiff should have relayed their concerns about renewals as early as documentary evidence suggest Harbor National Bank had a concern, to-wit, the year 2010.

34. These false representations were made to induce the Mr. Whitfield to enter

35. Mr. Whitfield reasonably relied on the material representations of Plaintiff and had no knowledge the representations made by the Plaintiff were false and the Mr. Whitfield was, therefore, fraudulently induced by the Plaintiff to enter into the high cost loan.

36. Mr. Whitfield made a mistake in entering into the loan, which mistake was unilateral. Mr. Whitfield was fraudulently induced by the Plaintiff to make the unilateral mistake as a direct, proximate and foreseeable result of the fraud, deceit, misrepresentation, and active concealment perpetrated upon Mr. Whitfield by the Plaintiff.

37. Subsequent to the origination of the loan, Mr. Whitfield has been informed and now believes that the Plaintiff misrepresented the terms of the loan, verbally and in writing by (1) not receiving 30 year loans, (2) representing that the maturity date was simply a renewal date; and (3) charging, and refusing to change, the interest rate of 7.5%. The Plaintiff also made representations, and an offer, to renew the loans at 4.75% with a new maturity date of July 10, 2017 as agreed. As such, Mr. Whitfield is entitled to avoid or rescind the loan and to be returned to the status quo ante whereby the Plaintiff returns to Mr. Whitfield all monies paid by Mr. Whitfield in exchange for Mr. Whitfield returning the amount of the loan proceeds to the Plaintiff. In addition thereto, Mr. Whitfield is entitled to all incidental, consequential, direct and indirect damages proximately caused by Plaintiff when they fraudulently induced Mr. Whitfield to enter into the loan transaction. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an

FOR A FOURTH CAUSE OF ACTION
(Violation of Federal Trade Commission Act Section 5(a) 15 U.S.C. §45)
(As made applicable through SC Code §39-5-10 et.seq.)

38. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

39. As stated above, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity dates referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also represented, and made an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017.

40. Plaintiff's acts enumerated above constitute "unfair or deceptive acts or practices in or affecting commerce," as those terms are defined in the Act. This prohibition applies to all persons engaged in commerce, including banks. An act or practice is unfair where it: (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers and; (3) is not outweighed by countervailing benefits to consumers or to competition. In this case, Plaintiff's actions discussed above have caused substantial injury to Mr. Whitfield.

41. An act or practice is deceptive where: (1) a representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances and; (3) the misleading representation, omission, or practice is material.

that the loans would be renewed. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Promissory Estoppel / Detrimental Reliance)

42. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

43. Mr. Whitfield relied on the promises of Angela Bell, Charlie Rivers, and Scott Warren to renew and modify the loans.

44. These promises were unambiguous in their terms and were relied upon by Mr. Whitfield. In particular, there were no contingencies placed upon the June 26, 2012 written offer to renew any of the loans as title insured first mortgages were already in place on the subject properties.

45. The reliance by Mr. Whitfield regarding renewing the loans was more than expected and more than foreseeable by Harbor National Bank.

46. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Tortious Interference with Prospective Contractual Relations)

47. Mr. Whitfield hereby incorporates the allegations of the foregoing

48. The acts of Plaintiff described herein constituted an interference with Mr. Whitfield's business, were without justification, were done with improper purpose and motive, knowing it would place Mr. Whitfield under duress when filing these unfounded legal proceedings and knowing that it would interfere with Mr. Whitfield's ability to sell and/or rent the subject properties.

49. As a result of Plaintiff's actions Mr. Whitfield has lost the ability to enter into contracts with identifiable prospective buyers and/or renters of the subject properties. As a direct and proximate result of the Plaintiff's actions, Mr. Whitfield has suffered special damages including but not limited to a diminished value of his properties in the eyes of third parties, loss of income and loss of profits.

50. Plaintiff's actions proximately caused actual, consequential, and special damages, including but not limited to: a) inability to sell the subject properties to third parties who met requirements for sale and/or rental of the subject properties; b) foreclosure proceedings having been instituted on the subject properties; c) a diminished value of the subject properties in the eyes of third parties; d) damage to Mr. Whitfield's reputation and business standing in the real estate profession; e) financial damage to Mr. Whitfield's business because of time spent away to defend these charges, f) financial damage for his inability to sell the subject properties following filing of the lis pendens and lawsuit, g) attorneys' fees and costs incurred; h) time spent away from work as a result of the lis pendens and lawsuit, i) emotional distress to Mr. Whitfield, j) injury to his health and mental pain and suffering.

(Breach of Contract Accompanied by Fraudulent Act)

51. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

52. As stated above, Mr. Rivers made an agreement to renew the loans at the June 21, 2012 meeting with Mr. Whitfield.

53. Plaintiff breached the agreement with Mr. Whitfield by failing to close the renewal of the loan which is the subject of this lawsuit. Such breach was made with the fraudulent intent of never actually intending to close the renewal when that representation was made, and such fraudulent intent was manifested by the fraudulent act of claiming a title endorsement was required to renew the loan when in fact one was never needed.

54. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR AN EIGHTH CAUSE OF ACTION

(Abuse of Process as to David Swanson and BNC Bancorp through its employee/agent Scott Warren)

55. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

56. Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

57. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

59. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact evidence shows it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

60. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

61. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

62. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of

The acts described above and herein have caused damage to Mr. Whitfield by incurring actual damages, both mental and pecuniary, including by way of example only and without limitation: loss of time, injury to property and financial standing, shame, mortification, mental anguish, mental pain and suffering, emotional distress, loss of enjoyment of life, injury to feelings, an overall degradation of health, and was hindered from, and will continue to be hindered from attending to his usual duties and affairs of life, as a direct and proximate result of the aforesaid conduct of Harbor National Bank, in an exact amount of actual, consequential and special damages as to be determined by a trier of fact.

FOR A NINTH CAUSE OF ACTION

(Civil Conspiracy as to David Swanson and BNC Bancorp through its employee/agent
Scott Warren)

63. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

64. As alleged above, Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

65. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

66. Despite providing such **sworn testimony** by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is **no evidence of any such phone call** as the phone records from Mr.

Scott Warren cell phone or office line in June of 2012.

67. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

68. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

69. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

70. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given.

his own personal interest as they were performed outside the scope of his law firm's representation of Harbor National Bank.

72. The actions of David Swanson and Scott Warren as alleged above and herein constitute an combination of two or more persons that was done with the purpose of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield which has caused him special damages, beyond damages specified in his other causes of action for having to incur attorney's fees and costs associated with Harbor National Bank's advice of counsel defense which should never have been incurred.

FOR A TENTH CAUSE OF ACTION
(Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield)

73. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

74. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, such liability would be a proximate result of the wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents in failing to give her permission and/or authorization to renew the loan for the subject property located at 1055 Black Rush Circle, Mount Pleasant, South Carolina, said demand being made as a defense of Harbor National Bank to close all of the renewal loans set forth in Exhibit "C".

75. Specifically, the closing attorney Mark Weeks and Mr. Whitfield's previous counsel Lauren Felder have stated that Mrs. Cindy Whitfield's counsel Stanley Jaskiewicz

Property. Lauren Felder was advised by either Stanley Jaskiewicz or his paralegal Dena Hardison that Mrs. Cindy Whitfield, "would not sign off on the mortgage as Mr. Whitfield was solely responsible under the Final Family Court Order." Additionally, Mrs. Cindy Whitfield was told by Mr. Jaskiewicz' paralegal Dena Hardison that, "he [Mr. Whitfield] could not refinance my home or borrow the equity in it as he would be putting another nail in his coffin." According to Mrs. Whitfield, Ms. Dena Hardison gave her this advice before the closing² and was also told by Ms. Hardison not to, "do anything until I talk to Stan," regarding gaining access to her home for an appraisal. According to Mrs. Whitfield, Mr. Jaskiewicz never called her back regarding any issues related to procuring her consent to renew her home.

76. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, these wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents have damaged Mr. Whitfield, including but not limited to consequential and special damages, and the imposition of attorney's fees and costs in defending the foreclosure and prosecuting the Counterclaims as alleged herein. Mr. Whitfield and Mrs. Cindy Whitfield had a special relationship by virtue of their continuing family court obligations that would support a claim for indemnity against Mrs. Cindy Whitfield. Moreover, Mr. Whitfield is wholly without fault for Cindy Whitfield failing to provide her permission and/or authorization to renew the loan for the Black Rush Property.

² Mrs. Whitfield indicated this statement was made by Ms. Hardison at the time the appraiser was attempting to gain access to Mrs. Whitfield's home-- in May and June of 2012. Correspondence was sent to Stanley Jaskiewicz advising him of appraisal access issue on June 11, 2012.

action, which such liability is expressly denied, Mr. Whitfield would be entitled to be equitably indemnified for such liability from Cindy Whitfield for any liability that Mr. Whitfield is found to have incurred to the Plaintiff such that Mr. Whitfield would be entitled to recover his consequential and special damages, attorney's fees and costs, monies adjudged owed to the Plaintiff and/or monies expended by way of settlement of Plaintiff's claims as a result of Cindy Whitfield and/or her agents wrongful acts, breach of duties, omissions, and/or negligence as afore-described.

WHEREFORE, Defendants prays for relief as set forth below together with such further relief as this court deems just:

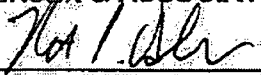
- a. Actual damages;
- b. Compensatory damages;
- c. Special damages;
- d. Statutory damages;
- e. Treble Damages
- f. Disgorgement of profits;
- g. Restitution;
- h. Rescission;
- i. Injunctive relief; and
- j. Attorneys' fees and costs

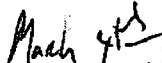
Mr. Whitfield demands a jury trial on all counts stated above. These causes of action must be tried before any equitable causes of action asserted by either party can be disposed of. See Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994)

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: _____


Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com
Attorneys for the Defendant


_____, 2016.
Charleston, South Carolina

I certify that I served the foregoing Fourth mended Answer, Affirmative Defenses and Counterclaims upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this 4th day of March, 2016.

HALVERSEN & ASSOCIATES, LLC

By: *[Signature]*

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Charleston, South Carolina
March 4th, 2016

FILED
2016 FEBRUARY 29 AM 11:31
MARY P. BROWN
CLERK OF COURT
SOUTH CAROLINA
KDC

FILED
2016 MAR -8 AM 11:35
MARY P. BROWN
CLERK OF COURT
SOUTH CAROLINA
KDC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF BERKELEY) CASE NUMBER: 2012-CP-08-2618
)
 Harbor National Bank,)
)
 Plaintiff,)
)
 v.)
)
 Anthony M. Whitfield,)
)
 Defendant.)

REPLY TO FOURTH AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS

FILED
 2014 MAY -9 AM 11:50
 MARY P. BROOKS
 CLERK OF COURT
 BERKELEY COUNTY SC

The Plaintiff, replying to the allegations of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, would show unto this Court:

1. Each and every allegation contained in said Fourth Amended Answer, Affirmative Defenses and Counterclaims not hereinafter specifically admitted is denied.
2. The allegations of Paragraphs One (1) through Ten (10) of the Answer, Affirmative Defenses and Counterclaims fail to make allegations against the Plaintiff requiring a response; to the extent they make such allegations, the same are hereby denied.
3. Responding to the allegations of Paragraph Eleven (11) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that the Defendant applied to the Plaintiff for a credit commitment to purchase and refinance commercial real estate in the furtherance of his business in the Berkeley, Dorchester and Charleston County areas, and that the Defendant had financed other transactions with Southtrust Bank; the remaining allegations of Paragraph Eleven (11) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims are denied.
4. The allegations of Paragraphs Twelve (12) and Thirteen (13) of the Fourth

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Amended Answer, Affirmative Defenses and Counterclaims are denied.

5. Responding to the allegations of Paragraph Fourteen (14) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that it provided the attached Exhibit "A" to the Defendant setting forth the terms and conditions upon which it would agree to extend credit to the Defendant, the terms and conditions of which are explicitly set forth in the said correspondence, and the Plaintiff craves reference to the said correspondence to determine the terms and conditions of such commitment; any allegations contained in Paragraph Fourteen (14) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims not hereinafter specifically admitted are denied.

6. Responding to the allegations of Paragraph Fifteen (15) of the Counterclaim, the Plaintiff admits that the Defendant chose a fixed interest rate as set forth in the applicable Note; any allegations contained in Paragraph Fifteen (15) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

7. The allegations of Paragraph Sixteen (16) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims are denied.

8. Responding to the allegations of Paragraph Seventeen (17) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that the Defendant made payments under the terms of and pursuant to the Promissory Note; any allegations contained in Paragraph Seventeen (17) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

9. Responding to the allegations of Paragraph Eighteen (18) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that it requested copies of the Defendant's tax returns pursuant to the terms of line of credit and the note and mortgage, that

Defendant requested to be provided with a lower interest rate, and that the Plaintiff was considering terminating the loans due to the Defendant's failure to provide necessary documentation; any allegations contained in Paragraph Eighteen (18) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

10. Responding to the allegations of Paragraph Nineteen (19) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that it wrote to the Defendant again advising of the need for sufficient financial information, including tax returns, to evaluate the proposal to renew loans with the Defendant, that the Defendant thereafter advised of the completion of the tax returns, that the Defendant requested modified terms for the loans, and that Angela Bell communicated with a senior credit analyst regarding the successful receipt of required documentation from the Defendant; any allegations contained in Paragraph Nineteen (19) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

11. Responding to the allegations of Paragraph Twenty (20) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits the Notes secured by mortgages on 732 Gahagan and 110 Mepkin matured by their terms, that in a meeting with the Defendant that an agreement was reached upon the terms and conditions upon which certain loans could be renewed, that renewal terms included the terms contained in a June 26, 2012 letter to Mr. Whitfield; any allegations contained in Paragraph Twenty (20) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

12. Responding to the allegations of Paragraph Twenty-One (21) of the Fourth

Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits the Scott Warren issued a terms letter to Mr. Whitfield setting forth the terms and conditions under which it would agree to renew the loans in existence, and that the letter is attached to the Fourth Amended Answer, Affirmative Defenses and Counterclaims as Exhibit "B"; any allegations contained in Paragraph Twenty-One (21) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

13. Responding to the allegations of Paragraph Twenty-Two (22) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits the Plaintiff attended a scheduled closing at the office of attorney Mark Weeks, that it was discovered that Defendant had transferred an interest in the Black Rush property to his ex-wife, Cindy Whitfield, and that it was required as a condition of the closing either that Mrs. Whitfield sign the new mortgage or that a title endorsement be obtained; any allegations contained in Paragraph Twenty-Two (22) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

14. Responding to the allegations of Paragraph Twenty-Three (23) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits the closing of the new loans never took place; ; any allegations contained in Paragraph Twenty-Three (23) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

FOR A FIRST DEFENSE TO THE FIRST COUNTERCLAIM
(DENIAL)

15. Responding to the allegations of Paragraph Twenty-Four (24) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges

the allegations of Paragraphs One (1) through Fourteen (14) of this Reply as if repeated herein verbatim.

16. The allegations of Paragraphs Twenty-Five (25), Twenty-Six (26), and Twenty-Seven (27) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SECOND COUNTERCLAIM
(DENIAL)

17. Responding to the allegations of Paragraph Twenty-Eight (28) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Sixteen (16) of this Reply as if repeated herein verbatim.

18. Responding to the allegations of Paragraph Twenty-Nine (29), the Plaintiff admits that it proposed to finance the line of credit through either a fixed rate or floating rate to be chosen by the Defendant, and that it stated its intention to agree to refinance the book of loans the Defendant had with the Plaintiff provided that the Defendant met the terms and conditions imposed upon the proposed transaction; the remaining allegations of Paragraph Twenty-Nine (29) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims are denied.

19. The allegations of Paragraph Thirty (30) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE THIRD COUNTERCLAIM
(DENIAL)

20. Responding to the allegations of Paragraph Thirty-One (31) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Nineteen (19) of this Reply as if repeated herein

verbatim.

21. The allegations of Paragraphs Thirty-Two (32), Thirty-Three (33), Thirty-Four (34), Thirty-Five (35), Thirty-Six (36) and Thirty-Seven (37) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE FOURTH COUNTERCLAIM
(DENIAL)

22. Responding to the allegations of Paragraph Thirty-Eight (38) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-One (21) of this Reply as if repeated herein verbatim.

23. Responding to the allegations of Paragraphs Thirty-Nine (39) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that it proposed to finance the line of credit through either a fixed rate or floating rate to be chosen by the Defendant, and that it stated its intention to agree to refinance the book of loans the Defendant had with the Plaintiff provided that the Defendant met the terms and conditions imposed upon the proposed transaction; the remaining allegations of Paragraph Thirty-Nine (39) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims are denied.

24. The allegations of Paragraphs Forty (40), and Forty-One (41) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE FIFTH COUNTERCLAIM
(DENIAL)

25. Responding to the allegations of Paragraph Forty-Two (42) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Four (24) of this Reply as if repeated

herein verbatim.

26. The allegations of Paragraphs Forty-Three (43), Forty-Four (44), Forty-Five (45) and Forty-Six (46) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SIXTH COUNTERCLAIM
(DENIAL)

27. Responding to the allegations of Paragraph Forty-Seven (47) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Thirty-Two (26) of this Reply as if repeated herein verbatim.

28. The allegations of Paragraphs Forty-Eight (48), Forty-Nine (49) and Fifty (50) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SEVENTH COUNTERCLAIM
(DENIAL)

29. Responding to the allegations of Paragraph Fifty-One (51) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Eight (28) of this Reply as if repeated herein verbatim.

30. The allegations of Paragraphs Fifty-Two (52), Fifty-Three (53) and Fifty-Four (54) of the Fourth Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A SECOND DEFENSE
(STATUTES OF LIMITATIONS)

31. Further responding to the allegations of all Counterclaims, the Plaintiff would show that such claims are barred by the applicable statutes of limitations, for which reason the Defendant cannot recover in any sum whatsoever.

FOR A THIRD DEFENSE
(FAILURE TO STATE A CLAIM)

32. Further responding to the allegations of all Counterclaims, the Plaintiff would show that such Counterclaims fail to state claims upon which relief can be granted, for which reason the Defendant cannot recover in any sum whatsoever.

FOR A FOURTH DEFENSE
(LACK OF RELIANCE)

33. Further responding to the allegations of all Counterclaims, the Plaintiff would show that the Defendant failed to rely or have any right to rely upon the alleged representations other than as contained in the written contracts between the parties, for which reason the Defendant cannot recover in any sum whatsoever.

FOR A FIFTH DEFENSE
(REGULATED TRANSACTIONS)

34. Further responding to the allegations of the Fourth Counterclaim, the Plaintiff would show that the actions and activities of the Plaintiff are regulated by the state and federal government, that the performance of said actions were in compliance with said state and federal regulations, and thus that the transactions are exempt from S.C. Code Ann. §39-5-10 et seq.


FOR A SIXTH DEFENSE
(OTHER CLAIM ALREADY PENDING)

35. Further responding to the allegations of the Counterclaims, the Plaintiff would show that another action is pending between the same parties for the same counterclaims, for which reason the said counterclaims are improper and should be dismissed pursuant to Rule 12(b)(8), SCRPC.

FOR A SEVENTH DEFENSE
(STATUTE OF FRAUDS)

35. Further responding to the allegations of the Counterclaims, the Plaintiff would show that Defendant's claim fails to comply with the statute of frauds, S.C. Code § 32-3-10, and the lender liability statute of frauds, S.C. Code § 37-10-107.

WHEREFORE, having fully responded to the allegations of the Fourth Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff prays that the same be dismissed, and that this Court enter judgment for the relief sought in the Complaint.



Brian C. Duffy
Seth W. Whitaker
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)

and

Robert A. Bernstein
BERNSTEIN & BERNSTEIN, P.A.
Post Office Box 20519
Charleston, SC 29413-0519
(843) 529-1111
(843) 529-0035 (fax)
Attorneys for the Plaintiff

May 8, 2014
Charleston, South Carolina

DW

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY) 2014 MAY -9 AM 11:51) CASE NUMBER: 2012-CP-08-3478

Harbor National Bank,) MARY P. BROWN)
CLERK OF COURT)
BERKELEY COUNTY, SC)

Plaintiff,)

v.)

Anthony M. Whitfield,)

Defendant.)

REPLY TO THIRD AMENDED ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS

The Plaintiff, replying to the allegations of the Third Amended Answer, Affirmative Defenses and Counterclaims, would show unto this Court:

1. Each and every allegation contained in said Third Amended Answer, Affirmative Defenses and Counterclaims not hereinafter specifically admitted is denied.
2. The allegations of Paragraphs One (1) through Ten (10) of the Answer, Affirmative Defenses and Counterclaims fail to make allegations against the Plaintiff requiring a response; to the extent they make such allegations, the same are hereby denied.
3. Responding to the allegations of Paragraph Eleven (11) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that the Defendant applied to the Plaintiff for a credit commitment to purchase and refinance commercial real estate in the furtherance of his business in the Berkeley, Dorchester and Charleston County areas, and that the Defendant had financed other transactions with Southtrust Bank; the remaining allegations of Paragraph Eleven (11) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.
4. The allegations of Paragraphs Twelve (12) and Thirteen (13) of the Third

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Amended Answer, Affirmative Defenses and Counterclaims are denied.

5. Responding to the allegations of Paragraph Fourteen (14) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that it provided the attached Exhibit "A" to the Defendant setting forth the terms and conditions upon which it would agree to extend credit to the Defendant, the terms and conditions of which are explicitly set forth in the said correspondence, and the Plaintiff craves reference to the said correspondence to determine the terms and conditions of such commitment; any allegations contained in Paragraph Fourteen (14) of the Third Amended Answer, Affirmative Defenses and Counterclaims not hereinafter specifically admitted are denied.

6. Responding to the allegations of Paragraph Fifteen (15) of the Counterclaim, the Plaintiff admits that the Defendant chose a fixed interest rate as set forth in the applicable Note; any allegations contained in Paragraph Fifteen (15) of the Third Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

7. The allegations of Paragraph Sixteen (16) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

8. Responding to the allegations of Paragraph Seventeen (17) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that the Defendant made payments under the terms of and pursuant to the Promissory Note; any allegations contained in Paragraph Seventeen (17) of the Third Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

9. Responding to the allegations of Paragraph Eighteen (18) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that it requested copies of the Defendant's tax returns pursuant to the terms of line of credit and the note and mortgage, that

Defendant requested to be provided with a lower interest rate, and that the Plaintiff was considering terminating the loans due to the Defendant's failure to provide necessary documentation; any allegations contained in Paragraph Eighteen (18) of the Third Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

10. Responding to the allegations of Paragraph Nineteen (19) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that it wrote to the Defendant again advising of the need for sufficient financial information, including tax returns, to evaluate the proposal to renew loans with the Defendant, that the Defendant thereafter advised of the completion of the tax returns, that the Defendant requested modified terms for the loans, and that Angela Bell communicated with a senior credit analyst regarding the successful receipt of required documentation from the Defendant; any allegations contained in Paragraph Nineteen (19) of the Third Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

11. Responding to the allegations of Paragraph Twenty (20) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits the Notes secured by mortgages on 732 Gahagan and 110 Mepkin matured by their terms, that in a meeting with the Defendant that an agreement was reached upon the terms and conditions upon which certain loans could be renewed, that renewal terms included the terms contained in a June 26, 2012 letter to Mr. Whitfield; any allegations contained in Paragraph Twenty (20) of the Third Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

12. Responding to the allegations of Paragraph Twenty-One (21) of the Third

Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits the Scott Warren issued a terms letter to Mr. Whitfield setting forth the terms and conditions under which it would agree to renew the loans in existence, and that the letter is attached to the Third Amended Answer, Affirmative Defenses and Counterclaims as Exhibit "B"; any allegations contained in Paragraph Twenty-One (21) of the Third Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

13. Responding to the allegations of Paragraph Twenty-Two (22) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits the Plaintiff attended a scheduled closing at the office of attorney Mark Weeks, that it was discovered that Defendant had transferred an interest in the Black Rush property to his ex-wife, Cindy Whitfield, and that it was required as a condition of the closing either that Mrs. Whitfield sign the new mortgage or that a title endorsement be obtained; any allegations contained in Paragraph Twenty-Two (22) of the Third Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

14. Responding to the allegations of Paragraph Twenty-Three (23) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits the closing of the new loans never took place; ; any allegations contained in Paragraph Twenty-Three (23) of the Third Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

FOR A FIRST DEFENSE TO THE FIRST COUNTERCLAIM
(DENIAL)

15. Responding to the allegations of Paragraph Twenty-Four (24) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges

the allegations of Paragraphs One (1) through Fourteen (14) of this Reply as if repeated herein verbatim.

16. The allegations of Paragraphs Twenty-Five (25), Twenty-Six (26), and Twenty-Seven (27) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SECOND COUNTERCLAIM
(DENIAL)

17. Responding to the allegations of Paragraph Twenty-Eight (28) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Sixteen (16) of this Reply as if repeated herein verbatim.

18. Responding to the allegations of Paragraph Twenty-Nine (29), the Plaintiff admits that it proposed to finance the line of credit through either a fixed rate or floating rate to be chosen by the Defendant, and that it stated its intention to agree to refinance the book of loans the Defendant had with the Plaintiff provided that the Defendant met the terms and conditions imposed upon the proposed transaction; the remaining allegations of Paragraph Twenty-Nine (29) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

19. The allegations of Paragraph Thirty (30) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE THIRD COUNTERCLAIM
(DENIAL)

20. Responding to the allegations of Paragraph Thirty-One (31) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Nineteen (19) of this Reply as if repeated herein

verbatim.

21. The allegations of Paragraphs Thirty-Two (32), Thirty-Three (33), Thirty-Four (34), Thirty-Five (35), Thirty-Six (36) and Thirty-Seven (37) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE FOURTH COUNTERCLAIM
(DENIAL)

22. Responding to the allegations of Paragraph Thirty-Eight (38) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-One (21) of this Reply as if repeated herein verbatim.

23. Responding to the allegations of Paragraphs Thirty-Nine (39) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that it proposed to finance the line of credit through either a fixed rate or floating rate to be chosen by the Defendant, and that it stated its intention to agree to refinance the book of loans the Defendant had with the Plaintiff provided that the Defendant met the terms and conditions imposed upon the proposed transaction; the remaining allegations of Paragraph Thirty-Nine (39) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

24. The allegations of Paragraphs Forty (40), and Forty-One (41) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE FIFTH COUNTERCLAIM
(DENIAL)

25. Responding to the allegations of Paragraph Forty-Two (42) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Four (24) of this Reply as if repeated herein

verbatim.

26. The allegations of Paragraphs Forty-Three (43), Forty-Four (44), Forty-Five (45) and Forty-Six (46) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SIXTH COUNTERCLAIM
(DENIAL)

27. Responding to the allegations of Paragraph Forty-Seven (47) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Six (26) of this Reply as if repeated herein verbatim.

28. The allegations of Paragraphs Forty-Eight (48), Forty-Nine (49), and Fifty (50) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SEVENTH COUNTERCLAIM
(DENIAL)

29. Responding to the allegations of Paragraph Fifty-One (51) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Eight (28) of this Reply as if repeated herein verbatim.

30. The allegations of Paragraphs Fifty-Two (52), Fifty-Three (53), and Fifty-Four (54) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A SECOND DEFENSE
(STATUTES OF LIMITATIONS)

31. Further responding to the allegations of all Counterclaims, the Plaintiff would show that such claims are barred by the applicable statutes of limitations, for which reason the Defendant cannot recover in any sum whatsoever.

FOR A THIRD DEFENSE
(FAILURE TO STATE A CLAIM)

32. Further responding to the allegations of all Counterclaims, the Plaintiff would show that such Counterclaims fail to state claims upon which relief can be granted, for which reason the Defendant cannot recover in any sum whatsoever.

FOR A FOURTH DEFENSE
(LACK OF RELIANCE)

33. Further responding to the allegations of all Counterclaims, the Plaintiff would show that the Defendant failed to rely or have any right to rely upon the alleged representations other than as contained in the written contracts between the parties, for which reason the Defendant cannot recover in any sum whatsoever.

FOR A FIFTH DEFENSE
(REGULATED TRANSACTIONS)

34. Further responding to the allegations of the Fourth Counterclaim, the Plaintiff would show that the actions and activities of the Plaintiff are regulated by the state and federal government, that the performance of said actions were in compliance with said state and federal regulations, and thus that the transactions are exempt from S.C. Code Ann. §39-5-10 et seq.


FOR A SIXTH DEFENSE
(OTHER CLAIM ALREADY PENDING)

35. Further responding to the allegations of the Counterclaims, the Plaintiff would show that another action is pending between the same parties for the same counterclaims, for which reason the said counterclaims are improper and should be dismissed pursuant to Rule 12(b)(8), SCRPC.

FOR A SEVENTH DEFENSE
(STATUTE OF FRAUDS)

35. Further responding to the allegations of the Counterclaims, the Plaintiff would show that Defendant's claim fails to comply with the statute of frauds, S.C. Code § 32-3-10, and the lender liability statute of frauds, S.C. Code § 37-10-107.

WHEREFORE, having fully responded to the allegations of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff prays that the same be dismissed, and that this Court enter judgment for the relief sought in the Complaint.



Brian C. Duffy
Seth W. Whitaker
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)

and

Robert A. Bernstein
BERNSTEIN & BERNSTEIN, P.A.
Post Office Box 20519
Charleston, SC 29413-0519
(843) 529-1111
(843) 529-0035 (fax)
Attorneys for the Plaintiff

May 8, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

BANK OF NORTH CAROLINA,)
Plaintiff,)

vs.)

ANTHONY WHITFIELD, CINDY)
WHITFIELD, AND DAVID SWANSON)
Defendants.)

IN THE COURT OF COMMON PLEAS)
CASE NO. 2014-CP-18-1793)

DEFENDANT'S FOURTH AMENDED
ANSWER, AFFIRMATIVE DEFENSES,
CROSSCLAIM AND COUNTERCLAIM

(Breach of Contract, Negligent
Misrepresentation, Fraud in the
Inducement, Unfair Trade Practices,
Promissory Estoppel, Interference with
Prospective Contractual Relations, and
Breach of Contract Accompanied by
Fraudulent Act, Abuse of Process, Civil
Conspiracy, and Equitable Indemnity)

(Jury Trial Demanded)

TO: ROBERT A. BERNSTEIN, ATTORNEY FOR PLAINTIFF

Comes now Defendant, Anthony Whitfield (hereinafter, "Mr. Whitfield") and responds to the allegations of Plaintiff's Complaint as follows:

1. Mr. Whitfield admits the allegations of Paragraphs 2, 3, 8, 14, 15, 16, 17, 18 and 25.
2. Mr. Whitfield denies, the allegations of Paragraphs 13 and 23 to the extent such Paragraphs reference previous allegations which are herein denied.
3. Mr. Whitfield admits the allegations of Paragraph 5, but denies that he chose the stated interest rate and alleges that at all material times Plaintiff represented the maturity date of the loan would be automatically extended by Plaintiff.

4. Mr. Whitfield admits an assignment was made but denies the event of default as alleged in Paragraph 24, 26 and 29.

5. Mr. Whitfield denies Paragraphs 1, 4, 6, 7, 9, 10, 11, 12, 19, 20, 21, 22, 27 and 28.

6. Mr. Whitfield denies each and every allegation not specifically enumerated herein.

FIRST AFFIRMATIVE DEFENSE

7. Plaintiff's claims to foreclose on the 2007 Mortgage should be waived, estopped, barred, and/or dismissed as Defendant made all payments as was required under the Note and was told by Plaintiff numerous times that the April 13, 2012 maturity date as referenced in the Note would be automatically extended.

SECOND AFFIRMATIVE DEFENSE

8. Plaintiff's claims in equity are barred by the doctrine of unclean hands hands and equitable estoppel.

THIRD AFFIRMATIVE DEFENSE

9. Plaintiff's action should be barred by the doctrine of unconscionability, fraud and duress.

FOURTH AFFIRMATIVE DEFENSE

10. Upon information and belief, the subject note attempted to be foreclosed upon is not the original note and therefore Plaintiff does not have standing pursue this foreclosure action.

COUNTERCLAIMS

Factual Allegations

11. In 2006, Mr. Whitfield approached Charlie Rivers (hereinafter, "Mr. Rivers") of Harbor National Bank to purchase and refinance certain real estate in the lowcountry counties of Berkeley, Dorchester and Charleston. Mr. Rivers previously helped Mr. Whitfield refinance over 25 loans when Mr. Rivers was a loan officer with Southtrust Bank. These loans always had 30 year terms and never had balloon payments or required refinancing or re-approval.

12. Mr. Rivers promised Mr. Whitfield the same loans as he was previously given by Mr. Rivers, to-wit, 30 year loans with the best rate possible, with a ½ point origination fee. There was no mention of balloon payments or re-qualification anytime during the 30 year loans. After a review of Mr. Whitfield's financial condition, Mr. Rivers approved \$1.5 million in loans to refinance rental properties. At the time, Mr. Whitfield made clear to Mr. Rivers that the loans could not have demand features or have a balloon payment. Mr. Rivers agreed.

13. In reliance on Mr. Rivers' representations, Mr. Whitfield purchased the property at 732 Gahagan Drive, Summerville, SC 29485 (hereinafter, "the Subject Property").

14. On or about March 27, 2007 Mr. Whitfield was provided documentation from Plaintiff stating that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ % (See Exhibit "A" attached hereto).

15. Despite being provided documentation by Plaintiff that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ %, Mr. Whitfield

was provided the higher 7.5% rate as opposed to the lower floating rate of prime minus ¼ %.

16. Despite being provided documents at the closing with a April 13, 2012 maturity date on some of the loans, Mr. Whitfield was assured numerous times by loan officer Angela Bell that the maturity date was just a formality and in fact was just a renewal date and would be extended automatically with only adjustments of interest without any re-qualifying or costs to extend. Despite making such assurances to Mr. Whitfield, loan officer Angela Bell determined as early as 2010 that the loans would not be renewed as she felt Mr. Whitfield was not providing financial information to her. At the time she indicated she needed to "grease the wheel" with Mr. Whitfield's accountant so the accountant would tell her more information about Mr. Whitfield's financial status.

17. Because of Ms. Bell's assurances and representations, Mr. Whitfield made payments on the loan for the subject property from the origination of the loan every month until the renewal date.

18. In January, 2012, Plaintiff asked Mr. Whitfield for a copy of his recent tax returns so that the loan could be automatically extended. As late as February 6, 2012, loan officer Angela Bell sent an email to Mr. Whitfield asking him for tax information to work on the "renewals." On February 21, 2012, Mr. Whitfield informed loan officer Angela Bell that he was under some financial pressure, that his health was suffering, and that he wanted interest rates on par with the other mortgages he held with other banks. The following day, Ms. Bell informed Harbor National Bank personnel (but not Mr. Whitfield) that she was going to let Mr. Whitfield know that she would be asking him to move the loans. Although she informed others of her intention not to renew the loans, Ms. Bell never

told Mr. Whitfield that he needed to move the loans- at any point in time. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible.

19. One week later, on February 28, 2012 loan officer Angela Bell wrote Mr. Whitfield to let him know that she would have to have his 2010 tax returns in order to request approval for renewal of his upcoming maturing loans. On April 2, 2012, Mr. Whitfield informed loan officer Angela Bell that his 2010 tax returns were complete and that he urgently wanted his loans modified since the rates were extremely high, and that his health had been an issue. After receiving the information about receiving the tax returns, the following day loan officer Angela Bell told a senior credit analyst at Harbor National Bank, "I'm just glad the threats of no renewals finally worked." Five days later, on April 8, 2012, Mr. Whitfield suffered a heart attack.

20. Despite making assurances the loans would renew, two notes (732 Gahagan and 110 Mepkin) matured on April 13, 2012 without having been renewed by the Plaintiff. On June 21, 2012 Charlie Rivers orally agreed to modify the notes and specifically agreed to: (a) extend the notes for a 25 year amortization with another 5 year maturity; (b) eliminate the need for any principal pay downs; (c) eliminate the need for additional collateral to secure the notes; (d) eliminate the need to cross collateralize the loans; (e) waive the default interest rate of 14%; (f) back date the rate of 4.75% to the maturity of the April 13, 2012 maturities; and (g) credit Mr. Whitfield's overpayment of interest.

21. On June 26, 2012, Harbor National Bank vice president Scott Warren signed a loan commitment letter to Mr. Whitfield outlining the terms and conditions of the

renewals of all Mr. Whitfield's loans held by Harbor National Bank. The proposed new loans dropped the interest rate to 4.75% and extended the maturities another 5 years. (See loan commitment, attached hereto as Exhibit "B"). On the same day, Mr. Whitfield was given drafts of new notes to sign for the closing which was to be held on June 28, 2012. The new documents contained clauses that all of Mr. Whitfield's properties would be cross collateralized, despite Mr. River's agreement and assurances not to cross collateralize the properties (See Paragraph 20 (d) herein).

