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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
COURT OF COMMON PLEAS

W. Jeffrey Young, Presiding Judge Third Judicial Circuit

Case No. 2011-CP-43-282

First Citizens Bank and Trust Company, Inc. f/k/a Community
Resource Bank, N.A., Sumter Region Respondent,

v.

Lance E. Jones Appellant.

RECORD ON APPEAL

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RECEIVED

SEP 20 2012

SC Court of Appeals

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-43-282

First Citizens Bank and Trust Company, Inc.,

Lance E. Jones,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Hamilton Osborne, Jr.

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Summary judgment granted to Plaintiff

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
First Citizens Bank and Trust Company, Inc.	Lance E. Jones	\$44,743.09 plus \$5.98 per day for each day after June 27, 2011, until the entry of judgment
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

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

W. Jeffrey Young, Circuit Court Judge

2156 Judge Code

1/6/12 Date

000001

For Clerk of Court Office Use Only

This judgment was entered on the 6 day of Jan, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 6 day of Jan, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Hamilton Osborne, Jr.

Haynsworth Sinkler Boyd, P.A.

1201 Main Street, 22nd Floor
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert D. McKissick

Abbott & McKissick Law Firm, LLC

702 West Evans Street
Florence, SC 29501-3412

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell
CLERK OF COURT

Court Reporter:

000002

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

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9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

000004

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
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14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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in Sumter County, but the property was sold for taxes. The redemption period expired, and the property has been conveyed to a third party.

Jones admitted executing the Note but denied any liability thereon. Jones counterclaimed against First Citizens, alleging that Mark A. Mossell, an employee of First Citizens, agreed on behalf of First Citizens to lend Jones the money needed to pay the delinquent taxes owed on mortgaged property. Jones further alleged that Mr. Mossell told him that First Citizens would pay the taxes and that First Citizens thereafter failed to do so.¹

UNDISPUTED FACTS

The following facts are established by the Affidavit of Mark A. Mossell and are not disputed by Jones:

1. On November 16, 2006, Community Resource Bank N.A. made a loan to Jones in the principal amount of \$65,000.00.
2. To evidence his indebtedness for the loan, Jones executed to Community Resource Bank N.A. a promissory note dated November 16, 2006 (the "Note").
3. To secure payment of the Note, Jones executed to Community Resource Bank N.A. a mortgage dated November 16, 2006 (the "Mortgage").
4. Community Resource Bank N.A. merged into First Citizens as of November 1, 2008.
5. On or about March 26, 2010, Jones and First Citizens entered into a Loan Modification Agreement effective as of March 16, 2010.

¹ The record contains evidence that First Citizens issued a check to pay the taxes but that the check either never reached the Sumter County Treasurer or was received but not deposited by the Treasurer. In the view of the court, whether in fact First Citizens ever issued such a check or mailed it to the Treasurer is irrelevant to the resolution of this case.

W98

6. The Loan Modification Agreement provided that the Borrower, Jones, was required to pay interests only on the Note for a three-month period beginning March 16, 2010, and ending May 16, 2010.

7. Jones failed to make payments due on the Note, and First Citizens, which is the owner and the holder of the Note, declared the principal balance and all accrued interest owed on the Note immediately due and payable.

8. The debt owed on the Note as of June 27, 2011, is as follows:

Principal balance	\$49,137.21
Interest accrued as of June 27, 2011	1,059.51
Late charges	<u>609.03</u>
Total amount due as of June 27, 2011	\$44,743.09

Interest is continuing to accrue on the principal balance at the rate of \$5.98 per day for each day after June 27, 2011, and the Note provides that First Citizens may recover all costs of collection, including reasonable attorney's fees.

CONCLUSIONS OF LAW

I. FIRST CITIZENS IS ENTITLED TO SUMMARY JUDGMENT ON ITS CLAIM AGAINST JONES.

Jones admits executing the Note on which First Citizens bases its claim against him, and the Affidavit of Mark A. Mossell establishes all facts necessary to support the claim of First Citizens against Jones. Jones does not dispute those facts. First Citizens is thus entitled to judgment against Jones for the debt owed on the Note.

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II. FIRST CITIZENS IS ALSO ENTITLED TO SUMMARY JUDGMENT ON THE COUNTERCLAIMS JONES HAS ASSERTED AGAINST FIRST CITIZENS.

A. First Citizens did not breach a fiduciary duty to Jones.

In his first counterclaim, Jones alleged that First Citizens breached a fiduciary duty to him by failing to pay the delinquent taxes on the property encumbered by the Mortgage. This counterclaim fails as a matter of law because the record contains no evidence of facts establishing a fiduciary relationship between Jones and First Citizens.

The law of South Carolina relating to the establishment of a fiduciary relationship between a bank and its customer has been summarized as follows:

A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another. A relationship must be more than casual to equal a fiduciary relationship.

As a general rule, a fiduciary relationship cannot be established by the unilateral action of one party. The other party must have actually accepted or induced the confidence placed in him.

South Carolina holds the normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature. However, a bank may be held to a fiduciary duty if it undertakes to advise a depositor as part of services the bank offers. Such a relationship charges the bank with a duty to disclose material facts that may affect its customer's interests. Yet, no fiduciary relationship between a bank and its depositor exists when the bank is unaware of any special trust reposed in it.

