STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing Under the laws of the United States of America, PLAINTIFF, vs. Brian Legette; and South Carolina Department of Revenue, DEFENDANT(S).	)	IN THE COURT OF COMMON PLEAS CASE NO.: 2016CP1004935 RULE 59(E) ORDER

This Court granted Plaintiff's Motion for Summary Judgment in this matter on July 2, 2018. Defendant Brian LeGette timely filed a motion to reconsider, alter or amend which was heard by this Court on August 6, 2018. Based upon the motions, affidavits and arguments of counsel, the court grants the motion to Amend Paragraph 14 of the Foreclosure Decree as the Defendant did provide an affidavit in opposition to the Motion to this court dated February 28, 2018; however, the court denies the remaining grounds for relief sought in the motion and reaffirms the grant of Summary Judgment to the Plaintiff.

Principally, Defendant contends this court is estopped from granting summary judgment on the same grounds presented to the court on June 25 as were presented to the court on February 28, 2018[1]. At the February hearing, the court instructed Defendant to make a motion for review of the 2011 Administrative Order "to see whether or not a valid offer and modification

[1] The court disagrees under the authority of Ballenger v Bowen, 313 SC 476, 443 SE 2d 379 (1994).

agreement has been made." February 28, 2018 Tr.p.14, L. 4-6. No motion was made on these grounds; however, upon review of the record the court finds that, "since the close of the denial for the review in October 2016 there have not been any subsequent loss mitigation efforts" by Defendant. June 25, 2018 Tr. P.15, L. 21-23. (emphasis supplied). This fact was confirmed by counsel for the Defendant at the August 6, 2018 hearing.

A review of Administrative Order 2011-05-02-01 A.1 and 3, establishes that the Defendant could not qualify under the terms of the Order. Defendant is neither the mortgagor (his deceased mother was) nor is the property "owner-occupied" as defined therein. Pursuant to Section C, as noted above, the Defendant did not submit the required information to Mortgagee, no loan modification was agreed to and therefore there was nothing to reduce to writing and execute by the parties (see below). Finally, having given Defendant the opportunity to pursue additional loss mitigation efforts between February and June 2018, the court finds that Defendant's failure to pursue this does not constitute good faith compliance with the terms of the Administrative Order. Accordingly, the court determined that the Foreclosure process should continue.

Defendant's contention apparently is that, by paying the reduced amount offered by the lender as part of a trial loan modification plan, the lender is required to abide by that agreement for the life of the loan. This position is inconsistent with the term "trial loan modification" which was offered to Defendant. This court routinely sees a 90 day trial plan which, when followed, often results in a permanent loan modification which is then reduced to a writing between the parties to create the new contract and ends the terms of the original note and mortgage obligations. This process, if pursued, would have been in compliance with the Administrative Order and may have led to a permanent loan modification; however, it was not pursued.

In this instance, the writing submitted as Exhibit A to Defendant's affidavit is a letter from Seterus (loan servicer) dated September 30, 2016 in which the servicer acknowledges that Defendant is not the signer of the original note; i.e., he is not the Obligor on the note, and would therefore require "a review of the loan and your (Defendant's) personal financial situation." Apparently, Defendant never complied with these requests and no permanent loan modification was ever entered into.

Defendant further contends that his counterclaims for Breach of Contract Accompanied by Fraud, Promissory Estoppel and Unfair Trade Practices survive based solely on the allegations in his affidavit which meets the "scintilla of evidence" test to survive summary judgement.

As noted above, the parties never entered into a contract past the trial modification for which fraud could arise. As to promissory estoppel, the parties are the lender's representative and the Personal Representative of the Estate of the deceased obligor. It is apparent from Plaintiff's letter of September 30, 2016 that, once Seterus learned of Defendant's status that he was not the obligor on the note, that further inquiry into his financial status would be required to modify the loan. Again, Defendant failed and/or refused to provide any further information for a modification. Upon being provided this notice, I find Defendant had no right to rely on any oral representations (or misrepresentations as defendant alleges) by the servicer Seterus.

Finally, defendant believes that "based upon the size of Plaintiff and the volume of mortgages that they handle,... that there is the likelihood that this has happened to others." While this may allege facts to make a scintilla of evidence, there must be more proof than just the metaphysical doubt of proof of a fact alleged – some proof, more than what Defendant has alleged here, is required to sustain this cause of action. Baughman v AT&T, 306 SC 101, 410

SE2d 537 (1991). "A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment." Shupe v Settle, 315 SC 510, 445 SE2d 651 (SC AP. 1994).

IT IS THEREFORE ORDERED the Decree of Foreclosure is amended to establish that Defendant did provide an affidavit in response to the motion for summary judgment but the remaining matters contained in Defendant's motion under rule 59 (e) are hereby denied.

IT IS FURTHER ORDERED that the property be set for the September 4, 2018 sale.

IT IS SO ORDERED!

The Honorable Mikell R. Scarborough
Master in Equity
Charleston County

8/9, 2018
Charleston, South Carolina