22. In reliance upon Mr. Warren's June 26, 2012 commitment letter, Mr. Whitfield attended a scheduled closing at attorney Mark Weeks' law office. At the closing, Mr. Warren informed Mr. Whitfield that a signed endorsement from a title company was needed so that Mr. Whitfield's ex-spouse Cindy Whitfield would not be required to sign the loan documents for one of the properties that Cindy Whitfield resided in (hereinafter, the "Black Rush Property")¹. At a certain point, Mr. Whitfield was informed by the closing attorney that the endorsement could not be procured, that Mrs. Whitfield was refusing to sign the mortgage to the Black Rush Property, and Mr. Warren proposed that it would only be possible to close two of the subject properties - Mepkin and Gahagan, but that if the Black Rush Property ultimately couldn't be closed, all properties including Mepkin and Gahagan would have to be foreclosed upon.

23. Despite Harbor National Bank's representations that a title endorsement was required to renew the Black Rush Property, Mr. Whitfield has subsequently learned that no such endorsement was required from the title company. Moreover, Harbor

¹ Plaintiff also attempted to procure a "Business Purpose Statement" from Mr. Whitfield indicating that the property was to be used in Mr. Whitfield's business despite having previous knowledge that the Black Rush Property was in a fact residential property for Mr. Whitfield's ex-wife Cindy Whitfield.

National Bank failed to renew any of the loans listed in the June 26, 2012 commitment letter despite agreeing to do so, willfully breaching their agreements, and causing Mr. Whitfield damages as to be determined by the trier of fact.

FOR A FOR FIRST COUNTERCLAIM
(Breach of Contract)

24. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

25. As described above, Plaintiff indicated before and after the origination of the loan, verbally and in writing, that the loan to the Subject Property would be automatically renewed.

26. Despite repeatedly making these representations and reassurances, Plaintiff failed to renew the loan and instead declared Mr. Whitfield to be in default despite being paid all monthly installments on time, as and when due, breaching their agreement with Mr. Whitfield.

27. Although Plaintiff ultimately promised in writing to renew the loan on June 26, 2012, Plaintiff refused to close the loan on June 28, 2012, as described above, breaching the terms of the offer contained in the writing. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligent Misrepresentation)

28. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

29. As described above, Harbor National Bank made affirmative representations to Mr. Whitfield that: (1) the initial loans would be 30 year loans; (2) the maturity date referenced in the Note was simply a renewal date; and (3) the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with a new maturity date of July 10, 2017.

30. Plaintiff knew these representations were false, misleading, and incomplete when they were made. Such representations were (1) false, misleading and incomplete when made; (2) were made for a pecuniary interest of the Plaintiff; (3) the Plaintiff owed a duty of care to convey truthful information to Mr. Whitfield; (4) the Plaintiff breached that duty by failing to exercise due care; (5) Mr. Whitfield was unaware that the representations were false - and had no reason to suspect they were false as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his financial detriment as outlined above. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A THIRD CAUSE OF ACTION
(Fraud in the Inducement)

31. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

32. At or about the time of the initial loan originations, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity date referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017. Such representations were false, incomplete and misleading when made, were material, were known by the Plaintiff to be false, misleading and incomplete, and were intended to be relied upon.

33. Mr. Whitfield was unaware that the representations were false and had no reason to suspect they were false, as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his detriment financial as outlined above. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible. At a minimum, the Plaintiff should have relayed their concerns about renewals as early as documentary evidence suggest Harbor National Bank had a concern, to-wit, the year 2010.

34. These false representations were made to induce the Mr. Whitfield to enter a high cost loan, and were made by the Plaintiff with the knowledge of their falsity.

35. Mr. Whitfield reasonably relied on the material representations of Plaintiff and had no knowledge the representations made by the Plaintiff were false and the Mr.

Whitfield was, therefore, fraudulently induced by the Plaintiff to enter into the high cost loan.

36. Mr. Whitfield made a mistake in entering into the loan, which mistake was unilateral. Mr. Whitfield was fraudulently induced by the Plaintiff to make the unilateral mistake as a direct, proximate and foreseeable result of the fraud, deceit, misrepresentation, and active concealment perpetrated upon Mr. Whitfield by the Plaintiff.

37. Subsequent to the origination of the loan, Mr. Whitfield has been informed and now believes that the Plaintiff misrepresented the terms of the loan, verbally and in writing by (1) not receiving 30 year loans, (2) representing that the maturity date was simply a renewal date; and (3) charging, and refusing to change, the interest rate of 7.5%. The Plaintiff also made representations, and an offer, to renew the loans at 4.75% with a new maturity date of July 10, 2017 as agreed. As such, Mr. Whitfield is entitled to avoid or rescind the loan and to be returned to the status quo ante whereby the Plaintiff returns to Mr. Whitfield all monies paid by Mr. Whitfield in exchange for Mr. Whitfield returning the amount of the loan proceeds to the Plaintiff. In addition thereto, Mr. Whitfield is entitled to all incidental, consequential, direct and indirect damages proximately caused by Plaintiff when they fraudulently induced Mr. Whitfield to enter into the loan transaction. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Violation of Federal Trade Commission Act Section 5(a) 15 U.S.C. §45)
(As made applicable through SC Code §39-5-10 et.seq.)

38. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

39. As stated above, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity dates referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also represented, and made an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017.

40. Plaintiff's acts enumerated above constitute "unfair or deceptive acts or practices in or affecting commerce," as those terms are defined in the Act. This prohibition applies to all persons engaged in commerce, including banks. An act or practice is unfair where it: (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers and; (3) is not outweighed by countervailing benefits to consumers or to competition. In this case, Plaintiff's actions discussed above have caused substantial injury to Mr. Whitfield.

41. An act or practice is deceptive where: (1) a representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances and; (3) the misleading representation, omission, or practice is material. In this case, Plaintiff's actions were deceptive because Plaintiff clearly misrepresented that the loans would be renewed. Mr. Whitfield has been injured in reliance upon Harbor

National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Promissory Estoppel / Detrimental Reliance)

42. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

43. Mr. Whitfield relied on the promises of Angela Bell, Charlie Rivers, and Scott Warren to renew and modify the loans.

44. These promises were unambiguous in their terms and were relied upon by Mr. Whitfield. In particular, there were no contingencies placed upon the June 26, 2012 written offer to renew any of the loans as title insured first mortgages were already in place on the subject properties.

45. The reliance by Mr. Whitfield regarding renewing the loans was more than expected and more than foreseeable by Harbor National Bank.

46. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Tortious Interference with Prospective Contractual Relations)

47. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

48. The acts of Plaintiff described herein constituted an interference with Mr.

Whitfield's business, were without justification, were done with improper purpose and motive, knowing it would place Mr. Whitfield under duress when filing these unfounded legal proceedings and knowing that it would interfere with Mr. Whitfield's ability to sell and/or rent the subject property.

49. As a result of Plaintiff's actions Mr. Whitfield has lost the ability to enter into contracts with identifiable prospective buyers and/or renters of the subject property. As a direct and proximate result of the Plaintiff's actions, Mr. Whitfield has suffered special damages including but not limited to a diminished value of their property in the eyes of third parties, loss of income and loss of profits.

50. Plaintiff's actions proximately caused actual, consequential, and special damages, including but not limited to: a) inability to sell the subject property to third parties who met requirements for sale and/or rental of the subject property; b) foreclosure proceedings having been instituted on the subject property; c) a diminished value of the subject property in the eyes of third parties; d) damage to Mr. Whitfield's reputation and business standing in the real estate profession; e) financial damage to Mr. Whitfield's business because of time spent away to defend these charges, f) financial damage for his inability to sell the subject property following filing of the lis pendens and lawsuit, g) attorneys' fees and costs incurred; h) time spent away from work as a result of the lis pendens and lawsuit, i) emotional distress to Mr. Whitfield, j) injury to his health and mental pain and suffering.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

51. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

52. As stated above, Mr. Rivers made an agreement to renew the loans at the June 21, 2012 meeting with Mr. Whitfield.

53. Plaintiff breached the agreement with Mr. Whitfield by failing to close the renewal of the loan which is the subject of this lawsuit. Such breach was made with the fraudulent intent of never actually intending to close the renewal when that representation was made, and such fraudulent intent was manifested by the fraudulent act of claiming a title endorsement was required to renew the loan when in fact one was never needed.

54. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR AN EIGHTH CAUSE OF ACTION

(Abuse of Process as to David Swanson and BNC Bancorp through its employee/agent
Scott Warren)

55. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

56. Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

57. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

58. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr.

David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

59. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact evidence shows it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

60. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

61. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

62. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given. The acts described above and herein have caused damage to Mr. Whitfield by incurring actual damages, both mental and pecuniary, including by way of example only and

without limitation: loss of time, injury to property and financial standing, shame, mortification, mental anguish, mental pain and suffering, emotional distress, loss of enjoyment of life, injury to feelings, an overall degradation of health, and was hindered from, and will continue to be hindered from attending to his usual duties and affairs of life, as a direct and proximate result of the aforesaid conduct of Harbor National Bank, in an exact amount of actual, consequential and special damages as to be determined by a trier of fact.

FOR A NINTH CAUSE OF ACTION

(Civil Conspiracy as to David Swanson and BNC Bancorp through its employee/agent
Scott Warren)

63. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

64. As alleged above, Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

65. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

66. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

67. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

68. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

69. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

70. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given.

71. Mr. David Swanson's actions described above and herein were made for his own personal interest as they were performed outside the scope of his law firm's representation of Harbor National Bank.

72. The actions of David Swanson and Scott Warren as alleged above and

herein constitute an combination of two or more persons that was done with the purpose of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield which has caused him special damages, beyond damages specified in his other causes of action for having to incur attorney's fees and costs associated with Harbor National Bank's advice of counsel defense which should never have been incurred.

FOR A TENTH CAUSE OF ACTION
(Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield)

73. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

74. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, such liability would be a proximate result of the wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents in failing to give her permission and/or authorization to renew the loan for the subject property located at 1055 Black Rush Circle, Mount Pleasant, South Carolina, said demand being made as a defense of Harbor National Bank to close all of the renewal loans set forth in Exhibit "C".

75. Specifically, the closing attorney Mark Weeks and Mr. Whitfield's previous counsel Lauren Felder have stated that Mrs. Cindy Whitfield's counsel Stanley Jaskiewicz was contacted regarding procuring her consent for the renewal of the Black Rush Property. Lauren Felder was advised by either Stanley Jaskiewicz or his paralegal Dena Hardison that Mrs. Cindy Whitfield, "would not sign off on the mortgage as Mr. Whitfield was solely responsible under the Final Family Court Order." Additionally, Mrs. Cindy

Whitfield was told by Mr. Jaskiewicz' paralegal Dena Hardison that, "he [Mr. Whitfield] could not refinance my home or borrow the equity in it as he would be putting another nail in his coffin." According to Mrs. Whitfield, Ms. Dena Hardison gave her this advice before the closing² and was also told by Ms. Hardison not to, "do anything until I talk to Stan," regarding gaining access to her home for an appraisal. According to Mrs. Whitfield, Mr. Jaskiewicz never called her back regarding any issues related to procuring her consent to renew her home.

76. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, these wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents have damaged Mr. Whitfield, including but not limited to consequential and special damages, and the imposition of attorney's fees and costs in defending the foreclosure and prosecuting the Counterclaims as alleged herein. Mr. Whitfield and Mrs. Cindy Whitfield had a special relationship by virtue of their continuing family court obligations that would support a claim for indemnity against Mrs. Cindy Whitfield. Moreover, Mr. Whitfield is wholly without fault for Cindy Whitfield failing to provide her permission and/or authorization to renew the loan for the Black Rush Property.

77. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, Mr. Whitfield would be entitled to be equitably indemnified for such liability from Cindy Whitfield for any liability that Mr. Whitfield is found to have incurred to the Plaintiff such that Mr. Whitfield would be entitled

² Mrs. Whitfield indicated this statement was made by Ms. Hardison at the time the appraiser was attempting to gain access to Mrs. Whitfield's home-- in May and June of 2012. Correspondence was sent to Stanley Jaskiewicz advising him of appraisal access issue on June 11, 2012.

to recover his consequential and special damages, attorney's fees and costs, monies adjudged owed to the Plaintiff and/or monies expended by way of settlement of Plaintiff's claims as a result of Cindy Whitfield and/or her agents wrongful acts, breach of duties, omissions, and/or negligence as afore-described.

WHEREFORE, Defendants prays for relief as set forth below together with such further relief as this court deems just:


- a. Actual damages;
- b. Compensatory damages
- c. Special damages;
- d. Statutory damages;
- e. Treble Damages
- f. Disgorgement of profits;
- g. Restitution;
- h. Rescission;
- i. Injunctive relief; and
- j. Attorneys' fees and costs

DEMAND FOR JURY TRIAL

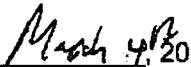
Mr. Whitfield demands a jury trial on all counts stated above. These causes of action must be tried before any equitable causes of action asserted by either party can be disposed of. See Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994)

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: 

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com
Attorneys for the Defendant

 2016.
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that I served the foregoing Fourth Amended Answer, Affirmative Defenses and Counterclaims upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this 4th day of March, 2016.

HALVERSEN & ASSOCIATES, LLC

By: *Brent S. Halversen*

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

2016 MAR -8 PM 12:02
CLERK OF COURT
SOUTH CAROLINA
CHARLESTON COUNTY

Charleston, South Carolina
March 4th, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

BANK OF NORTH CAROLINA,)

Plaintiff,)

vs.)

✓ ANTHONY WHITFIELD, CINDY WHITFIELD, AND DAVID SWANSON)

Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-18-1792

2016 MAR -8 PM 12:00

DEFENDANT'S FOURTH AMENDED ANSWER, AFFIRMATIVE DEFENSES, CROSSCLAIM AND COUNTERCLAIMS

(Breach of Contract, Negligent Misrepresentation, Fraud in the Inducement, Unfair Trade Practices, Promissory Estoppel, Tortious Interference with Prospective Contractual Relations, and Breach of Contract Accompanied by Fraudulent Act, Abuse of Process, Civil Conspiracy, and Equitable Indemnification)

(Jury Trial Demanded)

TO: ROBERT A. BERNSTEIN, ATTORNEY FOR PLAINTIFF

Comes now Defendant, Anthony Whitfield (hereinafter, "Mr. Whitfield") and responds to the allegations of Plaintiff's Complaint as follows:

1. Mr. Whitfield admits the allegations of Paragraphs 2, 3, 8, 14, 15, 16, 17, 18, 25, 33, 39, 40, 41, 42, 43 and 50.
2. Mr. Whitfield denies, the allegations of Paragraphs 13, 23, 38 and 48 to the extent such Paragraphs reference previous allegations which are herein denied.
3. Mr. Whitfield admits the allegations of Paragraph 5 and 30, but denies that he chose the stated interest rate and alleges that at all material times Plaintiff represented the maturity date of the loan would be automatically extended by Plaintiff.

4. Mr. Whitfield admits an assignment was made but denies the event of default as alleged in Paragraph 24, 26, 29, 49, 51 and 54.

5. Mr. Whitfield denies Paragraphs 1, 4, 6, 7, 9, 10, 11, 12, 19, 20, 21, 22, 27, 28, 31, 32, 34, 35, 36, 37, 44, 45, 46, 47, 52 and 53.

6. Mr. Whitfield denies each and every allegation not specifically enumerated herein.

FIRST AFFIRMATIVE DEFENSE

7. Plaintiff's claims to foreclose on the 2007 Mortgage should be waived, estopped, barred, and/or dismissed as Defendant made all payments as was required under the Note and was told by Plaintiff numerous times that the October 13, 2012 maturity date as referenced in the Note would be automatically extended.

SECOND AFFIRMATIVE DEFENSE

8. Plaintiff's claims in equity are barred by the doctrine of unclean hands and equitable estoppel.

THIRD AFFIRMATIVE DEFENSE

9. Plaintiff's action should be barred by the doctrine of unconscionability, fraud and duress.

FOURTH AFFIRMATIVE DEFENSE

10. Upon information and belief, the subject notes attempted to be foreclosed upon are not the original notes and therefore Plaintiff does not have standing pursue this foreclosure action.

COUNTERCLAIMS

Factual Allegations

11. In 2006, Mr. Whitfield approached Charlie Rivers (hereinafter, "Mr. Rivers") of Harbor National Bank to purchase and refinance certain real estate in the lowcountry counties of Berkeley, Dorchester and Charleston. Mr. Rivers previously helped Mr. Whitfield refinance over 25 loans when Mr. Rivers was a loan officer with Southtrust Bank. These loans always had 30 year terms and never had balloon payments or required refinancing or re-approval.

12. Mr. Rivers promised Mr. Whitfield the same loans as he was previously given by Mr. Rivers, to-wit, 30 year loans with the best rate possible, with a ½ point origination fee. There was no mention of balloon payments or re-qualification anytime during the 30 year loans. After a review of Mr. Whitfield's financial condition, Mr. Rivers approved \$1.5 million in loans to refinance rental properties. At the time, Mr. Whitfield made clear to Mr. Rivers that the loans could not have demand features or have a balloon payment. Mr. Rivers agreed.

13. In reliance on Mr. Rivers' representations, Mr. Whitfield purchased the property at 9708 Jamison Road and 131 Tyron Road (hereinafter, "the Subject Property").

14. On or about March 27, 2007 Mr. Whitfield was provided documentation from Plaintiff stating that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ % (See Exhibit "A" attached hereto).

15. Despite being provided documentation by Plaintiff that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ %, Mr. Whitfield was provided the higher 7.5% rate as opposed to the lower floating rate of prime minus

¼ %.

16. Despite being provided documents at the closing with a April 13, 2012 maturity date on some of the loans, Mr. Whitfield was assured numerous times by loan officer Angela Bell that the maturity date was just a formality and in fact was just a renewal date and would be extended automatically with only adjustments of interest without any re-qualifying or costs to extend. Despite making such assurances to Mr. Whitfield, loan officer Angela Bell determined as early as 2010 that the loans would not be renewed as she felt Mr. Whitfield was not providing financial information to her. At the time she indicated she needed to "grease the wheel" with Mr. Whitfield's accountant so the accountant would tell her more information about Mr. Whitfield's financial status.

17. Because of Ms. Bell's assurances and representations, Mr. Whitfield made payments on the loan for the subject properties from the origination of the loan every month until the renewal date.

18. In January, 2012, Plaintiff asked Mr. Whitfield for a copy of his recent tax returns so that the loan could be automatically extended. As late as February 6, 2012, loan officer Angela Bell sent an email to Mr. Whitfield asking him for tax information to work on the "renewals." On February 21, 2012, Mr. Whitfield informed loan officer Angela Bell that he was under some financial pressure, that his health was suffering, and that he wanted interest rates on par with the other mortgages he held with other banks. The following day, Ms. Bell informed Harbor National Bank personnel (but not Mr. Whitfield) that she was going to let Mr. Whitfield know that she would be asking him to move the loans. Although she informed others of her intention not to renew the loans, Ms. Bell never told Mr. Whitfield that he needed to move the loans- at any point in time. Had Mr. Whitfield

known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible.

19. One week later, on February 28, 2012 loan officer Angela Bell wrote Mr. Whitfield to let him know that she would have to have his 2010 tax returns in order to request approval for renewal of his upcoming maturing loans. On April 2, 2012, Mr. Whitfield informed loan officer Angela Bell that his 2010 tax returns were complete and that he urgently wanted his loans modified since the rates were extremely high, and that his health had been an issue. After receiving the information about receiving the tax returns, the following day loan officer Angela Bell told a senior credit analyst at Harbor National Bank, "I'm just glad the threats of no renewals finally worked." Five days later, on April 8, 2012, Mr. Whitfield suffered a heart attack.

20. Despite making assurances the loans would renew, two notes (732 Gahagan and 110 Mepkin) matured on April 13, 2012 without having been renewed by the Plaintiff. On June 21, 2012 Charlie Rivers orally agreed to modify the notes and specifically agreed to: (a) extend the notes for a 25 year amortization with another 5 year maturity; (b) eliminate the need for any principal pay downs; (c) eliminate the need for additional collateral to secure the notes; (d) eliminate the need to cross collateralize the loans; (e) waive the default interest rate of 14%; (f) back date the rate of 4.75% to the maturity of the April 13, 2012 maturities; and (g) credit Mr. Whitfield's overpayment of interest.

21. On June 26, 2012, Harbor National Bank vice president Scott Warren signed a loan commitment letter to Mr. Whitfield outlining the terms and conditions of the renewals of all Mr. Whitfield's loans held by Harbor National Bank. The proposed new

loans dropped the interest rate to 4.75% and extended the maturities another 5 years. (See loan commitment, attached hereto as Exhibit "B"). On the same day, Mr. Whitfield was given drafts of new notes to sign for the closing which was to be held on June 28, 2012. The new documents contained clauses that all of Mr. Whitfield's properties would be cross collateralized, despite Mr. River's agreement and assurances not to cross collateralize the properties (See Paragraph 18 (d) herein).

22. In reliance upon Mr. Warren's June 26, 2012 commitment letter, Mr. Whitfield attended a scheduled closing at attorney Mark Weeks' law office. At the closing, Mr. Warren informed Mr. Whitfield that a signed endorsement from a title company was needed so that Mr. Whitfield's ex-spouse Cindy Whitfield would not be required to sign the loan documents for one of the properties that Cindy Whitfield resided in (hereinafter, the "Black Rush Property")¹. At a certain point, Mr. Whitfield was informed by the closing attorney that the endorsement could not be procured, that Mrs. Whitfield was refusing to sign the mortgage to the Black Rush Property, and Mr. Warren proposed that it would only be possible to close two of the subject properties -Mepkin and Gahagan, but that if the Black Rush Property ultimately couldn't be closed, all properties including Mepkin and Gahagan would have to be foreclosed upon.

23. Despite Harbor National Bank's representations that a title endorsement was required to renew the Black Rush Property, Mr. Whitfield has subsequently learned that no such endorsement was required from the title company. Moreover, Harbor National Bank failed to renew any of the loans listed in the June 26, 2012 commitment

¹ Plaintiff also attempted to procure a "Business Purpose Statement" from Mr. Whitfield indicating that the property was to be used in Mr. Whitfield's business despite having previous knowledge that the Black Rush Property was in a fact residential property for Mr. Whitfield's ex-wife Cindy Whitfield.

letter despite agreeing to do so, willfully breaching their agreements, and causing Mr. Whitfield damages as to be determined by the trier of fact.

FOR A FOR FIRST COUNTERCLAIM
(Breach of Contract)

24. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

25. As described above, Plaintiff indicated before and after the origination of the loan, verbally and in writing, that the loan to the Subject Property would be automatically renewed.

26. Despite repeatedly making these representations and reassurances, Plaintiff failed to renew the loan and instead declared Mr. Whitfield to be in default despite being paid all monthly installments on time, as and when due, breaching their agreement with Mr. Whitfield.

27. Although Plaintiff ultimately promised in writing to renew the loan on June 26, 2012, Plaintiff refused to close the loan on June 28, 2012, as described above, breaching the terms of the offer contained in the writing. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligent Misrepresentation)

28. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

29. As described above, Harbor National Bank made affirmative representations to Mr. Whitfield that: (1) the initial loans would be 30 year loans; (2) the maturity date referenced in the Note was simply a renewal date; and (3) the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with a new maturity date of July 10, 2017.

30. Plaintiff knew these representations were false, misleading, and incomplete when they were made. Such representations were (1) false, misleading and incomplete when made; (2) were made for a pecuniary interest of the Plaintiff; (3) the Plaintiff owed a duty of care to convey truthful information to Mr. Whitfield; (4) the Plaintiff breached that duty by failing to exercise due care; (5) Mr. Whitfield was unaware that the representations were false - and had no reason to suspect they were false as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his financial detriment as outlined above. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A THIRD CAUSE OF ACTION
(Fraud in the Inducement)

31. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

32. At or about the time of the initial loan originations, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity date referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017. Such representations were false, incomplete and misleading when made, were material, were known by the Plaintiff to be false, misleading and incomplete, and were intended to be relied upon.

33. Mr. Whitfield was unaware that the representations were false and had no reason to suspect they were false, as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his detriment financial as outlined above. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible. At a minimum, the Plaintiff should have relayed their concerns about renewals as early as documentary evidence suggest Harbor National Bank had a concern, to-wit, the year 2010.

34. These false representations were made to induce the Mr. Whitfield to enter a high cost loan, and were made by the Plaintiff with the knowledge of their falsity.

35. Mr. Whitfield reasonably relied on the material representations of Plaintiff and had no knowledge the representations made by the Plaintiff were false and the Mr.

Whitfield was, therefore, fraudulently induced by the Plaintiff to enter into the high cost loan.

36. Mr. Whitfield made a mistake in entering into the loan, which mistake was unilateral. Mr. Whitfield was fraudulently induced by the Plaintiff to make the unilateral mistake as a direct, proximate and foreseeable result of the fraud, deceit, misrepresentation, and active concealment perpetrated upon Mr. Whitfield by the Plaintiff.

37. Subsequent to the origination of the loan, Mr. Whitfield has been informed and now believes that the Plaintiff misrepresented the terms of the loan, verbally and in writing by (1) not receiving 30 year loans, (2) representing that the maturity date was simply a renewal date; and (3) charging, and refusing to change, the interest rate of 7.5%. The Plaintiff also made representations, and an offer, to renew the loans at 4.75% with a new maturity date of July 10, 2017 as agreed. As such, Mr. Whitfield is entitled to avoid or rescind the loan and to be returned to the status quo ante whereby the Plaintiff returns to Mr. Whitfield all monies paid by Mr. Whitfield in exchange for Mr. Whitfield returning the amount of the loan proceeds to the Plaintiff. In addition thereto, Mr. Whitfield is entitled to all incidental, consequential, direct and indirect damages proximately caused by Plaintiff when they fraudulently induced Mr. Whitfield to enter into the loan transaction. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Violation of Federal Trade Commission Act Section 5(a) 15 U.S.C. §45)
(As made applicable through SC Code §39-5-10 et.seq.)

38. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

39. As stated above, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity dates referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also represented, and made an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017.

40. Plaintiff's acts enumerated above constitute "unfair or deceptive acts or practices in or affecting commerce," as those terms are defined in the Act. This prohibition applies to all persons engaged in commerce, including banks. An act or practice is unfair where it: (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers and; (3) is not outweighed by countervailing benefits to consumers or to competition. In this case, Plaintiff's actions discussed above have caused substantial injury to Mr. Whitfield.

41. An act or practice is deceptive where: (1) a representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances and; (3) the misleading representation, omission, or practice is material. In this case, Plaintiff's actions were deceptive because Plaintiff clearly misrepresented that the loans would be renewed. Mr. Whitfield has been injured in reliance upon Harbor

National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Promissory Estoppel / Detrimental Reliance)

42. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

43. Mr. Whitfield relied on the promises of Angela Bell, Charlie Rivers, and Scott Warren to renew and modify the loans.

44. These promises were unambiguous in their terms and were relied upon by Mr. Whitfield. In particular, there were no contingencies placed upon the June 26, 2012 written offer to renew any of the loans as title insured first mortgages were already in place on the subject properties.

45. The reliance by Mr. Whitfield regarding renewing the loans was more than expected and more than foreseeable by Harbor National Bank.

46. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Tortious Interference with Prospective Contractual Relations)

47. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

48. The acts of Plaintiff described herein constituted an interference with Mr.

Whitfield's business, were without justification, were done with improper purpose and motive, knowing it would place Mr. Whitfield under duress when filing these unfounded legal proceedings and knowing that it would interfere with Mr. Whitfield's ability to sell and/or rent the subject properties.

49. As a result of Plaintiff's actions Mr. Whitfield has lost the ability to enter into contracts with identifiable prospective buyers and/or renters of the subject properties. As a direct and proximate result of the Plaintiff's actions, Mr. Whitfield has suffered special damages including but not limited to a diminished value of his properties in the eyes of third parties, loss of income and loss of profits.

50. Plaintiff's actions proximately caused actual, consequential, and special damages, including but not limited to: a) inability to sell the subject properties to third parties who met requirements for sale and/or rental of the subject properties; b) foreclosure proceedings having been instituted on the subject properties; c) a diminished value of the subject properties in the eyes of third parties; d) damage to Mr. Whitfield's reputation and business standing in the real estate profession; e) financial damage to Mr. Whitfield's business because of time spent away to defend these charges, f) financial damage for his inability to sell the subject properties following filing of the lis pendens and lawsuit, g) attorneys' fees and costs incurred; h) time spent away from work as a result of the lis pendens and lawsuit, i) emotional distress to Mr. Whitfield, j) injury to his health and mental pain and suffering.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

51. Mr. Whitfield hereby incorporates the allegations of the foregoing

paragraphs as if fully restated herein.

52. As stated above, Mr. Rivers made an agreement to renew the loans at the June 21, 2012 meeting with Mr. Whitfield.

53. Plaintiff breached the agreement with Mr. Whitfield by failing to close the renewal of the loan which is the subject of this lawsuit. Such breach was made with the fraudulent intent of never actually intending to close the renewal when that representation was made, and such fraudulent intent was manifested by the fraudulent act of claiming a title endorsement was required to renew the loan when in fact one was never needed.

54. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR AN EIGHTH CAUSE OF ACTION

(Abuse of Process as to David Swanson and BNC Bancorp through its employee/agent
Scott Warren)

55. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

56. Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

57. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

58. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012

closing, there is no evidence of any such phone call as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

59. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact evidence shows it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

60. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

61. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

62. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given. The acts described above and herein have caused damage to Mr. Whitfield by incurring

actual damages, both mental and pecuniary, including by way of example only and without limitation: loss of time, injury to property and financial standing, shame, mortification, mental anguish, mental pain and suffering, emotional distress, loss of enjoyment of life, injury to feelings, an overall degradation of health, and was hindered from, and will continue to be hindered from attending to his usual duties and affairs of life, as a direct and proximate result of the aforesaid conduct of Harbor National Bank, in an exact amount of actual, consequential and special damages as to be determined by a trier of fact.

FOR A NINTH CAUSE OF ACTION

(Civil Conspiracy as to David Swanson and BNC Bancorp through its employee/agent
Scott Warren)

63. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

64. As alleged above, Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

65. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

66. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

67. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

68. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

69. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

70. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given.

71. Mr. David Swanson's actions described above and herein were made for his own personal interest as they were performed outside the scope of his law firm's representation of Harbor National Bank.

72. The actions of David Swanson and Scott Warren as alleged above and

herein constitute an combination of two or more persons that was done with the purpose of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield which has caused him special damages, beyond damages specified in his other causes of action for having to incur attorney's fees and costs associated with Harbor National Bank's advice of counsel defense which should never have been incurred.

FOR A TENTH CAUSE OF ACTION
(Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield)

73. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

74. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, such liability would be a proximate result of the wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents in failing to give her permission and/or authorization to renew the loan for the subject property located at 1055 Black Rush Circle, Mount Pleasant, South Carolina, said demand being made as a defense of Harbor National Bank to close all of the renewal loans set forth in Exhibit "C".

75. Specifically, the closing attorney Mark Weeks and Mr. Whitfield's previous counsel Lauren Felder have stated that Mrs. Cindy Whitfield's counsel Stanley Jaskiewicz was contacted regarding procuring her consent for the renewal of the Black Rush Property. Lauren Felder was advised by either Stanley Jaskiewicz or his paralegal Dena Hardison that Mrs. Cindy Whitfield, "would not sign off on the mortgage as Mr. Whitfield was solely responsible under the Final Family Court Order." Additionally, Mrs. Cindy

Whitfield was told by Mr. Jaskiewicz' paralegal Dena Hardison that, "he [Mr. Whitfield] could not refinance my home or borrow the equity in it as he would be putting another nail in his coffin." According to Mrs. Whitfield, Ms. Dena Hardison gave her this advice before the closing² and was also told by Ms. Hardison not to, "do anything until I talk to Stan," regarding gaining access to her home for an appraisal. According to Mrs. Whitfield, Mr. Jaskiewicz never called her back regarding any issues related to procuring her consent to renew her home.

76. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, these wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents have damaged Mr. Whitfield; including but not limited to consequential and special damages, and the imposition of attorney's fees and costs in defending the foreclosure and prosecuting the Counterclaims as alleged herein. Mr. Whitfield and Mrs. Cindy Whitfield had a special relationship by virtue of their continuing family court obligations that would support a claim for indemnity against Mrs. Cindy Whitfield. Moreover, Mr. Whitfield is wholly without fault for Cindy Whitfield failing to provide her permission and/or authorization to renew the loan for the Black Rush Property.

77. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, Mr. Whitfield would be entitled to be equitably indemnified for such liability from Cindy Whitfield for any liability that Mr. Whitfield is found to have incurred to the Plaintiff such that Mr. Whitfield would be entitled

² Mrs. Whitfield indicated this statement was made by Ms. Hardison at the time the appraiser was attempting to gain access to Mrs. Whitfield's home-- in May and June of 2012. Correspondence was sent to Stanley Jaskiewicz advising him of appraisal access issue on June 11, 2012.

to recover his consequential and special damages, attorney's fees and costs, monies adjudged owed to the Plaintiff and/or monies expended by way of settlement of Plaintiff's claims as a result of Cindy Whitfield and/or her agents wrongful acts, breach of duties, omissions, and/or negligence as afore-described.

WHEREFORE, Defendants prays for relief as set forth below together with such further relief as this court deems just:

- a. Actual damages;
- b. Compensatory damages
- c. Special damages;
- d. Statutory damages;
- e. Treble Damages
- f. Disgorgement of profits;
- g. Restitution;
- h. Rescission;
- i. Injunctive relief; and
- j. Attorneys' fees and costs

DEMAND FOR JURY TRIAL

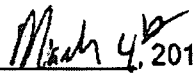
Mr. Whitfield demands a jury trial on all counts stated above. These causes of action must be tried before any equitable causes of action asserted by either party can be disposed of. See Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994)

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: 

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com
Attorneys for the Defendant


March 4, 2016.
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that I served the foregoing Fourth Amended Answer, Affirmative Defenses Crossclaim and Counterclaims upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this 4th day of March, 2016.

HALVERSEN & ASSOCIATES, LLC

By: 

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

2016 MAR -8 PM 12:00
MARCHESTER COUNTY

Charleston, ~~South~~ Carolina
March 4th, 2016

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

BANK OF NORTH CAROLINA,
Plaintiff,

vs.

✓ ANTHONY WHITFIELD, CINDY
WHITFIELD, AND DAVID SWANSON
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2014-CP-18-358

**DEFENDANT'S AMENDED
ANSWER, AFFIRMATIVE
DEFENSES AND
COUNTERCLAIMS**

(Breach of Contract, Negligent
Misrepresentation, Fraud in the
Inducement, Unfair Trade Practices,
Promissory Estoppel, Interference with
Prospective Contractual Relations, and
Breach of Contract Accompanied by
Fraudulent Act, Abuse of Process, Civil
Conspiracy, and Equitable Indemnity)

(Jury Trial Demanded)

TO: BRIAN DUFFY AND SETH WHITAKER, ATTORNEYS FOR PLAINTIFF

Comes now Defendant, Anthony Whitfield (hereinafter "Mr. Whitfield") and responds to the allegations of Plaintiff's Complaint as follows:

1. Mr. Whitfield admits the allegations of Paragraphs 2, 3, 6, 8, 14, 15, 16, 17, 18 and 25.
2. Mr. Whitfield denies, the allegations of Paragraphs 13 and 23 to the extent such Paragraphs reference previous allegations which are herein denied.
3. Mr. Whitfield admits the allegations of Paragraph 5, but denies that he chose the stated interest rate and alleges that at all material times Plaintiff represented the maturity date of the loan would be automatically extended by Plaintiff.

4. Mr. Whitfield admits an assignment was made but denies the event of default as alleged in Paragraph 24, 26 and 29.

5. Mr. Whitfield denies Paragraphs 1, 4, 7, 9, 10, 11, 12, 19, 20, 21, 22, 27, 28 and 29.

6. Mr. Whitfield denies each and every allegation not specifically enumerated herein.

FIRSTAFFIRMATIVE DEFENSE

7. Plaintiffs claims to foreclose on the 2007 Mortgage should be waived, estopped, barred, and/or dismissed as Defendant made all payments as as required under the Note and was told by Plaintiff numerous times that the October 16, 2013 maturity date as referenced in the Note would be automatically extended, and in fact agreed orally and in writing to renew the loan.

SECONDAFFIRMATIVE DEFENSE

8. Plaintiffs claims in equity are barred by the doctrine of unclean hands hands and equitable estoppel.

THIRDAFFIRMATIVE DEFENSE

9. Plaintiffs action should be barred by the doctrine of unconscionability, fraud and duress.

FOURTHAFFIRMATIVE DEFENSE

10. Upon information and belief, the subject note attempted to be foreclosed upon is not the original note and therefore Plaintiff does not have standing pursue this foreclosure action.

COUNTERCLAIMS

Factual Allegations

11. In 2006, Mr. Whitfield approached Charlie Rivers (hereinafter, "Mr. Rivers") of Harbor National Bank to purchase and refinance certain real estate in the lowcountry counties of Berkeley, Dorchester and Charleston. Mr. Rivers previously helped Mr. Whitfield refinance over 25 loans when Mr. Rivers was a loan officer with Southtrust Bank. These loans always had 30 year terms and never had balloon payments or required refinancing or re-approval.

12. Mr. Rivers promised Mr. Whitfield the same loans as he was previously given by Mr. Rivers, to-wit, 30 year loans with the best rate possible, with a % point origination fee. There was no mention of balloon payments or re-qualification anytime during the 30 year loans. After a review of Mr. Whitfield's financial condition, Mr. Rivers approved \$1.5 million in loans to refinance rental properties. At the time, Mr. Whitfield made clear to Mr. Rivers that the loans could not have demand features or have a balloon payment. Mr. Rivers agreed.

13. In reliance on Mr. Rivers' representations, Mr. Whitfield purchased the property at 98 Willow Lane, Ladson, SC 29456 (hereinafter, "the Subject Property").

14. On or about March 27, 2007 Mr. Whitfield was provided documentation from Plaintiff stating that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ % (See Exhibit.A" attached hereto).

15. Despite being provided documentation by Plaintiff that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus ¼ %, Mr. Whitfield was provided the higher 7.25% rate as opposed to the lower floating rate of prime minus

¼ %.

16. Despite being provided documents at the closing with an October 16, 2013 maturity date on the loan, Mr. Whitfield was assured numerous times by loan officer Angela Bell that the maturity date was just a formality and in fact was just a renewal date and would be extended automatically with only adjustments of interest without any re-qualifying or costs to extend. Despite making such assurances to Mr. Whitfield, loan officer Angela Bell determined as early as 2010 that the loans would not be renewed as she felt Mr. Whitfield was not providing financial information to her. At the time she indicated she needed to "grease the wheel" with Mr. Whitfield's accountant so the accountant would tell her more information about Mr. Whitfield's financial status.

17. Because of Ms. Bell's assurances and representations, Mr. Whitfield made payments on the loan for the subject property from the origination of the loan every month until the renewal date.

18. In January, 2012, Plaintiff asked Mr. Whitfield for a copy of his recent tax returns so that the loan could be automatically extended. As late as February 6, 2012, loan officer Angela Bell sent an email to Mr. Whitfield asking him for tax information to work on the "renewals.". On February 21, 2012, Mr. Whitfield informed loan officer Angela Bell that he was under some financial pressure, that his health was suffering, and that he wanted interest rates on par with the other mortgages he held with other banks. The following day, Ms. Bell informed Harbor National Bank personnel (but not Mr. Whitfield) that she was going to let Mr. Whitfield know that she would be asking him to move the loans. Although she informed others of her intention not to renew the loans, Ms. Bell never told Mr. Whitfield that he needed to move the loans- at any point in time.

Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible.

19. One week later, on February 28, 2012 loan officer Angela Bell wrote Mr. Whitfield to let him know that she would have to have his 2010 tax returns in order to request approval for renewal of his upcoming maturing loans. On April 2, 2012, Mr. Whitfield informed loan officer Angela Bell that his 2010 tax returns were complete and that he urgently wanted his loans modified since the rates were extremely high, and that his health had been an issue. After receiving the information about receiving the tax returns, the following day loan officer Angela Bell told a senior credit analyst at Harbor National Bank, "I'm just glad the threats of no renewals finally worked." Five days later, on April 8, 2012, Mr. Whitfield suffered a heart attack.

20. Despite making assurances his loans would renew, two notes (732 Gahagan and 110 Mepkin) matured on April 13, 2012 without having been renewed by the Plaintiff. On June 21, 2012 Charlie Rivers orally agreed to modify the notes and specifically agreed to: (a) extend the notes for a 25 year amortization with another 5 year maturity; (b) eliminate the need for any principal pay downs; (c) eliminate the need for additional collateral to secure the notes; (d) eliminate the need to cross collateralize the loans; (e) waive the default interest rate of 14%; (f) back date the rate of 4.75% to the maturity of the April 13, 2012 maturities; and (g) credit Mr. Whitfield's overpayment of interest.

21. On June 26, 2012, Harbor National Bank vice president Scott Warren signed a loan commitment letter to Mr. Whitfield outlining the terms and conditions of the renewals of all Mr. Whitfield's loans held by Harbor National Bank. The proposed

new loans dropped the interest rate to 4.75% and extended the maturities another 5 years. (See loan commitment, attached hereto as Exhibit "B"). On the same day, Mr. Whitfield was given drafts of new notes to sign for the closing which was to be held on June 28, 2012. The new documents contained clauses that all of Mr. Whitfield's properties would be cross collateralized, despite Mr. River's agreement and assurances not to cross collateralize the properties (See Paragraph 20 (d) herein).

22. In reliance upon Mr. Warren's June 26, 2012 commitment letter, Mr. Whitfield attended a scheduled closing at attorney Mark Weeks' law office. At the closing, Mr. Warren informed Mr. Whitfield that a signed endorsement from a title company was needed so that Mr. Whitfield's ex-spouse Cindy Whitfield would not be required to sign the loan documents for one of the properties that Cindy Whitfield resided in (hereinafter, the "Black Rush Property")¹. At a certain point, Mr. Whitfield was informed by the closing attorney that the endorsement could not be procured, that Mrs. Whitfield was refusing to sign the mortgage to the Black Rush Property, and Mr. Warren proposed that it would only be possible to close two of the subject properties - Mepkin and Gahagan, but that if the Black Rush Property ultimately couldn't be closed, all properties including Mepkin and Gahagan would have to be foreclosed upon.

23. Despite Harbor National Bank's representations that a title endorsement was required to renew the Black Rush Property, Mr. Whitfield has subsequently learned that no such endorsement was required from the title company. Moreover, Harbor National Bank failed to renew any of the loans listed in the June 26, 2012 commitment letter despite agreeing to do so, willfully breaching their agreements, and causing Mr.

¹ Plaintiff also attempted to procure a "Business Purpose Statement" from Mr. Whitfield indicating that the property was to be used in Mr. Whitfield's business despite having previous knowledge that the Black Rush Property was in fact residential property for Mr. Whitfield's ex-wife Cindy Whitfield.

Whitfield damages as to be determined by the trier of fact.

FOR A FOR FIRST COUNTERCLAIM

(Breach of Contract)

24. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

25. As described above, Plaintiff indicated before and after the origination of the loan, verbally and in writing, that the loan to the Subject Property would be automatically renewed.

26. Despite repeatedly making these representations and reassurances, Plaintiff failed to renew the loan and instead declared Mr. Whitfield to be in default despite being paid all monthly installments on time, as and when due, breaching their agreement with Mr. Whitfield.

27. Although Plaintiff ultimately promised in writing to renew the loan on June 26, 2012, Plaintiff refused to close the loan on June 28, 2012, as described above, breaching the terms of the offer contained in the writing. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION

(Negligent Misrepresentation)

28. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

29. As described above, Harbor National Bank made affirmative representations to Mr. Whitfield that: (1) the initial loans would be 30 year loans; (2) the maturity date referenced in the Note was simply a renewal date; and (3) the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus 0%. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with a new maturity date of July 10, 2017.

30. Plaintiff knew these representations were false, misleading, and incomplete when they were made. Such representations were (1) false, misleading and incomplete when made; (2) were made for a pecuniary interest of the Plaintiff; (3) the Plaintiff owed a duty of care to convey truthful information to Mr. Whitfield; (4) the Plaintiff breached that duty by failing to exercise due care; (5) Mr. Whitfield was unaware that the representations were false - and had no reason to suspect they were false as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his financial detriment as outlined above. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A THIRD CAUSE OF ACTION
(Fraud in the Inducement)

31. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

32. At or about the time of the initial loan originations, Plaintiff made

affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity date referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus $\frac{1}{4}$ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017. Such representations were false, incomplete and misleading when made, were material, were known by the Plaintiff to be false, misleading and incomplete, and were intended to be relied upon.

33. Mr. Whitfield was unaware that the representations were false and had no reason to suspect they were false, as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his detriment financial as outlined above. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible. At a minimum, the Plaintiff should have relayed their concerns about renewals as early as documentary evidence suggest Harbor National Bank had a concern, to-wit, the year 2010.

34. These false representations were made to induce the Mr. Whitfield to enter a high cost loan, and were made by the Plaintiff with the knowledge of their falsity.

35. Mr. Whitfield reasonably relied on the material representations of Plaintiff and had no knowledge the representations made by the Plaintiff were false and the Mr. Whitfield was, therefore, fraudulently induced by the Plaintiff to enter into the high cost loan.

36. Mr. Whitfield made a mistake in entering into the loan, which mistake was unilateral. Mr. Whitfield was fraudulently induced by the Plaintiff to make the unilateral

mistake as a direct, proximate and foreseeable result of the fraud, deceit, misrepresentation, and active concealment perpetrated upon Mr. Whitfield by the Plaintiff.

37. Subsequent to the origination of the loan, Mr. Whitfield has been informed and now believes that the Plaintiff misrepresented the terms of the loan, verbally and in writing by (1) not receiving 30 year loans, (2) representing that the maturity date was simply a renewal date; and (3) charging, and refusing to change, the interest rate of 7.25%. The Plaintiff also made representations, and an offer, to renew the loans at 4.75% with a new maturity date of July 10, 2017 as agreed. As such, Mr. Whitfield is entitled to avoid or rescind the loan and to be returned to the status quo ante whereby the Plaintiff returns to Mr. Whitfield all monies paid by Mr. Whitfield in exchange for Mr. Whitfield returning the amount of the loan proceeds to the Plaintiff. In addition thereto, Mr. Whitfield is entitled to all incidental, consequential, direct and indirect damages proximately caused by Plaintiff when they fraudulently induced Mr. Whitfield to enter into the loan transaction. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FOURTH CAUSE OF ACTION

(Violation of Federal Trade Commission Act Section 5(a) 15 U.S.C. §45)
(As made applicable through SC Code §39-5-10 et.seq.)

38. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

39. As stated above, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity dates referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also represented, and made an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017.

40. Plaintiff's acts enumerated above constitute "unfair or deceptive acts or practices in or affecting commerce," as those terms are defined in the Act. This prohibition applies to all persons engaged in commerce, including banks. An act or practice is unfair where it: (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers and; (3) is not outweighed by countervailing benefits to consumers or to competition. In this case, Plaintiff's actions discussed above have caused substantial injury to Mr. Whitfield.

41. An act or practice is deceptive where: (1) a representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances and; (3) the misleading representation, omission, or practice is material. In this case, Plaintiff's actions were deceptive because Plaintiff clearly misrepresented that the loans would be renewed. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FIFTH CAUSE OF ACTION

(Promissory Estoppel/ Detrimental Reliance)

42. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

43. Mr. Whitfield relied on the promises of Angela Bell, Charlie Rivers, and Scott Warren to renew and modify the loans.

44. These promises were unambiguous in their terms and were relied upon by Mr. Whitfield. In particular, there were no contingencies placed upon the June 26, 2012 written offer to renew any of the loans as title insured first mortgages were already in place on the subject properties.

45. The reliance by Mr. Whitfield regarding renewing the loans was more than expected and more than foreseeable by Harbor National Bank.

46. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SIXTH CAUSE OF ACTION

(Tortious Interference with Prospective Contractual Relations)

47. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

48. The acts of Plaintiff described herein constituted an interference with Mr. Whitfield's business, were without justification, were done with improper purpose and motive, knowing it would place Mr. Whitfield under duress when filing

these unfounded legal proceedings and knowing that it would interfere with Mr. Whitfield's ability to sell and/or rent the subject property.

49. As a result of Plaintiffs actions Mr. Whitfield has lost the ability to enter into contracts with identifiable prospective buyers and/or renters of the subject property. As a direct and proximate result of the Plaintiffs actions, Mr. Whitfield has suffered special damages including but not limited to a diminished value of their property in the eyes of third parties, loss of income and loss of profits.

50. Plaintiffs actions proximately caused actual, consequential, and special damages, including but not limited to: a) inability to sell the subject property to third parties who met requirements for sale and/or rental of the subject property; b) foreclosure proceedings having been instituted on the subject property; c) a diminished value of the subject property in the eyes of third parties; d) damage to Mr. Whitfield's reputation and business standing in the real estate profession; e) financial damage to Mr. Whitfield's business because of time spent away to defend these charges, f) financial damage for his inability to sell the subject property following filing of the lis pendens and lawsuit, g) attorneys' fees and costs incurred; h) time spent away from work as a result of the lis pendens and lawsuit, i) emotional distress to Mr. Whitfield, j) injury to his health and mental pain and suffering.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

51. Mr. Whitfield hereby incorporates the allegations of the

foregoing paragraphs as if fully restated herein.

52. As stated above, Mr. Rivers made an agreement to renew the loans at the June 21, 2012 meeting with Mr. Whitfield.

53. Plaintiff breached the agreement with Mr. Whitfield by failing to close the renewal of the loan which is the subject of this lawsuit. Such breach was made with the fraudulent intent of never actually intending to close the renewal when that representation was made, and such fraudulent intent was manifested by the fraudulent act of claiming a title endorsement was required to renew the loan when in fact one was never needed.

54. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR AN EIGHTH CAUSE OF ACTION

(Abuse of Process as to David Swanson and BNC Bancorp through its employee/agent Scott Warren)

55. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

56. Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

57. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

58. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr.

David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

59. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact evidence shows it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

60. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

61. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

62. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given. The acts described above and herein have caused damage to Mr. Whitfield by incurring actual damages, both mental and pecuniary, including by way of example only and without limitation: loss of time, injury to property and financial standing, shame, mortification, mental anguish, mental pain and suffering, emotional distress, loss of enjoyment of life, injury to feelings, an overall degradation of health, and was hindered from, and will

continue to be hindered from attending to his usual duties and affairs of life, as a direct and proximate result of the aforesaid conduct of Harbor National Bank, in an exact amount of actual, consequential and special damages as to be determined by a trier of fact.

FOR A NINTH CAUSE OF ACTION

(Civil Conspiracy as to David Swanson and BNC Bancorp through its employee/agent Scott Warren)

63. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

64. As alleged above, Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

65. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

66. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

67. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

68. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the

advice was ever given as there is no engagement letter, fee agreement, correspondence, records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

69. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

70. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given.

71. Mr. David Swanson's actions described above and herein were made for his own personal interest as they were performed outside the scope of his law firm's representation of Harbor National Bank.

72. The actions of David Swanson and Scott Warren as alleged above and herein constitute an combination of two or more persons that was done with the purpose of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield which has caused him special damages, beyond damages specified in his other causes of action for having to incur attorney's fees and costs associated with Harbor National Bank's advice of counsel defense which should never have been incurred.

FOR A TENTH CAUSE OF ACTION
(Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield)

73. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

74. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, such liability would be a proximate result of the wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents in failing to give her permission and/or authorization to renew the loan for the subject property located at 1055 Black Rush Circle, Mount Pleasant, South Carolina, said demand being made as a defense of Harbor National Bank to close all of the renewal loans set forth in Exhibit "C".

75. Specifically, the closing attorney Mark Weeks and Mr. Whitfield's previous counsel Lauren Felder have stated that Mrs. Cindy Whitfield's counsel Stanley Jaskiewicz was contacted regarding procuring her consent for the renewal of the Black Rush Property. Lauren Felder was advised by either Stanley Jaskiewicz or his paralegal Dena Hardison that Mrs. Cindy Whitfield, "would not sign off on the mortgage as Mr. Whitfield was solely responsible under the Final Family Court Order." Additionally, Mrs. Cindy Whitfield was told by Mr. Jaskiewicz' paralegal Dena Hardison that, "he [Mr. Whitfield] could not refinance my home or borrow the equity in it as he would be putting another nail in his coffin." According to Mrs. Whitfield, Ms. Dena Hardison gave her this advice before the closing¹ and was also told by Ms. Hardison not to, "do anything until I talk to Stan," regarding gaining access to her home for an appraisal. According to Mrs. Whitfield, Mr. Jaskiewicz never called her back regarding any issues related to procuring her consent to renew her home.

76. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, these wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents have damaged Mr.

¹ Mrs. Whitfield indicated this statement was made by Ms. Hardison at the time the appraiser was attempting to gain access to Mrs. Whitfield's home-- in May and June of 2012. Correspondence was sent to Stanley Jaskiewicz advising him of appraisal access issue on June 11, 2012.

Whitfield, including but not limited to consequential and special damages, and the imposition of attorney's fees and costs in defending the foreclosure and prosecuting the Counterclaims as alleged herein. Mr. Whitfield and Mrs. Cindy Whitfield had a special relationship by virtue of their continuing family court obligations that would support a claim for indemnity against Mrs. Cindy Whitfield. Moreover, Mr. Whitfield is wholly without fault for Cindy Whitfield failing to provide her permission and/or authorization to renew the loan for the Black Rush Property.

77. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, Mr. Whitfield would be entitled to be equitably indemnified for such liability from Cindy Whitfield for any liability that Mr. Whitfield is found to have incurred to the Plaintiff such that Mr. Whitfield would be entitled to recover his consequential and special damages, attorney's fees and costs, monies adjudged owed to the Plaintiff and/or monies expended by way of settlement of Plaintiff's claims as a result of Cindy Whitfield and/or her agents wrongful acts, breach of duties, omissions, and/or negligence as afore-described.

WHEREFORE, Defendants prays for relief as set forth below together with such further relief as this court deems just:

- a. Actual damages;
- b. Statutory damages;
- c. Compensatory damages
- d. Special damages
- e. Treble Damages

- f. Disgorgement of profits;
- g. Restitution;
- h. Rescission;
- g. Injunctive relief; and
- h. Attorneys' fees and costs

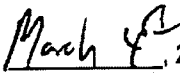
DEMAND FOR JURY TRIAL

Mr. Whitfield demands a jury trial on all counts stated above. These causes of action must be tried before any equitable causes of action asserted by either party can be disposed of. See Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994)

HALVERSEN & ASSOCIATES, LLC

By: 

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

 2016.
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that I served the foregoing Amended Answer by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this 4th day of March, 2016.

HALVERSEN & ASSOCIATES, LLC

By: *Brent S. Halversen*

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Charleston, South Carolina
March 4th, 2016.

2016 MAR -8 PM 12:03
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Harbor National Bank,)
)
Plaintiff,)
)
v.)
)
Anthony M. Whitfield and Cindy Whitfield,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2012-CP-10- 5807

SUMMONS

BY _____
JULIE J. ARMSTRONG
CLERK OF COURT
2012 SEP -7 PM 4:15
FILED

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to serve an Answer to the allegations of the Complaint, which is hereby served upon you, within thirty (30) days of the date of service hereof; Your Answer shall be served upon the Clerk of this Court and upon the subscriber at his office, 5418-B Rivers Avenue, North Charleston, South Carolina 29406-6165; If you fail to respond within the time aforesaid, the Plaintiff will take judgment against you by default for the relief demanded in the Complaint.

BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein
Robert A. Bernstein
Post Office Box 20519
Charleston, SC 29413-0519
(843) 529-1111
(843) 529-0035 (fax)
ATTORNEYS FOR THE PLAINTIFF

September 5, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Harbor National Bank,)
)
 Plaintiff,)
)
 v.)
)
 Anthony M. Whitfield and Cindy Whitfield,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 CASE NUMBER: 2012-CP-10- 5887

COMPLAINT
 (Foreclosure of Real Estate)
 (Action On Note)
 (Non-Jury)

FILED
 2012 SEP -7 PM 4:15
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY

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

1. The Plaintiff is a national banking organization organized and existing pursuant to the laws of the United States of America, with its principal place of business located in South Carolina.
2. Defendant Anthony M. Whitfield is a citizen and resident of the County of Charleston, State of South Carolina.
3. Defendant Cindy Whitfield is a citizen and resident of the County of Charleston, State of South Carolina.
4. The real property hereinafter described, which is the subject of this action, is situated and located in Charleston County, South Carolina.
5. All parties hereto and all matters herein are within the jurisdiction of this Court.

RAB
 #1

**FOR A FIRST CAUSE OF ACTION AGAINST
 DEFENDANT ANTHONY M. WHITFIELD**
 (Action on Note)

6. Heretofore, on or about April 23, 2007, for value received the Defendant Anthony M. Whitfield executed and delivered to Harbor National Bank, a certain Promissory Note, Loan No. 400032000, a copy of which is attached hereto as Exhibit "A" and made a part hereof by reference, by which, according to the terms and conditions set out therein, Anthony M. Whitfield promised to pay to Harbor National Bank the sum of Three Hundred Twenty-Five Thousand and no/100 (\$325,000.00) Dollars, together with interest thereon at the rate of 7.5 % per annum on the unpaid balance, with a maturity date of May 3, 2012.

7. On September 20, 2007, the parties entered into a Commercial Debt Modification Agreement, wherein the date of monthly payments was changed, but the maturity date of the said Note remained the same; a true and correct copy of the said Commercial Debt Modification Agreement is attached hereto as Exhibit "B" to the Complaint.

8. The payment due under the Note referred to in the preceding paragraph is in default, and the conditions of said Note have been broken.

9. Defendant Anthony M. Whitfield has committed an act of default under the aforesaid Note.

10. The Plaintiff has made demand upon Defendant Anthony M. Whitfield to pay the entire amount due under the Note, but the said Defendant has failed and refused to make such payment.

11. The failure of Defendant Anthony M. Whitfield to make payment of the balance due constitutes a breach of the Note.

12. Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note as August 17, 2012, the principal sum of Three Hundred

Fourteen Thousand, Eight Hundred Sixty-Six and 30/100 (\$314,866.30) Dollars, accumulated interest of Seven Thousand, Two Hundred Seventy-Four and 21/100 (\$7,274.21) Dollars, and interest continuing to accumulate at the current rate of \$122.45 per diem from August 17, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

13. Plaintiff has retained and employed Bernstein & Bernstein, P.A. for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable attorneys' fees incurred with respect to this action.

14. By reason of the aforesaid breach of contract, the Plaintiff has suffered damages in the amount of Three Hundred Fourteen Thousand, Eight Hundred Sixty-Six and 30/100 (\$314,866.30) Dollars, accumulated interest of Seven Thousand, Two Hundred Seventy-Four and 21/100 (\$7,274.21) Dollars, and interest continuing to accumulate at the current rate of \$122.45 per diem from August 17, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

**FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS
ANTHONY M. WHITFIELD AND CINDY WHITFIELD
(Mortgage Foreclosure)**

15. The allegations of paragraphs One (1) through Fourteen (14) of this Complaint are realleged as if repeated herein verbatim.

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16. To further secure his obligation under the aforesaid Promissory Note, on April 23, 2007, Anthony M. Whitfield executed a Real Estate Mortgage, whereby to secure the liability under the Promissory Note and any further advances thereof, a mortgage was granted to and upon the following described property, to wit:

All that certain piece, parcel or tract of land situate, lying, and being in the Town of

Mt. Pleasant, Charleston County, South Carolina, shown and designated as Lot 78, on that certain plat prepared by Mark S. Busey, S.C.R.L.S., entitled "A FINAL SUBDIVISION PLAT OF PHASE 2 WHISPERING MARSH, DUNES WEST, OWNED BY JOHN WIELAND HOMES OF SOUTH CAROLINA, LOCATED IN THE TOWN OF MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA", said plat being dated January 13, 2000 and duly recorded in the Charleston County RMC Office in Plat Book ED, Page 822. reference to said plat is hereby made for a more complete description as to distances, courses, metes and bounds.

BEING the same premises as conveyed to Anthony M. Whitfield by deed of Dennis E. Harris and Robin Harris dated April 23, 2007, and recorded in the Office of the R.M.C. for Charleston County on April 24, 2007 in Deed Book C623, Page 352.

TMS #594-10-00-507

Address: 1055 Black Rush Circle, Mt. Pleasant, SC 29466

(hereinafter referred to as the PROPERTY); a true and correct copy of the said Mortgage is attached hereto as Exhibit "C" to this Complaint.

17. On April 24, 2007, the said Mortgage was recorded in the Office of the Register of Mesne Conveyances for Charleston County in Book E623, at page 742.

18. According to the terms and conditions of the aforesaid Real Estate Mortgage, it is provided that in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable without notice, at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all cost of collection, including a reasonable attorney's fees, shall become an obligation of the Defendant Anthony M. Whitfield, to be secured by the said mortgage as part of the debt secured thereby.

19. Further, under the terms and conditions of the said Mortgages, it was agreed that the mortgagor would pay all taxes, assessments, water rates, other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if the mortgagor failed to

do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

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

21. On or about July 24, 2007, without the knowledge or consent of the Plaintiff, the Defendant Anthony M. Whitfield transferred a one-half undivided interest in the said property to Defendant Cindy Whitfield.

22. Defendant Cindy Whitfield acquired her one-half undivided interest in the property subject to the mortgage of the Plaintiff herein, and her claim to the said property is subordinate to the claim of the Plaintiff herein.

23. The payments due under said Note is due and has been in default since May 3, 2012, and the conditions of said mortgage have been broken.

24. The entire balance of said indebtedness due and payable, and that there is due on said note as of August 17, 2012, the sum of Three Hundred Fourteen Thousand, Eight Hundred Sixty-Six and 30/100 (\$314,866.30) Dollars, accumulated interest of Seven Thousand, Two Hundred Seventy-Four and 21/100 (\$7,274.21) Dollars, and interest continuing to accumulate at the current rate of \$122.45 per diem from August 17, 2012 until paid in full, together with late charges, the costs and

disbursements of this action, and attorney's fees.

25. Plaintiff has retained and employed Bernstein & Bernstein, P.A. for the purpose of instituting and prosecuting this action, and is entitled to recover all costs, expenses and reasonable attorneys' fees incurred with respect to this action.

26. The Plaintiff is entitled to an Order foreclosing the mortgage upon the PROPERTY, and the proceeds of the said foreclosure to be distributed first to the costs and expenses of the sale thereof, second to be applied against accrued principal and interest under the Note and mortgage, third to payment of the costs, expenses and reasonable attorneys fees incurred by the Plaintiff in prosecuting this foreclosure action, and the Court should thereafter pay any excess proceeds of sale to such claimants in such priorities as their interests may appear.

FOR A THIRD CAUSE OF ACTION
(Appointment of Receiver)

27. The allegations of paragraphs One (1) through Twenty-Six (26) of this Complaint are realleged as if repeated herein verbatim.

28. To further secure his obligation under the aforesaid Promissory Note, on April 23, 2007, Anthony M. Whitfield executed an Assignment of Leases and Rents, whereby to secure the liability under the Promissory Note and any further advances thereof, the Defendant assigned all leases and rents from the subject PROPERTY to the Plaintiff; a true and correct copy of the said Assignment of Leases and Rents is attached hereto as Exhibit "D."

25. On April, 2007, the said Assignment of Leases and Rents was recorded in the Office of the Register of Mesne Conveyances for Charleston County in Book F623, at Page 152.

26. According to the terms of the said Assignment of Leases and Rents, and as additional

security, the Defendant assigned all rents, issues and profits of the PROPERTY from and after any default thereunder, and should legal proceedings be instituted pursuant to said Assignment of Leases and Rents, the Plaintiff were given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as Receiver, shall apply the residue of the rents, issues and profits toward the secured debt.

27. The payments due under said Note is due and has been in default since May 3, 2012, and the conditions of said Assignment of Leases and Rents have been broken.

28. The entire balance of said indebtedness due and payable, and that there is due on said note of August 17, 2012, the sum of Three Hundred Fourteen Thousand, Eight Hundred Sixty-Six and 30/100 (\$314,866.30) Dollars, accumulated interest of Seven Thousand, Two Hundred Seventy-Four and 21/100 (\$7,274.21) Dollars, and interest continuing to accumulate at the current rate of \$122.45 per diem from August 17, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees.

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29. The Plaintiff is entitled to have a Receiver appointed for the PROPERTY to collect all income from the said PROPERTY, to pay expenses associated therewith, including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt hereunder.

WHEREFORE, the Plaintiff prays for judgment as follows:

(1) Under the First Cause of Action, for judgment against Defendant Anthony M. Whitfield the amount of Three Hundred Fourteen Thousand, Eight Hundred Sixty-Six and 30/100 (\$314,866.30) Dollars, accumulated interest of Seven Thousand, Two Hundred Seventy-Four and 21/100 (\$7,274.21) Dollars, and interest continuing to accumulate at the current rate of \$122.45 per diem from August 17, 2012 until paid in full, together with late charges, the costs and disbursements of this action, and attorney's fees;

- (2) Under the Second Cause of Action, that
- (a) That the amount due upon the said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorneys fees and the costs of this action.
- (b) That the Plaintiff's Mortgage be declared a first lien and that Plaintiff has judgment of foreclosure for the amount found to be due and owing under the promissory note, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, and the costs of this action.
- (c) That the PROPERTY be sold under the direction of this Court, the equities of redemption are barred, and that the proceeds of sale are applied as follows:


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

Second, to the payment and discharge of the amount due on the Plaintiff's Note and Mortgage, with the costs and disbursements of this action together with attorneys' fees, and

Third, the surplus, if any, be distributed according to law; and

- #8
- 3) Under the Third Cause of Action, for the Appointment of a Receiver to collect all income from the said PROPERTY, to pay expenses associated therewith, including the fees of the Receiver, and to remit the balance of such collections to the Plaintiff to apply toward the secured debt
- 4) For such other and further relief as may be just and proper.

BERNSTEIN & BERNSTEIN, P.A.



Robert A. Bernstein
Post Office Box 20519
Charleston, SC 29413-0519
(843) 529-1111
(843) 529-0035 (fax)
ATTORNEYS FOR THE PLAINTIFF

September 5, 2012
Charleston, South Carolina

APPROXY N WHITFIELD 2141 DORCHESTER ROAD NORTH CHARLESTON, SC 29405	Harbor National Bank 1503 Old Towne Road Charleston, SC 29407	247-06-7213
BORROWER'S NAME AND ADDRESS <small>"I" includes each borrower above, jointly and severally.</small>		LENDER'S NAME AND ADDRESS <small>"You" means the lender, its successors and assigns.</small>
		Loan Number <u>400032000</u> Date <u>04/23/2007</u> Maturity Date <u>05/03/2012</u> Loan Amount \$ <u>325,000.00</u> Renewal Of: _____

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of Three Hundred Twenty-Five Thousand Dollars Dollars \$ 325,000.00

Single Advance: I will receive all of this principal sum on 04/23/2007. No additional advances are contemplated under this note.
 Multiple Advances: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.
 Conditions: The conditions for future advances are _____

Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____
 Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 04/23/2007 at the rate of 7.500 % per year until Maturity

Variable Rate: This rate may then change as stated below.
 Index Rate: The future rate will be _____ the following index rate: _____

No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.
 Frequency and Timing: The rate on this note may change as often as _____
 A change in the interest rate will take effect _____

Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %.
 Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

The amount of each scheduled payment will change. The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a Actual/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

on the same fixed or variable rate basis in effect before maturity (as indicated above).
 at a rate equal to 14.000%

LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% of the payment amount with a minimum of \$20.00

ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which are are not included in the principal amount above: APPRAISAL FEE \$325.00, FLOOD SEARCH FEE \$15, ORIENTATION FEE \$125.00

PAYMENTS: I agree to pay this note as follows:

Interest: I agree to pay accrued interest (see Additional Terms)

Principal: I agree to pay the principal (see Additional Terms)

Installments: I agree to pay this note in _____ payments. The first payment will be in the amount of \$ _____ and will be due _____ . A payment of \$ _____ will be due _____ thereafter. The final payment of the entire

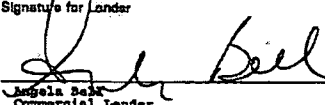
unpaid balance of principal and interest will be due _____


ADDITIONAL TERMS: I AGREE TO PAY 24 MONTHLY INTEREST ONLY PAYMENTS BEGINNING 05/03/2007, FOLLOWED BY 35 MONTHLY PRINCIPAL AND INTEREST PAYMENTS OF \$2,297.15 BEGINNING 05/03/2009 WITH 1 (ONE) FINAL PAYMENT OF THE OUTSTANDING PRINCIPAL AND ACCRUED INTEREST ON 05/03/2012.

SECURITY: This note is separately secured by (describe separate document by type and date):
MORTGAGE AND ASSIGNMENT OF LEASES & RENTS OF EVEN DATE ON 1055 BLACK RIVER CIRCLE, MT. PLEASANT, SC
(This section is for your internal use. Failure to list a separate security document does not mean the agreement with this note.)

PURPOSE: The purpose of this loan is TO PURCHASE 1055 BLACK RIVER CIRCLE, MT PLEASANT, SC

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

Signature for Lender

 Angela Bell
 Commercial Lender


 APPROXY N WHITFIELD

Amigo,
 Do I need a modification for the other
 two loans to pay payments due same
 time?
 Thanks Jim

BORROWER NAME AND ADDRESS	LENDER NAME AND ADDRESS	LOAN IDENTIFICATION
BROWNIE B. SWEETFIELD 2141 BROWNIE ROAD BIRMINGHAM, AL 35208	Southern National Bank 1843 Old Towne Road Charleston, SC 29407	Number <u>40011208</u> Account # <u>12345678</u> Date <u>09/20/07</u>

Refer to the attached Signature Addendum, Improvement Instructions, the additional Borrowers and their signatures.

COMMERCIAL DEBT MODIFICATION AGREEMENT

DATE AND PARTIES: The date of this Modification Agreement (Modification) is 09/20/07.
 As used in this Modification, the terms have the following meanings:
 "Parties" means "Lender" and "Borrower" and "any" refers to each Borrower signing this Modification, individually and together with their heirs, successors, administrators, assigns, and assigns. "This" and "herein" refer to the Lender, with its predecessors or successors, assigns and assigns, or any person or entity that acquires an interest in this Modification or Prior Obligations.
 "Prior Obligations" means all any previous agreements providing any proceeds to pay your money, including any loan agreement, note, or document that evidences any indebtedness, and any amendments, supplements, modifications, and conditions.
ACKNOWLEDGMENT: You and I have entered into a Prior Obligation which is evidenced by DEMAND NOTE # 40011208 dated 09/20/07. It is the original principal amount of \$ 125,000.00 with a maturity date of 09/20/07. It is the original principal amount of \$ 125,000.00 with a maturity date of 09/20/07. It is the original principal amount of \$ 125,000.00 with a maturity date of 09/20/07. It is the original principal amount of \$ 125,000.00 with a maturity date of 09/20/07.

MODIFICATION: As of the date of this Modification, the amount outstanding due to / amount outstanding on the Prior Obligation is \$ 125,000.00 principal (including plus \$ 0.00 interest) amount loaned, for a total of \$ 125,000.00.
 MODIFICATION. For each amount, you and I agree to modify the Prior Obligations as follows:

- INTEREST RATE MODIFICATION
- INTEREST RATE

Maturity Interest Amount. Any amount earned or collected or interest will be limited to the maximum level amount of interest allowed by state or federal law. Amounts in excess of the maximum level amount will be applied first to the unpaid principal balance. Any remainder will be returned to you.
 Post-Maturity/Default Interest Rate.

CONVERSION. This Modification provides for an extension of interest.

PAYMENT MODIFICATION. THE MONTHLY PAYMENT IS BEING CHANGED FROM THE END OF EACH MONTH TO THE LAST DAY OF EACH MONTH BEGINNING ON SEPTEMBER 15, 2007 UNTIL JANUARY 15, 2011. THE MONTHLY PAYMENT IS BEING CHANGED FROM \$ 1,250.00 TO \$ 1,250.00. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

DRAW PERIOD MODIFICATION.

FEES AND CHARGES MODIFICATION.

ADDITIONAL TERMS:

CONCURRENCE OF TERMS: Except as specifically amended in this Modification, all terms of the Prior Obligations remain in effect.
 INTERPRETING. Wherever used, the singular includes the plural and the plural includes the singular. The gender includes all genders.
 NOTICE TO BORROWER: THIS IS A DEMAND NOTE AND SO MAY BE COLLECTED BY THE LENDER AT ANY TIME. A NEW NOTE MUTUALLY AGREED UPON AND SUBSEQUENTLY ISSUED MAY CARRY A HIGHER OR LOWER RATE OF INTEREST.

ORAL AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE, REGARDLESS OF THE LEGAL THEORY UPON WHICH IT IS BASED THAT IS IN ANY WAY RELATED TO THE CREDIT AGREEMENT, TO PREVENT YOU (BORROWER/DEBTOR) AND IS (LENDER/CREDITOR) FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS OR WRITTEN ORAL AGREEMENTS OR COMMITMENTS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US, EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT. BY SIGNING THIS MODIFICATION, THE PARTIES AFFIRM THAT NO UNWRITTEN ORAL AGREEMENTS EXIST BETWEEN THEM.

REPRESENTATIONS: By signing this and, Borrower agrees to the terms contained in this form. Borrower also acknowledges receipt of a copy of this form.

BORROWER:

Signature of B. Sweetfield
 Name: B. Sweetfield Date: 9/20/07

LENDER:

Signature of Southern National Bank
 Name: Southern National Bank Date: 9/20/07

COMMERCIAL DEBT MODIFICATION AGREEMENT
 EX-100 (Rev. 10/01) Issues: Southern, Inc. No. 0001. Not For Use Commercial Purposes. NOT TO BE USED FOR LOANS SUBJECT TO CONSUMER CREDIT LAWS (Page 1 of 2)

EXHIBIT B
 Page 1 of 1

J. STANLEY CLAYPOOLE, PA
2155 NORTH PARK LANE
NORTH CHARLESTON, S.C. 29406
Whitfield 07-0513

BK E 623PG742

This document was prepared by (name, address, phone):

Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

State of South Carolina

Space Above This Line For Recording Data

REAL ESTATE MORTGAGE
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 04/23/2007 and the parties and their addresses are as follows:

MORTGAGOR: ANTHONY M WHITFIELD
2141 DORCHESTER ROAD
NORTH CHARLESTON, SC 29405

Refer to the Addendum which is attached and incorporated herein for additional Mortgagors.

LENDER: Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:

SEE ATTACHED EXHIBIT 'A'

The property is located in CHARLESTON at 1055 BLACK RUSH
(County)
CIRCLE MOUNT PLEASANT, South Carolina 29466
(Address) (City) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT DOT FOR FBSA, FHLBC, FHA OR VA USE, AND NOT FOR CONSUMER PURPOSES

(page 1 of 8)

Exhibit © 1994, 2001 Bankers Systems, Inc., St. Cloud, MN Form AGCO-RES-6C 1/21/2003

EXHIBIT C
Page 1 of 10

- 3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 325,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.
- 4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:
 - A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., borrower's name, note amount, interest rate, maturity date):
One note of even date in the principal amount of 325,000.00 with final payment due 05/03/2012
 - B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
 - C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
 - D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
 - E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

- 5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
- 6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
- 7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
- 8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
 - A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
 - C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
- 9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

EXHIBIT C
 Page 2 of 10

10. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. ENTITY WARRANTIES AND REPRESENTATIONS. If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. AUTHORITY TO PERFORM. If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. ASSIGNMENT OF LEASES AND RENTS. Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

- A. Existing or future leases, subleases, licenses, guarantees and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
- B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

_____ *AK*

any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

16. DEFAULT. Mortgagor will be in default if any of the following occur:

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. REMEDIES ON DEFAULT. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgage is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

19. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has

characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

20. CONDEMNATION. Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

21. INSURANCE. Mortgagor agrees to maintain insurance as follows:
A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

(page 5 of 8)
[Signature]

EXHIBIT C
Page 5 of 10

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. NO ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

25. APPLICABLE LAW; SEVERABILITY; INTERPRETATION. This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. WAIVER OF HOMESTEAD. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. U.C.C. PROVISIONS. If checked, the following are applicable to, but do not limit, this Mortgage:

- Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

(page 6 of 8)

- Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

29. OTHER TERMS. If checked, the following are applicable to this Mortgage:

- Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**
- Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- Additional Terms.**

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

Actual authority was granted to the parties signing below by resolution signed and dated _____.

Entity Name: _____

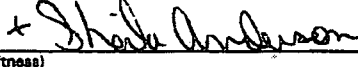
Entity Name: _____



(Signature) ANTHONY E. WHITEFIELD (Date) 04/23/2007 (Seal)

(Signature) _____ (Date) _____ (Seal)

Signed, Sealed and delivered in the presence of:

+ 

(Witness)



(Witness)

Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

BK E 623PG749

PROBATE:

STATE OF South Carolina, COUNTY OF Charleston) ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

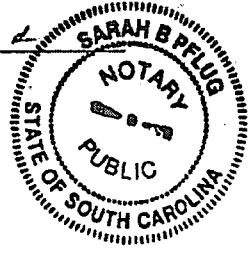
Sworn to and subscribed before me this 23rd day

of April, 2007

[Signature]
Notary Public for South Carolina

x [Signature]

My commission expires: 1-28-2012



BKE 623PG750

Exhibit "A"

ALL that certain piece, parcel or tract of land, situate, lying and being in the Town of Mt. Pleasant, Charleston County, South Carolina, shown and designated as Lot 78, on that certain plat prepared by Mark S. Busey, S.C.R.L.S., entitled "A FINAL SUBDIVISION PLAT OF PHASE 2 WHISPERING MARSH, DUNES WEST, OWNED BY JOHN WIELAND HOMES OF SOUTH CAROLINA, LOCATED IN THE TOWN OF MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" said plat being dated January 13, 2000 and duly recorded in the Charleston County RMC Office in Plat Book ED, Page 822. Reference to said plat is hereby made for a more complete description as to distances, courses, metes and bounds.

BEING the same premises as conveyed to the Mortgagor herein by deed of Dennis E. Harris and Robin J. Harris dated this date and recorded simultaneously herewith.

EXHIBIT ^C
Page 9 of 10

BK E 623PG751

RECORDER'S PAGE

NOTE: This page **MUST** remain with the original document



FILED
 April 24, 2007
 3:54:11 PM
 BK E 623PG742
 Charlie Lybrand, Register
 Charleston County, SC

Filed By:

J. Stanley Claypoole, P.A.
 Attorney at Law
 2155 Northpark Lane
 North Charleston SC 29406

Number of Pages:

10

DWT
C

DESCRIPTION	AMOUNT
	\$ 15.00
Postage	

TOTAL	\$ 15.00
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DRAWER:

	A - bmm
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DO NOT STAMP BELOW THIS LINE

EXHIBIT C
Page 10 of 10

J. STANLEY CLAYPOOLE, PA
2155 NORTH PARK LANE
NORTH CHARLESTON, S.C. 29406
Whitfield 01-0513

BKF 623PG152

State of South Carolina

Space Above This Line For Recording Data

This document was prepared by (name, address, phone number):

Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

(843) 852-6400

ASSIGNMENT OF LEASES AND RENTS

1. **DATE AND PARTIES.** The date of this Assignment of Leases and Rents (Assignment) is 04/23/2007. The parties and their addresses are:

ASSIGNOR: ANTHONY M WHITFIELD
2141 DORCHESTER ROAD
NORTH CHARLESTON, SC 29405

Refer to the Addendum that is attached and incorporated herein for additional Assignors.

LENDER: Harbor National Bank
1503 Old Towne Road
Charleston, SC 29407

2. **ASSIGNMENT OF LEASES AND RENTS.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Assignor's performance under this Assignment, Assignor irrevocably assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (all referred to as Property).
- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including any extensions, renewals, modifications or replacements (all referred to as Leases).
- B. Rents, issues and profits (all referred to as Rents), including but not limited to security deposits, minimum rent, percentage rent, additional rent, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Assignor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property.
- C. The term Property as used in this Assignment shall include the following described real property:
SEE ATTACHED EXHIBIT 'A'

SOUTH CAROLINA ASSIGNMENT OF LEASES AND RENTS
(NOT FOR FNMA, FHLMC, OR VA USE AND NOT FOR CONSUMER PURPOSES)
EsperSM © 2001 Bankers Systems, Inc., St. Cloud, MN Form ASMT-RENT-SC 2/27/2002

(page 1 of 7)

EXHIBIT D
Page 1 of 9

BKF 623PG153

The Property is located in CHARLESTON County at 1055 BLACK RUSH CIRCLE MOUNT PLEASANT, SC 29466 (Address, City, State, ZIP Code).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Assignment at any one time will not exceed \$ 325,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Assignment. Also, this limitation does not apply to advances made under the terms of this Assignment to protect Lender's security and to perform any of the covenants contained in this Assignment. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

4. **SECURED DEBTS.** This Assignment will secure the following Secured Debts:
A. **Specific Debts.** The following debts and all extensions, renewals, refinancings, modifications and replacements. (include items such as borrowers' names, note amounts, interest rates, maturity dates, etc.)

One or more of the debts secured by this Assignment contains a future advance provision.

B. **All Debts.** All present and future debts from Assignor and _____

to Lender, even if this Assignment is not specifically referenced or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Assignment, each agrees that it will secure debts incurred either individually or with others who may not sign this Assignment. Nothing in this Assignment constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. In the event that Lender fails to provide notice of the right of rescission, Lender waives any subsequent security interest in the Assignor's principal dwelling that is created by this Assignment. This Assignment will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Assignment will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.

C. **Sums Advanced.** All sums advanced and expenses incurred by Lender under the terms of this Assignment.

5. **PAYMENTS.** Assignor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Assignment.

6. **COLLECTION OF RENTS.** Assignor may collect, receive, enjoy and use the Rents so long as Assignor is not in default. Assignor will not collect in advance any Rents due in future lease periods, unless Assignor first obtains Lender's written consent. Upon default, Assignor will receive any Rents in trust for Lender and Assignor will not commingle the Rents with any other funds. When Lender so directs, Assignor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Assignor agrees that this Assignment is immediately effective between Assignor and Lender and effective as to third parties on the recording of this Assignment.

7. **WARRANTIES AND REPRESENTATIONS.** To induce Lender to enter into the Loan, Assignor makes these representations and warranties for as long as this Assignment is in effect.

A. **Power.** Assignor is duly organized, validly existing and in good standing under the laws in the jurisdiction where Assignor was organized and is duly qualified, validly existing and in good standing in all jurisdictions in which Assignor operates or Assignor owns or leases property. Assignor has the power and authority to enter into this transaction and to carry on Assignor's business or activity as now conducted.

B. **Authority.** The execution, delivery and performance of this Assignment and the obligation evidenced by this Assignment are within Assignor's duly authorized powers; has received all necessary governmental approval; will not violate any provision of law or order of court or governmental agency; and will not violate any agreement to which Assignor is a party or to which Assignor is or any of Assignor's property is subject.

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EXHIBIT D
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- C. **Name and Place of Business.** Other than previously disclosed in writing to Lender, Assignor has not changed Assignor's name or principal place of business within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Assignor does not and will not use any other name and will preserve Assignor's existing name, trade names and franchises.
- D. **Ownership or Lease of Property.** Assignor owns or leases all property that Assignor needs to conduct Assignor's business and activities. All of Assignor's property is free and clear of all liens, security interests, encumbrances and other adverse claims and interests, except those Lender previously agreed to in writing.
- E. **Compliance with Laws.** Assignor is not violating any laws, regulations, rules, orders, judgments or decrees applicable to Assignor or Assignor's property, except for those that Assignor is challenging in good faith through proper proceedings after providing adequate reserves to fully pay the claim and its challenge should Assignor lose.
- F. **Title.** Assignor has good title to the Leases, Rents and Property and the right to assign, grant, bargain, convey and mortgage to Lender as additional security the Leases and Rents, and no other person has any right in the Leases and Rents.
- G. **Recordation.** Assignor has recorded the Leases as required by law or as otherwise prudent for the type and use of the Property.
- H. **Default.** No default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Assignor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Assignor or any party to the Lease defaults or fails to observe any applicable law, Assignor will promptly notify Lender.
- I. **Lease Modification.** Assignor has not sublet, modified, extended, canceled, or otherwise altered the Leases, or accepted the surrender of the Property covered by the Leases (unless the Leases so required).
- J. **Encumbrance.** Assignor has not assigned, compromised, subordinated or encumbered the Leases and Rents.
- B. COVENANTS.** Assignor agrees to the following covenants:
- A. **Rent Abatement and Insurance.** When any Lease provides for an abatement of Rents due to fire, flood or other casualty, Assignor will insure against this risk of loss with a policy satisfactory to Lender. Assignor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.
- B. **Copies of Leases.** Assignor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed.
- C. **Right to Rents.** Immediately after the execution of this Assignment, Assignor will notify all current and future tenants and others obligated under the Leases of Lender's right to the Leases and Rents, and will request that they immediately pay all future Rents directly to Lender when Assignor or Lender asks them to do so.
- D. **Accounting.** When Lender requests, Assignor will provide to Lender an accounting of Rents, prepared in a form acceptable to Lender, subject to generally accepted accounting principles and certified by Assignor or Assignor's accountant to be current, accurate and complete as of the date requested by Lender.
- E. **Lease Modification.** Assignor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so required) without Lender's written consent.
- F. **Encumbrance.** Assignor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent.
- G. **Future Leases.** Assignor will not enter into any future Leases without prior written consent from Lender. Assignor will execute and deliver such further assurances and assignments as to these future Leases as Lender requires from time to time.
- H. **Personal Property.** Assignor will not sell or remove any personal property on the Property, unless Assignor replaces this personal property with like kind for the same or better value.
- I. **Prosecution and Defense of Claims.** Assignor will appear in and prosecute its claims or defend its title to the Leases and Rents against any claims that would impair Assignor's interest under this Assignment and, on Lender's request, Assignor will also appear in any action or proceeding on behalf of Lender. Assignor agrees to assign to Lender, as requested by Lender, any right, claims or defenses which Assignor may have against parties who supply labor or materials to improve or maintain the leaseholds subject to the Leases and/or the Property.
- J. **Liability and Indemnification.** Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses or damages due to Lender's gross negligence or intentional torts to the extent permitted by law. Otherwise, Assignor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.
- K. **Leasehold Estate.** Assignor will not cause or permit the leasehold estate under the Leases to merge with Assignor's reversionary interest, and agrees that the Leases shall remain in full force and effect regardless of any merger of the Assignor's interests and of any merger of the interests of Assignor and any party obligated under the Leases.
- L. **Insolvency.** Lender will be the creditor of each tenant and of anyone else obligated under the Leases who is subject to an assignment for the benefit of creditors, an insolvency, a dissolution or a receivership proceeding, or a bankruptcy.

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9. **TRANSFER OF AN INTEREST IN THE ASSIGNOR.** If Assignor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if:
- A. A beneficial interest in Assignor is sold or transferred.
 - B. There is a change in either the identity or number of members of a partnership or similar entity.
 - C. There is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity.
- However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Assignment.
10. **DEFAULT.** Assignor will be in default if any of the following occur with regard to the Secured Debts that are secured by this Assignment:
- A. **Payments.** Assignor fails to make a payment in full when due.
 - B. **Insolvency or Bankruptcy.** Assignor makes an assignment for the benefit of creditors or becomes insolvent, either because Assignor's liabilities exceed Assignor's assets or Assignor is unable to pay Assignor's debts as they become due; or Assignor petitions for protection under federal, state or local bankruptcy, insolvency or debtor relief laws, or is the subject of a petition or action under such laws and fails to have the petition or action dismissed within a reasonable period of time not to exceed 60 days.
 - C. **Death or Incompetency.** If Assignor is an individual, Assignor dies or is declared legally incompetent.
 - D. **Business Termination.** If Assignor is not an individual, Assignor merges, dissolves, reorganizes or ends its business or existence, or a partner or majority owner dies or is declared legally incompetent.
 - E. **Failure to Perform.** Assignor fails to perform any condition or to keep any promise or covenant of this Assignment, any other document evidencing or pertaining to the Loan, or any other debt or agreement Assignor has with Lender.
 - F. **Misrepresentation.** Assignor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
 - G. **Property Transfer.** Assignor transfers all or a substantial part of Assignor's money or property.
 - H. **Property Value.** The value of the Property declines or is impaired.
 - I. **Name Change.** Assignor changes Assignor's name or assumes an additional name without notifying Lender before making such a change.
 - J. **Material Change.** Without first notifying Lender, there is a material change in Assignor's business, including ownership, management, and financial conditions.
 - K. **Insecurity.** Lender reasonably believes that Lender is insecure.
11. **REMEDIES.** After Assignor defaults, and after Lender gives any legally required notice and opportunity to cure the default, Lender may at Lender's option do any one or more of the following:
- A. **Acceleration.** Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due.
 - B. **Additional Security.** Lender may demand additional security or additional parties to be obligated to pay the Secured Debts.
 - C. **Sources.** Lender may use any and all remedies Lender has under the state law where the Property is located or federal law or in any instrument evidencing or pertaining to the Secured Debts.
 - D. **Insurance Benefits.** Lender may make a claim for any and all insurance benefits or refunds that may be available on Assignor's default.
 - E. **Payments Made On Assignor's Behalf.** Amounts advanced on Assignor's behalf will be immediately due and may be added to the Secured Debts.
 - F. **Rents.** Lender may terminate Assignor's right to collect Rents and directly collect and retain Rents in Lender's name without taking possession of the Property and to demand, collect, receive, and sue for the Rents, giving proper receipts and releases. In addition, after deducting all reasonable expenses of collection from any collected and retained Rents, Lender may apply the balance as provided for by the Secured Debts.
 - G. **Entry.** Lender may enter, take possession, manage and operate all or any part of the Property; make, modify, enforce or cancel or accept the surrender of any Leases; obtain or evict any tenants and licensees; increase or reduce Rents; decorate, clean and make repairs or do any other act or incur any other cost Lender deems proper to protect the Property as fully as Assignor could do. Any funds collected from the operation of the Property may be applied in such order as Lender may deem proper, including, but not limited to, payment of the following: operating expenses, management, brokerage, attorneys' and accountants' fees, the Secured Debts, and toward the maintenance of reserves for repair or replacement. Lender may take such action without regard to the adequacy of the security, with or without any action or proceeding, through any person or agent, or receiver to be appointed by a court, and irrespective of Assignor's possession. The collection and application of the Rents or the entry upon and taking possession of the Property as set out in this section shall not cure or waive any notice of default under the Secured Debts, this Assignment, or invalidate any act pursuant to such notice. The enforcement of such remedy by Lender, once exercised, shall continue for so long as Lender shall elect, notwithstanding that such collection and application of Rents may have cured the original default.

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H. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

12. APPOINTMENT OF A RECEIVER. On or after an Assignor's default, Assignor agrees to Lender making an application to the court for an appointment of a receiver for the benefit of Lender to take possession of the Property and the Leases, with the power to receive, collect and apply the Rents. Any Rents collected will be applied as the court authorizes to pay taxes, to provide insurance, to make repairs and to pay costs or any other expenses relating to the Property, the Leases and Rents, and any remaining sums shall be applied to the Secured Debts. Assignor agrees that this appointment of a receiver may be without giving bond, without reference to the then-existing value of the Property, and without regard to the insolvency of any person liable for any of the Secured Debts.

13. COLLECTION EXPENSES AND ATTORNEYS' FEES. To the extent permitted by law, Assignor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Assignment. Unless the applicable law that governs this Assignment is North Dakota, expenses include, but are not limited to, reasonable attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. These expenses will bear interest from the date of payment until paid in full at the contract interest rate then in effect for the Loan. To the extent permitted by the United States Bankruptcy Code, Assignor agrees to pay the reasonable attorneys' fees Lender incurs to collect this Assignment as awarded by any court exercising jurisdiction under the Bankruptcy Code.

14. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste," "hazardous substance," or "regulated substances" under any Environmental Law.

Assignor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Assignor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Assignor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Assignor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Assignor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Assignor or any tenant of any Environmental Law. Assignor will immediately notify Lender in writing as soon as Assignor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Except as previously disclosed and acknowledged in writing to Lender, Assignor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.
- F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Assignor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Assignor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Assignor and any tenant are in compliance with applicable Environmental Law.

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_____ *AW*

EXEMPT *D*
e 5 of 2

- I. Upon Lender's request and at any time, Assignor agrees, at Assignor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
 - J. Lender has the right, but not the obligation, to perform any of Assignor's obligations under this section at Assignor's expense.
 - K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Assignor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses to the extent permitted by law, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Assignment and in return Assignor will provide Lender with collateral of at least equal value to the Property secured by this Assignment without prejudice to any of Lender's rights under this Assignment.
 - L. Notwithstanding any of the language contained in this Assignment to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Assignment regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.
- 16. TERM.** This Assignment will remain in full force and effect until the Secured Debts are paid or otherwise discharged and Lender is no longer obligated to advance funds under any loan or credit agreement which is a part of the Secured Debts. If any or all payments of the Secured Debts are subsequently invalidated, declared void or voidable, or set aside and are required to be repaid to a trustee, custodian, receiver or any other party under any bankruptcy act or other state or federal law, then the Secured Debts will be revived and will continue in full force and effect as if this payment had not been made.
- 17. CO-SIGNERS.** If Assignor signs this Assignment but does not sign the Secured Debts, Assignor does so only to assign Assignor's interest in the Property to secure payment of the Secured Debts and Assignor does not agree to be personally liable on the Secured Debts. If this Assignment secures a guaranty between Lender and Assignor, Assignor agrees to waive any rights that may prevent Lender from bringing any action or claim against Assignor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.
- 18. WAIVERS.** Except to the extent prohibited by law, Assignor waives all homestead exemption rights relating to the Property.
- 19. U.C.C. PROVISIONS.**
- Construction Loan.** This Assignment secures an obligation incurred for the construction of an improvement on the Property.
- 20. OTHER TERMS.** If checked, the following are applicable to this Assignment:
- Line of Credit.** The Secured Debts include a revolving line of credit provision. Although the Secured Debts may be reduced to a zero balance, this Assignment will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.
 - Additional Terms.**
- 21. APPLICABLE LAW.** This Assignment is governed by the laws of South Carolina, except to the extent otherwise required by the laws of the jurisdiction where the Property is located, and the United States of America.
- 22. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** Each Assignor's obligations under this Assignment are independent of the obligations of any other Assignor. Lender may sue each Assignor individually or together with any other Assignor. Lender may release any part of the Property and Assignor will still be obligated under this Assignment for the remaining Property. The duties and benefits of this Assignment will bind and benefit the successors and assigns of Lender and Assignor.
- 23. AMENDMENT, INTEGRATION AND SEVERABILITY.** This Assignment may not be amended or modified by oral agreement. No amendment or modification of this Assignment is effective unless made in writing and executed by Assignor and Lender. This Assignment is the complete and final expression of the agreement. If any provision of this

(page 6 of 7)
[Signature]

EXHIBIT D
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Assignment is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

23. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Assignment.

24. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail and by registered or certified mail, return receipt requested, to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one party will be deemed to be notice to all parties. Assignor will inform Lender in writing of any change in Assignor's name, address or other application information. Assignor will provide Lender any financial statements or information Lender requests. All financial statements and information Assignor gives Lender will be correct and complete. Assignor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Assignor's obligations under this Assignment and to confirm Lender's lien status on any Property. Time is of the essence.

25. SIGNATURES. By signing under seal, Assignor agrees to the terms and covenants contained in this Assignment. Assignor also acknowledges receipt of a copy of this Assignment.

(Entity Name)

[Signature] (Seal)
(Signature) ANTHONY M WELTFIELD

(Seal) (Signature)

Signed, sealed and delivered in the presence of:

x [Signature]
(Witness)

[Signature]
(Witness)

PROBATE: STATE OF South Carolina COUNTY OF Charleston } ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Assignor (and each Assignor if more than one) sign, seal and deliver the foregoing Assignment and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 23rd day of April, 2007



[Signature]
Notary Public for South Carolina

x [Signature]

My commission expires: 1-28-2014

EXHIBIT D
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Exhibit "A"

ALL that certain piece, parcel or tract of land, situate, lying and being in the Town of Mt. Pleasant, Charleston County, South Carolina, shown and designated as Lot 78, on that certain plat prepared by Mark S. Busey, S.C.R.L.S., entitled "A FINAL SUBDIVISION PLAT OF PHASE 2 WHISPERING MARSH, DUNES WEST, OWNED BY JOHN WIELAND HOMES OF SOUTH CAROLINA, LOCATED IN THE TOWN OF MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" said plat being dated January 13, 2000 and duly recorded in the Charleston County RMC Office in Plat Book ED, Page 822. Reference to said plat is hereby made for a more complete description as to distances, courses, metes and bounds.

BEING the same premises as conveyed to the Mortgagor herein by deed of Dennis E. Harris and Robin J. Harris dated this date and recorded simultaneously herewith.

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RECORDER'S PAGE

NOTE: This page **MUST** remain with the original document



FILED

April 24, 2007

3:54:44 PM

BKF 623PG152

Charlie Lybrand, Register
Charleston County, SC

Filed By:

J. Stanley Claypoole, P.A.
Attorney at Law
2155 Northpark Lane
North Charleston SC 29406

Number of Pages:

9

DESCRIPTION AMOUNT

DESCRIPTION	AMOUNT
MISC/ASGT	\$ 14.00
Postage	

TOTAL \$ 14.00

DRAWER:

A - bmm

DO NOT STAMP BELOW THIS LINE

D
Page 9 of 9

STATE OF SOUTH CAROLINA **FILED**
COUNTY OF CHARLESTON 2014 SEP 10 AM 11:54 IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-5887

HARBOR NATIONAL BANK, JULIE J. ARMSTRONG
CLERK OF COURT

Plaintiff

REPLY TO THIRD AMENDED ANSWER,
AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS

v.

ANTHONY M. WHITFIELD AND CINDY
WHITFIELD,

Defendants.

The Plaintiff, replying to the allegations of the Third Amended Answer, Affirmative Defenses, and Counterclaims, would show unto this Court:

1. Each and every allegation contained in said Third Amended Answer, Affirmative Defenses and Counterclaims not hereinafter specifically admitted is denied.
2. The allegations of Paragraphs One (1) through Nineteen (19) of the Answer, Affirmative Defenses and Counterclaims fail to make allegations against the Plaintiff requiring a response; to the extent they make such allegations, the same are hereby denied.
3. Responding to the allegations of Paragraph Twenty (20) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that the Defendant applied to the Plaintiff for a credit commitment to purchase and refinance commercial real estate in the furtherance of his business in the Berkeley, Dorchester and Charleston County areas, and that the Defendant had financed other transactions with Southtrust Bank; the remaining allegations of Paragraph Twenty (20) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.
4. The allegations of Paragraphs Twenty-One (21) and Twenty-Two (22) of the

Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

5. Responding to the allegations of Paragraph Twenty-Three (23) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that it provided the attached Exhibit "A" to the Defendant setting forth the terms and conditions upon which it would agree to extend credit to the Defendant, the terms and conditions of which are explicitly set forth in the said correspondence, and the Plaintiff craves reference to the said correspondence to determine the terms and conditions of such commitment; any allegations contained in Paragraph Twenty-Three (23) of the Third Amended Answer, Affirmative Defenses and Counterclaims not hereinafter specifically admitted are denied.

6. The allegations of Paragraph Twenty-Four (24) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

7. Responding to the allegations of Paragraph Twenty-Five (25) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that the Defendant chose a fixed interest rate as set forth in the applicable Note; any allegations contained in Paragraph Twenty-Five (25) of the Third Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

8. The allegations of Paragraph Twenty-Six (26) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

9. Responding to the allegations of Paragraph Twenty-Seven (27) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that the Defendant made payments under the terms of and pursuant to the Promissory Note; any allegations contained in Paragraph Twenty-Seven (27) of the Third Amended Answer,

Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

10. Responding to the allegations of Paragraph Twenty-Eight (28) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that it requested copies of the Defendant's tax returns pursuant to the terms of line of credit and the note and mortgage, that Defendant requested to be provided with a lower interest rate, and that the Plaintiff was considering terminating the loans due to the Defendant's failure to provide necessary documentation; any allegations contained in Paragraph Twenty-Eight (28) of the Third Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

11. Responding to the allegations of Paragraph Twenty-Nine (29) of the Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that it wrote to the Defendant again advising of the need for sufficient financial information, including tax returns, to evaluate the proposal to renew loans with the Defendant, that the Defendant thereafter advised of the completion of the tax returns, that the Defendant requested modified terms for the loans, and that Angela Bell communicated with a senior credit analyst regarding the successful receipt of required documentation from the Defendant; any allegations contained in Paragraph Twenty-Nine (29) of the Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

12. Responding to the allegations of Paragraph Thirty (30) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits the Notes secured by mortgages on 732 Gahagan and 110 Mepkin matured by their terms, that in a meeting with the

Defendant that an agreement was reached upon the terms and conditions upon which certain loans could be renewed, that renewal terms included the terms contained in a June 26, 2012 letter to Mr. Whitfield; any allegations contained in Paragraph Thirty (30) of the Third Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

13. Responding to the allegations of Paragraph Thirty-One (31) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits the Scott Warren issued a terms letter to Mr. Whitfield setting forth the terms and conditions under which it would agree to renew the loans in existence, and that the letter is attached to the Third Amended Answer, Affirmative Defenses and Counterclaims as Exhibit "B"; any allegations contained in Paragraph Thirty-One (31) of the Third Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

14. Responding to the allegations of Paragraph Thirty-Two (32) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits the Plaintiff attended a scheduled closing at the office of attorney Mark Weeks, that it was discovered that Defendant had transferred an interest in the Black Rush property to his ex-wife, Cindy Whitfield, and that it was required as a condition of the closing either that Mrs. Whitfield sign the new mortgage or that a title endorsement be obtained; any allegations contained in Paragraph Thirty-Two (32) of the Third Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

15. Responding to the allegations of Paragraph Thirty-Three (33) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits the closing of

the new loans never took place; any allegations contained in Paragraph Thirty-Three (33) of the Third Amended Answer, Affirmative Defenses and Counterclaims in addition to or other than this specific admission are denied.

FOR A FIRST DEFENSE TO THE FIRST COUNTERCLAIM
(DENIAL)

16. Responding to the allegations of Paragraph Thirty-Four (34) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Fifteen (15) of this Reply as if repeated herein verbatim.

17. The allegations of Paragraphs Thirty-Five (35), Thirty-Six (36), and Thirty-Seven (37) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SECOND COUNTERCLAIM
(DENIAL)

18. Responding to the allegations of Paragraph Thirty-Eight (38) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Seventeen (17) of this Reply as if repeated herein verbatim.

19. Responding to the allegations of Paragraph Thirty-Nine (39), the Plaintiff admits that it proposed to finance the line of credit through either a fixed rate or floating rate to be chosen by the Defendant, and that it stated its intention to agree to refinance the book of loans the Defendant had with the Plaintiff provided that the Defendant met the terms and conditions imposed upon the proposed transaction; the remaining allegations of Paragraph Thirty-Nine (39) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

20. The allegations of Paragraph Forty (40) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE THIRD COUNTERCLAIM
(DENIAL)

21. Responding to the allegations of Paragraph Forty-One (41) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty (20) of this Reply as if repeated herein verbatim.

22. The allegations of Paragraphs Forty-Two (42), Forty-Three (43), Forty-Four (44), Forty-Five (45), Forty-Six (46) and Forty-Seven (47) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE FOURTH COUNTERCLAIM
(DENIAL)

23. Responding to the allegations of Paragraph Forty-Eight (48) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Two (22) of this Reply as if repeated herein verbatim.

24. Responding to the allegations of Paragraphs Forty-Nine (49) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff admits that it proposed to finance the line of credit through either a fixed rate or floating rate to be chosen by the Defendant, and that it stated its intention to agree to refinance the book of loans the Defendant had with the Plaintiff provided that the Defendant met the terms and conditions imposed upon the proposed transaction; the remaining allegations of Paragraph Forty-Nine (49) of the Third

Amended Answer, Affirmative Defenses and Counterclaims are denied.

25. The allegations of Paragraphs Fifty (50) and Fifty-One (51) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE FIFTH COUNTERCLAIM
(DENIAL)

26. Responding to the allegations of Paragraph Fifty-Two (52) of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Five (25) of this Reply as if repeated herein verbatim.

27. The allegations of Paragraphs Fifty-Three (53), Fifty-Four (54), Fifty-Five (55) and Fifty-Six (56) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SIXTH COUNTERCLAIM
(DENIAL)

28. Responding to the allegations of Paragraph 57 (57) of the Third Amended Answer, Affirmative Defenses, and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Seven (27) of this Reply as if repeated herein verbatim.

29. The allegations of Paragraphs Fifty-Eight (58), Fifty-Nine (59) and Sixty (60) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A FIRST DEFENSE TO THE SEVENTH COUNTERCLAIM
(DENIAL)

30. Responding to the allegations of Paragraph Sixty-One (61) of the Third Amended

Answer, Affirmative Defenses, and Counterclaims, the Plaintiff repeats and realleges the allegations of Paragraphs One (1) through Twenty-Nine (29) of this Reply as if repeated herein verbatim.

31. The allegations of Paragraphs Sixty-Two (62), Sixty-Three (63), and Sixty-Four (64) of the Third Amended Answer, Affirmative Defenses and Counterclaims are denied.

FOR A SECOND DEFENSE
(STATUTES OF LIMITATIONS)

32. Further responding to the allegations of all Counterclaims, the Plaintiff would show that such claims are barred by the applicable statutes of limitations, for which reason the Defendant cannot recover in any sum whatsoever.

FOR A THIRD DEFENSE
(FAILURE TO STATE A CLAIM)

33. Further responding to the allegations of all Counterclaims, the Plaintiff would show that such Counterclaims fail to state claims upon which relief can be granted, for which reason the Defendant cannot recover in any sum whatsoever.

FOR A FOURTH DEFENSE
(LACK OF RELIANCE)

34. Further responding to the allegations of the Second and Third Counterclaims, the Plaintiff would show that the Defendant failed to rely or have any right to rely upon the alleged representations other than as contained in the written contracts between the parties, for which reason the Defendant cannot recover in any sum whatsoever.

FOR A FIFTH DEFENSE
(REGULATED TRANSACTIONS)

35. Further responding to the allegations of the Fourth Counterclaim, the Plaintiff

would show that the actions and activities of the Plaintiff are regulated by the state and federal government, that the performance of said actions were in compliance with said state and federal regulations, and thus that the transactions are exempt from S.C. Code Ann. §39-5-10 et seq.

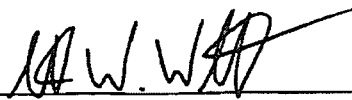
FOR A SIXTH DEFENSE
(OTHER CLAIM ALREADY PENDING)

36. Further responding to the allegations of the Counterclaims, the Plaintiff would show that another action is pending between the same parties for the same counterclaims, for which reason the said counterclaims are improper and should be dismissed pursuant to Rule 12(b)(8), SCRCP.

FOR A SEVENTH DEFENSE
(STATUTE OF FRAUDS)

37. Further responding to the allegations of the Counterclaims, the Plaintiff would show that Defendant's claim fails to comply with the statute of frauds, S.C. Code § 32-3-10, and the lender liability statute of frauds, S.C. Code § 37-10-107.

WHEREFORE, having fully responded to the allegations of the Third Amended Answer, Affirmative Defenses and Counterclaims, the Plaintiff prays that the same be dismissed, and that this Court enter judgment for the relief sought in the Complaint.



Brian C. Duffy
Seth W. Whitaker
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)

and

Robert A. Bernstein
BERNSTEIN & BERNSTEIN, P.A.
Post Office Box 20519
Charleston, SC 29413-0519
(843) 529-1111
(843) 529-0035 (fax)
Attorneys for the Plaintiff

September 10, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-5887

HARBOR NATIONAL BANK,

Plaintiff,

v.

ANTHONY M. WHITFIELD AND CINDY
WHITFIELD,

Defendants.

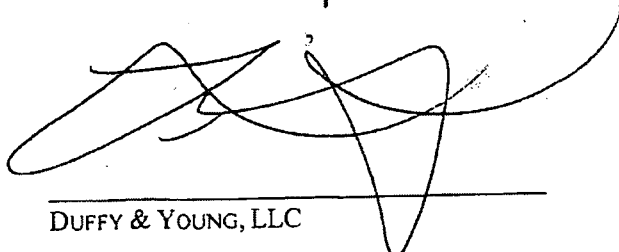
CERTIFICATE OF SERVICE

The undersigned, an employee of Duffy & Young, LLC, does hereby certify that on September 10, 2014, he/she served a copy of the Reply of the Plaintiff to the Third Amended Answer, Affirmative Defenses and Counterclaims upon Anthony M. Whitfield by placing a copy of the same in the United States Mail, postage prepaid, and addressed to the following:

Brent S. Halversen, Esquire
HALVERSEN & ASSOCIATES, LLC
171 Church Street, Suite 330
Charleston, SC 29401

Daniel S. Slotchiver, Esq.
Andrew J. McCumber, Esq.
SLOTCHIVER & SLOTCHIVER, LLP
44 State Street
Charleston, SC 29401

FILED
2014 SEP 10 AM 11:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____



DUFFY & YOUNG, LLC

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS)
)
CASE NO. 2012-CP-10-5887)

FILED
2016 JAN -8 PM 2:36
JULIE J. ARMSTRONG
CLERK OF COURT

HARBOR NATIONAL BANK,)
)
Plaintiff,)

vs.)

ANTHONY WHITFIELD, CINDY)
WHITFIELD AND DAVID SWANSON)
)
Defendants.)
_____)

**DEFENDANT'S FIFTH AMENDED
ANSWER, AFFIRMATIVE DEFENSES,
CROSSCLAIM AND COUNTERCLAIMS**

(Breach of Contract, Breach of Contract
Accompanied by Fraudulent Act,
Negligent Misrepresentation, Fraud in the
Inducement, Unfair Trade Practices,
Promissory Estoppel, Tortious
Interference with Prospective Contractual
Relations, Abuse of Process, Civil
Conspiracy, and Equitable Indemnity)

(Jury Trial Demanded)

TO: ROBERT A. BERNSTEIN, BRIAN DUFFY, AND SETH WHITAKER, ATTORNEYS
FOR PLAINTIFF

Comes now Defendant, Anthony Whitfield (hereinafter, "Mr. Whitfield") and
responds to the allegations of Plaintiff's Complaint as follows:

1. Mr. Whitfield admits the allegations of Paragraphs 2, 3, 4, 10 and 19.
2. Mr. Whitfield denies, the allegations of Paragraphs 15 and 27 to the
extent such Paragraphs reference previous allegations which are herein
denied.
3. Mr. Whitfield admits an assignment was made but denies the event
of default as alleged in Paragraph 20, 28, 25, 26 and 27.

4. Mr. Whitfield denies Paragraphs 1, 5, 6, 7, 8, 9, 11, 12, 13, 14, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 28 and 29.

5. Mr. Whitfield denies each and every allegation not specifically enumerated herein.

FIRST AFFIRMATIVE DEFENSE

6. Plaintiff's claims to foreclose on the 2007 Mortgage should be waived, estopped, barred, and/or dismissed as Defendant made all payments as was required under the Note and was told by Plaintiff numerous times that the maturity date as referenced in the Note would be automatically extended.

SECOND AFFIRMATIVE DEFENSE

7. Plaintiff's claims in equity are barred by the doctrine of unclean hands and equitable estoppel.

THIRD AFFIRMATIVE DEFENSE

8. Plaintiff's action should be barred by the doctrines of unconscionability, waiver, fraud and duress.

FOURTH AFFIRMATIVE DEFENSE

9. Plaintiff has failed to comply with the mandatory provisions of the South Carolina Supreme Court Administrative Order 2011-05-02-01. As such, this matter should be stayed or dismissed.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's Failure to Provide Required Truth in Lending Disclosures; Set-Off

10. Defendants, whose ownership interest in the residential property being

foreclosed upon with address of 1055 Black Rush Circle, Mount Pleasant, SC 29466 (the "Subject Property") is subject to the security interest created by the Plaintiff's 2007 mortgage, elect to rescind the mortgage and note being foreclosed upon (the " 2007 Loan").

Plaintiff violated TILA and Regulation Z by, inter alia:

- a. failing to provide interest rate disclosures at the 2007 closing;
- b. failing to provide material disclosures in a form Defendants could keep prior to consummation of the 2007 closing;
- c. failing to provide Notices of Right to Cancel;
- d. failing to provide disclosures as part of the 2007 Loan.

11. Plaintiff was obligated to provide the information set forth in the preceding Paragraph as Plaintiff knew, at all material times, that the subject property was residential and was Defendant Cindy Whitfield's primary residence.

12. Plaintiff's violations of the Truth-in-Lending Act give rise to a three year continuing right of rescission on the part of Defendants.

13. Defendants hereby elect to rescind the 2007 loan transaction with Plaintiff, pursuant to the continuing right of rescission.

14. When a consumer elects to rescind pursuant to the Truth-in-Lending Act, any security interest taken in connection with the transaction becomes void. 15 U.S.C. § 1635(b).

15. When a consumer elects to rescind pursuant to the Truth-in-Lending Act, the consumer is not liable for any finance or other charge. 15 U.S.C. § 1635(b).

16. The 2007 mortgage that is the subject of this foreclosure action was taken

in connection with the transaction that Defendant has elected to rescind.

17. Defendant has the ability to tender repayment of their rescission obligations through procurement of a buyer of the home.

18. Since the mortgage is void, the foreclosure action must be dismissed.

SIXTH AFFIRMATIVE DEFENSE

19. Upon information and belief, the subject note attempted to be foreclosed upon is not the original note and therefore Plaintiff does not have standing pursue this foreclosure action.

COUNTERCLAIMS

Factual Allegations

20. In 2006, Mr. Whitfield approached Charlie Rivers (hereinafter, "Mr. Rivers") of Harbor National Bank to purchase and refinance certain real estate in the lowcountry counties of Berkeley, Dorchester and Charleston. Mr. Rivers previously helped Mr. Whitfield refinance over 25 loans when Mr. Rivers was a loan officer with Southtrust Bank. These loans always had 30 year terms and never had balloon payments or required refinancing or re-approval.

21. Mr. Rivers promised Mr. Whitfield the same loans as he was previously given by Mr. Rivers, to-wit, 30 year loans with the best rate possible, with a ½ point origination fee. There was no mention of balloon payments or re-qualification anytime during the 30 year loans. After a review of Mr. Whitfield's financial condition, Mr. Rivers approved \$1.5 million in loans to refinance rental properties. At the time, Mr. Whitfield

made clear to Mr. Rivers that the loans could not have demand features or have a balloon payment. Mr. Rivers agreed.

22. In reliance on Mr. Rivers' representations, Mr. Whitfield purchased the property at 1055 Black Rush Circle, Mount Pleasant, SC 29466 (hereinafter, "the Subject Property" or "Black Rush Property").

23. On or about March 27, 2007 Mr. Whitfield was provided documentation from Plaintiff stating that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus $\frac{1}{4}$ % (See Exhibit "A" attached hereto).

24. Plaintiff was aware at all material times, before and after the loan was closed, that the home was being purchased as a primary residence for Mr. Whitfield's ex-wife, Cindy Whitfield.

25. Despite being provided documentation by Plaintiff that Mr. Whitfield would have the choice of a 7.5% interest rate or a floating rate of prime minus $\frac{1}{4}$ %, Mr. Whitfield was provided the higher 7.5% rate as opposed to the lower floating rate of prime minus $\frac{1}{4}$ %.

26. Despite being provided documents at the closing with a April 13, 2012 maturity date on some of the loans, Mr. Whitfield was assured numerous times by loan officer Angela Bell that the maturity date was just a formality and in fact was just a renewal date and would be extended automatically with only adjustments of interest without any re-qualifying or costs to extend. Despite making such assurances to Mr. Whitfield, loan officer Angela Bell determined as early as 2010 that the loans would not be renewed as she felt Mr. Whitfield was not providing financial information to her. At the time she indicated she needed to "grease the wheel" with Mr. Whitfield's accountant so the

accountant would tell her more information about Mr. Whitfield's financial status.

27. Because of Ms. Bell's assurances and representations, Mr. Whitfield made payments on the loan for the subject properties from the origination of the loan every month until the renewal date.

28. In January, 2012, Plaintiff asked Mr. Whitfield for a copy of his recent tax returns so that the loan could be automatically extended. As late as February 6, 2012, loan officer Angela Bell sent an email to Mr. Whitfield asking him for tax information to work on the "renewals." On February 21, 2012, Mr. Whitfield informed loan officer Angela Bell that he was under some financial pressure, that his health was suffering, and that he wanted interest rates on par with the other mortgages he held with other banks. The following day, Ms. Bell informed Harbor National Bank personnel (but not Mr. Whitfield) that she was going to let Mr. Whitfield know that she would be asking him to move the loans. Although she informed others of her intention not to renew the loans, Ms. Bell never told Mr. Whitfield that he needed to move the loans- at any point in time. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible.

29. One week later, on February 28, 2012 loan officer Angela Bell wrote Mr. Whitfield to let him know that she would have to have his 2010 tax returns in order to request approval for renewal of his upcoming maturing loans. On April 2, 2012, Mr. Whitfield informed loan officer Angela Bell that his 2010 tax returns were complete and that he urgently wanted his loans modified since the rates were extremely high, and that his health had been an issue. After receiving the information about receiving the tax returns, the following day loan officer Angela Bell told a senior credit analyst at Harbor

National Bank, "I'm just glad the threats of no renewals finally worked." Five days later, on April 8, 2012, Mr. Whitfield suffered a heart attack.

30. Despite making assurances the loans would renew, two notes (732 Gahagan and 110 Mepkin) matured on April 13, 2012 without having been renewed by the Plaintiff. The note for the Black Rush Property came due on May 3, 2012, again without renewal. On June 21, 2012 Charlie Rivers orally agreed to modify the notes and specifically agreed to: (a) extend the notes for a 25 year amortization with another 5 year maturity; (b) eliminate the need for any principal pay downs; (c) eliminate the need for additional collateral to secure the notes; (d) eliminate the need to cross collateralize the loans; (e) waive the default interest rate of 14%; (f) back date the rate of 4.75% to the maturity the May 3, 2012 maturity date; and (g) credit Mr. Whitfield's overpayment of interest.

31. On June 26, 2012, Harbor National Bank vice president Scott Warren signed a loan commitment letter to Mr. Whitfield outlining the terms and conditions of the renewals of all Mr. Whitfield's loans held by Harbor National Bank. The proposed new loans dropped the interest rate to 4.75% and extended the maturities another 5 years. (See loan commitment, attached hereto as Exhibit "B"). On the same day, Mr. Whitfield was given drafts of new notes to sign for the closing which was to be held on June 28, 2012. The new documents contained clauses that all of Mr. Whitfield's properties would be cross collateralized, despite Mr. River's agreement and assurances not to cross collateralize the properties (See Paragraph 30 (d) herein).

32. In reliance upon Mr. Warren's June 26, 2012 commitment letter, Mr. Whitfield attended a scheduled closing at attorney Mark Weeks' law office. At the closing,

Mr. Warren informed Mr. Whitfield that a signed endorsement from a title company was needed so that Mr. Whitfield's ex-spouse Cindy Whitfield would not be required to sign the loan documents for the Black Rush Property, the home that Cindy Whitfield resided in.¹ At a certain point, Mr. Whitfield was informed by the closing attorney that the endorsement could not be procured, that Mrs. Whitfield was refusing to sign the mortgage to the Black Rush Property, and Mr. Warren proposed that it would only be possible to close two of the subject properties -Mepkin and Gahagan, but that if the Black Rush Property ultimately couldn't be closed, all properties including Mepkin and Gahagan would have to be foreclosed upon.

33. Despite Harbor National Bank's representations that a title endorsement was required to renew the Black Rush Property, Mr. Whitfield has subsequently learned that no such endorsement was required from the title company. Moreover, Harbor National Bank failed to renew any of the loans listed in the June 26, 2012 commitment letter despite agreeing to do so, willfully breaching their agreements, and causing Mr. Whitfield damages as to be determined by the trier of fact.

FOR A FOR FIRST COUNTERCLAIM
(Breach of Contract)

34. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

¹ Plaintiff also attempted to procure a "Business Purpose Statement" from Mr. Whitfield indicating that the property was to be used in Mr. Whitfield's business despite having previous knowledge that the Black Rush Property was in a fact residential property for Mr. Whitfield's ex-wife Cindy Whitfield.

35. As described above, Plaintiff indicated before and after the origination of the loan, verbally and in writing, that the loan to the Subject Property would be automatically renewed.

36. Despite repeatedly making these representations and reassurances, Plaintiff failed to renew the loan and instead declared Mr. Whitfield to be in default despite being paid all monthly installments on time, as and when due, breaching their agreement with Mr. Whitfield.

37. Although Plaintiff ultimately promised in writing to renew the loan on June 26, 2012, Plaintiff refused to close the loan on June 28, 2012, as described above, breaching the terms of the offer contained in the writing. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligent Misrepresentation)

38. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

39. As described above, Harbor National Bank made affirmative representations to Mr. Whitfield that: (1) the initial loans would be 30 year loans; (2) the maturity date referenced in the Note was simply a renewal date; and (3) the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with a new maturity date of July 10, 2017.

40. Plaintiff knew these representations were false, misleading, and incomplete when they were made. Such representations were (1) false, misleading and incomplete when made; (2) were made for a pecuniary interest of the Plaintiff; (3) the Plaintiff owed a duty of care to convey truthful information to Mr. Whitfield; (4) the Plaintiff breached that duty by failing to exercise due care; (5) Mr. Whitfield was unaware that the representations were false - and had no reason to suspect they were false as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his financial detriment as outlined above. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A THIRD CAUSE OF ACTION
(Fraud in the Inducement)

41. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

42. At or about the time of the initial loan originations, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity date referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017. Such representations were false, incomplete and misleading when made, were material, were known by the Plaintiff to be

false, misleading and incomplete, and were intended to be relied upon.

43. Mr. Whitfield was unaware that the representations were false and had no reason to suspect they were false, as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his detriment financial as outlined above. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible. At a minimum, the Plaintiff should have relayed their concerns about renewals as early as documentary evidence suggest Harbor National Bank had a concern, to-wit, the year 2010.

44. These false representations were made to induce the Mr. Whitfield to enter a high cost loan, and were made by the Plaintiff with the knowledge of their falsity.

45. Mr. Whitfield reasonably relied on the material representations of Plaintiff and had no knowledge the representations made by the Plaintiff were false and the Mr. Whitfield was, therefore, fraudulently induced by the Plaintiff to enter into the high cost loan.

46. Mr. Whitfield made a mistake in entering into the loan, which mistake was unilateral. Mr. Whitfield was fraudulently induced by the Plaintiff to make the unilateral mistake as a direct, proximate and foreseeable result of the fraud, deceit, misrepresentation, and active concealment perpetrated upon Mr. Whitfield by the Plaintiff.

47. Subsequent to the origination of the loan, Mr. Whitfield has been informed and now believes that the Plaintiff misrepresented the terms of the loan, verbally and in writing by (1) not receiving 30 year loans, (2) representing that the maturity date was simply a renewal date; and (3) charging, and refusing to change, the interest rate of 7.5%.

The Plaintiff also made representations, and an offer, to renew the loans at 4.75% with a new maturity date of July 10, 2017 as agreed. As such, Mr. Whitfield is entitled to avoid or rescind the loan and to be returned to the status quo ante whereby the Plaintiff returns to Mr. Whitfield all monies paid by Mr. Whitfield in exchange for Mr. Whitfield returning the amount of the loan proceeds to the Plaintiff. In addition thereto, Mr. Whitfield is entitled to all incidental, consequential, direct and indirect damages proximately caused by Plaintiff when they fraudulently induced Mr. Whitfield to enter into the loan transaction. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FOURTH CAUSE OF ACTION

(Violation of Federal Trade Commission Act Section 5(a) 15 U.S.C. §45)

(As made applicable through SC Code §39-5-10 et.seq.)

48. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

49. As stated above, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity dates referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% or prime minus ¼ %. The Plaintiff also represented, and made an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017.

50. Plaintiff's acts enumerated above constitute "unfair or deceptive acts or practices in or affecting commerce," as those terms are defined in the Act. This prohibition

applies to all persons engaged in commerce, including banks. An act or practice is unfair where it: (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers and; (3) is not outweighed by countervailing benefits to consumers or to competition. In this case, Plaintiff's actions discussed above have caused substantial injury to Mr. Whitfield.

51. An act or practice is deceptive where: (1) a representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances and; (3) the misleading representation, omission, or practice is material. In this case, Plaintiff's actions were deceptive because Plaintiff clearly misrepresented that the loans would be renewed. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Promissory Estoppel / Detrimental Reliance)

52. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

53. Mr. Whitfield relied on the promises of Angela Bell, Charlie Rivers, and Scott Warren to renew and modify the loans.

54. These promises were unambiguous in their terms and were relied upon by Mr. Whitfield. In particular, there were no contingencies placed upon the June 26, 2012 written offer to renew any of the loans as title insured first mortgages were already in place on the subject properties.

55. The reliance by Mr. Whitfield regarding renewing the loans was more than expected and more than foreseeable by Harbor National Bank.

56. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

57. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

58. As stated above, Mr. Rivers made an agreement to renew the loans at the June 21, 2012 meeting with Mr. Whitfield.

59. Plaintiff breached the agreement with Mr. Whitfield by failing to close the renewal of the loan which is the subject of this lawsuit. Such breach was made with the fraudulent intent of never actually intending to close the renewal when that representation was made, and such fraudulent intent was manifested by the fraudulent act of claiming a title endorsement was required to renew the loan when in fact one was never needed.

60. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SEVENTH CAUSE OF ACTION
(Tortious Interference with Prospective Contractual Relations)

61. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

62. The acts of Plaintiff described herein constituted an interference with Mr. Whitfield's business, were without justification, were done with improper purpose and motive, knowing it would place Mr. Whitfield under duress when filing these unfounded legal proceedings and knowing that it would interfere with Mr. Whitfield's ability to sell and/or rent his properties.

63. As a result of Plaintiff's actions Mr. Whitfield has lost the ability to enter into contracts with identifiable prospective buyers and/or renters of his properties. As a direct and proximate result of the Plaintiff's actions, Mr. Whitfield has suffered special damages including but not limited to a diminished value of their property in the eyes of third parties, loss of income and loss of profits.

64. Plaintiff's actions proximately caused actual, consequential, and special damages, including but not limited to: a) inability to sell and/or rent his properties to third parties who meet requirements for sale and/or rental of his properties; b) foreclosure proceedings having been instituted on his properties; c) a diminished value of his properties in the eyes of third parties; d) damage to Mr. Whitfield's reputation and business standing in the real estate profession; e) financial damage to Mr. Whitfield's business because of time spent away to defend these charges; f) financial damage for his inability to sell his properties following filing of the lis pendens and lawsuit; g) attorneys' fees and costs incurred; h) time spent away from work as a result of the lis pendens and lawsuit; i) emotional distress to Mr. Whitfield; j) injury to his health and mental pain and

suffering; and k) adverse tax consequences.

FOR AN EIGHTH CAUSE OF ACTION

(Abuse of Process as to David Swanson and BNC Bancorp through its employee/agent Scott Warren)

65. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

66. Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

67. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

68. Despite providing such **sworn testimony** by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is **no evidence of any such phone call** as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

69. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, **when in fact evidence shows it was not made at the time**, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

70. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is **no engagement letter, fee agreement, correspondence,**

records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

71. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

72. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given. The acts described above and herein have caused damage to Mr. Whitfield by incurring actual damages, both mental and pecuniary, including by way of example only and without limitation: loss of time, injury to property and financial standing, shame, mortification, mental anguish, mental pain and suffering, emotional distress, loss of enjoyment of life, injury to feelings, an overall degradation of health, and was hindered from, and will continue to be hindered from attending to his usual duties and affairs of life, as a direct and proximate result of the aforesaid conduct of Harbor National Bank, in an exact amount of actual, consequential and special damages as to be determined by a trier of fact.

FOR A NINTH CAUSE OF ACTION

(Civil Conspiracy as to David Swanson and BNC Bancorp through its employee/agent
Scott Warren)

73. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

74. As alleged above, Mr. Scott Warren claims he called Mr. David Swanson for the advice to procure a title endorsement in order to renew the loan for the Black Rush Property.

75. Mr. Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank, said closing set to occur on June 28, 2012.

76. Despite providing such sworn testimony by each Mr. Scott Warren and Mr. David Swanson that this advice was given and received before the June 28, 2012 closing, there is no evidence of any such phone call as the phone records from Mr. David Swanson's cell phone and his office line show no record of a phone call from Mr. Scott Warren cell phone or office line in June of 2012.

77. Because the telephone records show the phone call never occurred, the sworn testimony that the call was made, when in fact it was not made at the time, was given with the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans.

78. Mr. David Swanson has represented that Scott Warren called him regarding an anticipated closing, in which he gave advice to Mr. Warren to procure a title endorsement. As alleged previously, Mr. Swanson and his law firm have no proof the advice was ever given as there is no engagement letter, fee agreement, correspondence,

records of any kind, opinion letters, or billing entries at the firm to corroborate the legal defense that Mr. Swanson provided the information at the time he claims the advice was made. Additionally, there is no evidence of the communication itself from Mr. Warren's cell phone or office line to Mr. Swanson's cell phone or office line, further evidence that the communication was never made, when Mr. Swanson and Mr. Warren claim it was.

79. The sworn testimony that the call was placed before closing, when in fact it was not, was a willful or overt act, done with the intent and collateral objective of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield.

80. The sworn testimony by each Mr. Scott Warren and Mr. David Swanson was a misuse and perversion of legal process by fabricating a legal defense (advice of counsel) when one in fact had never been given at the time claimed to have been given.

81. Mr. David Swanson's actions described above and herein were made for his own personal interest as they were performed outside the scope of his law firm's representation of Harbor National Bank.

82. The actions of David Swanson and Scott Warren as alleged above and herein constitute an combination of two or more persons that was done with the purpose of furnishing a legal defense (advice of counsel) for the bank and injuring Mr. Whitfield which has caused him special damages, beyond damages specified in his other causes of action for having to incur attorney's fees and costs associated with Harbor National Bank's advice of counsel defense which should never have been incurred.

FOR A TENTH CAUSE OF ACTION
(Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield)

83. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

84. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, such liability would be a proximate result of the wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents in failing to give her permission and/or authorization to renew the loan for the subject property located at 1055 Black Rush Circle, Mount Pleasant, South Carolina, said demand being made as a defense of Harbor National Bank to close all of the renewal loans set forth in Exhibit "C".

85. Specifically, the closing attorney Mark Weeks and Mr. Whitfield's previous counsel Lauren Felder have stated that Mrs. Cindy Whitfield's counsel Stanley Jaskiewicz was contacted regarding procuring her consent for the renewal of the Black Rush Property. Lauren Felder was advised by either Stanley Jaskiewicz or his paralegal Dena Hardison that Mrs. Cindy Whitfield, "would not sign off on the mortgage as Mr. Whitfield was solely responsible under the Final Family Court Order." Additionally, Mrs. Cindy Whitfield was told by Mr. Jaskiewicz' paralegal Dena Hardison that, "he [Mr. Whitfield] could not refinance my home or borrow the equity in it as he would be putting another nail in his coffin." According to Mrs. Whitfield, Ms. Dena Hardison gave her this advice before the closing² and was also told by Ms. Hardison not to, "do anything until I talk to Stan,"

² Mrs. Whitfield indicated this statement was made by Ms. Hardison at the time the appraiser was attempting to gain access to Mrs. Whitfield's home-- in May and June of 2012. Correspondence was sent to Stanley Jaskiewicz advising him of appraisal access issue on June 11, 2012.

regarding gaining access to her home for an appraisal. According to Mrs. Whitfield, Mr. Jaskiewicz never called her back regarding any issues related to procuring her consent to renew her home.

86. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, these wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents have damaged Mr. Whitfield, including but not limited to consequential and special damages, and the imposition of attorney's fees and costs in defending the foreclosure and prosecuting the Counterclaims as alleged herein. Mr. Whitfield and Mrs. Cindy Whitfield had a special relationship by virtue of their continuing family court obligations that would support a claim for indemnity against Mrs. Cindy Whitfield. Moreover, Mr. Whitfield is wholly without fault for Cindy Whitfield failing to provide her permission and/or authorization to renew the loan for the Black Rush Property.

87. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, Mr. Whitfield would be entitled to be equitably indemnified for such liability from Cindy Whitfield for any liability that Mr. Whitfield is found to have incurred to the Plaintiff such that Mr. Whitfield would be entitled to recover his consequential and special damages, attorney's fees and costs, monies adjudged owed to the Plaintiff and/or monies expended by way of settlement of Plaintiff's claims as a result of Cindy Whitfield and/or her agents wrongful acts, breach of duties, omissions, and/or negligence as afore-described.

WHEREFORE, Plaintiff prays for relief as set forth below together with such further relief as this court deems just:


- a. Actual damages
- b. Consequential and Special damages;
- c. Statutory damages;
- d. Treble Damages
- e. Disgorgement of profits;
- f. Restitution;
- g. Rescission;
- h. Injunctive relief;
- i. Attorneys' fees and costs;
- j. Punitive Damages;

DEMAND FOR JURY TRIAL

Mr. Whitfield demands a jury trial on all counts stated above. These causes of action must be tried before any equitable causes of action asserted by either party can be disposed of. See Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994).

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: 

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Attorneys for Defendant

-and-

Andrew J. McCumber, Esquire

SLOTCHIVER & SLOTCHIVER, LLP

44 State Street
Charleston, SC 29401
Phone: (843) 577-6531
Facsimile: (843) 577-0261
andrew@slotchiverlaw.com
S.C. Bar No. 101559

or

Daniel S. Slotchiver, Esquire

SLOTCHIVER & SLOTCHIVER, LLP

44 State Street
Charleston, SC 29401
Phone: (843) 577-6531
Facsimile: (843) 577-0261
dan@slotchiverlaw.com
S.C. Bar No. 15129

Attorneys for Defendant

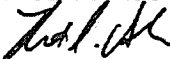
Charleston, SC
January 8, 2016

12-5887

CERTIFICATE OF SERVICE

I certify that I served the foregoing Fifth Amended Answer, Affirmative Defenses and Counterclaims and Crossclaim upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this 8th day of January, 2016.

HALVERSEN & ASSOCIATES, LLC

By: 

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Charleston, SC
January 8, 2015

FILED
2016 JAN - 8 PM 2:36
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
 Bank of North Carolina,)
 Plaintiff,)
 vs.)
 Anthony Whitfield and)
 Cindy Whitfield)
 Defendants.)
 Anthony Whitfield)
 Third Party Plaintiff)
 vs.)
 David Swanson)
 Third Party Defendant)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 2012-CP-08-2618

**THIRD PARTY DEFENDANT DAVID
 SWANSON'S ANSWER TO
 DEFENDANT/THIRD PARTY
 PLAINTIFF'S FIFTH AMENDED
 ANSWER AFFIRMATIVE DEFENSES,
 CROSSCLAIM, COUNTERCLAIMS AND
 THIRD PARTY COMPLAINT
 (JURY TRIAL DEMANDED)**

FILED
 APR 11 PM 1:57
 CLERK OF COURT
 COUNTY, SC

TO: BRENT HALVERSEN, ESQ. AND DANIEL SLOCHIVER, ESQ., ATTORNEYS FOR
 DEFENDANT/THIRD PARTY PLAINTIFF ANTHONY WHITFIELD:

Third Party Defendant David Swanson hereby responds to the above-captioned Third Party
 Plaintiff's Complaint as follows:

1. The Allegations contained in Paragraphs 1 through 10 of Defendant's Fourth
 Answer, Crossclaim, Counterclaims and Third Party Complaint (hereinafter "Third Party
 Complaint") assert defenses to Plaintiff's Complaint, to which Third Party Defendant need not
 respond. To the extent the allegations in Paragraphs 1 through 10 suggest or imply liability against
 the Third Party Defendant, those allegations are expressly denied.

2. Third Party Defendant is without sufficient knowledge and information to form an
 opinion as to the allegations contained in Paragraphs 11 through 55 of the Third Party Complaint,
 and therefore denies the same.

SRK

3721106v.1

3. Responding to the allegations contained in Paragraphs 56 and 57 of the Third Party Complaint, Third Party Defendant admits only so much of the allegations as to indicate Third Party Defendant had a conversation with Scott Warren regarding a title endorsement, and both parties to that conversation have testified under oath concerning the existence of that conversation and the substance thereof. Third Party Defendant denies the remainder of the allegations contained in Paragraphs 56 and 57.

4. Third Party Defendant denies the allegations contained in Paragraphs 58 and 59 of the Third Party Complaint.

5. Responding to Paragraph 60 of the Third Party Complaint, Third Party Defendant admits only so much of the allegations as to indicate Third Party Defendant had a conversation with Scott Warren regarding a title endorsement, and both parties to that conversation have testified under oath concerning the existence of that conversation and the substance thereof. Third Party Defendant denies the remainder of the allegations contained in Paragraph 60.

6. Third Party Defendant denies the allegations contained in Paragraphs 61 and 62 of the Third Party Complaint.

7. In response to Paragraph 63 of the Third Party Complaint, Third Party Defendant repeats and re-alleges every preceding paragraph of this Third Party Answer as if restated herein verbatim.

8. Responding to Paragraphs 64 and 65 of the Third Party Complaint, Third Party Defendant admits only so much of the allegations as to indicate Third Party Defendant had a conversation with Scott Warren regarding a title endorsement, and both parties to that conversation have testified under oath concerning the existence of that conversation and the substance thereof. Third Party Defendant denies the remainder of the allegations contained in Paragraphs 64 and 65.

9. Third Party Defendant denies the allegations contained in Paragraphs 66 and 67 of the Third Party Complaint.

10. Responding to Paragraph 68 of the Third Party Complaint, Third Party Defendant admits only so much of the allegations as to indicate Third Party Defendant had a conversation with Scott Warren regarding a title endorsement, and both parties to that conversation have testified under oath concerning the existence of that conversation and the substance thereof. Third Party Defendant denies the remainder of the allegations contained in Paragraph 68.

11. Third Party Defendant denies the allegations contained in Paragraphs 69 through 72 of the Third Party Complaint.

12. In response to Paragraph 73 of the Third Party Complaint, Third Party Defendant repeats and re-alleges every preceding paragraph of this Third Party Answer as if restated herein verbatim.

13. Third Party Defendant is without sufficient knowledge and information to form an opinion as to the allegations contained in Paragraphs 74 through 77 of the Third Party Complaint, and therefore denies the same.

14. Defendant denies each and every allegation not specifically admitted herein.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

15. Third Party Plaintiff's Complaint fails to allege facts sufficient to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6), SCRPC.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

16. Third Party Defendant was at all times acting as an attorney in the course and scope of providing legal services to his client and is immune from liability to third-parties such as Third Party Plaintiff.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

17. No act or omission of Third Party Defendant was the cause of any damages to Third Party Plaintiff.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

18. Third Party Plaintiff's claims against Third Party Defendant are barred to the extent relief is obtainable from other avenues.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

19. Third Party Plaintiff lacks standing to pursue one or more claims against Third Party Defendant.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

20. Third Party Plaintiff's claims are or may be barred by the doctrines of waiver, estoppel and/or unclean hands.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

21. At all relevant times, Third Party Defendant exercised the necessary degree of care and skill maintained by other attorneys under similar conditions and in like circumstances.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

22. Third Party Plaintiff's Complaint alleges duplicative causes of action that should be dismissed or merged as provided by law.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

23. Third Party Plaintiff's Complaint fails to state a claim upon which attorney's fees can be awarded or allege facts which, if proven, would entitle Third Party Plaintiff to an award of attorney's fees.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

24. Third Party Plaintiff's Complaint fails to state a claim upon which treble damages can be awarded or allege facts which, if proven, would entitle Third Party Plaintiff to an award of treble damages.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

25. Third Party Plaintiff's Complaint fails to state a claim upon which punitive damages can be awarded or allege facts which, if proven, would entitle Third Party Plaintiff to an award of punitive damages.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

26. Any award of punitive or exemplary damages in this action would be in violation of the rights of Third Party Defendant under the United States Constitution and the Constitution of the State of South Carolina.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

27. Third Party Defendant reserves any additional and further defenses that may be revealed by information obtained during the course of investigation and discovery as consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the allegations of Third Party Plaintiff's Complaint, Third Party Defendant prays that Third Party Plaintiff's Complaint be dismissed with prejudice, for all costs of the action to be cast upon Third Party Plaintiff, and for such other and further relief as this Court may deem just and proper.

This 4 day of April, 2016.

Respectfully submitted,

EARHART OVERSTREET LLC

By: 

DAVID W. OVERSTREET

State Bar No.: 16965

MICHAEL B. MCCALL

State Bar No.: 73028

STEVEN R. KROPSKI

State Bar No.: 101441

Attorneys for Third Party Defendant David Swanson

PO Box 22528
Charleston, SC 29413
843-972-9400

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
 Bank of North Carolina,)
 Plaintiff,)
 vs.)
 Anthony Whitfield and)
 Cindy Whitfield)
 Defendants.)
 Anthony Whitfield)
 Third Party Plaintiff)
 vs.)
 David Swanson)
 Third Party Defendant)

) IN THE COURT OF COMMON PLEAS
) CASE NO.: 2012-CP-08-2618

CERTIFICATE OF SERVICE

2016 APR 11 PM 1:58
 MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC
 FILED

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by via electronic mail or by depositing a true copy of same via in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Brent S. Halverson, Esq.
 Halverson & Associates, LLC
 171 Church Street, Suite 300
 Charleston, SC 29401

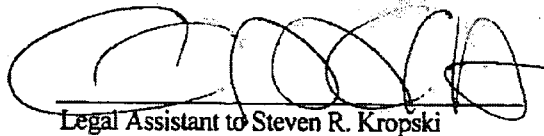
Andrew J. McCumber, Esq.
 Daniel S. Slotchiver, Esq.
 Slotchiver & Slotchiver, LLP
 44 State Street
 Charleston, SC 29401

Brian C. Duffy, Esq.
 Seth W. Whitaker, Esq.

Stephen Jenkins Bell, Esq.
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401

Robert A. Bernstein, Esq.
Bernstein & Bernstein PA
5418-B Rivers Avenue
North Charleston, SC 29406

This 4th day of April, 2016.



Legal Assistant to Steven R. Kropski

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Bank of North Carolina,)
Plaintiff,)
vs.)
Anthony Whitfield and)
Cindy Whitfield)
Defendants.)
Anthony Whitfield)
Third Party Plaintiff)
vs.)
David Swanson)
Third Party Defendant)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2012-CP-08-3478
**THIRD PARTY DEFENDANT DAVID
SWANSON'S ANSWER TO
DEFENDANT/THIRD PARTY
PLAINTIFF'S FOURTH AMENDED
ANSWER AFFIRMATIVE DEFENSES,
CROSSCLAIM, COUNTERCLAIMS AND
THIRD PARTY COMPLAINT
(Jury Trial Demanded)**

APR - 7 AM 11:58
CLERK OF COURT
COURT HOUSE

TO: BRENT HALVERSEN, ESQ. AND DANIEL SLOCHIVER, ESQ., ATTORNEYS FOR
DEFENDANT/THIRD PARTY PLAINTIFF ANTHONY WHITFIELD:

Third Party Defendant David Swanson hereby responds to the above-captioned Third Party
Plaintiff's Complaint as follows:

1. The Allegations contained in Paragraphs 1 through 10 of Defendant's Fourth Answer, Crossclaim, Counterclaims and Third Party Complaint (hereinafter "Third Party Complaint") assert defenses to Plaintiff's Complaint, to which Third Party Defendant need not respond. To the extent the allegations in Paragraphs 1 through 10 suggest or imply liability against the Third Party Defendant, those allegations are expressly denied.
2. Third Party Defendant is without sufficient knowledge and information to form an opinion as to the allegations contained in Paragraphs 11 through 55 of the Third Party Complaint, and therefore denies the same.

SRK

3721106v.1

3. Responding to the allegations contained in Paragraphs 56 and 57 of the Third Party Complaint, Third Party Defendant admits only so much of the allegations as to indicate Third Party Defendant had a conversation with Scott Warren regarding a title endorsement, and both parties to that conversation have testified under oath concerning the existence of that conversation and the substance thereof. Third Party Defendant denies the remainder of the allegations contained in Paragraphs 56 and 57.

4. Third Party Defendant denies the allegations contained in Paragraphs 58 and 59 of the Third Party Complaint.

5. Responding to Paragraph 60 of the Third Party Complaint, Third Party Defendant admits only so much of the allegations as to indicate Third Party Defendant had a conversation with Scott Warren regarding a title endorsement, and both parties to that conversation have testified under oath concerning the existence of that conversation and the substance thereof. Third Party Defendant denies the remainder of the allegations contained in Paragraph 60.

6. Third Party Defendant denies the allegations contained in Paragraphs 61 and 62 of the Third Party Complaint.

7. In response to Paragraph 63 of the Third Party Complaint, Third Party Defendant repeats and re-alleges every preceding paragraph of this Third Party Answer as if restated herein verbatim.

8. Responding to Paragraphs 64 and 65 of the Third Party Complaint, Third Party Defendant admits only so much of the allegations as to indicate Third Party Defendant had a conversation with Scott Warren regarding a title endorsement, and both parties to that conversation have testified under oath concerning the existence of that conversation and the substance thereof. Third Party Defendant denies the remainder of the allegations contained in Paragraphs 64 and 65.