Regions Bank v. Schmauch, 354 S.C. 648, 670-71, 582 S.E.2d 432, 444 (Ct. App. 2003) (citations omitted). "The normal bank-depositor arrangement creates a creditor-debtor relationship rather than a fiduciary one." *Burwell v. South Carolina National Bank*, 288 S.C. 34, 40, 340 S.E.2d 786, 790 (1986) (holding that a bank did not have a fiduciary relationship with the guarantor of a loan). Absent evidence that a bank provided advice to a borrower, the bank does not have a fiduciary relationship with the borrower. *American Federal Bank, FSB v. Parker*, 301 S.C. 509, 392 S.E.2d 798 (Ct. App. 1990).

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In this case, there is no evidence that First Citizens provided advice of any kind to Jones with respect to the loan involved in this action or with respect to any other matter. There is thus no evidence supporting the assertion that First Citizens had fiduciary duties to Jones.

"The determination of whether a fiduciary relationship exists is an equitable issue to be determined by the court." *Cowburn v. Leventis*, 366 S.C. 20, 37, 619 S.E.2d 437, 447 (Ct. App. 2005) (affirming an order granting summary judgment on the grounds that no fiduciary duty existed between the parties). This court thus has the authority to determine, and does determine, that no fiduciary relationship existed between First Citizens and Jones.

B. First Citizens had no duty of care to Jones.

In his second counterclaim, Jones alleged that First Citizens owed him a duty of care and that it negligently failed to pay the delinquent property taxes. This counterclaim fails as a matter of law because First Citizens had no duty of care to Jones and was accordingly not negligent.

Any duty that First Citizens owed to Jones arose from the contractual relationship between them, and "the law is well-settled that breach of contractual duties does not give rise to an action in tort for negligence." *Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 503 n.5, 473 S.E.2d 52, 55 n.5 (1996). "A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie." *Tommy L. Griffin Plumbing & Heating Co. v. Jordon, Jones & Goulding*, 320 S.C. 49, 54-55, 463 S.E.2d 85, 88 (1995) ("In most instances, a negligence action will not lie when the parties are in privity of contract."). Only if a duty arises independently from any contractual duties between the parties can there possibly be a tort action. *Id.*²

² Accord. *Seebaldt v. First Fed. Sav. & Loan Ass'n*, 269 S.C. 691, 693, 239 S.E.2d 726, 727 (1977) (holding that "[b]are allegations of negligence cannot convert a breach of contract action into an action in tort"); *Sheppard v. Nienow*, 254 S.C. 44, 49, 173 S.E.2d 343, 345 (1970)

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Whether First Citizens had a duty of care to Jones is an issue of law for the court to determine.

An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. In a negligence action, the court must determine, as a matter of law, whether the defendant owed a duty of care to the plaintiff. If there is no duty, the defendant is entitled to judgment as a matter of law.

Huggins v. Citibank, N.A., 355 S.C. 329, 332, 585 S.E.2d 275, 276-77 (2003) (citations omitted).

South Carolina has not recognized the existence of a duty of care under the circumstances that Jones alleges. In other circumstances, the South Carolina Supreme Court has been very reluctant to recognize new duties of care that expand the scope of traditional tort liability. *E.g.*, *McCullough v. Goodrich & Penning Mtg. Fund, Inc.*, 373 S.C. 43, 644 S.E.2d 43 (2007) (holding that South Carolina does not recognize a secured party's right to bring a claim against a third party for negligent impairment of the secured party's collateral); *Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co.*, 355 S.C. 614, 586 S.E.2d 586 (2003) (declining to recognize a general duty of care from an independent insurance adjuster or insurance adjusting company to the insured); *Huggins v. Citibank, N.A.*, 355 S.C. 329, 585 S.E.2d 275 (2003) (holding that a bank does not have a duty to exercise due care in issuing a credit card so as to

(holding that the plaintiff could not maintain an action in negligence for failure to perform a contractual promise and explaining that "actionable negligence is the neglect to perform a legal duty, as distinguished from the failure to perform a mere contractual duty"); *Carolina Winds Owners' Ass'n v. Joe Harden Builder, Inc.*, 297 S.C. 74, 82, 374 S.E.2d 897, 902 (Ct. App. 1988) ("[I]f the ground for complaint is the defendant's negligent performance of a duty arising solely from a contract, the action lies in contract, not negligence.") (citation omitted), *overruled on other grounds*, *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989); *Brown v. South Carolina Ins. Co.*, 284 S.C. 47, 53, 324 S.E.2d 641, 645 (Ct. App. 1984) ("[I]f the defendant's neglect results only in nonperformance of the contract and he is under no duty to act apart from the contract, he is not liable in negligence, but in contract."), *overruled on other grounds*, *Charleston County Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993); *Troutman v. Facetglas, Inc.*, 281 S.C. 598, 601, 316 S.E.2d 424, 426 (Ct. App. 1984) ("A mere breach of contract is not actionable as a tort in South Carolina, no matter what the intent of the breaching party was.").

WJL

prevent harm to the credit of an individual whose identity has been stolen and used to apply for a credit card); *Hendricks v. Clemson University*, 353 S.C. 449, 578 S.E.2d 711 (2003) (holding that a school owes no duty of care to a student in giving advice concerning the courses he should take); *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997) (holding that the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them); *Citizens & S. Nat'l Bank of South Carolina v. Lanford*, 313 S.C. 540, 443 S.E.2d 549 (1994) (holding that a bank did not owe a duty to tell a guarantor that his liability was for the entire loan amount where that information was disclosed by the terms of the written guaranty); *Byerly v. Connor*, 307 S.C. 441, 415 S.E.2d 796 (1992) (holding that the South Carolina Public Service Authority had no duty to discover and warn of a latent hazardous condition on land that it leased to another); *Seebaldt v. First Fed. