

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Lisa Lee Smith, Special Referee

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

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SC Court of Appeals

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

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

Of whom D. Randolph Whitt is the Appellant.

RECORD ON APPEAL

July 13, 2018

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STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-32-02795

**ORDER DENYING DEFENDANT'S
MOTION TO TRANSFER
TO THE JURY ROSTER**

THIS MATTER came before the Court upon Motion by D. Randolph Whitt ("Defendant") seeking an Order transferring this action to the jury roster on Defendant's counterclaims. A motion hearing was held on September 22, 2017, with participation by the Defendants D. Randolph Whitt and Pearce W. Fleming, each members of the South Carolina Bar representing themselves *pro se*; and Magalie A. Creech, attorney for the Plaintiff Federal National Mortgage Association. After consideration of the memoranda submitted by the parties, the oral arguments at the hearing, and the proposed orders of the parties, Defendant's Motion is denied based upon the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Plaintiff commenced the instant residential mortgage foreclosure action upon the filing of its Lis Pendens, Summons and Complaint on August 1, 2014.
2. Defendant served an Amended Answer on March 27, 2015, which contained a jury trial demand and asserted counterclaims for violation of the implied covenant of good faith and fair dealing and violation of the CFPB Dual Tracking Regulations. The alleged conduct giving rise to the Defendant's counterclaims is alleged to have occurred after the Defendant's default under the terms of the note and mortgage. Plaintiff filed a timely Reply denying the counterclaims on April 6, 2015.

3. On March 25, 2015, Plaintiff filed a Motion to Strike Defendant's Jury Demand and for a Mandatory Order of Reference.

4. By Order of the Honorable William P. Keesley captioned "Mandatory Order of Reference to Special Referee and Striking the Demand for a Jury Trial on the Counterclaim" ("Order of Reference") entered June 11, 2015, this action was referred in its entirety to Lisa Lee Smith as Special Referee. The Order of Reference specified that as an action for foreclosure, the case is subject to a "mandatory order of reference". Furthermore, because the Defendant failed to appear and oppose the Plaintiff's motion to strike the demand for a jury trial, Judge Keesley ordered that "the demand for jury trial is stricken and the court directs that the issues be tried without a jury."

5. The Order addressed each of the counterclaims in the Answer, found no basis for a jury trial, and also found that that by asserting permissive legal counterclaims in response to Plaintiff's equitable foreclosure action, Defendant had waived any right he may have had to a jury trial. The parties received the filed Order of Reference and neither moved for reconsideration of the Order, nor did either party appeal the Order.

6. The Order of Reference further indicated that "[s]hould the Special Referee determine that there is a valid claim that requires a jury trial, she may notify the circuit court, as provided in the South Carolina Rules of Civil Procedure". This sentence granted to the Special Referee the power during the handling of the case to consider the issue if the Special Referee is made aware of "a valid claim that requires a jury trial".

7. At the hearing on Defendant's present Motion to Transfer to the Jury Trial Roster, considerable focus by the parties was on the issue of whether Judge Keesley's Order was a final order or a conditional order. If conditional, the order would not be a final order for purposes of appeal. This argument focused on whether Judge Keesley's Order was appealable, and whether the fact that the Defendant did not appeal

Judge Keesley's order striking the demand for a jury trial, resulted in the Defendant's present claim being barred by the doctrine of *res judicata* and Judge Keesley's order stands as the law of the case.

8. An order denying a request for a jury trial involves the mode of trial, affects substantial rights under section 14-3-330(2) of the South Carolina Code, and is immediately appealable. See *Bateman v. Rouse*, 358 S.C. 667, 674, 596 S.E.2d 386, 3991 (Ct. App. 2004). "The failure to immediately appeal an order affecting the mode of trial constitutes a waiver of the right to appeal these issues." *Id.*; see, e.g., *Edwards v. Timmons*, 297 S.C. 314, 316, 377 S.E.2d 97, 97 (1988) (holding that the trial court's un-appealed order of reference to a master-in-equity became the law of the case); *Creed v. Stokes*, 285 S.C. 542, 542-43, 331 S.E.2d 351, 351-52 (1985) (finding the appellant waived his objection to the order of reference by not immediately appealing the order).

9. Judge Keesley's order striking the Defendant's demand for a jury trial was a final appealable order. Judge Keesley's order contained no language that made it conditional on any further action or review by the Special Referee or contingent upon further action of the Circuit Court or Special Referee. Therefore, by the express terms of the Order of Reference, the Plaintiff's initial claim for a jury trial was stricken by Judge Keesley and as such is the law of the case as to the counterclaims plead.

10. However, Defendant has moved anew for the case to be transferred to the jury trial roster, and Judge Keesley's order clearly granted the Special Referee the power to consider such a motion if raised during the pendency of the case.

11. With one exception, the Defendant's counterclaims are the same now as they were in the pleadings considered by Judge Keesley in his June 11, 2015 order. That exception is that Defendant's counterclaims have evolved over the course of the litigation to include complaints about the actions of the Plaintiff during the litigation in submitting alleged inconsistent and confusing Affidavits regarding the debt calculation at prior hearings where the Plaintiff sought Summary Judgement before the Special Referee.

12. By Order dated April 7, 2017 and filed April 10, 2017, the Special Referee partially granted, and partially denied, the Plaintiff's Motion for Summary Judgment, setting forth in detail the matters where there are no issues of material fact, such that summary judgment was appropriate ("Order for Partial Summary Judgment").

13. Among other findings, the Order for Partial Summary Judgment included findings that (a) as of the date of Requests for Admissions dated October 15, 2015, Defendant Whitt is deemed to have admitted that he had not suffered any damages, did not have valid claims against the Plaintiff, and did not have valid defenses to the foreclosure of the Mortgage; and (b) the Plaintiff is entitled to foreclose the mortgage and the amount of the principal and interest calculation on the debt is final as set forth therein.

14. One issue in which Summary Judgment was denied concerned the calculation of amounts that may be owed to the Plaintiff over and above the principal and interest calculation.

15. The finding that the Plaintiff failed to meet the steep burden for Summary Judgment as to the calculation of the debt amount over and above the stated amount of principal and interest formula, did not give rise to a new counterclaim, or any recharacterization of an original counterclaim, which would warrant a jury trial. Defendant argues essentially that the Plaintiff's failure to win on all issues at summary judgment is evidence supporting the original counterclaims, and evidence that the counterclaims are compulsory in nature. A "compulsory counterclaim" is not created just because a non-moving party successfully identifies issues of material fact not appropriate for summary judgment. Rather, it simply means the issues identified by the non-moving party are ripe for cross examination at a hearing on the merits.

16. Defendant contends that he is entitled to a jury trial because his counterclaims are compulsory, and cites *Plantation Federal Bank v. Gray*, 401 S.C. 507, 737 S.E.2d 515 (Ct. App. 2013) in support of this argument. However, Defendant's reliance on the *Gray* case is misplaced because *Gray* did not address the question of whether a mortgagee's counterclaims were compulsory. Instead, *Gray* held that a mortgagee's

equitable foreclosure action could not be heard prior to a jury trial of the mortgagor's counterclaims at law. The compulsory nature of the mortgagee's counterclaims in *Gray* was not in dispute, and for that reason the foreclosure and legal counterclaims were bifurcated.

17. Judge Keesley's Order unequivocally determined that the Defendant was not entitled to a jury trial, the counterclaims as plead are permissive and that Defendant waived his right to a jury trial by asserting permissive counterclaims in this foreclosure. Defendant's evolution of his counterclaims before the Special Referee has not convinced the Special Referee that any of his counterclaims are "compulsory counterclaims" as that term is defined by applicable case law and rules of civil procedure.

18. Upon review of the counterclaims raised by the Defendant, the Special Referee finds that the Defendant's current articulation of the counterclaims does not alter any of the originally plead counterclaims in such a way as to identify any valid claim that requires a jury trial for any part of this case.

NOW THEREFORE, the Defendant Whitt's Motion to transfer to the Jury Trial Roster is **DENIED**. This matter shall be scheduled for a non-jury merits hearing on the remaining issues herein as soon as is practicable.


The Honorable Lisa Lee Smith
Special Referee for Lexington County

Chapin, South Carolina

November 22, 2017

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

FILED

CASE NO.: 2014-CP-32-02795

**ORDER FOR MANDATORY REFERENCE
TO SPECIAL REFEREE**

AND

**STRIKING THE DEMAND FOR A JURY
TRIAL ON THE COUNTERCLAIM**

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON

WM
#1

This matter was on the roster for this week's term of Common Pleas Non-Jury court. Plaintiff's counsel appeared. No one appeared for the defendants. The court did not hear the motion for an order striking Defendant's jury demand. However, this is an action for foreclosure, and it is subject to a mandatory order of reference. The court was advised that the sitting Master-in-Equity has a conflict and would recuse himself from the case, so the matter is referred to Lisa Lee Smith, as Special Referee for Lexington County, pursuant to Rule 53(b), SCRPC. Having failed to appear and oppose the motion to strike the demand for jury trial, the demand for jury trial is stricken and the court directs that the issues be tried without a jury. Should the Special Referee determine that there is a valid claim that requires a jury trial, she may notify the circuit court, as provided in the South Carolina Rules of Civil Procedure.

There is an Amended Answer which seeks to have a jury trial on a counterclaim for violation of the implied covenant of good faith and fair dealing, and violation of the CFPB Dual Tracking Regulations. First, the implied covenant of good faith and fair dealing is not an independent cause of action. See RoTEC v. Encompass, 359 S.C. 467, 597 S.E.2d 881 (Ct. App. 2004) (holding claim for breach of implied covenant of good faith and fair dealing was subsumed under claim for breach of contract). Second, Section 6(f) of the Real Estate Settlement Procedures Act (RESPA) does not prohibit a lender from initiating or moving forward with a foreclosure, but merely provides statutory damages for violations of this section. 12 U.S.C. 2605(f). Specifically, the alleged conduct which Defendant contends

gives rise to this claim is alleged to have occurred after the Defendant's default under the terms of the note and mortgage.

Affirmative defenses raised in response to an equitable cause of action are inherently equitable in nature, and not triable by a jury. See Farley v. Matthews, 186 S.C. 294, 167 S.E. 502 (1933).

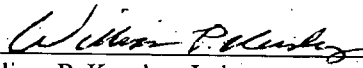
The Plaintiff's foreclosure action is centered entirely on the obligations created by the note and mortgage and the Defendant's default thereunder. There is no opposition to the position taken by the Plaintiff that the Defendant's legal counterclaim does not arise from the same transaction or occurrence as Plaintiff's foreclosure action, thereby making it permissive.

Asserting a permissive claim in a foreclosure action constitutes a waiver of the right to a jury trial. See Wachovia Bank, National Association v. Blackburn, 407 S.C. 321, 755 S.E.2d 437 (2014) (finding that where the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial). This being an action for foreclosure of a mortgage and, as such, an action in equity, it is an appropriate matter to be referred to the Master in Equity. See Collier v. Green, 244 S.C. 346, 137 S.E.2d 277 (1964).

#2
It is, therefore, **ORDERED** that this case is referred to Honorable Lisa Lee Smith, Special Referee for Lexington County, who shall exercise all power and authority which a Circuit Judge sitting without a jury would have, including but not limited to, making findings of fact and conclusions of law; directing entry of final judgment; hearing any issues, including motions, after sale or judgment; issuing any and all orders, supplemental orders, and writs of assistance, and hearing any issues involving possession and/or removal of property and appraisal proceedings under Section 29-3-360, *et seq.* of the South Carolina Code, with any appeal from the final judgment being to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules. Any judicial sale of the property subject of this action may be held on a day other than the regular judicial sale day.

IT IS SO ORDERED.

6/11/2015


William P. Keesley, Judge

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

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

**ORDER AND JUDGMENT OF
FORECLOSURE AND SALE
(DEFICIENCY WAIVED)**

Magalie A. Creech
FINKEL LAW FIRM LLC
Attorneys for the Plaintiff

ANSWERING DEFENDANTS:

D. Randolph Whitt, Esquire
Defendant Pro Se

Pearce W. Fleming, Esquire
Defendant Pro Se

THIS MATTER having been opened to the Court upon the filing of the Motion for Summary Judgment by Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America for the foreclosure of a residential mortgage on property owned by D. Randolph Whitt ("Defendant"); the Court having considered the facts and law cited in the Motion, Plaintiff's Affidavit in Support of Summary Judgment together with the supporting exhibits annexed thereto; the Court having conducted a hearing on the Motion on April 25, 2016; the Court having considered the oral argument of counsel; there being no material facts in dispute and good and sufficient cause having been shown.

Pursuant to Rule 53 SCRPC, the above-entitled matter was referred to Lisa Lee Smith as Special Referee for Lexington County. Any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Pursuant to the said Order of Reference, a hearing was held on the Plaintiff's Motion for Summary Judgment after proper notice to the parties and/or their attorneys, and was attended by counsel.

for the Plaintiff and by Pearce W. Flemming, Defendant *pro se*. Based upon the pleadings, affidavits, and evidence presented, I find, conclude and order as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Based upon the Certification of Compliance filed herein, the provisions of the Administrative Order issued by the Chief Justice of the Supreme Court of South Carolina on May 2, 2011, Order 2011-05-02-01, have been satisfied and no longer apply to the within foreclosure action.
2. Pursuant to the Administrative Order of the Chief Justice, 2009-05-22-01, the loan that is subject of this action is eligible for participation in the Home Affordable Modification Program (HMP); however, the loan is not subject to modification under the HMP because the property is vacant.
3. The Lis Pendens was filed on August 1, 2014.
4. The Summons and Complaint were filed on August 1, 2014.
5. Service was made upon the Defendants named in this Report as is shown by the proof of service filed herein.
6. All Defendants and/or their attorneys of record were notified of the time, date and place of the hearing in this matter.
7. According to the Affidavit filed herein, the Defendants D. Randolph Whitt and Pearce W. Fleming are not in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act (2003), and any amendments thereto.
8. Pearce W. Fleming, Esquire, Defendant Pro Se, served an Answer on the Plaintiff, which is on file herein.
9. D. Randolph Whitt, Esquire, Defendant Pro Se, served an Answer on the Plaintiff, which is on file herein. The Answer raises breach of the covenant of good faith and fair dealing and dual tracking violation of the CFPB regulations as counterclaims.
10. Based on the Affidavit in Support of Plaintiff's Motion for Summary Judgment filed herein, it appears that Defendant D. Randolph Whitt was served with various discovery requests on October 21, 2015, including Requests to Admit, and has failed to respond to same.
11. Rule 36(a) of the South Carolina Rules of Civil Procedure provides, in pertinent part, that a "matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as stipulated in writing by the parties pursuant to Rules 29 and 6(b), the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney..." Rule 36 SCRPC. Under SCRPC 6(e), a party is given an additional 5 days after service by mail.

JS #2

12. Based on the foregoing, Plaintiff's Requests to Admit are deemed admitted pursuant to Rule 36(a), SCRPC. Accordingly, I find that no genuine issue of material fact exists and that summary judgment in favor of Plaintiff is proper.

13. Moreover, Defendant D. Randolph Whitt has not filed an opposing affidavit made on personal knowledge, setting forth facts as would be admissible in evidence that show there is a genuine issue of material fact remaining for trial, or otherwise factually developed any of her claims herein.

14. "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "[A] ssertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact." Jackson v. Bermuda Sands, Inc., 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009). Accordingly, I find that no genuine issue of material fact exists as to Defendant's defenses, and *that based on the following facts*, summary judgment is in favor of Plaintiff is proper.

15. For value received, Robin F. Whitt made, executed and delivered a Note dated June 26, 1998, promising thereby to pay to the order of Federal Home Mortgage Group, Inc., the sum of \$120,275.00, with interest at the rate of 7.50% per annum. Other terms and conditions are stated in the Note, which is of record herein.

16. To better secure the payment of the Note described above, the said Robin F. Whitt and D. Randolph Whitt made, executed and delivered to Federal Home Mortgage Group, Inc., a Mortgage in writing, dated June 26, 1998, covering real property in Lexington County, which is the same as that described in the Complaint. The Mortgage was filed on June 30, 1998, and is of record in the Office of the Register of Deeds for Lexington County in Book 4739 at Page 102.

17. This Mortgage constitutes a first mortgage lien on the subject property and is a Purchase Money Mortgage.

18. Thereafter, the subject Note and Mortgage were assigned by instruments recorded in the Office of the Register of Deeds for Lexington, as follows:

- a. by Assignment dated June 26, 1998, and recorded June 30, 1998, in Book 4739 at Page 110, Federal Home Mortgage Group, INC assigned the subject Note and Mortgage to Chase Manhattan Mortgage Corporation; and
- b. by Assignment dated April 2, 2014, and recorded June 17, 2014, in Book 17019 at Page 13, Chase Manhattan Mortgage Corporation assigned the subject Note and Mortgage to Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America, the present lienholder and Plaintiff herein.

[Handwritten signature] #3

19. Subsequent to the recording of the Plaintiff's mortgage, by Deed recorded June 10, 2009 in Book 14284 at Page 273, Robin F. Whitt conveyed her interest in the property to D. Randolph Whitt, thereby making D. Randolph Whitt the sole title holder of record.

20. The titleholder of record in and to the subject property as of the filing of the Lis Pendens in this action is D. Randolph Whitt.

21. Due solely to inadvertence and scrivener's error the legal description in the deed recorded on June 9, 2010 in Book 14284 at Page 273, incorrectly references the plat dated July 11, 1966 of the subject property as being recorded in Plat Slide 233 at No. 10. The plat is actually recorded in Plat Slide 223 at No. 10.

22. The Plaintiff seeks reformation of the legal description to correctly reference the plat dated July 11, 1966 as being recorded in Plat Slide 223 at No. 10, comport with the public records.

23. Payment due on the Note has not been made as provided for therein, and Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of an attorney for collection.

24. Counsel for Plaintiff filed an affidavit as to attorney's fees and costs in this case, which was not contested, and, therefore, I find as fact herein. Having considered the nature, extent and difficulty of the services rendered, the time involved in reviewing the various documents, performing the title search, preparing the pleadings, attending hearings and argument, the professional standing of counsel, the fee customarily charged for similar services, and the beneficial results obtained for Plaintiff, I find that the sum of \$3,467.75 is a reasonable fee to allow under the terms of the Note and Mortgage as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the action.

25. The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, including an attorney's fee, secured by Note and Mortgage, is as follows:

Principal due as of November 1, 2013	\$89,776.15
Interest from October 1, 2013	
through April 25, 2016 @ 7.50%	17,275.72
Late charges	36.75
Total Fees	5.00
Escrow	6,301.97
Expense Advances	5,215.25
Costs of collection prior to hearing	135.00
Attorney Fees (awarded but unpaid)	3,467.75
TOTAL DEBT secured by Note and Mortgage, including interest to date shown	\$122,213.59

Interest for the period from April 25, 2016 as shown above at the rate of 7.50% shall be added to the Principal Balance shown above through the date this Judgment is filed. After the date of judgment, interest at the rate of 7.50% on the total judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage.

26. Plaintiff does not demand a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due unto Plaintiff, including costs and Attorney's fees.

27. The Defendant Pearce W. Fleming claims or may claim a lien upon or interest in the subject property by virtue of the following:

- a. Mortgage from D. Randolph Whitt, dated April 9, 2014 and recorded April 10, 2014 in Book 16893 at Page 106, in the amount of \$43,168.14

The interest or lien of this Defendant, if any, is junior and subordinate to Plaintiff's purchase money Mortgage.

IT IS THEREFORE ORDERED:

1. Plaintiff's Motion for Summary Judgment against Defendant D. Randolph Whitt is granted.
2. Judgement is entered in favor of Plaintiff on all counterclaims and defenses raised by Defendant D. Randolph Whitt.
3. The legal description of the Mortgage is hereby reformed to correctly reference the plat dated July 11, 1966 as being recorded in Plat Slide 223 at No. 10, to comport with the public records.
4. There is due to Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of \$122,213.59, representing the "Total Debt" due Plaintiff as set forth in the Findings of Fact, *supra*, together with interest at the rate provided therein from the date aforesaid to the date hereof.
5. The amount due in the preceding paragraph (the "Total Debt" as set forth in the Findings of Fact, *supra*, and later accrued interest) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 7.50%.
6. The Defendant liable for the aforesaid Mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be cancelled.
7. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Special Referee, or her agent under the direction of the Special Referee, at public auction, at the Lexington County Courthouse, Lexington, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a

legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

- A. **FOR CASH:** The Special Referee will require a deposit of 5% on the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within 20 days, the deposit may be forfeited without further hearing and applied to the costs and Plaintiff's debt.
 - B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.50%.
 - C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.
 - D. This Mortgage constitutes a first priority lien on the subject property.
 - E. Purchaser to pay for deed preparation and costs of recording the Deed, and transfer taxes.
8. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, disbursements and expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Special Referee only the amount of the costs, disbursements and expenses crediting the balance of the bid on Plaintiff's indebtedness.
9. The Special Referee will, by advertisement according to law, give notice of the time, date, place of sale, and the terms thereof, which Notice of Sale is incorporated herein by reference; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within 20 days after date of sale, then the Special Referee may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.
10. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the property shall not be sold, and in that event any such sale shall be null and void and of no force and effect. The property shall be re-advertised and sold at some convenient sales day thereafter when Plaintiff, Plaintiff's attorney, or Plaintiff's agent is present.
11. That the Special Referee will apply the proceeds of the sale as follows:
- FIRST:** To payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.
- NEXT:** To the payment of Plaintiff, or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.
- NEXT:** Any surplus funds will be held pending further order of the Court.

JP #6

12. **IT IS FURTHER ORDERED** that in the event the successful bidder is other than the Defendant in possession herein, upon full compliance with the bid, and upon issuance of a Writ of Assistance by this Court, the Sheriff of Lexington County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

13. **IT IS FURTHER ORDERED** that, in the event the successful bidder is other than the Defendant in possession herein and the occupant(s) have voluntarily vacated the premises or have been ejected from the premises leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said premises, upon full compliance with the bid, Purchaser is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of Plaintiff's mortgage, which personal property, being deemed abandoned, shall be removed by Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

14. **IT IS FURTHER ORDERED** that, in addition to all parties deemed by law to have received constructive notice of the action herein, the Defendant named herein and all persons whomsoever claiming under said defendant, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

15. **IT IS FURTHER ORDERED** that the Deed of conveyances made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder of the mortgaged property at the time of filing of the notice of pendency of the within action, and the name of the grantee, and the Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

16. **IT IS FURTHER ORDERED** that the Special Referee will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, issuing a Writ of Assistance and hearing any issues involving appraisal proceedings under Section 29-3-680 *et seq.*, South Carolina Code of Laws (1976), as amended.

17. Plaintiff does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject property.

18. The Special Referee shall direct the Register of Deeds to release of record the Mortgage lien being foreclosed, all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and Disbursements has been executed and filed. Plaintiff's Mortgage lien is described as follows:

That certain Mortgage given by Robin F. Whitt and D. Randolph Whitt to Federal Home Mortgage Group, Inc. dated June 26, 1998 and recorded in the Office of the Register of Deeds for Lexington County on June 30, 1998 in Book 4739 at Page 102.

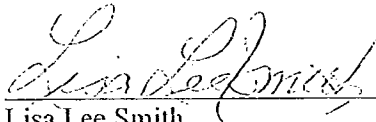
18. The following is a description of the premises herein ordered to be sold:

All that certain pieces, parcels or land, with Improvements thereon, situate, lying and being in Lexington County, State of South Carolina, and being shown as Lots 37 and 37A on a final subdivision plat of Magnolia Ridge prepared by Drafts Surveying, Inc. dated July 11, 1996, and recorded in the Lexington County RMC office in Plat Slide 223, No. 10; also shown on a plat prepared for D. Randolph Whitt and Robin F. Whitt by Drafts Surveying, Inc. dated June 19, 1998 and recorded in the Lexington County Register of Deeds office in Plat Book 284 at Page 154 and having the metes and bounds as shown on said latter plat.

TMS Number: 005552-01-037

PROPERTY ADDRESS: 344 Blossom View Ct, West Columbia, SC

This being the same property conveyed to Robin F. Whitt and D. Randolph Whitt by deed of W.J.S., Inc., dated June 26, 1998 and recorded in the Office of the Register of Deeds for Lexington County on June 30, 1998 in Deed Book 4739 at Page 99. Robins F. Whitt conveyed her interest to D. Randolph Whitt by deed dated June 7, 2010 and recorded June 9, 2010 in Book 14284 at Page 273.



Lisa Lee Smith
Special Referee for Lexington County

Lexington, South Carolina
April 27, 2016

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W.
Fleming,

DEFENDANTS.

FILED

IN THE COURT OF COMMON PLEAS

2016 JUN -3 AM 9:08

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

BETH A. GARDIGG
CLERK OF COURT
LEXINGTON, SC

ORDER TO VACATE AND RESCHEDULE

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

COPY

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

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

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

The Special Referee is not persuaded by the Defendant Whitt's argument that the problems with the notice of the summary judgment hearing in this case amount to a "structural defect" under the case law of LaSalle Bank Nat'l Ass'n v. Davidson, 688 S.E.2d 121 (S.Ct. 2009). In determining whether to set aside a final judgment under Rule 60(b), the Court must consider the following relevant factors: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other parties. Micronics, Inc. v. S.C. Dep't of Revenue 548 S.E.2d 223, 226 (S.C. Ct. App. 2001).

The Defendant Whitt filed his motion for relief promptly, prior to the sale of the property pursuant to the foreclosure order, on the 10th day following the date affirmed by the Plaintiff's Certificate of Service of mailing a copy of the foreclosure order to the Defendant Whitt.

The Defendant Whitt failed to appear at the hearing for the Motion for Summary Judgment because he did not have actual notice of the hearing. Prior communications by e-mail between the Special Referee, Plaintiff's Counsel and Defendant Whitt concluded with Plaintiff's counsel indicating that they were not ready to schedule a final hearing at that time and that they would contact the Special Referee's office "and copy counsel when [they] are ready to schedule a hearing." Defendant Whitt is an attorney representing himself pro se and could have reasonably considered himself "counsel" as referenced in the e-mail. While this e-mail did not give rise to any legal requirement for the Defendant Whitt to be consulted by e-mail regarding the scheduling of the hearing on the Motion for Summary Judgment, nor any legal requirement to provide any notice by e-mail to the Defendant Whitt, such a communication may explain the Defendant Whitt not "acting promptly" to be concerned about ambiguities in his mailing address for service, since he was communicating with Plaintiff's Counsel and the Special Referee previously.

The Special Referee finds that in this situation, the "mistake, inadvertence, surprise, or excusable neglect" is associated with the notice of the Summary Judgment hearing, and therefore Defendant Whitt's opportunity to be heard in defense of the Motion for Summary Judgment. Defendant Whitt did not appear at the Summary Judgment hearing and claims that he was not properly served with the notice of the hearing and he had no actual notice of the hearing. Defendant Whitt asserts that the hearing notice should have been mailed to the property address, which is his residence and has been his residence throughout this litigation.

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

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

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

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

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

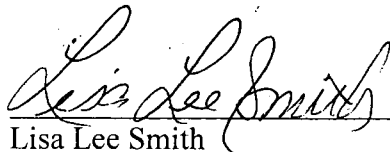
While the meritorious defense to summary judgment recognized by the Special Referee, raised by Defendant Whitt in argument for his motion to vacate, only applied to a portion of the matters before the Court at the summary judgment stage, the entire Order is vacated pursuant to Rule 60(b)(1) because the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

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

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

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

IT IS SO ORDERED.



Lisa Lee Smith
Special Referee for Lexington County

Lexington, South Carolina

Aug. 1, 2016

RECEIVED
CLERK OF COURT
LEXINGTON SC

2016-08-03 AM 9:09

FILED

MB

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W.
Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO: 2014-CP-32075

ORIGINAL**ORDER**

**Allowing Supplemental Materials re: Motion
for Summary Judgment**

THIS MATTER came before the Special Referee for hearing on November 16, 2016, regarding a Motion for Summary Judgment by the Plaintiff, with all parties either present or represented by counsel. The Special Referee heard and considered arguments, affidavits and memoranda presented at the hearing. At the request and consent of the parties, additional time is granted for the submission of additional affidavit(s)/memoranda by the Plaintiff and responsive affidavit(s)/memoranda by the Defendants, within the following schedule.

1. Plaintiff may file and serve by regular mail additional supporting affidavit(s) and/or memoranda on or before December 7, 2016 and shall also e-mail same to all parties and the Special Referee.

2. Defendants may thereafter file and serve by regular mail additional responsive affidavit(s) and/or memoranda on or before December 21, 2016, and shall also e-mail same to all parties/counsel and Special Referee.

3. The record for the Summary Judgment hearing shall thereafter be closed and under consideration by the Special Referee.

IT IS SO ORDERED.



Lisa Lee Smith
Special Referee for Lexington County

Lexington, South Carolina
Nov. 28, 2016

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2017 APR 10 PM 1:22

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

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

**ORDER RE MOTION FOR SUMMARY
JUDGMENT**

(Granted in Part / Denied in Part)

PLAINTIFF,

(Deficiency Waived)

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

This matter was initiated by the filing on August 1, 2014 of a *Lis Pendens* and Summons and Complaint seeking the foreclosure of a residential mortgage. These pleadings were subsequently properly served upon the Defendants. A deficiency judgment is not demanded by the Plaintiff. D. Randolph Whitt, Esquire, Defendant, *Pro Se*, filed and served an Answer and a subsequent Amended Answer and Counterclaim on the Plaintiff. The counterclaims raise the issues of breach of the covenant of good faith and fair dealing and a dual tracking violation of the CFPB regulations; which are denied by the Plaintiff. Pearce W. Fleming, Esquire, who is also a *Pro Se* Defendant, served an Answer on the Plaintiff, which is on file herein, seeking protection of his rights as a separate mortgage lien holder; including rights to any surplus funds in foreclosure.

Pursuant to Rule 53 SCRPC, the above-entitled matter was referred to Lisa Lee Smith as Special Referee for Lexington County. After a previous ruling on summary judgment was vacated by Order of the Special Referee dated August 1, 2016, on file herein, this matter came back before the Special Referee on November 16, 2016, for a hearing of the Plaintiff's refilled Motion for Summary Judgment. Proper notice of the Hearing was served on the parties and/or



their attorneys. At the hearing, Plaintiff was represented by Magalie A. Creech, Esq., of the Finkel Law Firm. The Defendants, both members of the South Carolina Bar, appeared *pro se*.

“Summary judgment is a drastic remedy and should be cautiously invoked so that a litigant will not be improperly deprived of a trial on disputed factual issues.” Hoard v. Roper Hospital, Inc., 694 S.E.2d 1, 4 (S.C. 2010). Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC.

“In ascertaining whether any triable issue of fact exists, the trial court must view all evidence and all inferences that can be reasonably drawn from it in the light most favorable to the non-moving party.” Rawlinson Rd Homeowners Assoc. Inc. v. Jackson, 716 S.E.2d 337, 341 (S.C. Ct. App. 2011) (*citing* Belton v. Cincinnati Ins. Co., 360 S.C. 575, 578, 602 S.E.2d 389, 391 (2004)). “[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Id.* at 341 (*quoting* Hancock v. Mid-South Mgmt. Co., 673 S.E.2d 801, 803 (S.C. 2009)).

“A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. *Id.* At 342 (*quoting* David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006)).

While not solely determinative of all issues before this Court, I find that Defendant Whitt, by his failure to respond, admitted to the Plaintiff's Requests for Admissions dated October 21,

2015 and served upon him, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure. Defendant Whitt admitted at the hearing that he did not respond to the Plaintiff's Requests for Admissions; however, he asserted that the requests should not be deemed admitted, because (1) the Plaintiff's requests were an improper use of Requests to Admit and (2) the legal implications of the conduct of the Plaintiff and/or Plaintiff's representatives after the date of the Requests to Admit should not be determined by any deemed admissions from the failure to respond to the Requests to Admit.

As to Defendant Whitt's first argument that the Requests to Admit were improper to the extent they simply asserted the ultimate issues in the case (i.e. "I win, you loose"), I find that the Plaintiff's Requests to Admit were proper under Rule 36. The applicable South Carolina Rule reads, in part, "(a) party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request." Rule 36(a) SCRPC. Requests to admit may go specifically and directly to issues raised in the pleadings, and "the admission resulting from a party's failure to respond to the request may override the pleadings." Scott v. Greenville Housing Authority, 353 S.C. 639, 650 (Ct. App. 2013). In Scott, the South Carolina Court of Appeals held that requests for admissions were valid which stated that the Defendant was responsible and liable for all damages, and Defendant's conduct was the sole proximate cause of any and all damages; even though the Defendant had denied such allegations in its Answer. An admission under Rule 36 is "akin to the doctrine of judicial estoppel: an admission precludes the admitting party from arguing facts at trial contrary to its responses to a



request to admit....” Commerce Center of Greenville, Inc. v. W. Powers McElveen & Assoc Inc., 347 S.C. 545, 554 (Ct. App. 2001).

In the present case, Plaintiff served 18 statements as Requests for Admission on Defendant Whitt, which is on file in this matter as Exhibit A to Plaintiff’s Affidavit in Support of Motion for Summary Judgment filed herein December 10, 2015. The requests sought the admission of statements of fact or opinion, application of law to fact or the genuineness of documents attached; all of which are an appropriate use of requests for admissions pursuant to Rule 36, SCRCF. Furthermore, the Defendant did not respond to the Plaintiff in discovery by stating his objections to any particular requests, even though such a procedure is set forth in the Rule as the appropriate manner to handle such objections. Accordingly, the requests to admit are deemed admitted by the Defendant Whitt and are therefore appropriate for summary judgment.

At the hearing on the Motion, Defendant Whitt raised a second argument, that the failure to respond to the requests for admission should not be conclusive as to the legal implications of the conduct of the Plaintiff and/or the Plaintiff’s representatives after the date of the Requests to Admit. Such a limitation to the interpretation of the admissions is appropriate considering the ongoing nature of the procedures of foreclosure. Therefore, the finding of summary judgment based on the Defendant’s admissions that Defendant Whitt had not suffered any damages, did not have valid claims against the Plaintiff, did not have valid defenses to the foreclosure of the Mortgage and was not entitled to reimbursement of attorneys’ fees and costs, (See Req. to Adm. 11, 12, 13, 18); is a finding that does not preclude the Defendant from raising defenses or claims at the hearing on the merits, which are based upon facts occurring or arising subsequent to the date of his deemed admissions. In other words, prior admissions are not determinative at summary judgment of the legal implications of subsequently occurring facts. Therefore, the



Defendant Whitt's admissions for purposes of this summary judgment consideration are interpreted at the point in time which the Requests for Admissions were asserted by the Plaintiff.

After consideration of the pleadings, the evidence and the law cited in the Plaintiff's and Defendant's Affidavits and Memoranda, together with supporting exhibits annexed thereto including the Plaintiff's Request for Admissions, and after consideration of the oral arguments of counsel and the parties at the hearing on the motion, along with an examination of the supplemental submissions permitted by order after the hearing, I find that the Plaintiff is entitled to an Order granting Summary Judgment in part and denying Summary Judgment in part.

I find and conclude that there are no genuine issues of material fact, and summary judgment is thus appropriate, as to the following particulars:

1. For value received, Robin F. Whitt made, executed and delivered a Note dated June 26, 1998, promising thereby to pay to the order of Federal Home Mortgage Group, Inc., the sum of \$120,275.00, with interest at the rate of 7.50% per annum. Other terms and conditions are stated in the Note; a correct copy being of record herein. Defendant D. Randolph Whitt did not sign the Note, and has not assumed the loan by becoming an obligor on the Note.
2. Robin F. Whitt and Defendant D. Randolph Whitt made, joint owners of the subject real property at said time, executed and delivered to Federal Home Mortgage Group, Inc., a Mortgage in writing, dated June 26, 1998, covering real property in Lexington County, which is the same as that described in the Complaint. The Mortgage was filed on June 30, 1998, and is of record in the Office of the Register of Deeds for Lexington County in Book 4739 at Page 102. Defendant D. Randolph Whitt signed the referenced Mortgage.
3. This Mortgage constitutes a first mortgage lien on the subject property and is a Purchase Money Mortgage.



4. Thereafter, the subject Note and Mortgage were assigned by instruments recorded in the Office of the Register of Deeds for Lexington, as follows:

a. by Assignment dated June 26, 1998, and recorded June 30, 1998, in Book 4739 at Page 110, Federal Home Mortgage Group, Inc., assigned the subject Note and Mortgage to Chase Manhattan Mortgage Corporation; and

b. by Assignment dated April 2, 2014, and recorded June 17, 2014, in Book 17019 at Page 13, Chase Manhattan Mortgage Corporation assigned the subject Note and Mortgage to Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America. Fannie Mae is the present lien holder and Plaintiff herein.

5. Subsequent to the recording of the Plaintiff's mortgage, by Deed recorded June 09, 2010 in Book 14284 at Page 273, Robin F. Whitt conveyed her interest in the property to D. Randolph Whitt, thereby making D. Randolph Whitt the sole title holder of record. Accordingly, it is uncontested that the titleholder of record in and to the subject property as of the filing of the *Lis Pendens* in this action is the Defendant D. Randolph Whitt.¹

6. All required payments due and owing under the Note have not been made as provided for therein, and Plaintiff, as the holder thereof, elected to require immediate payment of the entire amount due thereon and placed the Note and Mortgage in the hands of an attorney for collection.

7. The balance due and owing under the Note and Mortgage has not been paid in full, the Plaintiff provided notice of default, and the default arising under the Note and Mortgage has not been cured.

¹ However, this Court and the Plaintiff do not warrant Plaintiff's title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject property.

8. As of November 1, 2013, the principal amount due and owing under the Note and Mortgage was \$89,776.15; and under the terms of the Note and Mortgage, interest at the rate of 7.50% *per annum* continues to accrue on the unpaid balance from October 1, 2013.

9. The Defendant Pearce W. Fleming holds a lien upon or interest in the subject property by virtue of a Mortgage from D. Randolph Whitt, dated April 9, 2014 and recorded April 10, 2014 in Book 16893 at Page 106, in the amount of \$43,168.14.

10. The lien of the Defendant Pearce W. Flemming, if any remains unsatisfied, is junior and subordinate to Plaintiff's purchase money Mortgage.

11. Under the terms of the Note and Mortgage and finding herein, Plaintiff is entitled to foreclosure of the property, and is entitled to the reimbursement of its costs and expenses, including reasonable attorney's fees.

12. Due to a scrivener's error, the legal description in the deed to the Defendant Whitt recorded June 9, 2010 in Book 14284 at Page 273 incorrectly references the plat dated July 11, 1996 as being recorded in Plat Slide 233 at No. 10, rather than the correct reference to Plat Slide 223 at No. 10.

13. As of the Requests for Admissions dated October 15, 2015, Defendant admitted to the application of law to the facts in existence at that time, that he had not suffered any damages, did not have valid claims against the Plaintiff, did not have valid defenses to the foreclosure of the Mortgage and was not entitled to reimbursement of attorneys' fees and costs.

As to all other matters raised by the pleadings in this case, I find that there are genuine issues of material fact and therefore summary judgment is not warranted. This includes, but is not limited to, issues concerning the determination of the amount owed to the Plaintiff reflecting the calculation of portions of the debt over and above the principal and interest calculations.



IT IS THEREFORE ORDERED for the reasons set forth above, Plaintiff's Motion for Summary Judgment is granted in part and denied in part; and a hearing shall be scheduled as soon as possible on merits of the remaining issues in dispute.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Lisa Lee Smith", written over a horizontal line.

Lisa Lee Smith
Special Referee for Lexington County

Lexington, South Carolina

April 7, 2017

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

vs.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANT(S).

TO THE ABOVE NAMED DEFENDANT(S):

IN THE COURT OF COMMON PLEAS
 C/A NO: 2014-CP-32-

FILED**SUMMONS AND NOTICE**

2014 AUG -1 A 11:16

(NON-JURY MORTGAGE FORECLOSURE)
 BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON SC

2014CP3202795

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or to otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the plaintiff's attorneys at their office, 4000 Faber Place, Suite 450 (29405), P.O. Box 71727, North Charleston, South Carolina, 29415, or to otherwise appear and defend the action pursuant to applicable court rules, within thirty (30) days after service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of such service; and if you fail to answer the Complaint or otherwise appear and defend within the time aforesaid, the Plaintiff in this action will apply to the Court for relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

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

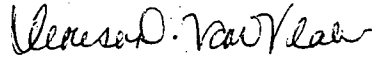
YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff.

YOU WILL ALSO TAKE NOTICE that pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, as amended effective September 1, 2002, the Plaintiff will move for a general Order of Reference to the Master in Equity for Lexington County, which Order shall, pursuant to Rule 53(b) of the

SCRCP, specifically provide that the said Master in Equity is authorized and empowered to enter a final judgment in this action.

FINKEL LAW FIRM LLC
P.O. Box 71727
North Charleston, S.C. 29415
(843) 577-5460

By:



- ☐ Thomas A. Shook, SC Bar # 68340
 - ☐ Susan S. White, SC Bar # 5453
 - ☐ Andrew M. Wilson, SC Bar #72553
 - ☐ Elizabeth S. Moore, SC Bar # 69236
 - ☒ Teresa D. Van Vlase, SC Bar # 11118
- Attorneys for Plaintiff

July 29, 2014

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

vs.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2014-CP-32-

FILED**COMPLAINT**

2014 AUG -1 A 11:16

(NON-JURY MORTGAGE FORECLOSURE)
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2014CP3202795

The Plaintiff alleges as follows:

1. The Plaintiff, a corporation or other legal entity, brings this foreclosure action to collect a debt and/or enforce a mortgage, security interest, or other rights in property securing the debt.
2. The Plaintiff is the servicer and/or mortgagee of the note and mortgage covering real property located in Lexington County, which is the subject of the within captioned action, and is entitled to enforce same.
3. The defendant(s) named herein may have an interest in the property that is the subject of this action.
4. Any defendant(s) described herein as Judgment Creditor(s) have by filing judgment(s) designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of §15-35-840 of the South Carolina Code of Laws (1976 as amended).
5. On or about June 26, 1998, for value received, Robin F. Whitt executed and delivered to Federal Home Mortgage Group, Inc. a certain promissory note in the sum of \$120,275.00, together with interest thereon pursuant to the terms of the note.
6. To secure the payment of the said note and debt, secured thereby, and in accordance with the terms and conditions thereof, on June 26, 1998, Robin F. Whitt and D. Randolph Whitt executed and delivered to Federal Home Mortgage Group, Inc., its successors and assigns, a mortgage covering the following described property:

All that certain pieces, parcels or land, with Improvements thereon, situate, lying and being in Lexington County, State of South Carolina, and being shown as Lots 37 and 37A on a final subdivision plat of Magnolia Ridge prepared by Drafts Surveying, Inc. dated July 11, 1996, and recorded in the Lexington County RMC office in Plat Slide 223, No. 10; also shown on a plat prepared for D. Randolph Whitt and Robin F. Whitt by Drafts Surveying, Inc. dated June 19, 1998 and recorded in the Lexington County Register of Deeds office in Plat Book 284 at Page 154 and having the metes and bounds as shown on said latter plat.

TMS #: 005552-01-037

Property Address: 344 Blossom View Ct, West Columbia, SC

7. Thereafter the mortgage was recorded in the Office of the Register of Deeds for Lexington County in book 4739 at page 102 on June 30, 1998.
8. The above-referenced instrument constitutes a purchase money mortgage with the proceeds of the loan being used to purchase the property above described.
9. Thereafter, the subject mortgage was assigned or otherwise transferred as follows:
 - a. By assignment dated June 26, 1998, and recorded June 30, 1998, in book 4739 at page 110, Federal Home Mortgage Group, Inc. assigned the subject mortgage to Chase Manhattan Mortgage Corporation;
 - b. By assignment dated April 2, 2014, and recorded June 17, 2014, in book 17019 at page 13, JPMorgan Chase Bank, N.A., s/b/m Chase Home Finance LLC, s/b/m to Chase Manhattan Mortgage Corporation assigned the subject mortgage to Federal National Mortgage Association, thereby making Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America, the Plaintiff herein.
10. Subsequent to the recording of the plaintiff's mortgage, by Deed recorded June 10, 2009 in Book 14284 at Page 273, Robin F. Whitt by virtue of the Final Order issued by the Family Court on March 10 2009, Case Number: 2008-DR-32-2781 conveyed her interest in the property to D. Randolph Whitt, thereby making D. Randolph Whitt the sole title holder of record.

Any interest of D. Randolph Whitt is junior and subordinate to the plaintiff's mortgage.
11. Due solely to inadvertence and scrivener's error the legal description in the deed recorded on June 9, 2010 in Book 14284 at Page 273, incorrectly references the plat dated July 11, 1996 of the subject property as being recorded in Plat Slide 233 at No. 10. The plat is actually recorded in Plat Slide 223 at No. 10.
12. The plaintiff seeks reformation of the legal description to correctly reference the plat dated July 11, 1996 as being recorded in Plat Slide 223 at No. 10, comport with the public records.

13. Pursuant to the Administrative Order of the Chief Justice, 2009-05-22-01, the loan that is subject of this action is held by a participant in the Home Affordable Modification Program (HMP), however the loan is not subject to modification under the HMP because the property is vacant.

14. Pursuant to the terms of the mortgage, any sums paid by the plaintiff for inspecting and securing the subject property, for fire and other hazard insurance, taxes and assessments for the mortgaged premises, and any costs of collection, including reasonable attorney's fees, are secured by the mortgage.

15. The monthly payments due on said note and mortgage are in default since November 1, 2013, although demand for payment thereof has been made and the plaintiff, as the holder of the said note and mortgage, after providing all required notices, elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of November 1, 2013, the sum of \$ 89,776.15, together with interest at the rate of 7.50% per annum, from October 1, 2013, and also for the costs and disbursements of this action, including attorney's fees.

16. Pursuant to Section 37-3-105, South Carolina Code of Laws (1976 as amended), the mortgage lien, which is the subject of this action, is a first lien on real estate and is not a '*consumer loan*' for the purposes of the South Carolina Consumer Protection Code. Any notice of right to cure has been given as required.

17. The Plaintiff does not demand a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due unto the plaintiff, including costs and attorney's fees.

18. Pearce W. Fleming claim(s), or may claim a lien upon or interest in the subject property by virtue of a mortgage from D. Randolph Whitt, dated April 9, 2014, and recorded April 10, 2014, in Book 16893 at Page 106, in the amount of \$43,168.14.

The interest or lien of the above Defendant, if any, is junior and subordinate to the plaintiff's purchase money mortgage.

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

1. The amount due upon the said note and mortgage held by Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

2. The said Plaintiff's Mortgage be declared a first mortgage lien and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.

3. The Court grant reformation of the legal description in the deed recorded on June 9, 2010 in Book 14284 at Page 273 to correctly reference the plat dated July 11, 1996 as being recorded in Plat Slide 223 at No. 10, to comport with the public records.

4. The mortgaged premises be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be 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 Plaintiff's note and mortgage, together with the attorney's fees as aforesaid, and

Third, the surplus, if any be distributed according to law.

5. An Order be entered directing and empowering the Sheriff of Lexington County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

6. An Order be entered for the ejectment of the defendants in possession herein and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures and items not subject to the lien of the plaintiff's mortgage, which personal property if not removed shall be deemed abandoned and shall be removed by the plaintiff or its agents from the subject property by placing said property on the public street or highway or by any other means.

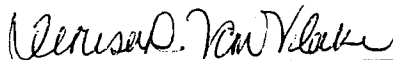
7. An Order be entered granting the appointment of a Receiver to secure and supervise the rental of the property sought to be foreclosed with authority to take possession thereof and collect rents, issues and profits thereon during the pendency of this action and to hold the same as further security for Plaintiff's debt.

8. An Order be entered for reimbursement of all costs for inspecting and securing the property incurred by the plaintiff as a result of the delinquency.

9. An Order be entered for such other and further relief as may be just and proper.

FINKEL LAW FIRM LLC
P.O. Box 71727
N. Charleston, SC 29415
(843) 577-5460

By:



- ☐ Thomas A. Shook, SC Bar # 68340
 - ☐ Susan S. White, SC Bar # 5453
 - ☐ Andrew M. Wilson, SC Bar #72553
 - ☐ Elizabeth S. Moore, SC Bar # 69236
 - ☒ Teresa D. Van Vlakte, SC Bar # 11118
- Attorneys for Plaintiff

July 29, 2014

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT, (THE 'ACT')
15 U.S.C. SECTION 1601, AS AMENDED**

1. As of August 31, 2014, you owe \$ 99,620.59. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write or call as directed in Paragraph 6 of this Notice.
2. Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America is the Creditor to whom the debt is owed.
3. The debt described in this Notice will be assumed to be valid by the Creditor's law firm unless you, the Debtor, within thirty (30) days after receipt of this notice, dispute the validity of the debt or some portion thereof.
4. If you, the Debtor, notify the Creditor's law firm in writing, within thirty (30) days from receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will cease all collection activities until it obtains and provides to you a verification of the debt, and a copy of the verification will be mailed to you, the debtor, by the Creditor's law firm.
5. If the Creditor named in the attached letter is not the original Creditor, and if you make a written request to the Creditor's law firm within thirty (30) days, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. Written requests should be addressed to Finkel Law Firm LLC, Post Office Box 71727, N. Charleston, SC 29415, or call (843) 577-5460.
7. Please be advised that the time period in which you have to dispute the amount of your debt and request additional information does not alter or affect the time period set forth in the South Carolina Rules of Civil Procedure for the filing of an answer or other responsive pleading to the Complaint.
8. If the Debtor has received a discharge of the debt described in paragraph one pursuant to the United States Bankruptcy Code, then neither Creditor nor its law firm is seeking to collect any portion of the debt and all information contained herein is supplied for informational purposes only. Any pending or ensuing legal action by Creditor's law firm will undertake to foreclose a valid security interest only and neither is intended nor will operate as any effort to collect upon any debt that has been so discharged.

**THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED
WILL BE USED FOR THAT PURPOSE**

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

vs.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 2014 CP 32-**FILED**

NOTICE OF FORECLOSURE

INTERVENTION | A 11:16

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2014 CP 3202795

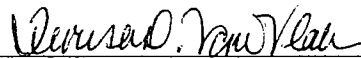
TO D. RANDOLPH WHITT:

PLEASE TAKE NOTICE THAT pursuant to the Supreme Court of South Carolina Administrative Order 2011-05-02-01, you may be eligible for foreclosure intervention programs for the purpose of resolving the above-referenced foreclosure action. If you wish to be considered for a foreclosure intervention program, you may contact Finkel Law Firm LLC, 4000 Faber Place Drive, Suite 450 (29405), P.O. Box 71727 (29415), North Charleston, SC 29405, or call (843) 577-5460 within **thirty (30) days** from the date of this notice. Finkel Law Firm LLC represents the Plaintiff in this action. Our law firm does not represent you and is not authorized to provide you any legal advice.

IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN THIS FORECLOSURE INTERVENTION PROCESS, THE FORECLOSURE MAY PROCEED.

FINKEL LAW FIRM LLC
P.O. Box 71727
North Charleston, S.C. 29415
(843) 577-5460

By:



- ☐ Thomas A. Shook, SC Bar # 68340
 - ☐ Susan S. White, SC Bar # 5453
 - ☐ Andrew M. Wilson, SC Bar #72553
 - ☐ Elizabeth S. Moore, SC Bar #69236
 - ☒ Teresa D. Van Blake, SC Bar #11118
- Attorneys for Plaintiff

July 29, 2014

NOTICE PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT (15 U.S.C. § 1692 et seq.): This is an attempt to collect a debt and any information you provide will be used for that purpose. However, if you have previously received a discharge from bankruptcy, this message is not and should be construed as an attempt to collect a debt, but only as a requirement pursuant to the administrative order.

Foreclosure Intervention Response Form

This information is requested for the express purpose of foreclosure intervention pursuant to S.C. Supreme Court Administrative Order 2011-05-02-01.

Please check one of the two choices below regarding (344 Blossom View Ct, West Columbia, SC 29170):

_____ I am the owner of and occupy the property as my principal residence.

_____ I am the owner but **do not** occupy the property.

If you own and occupy (344 Blossom View Ct, West Columbia, SC 29170) as your principal residence and are interested in the following type(s) of loss mitigation, please indicate your interest(s) below (check all that interest you):

_____ Reinstatement

_____ Deed in Lieu

_____ Payoff

_____ Short Sale

_____ Payment Plan

_____ I am already working with my mortgage company.

_____ Forbearance Agreement

_____ Other: _____

_____ Loan Modification

PLEASE NOTE THAT YOU MAY NOT QUALIFY FOR ALL THE OPTIONS LISTED ABOVE. NO REPRESENTATION OF ANY KIND IS BEING MADE REGARDING THE AVAILABILITY OF ANY LOSS MITIGATION OPTION OR YOUR QUALIFICATION FOR ANY OPTION.

_____ I **do not** wish to participate in any Foreclosure Intervention Program.

So that we may offer you the fullest possible assistance, please provide the information requested below.

Contact Information

May we leave a phone message?

At home? ☐ Yes ☐ No

Home #: _____

On your cell? ☐ Yes ☐ No

Cell #: _____

At work? ☐ Yes ☐ No

Work #: _____

May we send you an e-mail message? ☐ Yes ☐ No

Email: _____

_____ (Signature)

_____ (Signature)

_____ (Signature)

_____ (Signature)

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

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

vs.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANT(S).

COPY
FILED

IN THE COURT OF COMMON PLEAS

C/A NO: 2014-CP-32-2014 AUG -1 A 11:15

LIS PENDENS

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

(NON-JURY MORTGAGE FORECLOSURE)

2014-LP-32 - 744

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this court upon Complaint of the above-named Plaintiff against the above-named Defendant(s) for foreclosure of a certain mortgage of real estate given by Robin F. Whitt and D. Randolph Whitt to Federal Home Mortgage Group, Inc. in the amount of \$120,275.00, dated June 26, 1998, and recorded in the Office of the Register of Deeds for Lexington County in Book 4739 at Page 102 on June 30, 1998 at 1:32 p.m.

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

All that certain pieces, parcels or land, with Improvements thereon, situate, lying and being in Lexington County, State of South Carolina, and being shown as Lots 37 and 37A on a final subdivision plat of Magnolia Ridge prepared by Drafts Surveying, Inc. dated July 11, 1996, and recorded in the Lexington County RMC office in Plat Slide 223, No. 10; also shown on a plat prepared for D. Randolph Whitt and Robin F. Whitt by Drafts Surveying, Inc. dated June 19, 1998 and recorded in the Lexington County Register of Deeds office in Plat Book 284 at Page 154 and having the metes and bounds as shown on said latter plat.

TMS#: 005552-01-037

Property Address: 344 Blossom View Ct, West Columbia, SC

FINKEL LAW FIRM LLC

Post Office Box 71727

North Charleston, South Carolina 29415

(843) 577-5460

By:



- ☐ Thomas A. Shook, SC Bar # 68340
☐ Susan S. White, SC Bar # 5453
☐ Andrew M. Wilson, SC Bar # 72553
☐ Elizabeth S. Moore, SC Bar # 69236
☒ Teresa D. Van Vlake, SC Bar # 11118
 Attorneys for Plaintiff

July 29, 2014



ORIGINAL

Reply to Charleston Foreclosure Office

January 12, 2015

DENIAL OF FORECLOSURE RELIEF
(after review)

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

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

Dear Sir:

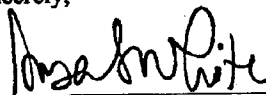
Your loan has been reviewed for the foreclosure intervention options you requested pursuant to the Notice of Foreclosure Intervention you returned to us. Unfortunately, you are ineligible for the following reasons:

	YOU REQUESTED	REASON FOR INELIGIBILITY
☐	Reinstatement	
☐	Payoff	
☐	Payment Plan	
☐	Forbearance Agreement	
☒	Loan Modification	The borrower defaulted on the trial payment plan.
☐	Deed in Lieu	
☐	Short Sale	
☐	Other:	

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

Sincerely,

By:

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

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

COLUMBIA
1201 Main Street, Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201

CHARLESTON
Litigation, Real Estate & REO
4000 Faber Place Drive, Suite 450
Post Office Box 41489 (29423)

CHARLESTON
Foreclosure
4000 Faber Place Drive, Suite 450
Post Office Box 71727 (29415)

240

F44356

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

vs.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 14-CP-32-2795

**CERTIFICATION OF COMPLIANCE WITH
ADMINISTRATIVE ORDER 2011-05-02-01**

The undersigned attorneys for Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America certify the following:

1. That Robin F. Whitt and D. Randolph Whitt was/were provided a Notice of Mortgagor's Foreclosure Intervention Rights by the following method:
 - ☒ By service of same with the Summons and Complaint filed by Mortgagor that commenced the above captioned action;
 - ☐ By service of a letter setting forth Mortgagor's Foreclosure Intervention Rights.
2. That Mortgagee, or its designated agent (i.e. servicer) has received and examined all documents and records required to be submitted by the Mortgagor to evaluate eligibility for foreclosure intervention;
3. That Mortgagor does not qualify for loan modification or other means of loss mitigation, in accordance with any standards, rules or guidelines applicable to the mortgage loan, and the parties have been unable to reach any other agreement concerning the foreclosure process; specifically, Mortgagor is ineligible for foreclosure relief for the following reason(s):
 - ☐ Failure to respond to Notice of Foreclosure Intervention Rights within 30 days of service of same.
 - ☐ Failure to provide all required materials requested by Plaintiff for loss mitigation.
 - ☒ Mortgagor does not meet requirement of Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America for a loan modification and is accordingly ineligible for same.
 - ☐ Mortgagor does not meet requirement for the Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America's loss mitigation opportunity and is accordingly ineligible for same.
4. That notice of the denial of loan modification or other means of loss mitigation has been served on the mortgagor by mailing such notice to all known addresses of the Mortgagor, provided that

RECEIVED
CLERK OF COURT
LEXINGTON
SOUTH CAROLINA

2015 MAR -2
A 11:11

F44356

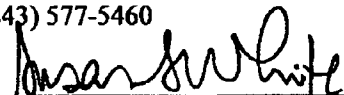
such notice shall also state that the Mortgagor has 30 days from the date of mailing of notice of denial of relief to file and serve an answer or other response to the Mortgagee's summons and complaint.

Based on the foregoing, the undersigned is informed and believes that it has afforded Mortgagor a full and fair opportunity to submit any other information or data pertaining to the Mortgagor's loan or personal circumstances for consideration by the Mortgagee.

FINKEL LAW FIRM LLC
P.O. Box 71727
North Charleston, SC 29415
(843) 577-5460

ORIGINAL

By:

- 
☐ Thomas A. Shook, SC Bar # 68340
☒ Susan S. White, SC Bar # 5453
☐ Elizabeth S. Moore, SC Bar # 69236
☐ Teresa D. Van Vlakte, SC Bar # 11118

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

BETH A. O'NEILL
CLERK OF COURT
LEXINGTON, SC

2015 MAR -2 A 11:49

FILED

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Case No. 2014-CP-32- 02795

Federal National Mortgage Assn.

Plaintiff,

vs.

D. Randolph Whitt, et al

Defendants.

Answer

(Jury Trial Demanded)

Defendant D. Randolph Whitt ("Defendant") offers this answer to the complaint filed in this matter.

- 1) Each allegation not hereafter admitted or qualified is hereby denied and strict proof demanded thereof.
- 2) The execution of the mortgage is admitted, as are the jurisdictional allegations and the allegations confirmed by reference to the public records of Lexington County.

For a Further Defense
(Unclean Hands)

- 3) The Plaintiff's conduct in this matter provides a basis for barring the relief sought by Plaintiff pursuant to the doctrine of unclean hands.

For A Further Defense
(Failure to State a Claim)

- 4) The Complaint fails to state a claim upon which relief can be granted.

Therefore, Defendant requests that the Court deny the relief sought by the Plaintiff.

D. Randolph Whitt

D. Randolph Whitt
Fleming & Whitt, P.A.
Post Office Box 12125
Columbia, SC 29211-2125
(803) 254-4751 Tel
(803) 779-0133 Fax
rwhitt@pwfleming.com

2/25/15, ~~2014~~

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2014-CP-32- 02795

Federal National Mortgage Assn.

Plaintiff,

vs.

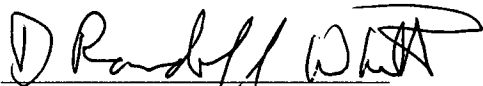
D. Randolph Whitt, et al

Defendants.

Certificate of Service

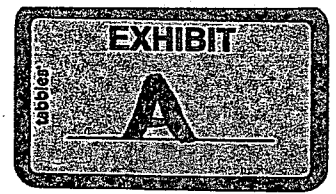
The undersigned hereby certifies that I served the Answer dated 2/25/2015 by causing a copy of said document to be placed in a sealed envelope with postage thereon fully prepaid, in the United States mail, with a return address clearly shown and addressed to :

Teresa Van Vlake
4000 Faber Place Dr.
Suite 450
North Charleston SC 29405



D. Randolph Whitt
Fleming & Whitt, P.A.
Post Office Box 12125
Columbia, SC 29211-2125
(803) 254-4751 Tel
(803) 779-0133 Fax
dwhitt2001@aol.com

February 25, 2015



STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Case No. 2014-CP-32-02795

Federal National Mortgage Assn.

Plaintiff,

vs.

D. Randolph Whitt, et al

Defendants.

Amended Answer and Counterclaims

(Jury Trial Demanded)

Defendant D. Randolph Whitt ("Defendant") offers this amended answer and asserts the following counterclaims to the complaint filed in this matter.

- 1) Each allegation not hereafter admitted or qualified is hereby denied and strict proof demanded thereof.
- 2) The execution of the mortgage is admitted, as are the jurisdictional allegations and the allegations confirmed by reference to the public records of Lexington County.

**For a Further Defense
(Unclean Hands)**

- 3) The Plaintiff's conduct in this matter provides a basis for barring the relief sought by Plaintiff pursuant to the doctrine of unclean hands.

**For A Further Defense
(Failure to State a Claim)**

- 4) The Complaint fails to state a claim upon which relief can be granted.

Factual Allegations

- 5) The Plaintiff has failed to appropriately handle information provide by the Defendant and failed to give any meaningful review to such material.
- 6) Plaintiff has asserted that Defendant defaulted on a trial payment plan, even though no offer of a trial payment plan was ever made to the Defendant.
- 7) Plaintiff has also asserted that Defendant is not eligible for a modification, after asserting that a modification had been offered and while continuing to solicit information (information that duplicates information previously submitted to Plaintiff) to allow further consideration of a modification
- 8) Plaintiff's inattention and failure to exercise due care in dealing with this matter is evidence by the Plaintiff's request that Defendant execute an IRS Form 4506-T for two completely irrelevant tax years, failing to respond when notified of this error until several months later, after the Defendant had supposedly defaulted on a trial payment plan.

For A First Counterclaim (Breach of Contract-Duty of Good Faith and Fair Dealing)

- 9) Defendants reincorporate and reallege each of the foregoing allegations as fully as if repeated herein verbatim.
- 10) Plaintiff's conduct as outlined above constitutes a breach of contract in that it violates Plaintiff's duty of good faith and fair dealing under the mortgage contract.
- 11) Defendants have suffered damages as a direct and proximate result of Plaintiff's breach.

For A Second Counterclaim
(Dual Tracking/CFPB Regs)

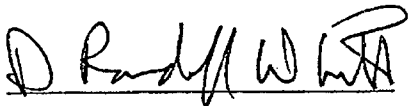
12) Defendants reincorporate and reallege each of the foregoing allegations as fully as if repeated herein verbatim.

13) Plaintiff's conduct as outlined above regarding this consumer loan, which is secured by residential real estate constitute impermissible dual tracking in violation of both the regulations of the Consumer Financial Protection Bureau(CFPB) and the common law of the State of South Carolina.

14) Plaintiff's conduct as outlined above also violates the CFPB regulations in failing to provide timely and accurate information to the Defendant and failing to appropriately handle and give meaningful review to information submitted by Defendant.

15) Defendants have suffered damages as a direct and proximate result of Plaintiff's conduct and are further entitled to statutory damages as found appropriate by the court.

Therefore, Defendant requests that the Court deny the relief sought by the Plaintiff and grant the relief sought in the counterclaims.



D. Randolph Whitt SC Bar #13068
Fleming & Whitt, P.A.
Post Office Box 12125
Columbia, SC 29211-2125
(803) 422 2176 Tel
(803) 779-0133 Fax
Dwhitt2001@aol.com

3/27, 2015

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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

Federal National Mortgage Assn.

Plaintiff,

vs.

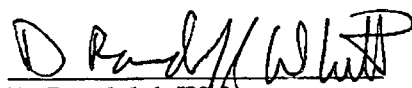
D. Randolph Whitt, et al

Defendants.

Certificate of Service

The undersigned hereby certifies that I served the Amended Answer and Counterclaims dated 3/27/2015 by causing a copy of said document to be placed in a sealed envelope with postage thereon fully prepaid, in the United States mail, with a return address clearly shown and addressed to :

Teresa Van Vlakte
4000 Faber Place Dr.
Suite 450
North Charleston SC 29405



D. Randolph Whitt
Fleming & Whitt, P.A.
Post Office Box 12125
Columbia, SC 29211-2125
(803) 422 2176 Tel
(803) 779-0133 Fax
dwhitt2001@aol.com

March 27, 2015

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-32-02795

**PLAINTIFF'S REPLY TO DEFENDANT'S
AMENDED ANSWER AND
COUNTERCLAIM**

ORIGINAL

Plaintiff, by undersigned counsel, hereby submits its Reply to the Amended Answer and Counterclaim ("Answer") filed by D. Randolph Whitt ("Defendant"). In support of its Reply, Plaintiff states as follows:

1. Unless expressly admitted herein, Plaintiff denies each and every allegation in the Answer.
2. Each allegation of the Complaint in this matter is hereby incorporated by reference. Plaintiff denies any factual allegation in the Answer inconsistent therewith and demands strict proof.
3. Plaintiff craves reference to the public records of Lexington County, South Carolina, for the subject documents of Plaintiff's action, and denies anything inconsistent therewith.
4. To the extent paragraphs 1 and 2 of the Answer require a response, Plaintiff denies same and demands strict proof.
5. Plaintiff denies paragraphs 3 through 6 of the Answer, and demands strict proof.
6. Plaintiff admits only so much of paragraph 7 of the Answer that can be construed to allege it has engaged in loss mitigation efforts with Defendant. Defendant denies the remaining allegations of paragraph 7 and demands strict proof.
7. Plaintiff denies paragraph 8 of the Answer and demands strict proof.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Violation of the Covenant of Good Faith and Fair Dealing)

8. Plaintiff reasserts the foregoing statements as if set forth at length herein.

9. Plaintiff denies paragraphs 9 through 11 of the Answer, and demands strict proof.

FOR A SECOND DEFENSE TO THE FIRST CAUSE OF ACTION
(Violation of the Covenant of Good Faith and Fair Dealing)

10. Plaintiff reasserts the foregoing statements as if set forth at length herein.
11. The implied covenant of good faith and fair dealing is not an independent cause of action.
12. Therefore, Defendant has failed to state facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6), SCRCP, and Defendant's Counterclaim should be dismissed with prejudice, or alternatively, stricken from the Answer.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(Dual Tracking/CFPB Regulations)

13. Plaintiff reasserts the foregoing statements as if set forth at length herein.
14. Plaintiff denies paragraphs 12 through 15 of the Answer and demands strict proof.
15. Plaintiff specifically denies any violation of applicable state and/or federal law.

FOR A SECOND DEFENSE TO THE SECOND CAUSE OF ACTION
(Dual Tracking/CFPB Regulations)

16. Plaintiff reasserts the foregoing statements as if set forth at length herein.
17. Defendant has failed to state facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6), SCRCP, and Defendant's Counterclaim should be dismissed with prejudice, or alternatively, stricken from the Answer.
18. Plaintiff specifically denies any violation of applicable state and/or federal law.

FOR A FURTHER DEFENSE TO DEFENDANT'S COUNTERCLAIM

19. Plaintiff reasserts the foregoing statements as if set forth at length herein.
20. Defendant has a debt due and owing to Plaintiff.
21. In order to secure the payment of the subject loan, Defendant did make, execute, and deliver to Plaintiff, its successors and assigns, a certain real estate Mortgage covering real property located in the County and State aforesaid and specifically described in said Mortgage.

22. Plaintiff and Defendant intended the subject real property to serve as security for the payment of the debt.

23. As a result, Plaintiff has an equitable lien on the property.

24. Because Defendant defaulted on the loan, Plaintiff is entitled to the relief prayed for in its Complaint.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

25. Plaintiff avers that Defendant's claims are barred by the doctrine of laches and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

26. Plaintiff avers that Defendant's claims are barred by the statute of frauds and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

27. Plaintiff avers that Defendant's claims are barred by the doctrine of estoppel and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

28. Plaintiff avers that Defendant's claims are barred by the doctrine of waiver and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

29. Plaintiff avers that Defendant's claims are barred by the applicable statute(s) of limitations and statute(s) of repose, and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

30. Plaintiff avers that Defendant's claims are barred by the doctrine of release, and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

31. Defendant's damages, if any, are the result of his own actions and/or omissions or the actions, omissions of individuals over whom Plaintiff exercised no control, or both.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

32. Defendant's claims are barred by his failure to perform certain conditions precedent under his loan agreement with Plaintiff.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

33. The relief requested by Defendant is barred by S.C. Code § 15-36-10.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

34. Plaintiff reserves the right to assert additional claims and defenses as they may become known.

WHEREFORE, Plaintiff requests that the Court dismiss the Defendant's Counterclaims with prejudice, award Plaintiff its costs and attorneys' fees, and grant such other and further relief as is just and necessary.

FINKEL LAW FIRM LLC


Magalie A. Arcure (S.C. Bar 78855)
Post Office Box 41489
Charleston, South Carolina 29423
Tel: (843) 577-5460
Facsimile: (843) 577-5135
Attorneys for the Plaintiff

Dated: April 2, 2015

FILED
CLERK OF COURT
LEXINGTON, SC

2015 APR - 6 10 22 06

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

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

**MOTION TO STRIKE JURY DEMAND AND
FOR MANDATORY ORDER OF REFERENCE**

(NONJURY MORTGAGE FORECLOSURE)

The undersigned attorneys for Plaintiff and pursuant to Rule 53 SCRPC, as amended effective September 1, 2002, move before this Honorable Court to strike the Defendant's demand for a jury trial and for the foreclosure action herein to be referred to the Honorable James O. Spence, Master in Equity for Lexington County, with authority to enter a final judgment in the case pursuant to Rule 53 (b) SCRPC. Pursuant to Rule 53(e) SCRPC, any appeal therefrom shall be to the Supreme Court or the Court of Appeals, as provided by the South Carolina Appellate Court Rules. As further set forth herein, Defendant has waived the right to a jury trial on his legal counterclaim because it is permissive and was raised in response to Plaintiff's equitable foreclosure action.

JURY TRIAL

It is a caveat of black letter law that an action to foreclose a real estate mortgage is in equity. The Smith Companies of Greenville, Inc., v. Hayes, 311 S.C. 358, 428 S.E.2d 900 (Ct. App. 1993); First Fed. Sav. Bank v. Knauss, 296 S.C. 136, 370 S.E.2d 906 (Ct. App. 1988); Dockside Assoc., Inc. v. Detyens, 294 S.E. 86, 362 S.E.2d 874 (1987); Collier v. Green, 244 S.C. 367, 137 S.E.2d 277 (1964). If any action is one in equity, it is to be tried by the court and the defendant is not entitled to a jury trial. Loyola Fed. Sav. Bank v. Thomasson Properties, 456 S.E.2d. 423 (S.C., Ct. App. 1995); C & S Real Estate Services, Inc. v. Massengal, 290 S.C. 299, 350 S.E.2d 191 (1986); Pelfrey v. Bank of Greer, 270 S.C. 691, 244

S.E.2d 315 (1978) ; Collier v. Green, 244 S.C. 367, 137 S.E.2d 277 (1964). In equity, the parties are not entitled, as a matter of right, to a trial by jury. Williford v. Downs, 265 S.C. 319, 321 218 S.E.2d 242, 243 (1975).

“By definition, a counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party’s claim.” Wells Fargo Bank, N.A. v. Smith, 398 S.C. 487, 495, 730 S.E.2d 328, 332-33 (Ct. App. 2012); see also Rule 13(a), SCRPC. Claims that arise out of separate transactions or occurrences than the subject matter of the opposing party’s claims are, instead, permissive. Rule 13(b), SCRPC. The South Carolina Supreme Court has adopted the logical relationship test to determine whether a counterclaim is compulsory. See N.C. Fed. Sav. & Loan Ass’n v. DAV Corp., 298 S.C. 514, 517, 381 S.E.2d 903, 905 (1989). Specifically within the context of an action for foreclosure, the determination of whether a counterclaim is compulsory is made by asking whether the counterclaim would affect the lender’s right to enforce the note and foreclose the mortgage. See Wells Fargo Bank, 398 S.C. at 496, 730 S.E.2d at 333; see also N.C. Fed. Sav. & Loan Ass’n, 298 S.C. 518-19, 381 S.E.2d at 905.

In the present case, the defendant mortgagor D. Randolph Whitt (“Defendant”) served an amended answer on March 27, 2015 which contains a demand for a jury trial. The answer attempts to raise a counterclaim for violation of the implied covenant of good faith and fair dealing, and violation of the CFPB Dual Tracking Regulations.

First, the implied covenant of good faith and fair dealing is not an independent cause of action. See RoTEC v. Encompass, 359 S.C. 467, 597 S.E.2d 881 (Ct. App. 2004) (holding claim for breach of implied covenant of good faith and fair dealing was subsumed under claim for breach of contract). Second, Section 6(f) of the Real Estate Settlement Procedures Act (RESPA) but does not prohibit a lender from initiating or moving forward with a foreclosure, but merely provides statutory damages for violations of this section. 12 U.S.C. 2605(f). Moreover, the factual basis for this claim arises from post-foreclosure loss mitigation efforts which cannot affect Plaintiff’s right to enforce the note and foreclose the mortgage. Indeed, the alleged conduct which Defendant contends gives rise to this claim occurred

after the Defendant's default under the terms of the note and mortgage; since Plaintiff's foreclosure action is centered entirely on the obligations created by the note and mortgage and the Defendant's default thereunder, Defendant's legal counterclaim does not arise from the same transaction or occurrence as Plaintiff's foreclosure action and is necessarily permissive.

By asserting this permissive legal claim in the instant foreclosure action, Defendant has waived the right to a jury trial. See Wachovia Bank, National Association v. Blackburn, 407 S.C. 321, 755 S.E.2d 437 (2014) (finding that where the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial). Furthermore, affirmative defenses raised in response to an equitable cause of action are inherently equitable in nature, and not triable by a jury. See Farley v. Matthews, 186 S.C. 294, 167 S.E. 502 (1933). This being an action for foreclosure of a mortgage and, as such, an action in equity, it is an appropriate matter to be referred to the Master in Equity. See Collier v. Green, 244 S.C. 346, 137 S.E.2d 277 (1964). Based on the foregoing, it would be improper not to strike the jury demand and refer the case. See Pelfrey, 270 S.C. at 695, 244 S.E.2d at 317 ("[t]he lower court was therefore *in error in refusing the motion of appellant for an order of reference* and in refusing to strike from the amended complaint the phrase 'the plaintiff demands a jury trial.'") (emphasis added).

Because Defendant's claim bears no logical relationship to the Plaintiff's enforcement of the note and mortgage in this foreclosure action, it is permissive in nature. Accordingly, the Defendant is not entitled to a jury trial in this foreclosure action.

REFERENCE TO MASTER IN EQUITY

The Plaintiff's action is for foreclosure of a mortgage and, as such, is an action in equity and is an appropriate matter to refer to the Master in Equity. Collier v. Green, 244 S.C. 346, 137 S.E.2d 277 (1964). Further, pursuant to Rule 53(b), SCRPC, this Court may, upon application of any party, direct a reference in this action of all or any of the issues, whether of fact or law.

CONCLUSION

The Plaintiff moves this Court to strike the Defendant's request for a jury trial and refer this action to the Honorable James O. Spence, Master in Equity for Lexington County to direct entry of final judgment in this action under Rule 53(e)(1), SCRCP, with any appeal therefrom to be to the Supreme Court or the Court of Appeals, as provided by the South Carolina Appellate Court Rules.

Respectfully submitted,

FINKEL LAW FIRM LLC



Magalie A. Arcure (S.C. Bar 78855)

Post Office Box 41489

Charleston, SC 29423

Main: (843) 577-5460

Direct: (843) 576-6307

Facsimile: (843) 577-5135

Attorneys for Plaintiff

Dated: April 6, 2015

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt, and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

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

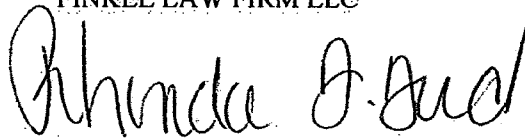
CERTIFICATION OF SERVICE

The undersigned states that on April 16th, 2015 she caused a true and correct copy of *Plaintiff's Motion to Strike Jury Demand and for Mandatory Order of Reference, the (proposed) Order Striking Defendants' Jury Demand and for Mandatory Reference, and Affidavit of Military Service* to be served upon the party identified below by United States mail, proper postage affixed and addressed as follows:

D. Randolph Whitt, Esquire
P.O. Box 12125
Columbia, 8C 29211-2125
Defendant Pro Se

Pearce W. Fleming, Esquire
P.O. Box 12125
Columbia, 8C 29211-2125
Defendant Pro Se

FINKEL LAW FIRM LLC



Rhonda F. Ford
Post Office Box 41489
Charleston, South Carolina 29423
Tel: (843) 577-5460
Facsimile: (843) 577-5135
Litigation Paralegal

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

FILED

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

2015 AUG 24

CERTIFICATION OF SERVICE

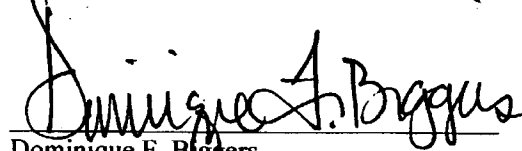
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

The undersigned states that on **August 20, 2015** she caused a true and correct copy of *Plaintiff's Filed Order of Mandatory Reference to Special Referee and Striking the Demand for a Jury Trial on the Counterclaim* to be served upon the party identified below by United States mail, proper postage affixed and addressed as follows:

D. Randolph Whitt, Esquire
P.O. Box 12125
Columbia, 8C 29211-2125
Defendant Pro Se

Pearce W. Fleming, Esquire
3723 Linwood Road
Columbia, 8C 29205-1545
Defendant Pro Se

FINKEL LAW FIRM LLC



Dominique F. Biggers
Post Office Box 41489
Charleston, South Carolina 29423
Tel: (843) 577-5460
Facsimile: (843) 577-5135
Litigation Paralegal

COPY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Case No. 2014-CP-32-02795

Federal National Mortgage Association

Plaintiff,

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

Rule 59(e) and 60 Motion

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2016 JUN -2 AM 9:26

FILED

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

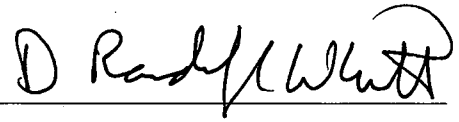
- 1) There were irregularities in the scheduling of the hearing that resulted in the order that is the subject of this motion. As the primary defendant, who had answered in this action, Defendant was entitled to be involved in the scheduling of this matter. Defendants should have been involved in any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

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

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

CONCLUSION

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

A handwritten signature in dark ink, appearing to read "D Randolph Whitt", is written over a horizontal line.

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

6/1, 2016

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-32-02795

**PLAINTIFF'S RETURN TO
DEFENDANT'S MOTION FOR RELIEF
FROM ENTRY OF JUDGMENT**

Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America ("Plaintiff") by and through its undersigned counsel, respectfully submits this Return to D. Randolph Whitt's ("Defendant") Motion for Relief from Judgment and to Stay the Foreclosure Sale ("Motion") and states as follows:

I. PROCEDURAL HISTORY

This is an action for foreclosure on real property. The monthly payments due on the subject note and mortgage are in default since November 1, 2013. The Summons, Lis Pendens, Complaint, and Notice of Foreclosure Intervention were filed August 1, 2014. The case was stayed for foreclosure intervention pursuant to the S.C. Supreme Court Administrative Order 2011-05-02-01, and a denial was filed on January 26, 2015 on the grounds that the borrower defaulted on a trial plan. Defendant served an Answer on February 25, 2015 and an Amended Answer on March 27, 2015, to which Plaintiff timely replied. The Amended Answer asserts violations of the CFPB's dual tracking provisions as counterclaims and demands a jury trial.

Pursuant to Order of the Honorable William P. Keesley entered on June 11, 2015, the Defendant's jury demand as stricken and the matter was referred to the Honorable Lisa Lee Smith as Special Referee for Lexington County. Thereafter, Plaintiff served Defendant with various discovery requests including requests for admission. When Defendant failed to answer the discovery, Plaintiff filed

a Motion for Summary Judgment on the grounds that all admissions were deemed admitted pursuant to Rule 36(a), SCRCF.

Upon notice to all parties, a summary judgment hearing was held before the Honorable Lisa Lee Smith. Defendant did not appear at the hearing. The Motion was granted, and an Order and Judgment of Foreclosure and Sale was entered on April 29, 2016. The property is scheduled for sale on June 7, 2016. Defendant filed the instant Motion on June 1, 2016, alleging that he was not consulted in scheduling the hearing, did not receive notice of the hearing, and that the Order and Judgment of Foreclosure was the result of impermissible dual tracking by Plaintiff.

Defendant, who is a licensed South Carolina attorney, provided a post office box as his address on all pleadings filed with the Court. This post office box was continually listed as Defendant's address of record with the South Carolina Bar until at least May 24, 2016. See Exhibit A. Plaintiff sent all correspondence and pleadings to Defendant at the post office box provided, and none of the mail was returned to Plaintiff.

II. STANDARD

Rule 60(b) of the South Carolina Rules of Procedure provides, in relevant part, as follows:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

In determining whether to set aside a default judgment under Rule 60(b), the trial judge should consider the following relevant factors: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other

parties. *Tobias v. Rice*, 379 S.C. 357, 366, 665 S.E.2d 216, 221 (Ct.App.2008); *Micronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 510–11, 548 S.E.2d 223, 226 (Ct. App. 2001); *Hill v. Dotts*, 345 S.C. 304, 309, 547 S.E.2d 894, 897 (Ct. App. 2001); *New Hampshire Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50, 435 S.E.2d 377, 378 (Ct. App. 1993). Our courts have held that in order to obtain relief from a default judgment under Rule 60(b)(1) or 60(b) (3), not only must the movant make a proper showing he is entitled to relief based upon one of the specified grounds, he must also make a prima facie showing of a meritorious defense. See *Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 341, 644 S.E.2d 793, 798 (Ct. App. 2007) (noting relief from a default judgment under Rule 60(b)(1) is available “upon a showing of excusable neglect and a meritorious defense; case law also directs the trial court to consider the presence or absence of prejudice to the party opposing the motion.”)

III. ARGUMENT

Defendant's stated grounds for relief are that he was not consulted in scheduling the hearing, did not receive notice of the hearing, and that the Order and Judgment of Foreclosure was the result of impermissible dual tracking by Plaintiff.

As a threshold matter, the Motion should be denied because it fails to cite any of the enumerated grounds for relief under Rule 60(b), SCRCP. Nevertheless, the Defendant's claims do not satisfy any grounds for relief from entry of judgment. While it was an oversight that Defendant was not contacted in scheduling the hearing, there is no requirement to do so. Defendant was properly served notice of the hearing at the address provided by Defendant, and which Defendant maintained throughout the litigation and, notably, *after* the hearing date based upon the records of the South Carolina Bar. Defendant also claims it was improper not to send notice of the hearing to the property address. However, this is not a requirement under any rule of civil procedure or South Carolina law; Plaintiff was merely required to provide notice of the final hearing to all parties, including those in default, which it did as evidenced by the notice of hearing included in the Plaintiff's Record of Hearing. None of the foregoing constitutes mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party.

Second, Defendant's Motion must be denied because it fails to set forth *any* meritorious defense to Plaintiff's foreclosure action. Defendant claims Plaintiff violated the CPFB Rules against dual tracking. However, even if there were any merit to such an allegation, which is expressly denied, it is a permissive counterclaim that does not preclude enforcement of the note and mortgage because it is not logically related to the subject of the Plaintiff's action; i.e., the borrower's failure to make the monthly payments pursuant to the terms of the note and mortgage. In a foreclosure action, a counterclaim is compulsory when there is a "logical relationship" between the counterclaim and the enforceability of the Note and Mortgage. *Carolina First Bank v. BADD, LLC, et. al.*, 2015 S.C. LEXIS 45, 7 (2015) (finding guarantor's claims for breach of contract and civil conspiracy did not arise from the same transaction or occurrence as execution of guaranty agreements because they did not affect the execution or enforceability of the guaranty agreements).

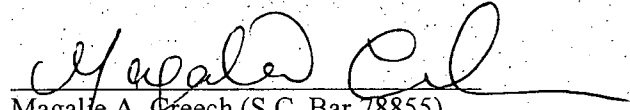
Finally, there was no pending loss mitigation application under review at any time between January 2015 and the hearing, nor was there an active non-foreclosure alternative in effect. *See* 12 C.F.R. 1024.41. Therefore, there is absolutely no basis whatsoever to Defendant's purported claim for dual tracking, and such a claim does not constitute a meritorious defense to the foreclosure action. Accordingly, the Motion must be denied.

III. CONCLUSION

Defendant Motion is defective and should be denied because it fails to make a prima facie showing of a meritorious defense and does not satisfy the other required Rule 60(b) elements. Furthermore, Defendant does not cite any applicable grounds for relief under Rule 60(b) and it is immaterial that Defendant did not receive the notice of the hearing which was properly served at this listed address with the South Carolina Bar and his pleadings filed herein.

(SIGNATURE PAGE FOLLOWS)

FINKEL LAW FIRM LLC

A handwritten signature in cursive script, appearing to read "Magalie Creech", written over a horizontal line.

Magalie A. Creech (S.C. Bar 78855)

Post Office Box 41489

Charleston, South Carolina 29423

Phone: (843) 577-5460

Facsimile: (866) 800-7954

Attorneys for the Plaintiff

Dated: June 3, 2016

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Member Directory

Member Profile

Name:	Mr. David Randolph Whitt
Company:	Fleming & Whitt, PA
Address:	PO Box 12125
Address (cont):	
City, State Zip:	Columbia, SC 29211-2125
Email Address:	dwhitt2001@aol.com
Phone:	
Fax:	
County:	Richland
SC Bar Admission:	11/15/1989
Law School:	University of South Carolina School of Law
Graduating Year:	1989
Website:	
Membership Class:	Regular Member
Membership Status:	Good Standing

Discipline/Administrative Actions if Any

This person has no disciplinary actions.

950 Taylor Street, Columbia, South Carolina 29201 | Phone (803) 799-6653 | Fax (803) 799-4118 | scbar-info@scbar.org

COPY

Federal National Mortgage Association

Plaintiff,

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

Affidavit

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

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

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

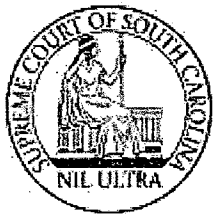
If testifying before the Court, I would so testify as above and my statements are true and correct.

Further Affiant sayeth not.

D Randolph Whitt
D. Randolph Whitt

June 1
~~May~~ __, 2016

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



Lexington County Eleventh Judicial Circuit Public Index



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

Switch View

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

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

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Click the ☒ icon to show associated parties.

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

From: Magalie Creech <mcreech@finkellaw.com>
To: 'Lisa Smith' <Lisa@smithsullivanlaw.com>; dwhitt2001 <dwhitt2001@aol.com>; pfleming3 <pfleming3@att.net>; Dominique Biggers <dbiggers@FinkelLaw.com>
Cc: Real estate <realestate@smithsullivanlaw.com>
Subject: RE: FNMA vs. D. Randolph Whitt & Pearce Fleming (2014-CP-32-744)
Date: Tue, Dec 8, 2015 6:09 pm

Good evening, Ms. Smith:

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

Thanks very much,

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

** If you cannot reach me and require immediate assistance, please contact Dominique Biggers at dbiggers@finkellaw.com. If you cannot reach me and require immediate assistance from an attorney, please contact Andy Shook at ashook@finkellaw.com.*



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

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

From: Lisa Smith [<mailto:Lisa@smithsullivanlaw.com>]
Sent: Tuesday, December 8, 2015 11:21 AM
To: Magalie Creech; dwhitt2001@aol.com; pfleming3@att.net
Cc: Real estate
Subject: FNMA vs. D. Randolph Whitt & Pearce Fleming (2014-CP-32-744)

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

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

COPY

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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

Federal National Mortgage Association

Plaintiff,

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2016 JUN -2 AM 9:26

FILED

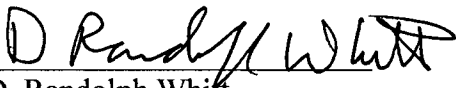
Certificate of service

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

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

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

Copies were also emailed to Ms Creech at mcreech@finkellaw.com
and Mr Fleming at pfleming3@att.net



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

June 1, 2016

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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

Federal National Mortgage Association

Plaintiff,

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

Affidavit

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

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

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

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

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

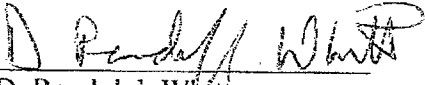
factually incorrect. The stated basis of "default on the trial payment plan" is disproved by the Plaintiff's assertion that they never offered any modification to the Defendant. This document is attached as Exhibit B. Defendant has no doubt that Plaintiff's attorneys were misled by the plaintiff, but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

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

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

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

Further Affiant sayeth not.


D. Randolph Whitt

November 14, 2016

SWORN to and subscribed before me
this 14th day of Nov, 2016


Elcorese Thomas



Exhibit A

Selling Guide

Published October 24, 2016

[Guide Table of Contents](#)

[Search guide content](#)

[BACK TO PART 8 >](#)

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

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

[Borrowers' Signatures on Notes](#)

[Signature Requirements: Powers of Attorney and Guardianship](#)

Borrowers' Signatures on Notes

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

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

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

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

Signature Requirements: Powers of Attorney and Guardianship

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

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

Related Announcements

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

Announcements	Issue Date
Announcement SFL-2013-02	October 22, 2013
Announcement SFL-2013-01	January 17, 2013

Exhibit B



Reply to Charleston Foreclosure Office

January 12, 2015

DENIAL OF FORECLOSURE RELIEF
(after review)

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

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

Dear Sir:

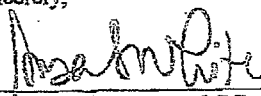
Your loan has been reviewed for the foreclosure intervention options you requested pursuant to the Notice of Foreclosure Intervention you returned to us. Unfortunately, you are ineligible for the following reasons:

	YOU REQUESTED	REASON FOR INELIGIBILITY
☐	Reinstatement	
☐	Payoff	
☐	Payment Plan	
☐	Forbearance Agreement	
☒	Loan Modification	The borrower defaulted on the trial payment plan.
☐	Deed in Lieu	
☐	Short Sale	
☐	Other	

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

Sincerely,

By:

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

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

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

CHARLESTON
Litigation, Real Estate & REG
4060 Faber Place Drive, Suite 450
Post Office Box 41489 (29423)
North Charleston, SC 29405
Tel: (843) 577-3460

CHARLESTON
Foreclosure
4060 Faber Place Drive, Suite 450
Post Office Box 71727 (29415)
North Charleston, SC 29405
Tel: (843) 577-3460

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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

Federal National Mortgage Association

Plaintiff,

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

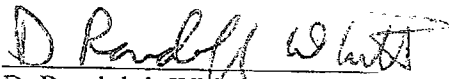
Certificate of service

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

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

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

Copies were also emailed to Ms Creech at mcreech@finkellaw.com
and Mr Fleming at pfleming3@att.net



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

November 14, 2016

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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

Federal National Mortgage Association

Plaintiff,

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

Supplemental Affidavit

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

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

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

Attorney's fees and costs

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

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

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

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

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

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

The Fourth Affidavit of Debt

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

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

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

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

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

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

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

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

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

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

The inclusion in the fourth affidavit of both subtotals and the various components of the subtotals in a single undifferentiated column have the effect of making the document as obscure as possible. For example the subtotal for recoverable balance of \$10,031.51 is included, followed immediately by the \$485.00 legal posting charge, the \$508.00 in phantom property inspections and the \$9,038.51 in legal fees and cost (which cannot be reconciled with the fee affidavit). Similar double entry occurs for the escrow items. A layman looking at this document is apparently meant to just give up under the weight of the obfuscation.

FIP Solicitation

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

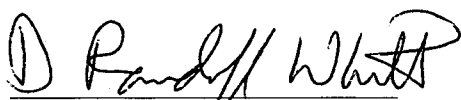
Plaintiff should be estopped from disavowing the notice served with the complaint. This is yet another example of Plaintiff's disdain for the idea that any factual assertion cannot just be discarded when it becomes inconvenient to be substituted with the new reality that is most expedient in hindsight.

Unclean Hands and Bad Faith

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

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

Further Affiant sayeth not.


D. Randolph Whitt

December 21, 2016

SWORN to and subscribed before me
this 21st day of December, 2016

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



Exhibit A

DDCH CORPORATE ADVANCE HISTORY SCREEN 205/001 02/17/16 19:15:45
 RF WHITT L:A F:A B: R: 11/01/13 TYPE CONV. RZS. MAN F
 344 BLOSSOM VIEW CT WEST COLUMBIA SC. 29170-2397

----- * MORE -----
 C/A PAYEE TRAN RSN USR ESC PAYEE
 SORT SORT SORT SORT SORT
 DATE RANGE: THRU

TRN	USR	DATE	TRAN AMT	ESC PAYEE	C/A	PAYEE RSN	DESCRIPTION	ORIG DSR
630	NIV	05/05/15	380.00	AT15604	35R50	CCLF	CONTESTED LIT FEE	
* 630	NIV	04/06/15	385.00	AT16604	39R57	LEFC	LEGAL FEES- FCL	*
631	NIV	04/02/15	15.00	EB11937	39R57	FP1F	PROP INSPECTION	
745	CHV	03/01/15	5.00		39T57	FSEF	SUBMISSION FEE-FC	
745	CHV	03/01/15	26.00		39T57	FTSE	TECH SUBMISSION	
745	CHV	03/01/15	225.00		39R57	LISC	TITLE SEARCH ATT'Y	
745	CHV	03/01/15	290.00		39R57	LPNC	PUBLICAIN NOTICE	
745	CHV	03/01/15	150.00		39R57	LEFC	LEGAL POSTING COST	
* 745	CHV	03/01/15	1,165.00		39R57	LEFC	LEGAL FEES- FCL	*
745	CHV	03/01/15	240.00		39R57	FP1F	PROP INSPECTION	

Exhibit B

PLACE
STAMP
HERE



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



Jim Eckstrom
Treasurer

PROPERTY TAX RECEIPT

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

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

<u>BILL NUMBER</u>	<u>TAX YEAR</u>	<u>DISTRICT</u>	<u>ASSESSMENT</u>	<u>PROPERTY TYPE</u>
2016-184800-107	2016	1	30	REAL ESTATE

PROPERTY DESCRIPTION	SCHOOL TAX	10.54
TMS#: 005552-01-076	COUNTY TAX	3.54
BLOSSOM VIEW CT MAGNOLIA RIDGE SUBDIVISION LO	MUNICIPAL TAX	.00

WHITT, D RANDOLPH	TOTAL PAID	14.08
344 BLOSSOM VIEW CT	PAID 12/05/2016	
WEST COLUMBIA SC 29170	5-000034	

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

Exhibit C

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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

[REDACTED]
Plaintiff,

vs.

[REDACTED]
Defendant.

Notice of Possible Foreclosure Intervention

To the Defendant [REDACTED]

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

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

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

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

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

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

_____, 2016

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

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

RECORD OF HEARING

(NON-JURY MORTGAGE FORECLOSURE)

Pursuant to the Order of Reference filed in the above cause of action, a summary judgment hearing was held before Lisa Lee Smith, as Special Referee for Lexington County. Counsel of record is as follows:

ATTORNEYS FOR PLAINTIFF: Magalie A. Creech of FINKEL LAW FIRM LLC.

ATTORNEYS FOR DEFENDANTS: D. Randolph Whitt, Esquire, Defendant Pro Se; Pearce W. Fleming, Esquire, Defendant Pro Se.

In attendance at the hearing were Magalie A. Creech for Plaintiff, and Pearce W. Fleming, Esquire, Defendant Pro Se. D. Randolph Whitt, Esquire, Defendant Pro Se did not attend the hearing, although Plaintiff provided Defendant notice of the hearing and the bailiff called for Defendant outside of courtroom prior to the commencement of the hearing.

The mortgagor was in default on the terms of the note and mortgage as of November 1, 2013.

The Lis Pendens was filed on August 1, 2014.

Summons and Complaint was filed on August 1, 2014.

Affidavits or Acceptances of Service are filed and show that service of the Summons and Complaint was properly affected upon all defendants herein.

There is an Affidavit of Military Status indicating that the individual Defendants are not in the military service of the United States of America.

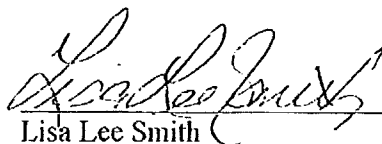
Plaintiff's attorney offered into evidence the following documents:

1. Notice of hearing and certificate of service
2. Promissory Note
3. Mortgage
4. Assignments
5. Affidavit of Verified Statement of Account/judgment figures
6. Affidavit of Attorneys Fees/Costs

By the Affidavit of Verified Statement of Account/judgment figures, Plaintiff established the total debt amount due as \$122,213.59. Plaintiff is not seeking a deficiency judgment.

Plaintiff moved for foreclosure of the subject mortgage, with equity of redemption barred, and for a sale of the subject property. The relief was granted, and the hearing was concluded.

Lexington, SC



Lisa Lee Smith
Special Referee for Lexington County

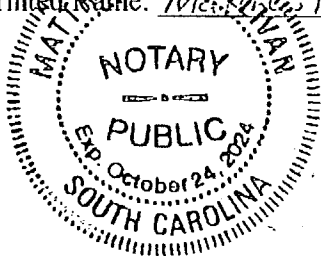
SWORN TO AND SUBSCRIBED before me on
this 29th day April, 2016

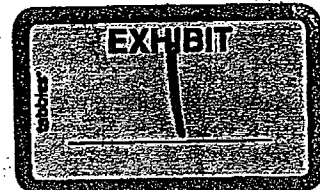


NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: 10/24/24

Printed Name: Matthew D. Sullivan





STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-32-02795

NOTICE OF HEARING

TO THE DEFENDANTS ABOVE NAMED:

PLEASE TAKE NOTICE THAT Plaintiff's Motion for Summary Judgment will be heard before the Honorable Lisa Smith, Lexington County, on Monday, April 25, 2016 at 2:00 p.m. This hearing will be held at, Lexington County Courthouse, 205 E. Main Street, Suite 204, Lexington, South Carolina.

FINKEL LAW FIRM LLC


Magalie A. Creech (S.C. Bar 78855)
Post Office Box 41489
Charleston, South Carolina 29423
Tel: (843) 577-5460
Facsimile: (843) 577-5135
Attorneys for the Plaintiff

Dated: March 21, 2016

2016 MAR 24 2:13
CLERK OF COURT
LEXINGTON

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

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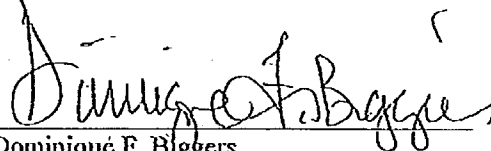
CERTIFICATE OF SERVICE

The undersigned states that on March 21, 2016, she caused a true and correct copy of *Plaintiff's Notice of Hearing* to be served upon the party identified below by facsimile and United States mail, proper postage affixed and addressed as follows:

D. Randolph Whitt, Esquire
P.O. Box 12125
Columbia, SC 29211-2125
Defendant Pro Se

Pearce W. Fleming, Esquire
3723 Linwood Road
Columbia, SC 29205-1545
Defendant Pro Se

FINKEL LAW FIRM LLC



Dominique F. Beggins
Post Office Box 41489
Charleston, South Carolina 29423
Tel: (843) 577-5460
Facsimile: (843) 577-5135
Litigation Paralegal

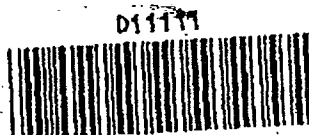
2016 MAR 21 2:15 PM
FEDERAL COURT
LEXINGTON
SOUTH CAROLINA

LOAN NO.
JUNE 26

, 19 98

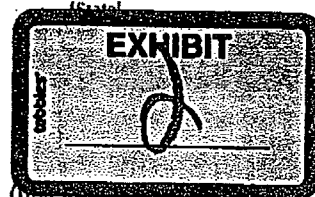
COLUMBIA

NOTE



SC

344 BLOSSOM VIEW COURT
WEST COLUMBIA, SC 29170
(Property Address)



1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 120,275.00
"principal", plus interest, to the order of the Lender. The Lender is
FEDERAL HOME MORTGAGE GROUP, INC.,

(This amount is subject to change)

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

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 7.500 %.

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

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the 1ST day of each month beginning on AUGUST 1, 19 98. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on JULY 1, 2028, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "maturity date".

I will make my monthly payments at
P.O. BOX 211517, COLUMBIA, SC 29221

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 840.99

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment". When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

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

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

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

(C) Notice of Default

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

(D) No Waiver By Note Holder

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

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

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

7. GIVING OF NOTICES

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

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

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor.

"Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

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

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

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

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

Robin J. Whitt
ROBIN F. WHITT

(Seal)

Borrower

(Seal)

Borrower

Social Security Number _____

Social Security Number _____

(Seal)

Borrower

(Seal)

Borrower

Social Security Number _____

Social Security Number _____

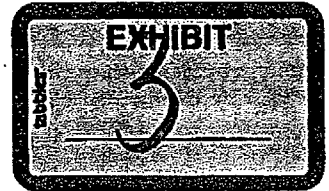
[Sign Original Only]

Pay to the Order of Chase Manhattan
Mortgage Corporation
without recourse:
FEDERAL HOME MORTGAGE GROUP, INC.

Mary E. Lee
Mary E. Lee, VP

Pay to the Order of
Without Recourse
Chase Manhattan Mortgage Corporation

BY Opal Frith
OPAL FRITH/ASST. SECRETARY



FILED, RECORDED, INDEXED
 06/30/1998 01:32P
 Rec Fee: 14.00 St Fee: 0.00
 Co Fee: 0.00 Pages: 8
 LEX. CO. REGISTER OF DEEDS
 DEBRA H. GUNTER

WHEN RECORDED MAIL TO
 FEDERAL HOME MORTGAGE GROUP, INC.
 125 EXECUTIVE POINTE BLVD.
 COLUMBIA, SC 29210

(Space Above This Line For Recording Data)

LOAN NO

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on JUNE 26, 1998 . The mortgagor
 is ROBIN F. WHITT AND D. RANDOLPH WHITT

whose address is 102 VISTA WAY
 WEST COLUMBIA, SC 29170

("Borrower").

This Security Instrument is given to FEDERAL HOME MORTGAGE GROUP, INC.

which is organized and existing under the laws of THE STATE OF SOUTH CAROLINA , and whose
 address is 125 EXECUTIVE POINTE BLVD.
 COLUMBIA, SC 29210 ("Lender").

Borrower owes Lender the principal sum of

ONE HUNDRED TWENTY THOUSAND TWO HUNDRED SEVENTY-FIVE AND 00/100
 Dollars (U.S. \$ 120,275.00). This debt is evidenced by Borrower's note dated the same date as
 this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid
 earlier, due and payable on JULY 1, 2028 . This Security Instrument secures to
 Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and
 modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to
 protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and
 agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby
 mortgage, grant and convey to the Lender and Lender's successors and assigns the following described
 property located in LEXINGTON County, South Carolina:

SEE EXHIBIT "A" ATTACHED

RJW D RW

For Assignment To Chase Manhattan See Record Bk. 4739 Page 10
 Wtz Corp.

which has the address of 344 BLOSSOM VIEW COURT

WEST COLUMBIA

South Carolina 29170 ("Property Address");
(Zip Code)

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property".

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items". Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. § 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 21, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac Uniform Instrument
Form 3041 9/90

Lender Forms Inc. (800) 446-3555
LIFT #FNMA3041 8/96

Page 2 of 7

Initials: RAH DRW

under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Hazard or Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, 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 sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower 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 sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by

the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

7. **Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. **Mortgage Insurance.** If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the mortgage insurance previously in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in the amount and for the period that Lender requires) provided by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

9. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

11. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment

or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

14. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

16. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

17. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

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

18. **Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this

Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17.

19. **Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

21. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

22. **Release.** Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

23. Waivers. Borrower waives all rights of homestead exemption in the Property.

24. **Future Advances.** The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to one hundred fifty percent (150%) of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

- | | | |
|--|---|---|
| ☐ Adjustable Rate Rider | ☐ Condominium Rider | ☐ 1-4 Family Rider |
| ☐ Graduated Payment Rider | ☐ Planned Unit Development Rider | ☐ Biweekly Payment Rider |
| ☐ Balloon Rider | ☐ Rate Improvement Rider | ☐ Second Home Rider |
| ☐ Other(s) [specify] | | |

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

Witnesses:
 Perry M. Pearce
 Wm. B. Pearce

Rolmi J. Whitt

(Seal)

ROBIN F. WHITT

-Вопросы

D Randolph White

(Seal)

D. RANDOLPH WHITT

-BOKOVAN

(Seal)

• **ВОСТОВЕ**

(Seal)

- Recovery

[Space Below This Line For Acknowledgment].

STATE OF SOUTH CAROLINA,

RIGHTLAND

County ss:

Before me personally appeared

the undersigned witness

and made oath that s/he saw the within named Borrower sign, seal, and as their act and deed, deliver the within written Mortgage; and that s/he with the other witness above

witnessed the execution thereof.

Sworn before me this 26TH day of JUNE, 1998

Sworn before me this 2011 day of North Carolina

[Signature] (Seal)

(Seal)

Notary Public for South Carolina

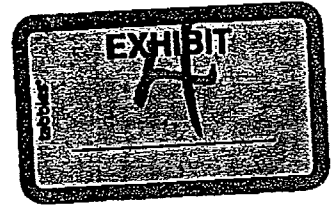
My Commission Expires: 6-3-04

EXHIBIT "A"
TO MORTGAGE FROM ROBIN F. WHITT AND D. RANDOLPH WHITT
TO
FEDERAL HOME LOAN MORTGAGE GROUP, INC.

All that certain pieces, parcels or land, with improvements thereon, situate, lying and being in Lexington County, State of South Carolina, and being shown as Lots 37 and 37A on a final subdivision plat of Magnolia Ridge prepared by Drafts Surveying, Inc. dated July 11, 1996, and recorded in the Lexington County RMC office in Plat Slide 223, No. 10; also shown on a plat prepared for D. Randolph Whitt and Robin F. Whitt by Drafts Surveying, Inc. dated June 19, 1998 and recorded in the Lexington County Register of Deeds office in Plat Book 284 at Page 154, and having the metes and bounds as shown on said latter plat.

This is the same property conveyed to the Mortgagors herein by deed of W.J.S., Inc. of even date, to be recorded simultaneously with this mortgage.

DERIVATION: RECORD BK 4739 PAGE 99



0030498 Bk: 4739 Pg: 0110

ASSIGNMENT

FILED, RECORDED, INDEXED
06/30/1998 01:29
Rc Fee: 6.00 St Fee: 0.00
Co Fee: 0.00 Page: 1
LEX. CO. REGISTER OF DEEDS
DEBRA H. GUNTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

FOR VALUE RECEIVED, the undersigned FEDERAL HOME MORTGAGE GROUP, INC., being the sole owner and holder of that certain Mortgage dated the 26th day of June, 1998, given by Robin F. Whitt and D. Randolph Whitt to secure a loan in the principal amount of One Hundred Twenty Thousand Two Hundred Seventy-five and no/100--- (\$ 120,275.00) Dollars, and recorded in the RMC Office for Lexington County in Mortgage Book 4739 at Page 102, does hereby transfer, assign, sell and set over all it's rights, title and interest in and to the same together with the Note which it was given to secure unto Chase Manhattan Mortgage Corporation

WITNESS the signature and seal of the FEDERAL HOME MORTGAGE GROUP, INC., by Ben S. Staples, it's President, hereby duly authorized, this the 26th day of June, 1998.
WITNESS: FEDERAL HOME MORTGAGE GROUP, INC.

BEN S. STAPLES, PRESIDENT

Christine E. Coake
CHRISTINE E. COAKE

MARTHA JO CARNES
MARTHA JO CARNES

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

PERSONALLY appeared before me, CHRISTINE E. COAKE, who being duly sworn, deposes and says that she saw the within named FEDERAL HOME MORTGAGE GROUP, INC., by BEN S. STAPLES, it's President, sign, seal, and as the act and deed of the Corporation, deliver the within written Assignment, and that she together with MARTHA JO CARNES, witnessed the execution thereof.

Christine E. Coake
CHRISTINE E. COAKE

SWORN to before me this the

26th day of June,

1998.

MARTHA JO CARNES (L.S.)
NOTARY PUBLIC IN AND FOR SC

My Commission Expires: 3/21/05

After recording please return to:
PEIRSONPATTERSON, LLP
ATTN: RECORDING DEPT.
13750 OMEGA ROAD
DALLAS, TX 75244-4505

2014025015 FILED, RECORDED, INDEXED
2014-06-17 01:17:12.983
REC FEE: \$8.00 ST FEE: \$0.00
CO FEE: \$0.00 Pages: 3
Lexington County R.O.D. Debra M. Gunter
MORTGAGE ASST BkPg 17019:13 E

Prepared by:
PEIRSONPATTERSON, LLP
13750 OMEGA ROAD
DALLAS, TX 75244-4505
800-899-9027

[Space Above This Line For Recording Data]

Loan No.

SOUTH CAROLINA ASSIGNMENT OF MORTGAGE

For Value Received, JPMorgan Chase Bank, N.A., S/B/M Chase Home Finance LLC, S/B/M to Chase Manhattan Mortgage Corporation, the undersigned holder of a Mortgage (herein "Assignor") does hereby grant, sell, assign, transfer and convey, unto FEDERAL NATIONAL MORTGAGE ASSOCIATION, (herein "Assignee"), whose address is 14221 Dallas Parkway, Suite 100, Dallas, TX 75254, a certain Mortgage dated June 26, 1998 and recorded on June 30, 1998, made and executed by ROBIN F. WHITT AND D. RANDOLPH WHITT, to and in favor of FEDERAL HOME MORTGAGE GROUP, INC., upon the following described property situated in LEXINGTON County, State of South Carolina:
Property Address: 344 BLOSSOM VIEW COURT, WEST COLUMBIA, SC 29170

See exhibit "A" attached hereto and made a part hereof.

Tax Map Sequence Number: 00555201037
such Mortgage having been given to secure payment of One Hundred Twenty Thousand Two Hundred Seventy Five and 00/100ths (\$120,275.00), which Mortgage is of record in Book, Volume, or Liber No. 4739, at Page 0102 (or as No. 0030497), in the Office of the County Clerk of LEXINGTON County, State of South Carolina.

TO HAVE AND TO HOLD, the same unto Assignee, its successor and assigns, forever, subject only to the terms and conditions of the above-described Mortgage.



IN WITNESS WHEREOF, the undersigned Assignor has executed this Assignment of Mortgage on
04-02-2014

Witnesses:

Assignor:

JPMorgan Chase Bank, N.A., S/B/M Chase Home
Finance LLC, S/B/M to Chase Manhattan
Mortgage Corporation

Name

SC
Whitney Boyd

By:

WRL
Whitney Boyd

Its:

Vice President

Name

Melisha Vikes

ACKNOWLEDGMENT

State of Louisiana

§

Parish of Ouachita

§

§

On this 2nd day of April 2014, before me appeared
Whitney Boyd to me personally known, who, being by
me duly sworn (or affirmed) did say that he/she is the Vice President of JPMorgan Chase
Bank, N.A., S/B/M Chase Home Finance LLC, S/B/M to Chase Manhattan Mortgage Corporation, and that
the seal affixed to said instrument is the corporate seal of said national association and that the instrument was
signed and sealed on behalf of the national association by authority of its board of directors and that
she acknowledged the instrument to be the
free act and deed of the national association.



TODD C SYLVESTER
NOTARY PUBLIC # 062367
OUACHITA PARISH LOUISIANA
MY COMMISSION IS FOR LIFE

Signature of Person Taking Acknowledgment

Printed Name

TODD C SYLVESTER #062367

NOTARY PUBLIC

Title or Rank

Serial Number, if any: N/A

My Commission Expires:

LIFE TIME

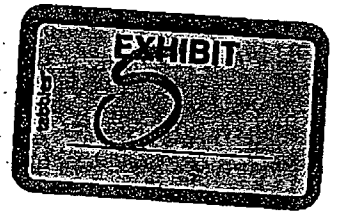
(Seal)



EXHIBIT A

All that certain pieces, parcels or land, with improvements thereon, situate, lying and being in Lexington County, State of South Carolina, and being shown as Lots 37 and 37A on a final subdivision plat of Magnolia Ridge prepared by Drafts Surveying, Inc. dated July 11, 1996, and recorded in the Lexington County RMC office in Plat Slide 223, No. 10; also shown on a plat prepared for D. Randolph Whitt and Robin F. Whitt by Drafts Surveying, Inc. dated June 19, 1998 and recorded in the Lexington County Register of Deeds office in Plat Book 284 at Page 154, and having the metes and bounds as shown on said latter plat.

This is the same property conveyed to the Mortgagors herein by deed of W.J.S., Inc. of even date, to be recorded simultaneously with this mortgage.



66040.F44356

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

vs.

D. Randolph Whitt; and Pearce W. Fleming et al.,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 14-CP-32-2795

AFFIDAVIT OF VERIFIED
STATEMENT OF ACCOUNT

Waived

Personally appeared, who being duly sworn, deposes and says:

My name is Shawann Hampton and I am Foreclosure Specialist (title) Seterus, Inc., as subservicer for Federal National Mortgage Association (in the above-captioned action). I am authorized to execute this Affidavit of Verified Statement of Account. The following principal, interest and escrow/corporate advances which are secured by the mortgage being foreclosed, have been incurred to the date of hearing:

- | | |
|---|-------------|
| 1. Principal balance as of the due date | \$89,776.15 |
| 2. Interest from 10/01/13 to 04/27/16 at 7.5% | \$17,312.62 |
| 3. Late charges | \$36.75 |
| 4. Total Fees | \$5.00 |
| 5. Escrow | \$6,301.97 |
| 6. Expense Advances | \$5,215.25 |

TOTAL PRINCIPAL, INTEREST AND EXPENSES: \$118,647.74

FILED
2016 MAR -4 A 11:19
CLERK OF COURT
LEXINGTON, SC

Seterus, Inc., as subservicer for Federal National Mortgage Association ("Fannie Mae")

Shawann Hampton 3/24/16
Name

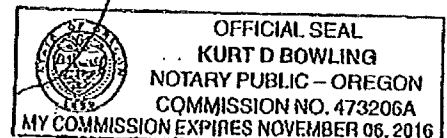
Foreclosure Specialist

Title

Beachton / Oregon
(City and State)
February 24, 2016

Sworn to before me this 24th day of February, 2016.

Kurt D Bowling



Notary Public for Oregon
My Commission Expires: **NOV 06 2016**

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO: 2014-CP-32-02795

CERTIFICATE OF SERVICE

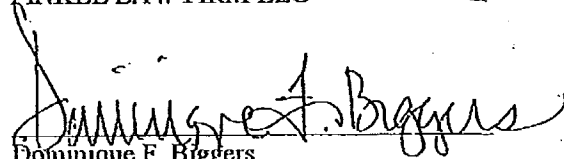
The undersigned states that on March 1, 2016, she caused a true and correct copy of *Plaintiff's Affidavit of Verified Statement of Account* to be served upon the party identified below by facsimile and United States mail, proper postage affixed and addressed as follows:

D. Randolph Whitt, Esquire
P.O. Box 12125
Columbia, SC 29211-2125
Defendant Pro Se

Pearce W. Fleming, Esquire
3723 Linwood Road
Columbia, SC 29205-1545
Defendant Pro Se

FILED
2016 MAR -4 A 11:19
CLERK OF COURT
LEXINGTON, SC

FINKEL LAW FIRM LLC


Dominique F. Biggers
Post Office Box 41489
Charleston, South Carolina 29423
Tel: (843) 577-5460
Facsimile: (843) 577-5135
Litigation Paralegal

DAY: AS-OF 04/27/16 PAYOFF CALCULATION TOTALS 02/17/16 19:16:28
 NAME RF WHITT CONTACT NAME ROBIN F WHITT

		RATE CHANGES		
		CALC	INT FROM	AMOUNT
PRINCIPAL BALANCE	89,776.16			
INTEREST 04/27/16	17,312.62			
PRO RATA NIP/FBI	.00		10/01/13	17,312.62
ESCROW ADVANCE	6,301.97		04/27/16	
ESCROW BALANCE	.00			
SUSPENSE BALANCE	.00			
HUD BALANCE	.00			
REPLACEMENT RESERVE	.00			
RESTRICTED ESCROW	.00			
TOTAL-FEES	5.00			
ACCUM LATE CHARGES	36.75			
ACCUM NSF CHARGES	.00			
OTHER FEES DUE	.00			
PENALTY INTEREST	.00			
FLAT/OTHER PENALTY FEE	.00			
CR LIFE/ORIG FEE RATE	.00			
RECOVERABLE BALANCE	5,215.25			
			TOTAL INTEREST	17,312.62
			TOTAL TO PAYOFF	118,647.74
PRINT DISALLOWED: NOT SIGNED ON TO OLLN				

PAY3 C

AS-OF 04/27/16 PAYOFF FEES AND PERDIEM 02/17/16 19:16:30

1ST MORT PERDIEM INTEREST - ASSESS WAIVE			ADDITIONAL FEES	
FROM	RATE	AMOUNT	N N 1	5.00 RECONVEYANCE CHARGES
04/27/16	07.50000	18.45	N N 2	.00
		CALCULATED	N N 3	.00
			N N 4	.00
			N N 5	.00
			Y N 6	.00

N	36.75	ACCUM LATE CHARGES
N	.00	ACCUM NSF CHARGES
N	.00	OTHER FEES DUE

MEMO ITEMS

PAYMENT L/C	12.25	TYP 13 ST 39 CNTY 063	INV 205 001
* ADDITIONAL MESSAGES *		PF4: FEZ COMMENTS	

--SEOC--

LIFE-OF-LOAN: 13FEB14 021314 SENT NOTICE OF INTENT TO FC, EXP. 03/19/14
 ACTIVE LOSS MITIGATION LOSS HIT IND = 1 LOSS MIT RETENTION
 REPAY PLAN ACTIVE FORECLOSURE
 LOAN IS IN FORECLOSURE, F/C STOP = 2 PROC STOP = 9 PAYMENT PLAN

PAY2 PAYOFF CALCULATION 02/17/16 19:16:34
NAME RF WHITT CONTACT NAME ROBIN F WHITT

AS OF VERBAL REVI REFI PAYI CSH-ADV SF-OPT
04/27/16 Y Y N N 1
CALC MTHD P/DN LETTER MSG DAYS
C D XP 00 1 30

CALC INT: 2 (1) THROUGH (2) TO AS OF

* ADDITIONAL MESSAGES *

WARNING: AS-OF DATE IS SIX MONTHS OR MORE BEYOND LOAN DUE DATE
USER HAS INSUFFICIENT COLLN SECURITY FOR LETTER

--SPOC--

LIFE-OF-LOAN: 13FEB14 021314 SENT NOTICE OF INTENT TO FC, EXP. 03/19/14

ACTIVE LOSS MITIGATION LOSS HIT IND = 1 LOSS MIT RETENTION

INT INDICATOR 2, INT IN ARREARS
LOAN TYPE 13 CONV. RES.
DISTRIBUTION TYPE 1 CONSTANT PAY
INTEREST RATE 7.50000 DUE 11/01/13
INV NAME FANNIE MAE
INV LOAN 205-001-1668301440
INV PHONE 503/372-8142

PAY1 LOAN		PAYOFF INFORMATION		02/17/16 19:16:35	
BILLING NAME AND ADDRESS		MORTGAGEOR & CO-MTRG SSN		MAN CODE F	
ROBIN F WHITE				PAY PERIOD	
		PROPERTY ADDRESS		MONTHLY	
344 BLOSSOM VIEW CT		344 BLOSSOM VIEW CT		PAY METHOD 9	
WEST COLUMBIA SC 29170		WEST COLUMBIA SC 29170		SPECIAL	
TOTAL PRIN BALANCE	DUE DATE	LOAN DATE	LOAN TYPE	13	
89,776.15	11/01/13	06/26/98	CONV. RES		

-----PF6:TO FAX

CONTACT NAME _____ CONTACT PHONE NO. ____/____-____

MAIL-TO NAME AND ADDRESS IF OTHER THAN BILLING NAME AND ADDRESS

1 _____ 2 _____

3 _____ 4 _____ STATE _____ ZIP _____

CONTACT2 NAME _____ CONTACT2 PHONE NO. ____/____-____

1 _____ 2 _____

3 _____ 4 _____ STATE _____ ZIP _____

-----* ADDITIONAL MESSAGES *-----

YOU ARE NOT SIGNED ON TO LETTER WRITER

--SPOC--

LIFE-OF-LOAN: 13FEB14 021314 SENT NOTICE OF INTENT TO FC, EXP. 03/19/14

ACTIVE LOSS MITIGATION LOSS MIT IND = 1 LOSS MIT RETENTION

REPAY PLAN ACTIVE FORECLOSURE

PIRI PROPERTY INSPECTION RESULTS 02/17/16 19:16:39
 RF WHITT DUE 11/01/13 TYPE CONV. RES INV-LN 205-001-1668301440
 344 BLOSSOM VIEW CT WEST COLUMBIA SC 29170-2337 GROUP

HISTORY OF REQUESTS

REQUEST DATE	INSPECTION TYPE	P/ REQUEST H MEDIA	PI CO.	REQUESTOR	COMPLETE DATE	FEE	V/ DATE O ADDED
02/06/16	FORECLOSE	P MASS REQ	SVLINK LILHI		02/15/16	15.00	O 02/17/16
	ACTION:	DISPOSITION:					
01/06/16	FORECLOSE	P MASS REQ	SVLINK LILHI		01/16/16	15.00	O 01/18/16
	ACTION:	DISPOSITION:					
12/07/15	FORECLOSE	P MASS REQ	SAFEGD LILHI		12/10/15	15.00	O 12/11/15
	ACTION:	DISPOSITION:					
11/05/15	FORECLOSE	P MASS REQ	SAFEGD LILHI		11/11/15	15.00	O 11/12/15
	ACTION:	DISPOSITION:					
09/14/15	FORECLOSE	P MASS REQ	SAFEGD LILHI				
	ACTION:	DISPOSITION:					
08/14/15	FORECLOSE	P MASS REQ	SAFEGD LILHI		08/22/15	15.00	O 08/24/15
	ACTION:	DISPOSITION:					

ADDITIONAL MESSAGES

--SFOC--

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

PIR1 PROPERTY INSPECTION RESULTS 02/17/16 19:16:40
 RF WHITT DUE 11/01/13 TYPE CONV. RES INV-LN 206-001-1668301440
 344 BLOSSOM VIEW CT WEST COLUMBIA SC 29170-2337 GROUP

HISTORY OF REQUESTS

REQUEST DATE	INSPECTION TYPE	P/ REQUEST M MEDIA	PI CO.	REQUESTOR	COMPLETE DATE	FEE O	V/ DATE O ADDED
07/15/15	FORECLOSE	P MASS REQ	SAFECD LILH1		07/12/15	15.00	0 07/20/15
	ACTION:	DISPOSITION:					
06/15/15	FORECLOSE	P MASS REQ	SAFECD LILH1		06/20/15	15.00	0 06/22/15
	ACTION:	DISPOSITION:					
05/15/15	FORECLOSE	P MASS REQ	SAFECD LILH1		05/23/15	15.00	0 05/27/15
	ACTION:	DISPOSITION:					
04/15/15	FORECLOSE	P MASS REQ	SAFECD LILH1		04/21/15	15.00	0 04/24/15
	ACTION:	DISPOSITION:					
03/16/15	FORECLOSE	P MASS REQ	SAFECD LILH1		03/20/15	15.00	0 03/23/15
	ACTION:	DISPOSITION:					
02/12/15	FORECLOSE	MASS REQ	SAFECD		02/14/15	15.00	0 02/28/15
	ACTION:	DISPOSITION:					

ADDITIONAL MESSAGES

--SPOC--

LIFE-OF-LOAN: 13FZB14 021314 SENT NOTICE OF INTENT TO FC, EXP. 03/19/14
 ACTIVE LOSS MITIGATION LOSS MIT IND = 1 LOSS MIT RETENTION

SRR1 CUSTOMER SERVICE INV 205/001 02/17/16 19:16:44
ROBIN F WHITT ID TYPE CONV. RES. MAN F

000-00-0000 IR 7.50000 BR 00

344 BLOSSOM VIEW CT WEST COLUMBIA SC 29170-2337

LMSLRU < LM.OFFICER LAST REVIEW UPDATE

>: 02/17/16

----- LOAN INFORMATION -----
----- 11/01/13 PMT ----- LAST PAID DATE DUE AMOUNT (13 MONTHS)
1ST PFI 840.99 PAYMENT WU: -
*COUNTY 90.90 HAZARD 06/09/15 06/15 1731.00- STATE FARM FIRE
*HAZ 117.41 COUNTY 11/16/15 12/15 933.91-
*TOT PMT 1049.30

ANALYZED COUP MO
04/30/15 03

LC DUE 36.75 ----- BALANCES ----- BILL AND BILL PROD
OTH FEES .00 PRINCIPAL 89,776.15 02/16/16
TOT DUE 28859.03 ESCROW 6,301.97- 2015 PRN .00
-- PENDING PAYMENT -- SUSPENSE .00 2015 TAX 933.91
05/14 1028.16 RES ESC .00 2015 INT .00

----- PF2 FOR ADDL MESSAGES -----

--SPOC--

LIFE-OF-LOAN: 13FEB14 021314 SENT NOTICE OF INTENT TO FC, EXP. 03/19/14

ACTIVE LOSS MITIGATION

LOSS MIT IND = 1 LOSS MIT RETENTION

121

SER1 CUSTOMER SERVICE INV 205/001 02/17/16 19:16:49
ROBIN F WHITT D TYPE-CONV. RES. MAN F

000-00-0000 IR 7.50000 BR 00

344 BLOSSOM VIEW CT WEST COLUMBIA SC 29170-2337

LMSLRU < LM OFFICER LAST REVIEW UPDATE >: 02/17/16

-----HIST-----* LOAN HISTORY (MORE)

PROC-DT	DUE-DT	TRAN	TRAN-DESCRIPTION	TRAN-EFFECTIVE-DATE
TRAN-AMT	PRINCIPAL	INTEREST	ESCROW	AMOUNT/CD/DESCRIPTION
11-24-15	00-00	631	PROPERTY PRESERVATION	
15.00	0.00	0.00	0.00	15.00 MTGR REC CORP ADV BA
11-16-15	11-13	161	ESCROW ADVANCE	
933.91	0.00	0.00	933.91	
11-16-15	12-15	312	COUNTY TAX	
933.91-	0.00	0.00	933.91-	PAYEE = 39063
			6,301.97-	
10-28-15	00-00	630	ATTORNEY ADVANCES	
40.00	0.00	0.00	0.00	40.00 MTGR REC CORP ADV BA
09-25-15	00-00	630	ATTORNEY ADVANCES	
180.00	0.00	0.00	0.00	180.00 MTGR REC CORP ADV BA

---* PF2 FOR ADDL MESSAGES *

--SPOC--

LIFE-OF-LOAN: 13FEB14 021314 SENT NOTICE OF INTENT TO FC, EXP. 03/19/14

ACTIVE LOSS MITIGATION LOSS MIT IND = 1 LOSS MIT RETENTION

SERI : CUSTOMER SERVICE INV 205/001 02/17/16 19:16:49
ROBIN F WHITT TYPE CONV. RES. MAN F

000-00-0000 IR 7.50000 BR 00

344 BLOSSOM VIEW CT WEST COLUMBIA SC 29170-2337

LMSLRU < LM OFFICER LAST REVIEW UPDATE >: 02/17/16

---* HIST * LOAN HISTORY * (MORE)

PROC-DT	DUE-DT	TRAN	TRAN-DESCRIPTION	TRAN-EFFECTIVE-DATE
TRAN-AMT	PRINCIPAL	INTEREST	ESCRON	AMOUNT/CD/DESCRIPTION
09-02-15	00-00	631	PROPERTY PRESERVATION	
15.00	0.00	0.00	0.00	15.00 MTGR REC CORP ADV BA
09-02-15	00-00	630	ATTORNEY ADVANCES	
50.00	0.00	0.00	0.00	50.00 MTGR REC CORP ADV BA
08-28-15	11-13	132	LATE CHARGE ADJUSTMENT	
0.00	0.00	0.00	0.00	12.25 1 LATE CHARGE
07-30-15	00-00	631	PROPERTY PRESERVATION	
15.00	0.00	0.00	0.00	15.00 MTGR REC CORP ADV BA
07-27-15	00-00	630	ATTORNEY ADVANCES	
350.00	0.00	0.00	0.00	350.00 MTGR REC CORP ADV BA
07-01-15	00-00	631	PROPERTY PRESERVATION	
15.00	0.00	0.00	0.00	15.00 MTGR REC CORP ADV BA

---* PF2 FOR ADDL MESSAGES *

--SPOC--

LIFE-OF-LOAN: 13FEB14 021314 SZNY NOTICE OF INTENT TO FC, EXP. 03/19/14

ACTIVE LOSS MITIGATION LOSS MIT IND = 1 LOSS MIT RETENTION

SERI CUSTOMER SERVICE INV 205/001 02/17/16 19:16:49
 ROBIN F WHITT ID TYPE CONV. RES. MAN F

000-00-0000 IR 7.50000 BR 00
 344 BLOSSOM VIEW CT WEST COLUMBIA SC 29170-2337

LMSLRU < LM OFFICER LAST REVIEW UPDATE

>: 02/17/16

HIST LOAN HISTORY (MORE)

PROC-DT	DUE-DT	TRAN	TRAN-DESCRIPTION	TRAN-EFFECTIVE-DATE
TRAN-AMT	PRINCIPAL	INTEREST	ESCROW	AMOUNT/CD/DESCRIPTION
06-25-15	00-00	710	ATTORNEY ADVANCE REPAYMENT	
107.75	0.00	0.00	0.00	107.75 MTR RZC CORP ADV BA
06-13-15	00-00	630	ATTORNEY ADVANCES	
20.00	0.00	0.00	0.00	20.00 MTR RZC CORP ADV BA
06-09-15	11-13	161	ESCROW ADVANCE	
1,731.00	0.00	0.00	1,731.00	
06-09-15	06-15	351	HOMELOWNERS INSURANCE PREMIUM	
1,731.00-	0.00	0.00	1,731.00-	PAYEE = 62M01
			5,368.06-	
06-04-15	00-00	631	PROPERTY PRESERVATION	
15.00	0.00	0.00	0.00	15.00 MTR REC CORP ADV BA

PF2 FOR ADDL MESSAGES

=SPOC=

LIFE-OF-LOAN: 13FEB14 021314 SENT NOTICE OF INTENT TO FC, EXP. 03/19/14

ACTIVE LOSS MITIGATION LOSS MIT IND = 1 LOSS MIT RETENTION

SER1 ----- CUSTOMER SERVICE INV 205/001 02/17/16 19:16:49
 ROBIN F WHITT 1 TYPE CONV. RES. MAN F
 000-00-0000 IR 7.50000 BR 00

344 BLOSSOM VIEW CT. WEST COLUMBIA SC 29170-2337 H ..
 LMSLRU < LM OFFICER LAST REVIEW UPDATE >: 02/17/16
 -----HIST-----* LOAN HISTORY -----(MORE)

PROC-DT	DUE-DT	TRAN	TRAN-DESCRIPTION	TRAN-EFFECTIVE-DATE
TRAN-AMT	PRINCIPAL	INTEREST	ESCROW	AMOUNT/CD/DESCRIPTION
05-27-15	00-00	630	ATTORNEY ADVANCES	
1,080.00	0.00	0.00	0.00	1,080.00 MTGR REC CORP ADV BA
06-07-15	00-00	631	PROPERTY PRESERVATION	
15.00	0.00	0.00	0.00	15.00 MTGR REC CORP ADV BA
05-05-15	00-00	630	ATTORNEY ADVANCES	
150.00	0.00	0.00	0.00	150.00 MTGR REC CORP ADV BA
05-05-15	00-00	630	ATTORNEY ADVANCES	
380.00	0.00	0.00	0.00	380.00 MTGR REC CORP ADV BA
04-16-15	11-13	162	LATE CHARGE ASSESSMENT	
0.00	0.00	0.00	0.00	12.25-1 LATE CHARGE
04-06-15	00-00	630	ATTORNEY ADVANCES	
385.00	0.00	0.00	0.00	385.00 MTGR REC CORP ADV BA

----- PF2 FOR ADDL MESSAGES -----

--SPOC--

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

SERI
 ROBIN, & WHITT
 344 BLOSSOM VIEW CT
 LMSLRU < LM OFFICER LAST REVIEW UPDATE

CUSTOMER SERVICE INV 205/001 02/17/16 19:16:49
 TYPE CONV. RES. MAN F
 000-00-0000 IR 7.50000 BR 00
 WEST COLUMBIA SC 29170-2337 N 803-95
 >: 02/17/16

-----* LOAN HISTORY *-----
 HIST (MORE)
 PROC-DT DUE-DT TRAN TRAN-DESCRIPTION TRAN-EFFECTIVE-DATE
 TRAN-AMT PRINCIPAL INTEREST ESCROW AMOUNT/CD/DESCRIPTION

04-02-15	00-00	631	PROPERTY PRESERVATION					15.00	MTGR REC CORP ADV BA
15.00	0.00	0.00	0.00						
03-01-15	00-00	745	CORPORATE ADVANCE ADJUSTMENT					5.00	3RD REC CORP ADV
5.00	0.00	0.00	0.00						
03-01-15	00-00	745	CORPORATE ADVANCE ADJUSTMENT					25.00	3RD REC CORP ADV
25.00	0.00	0.00	0.00						
03-01-15	00-00	745	CORPORATE ADVANCE ADJUSTMENT					225.00	MTGR REC CORP ADV BA
225.00	0.00	0.00	0.00						
03-01-15	00-00	745	CORPORATE ADVANCE ADJUSTMENT					290.00	MTGR REC CORP ADV BA
290.00	0.00	0.00	0.00						
03-01-15	00-00	745	CORPORATE ADVANCE ADJUSTMENT					150.00	MTGR REC CORP ADV BA
150.00	0.00	0.00	0.00						

-----* PF2 FOR ADDL MESSAGES *-----
 --SPOC--
 LIFE-OF-LOAN: 13FEB14 021314 SENT NOTICE OF INTENT TO FC, EXP. 03/19/14
 ACTIVE LOSS MITIGATION LOSS MIT IND = 1 LOSS MIT RETENTION

SER1 CUSTOMER SERVICE INV 205/001 02/17/16 19:16:49
 ROBIN F WHITT D TYPE CONV. RES. MAN F

000-00-0000 IR 7.50000 BR 00

344 BLOSSOM VIEW CT WEST COLUMBIA SC 29170-2337

LMSLRU < LM OFFICER LAST REVIEW UPDATE

>: 02/17/16

HIST END OF LOAN HISTORY (MORE)

PROC-DT	DUZ-DT	TRAN	TRAN-DESCRIPTION	TRAN-EFFECTIVE-DATE
TRAN-AMT	PRINCIPAL	INTEREST	ESCROW	AMOUNT/CD/DESCRIPTION
03-01-15	00-00	745	CORPORATE ADVANCE ADJUSTMENT	
1,155.00	0.00	0.00	0.00	1,155.00 MTGR REC CORP ADV BA
03-01-15	00-00	745	CORPORATE ADVANCE ADJUSTMENT	
240.00	0.00	0.00	0.00	240.00 MTGR REC CORP ADV BA
03-01-15	00-00	745	CORPORATE ADVANCE ADJUSTMENT	
28.00	0.00	0.00	0.00	28.00 MTGR REC CORP ADV BA
02-28-15	02-15	161	ESCROW ADVANCE	
3,637.06	0.00	0.00	3,637.06	

PF2 FOR ADDL MESSAGES *

==SPOC==

LIFE-OF-LOAN: 13FEB14 021314 SENT NOTICE OF INTENT TO FC, EXP. 03/19/14

ACTIVE LOSS MITIGATION LOSS MIT IND = 1 LOSS MIT RETENTION

DDCH REFORATE ADVANCE HISTORY SCREEN 205/001 02/17/16 19:15:39
 RE WHITT L:A F:A B: R: 11/01/13 TYPE CONV. RES. MAN F
 344 BLOSSOM VIEW CT WEST COLUMBIA SC 29170-2337

* MORE *

____ C/A PAYEE ____ TRAN ____ RSN ____ USR ____ ESC PAYEE
 ____ SORT ____ SORT ____ SORT ____ SORT ____ SORT
 DATE RANGE: ____ THRU ____

TRN	USR	DATE	TRAN AMT	ESC PAYEE	C/A	PAYEE RSN	DESCRIPTION	ORIG DSB
630	NIV	02/02/16	25.00	AT15604	39R57	LEPC	LEGALPOSTINGCOST	
630	NIV	02/02/16	180.00	AT15604	35R50	CCLF	CONTESTEDLITFEE	
631	NIV	01/27/16	15.00	EB56411	39R57	FPIF	PROP INSPECTION	
630	NIV	01/19/16	40.00	AT15604	35R50	CCLF	CONTESTEDLITFEE	
631	NIV	12/23/15	15.00	EB11937	39R57	FPIF	PROP INSPECTION	
630	NIV	12/14/15	210.00	AT15604	35R50	CCLF	CONTESTEDLITFEE	
631	NIV	11/24/15	15.00	EB11937	39R57	FPIF	PROP INSPECTION	
630	NIV	10/28/15	40.00	AT15604	35R50	CCLF	CONTESTEDLITFEE	
630	NIV	09/25/15	180.00	AT15604	35R50	CCLF	CONTESTEDLITFEE	
631	NIV	09/02/15	15.00	EB11937	39R57	FPIF	PROP INSPECTION	

DDCH CORPORATE ADVANCE HISTORY SCREEN 205/001 02/17/16 19:15:39
 RE WHITT LIA F: A B: R: 11/01/13 TYPE CONV. RES. MAN F
 344 BLOSSOM VIEW CT WEST COLUMBIA SC 29170-2337

----- * MORE *
 C/A PAYEE TRAN RSN USR ZSC PAYEE
 SORT SORT SORT SORT SORT
 DATE RANGE: THRU

TRM	USR	DATE	TRAN	AMT	ZSC	PAYEE	C/A	PAYEE	RSN	DESCRIPTION	ORIG	DSB
630	NIV	02/02/16		25.00	AT15604	39R57	LEPC	LEGALPOSTINGCOST				
630	NIV	02/02/16		180.00	AT15604	35R50	CCLF	CONTESTEDLITFEE				
631	NIV	01/27/16		15.00	EB56411	39R57	EPIF	PROP INSPECTION				
630	NIV	01/19/16		40.00	AT15604	35R50	CCLF	CONTESTEDLITFEE				
631	NIV	12/23/15		15.00	EB11937	39R57	EPIF	PROP INSPECTION				
630	NIV	12/14/15		210.00	AT15604	35R50	CCLF	CONTESTEDLITFEE				
631	NIV	11/24/15		15.00	EB11937	39R57	EPIF	PROP INSPECTION				
630	NIV	10/28/15		40.00	AT15604	35R50	CCLF	CONTESTEDLITFEE				
630	NIV	09/25/15		180.00	AT15604	35R50	CCLF	CONTESTEDLITFEE				
631	NIV	09/02/15		15.00	EB11937	39R57	EPIF	PROP INSPECTION				

DDCH CORPORATE ADVANCE HISTORY SCREEN 205/001 04/17/16 19:15:41
 RE WHITT L:A F:A B: R: 11/01/13 TYPE CONV. RES. MAN F
 344 BLOSSOM VIEW CT WEST COLUMBIA SC 29170-2337

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

TRN	USR	DATE	TRAN AMT	ESC PAYEE	C/A	DAYES RSN	DESCRIPTION	ORIG DSB
630	NIV	09/02/15	50.00	AT15604	35R50	CCLF	CONTESTEDLITFEE	
631	NIV	07/30/15	15.00	EB11937	39R57	FPIF	PROP INSPECTION	
630	NIV	07/27/15	360.00	AT15604	35R50	CCLF	CONTESTEDLITFEE	
631	NIV	07/01/15	15.00	EB11937	39R57	FPIF	PROP INSPECTION	
710	KB4	06/25/15	107.75	AT15604	35R50	CCLF	CONTESTEDLITFEE	06/27/15
630	NIV	06/19/15	20.00	AT15604	35R50	CCLF	CONTESTEDLITFEE	
631	NIV	06/04/15	15.00	EB11937	39R57	FPIF	PROP INSPECTION	
630	NIV	05/27/15	1,080.00	AT15604	35R60	CCLF	CONTESTEDLITFEE	
631	NIV	05/07/15	15.00	EB11937	39R57	FPIF	PROP INSPECTION	
630	NIV	05/05/15	150.00	AT15604	39R57	LFPC	LEGALPOSTINGCOST	