9. Third Party Defendant denies the allegations contained in Paragraphs 66 and 67 of the Third Party Complaint.

10. Responding to Paragraph 68 of the Third Party Complaint, Third Party Defendant admits only so much of the allegations as to indicate Third Party Defendant had a conversation with Scott Warren regarding a title endorsement, and both parties to that conversation have testified under oath concerning the existence of that conversation and the substance thereof. Third Party Defendant denies the remainder of the allegations contained in Paragraph 68.

11. Third Party Defendant denies the allegations contained in Paragraphs 69 through 72 of the Third Party Complaint.

12. In response to Paragraph 73 of the Third Party Complaint, Third Party Defendant repeats and re-alleges every preceding paragraph of this Third Party Answer as if restated herein verbatim.

13. Third Party Defendant is without sufficient knowledge and information to form an opinion as to the allegations contained in Paragraphs 74 through 77 of the Third Party Complaint, and therefore denies the same.

14. Defendant denies each and every allegation not specifically admitted herein.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

15. Third Party Plaintiff's Complaint fails to allege facts sufficient to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

16. Third Party Defendant was at all times acting as an attorney in the course and scope of providing legal services to his client and is immune from liability to third-parties such as Third Party Plaintiff.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

17. No act or omission of Third Party Defendant was the cause of any damages to Third Party Plaintiff.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

18. Third Party Plaintiff's claims against Third Party Defendant are barred to the extent relief is obtainable from other avenues.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

19. Third Party Plaintiff lacks standing to pursue one or more claims against Third Party Defendant.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

20. Third Party Plaintiff's claims are or may be barred by the doctrines of waiver, estoppel and/or unclean hands.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

21. At all relevant times, Third Party Defendant exercised the necessary degree of care and skill maintained by other attorneys under similar conditions and in like circumstances.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

22. Third Party Plaintiff's Complaint alleges duplicative causes of action that should be dismissed or merged as provided by law.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

23. Third Party Plaintiff's Complaint fails to state a claim upon which attorney's fees can be awarded or allege facts which, if proven, would entitle Third Party Plaintiff to an award of attorney's fees.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

24. Third Party Plaintiff's Complaint fails to state a claim upon which treble damages can be awarded or allege facts which, if proven, would entitle Third Party Plaintiff to an award of treble damages.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

25. Third Party Plaintiff's Complaint fails to state a claim upon which punitive damages can be awarded or allege facts which, if proven, would entitle Third Party Plaintiff to an award of punitive damages.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

26. Any award of punitive or exemplary damages in this action would be in violation of the rights of Third Party Defendant under the United States Constitution and the Constitution of the State of South Carolina.

**FURTHER RESPONDING TO THE THIRD PARTY COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

27. Third Party Defendant reserves any additional and further defenses that may be revealed by information obtained during the course of investigation and discovery as consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the allegations of Third Party Plaintiff's Complaint, Third Party Defendant prays that Third Party Plaintiff's Complaint be dismissed with prejudice, for all costs of the action to be cast upon Third Party Plaintiff, and for such other and further relief as this Court may deem just and proper.

This 4 day of April, 2016.

Respectfully submitted,

EARHART OVERSTREET LLC

By: 

DAVID W. OVERSTREET
State Bar No.: 16965

MICHAEL B. MCCALL
State Bar No.: 73028

STEVEN R. KROPSKI
State Bar No.: 101441

Attorneys for Third Party Defendant David
Swanson

PO Box 22528
Charleston, SC 29413
843-972-9400

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
 Bank of North Carolina,)
 Plaintiff,)
 vs.)
 Anthony Whitfield and)
 Cindy Whitfield)
 Defendants.)
 Anthony Whitfield)
 Third Party Plaintiff)
 vs.)
 David Swanson)
 Third Party Defendant)

) IN THE COURT OF COMMON PLEAS
) CASE NO.: 2012-CP-08-3478

CERTIFICATE OF SERVICE

2016 APR -7 AM 11:56
 FILED
 MARY P. DROWN
 CLERK OF COURT
 BERKELEY COUNTY

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by via electronic mail or by depositing a true copy of same via in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Brent S. Halverson, Esq.
 Halverson & Associates, LLC
 171 Church Street, Suite 300
 Charleston, SC 29401

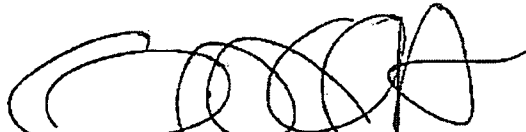
Andrew J. McCumber, Esq.
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 Seth W. Whitaker, Esq.

Stephen Jenkins Bell, Esq.
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401

Robert A. Bernstein, Esq.
Bernstein & Bernstein PA
5418-B Rivers Avenue
North Charleston, SC 29406

This 4th day of April, 2016.



Legal Assistant to Steven R. Kropski

State of South Carolina) In the Common Pleas Court
County of Berkeley) Ninth Judicial Circuit

Bank of North Carolina,) Transcript of Record
) 2012-CP-08-2618
) 2012-CP-08-3478

) 2012-CP-08-3478
) 2012-CP-08-3478
Anthony M. Whitfield, et al.,)
) 2012-CP-08-3478
) Defendant.)

September 20, 2016

Moncks Corner, South Carolina

B E F O R E:

The Honorable Markley Dennis, Jr., Presiding Judge

A P P E A R A N C E S:

Michael B. McCall, Esquire
Attorney for David Swanson

Stephen Bell, Esquire
Attorney for Bank of North Carolina

Brent Halversen, Esquire
Daniel S. Slotchiver, Esquire
Attorneys for Anthony Whitfield

SHARON L. VIZER
CIRCUIT COURT REPORTER

I N D E X

Motion to Alter/Amend.....3
Certificate of Reporter.....11

** NO EXHIBITS WERE MARKED **

1 Tuesday, September 20, 2016

2 THE COURT: Thank you all. I appreciate you
3 coming. I've had an opportunity to review in detail your
4 memorandums and, of course, they are incorporated for
5 purposes of review.

6 Let me just tell you where I am and maybe we can
7 shorten it a little bit, and I think probably you're
8 right. I just started focussing on the right to add a
9 thirty party instead of focussing on where that matter
10 would be tried.

11 You have filed the original filing, apparently.
12 I'm assuming this, because I don't have access to the
13 Dorchester file or Berkeley file. Judge Nicholson,
14 apparently, allowed you to add to sue David Swanson, and
15 that was in the Charleston case, and I think that was the
16 first filing. And that case, in looking at it,
17 hurriedly, and I don't have the depth and understanding
18 that y'all bring to this courtroom, but it's a
19 conspiracy, civil conspiracy and abuse of process.

20 All of those damages, unlike the foreclosure, are
21 not confined to Charleston. Wherever those damages
22 occurred you'd be entitled to present those damages in
23 that trial because the civil conspiracy is obviously
24 separate and apart, and how that's affected, a lot of
25 things. Of course, those damages would be all of the

1 actions if, in fact, you prevail on that issue because
2 you say what you did affected every one of those
3 properties, and that's the abuse of process.

4 I agree I missed it. Judge Goodstein is right.
5 That's an action that is only tried one time, and the
6 foreclosure is separate because it is a separate
7 contract for each one of them and it has to be litigated
8 in that locale, aside from the fact that it deals with
9 property as well.

10 But clearly, clearly to me I think the motion to
11 dismiss is proper because -- and I think I was caught up
12 in the fact that you have a right to litigate that. I
13 think that's correct, but I think you picked the forum or
14 venue for that for my purpose, and that was Charleston.
15 If you want to dismiss Charleston and go in Berkeley
16 that's fine but you can only go in one place for the tort
17 actions, in my opinion.

18 Now, you've briefed it thoroughly, and I appreciate
19 that, and you've alluded to some damages that may be
20 different in different places and different tweaks and
21 I'm not trying to -- I'm oversimplifying it, but that to
22 me is what you are saying.

23 But that, really, you are not prohibited from
24 addressing those in the lawsuit in Charleston because how
25 does a civil conspiracy only confine itself to

1 Charleston? I guess that's my question.

2 MR. HALVERSEN: I understand your thoughts and
3 concerns. I guess if what you are saying then is that
4 the damages that happened up here in Berkeley County
5 associated with the loss of the property here in Berkeley
6 County we can still claim those in the Charleston action.

7 THE COURT: I'm not ruling on that. I'm just
8 simply stating that to me this is always the question,
9 and it's sort of a law school question that I don't know
10 the answer to, so start back from the get-go. If you
11 have an automobile accident here, they have to take you
12 to Charleston, let's say the ambulance has a wreck in
13 Charleston and further damages you. You aren't
14 restricted to only the act, the damages that occurred in
15 Berkeley County. This is a false grab situation.
16 Whatever started and the ball started rolling from the
17 accident anything that happened, I think, is a legitimate
18 relevant damage of the action.

19 I think the same is true here because otherwise,
20 otherwise it has to be, because if you didn't the point
21 is well taken. You can have really -- well, you've got
22 two, three counties. You can have at least three
23 different rulings on what the damages are because the
24 damages are the same.

25 MR. HALVERSEN: I understand the Court's concern

1 with the damages. The liability issues though have
2 separate issues as well.

3 THE COURT: But you only get to try the liability
4 one time.

5 MR. HALVERSEN: Right.

6 THE COURT: This way you would be trying the
7 liability -- for instance, Charleston jury could say,
8 Yeah, you're right. There was a civil conspiracy and
9 abuse of process.

10 Berkeley jury could say, Uh-Uh, I don't think so.
11 I don't think that's correct.

12 Well, now what do we do?

13 MR. HALVERSEN: Well, the liability issues are
14 distinct in that the bank is claiming that they didn't
15 rely on Mr. Swanson's advice for -- they claim that
16 Swanson's advice was particularized to the Charleston
17 County action.

18 THE COURT: Well, I understand that, and that's
19 where your point is. Your point is no, it's not. It
20 applied to all of them, and you have to prove that. But
21 aside from that you don't -- so you're saying, well -- I
22 don't see how in the world -- well, let me hear the
23 argument that you are going to say, well, if we win in
24 Charleston then you can't bring Berkeley conspiracy down
25 in Charleston. I just don't see that. I don't see how

1 you can.

2 I mean, the damages from a tort are whenever they
3 occur. They are confined to the instant, the minute --
4 for instance, when they were talking your theory is that
5 they applied that advice across the board, correct?

6 MR. HALVERSEN: Correct, Your Honor.

7 THE COURT: And so how do you -- that will be an
8 interesting argument, but I don't see how the Court can
9 stop you from bringing in testimony of how it affected
10 every -- because what you are trying there is not the
11 foreclosure. You are trying the actions taken by the
12 bank and the actions by Mr. Swanson in abuse of process.
13 I'll be happy to hear from you. What's your position?

14 MR. MCCALL: Your Honor, I don't think that whether
15 Mr. Swanson is a party or not in these or any of these
16 cases will affect Mr. Whitfield's ability to challenge
17 the bank's defenses as it typically would.

18 THE COURT: I agree with you. To me that's the
19 other part. I mean, this thing is really -- we are
20 mixing, I think. There's a separate action, third party
21 action against Mr. Swanson, you did this. But what he
22 did you are saying caused the bank to do things that it
23 shouldn't have done, correct? For instance, you say you
24 should not have foreclosed.

25 MR. HALVERSEN: They are relying on that.

1 THE COURT: I understand that but, first of all, do
2 you get to sue the lawyer for giving bad advice?

3 MR. HALVERSEN: Well, we are not -- it's the
4 lawyer's client --

5 THE COURT: That's correct.

6 MR. HALVERSEN: -- but what we've been able to
7 establish through evidence is that there was no evidence
8 that the lawyer was ever contacted at the time which is a
9 very serious claim.

10 THE COURT: Well, therein lies the initial -- the
11 threshold. Then if the lawyer was never contacted then
12 the bank didn't -- they did something they shouldn't have
13 done and it goes to prove that. So it really doesn't
14 have -- again, that doesn't affect at all one way or the
15 other because you have that right, I think, in any of the
16 causes of action. That's just relevant -- is it relevant
17 to what you are arguing? Of course, it is.

18 I mean, it's relevant to the foreclosure in
19 Dorchester, it's relevant to the foreclosure in Berkeley,
20 it's relevant to the foreclosure in Charleston;
21 therefore, the jury would hear it.

22 What I'm focussing on is there's something else
23 that's a separate cause of action that you say I've been
24 damaged by your actions and there are costs, and I think
25 you can pick one place to try it. You filed an answer to

1 the third party action in Charleston.

2 MR. MCCALL: In Charleston, and we haven't moved to
3 dismiss Charleston.

4 THE COURT: I understand that and I checked that.
5 That was the other part. I wanted to make sure and
6 you're not. There's an answer filed in Charleston.
7 That's where that will be litigated. So I'm going to
8 grant your motion based on the memorandum, and your
9 position is well stated in your memo for purposes of
10 this. Okay?

11 MR. HALVERSEN: Thank you, Your Honor.

12 THE COURT: Thank you all.

13 MR. MCCALL: Your Honor, could I add, I believe the
14 Charleston County pleadings were handed up at the initial
15 motion to dismiss hearing. I've got copies of all of
16 them for the record if Your Honor --

17 THE COURT: I'll take judicial notice because I
18 looked at them yesterday.

19 MR. MCCALL: Okay.

20 THE COURT: I mean, I went online and reviewed
21 those and to be sure because the thing that I was
22 focussing on you can't have a motion to dismiss in each
23 county and say we can't do that here, you have to do it
24 somewhere else. But I read Judge Goodstein's order and I
25 realized that what I was focussing on is your right to

1 bring this action that you brought, and it's there and it
2 will be litigated, so thank you.

3 MR. MCCALL: Thank you, Your Honor.

4 MR. HALVERSEN: Thank you, Your Honor.

5 THE COURT: You bet. Thank you all very much for
6 coming up and battling the traffic. I hope you have a
7 good day.

8 MR. HALVERSEN: You too.

9 (WHEREUPON, the hearing was concluded.)

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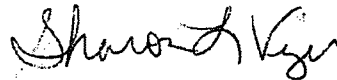
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C E R T I F I C A T E

I, Sharon L. Vizer, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 20th day of September 2016.

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

February 7, 2017



SHARON L. VIZER

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF BERKLEY

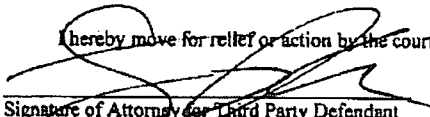
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Bank of North Carolina,)
)
 Plaintiff,)
)
 vs.)
)
 Whitfield, et al.)
)
 Defendant,)
)
)
)
 Anthony Whitfield)
)
 Third Party Plaintiff)
)
 v.)
)
 David Swanson)
)
 Third Party Defendant.)

CASE NO.: 2012-CP-08-2618

**MOTION INFORMATION FORM
AND COVER SHEET**

Check box above indicating submitting party.

<u>Third Party Plaintiff's Counsel</u> Brent S Halverson, Esq. Halverson & Associates, LLC 171 Church Street, Suite 300 Charleston, SC 29401 Daniel S. Slotchiver, Esq. Slotchiver & Slotchiver, LLP 44 State Street Charleston, SC 29401	<u>Attorneys for Third Party Defendant</u> David W. Overstreet, Esq. State Bar No.: 16965 Steven R. Kropski, Esq. State Bar No.: 101441 Earhart Overstreet LLC P.O. Box 22528 Charleston, SC 29413 (843) 972-9400
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<p style="text-align: center;">SECTION I: Hearing Information</p> Nature of Motion: Motion to Strike/Dismiss Estimated Time Needed: 15mins Court Reporter Needed: yes	
<p style="text-align: center;">SECTION II: Motion Type</p> <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for Third Party Defendant Date: 4/4/16	
<p style="text-align: center;">SECTION III: Motion Fee</p> <input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
<p style="text-align: center;">JUDGE'S SECTION</p> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE _____ CODE: _____ Date: _____
<p style="text-align: center;">CLERK'S VERIFICATION</p> Collected by: <u>JOM</u> (print name) <input type="checkbox"/> MOTION FEE COLLECTED: <u>25.00</u> <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____ <p style="text-align: right;">DATE FILED</p>	

2016 APR -7 PM 12:12
 CLERK OF COURT
 BERKLEY COUNTY, SC

25.00

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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Bank of North Carolina,)
Plaintiff,)
vs.)
Anthony Whitfield and)
Cindy Whitfield)
Defendants.)
Anthony Whitfield)
Third Party Plaintiff)
vs.)
David Swanson)
Third Party Defendant)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2012-CP-08-2618

**THIRD PARTY DEFENDANT DAVID
SWANSON'S MOTION TO STRIKE OR
DISMISS DEFENDANT/THIRD
PLAINTIFF'S COMPLAINT
(JURY TRIAL DEMANDED)**

FILED
2012 APR -7 PM 12:12
MARY FERRELL
CLERK OF COURT
BERKELEY COUNTY, SC

TO: BRENT HALVERSEN, ESQ. AND DANIEL SLOTCHIVER, ESQ., ATTORNEYS FOR
DEFENDANT/THIRD PARTY PLAINTIFF ANTHONY WHITFIELD:

YOU WILL PLEASE TAKE NOTICE that Third Party Defendant David Swanson ("Swanson"), by and through his undersigned attorneys, will move before the presiding Judge in the Court of Common Pleas for an Order dismissing and/or striking Defendant/Third Party Plaintiff's Complaint against him in the above-captioned case. This Motion is brought pursuant to Rule 12(b)(8), 12(f) and 14(a), SCRCP, and upon such other law and argument as is appropriate. This Motion is based on the pleadings, and any memoranda of law to be submitted prior to oral argument.

BACKGROUND

This action is one of six foreclosures initiated by Plaintiffs against Defendant arising out of his failure to pay loans held by the Plaintiff. Currently pending are: Civil Action 2012-CP-10-5887 in

DM

Charleston County; Civil Actions 2014-CP-18-358, 2014-CP-18-1792, 2014-CP-18-1793 in Dorchester County; and Civil Actions 2012-CP-08-2618, and 2012-CP-08-3478 in Berkley County.

Defendant/Third Party Plaintiff has interposed identical Third Party Claims against David Swanson and the Plaintiff in all six of the foreclosures, which have no connection to Defendant's liability to Plaintiff in its foreclosure action. In all six Third Party Complaints, Defendant/Third Party Plaintiff alleges claims for "abuse of process" and "civil conspiracy" alleging that Swanson and a bank representative lied about the existence of a phone call in order to "fabricate" a defense to Defendant's Counterclaims against the bank. The Third Party Complaint alleges:

- Warren claims he called Mr. David Swanson for advice to procure a title endorsement in order to renew the loan for the Black Rush Property. (Charleston Third Party Compl. ¶¶66, 74; Dorchester/Berkley Third Party Compl. ¶¶56, 64).
- Swanson claims that Mr. Scott Warren called him regarding the anticipated closing between Mr. Whitfield and Harbor National Bank. (Charleston Third Party Compl. ¶¶67, 75; Dorchester/Berkley Third Party Compl. ¶¶57, 65).
- Despite providing such sworn testimony...there is no evidence of any such phone call. (Charleston Third Party Compl. ¶¶68, 76; Dorchester/Berkley Third Party Compl. ¶¶58, 66).
- [T]he sworn testimony that the call was made...was given for the ulterior purpose of fabricating a legal defense for the bank's failure to renew its contractual obligations to renew Mr. Whitfield's loans. (Charleston Third Party Compl. ¶¶69, 77; Dorchester/Berkley Third Party Compl. ¶¶59, 67).

Defendant/Third Party Plaintiff alleges that the purported "abuse of process" has caused him emotional harm (Charleston Third Party Compl. ¶72; Dorchester/Berkley Third Party Compl. ¶62), while the alleged "civil conspiracy" has caused him damages in the form of "attorney's fees and costs incurred associated with Harbor National Bank's advice of counsel defense." (Charleston Third Party Compl. ¶82; Dorchester/Berkley Third Party Compl. ¶72).

BRIEF ARGUMENT

The allegations in all six of Defendant/Third Party Plaintiff's Third Party Complaints are identical. The Parties are actively engaged in litigating the exact same claims in the Charleston County Foreclosure action, which was filed approximately two months prior to the Third Party Complaint in the Dorchester County Foreclosure actions.

Additionally, Third Party Plaintiff's claims for "abuse of process" and "civil conspiracy" relate exclusively to the "Black Rush Property", which is located in Charleston County. The Third Party claims have no relationship to the properties located in Berkley County.

A first filed action between the exact same parties, litigating identical claims, is already pending in Charleston County. To require the trial of the exact same claims in six different lawsuits would be an undue burden on the parties and the Court, in addition to presenting the possibility of inconsistent verdicts in each case. Accordingly, Dismissal is proper under Rule 12(b)(8), SCRPC.

Furthermore, the Third Party Claims have no relationship to the Property that is the subject of this Foreclosure, nor do they relate in any way to the Plaintiff's claims against Defendant. "When considering a request to strike...a third-party claim, the court may properly consider the effect the additional parties and claims will have on the adjudication of the main action-in particular, whether continued joinder will serve to complicate the litigation unduly or will prejudice the other parties in any substantial way." *Beach v. Hudson*, 298 S.C. 424, 426 (Ct. App. 1989). "A third-party claim may be asserted...only when the third party's liability is in some way dependent on the outcome of the main claim or when the third party is secondarily liable to defendant." *Id.* (citing, 6 C. WRIGHT AND A. MILLER, FEDERAL PRACTICE AND PROCEDURE §1446 at 246 (1971) (emphasis added).

Here, the "abuse of process" and "civil conspiracy" claims clearly do not allege that Swanson can be held secondarily liability to the Plaintiff. Likewise, they will not be impacted by the outcome of the Foreclosure. Accordingly, the third party claims against Swanson should be struck.

CONCLUSION

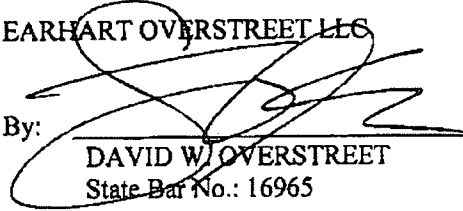
Third Party Plaintiff's Complaint alleged claims that are already being litigated in a first filed Charleston County lawsuit. Moreover, the Third Party claims have no relationship to Defendant's liability to Plaintiff for their Foreclosure action, nor are they dependent on the outcome of the Foreclosure action. Accordingly, Third Party Defendant Swanson prays that Third Party Plaintiff's Complaint be dismissed with prejudice or Struck from this action, for all costs of the action to be cast upon Third Party Plaintiff, and for such other and further relief as this Court may deem just and proper.

This 4 day of April, 2016.

Respectfully submitted,

EARHART OVERSTREET LLS

By:


DAVID W. OVERSTREET
State Bar No.: 16965

MICHAEL B. MCCALL
State Bar No.: 73028

STEVEN R. KROPSKI
State Bar No.: 101441

Attorneys for Defendant David Swanson

PO Box 22528
Charleston, SC 29413
843-972-9400

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) CASE NO.: 2012-CP-08-2618

COUNTY OF BERKELEY

Bank of North Carolina,

Plaintiff,

vs.

Anthony Whitfield and
Cindy Whitfield

Defendants.

Anthony Whitfield

Third Party Plaintiff

vs.

David Swanson

Third Party Defendant

CERTIFICATE OF SERVICE

TSM
FILED
2018 APR -7 PM 12: 12
MARIA F. GUNWALD
CLERK OF COURT
BERKELEY COUNTY, SC

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by via electronic mail or by depositing a true copy of same via in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Brent S. Halverson, Esq.
Halverson & Associates, LLC
171 Church Street, Suite 300
Charleston, SC 29401

Andrew J. McCumber, Esq.
Daniel S. Slotchiver, Esq.
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401


Brian C. Duffy, Esq.
Seth W. Whitaker, Esq.

TSM

Stephen Jenkins Bell, Esq.
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401

Robert A. Berstein, Esq.
Berstein & Berstein PA
5418-B Rivers Avenue
North Charleston, SC 29406

This 1st day of April, 2016.



Legal Assistant to Michael B. McCall

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF BERKLEY

Bank of North Carolina,

CASE NO.: 2012-CP-08-3478

Plaintiff,

vs.

**MOTION INFORMATION FORM
AND COVER SHEET**

Whitfield, et al.

Defendant,

Anthony Whitfield

Third Party Plaintiff

v.

David Swanson

Third Party Defendant.

Check box above indicating submitting party.

<u>Third Party Plaintiff's Counsel</u> Brent S Halverson, Esq. Halverson & Associates, LLC 171 Church Street, Suite 300 Charleston, SC 29401 Daniel S. Slotchiver, Esq. Slotchiver & Slotchiver, LLP 44 State Street Charleston, SC 29401	<u>Attorneys for Third Party Defendant</u> David W. Overstreet, Esq. State Bar No.: 16965 Steven R. Kropski, Esq. State Bar No.: 101441 Earhart Overstreet LLC P.O. Box 22528 Charleston, SC 29413 (843) 972-9400
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion to Strike/Dismiss Estimated Time Needed: 15mins Court Reporter Needed: yes	
SECTION II: Motion Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion	
I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for Third Party Defendant	Date: 4/14/16
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court, or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other:	
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<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE CODE: _____ Date: _____
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 2016 APR 11 PM 2:52
 CLERK OF COURT
 BERKLEY COUNTY, SC

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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Bank of North Carolina,)
Plaintiff,)
vs.)
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Cindy Whitfield)
Defendants.)
Anthony Whitfield)
Third Party Plaintiff)
vs.)
David Swanson)
Third Party Defendant)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2012-CP-08-3478

THIRD PARTY DEFENDANT DAVID SWANSON'S MOTION TO STRIKE OR DISMISS DEFENDANT/THIRD PLAINTIFF'S COMPLAINT (JURY TRIAL DEMANDED)

FILED
2016 APR 11 PM 2:52
CLERK OF COURT
BERKELEY COUNTY, SC

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Additionally, Third Party Plaintiff's claims for "abuse of process" and "civil conspiracy" relate exclusively to the "Black Rush Property", which is located in Charleston County. The Third Party claims have no relationship to the properties located in Berkley County.

A first filed action between the exact same parties, litigating identical claims, is already pending in Charleston County. To require the trial of the exact same claims in six different lawsuits would be an undue burden on the parties and the Court, in addition to presenting the possibility of inconsistent verdicts in each case. Accordingly, Dismissal is proper under Rule 12(b)(8), SCRPC.

Furthermore, the Third Party Claims have no relationship to the Property that is the subject of this Foreclosure, nor do they relate in any way to the Plaintiff's claims against Defendant. "When considering a request to strike...a third-party claim, the court may properly consider the effect the additional parties and claims will have on the adjudication of the main action-in particular, whether continued joinder will serve to complicate the litigation unduly or will prejudice the other parties in any substantial way." *Beach v. Hudson*, 298 S.C. 424, 426 (Ct. App. 1989). "A third-party claim may be asserted...only when the third party's liability is in some way dependent on the outcome of the main claim or when the third party is secondarily liable to defendant." *Id.* (citing, 6 C. WRIGHT AND A. MILLER, FEDERAL PRACTICE AND PROCEDURE §1446 at 246 (1971) (emphasis added).

Here, the "abuse of process" and "civil conspiracy" claims clearly do not allege that Swanson can be held secondarily liability to the Plaintiff. Likewise, they will not be impacted by the outcome of the Foreclosure. Accordingly, the third party claims against Swanson should be struck.

CONCLUSION


Third Party Plaintiff's Complaint alleged claims that are already being litigated in a first filed Charleston County lawsuit. Moreover, the Third Party claims have no relationship to Defendant's liability to Plaintiff for their Foreclosure action, nor are they dependent on the outcome of the Foreclosure action. Accordingly, Third Party Defendant Swanson prays that Third Party Plaintiff's Complaint be dismissed with prejudice or Struck from this action, for all costs of the action to be cast upon Third Party Plaintiff, and for such other and further relief as this Court may deem just and proper.

This 4 day of April, 2016.

Respectfully submitted,

EARHART OVERSTREET LLC

By:


DAVID W. OVERSTREET
State Bar No.: 16965

MICHAEL B. MCCALL
State Bar No.: 73028

STEVEN R. KROPSKI
State Bar No.: 101441

Attorneys for Defendant David Swanson

PO Box 22528
Charleston, SC 29413
843-972-9400

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
 Bank of North Carolina,)
 Plaintiff,)
 vs.)
 Anthony Whitfield and)
 Cindy Whitfield)
 Defendants.)
 Anthony Whitfield)
 Third Party Plaintiff)
 vs.)
 David Swanson)
 Third Party Defendant)

) IN THE COURT OF COMMON PLEAS
) CASE NO.: 2012-CP-08-3478

CERTIFICATE OF SERVICE

FILED
 2016 APR 11 PM 2:52
 CLERK OF COURT
 BERKELEY COUNTY, SC

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by via electronic mail or by depositing a true copy of same via in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Brent S. Halverson, Esq.
 Halverson & Associates, LLC
 171 Church Street, Suite 300
 Charleston, SC 29401

Andrew J. McCumber, Esq.
 Daniel S. Slotchiver, Esq.
 Slotchiver & Slotchiver, LLP
 44 State Street
 Charleston, SC 29401

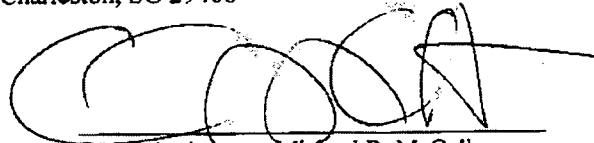
Brian C. Duffy, Esq.
 Seth W. Whitaker, Esq.
 Stephen Jenkins Bell, Esq.
 Duffy & Young, LLC

78

96 Broad Street
Charleston, SC 29401

Robert A. Berstein, Esq.
Berstein & Berstein PA
5418-B Rivers Avenue
North Charleston, SC 29406

This 4th day of April, 2016.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Legal Assistant to Michael B. McCall

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

)
)
) CASE NO. 2012-CP-08-2618

HARBOR NATIONAL BANK,
Plaintiff,

vs.

ANTHONY WHITFIELD
Defendant.

**MEMORANDUM IN OPPOSITION TO
DEFENDANT DAVID SWANSON'S
MOTION TO STRIKE OR DISMISS**

FILED
16 JUN 27 AM 9:01
CLERK OF COURT
BERKELEY COUNTY, S.C.

Introduction and Argument

1. In 2007 and 2008, Plaintiff made nine loans to Mr. Whitfield, for nine different residential properties. The loans were for five year terms. Beginning in 2012, those loans began coming due. In 2012, Plaintiff initiated five (5) foreclosure lawsuits covering eight of those properties in Berkeley, Dorchester, and Charleston Counties. In March of 2014, another foreclosure lawsuit covering one of the properties was filed in Dorchester County, bringing the total of six (6) foreclosure lawsuits covering nine (9) different properties. All of the properties were single family residential rental properties, except the Charleston County property which was purchased by Mr. Whitfield for his spouse at the time, Mrs. Cindy Whitfield, in order to meet his family court obligations in 2007.

2. In response to the foreclosure lawsuits, Mr. Whitfield counterclaimed in each of the lawsuits claiming, *inter-alia*, that Plaintiff made an agreement to renew all the loans for another five year term, breached that agreement, and caused him damages. Specifically, Mr. Whitfield met the president of the bank on June 21, 2012 where an

BH

agreement was made to renew all nine of Mr. Whitfield's loans for another five year term, at a reduced interest rate of 4.75%. After the meeting, the bank contacted the closing attorney and set up a closing for the following week, on June 28, 2012. Mr. Whitfield attended the closing for the renewal of all nine (9) loans on June 28, 2012, and the bank refused to close any of the nine (9) loans at the closing.

3. Plaintiff has denied that it made a contract to renew the loans, and has mainly defended Mr. Whitfield's claims that the bank breached an agreement to renew the loans on two grounds as enumerated in its various Replies: 1) that Mr. Whitfield's ex-wife Cindy Whitfield was required to sign a mortgage to her home in Charleston County in order to renew all of the loans in Charleston, Berkeley, and Dorchester County; or 2) that a title endorsement was necessary for the property in Charleston County to renew all of the loans in Charleston, Berkeley, and Dorchester County.

4. As part of the Plaintiff's "title endorsement" defense for the failure to renew the loans, Plaintiff claims it sought the advice of a real estate transactional attorney, Mr. David Swanson, who recommended that the bank should procure a title endorsement to the Charleston County property out of his hypothetical concern for an objection to the loan renewal by Cindy Whitfield (who lives in the Charleston County Property) on the grounds of an equitable subordination theory that has never been applied to a fee interest in real estate in South Carolina¹.

5. As alleged in Mr. Whitfield's Counterclaims², the bank has defended its actions in each Charleston, Berkeley, and Dorchester Counties by claiming it sought Mr.

¹ The undersigned is unaware that the theory has been successfully applied in any other state.

² David Swanson was made a party to the counterclaims as a "Counterclaim Defendant" pursuant to Rule 19 and 20, not a "Third Party Defendant" as claimed by Mr. Swanson in his motion to dismiss.

Swanson's advice in their decisions not to renew loans that cover properties in each Charleston, Berkeley, and Dorchester Counties. (See, e.g., Plaintiff's Reply filed March 24, 2016, ¶¶ 13, 32, 33, 35, 38, 39 and 41).

6. Because of newly discovered evidence (See Counterclaims filed on March 8, 2016, ¶¶ 58-72) that supports Mr. Whitfield's claim that the bank never received the advice it claims to have received and relied upon, Mr. Whitfield sued David Swanson for civil conspiracy and abuse of process.

7. David Swanson moved to dismiss in the Berkeley and Dorchester cases primarily travelling under Rule 12(b)(8) by arguing that all of the claims being made in all six lawsuits are the same. As stated above, Mr. Whitfield was sued six different times by the Plaintiff for foreclosure of nine different individual properties in each county. Each of the properties in Berkeley and Dorchester were separate, income producing properties³. Mr. Whitfield has already counterclaimed against the bank six different times that the bank made an agreement to renew the loans and he should never have been foreclosed upon. He has sought and will receive a jury trial in each action. Moreover, the bank has interposed its reliance upon the advice of David Swanson in each Charleston, Berkeley, and Dorchester Counties, including this matter.

8. In order to succeed on a Rule 12(b)(8) motion, the claims sought to be dismissed, "**must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8).**" Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E. 39 (Ct. App.

³ Plaintiff took possession of all of the properties through receivership proceedings early in the litigation. Mr. Whitfield is claiming separate damages for each income producing property that was confiscated without legal cause.

2010)(emphasis added). As stated above, the claims against David Swanson are not "precisely or substantially the same" as they involve advice the bank is relying upon for foreclosure of six different income producing properties (six different subject matters). See also, Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524 (Ct. App. 2009) (Citing Indiana court with approval that the "subject matter" must be the same to prevail on Rule 12(b)(8) motion).

9. Finally, to allow the Plaintiff bank to interpose a defense that it relied upon Mr. David's Swanson's advice in the Berkeley and Dorchester cases and yet simultaneously disallow Mr. Whitfield the ability to claim that the advice was never given and was fabricated-- would be fundamentally unfair and a perversion of justice, to-wit, allowing one a litigant to make certain defenses, and deny another to make claims based upon those same set of facts. For these reasons, the motion to dismiss must be denied, and the claim should be allowed to proceed.

HALVERSEN & ASSOCIATES, LLC

By: 

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Attorneys for Defendant

-and-

Andrew J. McCumber, Esquire

SLOTCHIVER & SLOTCHIVER, LLP

44 State Street
Charleston, SC 29401
Phone: (843) 577-6531
Facsimile: (843) 577-0261
andrew@slotchiverlaw.com
S.C. Bar No. 101559

or

Daniel S. Slotchiver, Esquire

SLOTCHIVER & SLOTCHIVER, LLP

44 State Street
Charleston, SC 29401
Phone: (843) 577-6531
Facsimile: (843) 577-0261
dan@slotchiverlaw.com
S.C. Bar No. 15129

Attorneys for Defendant

June 24th, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO. 2012-CP-08-3478

HARBOR NATIONAL BANK,
Plaintiff,

vs.

ANTHONY WHITFIELD
Defendant.

**MEMORANDUM IN OPPOSITION TO
DEFENDANT DAVID SWANSON'S
MOTION TO STRIKE OR DISMISS**

FILED
16 JUN 27 AM 9:01
CLERK OF COURT
BERKELEY COUNTY

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3. Plaintiff has denied that it made a contract to renew the loans, and has mainly defended Mr. Whitfield's claims that the bank breached an agreement to renew the loans on two grounds as enumerated in its various Replies: 1) that Mr. Whitfield's ex-wife Cindy Whitfield was required to sign a mortgage to her home in Charleston County in order to renew all of the loans in Charleston, Berkeley, and Dorchester County; or 2) that a title endorsement was necessary for the property in Charleston County to renew all of the loans in Charleston, Berkeley, and Dorchester County.

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Swanson's advice in their decisions not to renew loans that cover properties in **each** Charleston, Berkeley, and Dorchester Counties. (See, e.g., Plaintiff's Reply filed March 24, 2016, ¶¶ 13, 32, 33, 35, 38, 39 and 41).

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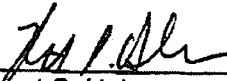
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HALVERSEN & ASSOCIATES, LLC

By: 
Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Attorneys for Defendant

-and-

Andrew J. McCumber, Esquire

SLOTCHIVER & SLOTCHIVER, LLP

44 State Street
Charleston, SC 29401
Phone: (843) 577-6531
Facsimile: (843) 577-0261
andrew@slotchiverlaw.com
S.C. Bar No. 101559

or

Daniel S. Slotchiver, Esquire

SLOTCHIVER & SLOTCHIVER, LLP

44 State Street
Charleston, SC 29401
Phone: (843) 577-6531
Facsimile: (843) 577-0261
dan@slotchiverlaw.com
S.C. Bar No. 15129

Attorneys for Defendant

June 24th, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA
 COUNTY OF BERKLEY

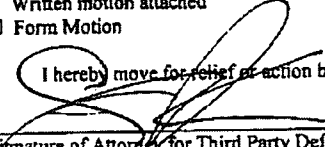
IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-08-2618

Bank of North Carolina,)
) Plaintiff,)
 vs.)
 Whitfield, et al.) Defendant,)
 Anthony Whitfield) Third Party Plaintiff)
 v.)
 David Swanson) Third Party Defendant.)

**MOTION INFORMATION FORM
 AND COVER SHEET**

Check box above indicating submitting party.

<u>Third Party Plaintiff's Counsel</u> Brent S Halverson, Esq. Halverson & Associates, LLC 171 Church Street, Suite 300 Charleston, SC 29401 Daniel S. Slotchiver, Esq. Slotchiver & Slotchiver, LLP 44 State Street Charleston, SC 29401	<u>Attorneys for Third Party Defendant</u> David W. Overstreet, Esq. State Bar No.: 16965 Steven R. Kropski, Esq. State Bar No.: 101441 Earhart Overstreet LLC P.O. Box 22528 Charleston, SC 29413 (843) 972-9400
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<p style="text-align: center;">SECTION I: Hearing Information</p> Nature of Motion: Motion to Reconsider Estimated Time Needed: 15mins Court Reporter Needed: yes	
<p style="text-align: center;">SECTION II: Motion Type</p> <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion	
I hereby move for relief of action by the court as set forth in the attached proposed order.  Signature of Attorney for Third Party Defendant Date: 7/11/16	
<p style="text-align: center;">SECTION III: Motion Fee</p> <input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
<p style="text-align: center;">JUDGE'S SECTION</p> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE: _____ Date: _____
<p style="text-align: center;">CLERK'S VERIFICATION</p> Collected by: <u>Tom</u> (print name) <input type="checkbox"/> MOTION FEE COLLECTED: <u>25.00</u> <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

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 HARRY P. BROWN
 CLERK OF COURT
 BERKLEY COUNTY, SC
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STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
 Bank of North Carolina,)
)
 Plaintiff,)
 vs.)
 Anthony Whitfield and)
 Cindy Whitfield)
 Defendants.)
)
 Anthony Whitfield)
)
 Third-Party Plaintiff)
 vs.)
 David Swanson)
 Third-Party Defendant)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 2012-CP-08-2618

**THIRD-PARTY DEFENDANT DAVID
 SWANSON'S MOTION TO RECONSIDER
 OR ALTER OR AMEND DENIAL OF
 MOTION TO DISMISS OR STRIKE
 THIRD-PARTY COMPLAINT**

2016 JUL 18 PM 3:50
 HARRY P. BRADY
 CLERK OF COURT
 BERKELEY COUNTY, SC

TSW
 FILED

TO: BRENT HALVERSEN, ESQ. AND DANIEL SLOTCHIVER, ESQ., ATTORNEYS FOR
 DEFENDANT/THIRD-PARTY PLAINTIFF ANTHONY WHITFIELD:

YOU WILL PLEASE TAKE NOTICE that Third-Party Defendant David Swanson
 ("Swanson"), by and through their undersigned attorneys, will hereby respectfully move before this
 Court for the Court to reconsider or alter or amend its prior ruling on his previously heard motion.
 Namely, Third Party Defendant respectfully asserts that this Court overlooked issues of law and
 fact in its prior ruling, particularly those set forth in the orders issued by the trial court in three
 identical cases pending in Dorchester County in which Third Party Defendant's motions were
 granted. (See Exhibits A, B, and C).

TSW

The above-named Third-Party Defendant filed a Motion to Dismiss or Strike The Third-Party Complaint Against him on April 7, 2016. A hearing was held before the Honorable R. Markley Dennis in Moncks Corner, South Carolina on June 28, 2016. Judge Dennis issued a Form-4 Order denying the subject motion. (Exhibit D.). This motion requests that the Court reconsider its (a) denial of the motion by Third-Party Defendant to dismiss or Strike the Third-Party Complaint against him.

Namely, there is no dispute that the allegations in the Third-Party Complaint are identical to the allegations in another first filed Third-Party Complaint already pending in Charleston County between the identical parties under Case No. 2012-CP-10-5887. In fact, identical third-party complaints were filed against Swanson in Civil Actions 2014-CP-18-358, 2014-CP-18-1792, 2014-CP-18-1793 in Dorchester County; and Civil Action 2012-CP-08-3478 in Berkley County.

In its motion to dismiss and/or strike the Third-Party Complaint, Third-Party Defendant argued that the presence of identical third-party complaints in six separate lawsuits will present the strong possibility of inconsistent verdicts in six different cases—although the claims are identical in all respects. Given the probability of insistent verdicts, Third-Party Defendant argued that the Complaint must be dismissed pursuant to SCRCP 12(b)(8). In fact, offering specific example of the likelihood of inconsistent disposition of the separate third-party claims, In the alternative, Third-Party Defendant argued the motion should be struck pursuant to *Beach v. Hudson* 298 S.C. 424, 426 (Ct. App. 1989), as the presence of six identical Third-Party lawsuits serves only to complicate the main foreclosure action. *Beach*, 298 S.C. at 426 (“When considering a request to strike...a third-party claim, the court may properly consider the effect the additional parties and claims will have on the adjudication of the main action-in particular, whether continued joinder will serve to complicate the litigation unduly or will prejudice the other parties in any substantial way.”)

Likewise, Third-Party Defendant argued that Third-Party Plaintiff's claims for abuse of process and civil conspiracy could not under any circumstances in law or fact, provide for derivative liability upon Third-Party Defendant for the main foreclosure action upon which Defendant/Third-Party Plaintiff is alleged to be liable to Plaintiff. "A third-party claim may be asserted...only when the third-party's liability is in some way dependent on the outcome of the main claim or when the third-party is secondarily liable to defendant." *Id.* (citing, 6 C. WRIGHT AND A. MILLER, FEDERAL PRACTICE AND PROCEDURE §1446 at 246 (1971) (emphasis added).

Here, the Court's Form 4 Order did not address the merits or grounds, upon which Third-Party Defendant's motion was based.

Third-Party Defendant respectfully believes that this Honorable Court overlooked issues of law in fact by denying its motion on all ground asserted in its motion. As the Trial Judge in Dorchester County concluded, "the third-party claims are substantially the same, if not identical, in both proceedings...Accordingly, the Court finds that dismissal of the Third-Party Complaint in this action against David Swanson is warranted pursuant to 12(b)(8), SCRPC." Likewise, as the Dorchester County Circuit Court found, "the original action is a foreclosure action[.]...Regardless of whether the third-party claims are somehow related to the foreclosure action, Defendant's third-party claims for abuse of process and civil conspiracy do not seek to and cannot shift any liability he may have to the bank in the original foreclosure action to David Swanson. Accordingly, the Court finds that the claims in the Third-Party Complaint are not premised on derivative liability, and therefore the Third-Party Complaint should be dismissed pursuant to Rule 14(a), SCRPC." Third-Party Defendant respectfully maintains that this Honorable Court overlooked the same issues of fact and law in denying Third-Party Defendant's motion.

Finally, while not contained in the Form 4 Order, at oral argument this Court indicated that Third-Party Defendant would have the opportunity to once again raise these grounds for dismissal via dispositive motion after conclusion of the Charleston County action. Third-Party Defendant respectfully asserts that, to the extent this assertion served as the basis for this Court's denial of Third-Party Defendant's motion that this Court erred in such conclusion. Rule 12(h)(1), SCRPC.

CONCLUSION

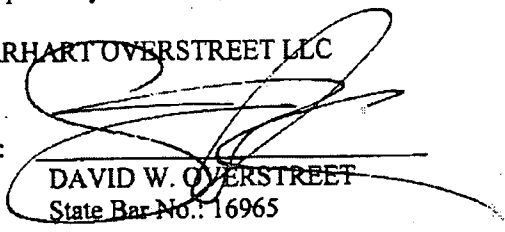
Accordingly, for all of the reasons stated herein, and all of the reasons stated his initial motion, Third-Party Defendant respectfully requests that this Honorable Court grant Third-Party Defendant's motion to reconsider and/or alter or amend the Form 4 Order dated June 30, 2016, and grant Third-Party Defendant's motion to dismiss and/or strike Third-Party Plaintiff's Claims against him.

This 11 day of July, 2016.

Respectfully submitted,

EARHART OVERSTREET LLC

By:


DAVID W. OVERSTREET
State Bar No.: 16965

MICHAEL B. MCCALL
State Bar No.: 73028

STEVEN R. KROPSKI
State Bar No.: 101441

Attorneys for Defendant David Swanson

PO Box 22528
Charleston, SC 29413
843-972-9400

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Bank of North Carolina,)
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Defendants.)
Anthony Whitfield)
Third Party Plaintiff)
vs.)
David Swanson)
Third Party Defendant)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2012-CP-08-2618

CERTIFICATE OF SERVICE

FILED
2015 JUL 18 PM 3:50
MARY P. FREEMAN
CLERK OF COURT
BERKELEY COUNTY, SC

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by via electronic mail or by depositing a true copy of same via in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Brent S. Halverson, Esq.
Halverson & Associates, LLC
171 Church Street, Suite 300
Charleston, SC 29401

Andrew J. McCumber, Esq.
Daniel S. Slotchiver, Esq.
Slotchiver & Slotchiver, LLP
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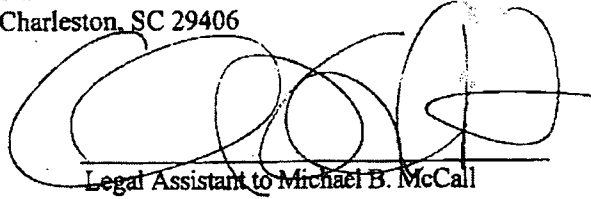
Brian C. Duffy, Esq.
Seth W. Whitaker, Esq.

TOM

Stephen Jenkins Bell, Esq.
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401

Robert A. Berstein, Esq.
Berstein & Berstein PA
5418-B Rivers Avenue
North Charleston, SC 29406

This 11th day of July, 2016.



Legal Assistant to Michael B. McCall

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Bank of North Carolina,

Plaintiff,

vs.

Anthony Whitfield and Cindy Whitfield,

Defendants,

Anthony Whitfield,

Third Party Plaintiff,

vs.

David Swanson,

Third Party Defendant.

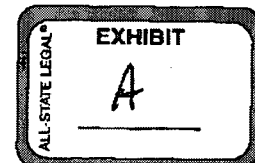
) IN THE COURT OF COMMON PLEAS
) IN THE FIRST JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-18-1793

**ORDER GRANTING MOTION TO
DISMISS THIRD-PARTY COMPLAINT**

This matter comes before the Court on Third-Party Defendant David Swanson's motion to dismiss the Third-Party Complaint. A hearing was held on June 1, 2016. Counsel for Plaintiff Bank of North Carolina, Defendant/Third-Party Plaintiff Anthony Whitfield, and Third-Party Defendant David Swanson were present. For the reasons set forth herein, Third-Party Defendant's motion is granted.

Introduction

This lawsuit is one of six foreclosure actions filed by Bank of North Carolina against Anthony Whitfield. Three actions are pending in Dorchester County: Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793; two are pending in Berkeley County: Case Nos. 2012-CP-08-2618, and 2012-CP-08-3478; and one is pending in Charleston County: Case No. 2012-CP-10-5887. In each of the six foreclosure actions, Defendant/Third Party Plaintiff has asserted



identical third-party claims against David Swanson alleging causes of action for abuse of process and civil conspiracy.

Third-Party Defendant David Swanson is an attorney at Haynsworth Sinkler Boyd, P.A. The third-party claims against him arise out of advice he gave the bank concerning the renewal of the loan on the property that is the subject of the Charleston County foreclosure action, which is referred to in the pleadings as the "Black Rush Property." Third Party Plaintiff alleges that Mr. Swanson never actually provided the advice to the bank, and that he and the bank lied about providing the advice in order to fabricate a defense to Third Party Plaintiff's counterclaims against the bank.

Third-Party Defendant Swanson has moved to dismiss in this action pursuant to Rules 12(b)(8), 12(f) and 14(a) of the South Carolina Rules of Civil Procedure on grounds that another action is pending between the same parties for the same claim, and that the claims against him are not the proper subject of third-party claims because they do not allege derivative liability.

Findings and Conclusions

Rule 12(b)(8) of the South Carolina Rules of Civil Procedure provides that a defendant may seek dismissal of an action when "another action is pending between the same parties for the same claim." In considering a motion to dismiss under Rule 12(b)(8), courts must consider both the identity of the parties and the identity of the claims. Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Ct. App. 2010). In order to warrant dismissal pursuant to Rule 12(b)(8), "the claim must be precisely or substantially the same in both proceedings. . . ." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524, 532 (Ct. App. 2009); see also Freemantle v. Preston, 398 S.C. 186, 728 S.E.2d 40, 45 (2012).

In support of this motion, Third-Party Defendant presented the Court with a copy of the pleadings in the related Charleston County action that is the subject of the Black Rush Property. The

Court finds that it is appropriate to take judicial notice of these pleadings in considering whether dismissal is warranted under Rule 12(b)(8), SCRCP.

Based on this Court's review of the pleadings in this action and the Charleston County action, the Court finds that the parties to the third-party claims are identical in both actions, and that the claims against David Swanson are substantially the same, if not identical, in both proceedings. *Compare* Def.'s Am. Answer and Third Party Compl., Dorchester Co. Case No. 2014-CP-18-1793, ¶¶ 55-72 *with* Def.'s Am. Answer and Third Party Compl., Charleston Co. Case No. 2012-CP-10-5887, ¶¶ 65-82. Accordingly, the Court finds that dismissal of the Third-Party Complaint in this action against David Swanson is warranted pursuant to Rule 12(b)(8), SCRCP.

Alternatively, Third-Party Defendant moves to dismiss the third-party claim pursuant to Rule 14(a) of the South Carolina Rules of Civil Procedure. Rule 14(a) permits a defendant to assert claims as a third-party plaintiff against a person who is not a party to the action, but only where the third party "*is or may be liable to him or all or part of the plaintiff's claim against him.*" (emphasis added). In other words, it is not whether the third-party claim is somehow related to the original action, but whether the defendant has a claim against a third party for all or part of the original claim that would shift liability for the original claim from the defendant to the third-party.

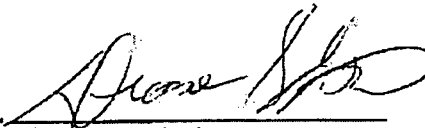
Here, the original action is a foreclosure action initiated by Bank of North Carolina against Anthony Whitfield. Regardless of whether the third-party claims are somehow related to the foreclosure action, Defendant's third-party claims for abuse of process and civil conspiracy do not seek to and cannot shift any liability he may have to the bank in the original foreclosure action to David Swanson. Accordingly, the Court finds that the claims in the Third-Party

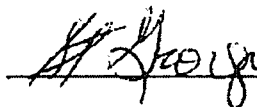
Complaint are not premised on derivative liability, and therefore the Third-Party Complaint should be dismissed pursuant to Rule 14(a), SCRCP.

Accordingly, Third-Part Defendant's motion to dismiss is GRANTED.

IT IS SO ORDERED.

This 7 day of June, 2016


Diane S. Goodstein
Circuit Court Judge

 South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Bank of North Carolina,

Plaintiff,

vs.

Anthony Whitfield and Cindy Whitfield,

Defendants,

Anthony Whitfield,

Third Party Plaintiff,

vs.

David Swanson,

Third Party Defendant.

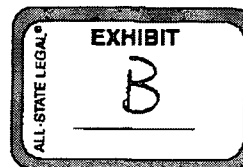
IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2014-CP-18-1792

**ORDER GRANTING MOTION TO
DISMISS THIRD-PARTY COMPLAINT**

This matter comes before the Court on Third-Party Defendant David Swanson's motion to dismiss the Third-Party Complaint. A hearing was held on June 1, 2016. Counsel for Plaintiff Bank of North Carolina, Defendant/Third-Party Plaintiff Anthony Whitfield, and Third-Party Defendant David Swanson were present. For the reasons set forth herein, Third-Party Defendant's motion is granted.

Introduction

This lawsuit is one of six foreclosure actions filed by Bank of North Carolina against Anthony Whitfield. Three actions are pending in Dorchester County: Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793; two are pending in Berkeley County: Case Nos. 2012-CP-08-2618, and 2012-CP-08-3478; and one is pending in Charleston County: Case No. 2012-CP-10-5887. In each of the six foreclosure actions, Defendant/Third Party Plaintiff has asserted



identical third-party claims against David Swanson alleging causes of action for abuse of process and civil conspiracy.

Third-Party Defendant David Swanson is an attorney at Haynsworth Sinkler Boyd, P.A. The third-party claims against him arise out of advice he gave the bank concerning the renewal of the loan on the property that is the subject of the Charleston County foreclosure action, which is referred to in the pleadings as the "Black Rush Property." Third Party Plaintiff alleges that Mr. Swanson never actually provided the advice to the bank, and that he and the bank lied about providing the advice in order to fabricate a defense to Third Party Plaintiff's counterclaims against the bank.

Third-Party Defendant Swanson has moved to dismiss in this action pursuant to Rules 12(b)(8), 12(f) and 14(a) of the South Carolina Rules of Civil Procedure on grounds that another action is pending between the same parties for the same claim, and that the claims against him are not the proper subject of third-party claims because they do not allege derivative liability.

Findings and Conclusions

Rule 12(b)(8) of the South Carolina Rules of Civil Procedure provides that a defendant may seek dismissal of an action when "another action is pending between the same parties for the same claim." In considering a motion to dismiss under Rule 12(b)(8), courts must consider both the identity of the parties and the identity of the claims. Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Ct. App. 2010). In order to warrant dismissal pursuant to Rule 12(b)(8), "the claim must be precisely or substantially the same in both proceedings. . . ." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524, 532 (Ct. App. 2009); *see also* Freemantle v. Preston, 398 S.C. 186, 728 S.E.2d 40, 45 (2012).

In support of this motion, Third-Party Defendant presented the Court with a copy of the pleadings in the related Charleston County action that is the subject of the Black Rush Property. The

Court finds that it is appropriate to take judicial notice of these pleadings in considering whether dismissal is warranted under Rule 12(b)(8), SCRCF.

Based on this Court's review of the pleadings in this action and the Charleston County action, the Court finds that the parties to the third-party claims are identical in both actions, and that the claims against David Swanson are substantially the same, if not identical, in both proceedings. Compare Def.'s Am. Answer and Third Party Compl., Dorchester Co. Case No. 2014-CP-18-1729, ¶¶ 55-72 with Def.'s Am. Answer and Third Party Compl., Charleston Co. Case No. 2012-CP-10-5887, ¶¶ 65-82. Accordingly, the Court finds that dismissal of the Third-Party Complaint in this action against David Swanson is warranted pursuant to Rule 12(b)(8), SCRCF.

Alternatively, Third-Party Defendant moves to dismiss the third-party claim pursuant to Rule 14(a) of the South Carolina Rules of Civil Procedure. Rule 14(a) permits a defendant to assert claims as a third-party plaintiff against a person who is not a party to the action, but only where the third party *"is or may be liable to him or all or part of the plaintiff's claim against him."* (emphasis added). In other words, it is not whether the third-party claim is somehow related to the original action, but whether the defendant has a claim against a third party for all or part of the original claim that would shift liability for the original claim from the defendant to the third-party.

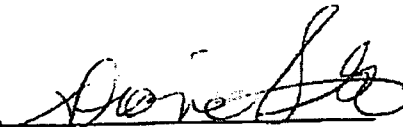
Here, the original action is a foreclosure action initiated by Bank of North Carolina against Anthony Whitfield. Regardless of whether the third-party claims are somehow related to the foreclosure action, Defendant's third-party claims for abuse of process and civil conspiracy do not seek to and cannot shift any liability he may have to the bank in the original foreclosure action to David Swanson. Accordingly, the Court finds that the claims in the Third-Party

Complaint are not premised on derivative liability, and therefore the Third-Party Complaint should be dismissed pursuant to Rule 14(a), SCRCP.

Accordingly, Third-Part Defendant's motion to dismiss is GRANTED.

IT IS SO ORDERED.

This 7 day of July, 2016


Diane S. Goodstein
Circuit Court Judge

 South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

) IN THE COURT OF COMMON PLEAS
) IN THE FIRST JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-18-0358

Bank of North Carolina,

Plaintiff,

vs.

Anthony Whitfield and Cindy Whitfield,

Defendants,

Anthony Whitfield,

Third Party Plaintiff,

vs.

David Swanson,

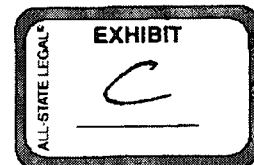
Third Party Defendant.

**ORDER GRANTING MOTION TO
DISMISS THIRD-PARTY COMPLAINT**

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Introduction

This lawsuit is one of six foreclosure actions filed by Bank of North Carolina against Anthony Whitfield. Three actions are pending in Dorchester County: Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793; two are pending in Berkeley County: Case Nos. 2012-CP-08-2618, and 2012-CP-08-3478; and one is pending in Charleston County: Case No. 2012-CP-10-5887. In each of the six foreclosure actions, Defendant/Third Party Plaintiff has asserted



identical third-party claims against David Swanson alleging causes of action for abuse of process and civil conspiracy.

Third-Party Defendant David Swanson is an attorney at Haynsworth Sinkler Boyd, P.A. The third-party claims against him arise out of advice he gave the bank concerning the renewal of the loan on the property that is the subject of the Charleston County foreclosure action, which is referred to in the pleadings as the "Black Rush Property." Third Party Plaintiff alleges that Mr. Swanson never actually provided the advice to the bank, and that he and the bank lied about providing the advice in order to fabricate a defense to Third Party Plaintiff's counterclaims against the bank.

Third-Party Defendant Swanson has moved to dismiss in this action pursuant to Rules 12(b)(8), 12(f) and 14(a) of the South Carolina Rules of Civil Procedure on grounds that another action is pending between the same parties for the same claim, and that the claims against him are not the proper subject of third-party claims because they do not allege derivative liability.

Findings and Conclusions

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In support of this motion, Third-Party Defendant presented the Court with a copy of the pleadings in the related Charleston County action that is the subject of the Black Rush Property. The

Court finds that it is appropriate to take judicial notice of these pleadings in considering whether dismissal is warranted under Rule 12(b)(8), SCRCF.

Based on this Court's review of the pleadings in this action and the Charleston County action, the Court finds that the parties to the third-party claims are identical in both actions, and that the claims against David Swanson are substantially the same, if not identical, in both proceedings. Compare Def.'s Am. Answer and Third Party Compl., Dorchester Co. Case No. 2014-CP-18-0358, ¶¶ 55-72 with Def.'s Am. Answer and Third Party Compl., Charleston Co. Case No. 2012-CP-10-5887, ¶¶ 65-82. Accordingly, the Court finds that dismissal of the Third-Party Complaint in this action against David Swanson is warranted pursuant to Rule 12(b)(8), SCRCF.

Alternatively, Third-Party Defendant moves to dismiss the third-party claim pursuant to Rule 14(a) of the South Carolina Rules of Civil Procedure. Rule 14(a) permits a defendant to assert claims as a third-party plaintiff against a person who is not a party to the action, but only where the third party "*is or may be liable to him or all or part of the plaintiff's claim against him.*" (emphasis added). In other words, it is not whether the third-party claim is somehow related to the original action, but whether the defendant has a claim against a third party for all or part of the original claim that would shift liability for the original claim from the defendant to the third-party.

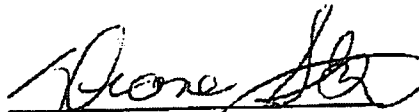
Here, the original action is a foreclosure action initiated by Bank of North Carolina against Anthony Whitfield. Regardless of whether the third-party claims are somehow related to the foreclosure action, Defendant's third-party claims for abuse of process and civil conspiracy do not seek to and cannot shift any liability he may have to the bank in the original foreclosure action to David Swanson. Accordingly, the Court finds that the claims in the Third-Party

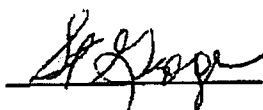
Complaint are not premised on derivative liability, and therefore the Third-Party Complaint should be dismissed pursuant to Rule 14(a), SCRPC.

Accordingly, Third-Part Defendant's motion to dismiss is GRANTED.

IT IS SO ORDERED.

This 7 day of July, 2016


Diane S. Goodstein
Circuit Court Judge

, South Carolina

STATE OF SOUTH CAROLINA
 COUNTY OF BERKELEY
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-08-2618

Harbor National Bank, et al

Anthony M. Whitfield, et al

FILED
 16 JUN 30 PM 1:32

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: CLERK OF COURT BERKELEY COUNTY, S.C.	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Defendant's Motion to Strike or Dismiss Third Party Complaint, filed on 4/7/16, is DENIED

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

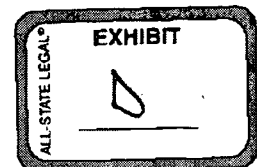
If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature] _____ 2060 6/28/16
 Circuit Court Judge Judge Code Date

For Clerk of Court Office Use Only

SCRPC Form 4C (03/2013)



STATE OF SOUTH CAROLINA
 COUNTY OF BERKLEY

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-08-3478

Bank of North Carolina,)
) Plaintiff,)
 vs.)
 Whitfield, et al.) Defendant,)
)
 Anthony Whitfield) Third Party Plaintiff)
 v.)
 David Swanson) Third Party Defendant)

**MOTION INFORMATION FORM
 AND COVER SHEET**

Check box above indicating submitting party.

<p><u>Third Party Plaintiff's Counsel</u> Brent S Halverson, Esq. Halverson & Associates, LLC 171 Church Street, Suite 300 Charleston, SC 29401</p> <p>Daniel S. Slotchiver, Esq. Slotchiver & Slotchiver, LLP 44 State Street Charleston, SC 29401</p>	<p><u>Attorneys for Third Party Defendant</u> David W. Overstreet, Esq. State Bar No.: 16965 Steven R. Kropski, Esq. State Bar No.: 101441 Earhart Overstreet LLC P.O. Box 22528 Charleston, SC 29413 (843) 972-9400</p>
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion to Reconsider Estimated Time Needed: 15mins Court Reporter Needed: yes	
SECTION II: Motion Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion	
I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for Third Party Defendant	Date: <u>7/14/16</u>
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other:	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	
CLERK'S VERIFICATION DATE FILED	
Collected by: <u>TBM</u> (print name)	
<input type="checkbox"/> MOTION FEE COLLECTED: <u>25.00</u> <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

FILED
 2016 JUL 18 PM 3:39
 HANRY T. BROWN
 CLERK OF COURT
 BERKLEY COUNTY, SC

25.00
 SRK

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Bank of North Carolina,)
Plaintiff,)
vs.)
Anthony Whitfield and)
Cindy Whitfield)
Defendants.)
Anthony Whitfield)
Third-Party Plaintiff)
vs.)
David Swanson)
Third-Party Defendant)

IN THE COURT OF COMMON PLEAS)
CASE NO.: 2012-CP-08-3478)
))
))
))
))
**THIRD-PARTY DEFENDANT DAVID)
SWANSON'S MOTION TO RECONSIDER)
OR ALTER OR AMEND DENIAL OF)
MOTION TO DISMISS OR STRIKE)
THIRD-PARTY COMPLAINT)**

TSM
FILED
2016 JUL 18 PM 3:39
CLERK OF COURT
BERKELEY COUNTY, SC

TO: BRENT HALVERSEN, ESQ. AND DANIEL SLOTCHIVER, ESQ., ATTORNEYS FOR DEFENDANT/THIRD-PARTY PLAINTIFF ANTHONY WHITFIELD:

YOU WILL PLEASE TAKE NOTICE that Third-Party Defendant David Swanson ("Swanson"), by and through their undersigned attorneys, will hereby respectfully move before this Court for the Court to reconsider or alter or amend its prior ruling on his previously heard motion. Namely, Third Party Defendant respectfully asserts that this Court overlooked issues of law and fact in its prior ruling, particularly those set forth in the orders issued by the trial court in three identical cases pending in Dorchester County in which Third Party Defendant's motions were granted. (See Exhibits A, B, and C).

TSM

The above-named Third-Party Defendant filed a Motion to Dismiss or Strike The Third-Party Complaint Against him on April 7, 2016. A hearing was held before the Honorable R. Markley Dennis in Moncks Corner, South Carolina on June 28, 2016. Judge Dennis issued a Form-4 Order denying the subject motion. (Exhibit D.). This motion requests that the Court reconsider its (a) denial of the motion by Third-Party Defendant to dismiss or Strike the Third-Party Complaint against him.

Namely, there is no dispute that the allegations in the Third-Party Complaint are identical to the allegations in another first filed Third-Party Complaint already pending in Charleston County between the identical parties under Case No. 2012-CP-10-5887. In fact, identical third-party complaints were filed against Swanson in Civil Actions 2014-CP-18-358, 2014-CP-18-1792, 2014-CP-18-1793 in Dorchester County; and Civil Action 2012-CP-08-3478 in Berkley County.

In its motion to dismiss and/or strike the Third-Party Complaint, Third-Party Defendant argued that the presence of identical third-party complaints in six separate lawsuits will present the strong possibility of inconsistent verdicts in six different cases—although the claims are identical in all respects. Given the probability of insistent verdicts, Third-Party Defendant argued that the Complaint must be dismissed pursuant to SCRCP 12(b)(8). In fact, offering specific example of the likelihood of inconsistent disposition of the separate third-party claims, In the alternative, Third-Party Defendant argued the motion should be struck pursuant to *Beach v. Hudson* 298 S.C. 424, 426 (Ct. App. 1989), as the presence of six identical Third-Party lawsuits serves only to complicate the main foreclosure action. *Beach*, 298 S.C. at 426 (“When considering a request to strike... a third-party claim, the court may properly consider the effect the additional parties and claims will have on the adjudication of the main action—in particular, whether continued joinder will serve to complicate the litigation unduly or will prejudice the other parties in any substantial way.”)

Likewise, Third-Party Defendant argued that Third-Party Plaintiff's claims for abuse of process and civil conspiracy could not under any circumstances in law or fact, provide for derivative liability upon Third-Party Defendant for the main foreclosure action upon which Defendant/Third-Party Plaintiff is alleged to be liable to Plaintiff. "A third-party claim may be asserted...only when the third-party's liability is in some way dependent on the outcome of the main claim or when the third-party is secondarily liable to defendant." *Id.* (citing, 6 C. WRIGHT AND A. MILLER, FEDERAL PRACTICE AND PROCEDURE §1446 at 246 (1971) (emphasis added).

Here, the Court's Form 4 Order did not address the merits or grounds, upon which Third-Party Defendant's motion was based.

Third-Party Defendant respectfully believes that this Honorable Court overlooked issues of law in fact by denying its motion on all ground asserted in its motion. As the Trial Judge in Dorchester County concluded, "the third-party claims are substantially the same, if not identical, in both proceedings...Accordingly, the Court finds that dismissal of the Third-Party Complaint in this action against David Swanson is warranted pursuant to 12(b)(8), SCRPC." Likewise, as the Dorchester County Circuit Court found, "the original action is a foreclosure action[]...Regardless of whether the third-party claims are somehow related to the foreclosure action, Defendant's third-party claims for abuse of process and civil conspiracy do not seek to and cannot shift any liability he may have to the bank in the original foreclosure action to David Swanson. Accordingly, the Court finds that the claims in the Third-Party Complaint are not premised on derivative liability, and therefore the Third-Party Complaint should be dismissed pursuant to Rule 14(a), SCRPC." Third-Party Defendant respectfully maintains that this Honorable Court overlooked the same issues of fact and law in denying Third-Party Defendant's motion.

Finally, while not contained in the Form 4 Order, at oral argument this Court indicated that Third-Party Defendant would have the opportunity to once again raise these grounds for dismissal via dispositive motion after conclusion of the Charleston County action. Third-Party Defendant respectfully asserts that, to the extent this assertion served as the basis for this Court's denial of Third-Party Defendant's motion that this Court erred in such conclusion. Rule 12(h)(1), SCRPC.

CONCLUSION

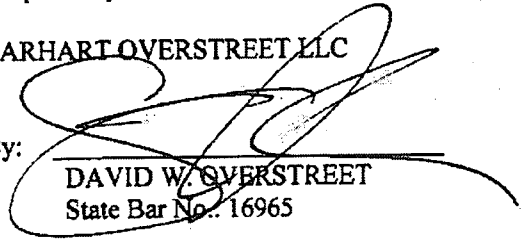
Accordingly, for all of the reasons stated herein, and all of the reasons stated his initial motion, Third-Party Defendant respectfully requests that this Honorable Court grant Third-Party Defendant's motion to reconsider and/or alter or amend the Form 4 Order dated June 30, 2016, and grant Third-Party Defendant's motion to dismiss and/or strike Third-Party Plaintiff's Claims against him.

This 11 day of July, 2016.

Respectfully submitted,

EARHART OVERSTREET LLC

By:


DAVID W. OVERSTREET
State Bar No.: 16965

MICHAEL B. MCCALL
State Bar No.: 73028

STEVEN R. KROPSKI
State Bar No.: 101441

Attorneys for Defendant David Swanson

PO Box 22528
Charleston, SC 29413
843-972-9400

STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
 Bank of North Carolina,)
 Plaintiff,)
 vs.)
 Anthony Whitfield and)
 Cindy Whitfield)
 Defendants.)
 Anthony Whitfield)
 Third-Party Plaintiff)
 vs.)
 David Swanson)
 Third-Party Defendant)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 2012-CP-08-3478

CERTIFICATE OF SERVICE

MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC

TBM
 2012 JUL 18 PM 3:39
 FILED

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by via electronic mail or by depositing a true copy of same via in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Brent S. Halverson, Esq.
 Halverson & Associates, LLC
 171 Church Street, Suite 300
 Charleston, SC 29401

Andrew J. McCumber, Esq.
 Daniel S. Slotchiver, Esq.
 Slotchiver & Slotchiver, LLP
 44 State Street
 Charleston, SC 29401

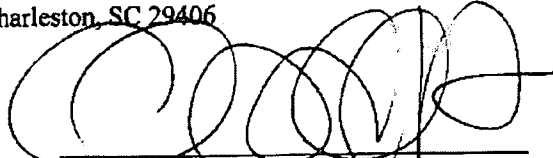
Brian C. Duffy, Esq.
 Seth W. Whitaker, Esq.
 Stephen Jenkins Bell, Esq.
 Duffy & Young, LLC

TBM

96 Broad Street
Charleston, SC 29401

Robert A. Berstein, Esq.
Berstein & Berstein PA
5418-B Rivers Avenue
North Charleston, SC 29406

This 11th day of July, 2016.



Legal Assistant to Steven R. Kropski

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2014-CP-18-1793

Bank of North Carolina,

Plaintiff,

vs.

Anthony Whitfield and Cindy Whitfield,

Defendants,

Anthony Whitfield,

Third Party Plaintiff,

vs.

David Swanson,

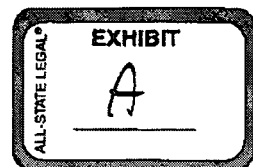
Third Party Defendant.