DDCH CORPORATE ADVANCE HISTORY SCREEN 205/001 02/17/16 19:15:45
 RE WHITT L:A F:A B: R: 11/01/13 TYPE CONV. RZS. MAN F
 344 BLOSSOM VIEW CT WEST COLUMBIA SC 29170-2337

----- * MORE *
 C/A PAYEE TRAN RSN USA ESC PAYEE
 _ SORT _ SORT _ SORT _ SORT _ SORT
 DATE RANGE: THRU

TRN	USR	DATE	TRAN AMT	ESC PAYEE	C/A	PAYEE RSN	DESCRIPTION	ORIG DSB
630	NIV	05/05/15	380.00	AT15604	35R50	CCLF	CONTESTEDLITFEE	
630	NIV	04/06/15	385.00	AT16604	39R57	LEFC	LEGAL FEES- FCL	
631	NIV	04/02/15	15.00	EB11937	39R57	FPF	PROP INSPECTION	
745	CNV	03/01/15	5.00		39T57	RSEF	SUBMISSIONFEE-FC	
745	CNV	03/01/15	25.00		39T57	RISE	TRCH SUBMISSION	
745	CNV	03/01/15	225.00		39R57	LTSC	TITLESEARCHATTY	
745	CNV	03/01/15	290.00		39R57	LEMC	PUBLICATN NOTICE	
745	CNV	03/01/15	150.00		39R57	LEFC	LEGALFOSTINGCOST	
745	CNV	03/01/15	1,165.00		39R57	LEFC	LEGAL FEES- FCL	
745	CNV	03/01/15	240.00		39R57	FPF	PROP INSPECTION	

DDCH CORPORATE ADVANCE HISTORY SCREEN 205/001 02/17/16 19:15:46
 RE WHITT L:A F:A B: R: 11/01/13 TYPE CONV. RES. MAN F.
 344 BLOSSOM VIEW CT WEST COLUMBIA SC 29170-2337

* END *

C/A PAYEE	TRAN	RSN	USR	ESC PAYEE
__ SORT	__ SORT	__ SORT	__ SORT	__ SORT
DATE RANGE: _____	THRU _____			
TRN	USR	DATE	TRAN	AMT
745	CNV	03/01/15	28.00	

C/A

PAYEE RSN	DESCRIPTION	ORIG DSB
39R57	PRIF	PSPROPINSPECTION

** BEGINNING CORP ADV BALANCE:	0.00
** TOTAL OF TRANS DISPLAYED ON DDCH:	5,245.25
** OUTSTANDING CORP ADV BALANCE:	5,245.25

FEE1 FSS ACTIVITY LEDGER 02/17/16 19:15:48
 SELECTED CODES FROM MDDYY PAGE 1 OF 1
 ROBIN F WHITT 344 BLOSSOM VIEW CT
 WEST COLUMBIA SC 29170-

FEE	DATE	DATE	DATE
CODE DESCRIPTION	ASSESSED	PAID	WAIVED
1 LATE CHARGE	02-28-15	36.75	
1 LATE CHARGE	04-16-15	12.25	
1 LATE CHARGE			08-28-15 12.25

NET	36.75	TOTALS	49.00	0.00	12.25
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HAZI	HAZARD & FLOOD INSURANCE		02/17/16 19:16:52	
351	NAME RE WHITT	TYPE CONV. RES.	UNIT ID	
PROP 344 BLOSSOM VIEW CT	WEST COLUMBIA SC 29170		MAN F GROUP	

-----MAIN-----

TYP AGENT INSCO	DUE EXPIRES	PREMIUM TRM.	COVERAGE P C	POLICY NUMBER	523.N
351 33333 SFM01	06/16 06/26/16	1731.00 12	220000 6 H	40B791655	
ACT C DISB CD	ADD. PREM	RTG CL N 00/00/00 VP Y OV		ZGD AE	N Y

-----* PF2 FOR ADDITIONAL MESSAGES *-----

WARNING: FLOOD ZONE DISCREPANCY --SPOC--

LIFE-OF-LOAN: 13FEB14 021314 SENT NOTICE OF INTENT TO FC, EXP. 03/19/14

ACTIVE LOSS MITIGATION LOSS MIT IND = 1 LOSS HIT RETENTION

REPAY PLAN ACTIVE FORECLOSURE

-----HDED TO UPDATE DEDUCTIBLE AMOUNT-----

AGENT AGENT DEFAULT	----- DISBURSEMENT AND REFUND HISTORY -----				
	TYP	PAYEE	DUE	PAID	AMOUNT
3800 MUIRLANDS BLVD	351	SFM01	06-15	06-09-15	1,731.00-
IRVINE CA 92618					

INSCO STATE FARM FIRE & CASUAL

PAY 11350 JOHNS CREEK PW

DULUTH CA 30098

HAZ1	HAZARD & FLOOD INSURANCE		02/17/16 19:15:54
351	NAME RE WHITT	TYPE CONV. RES.	UNIT ID
PROP 344 BLOSSOM VIEW CT	WEST COLUMBIA SC 29170		MAN F GROUP

-----MAIN-----

TYP AGENT INSCO	DUE EXPIRES	PREMIUM	TRM	COVERAGE	P C	POLICY NUMBER	523 N
351 33333 SFH01	06/16 06/26/16	1731.00	12	220000	6 R	408791655	
ACT C DISB CD	ADD. PREM	MIG CL N 00/00/00		VP Y OV	ZGD AZ	N Y	

-----* PF2 FOR ADDITIONAL MESSAGES *-----

WARNING: FLOOD ZONE DISCREPANCY --SPOC--

LIFE-OF-LOAN: 13FEB14 021314 SENT NOTICE OF INTENT TO FC, EXP. 03/19/14

ACTIVE LOSS MITIGATION LOSS MIT IND = 1 LOSS MIT RETENTION

REPAY PLAN ACTIVE FORECLOSURE

-----HDED TO UPDATE DEDUCTIBLE AMOUNT-----

AGENT AGENT DEFAULT	INVESTOR NAME FANNIE MAE
9800 MUIRLANDS BLVD	INVESTOR LOAN 205-001-1668301440
IRVINE CA 92618	INVESTOR PHONE 503-372-B142
INSCO STATE FARM FIRE & CASUAL	CLS 06-26-98 ASM 00-00-00 MAT 07-28
PAY 11350 JOHNS CREEK PW	DUE 11-01-13 PRIN BAL 89,776.15
	ESC BAL 6,301.97- R ESC .00
	HAZ MONTH 117.41 HAZ YTD .00
DOLUTH GA 30098	OCCUPANT UNKNOWN

HAZA	HAZARD & FLOOD INSURANCE	02/17/16	19:15:57
NAME RT WHITT	TYPE CONV. RES.		
PROP 344 BLOSSOM VIEW CT	WEST COLOMBIA SC 29170	MAN F	
TYP AGENT INSCO	DUE EXPIRES PREMIUM TRM. COVERAGE P C POLICY NUMBER		
	DEDUCTIBLE AMOUNT PERCENT		
351 33333 SFM01 06/16 06/26/16	1731.00 12	220000 6 H	40B791655

P194 COLLECTION INFORMATION 02/17/16

LN
NAME RF WHITT INV-LN 205-001-1668301440 DUE 11-01-13 TYPE 13
BR 00 MAN F P-TYPE 1 INT .0750000 FIRST PB 89,776.15 2ND PB .00
ORIG MTG 120275 LN DATE 06-26-98 TERM 360 HO P&I 840.99 PAY-PZR 12

BILL ROBIN F WHITT TEL W
NAME TAX NAME ROBIN F WHITT
6 344 BLOSSOM VIEW CT PROPERTY 344 BLOSSOM VIEW CT
ADDR WEST COLUMBIA SC 29170 ADDRESS WEST COLUMBIA SC 29170
AMOUNTS DUE ASM 00-00-00 MAT 07-28 XFER DEED

		BALANCES		STOPS	
DUE DATE	11-01-13				
REG PAYMENT	1049.30	SUSPENSE	.00	PROCESS	F
MONTHS	28	RES ESC	.00	CASHIER	S TIMES 1
TOT REG PAY	28822.28	HUD BAL	.00	DISB	0
ACCRUED LC	36.75	ESC ADV	6301.97	BD CK	0
		REP RES	.00	PIF	0
HSF BAL	.00	REG ESC	.00	EC	2 TRACK A
OTHER FEE	.00			NOTICE	F
TOTAL DUE	28859.03			ANALYZE	0
LC FACTR .05000	MAX LC AMT	12.25	MAX LC RATE .00000	L/C	4
LC CODE A	MIN LC AMT	.00	GRACE DAYS	015	PMT/BD CK TAB 0000000000000
REMINDER DAYS 15	FINAL NOTICE DAYS				DZLQ TAB THRU 04-15 0000000000001

SEE LIFE OF LOAN MEM10026832791 LOAN ASSUMPTION STATUS UNKNOWN

02-17-16

P309 LN
NAME RF WHITT
INV-LN 205-001-1668301440 DOE 11-01-13 TYPE 13
BR 00 MAN F P-TYPE 1 INT .0750000 FIRST PB 89,776.15 2ND PB .00
HOD .00 NET 1049.90 SF .00340000 SUSP .00 STOP D B P F N A D L
REP .00 RES .00 F 0 0 2 F 0 0 4

	02-02	02-02	01-27	01-19	12-23
APP	00-00	00-00	00-00	00-00	00-00
DUE	6 30	6 30	6 31	6 30	6 31
TYPE/TRAN	.00	.00	.00	.00	.00
AMOUNT	.00	.00	.00	.00	.00
PRIN-PD	.00	.00	.00	.00	.00
PRIN-BAL	89,776.15	89,776.15	89,776.15	89,776.15	89,776.15
INT-PD	.00	.00	.00	.00	.00
ESC-PD	.00	.00	.00	.00	.00
ESC-BAL	.00	.00	.00	.00	.00
AGR-INS	.00	.00	.00	.00	.00
LIFE-INS	.00	.00	.00	.00	.00
LC/FEES	.00	.00	.00	.00	.00
MISC-PD	.00	.00	.00	.00	.00
ADV-BAL	6,301.97	6,301.97	6,301.97	6,301.97	6,301.97
SUSP	.00	.00	.00	.00	.00
SC/PAYEE	AT15604	AT15604	ZB56411	AT15604	ZB11937

PAGE 00001 OF 00008 TRANS AVAILABLE

38 OLDEST TRAN 02-28-15 /P

P309 LN
NAME RE WHITT
MORTGAGE LOAN HISTORY
INV-LN 205-001-1668301440 DUE 11-01-13 TYPE 13
02-17-16
RR 00 MAN F P-TYPE 1 INT .0750000 FIRST PB 89,776.15 2ND PB .00
HUD .00 NET 1049.90 SF .00340000 SUSP .00 STOP D B P F N A D L
REP .00 RES .00 F 0 0 2 F 0 0 4

	12-14	11-24	11-16	11-15	10-28
APP	00-00	00-00	11-13	12-15	00-00
DUE	6 30	6 31	1 61	3 12	6 30
TYPE/TRAN	.00	.00	933.91	933.91-	.00
AMOUNT	.00	.00	.00	.00	.00
PRIN-PD	.00	.00	.00	.00	.00
PRIN-BAL	89,776.15	89,776.15	89,776.15	89,776.15	89,776.15
INT-PD	.00	.00	.00	.00	.00
ESC-PD	.00	.00	933.91	933.91-	.00
ESC-BAL	.00	.00	.00	933.91-	.00
A&H-INS	.00	.00	.00	.00	.00
LIFE-INS	.00	.00	.00	.00	.00
LC/FEEs	.00	.00	.00	.00	.00
MISC-PD	.00	.00	.00	.00	.00
ADV-BAL	6,301.97	6,301.97	6,301.97	5,368.06	5,368.06
SUSP	.00	.00	.00	.00	.00
SC/PAYEE	AT15604	EB11937	39063	AT15604	

PAGE 00002 OF 00008 TRANS AVAILABLE

38 OLDEST TRAN 02-28-15 /P

P309 LN
 NAME SF WHITT
 BR 00 MAN F P-TYPE 1 INT .0750000 FIRST PB 89,776.15 2ND PB .00
 HUD .00 NET 1049.30 SF .00340000 SUSP .00 STOP DB P F N A D L
 REP .00 RES .00 F 0 0 2 F 0 0 4
 APP 09-25 09-02 09-02 08-28 07-30
 DUE 00-00 00-00 00-00 11-13 00-00
 TYPE/TRAN 6 30 6 31 6 30 1 32 6 31
 AMOUNT .00 .00 .00 .00 .00
 PRIN-PD .00 .00 .00 .00 .00
 PRIN-BAL 89,776.15 89,776.15 89,776.15 89,776.15 89,776.15
 INT-PD .00 .00 .00 .00 .00
 ESC-PD .00 .00 .00 .00 .00
 ESC-BAL .00 .00 .00 .00 .00
 AGH-INS .00 .00 .00 .00 .00
 LIFE-INS .00 .00 .00 .00 .00
 LC/FESS .00 .00 .00 B 12.25 .00
 HISC-PD .00 .00 .00 .00 .00
 ADV-BAL 5,368.06 6,368.06 5,368.06 5,368.06 5,368.06
 SUSP .00 .00 .00 .00 .00
 SC/PAYEE AT15604 EB11937 AT15604 EB11937

PAGE 00003 OF 00008 TRANS AVAILABLE

38 OLDEST TRAN 02-28-15 /P

P309 LN	MORTGAGE LOAN HISTORY					02-17-16
NAME RE WHITT	INV-LN 205-001-1668301440 DUE 11-01-13 TYPE 13					
BR 00 MAN F P-TYPE 1 INT .0750000 FIRST PB	89,776.15 2ND PB					.00
HUD .00 NET 1049.30 SF .00340000 SUSP	.00 STOP D B P F N A D L					
REP .00 RES .00	F 0 0 2 F 0 0 4					
APP	07-27	07-01	06-25	06-19	06-09	
DUE	00-00	00-00	00-00	00-00	11-13	
TYPE/TRAN	6 30	6 31	7 10	6 30	1 61	
AMOUNT	.00	.00	107.75	.00	1,731.00	
PRIN-PD	.00	.00	.00	.00	.00	
PRIN-BAL	89,776.15	89,776.15	89,776.15	89,776.15	89,776.15	
INT-PD	.00	.00	.00	.00	.00	
ESC-PD	.00	.00	.00	.00	1,731.00	
ESC-BAL	.00	.00	.00	.00	.00	
ALH-INS	.00	.00	.00	.00	.00	
LIFE-INS	.00	.00	.00	.00	.00	
LC/FEES	.00	.00	.00	.00	.00	
MISC-PD	.00	.00	.00	.00	.00	
ADV-BAL	5,368.06	5,368.06	5,368.06	5,368.06	5,368.06	
SUSP	.00	.00	.00	.00	.00	
SC/PAYEE	AT15604	ZB11937	AT15604	AT15604		
PAGE 00004 OF 00008 TRANS AVAILABLE 38 OLDEST TRAN 02-28-15 /P						

02-17-16

P309 LN
NAME RF WHITT
MORTGAGE LOAN HISTORY
INV-LN 205-001-1668301440 DUE 11-01-13 TYPE 13
BR 00 MAN F P-TYPE 1 INT .0750000 FIRST PB 89,776.15 2ND PB .00
HUD .00 NET 1049.30 SF .00940000 SUSP .00 STOP D R P F N A D L
REP .00 RES .00 F 0 0 2 F 0 0 4

	06-09	06-04	05-27	05-07	05-05
APP	06-15	00-00	00-00	00-00	00-00
DUE	3 51	6 31	6 30	6 31	6 30
TYPE/TRAN	1,731.00-	.00	.00	.00	.00
AMOUNT	.00	.00	.00	.00	.00
PRIN-PD	89,776.15	89,776.15	89,776.15	89,776.15	89,776.15
PRIN-BAL	.00	.00	.00	.00	.00
INT-PD	1,731.00-	.00	.00	.00	.00
ESC-PD	1,731.00-	.00	.00	.00	.00
ESC-BAL	.00	.00	.00	.00	.00
A&H-INS	.00	.00	.00	.00	.00
LIFE-INS	.00	.00	.00	.00	.00
LG/FEES	.00	.00	.00	.00	.00
MISC-PD	3,637.06	3,637.06	3,637.06	3,637.06	3,637.06
ADV-BAL	.00	.00	.00	.00	.00
SUSP	SC/PAYEE	SFN01	EB11937	AT15604	EB11937
					AT15604

PAGE 00005 OF 00008 TRANS AVAILABLE

38 OLDEST TRAN 02-28-15 /P

P309 LN
NAME RF WHITT
BR 00 MAN F P-TYPE 1 INT .0750000 FIRST PB 89,776.15 2ND PB .00
HUD .00 NET 1049.90 SF .00340000 SUSP .00 STOP D B P F N A D L
REP .00 RES .00 F 0 0 2 F 0 0 4

	05-05	04-16	04-06	04-02	03-01
APP	00-00	11-13	00-00	00-00	00-00
DUE	6 30	1 52	6 30	6 31	7 45
TYPZ/TRAN	.00	.00	.00	.00	5.00
AMOUNT	.00	.00	.00	.00	.00
PRIN-PD	.00	.00	.00	.00	.00
PRIN-BAL	89,776.15	89,776.15	89,776.15	89,776.15	89,776.15
INT-PD	.00	.00	.00	.00	.00
ESC-PD	.00	.00	.00	.00	.00
ESC-BAL	.00	.00	.00	.00	.00
A&H-INS	.00	.00	.00	.00	.00
LIFE-INS	.00	.00	.00	.00	.00
LC/FEES	.00 1	12 26	.00	.00	.00
MISC-PD	.00	.00	.00	.00	.00
ADV-BAL	3,637.06	3,637.06	3,637.06	3,637.06	3,637.06
SUSP	.00	.00	.00	.00	.00
SC/PAYEE	AT15604		AT15604	EB11937	

PAGE 00006 OF 00008 TRANS AVAILABLE 38 OLDEST TRAN 02-28-15 /P

P309 LN
NAME RE WHITT
BR 00 MAN F P-TYPE 1 INT .0750000 FIRST PB 89,776.15 2ND PB .00
HUD .00 NET 1049.30 SF .00340000 SUSP .00 STOP DB P F N A D L
RED .00 RES .00 F 0 0 2 F 0 0 4
APP 03-01 03-01 03-01 03-01 03-01
DUE 00-00 00-00 00-00 00-00 00-00
TYPE/TRAN 7 45 7 45 7 45 7 45 7 45
AMOUNT 25.00 225.00 290.00 150.00 1,155.00
PRIN-PD .00 .00 .00 .00 .00
PRIN-BAL 89,776.15 89,776.15 89,776.15 89,776.15 89,776.15
INT-PD .00 .00 .00 .00 .00
ESC-PD .00 .00 .00 .00 .00
ESC-BAL .00 .00 .00 .00 .00
A&H-INS .00 .00 .00 .00 .00
LIFE-INS .00 .00 .00 .00 .00
LC/FEES .00 .00 .00 .00 .00
HISC-PD .00 .00 .00 .00 .00
ADV-BAL 3,637.06 3,637.06 3,637.06 3,637.06 3,637.06
SUSP .00 .00 .00 .00 .00
SC/PAYEE

PAGE 00007 OF 00008 TRANS AVAILABLE

38 OLDEST TRAN 02-28-15 /P

P309 LN
NAME RF WHITT
BR 00 MAN F P-TYPE 1 INT .0750000 FIRST PB 89,776.15 2ND PB .00
HUD .00 NET 1049.30 SF .00340000 SUSP .00 STOP D B P F H A D L
REP .00 RES .00 F 0 0 2 F 0 0 4
MORTGAGE LOAN HISTORY 02-17-16
INV-LN 205-001-1668301440 DUE 11-01-13 TYPE 13
APP 03-01 03-01 02-28
DUE 00-00 00-00 02-15
TYPE/TRAN 7 45 7 45 1 61
AMOUNT 240.00 28.00 3,637.06
PRIN-PD .00 .00 .00
PRIN-BAL 89,776.15 89,776.15 89,776.15
INT-PD .00 .00 .00
ESC-PD .00 .00 3,637.06
ESC-BAL .00 .00 .00
ACH-INS .00 .00 .00
LIFE-INS .00 .00 .00
LC/FEES .00 .00 .00
MISC-PD .00 .00 .00
ADV-BAL 3,637.06 3,637.06 3,637.06
SUSP .00 .00 .00
SC/PAYEE

PAGE 00008 OF 00008 *PRESS PF10 FOR 37 MONTHS* OLDEST TRAN 02-28-15 /P

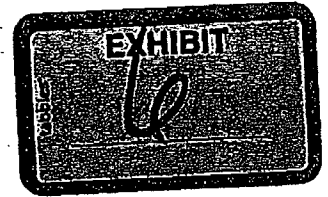
02-17-16

MORTGAGE LOAN HISTORY

P309 LN
NAME RF WHITT
INV-LN 205-001-1668301440 DUE 11-01-13 TYPE 13
BR 00 MAN F P-TYPE 1 INT .0750000 FIRST PB 89,776.15 2ND PB .00
HUD .00 NET 1049.80 SF .00340000 SUSP .00 STOP DBPFNADL
REV .00 RES .00 F002F004

APP	03-01	03-01	02-28
DUE	00-00	00-00	02-15
TYPE/TRAN	7 45	7 45	1 61
AMOUNT	240.00	28.00	3,637.06
PRIN-PD	.00	.00	.00
PRIN-BAL	89,776.15	89,776.15	89,776.15
INT-PD	.00	.00	.00
ESC-PD	.00	.00	3,637.06
ESC-BAL	.00	.00	.00
A&H-INS	.00	.00	.00
LIFE-INS	.00	.00	.00
LC/FEES	.00	.00	.00
MISC-PD	.00	.00	.00
ADV-BAL	3,637.06	3,637.06	3,637.06
SUSP	.00	.00	.00
SC/PAYEE			

PAGE 00008 OF 00008 TRANS AVAILABLE 38 OLDEST TRAN 02-28-15 /P



STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

ATTORNEY'S FEES/COSTS AFFIDAVIT
C/A NO: 2014-CP-32-02795

Personally appeared before me the undersigned attorney for the Plaintiff, who first being duly sworn, deposes and says as follows:

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

vs.

D. Randolph Whitt; and Pearce W. Fleming

1. I am an attorney for the Plaintiff in the above-referenced matter.
2. This case is an action to foreclosure a mortgage on real property located in Lexington County, South Carolina. The subject mortgage specifically provides that the Plaintiff is entitled to the recovery of attorneys' fees and costs associated with the collection of sums due under the promissory note.
3. I was retained by the Plaintiff to conduct this foreclosure action pursuant to a contractual rate of compensation providing for an attorneys' fee in the amount of \$2,200.00, and hourly compensation at \$200.00 per hour to resolve the contested aspects of the case in litigation.
4. Under Dedes v. Strickland, 414 S.E. 2d. 134 (S.C. 1992), the Supreme Court of South Carolina has set forth the factors to be considered in an award of attorney's fees in real property actions. These factors include nature, extent and difficulty of the legal services rendered the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fees charged in the locality for similar services, and the beneficial result obtained. These factors, as applied in this case, are as follows:
 - a. Nature, Extent, and Difficulty of the Legal Services Rendered. As stated earlier, this is an action to foreclose a mortgage on real property. The case involved complex issues of real property law. A hearing was held by the Master, who requires an order to be prepared by Plaintiff's counsel. Accordingly, the factual and legal issues presented were complex and detailed in nature, the extent of the work performed was necessary to adequately prepare and try these matters, and the matters decided were of legal and factual difficulty.
 - b. Time and Labor Necessarily Devoted to the Case. As stated above, this case involved difficult issues of both legal and factual natures. A substantial amount of time has been devoted to the case by the firm. In addition to review of title documents recorded in the public records and evaluating title to this real property, the following pleadings, papers, and documents have been prepared and reviewed:

Lis Pendens, Summons and Complaint
Order of Reference and supporting documents
Discovery Requests
Motion for Summary Judgment and Supporting Affidavits
Record of Hearing along with supporting exhibits

Proposed Order and Judgment of Foreclosure and Sale
Notice of Sale as required by statute

In addition to these documents, as Plaintiff's attorney, this law firm has arranged for service of process of the pleadings on all defendants and served all orders and documents required to prosecute this action including all notices of hearing; consulted with Plaintiff; had telephone conferences concerning the debt; conferred on and/or researched legal issues; reviewed the file in preparation for the hearing; scheduled and attended the hearing in this matter. Additional time post-judgment will be required for the preparation of necessary documents required by the Court to complete the foreclosure sale, including as necessary, the deed, report on sale, and judicial lien satisfaction.

Future duties included forwarding copies of the Order and Judgment of Foreclosure and Sale to the Defendant(s), advising the Defendant(s) of the date that the property will be sold; arranging and coordinating the amount to be bid by Plaintiff; representing Plaintiff at the sale; preparing a Report on Sale and Order Confirming Sale; and preparing any other documents that may be necessary in this particular action. Accordingly, the time and labor devoted to this case were necessary to properly prepare and try this case.

- c. Professional Standing of Counsel. I am employed with the Finkel Law Firm LLC. The Finkel Law Firm is a Martindale-Hubbell AV rated law firm with extensive experience in real property foreclosures. I am a licensed member of the South Carolina State Bar and have practiced a number of years in the real property and foreclosure area. Accordingly, I submit that I have a high professional standing in general and specifically in this particular area of practice.
 - d. Contingency of Compensation. As recited above, compensation in this case is based upon a contract fee of \$2,200.00 and hourly rate of \$200.00 per hour.
 - e. Customary Fee Charged in the Locality for Similar Services. I am aware from discussions with clients, other attorneys in this practice area, and from my general familiarity with the legal profession, that fees charged for similar cases range from \$2,200.00 - \$4,500.00 per case. My contract rate for this matter is within this range for this Region, and therefore is a Customary Fee in the Locality.
 - f. Beneficial Results Obtained. I obtained beneficial results for the Plaintiff in this action by securing a Judgment enforcing Plaintiff's rights under the subject mortgage with regard to the subject real property.
5. After due consideration of the nature, extent and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, I respectfully submit an award of attorney's fees to the full extent set forth in this Affidavit is appropriate; therefore, Plaintiff is entitled to recover \$3,467.75 in attorney's fees.
 6. The unpaid costs of collection to date include: \$135.00 court reporter fee.

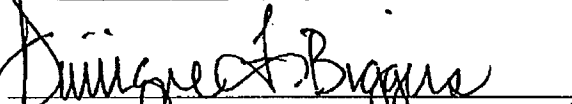
7. Approximately 25.80 hours have been spent on this file to date, and it is anticipated that several additional hours will be necessary to conclude this action after the trial.

FINKEL LAW FIRM, LLC
Post Office Box 41489
Charleston, SC 29423
(843) 577-5460

By:


Magalie A. Creech (SC Bar 78855)
Attorneys for Plaintiff

SWORN TO AND SUBSCRIBED before me on
this 21st day April, 2016


NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 14 May 2018
Printed Name: Dominique F. Biggers

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-32-02795

**AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

Shawann Hampton, being duly sworn, deposes and says:

1. I am of the age of majority and am competent to testify with respect to the following matters.
2. I am employed by Seterus, Inc., as servicer for the above-named Plaintiff, and am authorized to make this affidavit on its behalf.
3. I submit this Affidavit in Support of Plaintiff's Motion for Summary Judgment against the Defendant.
4. I am familiar with the loan transaction at issue in this matter, and make my declaration based on my review and understanding of records that Seterus, Inc. maintains in the ordinary course of business. These records are kept in the course of Seterus, Inc.'s regularly conducted loan administration, and it is the regular practice of Seterus, Inc. to keep these records. It is Seterus, Inc.'s regular practice to make these records at or near the time of the occurrence of the events reflected in the records. I have personally reviewed the documents, records, and other data relied on to make the statements in this Affidavit.
5. On June 26, 1998, Robin F. Whitt executed a promissory note ("Note") in favor of Federal Home Mortgage Group, Inc., in the original principal amount of \$120,275.00.
6. Robin F. Whitt was obligated to repay the principal amount borrowed, plus interest at the rate of 7.500% *per annum*, by making monthly payments. A true and correct copy of the Note is annexed hereto as Exhibit A.

7. The Note was secured by a mortgage ("Mortgage") given by the Robin F. Whitt and D. Randolph Whitt ("Defendant") simultaneously with the execution of the Note. The property encumbered by the Mortgage is located in West Columbia, Richland County, South Carolina and as is more particularly described in the Mortgage and the Lis Pendens filed by Plaintiff. It has the TMS#: 005552-01-037 and property address of: 344 Blossom View Ct., West Columbia, SC.

8. The Mortgage was recorded in the Office of the Register of Deeds for Richland County in Book 4739 at Page 102 on June 30, 1998. A true and correct copy of the Mortgage is annexed hereto as Exhibit B.

9. By virtue of an Assignment of Mortgage recorded in the Office of the Register of Deeds for Richland County in Book 4739 at Page 110 on June 30, 1998, Federal Home Mortgage Group, Inc., assigned the Mortgage to Chase Manhattan Mortgage Corporation.

10. Thereafter, Chase Manhattan Mortgage Corporation assigned the Mortgage to Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America ("Plaintiff") by virtue of an Assignment of Mortgage recorded in the Office of the Register of Deeds for Richland County in Book 17079 at Page 13 on June 17, 2014.

11. Subsequent to the recording of the Mortgage and by virtue of the Final Order issued in Family Court Case Number 2008-DR-32-2781, the Property was conveyed by Robin F. Whitt to the Defendant by deed recorded on June 9, 2010 in Book 14284 at Page 273, thereby making the Defendant the sole titleholder of record at the time of the filing of Plaintiff's Lis Pendens.

12. Due solely to inadvertence and scrivener's error, the legal description in the deed recorded on June 9, 2010 in Book 14284 at Page 273 incorrectly references the plat dated July 11, 1996 of the subject property as being recorded in Plat Slide 233 at No. 10; the plat is actually recorded in Plat Slide 223 at No. 10.

13. Robin F. Whitt defaulted on her obligations due and owing under the Note and Mortgage. Plaintiff sent Robin F. Whitt all required notices of default. A true and correct copy of the default letter is annexed hereto as Exhibit C.

14. Despite demand, Robin F. Whitt has not paid the amounts due and owing.
15. As of November 1, 2013, Robin F. Whitt is indebted to Plaintiff in the amount of \$89,776.15, exclusive of attorneys' fees and costs of this action. Interest continues to accrue on the foregoing at the rate of 7.500% *per annum* from October 1, 2013.
16. In addition to the amounts set forth above, the loan documents provide that Plaintiff is entitled to the reimbursement of its costs and expenses, including reasonable attorneys' fees.
17. Plaintiff does not offer loan assumptions in the event of a divorce which results in a non-borrowing co-mortgagor obtaining title to the property.
18. Defendant is a non-borrowing co-mortgagor under the subject loan transaction, and is not a customer of the Plaintiff.
19. Plaintiff is prohibited from sharing any information with Defendant regarding the subject loan account, because it constitutes the private, third-party financial information of Robin F. Whitt to which Defendant is not authorized access.
20. All loss mitigation correspondence and offers sent by Plaintiff have been directed solely to the borrower in the loan transaction, Robin F. Whitt.
21. Plaintiff does not offer any loss mitigation options to non-borrowing co-mortgagors and is, accordingly, unable to offer Defendant any home-retention options other than a reinstatement or payoff of the loan.
22. Plaintiff is informed and believes that it is entitled to reformation of the legal description to the Mortgage to correctly reference the plat dated July 11, 1996 as being recorded in Plat Slide 223 at No. 10, to comport with the public records and the intentions of the parties.
23. Plaintiff is informed and believes that it is entitled to the immediate foreclosure of its Mortgage and the sale of the property with the proceeds of such sale to be applied against the indebtedness due and owing to Plaintiff by Robin F. Whitt.

(SIGNATURE ON NEXT PAGE)

Seterus, Inc., as authorized sub-servicer
for Federal National Mortgage
Association ("Fannie Mae"), a
corporation organized and existing under
the laws of the United States of America

FURTHER AFFIANT SAYETH NOT.

Shawann Hampton 8/16/16

Name: **Shawann Hampton**
Seterus, Inc.

Sworn to before me this
11th day of August, 2016

RM 8.16.2016
Notary for the State of OREGON
My Commission Expires: 4-09-19

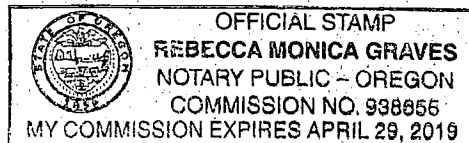


Exhibit A

LOAN NO.
JUNE 26

19 98

COLUMBIA

(City)

SC
(State)

NOTE



344 BLOSSOM VIEW COURT
WEST COLUMBIA, SC 29170
(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 120,275.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is FEDERAL HOME MORTGAGE GROUP, INC.,

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

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 7.500 %.

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

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the 1ST day of each month beginning on AUGUST 1 19 98. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on JULY 1, 2028, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "maturity date".

I will make my monthly payments at
P.O. BOX 211517, COLUMBIA, SC 29221

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 840.99

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment". When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

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

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

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

(C) Notice of Default

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

(D) No Waiver By Note Holder

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

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

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

7. GIVING OF NOTICES

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

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

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

9. WAIVERS

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

10. UNIFORM SECURED NOTE

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

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

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

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

Robin F. Whitt (Seal) _____ (Seal)
ROBIN F. WHITT Borrower Borrower

Social Security Number _____ Social Security Number _____

Borrower Borrower

Social Security Number _____ Social Security Number _____

[Sign Original Only]

Pay to the Order of Chase Manhattan
Mortgage Corporation
without recourse.
FEDERAL HOME MORTGAGE GROUP, INC.

Mary E. Lee
Mary E. Lee, VP

Pay to the Order of
Without Recourse
Chase Manhattan Mortgage Corporation

BY Opal Frith
OPAL FRITH/ASST. SECRETARY

Exhibit B

FILED, RECORDED, INDEXED
 06/30/1998 01:32P
 Rec Fee: 14.00 St Fee: 0.00
 Co Fee: 0.00 Pages: 8
 LEX. CO. REGISTER OF DEEDS
 DEBRA H. GUNTER

WHEN RECORDED MAIL TO
 FEDERAL HOME MORTGAGE GROUP, INC.
 125 EXECUTIVE POINTE BLVD.
 COLUMBIA, SC 29210

(Space Above This Line For Recording Data)

LOAN NO.

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on JUNE 26, 1998
 is ROBIN F. WHITT AND D. RANDOLPH WHITT

The mortgagor

whose address is 102 VISTA WAY
 WEST COLUMBIA, SC 29170

("Borrower").

This Security Instrument is given to FEDERAL HOME MORTGAGE GROUP, INC.

which is organized and existing under the laws of THE STATE OF SOUTH CAROLINA
 address is 125 EXECUTIVE POINTE BLVD.
 COLUMBIA, SC 29210

, and whose

("Lender").

Borrower owes Lender the principal sum of

ONE HUNDRED TWENTY THOUSAND TWO HUNDRED SEVENTY-FIVE AND 00/100

Dollars (U.S. \$ 120,275.00). This debt is evidenced by Borrower's note dated the same date as
 this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid
 earlier, due and payable on JULY 1, 2028

This Security Instrument secures to
 Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and
 modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to
 protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and
 agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby
 mortgage, grant and convey to the Lender and Lender's successors and assigns the following described
 property located in LEXINGTON County, South Carolina:

SEE EXHIBIT "A" ATTACHED

EXHIBIT "A"
TO MORTGAGE FROM ROBIN F. WHITT AND D. RANDOLPH WHITT
TO
FEDERAL HOME LOAN MORTGAGE GROUP, INC.

All that certain pieces, parcels or land, with improvements thereon, situate, lying and being in Lexington County, State of South Carolina, and being shown as Lots 37 and 37A on a final subdivision plat of Magnolia Ridge prepared by Drafts Surveying, Inc. dated July 11, 1996, and recorded in the Lexington County RMC office in Plat Slide 223, No. 10; also shown on a plat prepared for D. Randolph Whitt and Robin F. Whitt by Drafts Surveying, Inc. dated June 19, 1998 and recorded in the Lexington County Register of Deeds office in Plat Book 284 at Page 154, and having the metes and bounds as shown on said latter plat.

This is the same property conveyed to the Mortgagors herein by deed of W.J.S., Inc. of even date, to be recorded simultaneously with this mortgage.

DERIVATION: RECORD BK 4739 PAGE 99

which has the address of 344 BLOSSOM VIEW COURT WEST COLUMBIA
 (Street) (City)
 South Carolina 29170 ("Property Address");
 (Zip Code)

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property".

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items". Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. § 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 21, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender

under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Hazard or Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, 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 sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower 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 sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by

the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

7. **Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. **Mortgage Insurance.** If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the mortgage insurance previously in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in the amount and for the period that Lender requires) provided by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

9. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

11. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment

or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

14. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

16. **Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

17. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

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

18. **Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this

Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17.

19. **Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

21. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

22. **Release.** Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

23. Waivers. Borrower waives all rights of homestead exemption in the Property.

24. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to one hundred fifty percent (150%) of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

- | | | |
|--|---|---|
| ☐ Adjustable Rate Rider | ☐ Condominium Rider | ☐ 1-4 Family Rider |
| ☐ Graduated Payment Rider | ☐ Planned Unit Development Rider | ☐ Biweekly Payment Rider |
| ☐ Balloon Rider | ☐ Rate Improvement Rider | ☐ Second Home Rider |
| ☐ Other(s) [specify] | | |

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

Levy M. Pearce
Robin F. Whitt

Robin F. Whitt
 ROBIN F. WHITT

(Seal)

-Borrower

D. Randolph Whitt
 D. RANDOLPH WHITT

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

[Space Below This Line For Acknowledgment]

STATE OF SOUTH CAROLINA,

RICHLAND

County ss:

Before me personally appeared

the undersigned witness

and made oath that s/he saw the within named Borrower sign, seal, and as their act and deed, deliver the within written Mortgage; and that s/he with the other witness above

witnessed the execution thereof.

Sworn before me this 26TH day of JUNE, 1998

Robin F. Whitt (Seal)

Notary Public for South Carolina

My Commission Expires: 6-3-01

Levy M. Pearce

Exhibit C

Chase (OH4-7399)
P.O. Box 183205
Columbus, OH 43218
For Undeliverable Mail Only



12/11/2013

030489 - 1 of 3 NSP0HDLA-ZA J0468725 0000000

ROBIN F WHITT
344 BLOSSOM VIEW CT
WEST COLUMBIA, SC 29170-2337

Acceleration Warning (Notice of Intent to Foreclose)

Account:
Property Address: 344 BLOSSOM VIEW CT
W COLUMBIA, SC 29170 (the "Property")

Dear ROBIN F WHITT:

Under the terms of the Mortgage or Deed of Trust ("Security Instrument") securing your Loan, JPMorgan Chase Bank, N.A. ("Chase") hereby notifies you of the following:

1. You are in default because you have failed to pay the required monthly installments commencing with the payment due 11/01/2013.
2. As of 12/11/2013, total monthly payments (including principal, interest, and escrow if applicable), late fees, insufficient funds (NSF) fees, and other fees and advances due under the terms of your loan documents in the total amount of \$2,154.65 are past due. This past-due amount is itemized below. If applicable, your account may have additional escrow amounts that have been paid out and are due on the Loan. If you have any questions about the amounts detailed below, please contact us as soon as possible at 1-800-848-9380.

Total Monthly Payments	\$2,098.60
Late Fees	\$42.05
NSF Fees	\$0.00
Other Fees*	\$0.00
Advances*	\$14.00
Amount Held in Suspense	\$0.00

**Other Fees and Advances include those amounts assessed in accordance with your loan documents, and/or permitted by applicable law, or that were authorized for services rendered. If you need additional information regarding any of these amounts, please contact us at the number provided below.*

You are also responsible for paying any amounts that become due from the date of this letter through the expiration date set forth in Paragraph 3 below. These amounts may include, but are not limited to, taxes, insurance, inspection fees, and other fees, as permitted by applicable law.

If you have any reason to dispute the past-due amount listed above, or if you believe your Loan is current, please contact us at the telephone number provided below.

3. Action required to cure the default: You must pay the Total Monthly Payments listed in Paragraph 2 within 35 days from the date of this notice in order to cure this default. All late fees, NSF fees, and other fees and advances are still valid and will need to be repaid under the terms of your loan documents.
4. If you fail to cure the default on or before 01/15/2014, Chase may accelerate the maturity of the Loan, declare all sums secured by the Security Instrument immediately due and payable, and commence foreclosure by judicial proceeding and conduct a sale of the Property. If this happens, Chase will be entitled to collect its expenses incurred in pursuing the remedies provided in the Security Instrument, which may include, but not be limited to, allowable foreclosure/attorney fees, and other expenses permitted by your loan documents or applicable law.
5. You have the right to reinstate after acceleration of the Loan and the right to assert in the foreclosure proceeding the nonexistence of a default, or any other defense to acceleration and foreclosure. However, the amount required to reinstate may be higher than what is owed under Paragraph 2 above, due to additional fees and charges that we are entitled to collect under the Loan, including attorney fees, if permitted by law, related to any foreclosure action we initiate.
6. Kindly remit the total amount due, shown in Paragraph 2 above, to the remittance address listed below. Please note that Chase policy requires certified funds if two insufficient funds (NSF) payments have been received in the last six months. In this event, Chase will not accept a Direct Check, FastPay or SpeedPay. Payments cannot be made at Chase retail bank branches. Please refer to the addresses below for payment information or contact us if you have any questions.

Regular Mail:

CHASE
PO BOX 78420
PHOENIX, AZ 85062-8420

Overnight Mail:

CHASE
PO BOX 78420 1820 EAST SKY HARBOR CIRCLE SOUTH
PHOENIX, AZ 85034-9700

Except as required by law, we are under no obligation to accept less than the full amount owed. If you send us less than the full amount owed, we may in our sole discretion apply such partial payment to your Loan without waiving any default or waiving our right to accelerate the Loan and continue with foreclosure proceedings in accordance with Paragraph 4 above.

7. If you are unable to pay the amount past due, Chase has a variety of homeowners' assistance programs that might help you resolve your default and keep your home; however, we need to talk with you to discuss these options and determine which of them might be appropriate for your circumstances. Please call us as soon as possible at 1-800-848-9380.

8. While the Loan remains in default, we will perform certain tasks to protect our interest in the Property, including visits to your Property at regular intervals during the default. This will be done to determine, as of the date of the inspection, the property condition, occupancy status, and possibly your plans for curing the default and paying this Loan on time. You should anticipate that any costs incurred by Chase will be added to the amount you now owe if permitted by your loan documents or applicable law.

Chase offers one-on-one help to borrowers at Chase Homeownership Centers across the country. To find locations and learn more, visit www.chase.com/MyHome or call 866-550-5705. Counseling is also available through a variety of nonprofit organizations experienced in homeownership counseling and approved by the Secretary of Housing and Urban Development (HUD). A listing of such organizations may be obtained by calling HUD toll-free at 800-569-4287 or at www.hud.gov.

Sincerely,

Chase
1-800-848-9380
1-800-582-0542 TTY
www.chase.com

Enclosed:

- Federal Trade Commission Pamphlet

We are attempting to collect a debt, and any information obtained will be used for that purpose.

If you are represented by an attorney, please refer this letter to your attorney and provide us with the attorney's name, address, and telephone number.

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, a secured party retains rights under its security instrument, including the right to foreclose its lien.

IMPORTANT NOTICE TO SERVICEMEMBERS AND THEIR DEPENDENTS

If you are or recently were on active duty or active service, you may be eligible for benefits and protections under the federal Servicemembers Civil Relief Act (SCRA). This includes protection from foreclosure or eviction. You may also be eligible for benefits and protections under state law or Chase policy. SCRA and state Military benefits and protections also may be available if you are the dependent of an eligible Servicemember.

Eligible service may include:

- Active duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard, or
- Active service as a commissioned officer of the National Oceanic and Atmospheric Administration, or
- Active service as a commissioned officer of the Public Health Service, or
- Service with the forces of a nation with which the United States is allied in a war or Military action, or
- Service with the National Guard of a state militia under a state call of duty, or
- Any period when you are absent from duty because of sickness, wounds, leave, or other lawful cause.

For more information, please call Chase Military Services at 1-877-469-0110.

AN IMPORTANT REMINDER FOR ALL OUR CUSTOMERS

As stated in the "Questions and Answers for Borrowers about the Homeowner Affordability and Stability Plan" distributed by the Obama Administration, "Borrowers should beware of any organization that attempts to charge a fee for housing counseling or modification of a delinquent loan, especially if they require a fee in advance." Do not sign over the deed to your property to any organization or individual unless you are working directly with your mortgage company to forgive your debt. Never make a mortgage payment to anyone other than your mortgage company without their approval. Loan modification scams should be reported to PreventLoanScams.org, or by calling 1-888-995-HOPE; 1-888-995-4673. We offer loan modification assistance free of charge (i.e., no modification fee required). Please call us immediately at 1-866-550-5705 to discuss your options. The longer you delay, the fewer options you may have.

BR160

An important message from the Federal Trade Commission

A note to Homeowners



Facing foreclosure? Scammers are targeting people having trouble paying their mortgages. Some claim to be able to "rescue" homeowners from foreclosures, while others promise loan modifications – for a fee. The Federal Trade Commission, the nation's consumer protection agency, wants you to know how to avoid scams that could make your housing situation go from bad to worse.

Don't Get Hit by a Pitch.

"We can stop your foreclosure!"

"97% success rate!"

"Guaranteed to save your home!"

These kinds of claims are the tell-tale signs of a foreclosure rip-off. Steer clear of anyone who offers an easy out.

Don't Pay for a Promise.

Don't pay any business, organization, or person who promises to prevent foreclosure or get you a new mortgage. These so-called "foreclosure rescue companies" claim they can help save your home, but they're out to make a quick buck. Some may request hefty fees in advance – and then stop returning your calls. Others may string you along before disclosing their charges. Cut off all dealings if someone insists on a fee.

Send Payments Directly.

Some scammers offer to handle financial arrangements for you, but then just pocket your payment. Send your mortgage payments **ONLY** to your mortgage servicer.

Don't Pay for a Second Opinion.

Have you applied for a loan modification and been turned down? Never pay for a "second opinion."

Imitations = Frustrations.

Some con artists use names, phone numbers, and websites to make it look like they're part of the government. If you want to contact a government agency, type the web address directly into your browser and look up any address you aren't sure about. Use phone numbers listed on agency websites or in other reliable sources, like the Blue Pages in your phone directory. Don't click on links or open any attachments in unexpected emails.

Talk to a HUD-Certified Counseling Agency - For Free.

If you're having trouble paying your mortgage or you've already gotten a delinquency notice, free help is a phone call away. Call 1-888-995-HOPE for free personalized advice from housing counseling agencies certified by the U.S. Department of Housing and Urban Development (HUD). This national hotline – open 24/7 – is operated by the Homeownership Preservation Foundation, a nonprofit member of the HOPE NOW Alliance of mortgage industry members and HUD-certified counseling agencies. For free guidance online, visit www.hopenow.com. For free information on the President's plan to help homeowners, visit www.makinghomeaffordable.gov.



Federal Trade Commission
ftc.gov/MoneyMatters

Call

1-888-995-HOPE

for free personalized guidance from housing counseling agencies certified by the U.S. Department of Housing and Urban Development. The Homeowner's HOPE™ Hotline - open 24/7 - is operated by the Homeownership Preservation Foundation, a nonprofit member of the HOPE NOW Alliance of mortgage industry members and HUD-certified counseling agencies. Or visit

www.hopenow.com

For free information on the President's plan to help homeowners, visit

www.makinghomeaffordable.gov



STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO: 2014-CP-32-02795

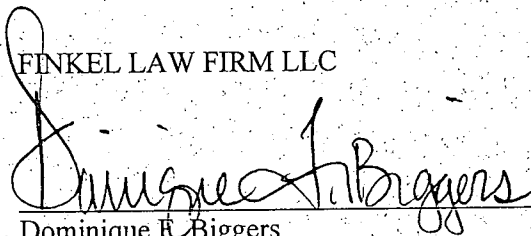
CERTIFICATE OF SERVICE

The undersigned states that on **August 17, 2016**, she caused a true and correct copy of *Plaintiff's Affidavit in Support of Motion for Summary Judgment* to be served upon the party identified below by facsimile and United States mail, proper postage affixed and addressed as follows:

D. Randolph Whitt, Esquire
344 Blossom View Ct.
West Columbia, SC 29170
Defendant Pro Se

Pearce W. Fleming, Esquire
3723 Linwood Road
Columbia, SC 29205-1545
Defendant Pro Se

FINKEL LAW FIRM LLC



Dominique R. Biggers
Post Office Box 41489
Charleston, South Carolina 29423
Tel: (843) 577-5460
Facsimile: (866) 800-7954
Litigation Paralegal

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

vs.

D. Randolph Whitt; and Pearce W. Fleming
et al.,

DEFENDANT(S).

Shawann Hampton

My name is _____ and I am Document Specialist (title) for Seterus, Inc., as authorized subservicer for Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America, Plaintiff in the above-captioned action. I am authorized to execute this Affidavit of Verified Statement of Account. The following principal, interest and escrow/corporate advances which are secured by the mortgage being foreclosed, have been incurred to the date of hearing:

- | | | |
|----|---|--------------|
| 1. | Principal balance as of the due date | \$ 89,776.15 |
| 2. | Interest from <u>10/01/2013</u> to <u>11/16/2016</u> at <u>7.500%</u> | \$ 21,037.41 |
| 3. | Accumulated Late Charges | \$ 36.75 |
| 4. | Escrow | \$ 8,339.97 |
| 6. | Corporate Advances | \$ 9,336.51 |

TOTAL PRINCIPAL, INTEREST AND EXPENSES: \$128,526.79

Seterus, Inc., as authorized subservicer for Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America

Shawann Hampton 10/21/16
Name
Document Specialist
Title

Beaverton / Oregon

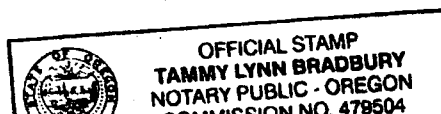
(City and State)

October 21, 2016

Sworn to before me this 21st day of October, 2016.

Notary Public for

My Commission Expires: 8/2/17



175



STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

ATTORNEY'S FEES/COSTS AFFIDAVIT

C/A NO: 2014-CP-32-2795

Personally appeared before me the undersigned attorney for the Plaintiff, who first being duly sworn, deposes and says as follows:

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

vs.

D. Randolph Whitt; and Pearce W. Fleming

1. I am an attorney for the Plaintiff in the above-referenced matter.
2. This case is an action to foreclose a mortgage on real property located in Lexington County, South Carolina. The subject mortgage specifically provides that the Plaintiff is entitled to the recovery of attorneys' fees and costs associated with the collection of sums due under the promissory note.
3. I was retained by the Plaintiff to conduct this foreclosure action pursuant to a contractual rate of compensation providing for an attorneys' fee in the amount of \$2,200.00 and hourly compensation at \$215.00 per hour to resolve the contested aspects of the case in litigation.
4. Under Dedes v. Strickland, 414 S.E. 2d. 134 (S.C. 1992), the Supreme Court of South Carolina has set forth the factors to be considered in an award of attorney's fees in real property actions. These factors include nature, extent and difficulty of the legal services rendered the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fees charged in the locality for similar services, and the beneficial result obtained. These factors, as applied in this case, are as follows:
 - a. Nature, Extent, and Difficulty of the Legal Services Rendered. As stated earlier, this is an action to foreclose a mortgage on real property. The case involved complex issues of real property law. A hearing was held by the Master, who requires an order to be prepared by Plaintiff's counsel. Accordingly, the factual and legal issues presented were complex and detailed in nature, the extent of the work performed was necessary to adequately prepare and try these matters, and the matters decided were of legal and factual difficulty.
 - b. Time and Labor Necessarily Devoted to the Case. As stated above, this case involved difficult issues of both legal and factual natures. A substantial amount of time has been devoted to the case by the firm. In addition to review of title documents recorded in the public records and evaluating title to this real property, the following pleadings, papers, and documents have been prepared and reviewed:

Lis Pendens

Summons and Complaint

Order of Reference and supporting documents

Discovery requests to Defendant

Motion for Summary Judgment and Affidavit in Support

Record of Hearing along with supporting exhibits

Proposed Order and Judgment of Foreclosure and Sale
Notice of Sale as required by statute

In addition to these documents, as Plaintiff's attorney, this law firm has arranged for service of process of the pleadings on all defendants and served all orders and documents required to prosecute this action including all notices of hearing; consulted with Plaintiff; had telephone conferences concerning the debt; conferred on and/or researched legal issues; reviewed the file in preparation for the hearing; scheduled and attended the hearing in this matter. Additional time post-judgment will be required for the preparation of necessary documents required by the Court to complete the foreclosure sale, including as necessary, the deed, report on sale, and judicial lien satisfaction.

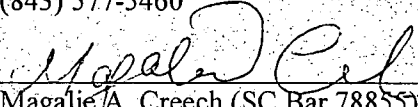
Future duties included forwarding copies of the Order and Judgment of Foreclosure and Sale to the Defendant(s), advising the Defendant(s) of the date that the property will be sold; arranging and coordinating the amount to be bid by Plaintiff; representing Plaintiff at the sale; preparing a Report on Sale and Order Confirming Sale; and preparing any other documents that may be necessary in this particular action. Accordingly, the time and labor devoted to this case were necessary to properly prepare and try this case

- c. Professional Standing of Counsel. I am employed with the Finkel Law Firm LLC. The Finkel Law Firm is a Martindale-Hubbell AV rated law firm with extensive experience in real property foreclosures. I am a licensed member of the South Carolina State Bar and have practiced a number of years in the real property and foreclosure area. Accordingly, I submit that I have a high professional standing in general and specifically in this particular area of practice.
 - d. Contingency of Compensation. As recited above, compensation in this case is based upon a contract fee of \$2,200.00, and \$200.00 per hour to resolve the contested aspects of the case in litigation.
 - e. Customary Fee Charged in the Locality for Similar Services. I am aware from discussions with clients, other attorneys in this practice area, and from my general familiarity with the legal profession, that fees charged for similar cases range from \$2,200.00 - \$4,500.00 per case. My contract rate for this matter is within this range for this Region, and therefore is a Customary Fee in the Locality.
 - f. Beneficial Results Obtained. I obtained beneficial results for the Plaintiff in this action by securing a Judgment enforcing Plaintiff's rights under the subject mortgage with regard to the subject real property.
5. After due consideration of the nature, extent and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, I respectfully submit an award of attorney's fees to the full extent set forth in this Affidavit is appropriate; therefore, Plaintiff is entitled to recover \$10,735.23 in attorney's fees, comprised of Plaintiff's awarded and paid attorneys fees in the amount of \$7,913.21, Plaintiff's awarded but unpaid attorneys' fees in the amount of \$2,686.72, and Plaintiff's awarded and unpaid costs in the amount of \$135.00.
 6. The unpaid costs of collection to date include: court reporter fee \$135.00; for a total of \$135.00

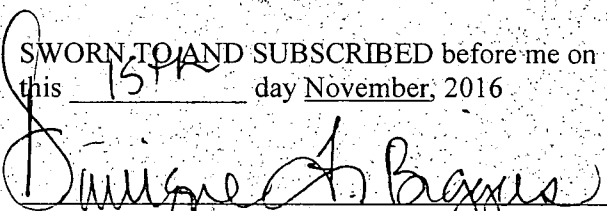
7. Approximately 44.70 hours have been spent on this file to date, and it is anticipated that several additional hours will be necessary to conclude this action after the hearing.

FINKEL LAW FIRM, LLC
Post Office Box 41489
Charleston, SC 29423
(843) 577-5460

By:


Magalie A. Creech (SC Bar 78855)
Attorneys for Plaintiff

SWORN TO AND SUBSCRIBED before me on
this 15th day November, 2016


NOTARY PUBLIC FOR SOUTH CAROLINA

Print Name: Dominique F. Biggers

My commission expires: 14 May 2015

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

vs.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO: 14-CP-32-2795

**AFFIDAVIT OF VERIFIED
STATEMENT OF ACCOUNT**

Waived

Shawann Hampton

Document Management Specialist

My name is _____ and I am _____ (title) for Seterus, Inc., as authorized servicer for Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America, Plaintiff in the above-captioned action. I am authorized to execute this Affidavit of Verified Statement of Account. The following principal, interest and escrow/corporate advances which are secured by the mortgage being foreclosed, have been incurred to the date of hearing:

Principal due as of November 1, 2013	\$89,776.15
Interest from October 1, 2013	
through November 28, 2016 @ 7.50%	21,258.77
Late charges	36.75
Total Fees	5.00
Escrow	9,359.08
Property Taxes	5,590.08
Hazard Insurance	3,769.00
Recoverable Balance	10,031.51
Legal Posting	485.00
Property Inspections	508.00
Advanced Attorney Fees & Costs	9,038.51
TOTAL DEBT secured by Note and	\$130,467.26
Mortgage, including interest to date shown	

(SIGNATURE PAGE FOLLOWS)

Seterus, Inc., as authorized subservicer for Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America.

Shanann Armstrong
Name
Document Management Specialist

12/10/14

Beaverton **Oregon**

(City and State)

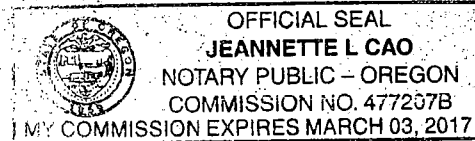
December 10, 2016

Sworn to before me this 10th day of December, 2016.

Jeannette L Cao

Notary Public for Oregon

My Commission Expires: 3/3/17



STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt, and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

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

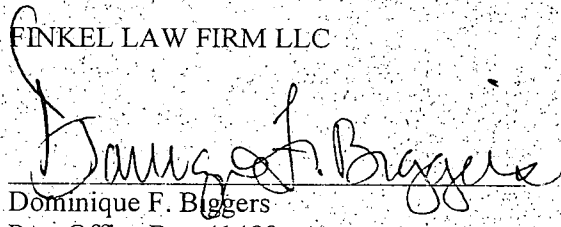
CERTIFICATION OF SERVICE

The undersigned states that on **December 8, 2016** she caused a true and correct copy of *Plaintiff's Affidavit of Verified Statement of Account* to be served upon the party identified below by United States mail, proper postage affixed and addressed as follows:

D. Randolph Whitt, Esquire
344 Blossom View Ct.
West Columbia, SC 29170
Defendant Pro Se

Pearce W. Fleming, Esquire
3723 Linwood Road
Columbia, SC 29205-1545
Defendant Pro Se

FINKEL LAW FIRM LLC


Dominique F. Biggers
Post Office Box 41489
Charleston, South Carolina 29423
Tel: (843) 577-5460
Facsimile: (843) 577-5135
Litigation Paralegal

STATE OF SOUTH CAROLINA

COPY

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

CASE NO.: 2014-CP-32-02795

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

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2016 AUG 29 P 1:17

FILED

Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America ("Plaintiff") by and through its undersigned counsel, hereby renews its motion pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for summary judgment against D. Randolph Whitt ("Defendant"). In support of its motion, Plaintiff states that there are no material facts in dispute concerning Plaintiff's claims that: i). it holds a valid and enforceable note and mortgage; ii). the loan is in default pursuant to the terms and conditions contained therein; and, iii). Plaintiff is entitled to the foreclosure of its mortgage.

Plaintiff further states that that there are no material facts in dispute concerning the Defendant's defenses or counterclaims and entry of summary judgment in Plaintiff's favor is proper.

Plaintiff reserves the right to submit supporting affidavits and/or a memorandum pursuant to applicable law at or prior to the hearing on this motion.

Respectfully submitted,

FINKEL LAW FIRM LLC


Magalie A. Creech (S.C. Bar 78855)
Post Office Box 41489
Charleston, South Carolina 29423
Telephone: (843) 577-5460
Facsimile: (866) 800-7954
Attorneys for Plaintiff

COPY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

CASE NO: 2014-CP-32-02795

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

CERTIFICATE OF SERVICE

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

2016 AUG 29 P 1:17
BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

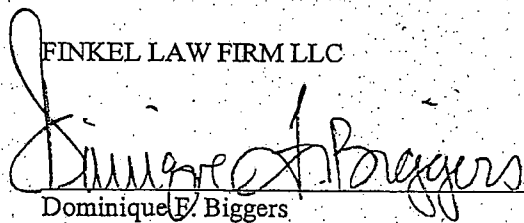
FILED

The undersigned states that on August 25, 2016, she caused a true and correct copy of *Plaintiff's Motion for Summary Judgment* to be served upon the party identified below by facsimile and United States mail, proper postage affixed and addressed as follows:

D. Randolph Whitt, Esquire
P.O. Box 12125
Columbia, SC 29211-2125
Defendant Pro Se

Pearce W. Fleming, Esquire
3723 Linwood Road
Columbia, SC 29205-1545
Defendant Pro Se

FINKEL LAW FIRM LLC



Dominique E. Biggers
Post Office Box 41489
Charleston, South Carolina 29423
Tel: (843) 577-5460
Facsimile: (843) 577-5135
Litigation Paralegal

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Federal National Mortgage Association

FILED

2016 NOV 16 PM 1:47

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

IN THE COURT OF COMMON PLEAS

Case No. 2014-CP-32-02795

COPY

Plaintiff,

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

Memorandum in Opposition to Summary judgment

Defendants D. Randolph Whitt ("Defendant") offer this memorandum in opposition to the Plaintiff's motion for summary judgment.

More Than a Mere Scintilla of Evidence is in the Record.

This is not a Case for Summary Judgment. "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Management Co.*, 673 S.E.2d 801, 803 (2009). "[S]ince it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Doe v. Batson*, 525 S.E.2d 909 (Ct. App. 1999) affirmed in part, vacated in part, remanded, *Doe ex rel. Doe v. Batson*, 548 S.E.2d 854, 857 (2001).

More than a mere scintilla of evidence is in the Record.

This Court Must Consider the Entire Record.

“In determining whether a genuine issue of fact exists, a court must consider everything in the record, pleadings, depositions, interrogatories, admissions on file, affidavits, etc.” *Gilmore v. Ivey*, 348 S.E.2d 180, 183 (Ct. App. 1986).

There Are Material Issues of Fact in Dispute.

Summary Judgment is not appropriate in this case because, Summary Judgment is only appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law (Rule 56, SCRCP). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party, *Koester v. Carolina Rental Ctr.*, 443 S.E.2d 392, 394 (1994). The party seeking summary judgment has the burden of establishing the absence of a genuine issue of material fact, *McNair v. Rainsford*, 499 S.E.2d 488, 493 (Ct. App. 1998).

S.C. Code 29-3-630

Even in a default foreclosure case the defendant has a right to confront a cross examine a live witness to establish the precise and final dollar amount of the debt owed to the plaintiff. In a case such as this where the defendant is not in default, has raised the defense of unclean hands, and has counterclaims which triable by a jury, a mere affidavit cannot suffice to meet the proof necessary to grant a foreclosure sale.

Insufficient Evidence of the amount of the debt

Problems with Exhibit 5 to Plaintiff's prior affidavit were a significant factor in this Court's prior order. Surprisingly, Plaintiff has done an even worse job of proving the debt which it claims the second time around. Although not binding on this Court, Defendant urges the adoption of the

The page from the FNMA servicing guide attached to Defendant's affidavit make it clear that anyone identified in and signing the applicable security instrument is a "borrower" and that it is not essential for all borrowers to sign the note. The balance of the servicing guide makes it clear that borrowers have modification rights, not just note signers as asserted by Plaintiff's servicer.

Counterclaims.

Plaintiff's complete reliance on Requests for Admissions as a basis for summary judgment as to Defendant's counterclaims is misplaced. Courts in several jurisdictions have found that requests for admission that are in essence "I win/You lose" are not proper uses of this vehicle. See e.g. *Piney Meeting House Investments, Inc. v. Hart* 726 S.E. 2D 319, 284 Va. 187 (Va. Sup. Ct., 2012)

The Gray Case

In *Plantation Federal Bank v. Gray*, Opinion no. 5075 (1/30/2013 S.C. App.) the Court of Appeals considered issues similar to the present case and found that the master in equity proceeding with a foreclosure sale of a vacant lot was erroneous. The Court of Appeals noted that the allegations of Gray's counterclaims "involve questions of fact that will most certainly arise in the foreclosure action, especially when considered in light of Gray's defenses to the foreclosure action, including unclean hands.(emphasis added).

In response to the Bank's argument regarding the decline in value of the lot and the necessity of the Bank paying property taxes in the interim, the Court of Appeals noted:

"These circumstances would possibly, if not likely, occur in every foreclosure action currently pending. Further, neither of these concerns represent the kind of "irreparable harm" contemplated by the Supreme Court that would justify infringing on Gray's

standards outline in the hearing package checklist used by Judge James Spence, the standing master for Lexington County. These standards include providing a breakdown of all expenses advances and detailed information about other charges in addition to principal and interest. Plaintiff appears to assert this information is somehow secret, without providing any authority for this position and despite the fact that a substantial amount of this information has already been offered in evidence in this case.

Faulty acceleration

The mortgage submitted as Exhibit B to Plaintiff's affidavit clearly identifies Defendant as a borrower on the signature page. Paragraph 21 of the mortgage requires an a notice of default go to borrowers before acceleration. However, Exhibit C to Plaintiff's affidavit includes such a notice to Defendant's ex-wife, but no notice to Defendant is provided

The South Carolina Foreclosure Intervention Program

In order to grant a foreclosure, the mater must also be satisfied that the requirements of the South Carolina Foreclosure Intervention Program have been met. The Order creating this program is not a mere suggestion, that the Plaintiff can choose to ignore if it proves inconvenient. An issue of material fact exists as to whether the Plaintiff's conduct has met this standard. Plaintiff's conduct in not complying with the mandate that all communication regarding FIP is to be carried out through Plaintiff's counsel, Plaintiff's misleading their counsel as to the reason for the modification denial, the resulting factually inaccurate filing as to the FIP program, and Plaintiff's failure to inform Defendant of appeals rights regarding the initial loss mitigation decision, all militate against a conclusion that the Plaintiff can show compliance.

Modification Rights Under the FNMA Servicing Guide

constitutional right to a trial by jury.

All Factual Inferences Must be Viewed in Favor of Defendants.

In determining whether a genuine issue of fact exists, the evidence and all factual inferences drawn from it must be viewed in a light most favorable to the Defendants.

Williams v. Lancaster County School Dist., 631 S.E.2d 286, 292 (Ct. of App. 2006).

Further Inquiry Into the Facts is Required.

“However, summary judgment should not be granted if further inquiry into the facts is desirable to clarify the application of the law.” ML-LEE Acquisition Fund, L.P. v. Deloitte & Touche, 463 S.E.2d 618, 624 (Ct. App. 1995), affirmed in part, reversed in part, 489 S.E.2d 470 (1997). Because this Court has not heard or inquired into the facts of Defendant’s Counterclaims pending against Plaintiff, this is not a case for Summary

Dual Tracking

The order was the result of impermissible dual tracking by Plaintiff. Plaintiff’s servicer Seterus offered a Loan Modification on February 18, 2016. During the pendency of the Loan Modification offer from Seterus, the Plaintiff, FNMA, took the following actions (i) scheduled a Foreclosure Hearing (ii) attended a Foreclosure Hearing and presented evidence (iii) submitted a Judgment of Foreclosure (iv) filed this Judgment after signature by the Judge and (v) scheduled a Foreclosure sale. A denial letter from Seterus, as to the Loan Modification, was not dated until May 9, 2016, and received by Defendant considerably after that time. All of the events referred to above, took place before the Notice concerning the Loan Modification was dated, or received.

CONCLUSION\

Therefore, Defendant requests that the court deny Plaintiff's motion for summary judgment.

D Randolph Whitt

D. Randolph Whitt
Fleming & Whitt, P.A.
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(803) 422-2176 Tel

11/16, 2016

FILED
2016 NOV 16 PM 1:47
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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

Federal National Mortgage Association

Plaintiff,

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

TO: THE PLAINTIFF FNMA

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE that the Defendant D. Randolph Whitt will move before a Special Referee, at the time and place set by the court, for an Order transferring this action to the jury roster for trial on the counterclaims herein , pursuant to Rules, 53, 38 and 39 of the South Carolina Rules of Civil Procedure.

Motion to Transfer to the Jury Roster

The Order Of Reference

This case was referred by Order filed June 11, 2015. The Order contained the following language: "Should the Special Referee determine that there is a valid claim that requires a jury trial, she may notify the circuit court, as provided in the South Carolina Rules of Civil Procedure." It is axiomatic that the order should be construed in a way that avoids rendering these words meaningless.

Pursuant to Rule 53, SCRCP, a master or special referee has no power or authority except that which is provided in the order of reference. Smith v. Ocean Lakes Family Campground, 315 S.C. 379, 381, 433 S.E.2d 909, 910 (Ct.App.1993).

A Valid Claim that Requires a Jury Trial

Despite several efforts, over a period of months, Plaintiff has been unable to secure summary judgment in this matter. It is now clear that defendant's counterclaims will not be disposed of short of trial in one forum or the other. Therefore a valid claim exists for purposes of the order of reference's provision regarding a jury trial. Requiring the Special referee to determine the ultimate and final validity of the counterclaims would result in a full trial of these claims in order to determine that they should be tried by a jury.

As to issue of whether the counterclaims are triable by a jury, there is no question that these are compulsory legal counterclaims. An action for breach of the mortgage contract that is the subject of the foreclosure, and claims related to Plaintiff's failures to meet its obligations in servicing the mortgage and Plaintiff's failure to provide accurate information to the court as to the amount of its debt and status of the account are prototypical examples of claims which are so closely related to the foreclosure that they are compulsory legal counterclaims.

The Gray Case

In *Plantation Federal Bank v. Gray*, Opinion no. 5075 (1/30/2013 S.C. App.) the Court of Appeals considered issues similar to the present case and found that the master in equity proceeding with a foreclosure sale of a vacant lot was erroneous. The Court of Appeals noted that the allegations of Gray's counterclaims, which included a breach of contract claim, "involve questions of fact that will most certainly arise in the foreclosure action, especially when considered in light of Gray's defenses to the foreclosure action, including unclean hands.(emphasis added).

In response to the Bank's argument regarding the decline in value of the lot and the necessity of the Bank paying property taxes in the interim, the Court of Appeals noted:
"These circumstances would possibly, if not likely, occur in every foreclosure action currently pending. Further, neither of these concerns represent the kind of "irreparable harm" contemplated by the Supreme Court that would justify infringing on Gray's constitutional right to a trial by jury.

s/D.Randolph Whitt

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September 6, 2017

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-32-02795

**PLAINTIFF'S RETURN TO
DEFENDANT'S MOTION FOR JURY
TRIAL**

Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America ("Plaintiff"), by and through its undersigned counsel, hereby responds to the Motion by D. Randolph Whitt ("Defendant") for an Order transferring this action to the jury roster on Defendant's counterclaims. As further set forth herein, Defendant failed to appeal the Mandatory Order of Reference to the Special Referee, which made a specific finding that Defendant was not entitled to a jury trial because his counterclaims are permissive. As such, the determination that Defendant is not entitled to a jury trial is *res judicata* and the unappealed Mandatory Order of Reference to the Special Referee stands as the law of the case. Therefore, Defendant's Motion must be denied as a matter of law.

"[A]n unappealed ruling, right or wrong, is the law of the case." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012). An order denying a request for a jury trial involves the mode of trial, affects substantial rights under section 14-3-330(2) of the South Carolina Code, and is immediately appealable. See *Bateman v. Rouse*, 358 S.C. 667, 674, 596 S.E.2d 386, 3991 (Ct. App. 2004). "The failure to immediately appeal an order affecting the mode of trial constitutes a waiver of the right to appeal these issues." *Id.*; see, e.g., *Edwards v. Timmons*, 297 S.C. 314, 316, 377 S.E.2d 97, 97 (1988) (holding that the trial court's unappealed order of reference to a master-in-equity became the law of the case); *Creed v. Stokes*, 285 S.C. 542, 542-43, 331 S.E.2d 351, 351-52 (1985)

(finding the appellant waived his objection to the order of reference by not immediately appealing the order).

Here, Defendant served an Amended Answer on March 27, 2015 which contained a demand for a jury trial. The Answer asserts counterclaims for violation of the implied covenant of good faith and fair dealing, and violation of the CFPB Dual Tracking Regulations. By Mandatory Order of Reference of the Honorable William P. Keesley entered June 11, 2015, this action was referred in its entirety to Lisa L. Smith as Special Referee. The Mandatory Order of Reference denied Defendant's request for a jury trial and involved the mode of trial, and thus was immediately appealable. In its Order, the Court concluded that Defendant's counterclaims are not logically related to Plaintiff's foreclosure action, are thus permissive, and that Defendant had waived his right to a jury trial by asserting permissive claims in response to Plaintiff's equitable foreclosure action. Defendant's failure to appeal the Order constitutes a waiver of the right to appeal these issues, and thus the Mandatory Order of Reference stands as the law of the case.

For all the foregoing reasons, Defendant's Motion must be denied and the scheduled nonjury trial of the remaining issues in this matter should proceed as scheduled on September 22, 2017.

Respectfully submitted,

FINKEL LAW FIRM LLC

/S/ Magalie A. Creech (S.C. Bar 78855)
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Telephone: (843) 577-5460
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Attorneys for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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

Federal National Mortgage Association

Plaintiff,

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

TO: THE PLAINTIFF FNMA

Reply to Plaintiff's Response

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

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

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

The Order Of Reference

This case was referred by Order filed June 11, 2015. The Order contained the following language: "Should the Special Referee determine that there is a valid claim that requires a jury trial, she may notify the circuit court, as provided in the South Carolina Rules of Civil Procedure." It is axiomatic that the order should be construed in a way that avoids rendering these words meaningless. This language means there is both a further act to be done (the Special Referee making a determination) and is subject to revision based on the result of that determination.

SC Code § 14-3-330(1)

Rather than subsection 330(2), which is cited by Plaintiff, the applicable statutory provision is subsection 330(1) for this intermediate order. This subsection provides in part "*provided*, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from". The final order on the mode of trial will be the ruling on this motion.

Conclusion

None of the preclusive doctrines extant under South Carolina Law constrain the Special Referee's consideration of this motion.

s/D.Randolph Whitt

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September 15, 2017

Federal National Mortgage Association

Plaintiff,

vs.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

Order Re Motion to Transfer to the Jury Roster

This matter comes before the court on the motion of Defendant Whitt to transfer the case to the jury roster. Plaintiff filed a response to this motion and Defendant Whitt filed a reply to the response.

The Order Of Reference

This case was referred by Order filed June 11, 2015. The Order contained the following language: "Should the Special Referee determine that there is a valid claim that requires a jury trial, she may notify the circuit court, as provided in the South Carolina Rules of Civil Procedure." It is axiomatic that the order should be construed in a way that avoids rendering these words meaningless. This language means there is both a further act to be done (the Special Referee making a determination) and is subject to revision based on the result of that determination.

Preclusive Effect of the Order of Reference

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

A final order is one which requires no additional action before the rights of the parties are fixed. See e.g. *Lewis v. State*, 368 S.C. 630, 630 SE 2d 464 (2006) ("a conditional order of dismissal is not

the final judgment in a post-conviction relief case since there is another act to be done before the rights of the parties are finally determined”) Likewise, the Order of Reference in this case is conditional and not a final order, based on the language cited in this motion.

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

SC Code § 14-3-330(1)

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

A Valid Claim that Requires a Jury Trial

Despite several efforts, over a period of months, Plaintiff has been unable to secure summary judgment in this matter. It is now clear that defendant's counterclaims will not be disposed of short of trial in one forum or the other. Therefore a valid claim exists for purposes of the order of reference's provision regarding a jury trial. Requiring the Special referee to determine the ultimate and final validity of the counterclaims would result in a full trial of these claims in order to determine that they should be tried by a jury.

As to issue of whether the counterclaims are triable by a jury, there is no question that these are compulsory legal counterclaims. An action for breach of the mortgage contract that is the subject of the foreclosure, and claims related to Plaintiff's failures to meet its obligations in servicing the mortgage and Plaintiff's failure to provide accurate information to the court as to the amount of its debt and status

of the account are prototypical examples of claims which are so closely related to the foreclosure that they are compulsory legal counterclaims.

The Gray Case

In Plantation Federal Bank v. Gray, Opinion no. 5075 (1/30/2013 S.C. App.) the Court of Appeals considered issues similar to the present case and found that the master in equity proceeding with a foreclosure sale of a vacant lot was erroneous. The Court of Appeals noted that the allegations of Gray's counterclaims, which included a breach of contract claim, "involve questions of fact that will most certainly arise in the foreclosure action, especially when considered in light of Gray's defenses to the foreclosure action, including unclean hands.(emphasis added).

In response to the Bank's argument regarding the decline in value of the lot and the necessity of the Bank paying property taxes in the interim, the Court of Appeals noted:

"These circumstances would possibly, if not likely, occur in every foreclosure action currently pending. Further, neither of these concerns represent the kind of "irreparable harm" contemplated by the Supreme Court that would justify infringing on Gray's constitutional right to a trial by jury.

IT IS THEREFORE ORDERED, for the reasons set forth above, that Defendant Whitt's counterclaims should be tried by a jury, and that this case should be transferred to the jury roster for those claims to be tried first.

IT IS SO ORDERED

Lisa Lee Smith
Special Referee for Lexington County

Lexington, South Carolina
_____, 2017

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

PLAINTIFF,

v.

D. Randolph Whitt; and Pearce W. Fleming,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-32-02795

**ORDER DENYING DEFENDANT'S
MOTION TO TRANSFER**

THIS MATTER came before the Court upon Motion by D. Randolph Whitt ("Defendant") for an Order transferring this action to the jury roster on Defendant's counterclaims. A hearing was held on September 22, 2017, at which counsel for Defendant and Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America ("Plaintiff") were present. After consideration of the memoranda submitted by the parties and the oral arguments of counsel, Defendant's Motion is denied based upon the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Plaintiff commenced the instant foreclosure action upon the filing of its Lis Pendens, Summons and Complaint on August 1, 2014.
2. Defendant served an Amended Answer on March 27, 2015, which contains a jury trial demand and asserts counterclaims for violation of the implied covenant of good faith and fair dealing and violation of the CFPB Dual Tracking Regulations. Plaintiff filed a timely Reply on April 6, 2015.
3. On March 25, 2015, Plaintiff filed a Motion to Strike Defendant's Jury Demand and for a Mandatory Order of Reference.
4. By Order of the Honorable William P. Keesley captioned "Mandatory Order of Reference to Special Referee and Striking the Demand for a Jury Trial on the Counterclaim" ("Order") entered June

11, 2015, this action was referred in its entirety to Lisa L. Smith as Special Referee. The Order further struck Defendant's jury demand, and made an express finding that by asserting permissive legal counterclaims in response to Plaintiff's equitable foreclosure action, Defendant had waived his right to a jury trial.

5. Defendant was served with the filed Order on August 20, 2015, as evidenced by the Certificate of Service filed on August 24, 2015.

6. Defendant did not move for reconsideration of the Order, nor did Defendant appeal the Order.

7. Defendant contends that he is entitled to a jury trial because his counterclaims are compulsory, and cites *Plantation Bank v. Gray*, 401 S.C. 507, 737 S.E.2d 515 (Ct. App. 2013) in support of this argument. However, Defendant's reliance on the *Grey* case is misplaced because *Grey* did not address the question of whether a mortgagee's counterclaims were compulsory. Instead, *Grey* held that a mortgagee's equitable foreclosure action could not be heard before a jury trial of the mortgagor's counterclaims at law. The compulsory nature of the mortgagee's counterclaims in *Grey* was not in disputed, and for that reason the foreclosure and legal counterclaims were bifurcated.

Here, the Order unequivocally determined that Defendant's counterclaims are permissive and that Defendant waived his right to a jury trial by asserting them in this foreclosure. The *Grey* decision is thus inapplicable and irrelevant to the question of whether the Order is interlocutory.

8. Next, Defendant argues that the Order is not a final order because it contains language stating, "should the Special Referee determine that there is a valid claim that requires a jury trial, she may notify the circuit court." Defendant relies upon *Lewis v. State*, 368 S.C. 630, 630 S.E.2d 464 (2006) and *Ashenfelder v. City of Georgetown*, 398 S.C. 568, 698 S.E.2d 856 (Ct. App. 2010) in support of his argument that this language renders the Order conditional, and therefore not a final order for purposes of appeal.

However, neither case is pertinent to this Court's analysis. *Lewis* held that a conditional order of dismissal is not a final judgment in a post conviction relief since there is "another act to be done before

the rights of the parties are finally determined... ” 368 S.C. at 630. *Ashenfelder* held that the denial of a motion for a directed verdict was not immediately appealable, because the only order entered was a form order declaring a mistrial. 398 S.C. at 577. Instead, this Court finds that the cases cited by Plaintiff are controlling.

9. “[A]n unappealed ruling, right or wrong, is the law of the case.” *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012).

10. An order denying a request for a jury trial involves the mode of trial, affects substantial rights under section 14-3-330(2) of the South Carolina Code, and is immediately appealable. *See Bateman v. Rouse*, 358 S.C. 667, 674, 596 S.E.2d 386, 3991 (Ct. App. 2004). “The failure to immediately appeal an order affecting the mode of trial constitutes a waiver of the right to appeal these issues.” *Id.*; *see, e.g., Edwards v. Timmons*, 297 S.C. 314, 316, 377 S.E.2d 97, 97 (1988) (holding that the trial court’s unappealed order of reference to a master-in-equity became the law of the case); *Creed v. Stokes*, 285 S.C. 542, 542-43, 331 S.E.2d 351, 351-52 (1985) (finding the appellant waived his objection to the order of reference by not immediately appealing the order).

11. The Order involves the mode of trial and affects substantial rights under section 14-3-330(2) of the South Carolina Code, because it struck Defendant’s demand for a jury trial. In its Order, the Court concluded that Defendant’s counterclaims are not logically related to Plaintiff’s foreclosure action, are thus permissive, and that Defendant had waived his right to a jury trial by asserting permissive claims in response to Plaintiff’s equitable foreclosure action. Therefore, the Order was immediately appealable.

12. Defendant’s failure to appeal the Order constitutes a waiver of the right to appeal these issues, and thus the Mandatory Order of Reference stands as the law of the case. As such, the determination that Defendant is not entitled to a jury trial is *res judicata* and the unappealed Mandatory Order of Reference to the Special Referee stands as the law of the case.

13. This Court finds that the cases cited by Defendant The Mandatory Order of Reference denied Therefore,

Defendant's Motion is **DENIED**. This matter shall be scheduled for a non-jury trial on the remaining issues herein as soon as is practicable.

The Honorable Lisa L. Smith
Special Referee for Lexington County

Lexington, South Carolina

_____, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Lisa Lee Smith, Special Referee

Case No. 2014-CP-32-02795

Federal National Mortgage Association',

Respondent,

v.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

Of whom D. Randolph Whitt is

Appellant.

NOTICE OF APPEAL

D. Randolph Whitt appeals the order of the Honorable Lisa Lee Smith. dated November 22, 2017 and filed November 27, 2017. Appellants received written notice of entry of the order on November 27, 2017.



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Attorney for Appellant

December 21, 2017

Other counsel of Record:

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Pearce W. Fleming
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Attorney for Respondent

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DEC 21 2017
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Lisa Lee Smith, Special Referee

Case No. 2014-CP-32-02795

Federal National Mortgage Association',

Respondent,

v.

D. Randolph Whitt and Pearce W. Fleming,

Defendants.

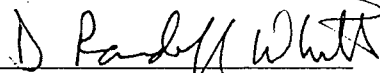
Of whom D. Randolph Whitt is

Appellant.

RECEIVED
DEC 21 2017
SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondents listed above by depositing a copy of it in the United States Mail, postage prepaid, on December 21, 2016, addressed to their attorney of record, Magalie A. Creech, Esq.'PO Box 41489, Charleston, SC 29423. A copy was also mailed to Pearce W. Fleming at the address indicated below.



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Attorney for Appellants

December 21, 2016

Other counsel of Record:

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ATTORNEYS AT LAW

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August 8, 2017

Via Email Only at mcreech@finkellaw.com

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RE: Federal National Association vs. D. Randolph Whitt and Pearce W. Fleming
C/A No.: 2014-CP-32-02795
S&S File No.: 15-0061 AD

Dear All:

My office reserved Judge James O. Spence's Courtroom (# 2-A) in the Lexington County Judicial Center located at 205 East Main Street, Lexington, SC, for **Friday, September 22, 2017, starting at 9:00 am** for the merits hearing for all remaining issues in this case.

This letter serves as the Notice of Hearing.

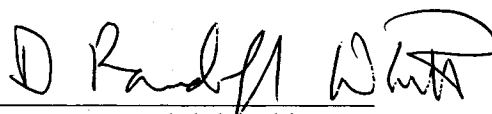
Sincerely,

Lisa Lee Smith
Special Referee
Lexington County

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and no other material.

July 13, 2018



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