**ORDER GRANTING MOTION TO
DISMISS THIRD-PARTY COMPLAINT**

This matter comes before the Court on Third-Party Defendant David Swanson's motion to dismiss the Third-Party Complaint. A hearing was held on June 1, 2016. Counsel for Plaintiff Bank of North Carolina, Defendant/Third-Party Plaintiff Anthony Whitfield, and Third-Party Defendant David Swanson were present. For the reasons set forth herein, Third-Party Defendant's motion is granted.

Introduction

This lawsuit is one of six foreclosure actions filed by Bank of North Carolina against Anthony Whitfield. Three actions are pending in Dorchester County: Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793; two are pending in Berkeley County: Case Nos. 2012-CP-08-2618, and 2012-CP-08-3478; and one is pending in Charleston County: Case No. 2012-CP-10-5887. In each of the six foreclosure actions, Defendant/Third Party Plaintiff has asserted



identical third-party claims against David Swanson alleging causes of action for abuse of process and civil conspiracy.

Third-Party Defendant David Swanson is an attorney at Haynsworth Sinkler Boyd, P.A.

The third-party claims against him arise out of advice he gave the bank concerning the renewal of the loan on the property that is the subject of the Charleston County foreclosure action, which is referred to in the pleadings as the "Black Rush Property." Third Party Plaintiff alleges that Mr. Swanson never actually provided the advice to the bank, and that he and the bank lied about providing the advice in order to fabricate a defense to Third Party Plaintiff's counterclaims against the bank.

Third-Party Defendant Swanson has moved to dismiss in this action pursuant to Rules 12(b)(8), 12(f) and 14(a) of the South Carolina Rules of Civil Procedure on grounds that another action is pending between the same parties for the same claim, and that the claims against him are not the proper subject of third-party claims because they do not allege derivative liability.

Findings and Conclusions

Rule 12(b)(8) of the South Carolina Rules of Civil Procedure provides that a defendant may seek dismissal of an action when "another action is pending between the same parties for the same claim." In considering a motion to dismiss under Rule 12(b)(8), courts must consider both the identity of the parties and the identity of the claims. Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Ct. App. 2010). In order to warrant dismissal pursuant to Rule 12(b)(8), "the claim must be precisely or substantially the same in both proceedings. . . ." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524, 532 (Ct. App. 2009); *see also* Freemantle v. Preston, 398 S.C. 186, 728 S.E.2d 40, 45 (2012).

In support of this motion, Third-Party Defendant presented the Court with a copy of the pleadings in the related Charleston County action that is the subject of the Black Rush Property. The

Court finds that it is appropriate to take judicial notice of these pleadings in considering whether dismissal is warranted under Rule 12(b)(8), SCRPC.

Based on this Court's review of the pleadings in this action and the Charleston County action, the Court finds that the parties to the third-party claims are identical in both actions, and that the claims against David Swanson are substantially the same, if not identical, in both proceedings. Compare Def.'s Am. Answer and Third Party Compl., Dorchester Co. Case No. 2014-CP-18-1793, ¶¶ 55-72 with Def.'s Am. Answer and Third Party Compl., Charleston Co. Case No. 2012-CP-10-5887, ¶¶ 65-82. Accordingly, the Court finds that dismissal of the Third-Party Complaint in this action against David Swanson is warranted pursuant to Rule 12(b)(8), SCRPC.

Alternatively, Third-Party Defendant moves to dismiss the third-party claim pursuant to Rule 14(a) of the South Carolina Rules of Civil Procedure. Rule 14(a) permits a defendant to assert claims as a third-party plaintiff against a person who is not a party to the action, but only where the third party "*is or may be liable to him or all or part of the plaintiff's claim against him.*" (emphasis added). In other words, it is not whether the third-party claim is somehow related to the original action, but whether the defendant has a claim against a third party for all or part of the original claim that would shift liability for the original claim from the defendant to the third-party.

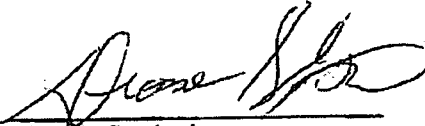
Here, the original action is a foreclosure action initiated by Bank of North Carolina against Anthony Whitfield. Regardless of whether the third-party claims are somehow related to the foreclosure action, Defendant's third-party claims for abuse of process and civil conspiracy do not seek to and cannot shift any liability he may have to the bank in the original foreclosure action to David Swanson. Accordingly, the Court finds that the claims in the Third-Party

Complaint are not premised on derivative liability, and therefore the Third-Party Complaint should be dismissed pursuant to Rule 14(a), SCRPC.


Accordingly, Third-Part Defendant's motion to dismiss is GRANTED.

IT IS SO ORDERED.

This 7 day of July, 2016



Diane S. Goodstein
Circuit Court Judge

 South Carolina

identical third-party claims against David Swanson alleging causes of action for abuse of process and civil conspiracy.

Third-Party Defendant David Swanson is an attorney at Haynsworth Sinkler Boyd, P.A. The third-party claims against him arise out of advice he gave the bank concerning the renewal of the loan on the property that is the subject of the Charleston County foreclosure action, which is referred to in the pleadings as the "Black Rush Property." Third Party Plaintiff alleges that Mr. Swanson never actually provided the advice to the bank, and that he and the bank lied about providing the advice in order to fabricate a defense to Third Party Plaintiff's counterclaims against the bank.

Third-Party Defendant Swanson has moved to dismiss in this action pursuant to Rules 12(b)(8), 12(f) and 14(a) of the South Carolina Rules of Civil Procedure on grounds that another action is pending between the same parties for the same claim, and that the claims against him are not the proper subject of third-party claims because they do not allege derivative liability.

Findings and Conclusions

Rule 12(b)(8) of the South Carolina Rules of Civil Procedure provides that a defendant may seek dismissal of an action when "another action is pending between the same parties for the same claim." In considering a motion to dismiss under Rule 12(b)(8), courts must consider both the identity of the parties and the identity of the claims. Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Ct. App. 2010). In order to warrant dismissal pursuant to Rule 12(b)(8), "the claim must be precisely or substantially the same in both proceedings. . . ." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524, 532 (Ct. App. 2009); see also Freemantle v. Preston, 398 S.C. 186, 728 S.E.2d 40, 45 (2012).

In support of this motion, Third-Party Defendant presented the Court with a copy of the pleadings in the related Charleston County action that is the subject of the Black Rush Property. The

Court finds that it is appropriate to take judicial notice of these pleadings in considering whether dismissal is warranted under Rule 12(b)(8), SCRCF.

Based on this Court's review of the pleadings in this action and the Charleston County action, the Court finds that the parties to the third-party claims are identical in both actions, and that the claims against David Swanson are substantially the same, if not identical, in both proceedings. Compare Def.'s Am. Answer and Third Party Compl., Dorchester Co. Case No. 2014-CP-18-1729, ¶¶ 55-72 with Def.'s Am. Answer and Third Party Compl., Charleston Co. Case No. 2012-CP-10-5887, ¶¶ 65-82. Accordingly, the Court finds that dismissal of the Third-Party Complaint in this action against David Swanson is warranted pursuant to Rule 12(b)(8), SCRCF.

Alternatively, Third-Party Defendant moves to dismiss the third-party claim pursuant to Rule 14(a) of the South Carolina Rules of Civil Procedure. Rule 14(a) permits a defendant to assert claims as a third-party plaintiff against a person who is not a party to the action, but only where the third party *"is or may be liable to him or all or part of the plaintiff's claim against him."* (emphasis added). In other words, it is not whether the third-party claim is somehow related to the original action, but whether the defendant has a claim against a third party for all or part of the original claim that would shift liability for the original claim from the defendant to the third-party.

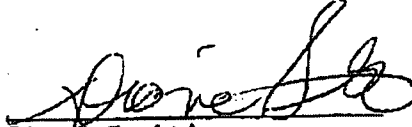
Here, the original action is a foreclosure action initiated by Bank of North Carolina against Anthony Whitfield. Regardless of whether the third-party claims are somehow related to the foreclosure action, Defendant's third-party claims for abuse of process and civil conspiracy do not seek to and cannot shift any liability he may have to the bank in the original foreclosure action to David Swanson. Accordingly, the Court finds that the claims in the Third-Party

Complaint are not premised on derivative liability, and therefore the Third-Party Complaint should be dismissed pursuant to Rule 14(a), SCRPC.

Accordingly, Third-Part Defendant's motion to dismiss is GRANTED.

IT IS SO ORDERED.

This 7 day of July, 2016


Diane S. Goodstein
Circuit Court Judge


South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

) IN THE COURT OF COMMON PLEAS
) IN THE FIRST JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-18-0358

Bank of North Carolina,

Plaintiff,

vs.

Anthony Whitfield and Cindy Whitfield,

Defendants,

Anthony Whitfield,

Third Party Plaintiff,

vs.

David Swanson,

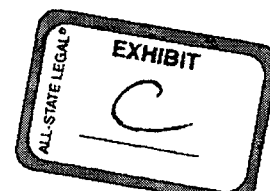
Third Party Defendant.

**ORDER GRANTING MOTION TO
DISMISS THIRD-PARTY COMPLAINT**

This matter comes before the Court on Third-Party Defendant David Swanson's motion to dismiss the Third-Party Complaint. A hearing was held on June 1, 2016. Counsel for Plaintiff Bank of North Carolina, Defendant/Third-Party Plaintiff Anthony Whitfield, and Third-Party Defendant David Swanson were present. For the reasons set forth herein, Third-Party Defendant's motion is granted.

Introduction

This lawsuit is one of six foreclosure actions filed by Bank of North Carolina against Anthony Whitfield. Three actions are pending in Dorchester County: Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793; two are pending in Berkeley County: Case Nos. 2012-CP-08-2618, and 2012-CP-08-3478; and one is pending in Charleston County: Case No. 2012-CP-10-5887. In each of the six foreclosure actions, Defendant/Third Party Plaintiff has asserted



identical third-party claims against David Swanson alleging causes of action for abuse of process and civil conspiracy.

Third-Party Defendant David Swanson is an attorney at Haynsworth Sinkler Boyd, P.A. The third-party claims against him arise out of advice he gave the bank concerning the renewal of the loan on the property that is the subject of the Charleston County foreclosure action, which is referred to in the pleadings as the "Black Rush Property." Third Party Plaintiff alleges that Mr. Swanson never actually provided the advice to the bank, and that he and the bank lied about providing the advice in order to fabricate a defense to Third Party Plaintiff's counterclaims against the bank.

Third-Party Defendant Swanson has moved to dismiss in this action pursuant to Rules 12(b)(8), 12(f) and 14(a) of the South Carolina Rules of Civil Procedure on grounds that another action is pending between the same parties for the same claim, and that the claims against him are not the proper subject of third-party claims because they do not allege derivative liability.

Findings and Conclusions

Rule 12(b)(8) of the South Carolina Rules of Civil Procedure provides that a defendant may seek dismissal of an action when "another action is pending between the same parties for the same claim." In considering a motion to dismiss under Rule 12(b)(8), courts must consider both the identity of the parties and the identity of the claims. Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Cl. App. 2010). In order to warrant dismissal pursuant to Rule 12(b)(8), "the claim must be precisely or substantially the same in both proceedings. . . ." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524, 532 (Cl. App. 2009); see also Freeman LLC v. Preston, 398 S.C. 186, 728 S.E.2d 40, 45 (2012).

In support of this motion, Third-Party Defendant presented the Court with a copy of the pleadings in the related Charleston County action that is the subject of the Black Rush Property. The

Court finds that it is appropriate to take judicial notice of these pleadings in considering whether dismissal is warranted under Rule 12(b)(8), SCRCF.

Based on this Court's review of the pleadings in this action and the Charleston County action, the Court finds that the parties to the third-party claims are identical in both actions, and that the claims against David Swanson are substantially the same, if not identical, in both proceedings. *Compare* Def.'s Am. Answer and Third Party Compl., Dorchester Co. Case No. 2014-CP-18-0358, ¶¶ 55-72 *with* Def.'s Am. Answer and Third Party Compl., Charleston Co. Case No. 2012-CP-10-5887, ¶¶ 65-82. Accordingly, the Court finds that dismissal of the Third-Party Complaint in this action against David Swanson is warranted pursuant to Rule 12(b)(8), SCRCF.

Alternatively, Third-Party Defendant moves to dismiss the third-party claim pursuant to Rule 14(a) of the South Carolina Rules of Civil Procedure. Rule 14(a) permits a defendant to assert claims as a third-party plaintiff against a person who is not a party to the action, but only where the third party "*is or may be liable to him or all or part of the plaintiff's claim against him.*" (emphasis added). In other words, it is not whether the third-party claim is somehow related to the original action, but whether the defendant has a claim against a third party for all or part of the original claim that would shift liability for the original claim from the defendant to the third-party.

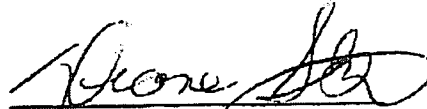
Here, the original action is a foreclosure action initiated by Bank of North Carolina against Anthony Whitfield. Regardless of whether the third-party claims are somehow related to the foreclosure action, Defendant's third-party claims for abuse of process and civil conspiracy do not seek to and cannot shift any liability he may have to the bank in the original foreclosure action to David Swanson. Accordingly, the Court finds that the claims in the Third-Party

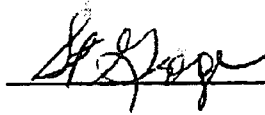
Complaint are not premised on derivative liability, and therefore the Third-Party Complaint should be dismissed pursuant to Rule 14(a), SCRPC.

Accordingly, Third-Part Defendant's motion to dismiss is GRANTED.

IT IS SO ORDERED.

This 7 day of July, 2016


Diane S. Goodstein
Circuit Court Judge


South Carolina

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF BERKELEY
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-08-3478

FILED

Harbor National Bank, et al

Anthony M. Whitfield, et al

16 JUN 30 PM 1:32

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	L. J. LEWIS CLERK OF COURT BERKELEY COUNTY, S.C.	Attorney for: <input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
		or <input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Defendant's Motion to Strike or Dismiss Third Party Complaint, filed on 4/11/16, is DENIED

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

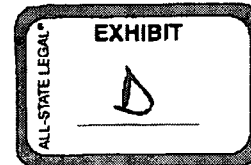
INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted in the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature] _____ 2060 _____ 6/28/16
 Circuit Court Judge Judge Code Date

For Clerk of Court Office Use Only

SCRPC Form 4C (03/2013)



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-08-2618

Bank of North Carolina,
David Swanson, and Cindy
Whitfield

Respondents,

v.

Anthony M. Whitfield,

Appellant.

NOTICE OF APPEAL

Anthony M. Whitfield, the Defendant / Third Party Plaintiff in the above referenced action hereby notices all Counsel of Record their intent to Appeal the September 29, 2016 order of the Honorable R. Markley Dennis, Jr. granting Respondent David Swanson's Rule 59(e) motion. Appellant received written notice of entry of this order on October 3, 2016.

Respectfully submitted this 21st day of October, 2016.

By: 

Andrew J. McCumber, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, South Carolina 29401
(843) 577-0261

ATTORNEY FOR APPELLANT

Other Counsel of Record:
(Continued on the following page)

FILED
2016 OCT 26 AM 11:10
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.
JAC

ASJM

Daniel S. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, South Carolina 29401
(843) 577-0261

ATTORNEY FOR APPELLANT

Brent Halversen, Esquire
Halversen & Associates
171 Church Street, Suite 330
Charleston, South Carolina 29401
(843) 284-5790

ATTORNEY FOR APPELLANT

David W. Overstreet, Esquire
Earhart Overstreet, LLC
Post Office Box No. 22528
Charleston, South Carolina 29413
(843) 972-9400

ATTORNEY FOR RESPONDENT DAVID SWANSON

Brian C. Duffy, Esquire
Thomas A. Limehouse, Jr., Esquire
Duffy & Young, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044

ATTORNEYS FOR RESPONDENT BANK OF NORTH CAROLINA

Paul B. Ferrara, III, Esquire
Ferrara Law Firm, PLLC
2300 Otranto Road
N. Charleston, South Carolina 29406
(843) 559-5511

ATTORNEY FOR RESPONDENT CINDY WHITFIELD

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF BERKELEY
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-08-2618

Bank of North Carolina
 Anthony Whitfield, Third Party Plaintiff
 PLAINTIFF(S)

Whitfield, et al.
 David Swanson, Third Party Defendant
 DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 12(d), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

16 SEP 29 PM 4: 12
 FILED
 BERKELEY COUNTY

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Third Party Defendant's Motion to Reconsider Granted.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature] 2060 9/21/2016
 SCRCP Form 4C (12/2011) Page 1

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Bank of North Carolina,

Plaintiff,

vs.

Anthony Whitfield and Cindy Whitfield,

Defendants,

Anthony Whitfield,

Third Party Plaintiff,

vs.

David Swanson,

Third Party Defendant.

) IN THE COURT OF COMMON PLEAS
) IN THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2012-CP-08-2618

**ORDER GRANTING MOTION TO
RECONSIDER**

BERKELEY COUNTY COURT

16 SEP 29 PM 4: 12

FILED

This matter comes before the Court on Third-Party Defendant David Swanson's motion to reconsider filed July 18, 2016 requesting reconsideration of the Court's June 30, 2016 order denying his motion to dismiss. A hearing was held on September 20, 2016. Counsel for Plaintiff Bank of North Carolina, Defendant Anthony Whitfield, and Third-Party Defendant David Swanson were present. For the reasons set forth herein, Third Party-Defendant Swanson's motion is granted.

Introduction

This lawsuit is one of six foreclosure actions filed by Bank of North Carolina against Anthony Whitfield. Two actions are pending in Berkeley County: Case Nos. 2012-CP-08-2618, and 2012-CP-08-3478; three are pending in Dorchester County: Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793; and one is pending in Charleston County: Case No. 2012-

Raf,

CP-10-5887. Defendant Whitfield initially asserted claims against David Swanson in the Charleston County action alleging causes of action for abuse of process and civil conspiracy, and subsequently asserted identical claims against Mr. Swanson in each of the five remaining foreclosure actions.

Mr. Swanson is an attorney at Haynsworth Sinkler Boyd, P.A. The claims against him arise out of advice he gave the bank concerning the renewal of the loan on the property that is the subject of the Charleston County foreclosure action, which is referred to in the pleadings as the "Black Rush Property." Defendant Whitfield alleges that Mr. Swanson never actually provided the advice to the bank, but conspired with the bank to fabricate a defense to Defendant Whitfield's counterclaims by providing deposition testimony in which he substantiated a conversation that he had with a bank employee. These allegations form the basis of Defendant Whitfield's claims against Mr. Swanson in each of the six foreclosure actions.

Defendant Swanson moved to dismiss the claims against him pursuant to Rules 12(b)(8) and 12(f) of the South Carolina Rules of Civil Procedure on grounds that another action is pending between the same parties for the same claim. Defendant Swanson also moved to dismiss the claims against him in Berkeley County Case No. 2012-CP-08-3478, and Dorchester County Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793 on the same grounds.

The Court heard Defendant Swanson's motions to dismiss in this action and Berkeley County Case No. 2012-CP-08-3478 on June 27, 2016. Counsel for Bank of North Carolina, Anthony Whitfield, and David Swanson were present, and the Court was presented with copies of the pleadings from the Charleston County foreclosure action. The Court denied the motions by way of Form 4 orders entered on June 30, 2016. On July 11, 2016, Defendant Swanson served motions to reconsider in both Berkeley County actions, attaching as exhibits three orders granting

200/2

Defendant Swanson's motions to dismiss in Dorchester County Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793.

Findings and Conclusions

Pursuant to Rule 59(e), SCRCPP, a party may request that a trial court reconsider its prior ruling where the party believes the trial court misunderstood, failed to fully consider, or overlooked an argument or issue. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772, 780 (2004). Upon this Court's review and consideration of the parties' arguments and submissions, the pleadings in this action and the related foreclosure actions, and the applicable law regarding the motion to dismiss, the Court finds that reconsideration is warranted.

Rule 12(b)(8) of the South Carolina Rules of Civil Procedure provides that a defendant may seek dismissal of an action when "another action is pending between the same parties for the same claim." In considering a motion to dismiss under Rule 12(b)(8), courts must consider both the identity of the parties and the identity of the claims. Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Ct. App. 2010). In order to warrant dismissal pursuant to Rule 12(b)(8), "the claim must be precisely or substantially the same in both proceedings. . . ." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524, 532 (Ct. App. 2009); see also Freemantle v. Preston, 398 S.C. 186, 728 S.E.2d 40, 45 (2012).

The Court has reviewed copies of the pleadings in the related foreclosure actions, including the Charleston County action that is the subject of the Black Rush Property. The Court finds that it is appropriate to take judicial notice of these pleadings in considering whether dismissal is warranted under Rule 12(b)(8), SCRCPP.

Upon further review and consideration, the Court finds the claims asserted against David Swanson in this action should be dismissed pursuant to Rule 12(b)(8). The Court finds that the

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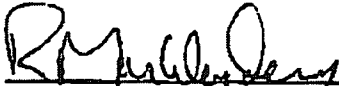
parties to the subject claims in this action and the Charleston County action are identical, and that the claims against David Swanson are substantially the same, if not identical, in both proceedings. Compare Def.'s Fifth Am. Answer, Berkeley Co. Case No. 2014-CP-08-2618, ¶¶ 55-72 with Def.'s Fifth Am. Answer, Charleston Co. Case No. 2012-CP-10-5887, ¶¶ 65-82. In both actions, Defendant Whitfield seeks to hold Mr. Swanson liable for abuse of process and civil conspiracy for the same alleged conduct—providing deposition testimony in which he substantiated a conversation that he had with a bank employee. The Court further observes that these claims were first asserted against Mr. Swanson in the Charleston County action, and that Mr. Swanson has not filed a Rule 12(b)(8) motion to dismiss in the Charleston County action.

Based upon the foregoing, the Court finds that with respect to the claims Defendant Whitfield has asserted against David Swanson in this action, another action is pending between the same parties for the same claims and that dismissal is warranted pursuant to Rule 12(b)(8), SCRCP.

Accordingly, Defendant David Swanson's motion to reconsider is GRANTED and the claims asserted against him in this action are hereby DISMISSED.

IT IS SO ORDERED.

This 21st day of September, 2016


R. Markley Dennis, Jr.
Circuit Court Judge

Mondes Corner, South Carolina

RMD 4

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-08-2618

Bank of North Carolina,
David Swanson, and Cindy
Whitfield

Respondents,

v.

Anthony M. Whitfield,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondents Bank of North Carolina, Cindy Whitfield, and David Swanson by depositing a copy of same in the United States Mail, postage prepaid, on October 21, 2016, addressed to their attorney of record, as follows:

David W. Overstreet, Esquire
Earhart Overstreet, LLC
Post Office Box No. 22528
Charleston, South Carolina 29413
(843) 972-9400

ATTORNEY FOR RESPONDENT DAVID SWANSON

Brian C. Duffy, Esquire
Thomas A. Limchouse, Jr., Esquire
Duffy & Young, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044

ATTORNEYS FOR RESPONDENT BANK OF NORTH CAROLINA

(Continued on the following page.)

FILED
2016 OCT 26 AM 10
MARY P. GROWN
CLERK OF COURT
BERKELEY COUNTY

Paul B. Ferrara, III, Esquire
Ferrara Law Firm, PLLC
2300 Otranto Road
N. Charleston, South Carolina 29406
(843) 559-5511

ATTORNEY FOR RESPONDENT CINDY WHITFIELD

Respectfully submitted this 21st day of October, 2016.

By: 

Andrew J. McCumber, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, South Carolina 29401
(843) 577-0261

ATTORNEY FOR APPELLANT

SLOTCHIVER & SLOTCHIVER, L.L.P.
ATTORNEYS AT LAW
EST. 1959

IRVIN J. SLOTCHIVER
DANIEL S. SLOTCHIVER
STEPHEN M. SLOTCHIVER
ANDREW J. McCUMBER

44 STATE STREET
CHARLESTON, SC 29401-2810
TELEPHONE (843) 577-6531
FACSIMILE (843) 577-0261

October 24, 2016

VIA U.S. MAIL

MARY P. BROWN
BERKELEY COUNTY CLERK OF COURT
COURT OF COMMON PLEAS
300-B CALIFORNIA AVENUE
PO BOX 219
MONCK'S CORNER, SC 29461

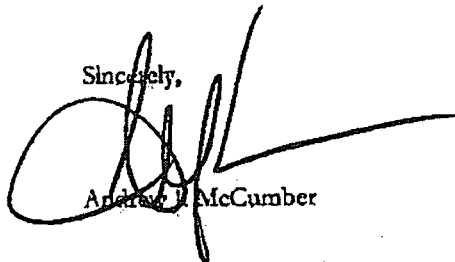
Re: Harbor National Bank vs. Anthony M. Whitfield
File No.: 2012-CP-08-2618

Dear Ms. Brown:

Enclosed for filing you will please find one (1) Notice of Appeal with regards to the above-referenced matter. Please return a clocked copy to me using the self-addressed postage paid envelope also enclosed.

Please do not hesitate to contact me or my office if you should require anything further from us with regard to same. I thank you in advance for your time and attention to this matter.

Sincerely,



Andrew J. McCumber

AJM/ssh
Enclosures (as stated)

www.slotchiverlaw.com

R. 390

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-08-3478

Bank of North Carolina,
David Swanson, and Cindy
Whitfield

Respondents,

v.

Anthony M. Whitfield,

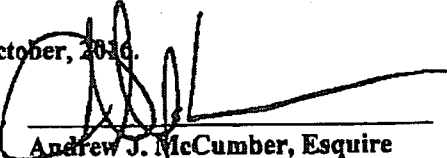
Appellant.

NOTICE OF APPEAL

Anthony M. Whitfield, the Defendant / Third Party Plaintiff in the above referenced action hereby notices all Counsel of Record their intent to Appeal the September 29, 2016 order of the Honorable R. Markley Dennis, Jr. granting Respondent David Swanson's Rule 59(e) motion. Appellant received written notice of entry of this order on October 3, 2016.

Respectfully submitted this 21st day of October, 2016.

By


Andrew J. McCumber, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, South Carolina 29401
(843) 577-0261

ATTORNEY FOR APPELLANT

Other Counsel of Record:
(Continued on the following page)

FILED
2016 OCT 26 AM 11:11
MARK P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.
KDC

ASJM

Daniel S. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, South Carolina 29401
(843) 577-0261

ATTORNEY FOR APPELLANT

Brent Halversen, Esquire
Halversen & Associates
171 Church Street, Suite 330
Charleston, South Carolina 29401
(843) 284-5790

ATTORNEY FOR APPELLANT

David W. Overstreet, Esquire
Earhart Overstreet, LLC
Post Office Box No. 22528
Charleston, South Carolina 29413
(843) 972-9400

ATTORNEY FOR RESPONDENT DAVID SWANSON

Brian C. Duffy, Esquire
Thomas A. Limehouse, Jr., Esquire
Duffy & Young, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044

ATTORNEYS FOR RESPONDENT BANK OF NORTH CAROLINA

Paul B. Ferrara, III, Esquire
Ferrara Law Firm, PLLC
2300 Otranto Road
N. Charleston, South Carolina 29406
(843) 559-5511

ATTORNEY FOR RESPONDENT CINDY WHITFIELD

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-08-3478

Bank of North Carolina
Anthony Whitfield, Third Party Plaintiff
PLAINTIFF(S)

Whitfield, et al.
David Swanson, Third Party Defendant
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 12(c), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other

18 SEP 29 PM 4:10
 FILED
 COURT OF COMMON PLEAS
 BERKELEY COUNTY

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Third Party Defendant's Motion to Reconsider Granted.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

R. Kelly D...

2060

9/21/2016 (AMC)
7/29/2014

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Bank of North Carolina,

Plaintiff,

vs.

Anthony Whitfield and Cindy Whitfield,

Defendants,

Anthony Whitfield,

Third Party Plaintiff,

vs.

David Swanson,

Third Party Defendant.

) IN THE COURT OF COMMON PLEAS
) IN THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2012-CP-08-3478

**ORDER GRANTING
MOTION TO RECONSIDER**

BERKELEY COUNTY

16 SEP 29 PM 4: 18

FILED

This matter comes before the Court on Third-Party Defendant David Swanson's motion to reconsider filed July 18, 2016 requesting reconsideration of the Court's June 30, 2016 order denying his motion to dismiss. A hearing was held on September 20, 2016. Counsel for Plaintiff Bank of North Carolina, Defendant Anthony Whitfield, and Third-Party Defendant David Swanson were present. For the reasons set forth herein, Third Party-Defendant Swanson's motion is granted.

Introduction

This lawsuit is one of six foreclosure actions filed by Bank of North Carolina against Anthony Whitfield. Two actions are pending in Berkeley County: Case Nos. 2012-CP-08-2618, and 2012-CP-08-3478; three are pending in Dorchester County: Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793; and one is pending in Charleston County: Case No. 2012-

Handwritten signature

CP-10-5887. Defendant Whitfield initially asserted claims against David Swanson in the Charleston County action alleging causes of action for abuse of process and civil conspiracy, and subsequently asserted identical claims against Mr. Swanson in each of the five remaining foreclosure actions.

Mr. Swanson is an attorney at Haynsworth Sinkler Boyd, P.A. The claims against him arise out of advice he gave the bank concerning the renewal of the loan on the property that is the subject of the Charleston County foreclosure action, which is referred to in the pleadings as the "Black Rush Property." Defendant Whitfield alleges that Mr. Swanson never actually provided the advice to the bank, but conspired with the bank to fabricate a defense to Defendant Whitfield's counterclaims by providing deposition testimony in which he substantiated a conversation that he had with a bank employee. These allegations form the basis of Defendant Whitfield's claims against Mr. Swanson in each of the six foreclosure actions.

Defendant Swanson moved to dismiss the claims against him pursuant to Rules 12(b)(8) and 12(f) of the South Carolina Rules of Civil Procedure on grounds that another action is pending between the same parties for the same claim. Defendant Swanson also moved to dismiss the claims against him in Berkeley County Case No. 2012-CP-08-2618, and Dorchester County Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793 on the same grounds.

The Court heard Defendant Swanson's motions to dismiss in this action and Berkeley County Case No. 2012-CP-08-2618 on June 27, 2016. Counsel for Bank of North Carolina, Anthony Whitfield, and David Swanson were present, and the Court was presented with copies of the pleadings from the Charleston County foreclosure action. The Court denied the motions by way of Form 4 orders entered on June 30, 2016. On July 11, 2016, Defendant Swanson served motions to reconsider in both Berkeley County actions, attaching as exhibits three orders granting

R. 396

Defendant Swanson's motions to dismiss in Dorchester County Case Nos. 2014-CP-18-0358, 2014-CP-18-1792, and 2014-CP-18-1793.

Findings and Conclusions

Pursuant to Rule 59(e), SCRCF, a party may request that a trial court reconsider its prior ruling where the party believes the trial court misunderstood, failed to fully consider, or overlooked an argument or issue. Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772, 780 (2004). Upon this Court's review and consideration of the parties' arguments and submissions, the pleadings in this action and the related foreclosure actions, and the applicable law regarding the motion to dismiss, the Court finds that reconsideration is warranted.

Rule 12(b)(8) of the South Carolina Rules of Civil Procedure provides that a defendant may seek dismissal of an action when "another action is pending between the same parties for the same claim." In considering a motion to dismiss under Rule 12(b)(8), courts must consider both the identity of the parties and the identity of the claims. Crickel Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Cl. App. 2010). In order to warrant dismissal pursuant to Rule 12(b)(8), "the claim must be precisely or substantially the same in both proceedings. . . ." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524, 532 (Cl. App. 2009); *see also* Freemantle v. Preston, 398 S.C. 186, 728 S.E.2d 40, 45 (2012).

The Court has reviewed copies of the pleadings in the related foreclosure actions, including the Charleston County action that is the subject of the Black Rush Property. The Court finds that it is appropriate to take judicial notice of these pleadings in considering whether dismissal is warranted under Rule 12(b)(8), SCRCF.

Upon further review and consideration, the Court finds the claims asserted against David Swanson in this action should be dismissed pursuant to Rule 12(b)(8). The Court finds that the

RD/3

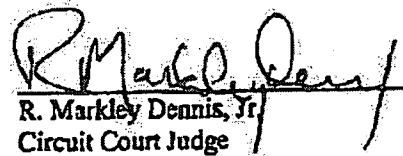
parties to the subject claims in this action and the Charleston County action are identical, and that the claims against David Swanson are substantially the same, if not identical, in both proceedings. Compare Def.'s Fourth Am. Answer, Berkeley Co. Case No. 2014-CP-08-3478, ¶¶ 55-72 with Def.'s Fifth Am. Answer, Charleston Co. Case No. 2012-CP-10-5887, ¶¶ 65-82. In both actions, Defendant Whitfield seeks to hold Mr. Swanson liable for abuse of process and civil conspiracy for the same alleged conduct—providing deposition testimony in which he substantiated a conversation that he had with a bank employee. The Court further observes that these claims were first asserted against Mr. Swanson in the Charleston County action, and that Mr. Swanson has not filed a Rule 12(b)(8) motion to dismiss in the Charleston County action.

Based upon the foregoing, the Court finds that with respect to the claims Defendant Whitfield has asserted against David Swanson in this action, another action is pending between the same parties for the same claims and that dismissal is warranted pursuant to Rule 12(b)(8), SCRPC.

Accordingly, Defendant David Swanson's motion to reconsider is GRANTED and the claims asserted against him in this action are hereby DISMISSED.

IT IS SO ORDERED.

This 21st day of September, 2016


R. Markley Dennis, Jr.
Circuit Court Judge

Moncks Corner, South Carolina

Dennis

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-08-3478

2016 OCT 26 AM 11:11
FILED
HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Bank of North Carolina,
David Swanson, and Cindy
Whitfield

Respondents,

v.

Anthony M. Whitfield,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondents Bank of North Carolina, Cindy Whitfield, and David Swanson by depositing a copy of same in the United States Mail, postage prepaid, on October 21, 2016, addressed to their attorney of record, as follows:

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Earhart Overstreet, LLC
Post Office Box No. 22528
Charleston, South Carolina 29413
(843) 972-9400

ATTORNEY FOR RESPONDENT DAVID SWANSON

Brian C. Duffy, Esquire
Thomas A. Limehouse, Jr., Esquire
Duffy & Young, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044

ATTORNEYS FOR RESPONDENT BANK OF NORTH CAROLINA

(Continued on the following page.)

Paul B. Ferrara, III, Esquire
Ferrara Law Firm, PLLC
2300 Otranto Road
N. Charleston, South Carolina 29406
(843) 559-5511

ATTORNEY FOR RESPONDENT CINDY WHITFIELD

Respectfully submitted this 21st day of October, 2018.

By: 

Andrew J. McCumber, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, South Carolina 29401
(843) 577-0261

ATTORNEY FOR APPELLANT

SLOTCHIVER & SLOTCHIVER, L.L.P.

ATTORNEYS AT LAW

EST. 1959

IRVIN J. SLOTCHIVER
DANIEL S. SLOTCHIVER
STEPHEN M. SLOTCHIVER
ANDREW J. McCUMBER

44 STATE STREET
CHARLESTON, SC 29401-2810
TELEPHONE (843) 577-6531
FACSIMILE (843) 577-0261

October 24, 2016

VIA U.S. MAIL

MARY P. BROWN
BERKELEY COUNTY CLERK OF COURT
COURT OF COMMON PLEAS
300-B CALIFORNIA AVENUE
PO BOX 219
MONCK'S CORNER, SC 29461

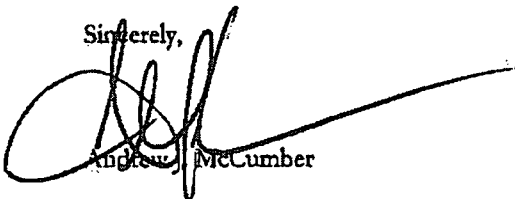
Re: Harbor National Bank vs. Anthony M. Whitfield
File No.: 2012-CP-08-3478

Dear Ms. Brown:

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Please do not hesitate to contact me or my office if you should require anything further from us with regard to same. I thank you in advance for your time and attention to this matter.

Sincerely,



Andrew J. McCumber

AJM/ssh
Enclosures (as stated)

www.slotchiverlaw.com

R. 401

Certificate of Counsel

RECEIVED
MAR 21 2018
SC Court of Appeals

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted this 28th day of February , 2018

By:


SLOTCHIVER & SLOTCHIVER, LLP

Andrew J. McCumber, Esquire
Daniel S. Slotchiver, Esquire
44 State Street
Charleston, South Carolina 29401
Telephone: (843) 577-6531

~
HALVERSEN & ASSOCIATES, LLC

Brent S. Halversen, Esquire
171 Church Street, Suite 330
Charleston, South Carolina 29401
Telephone: (843) 284-5790

COUNSEL FOR THE APPELLANT

Charleston, South Carolina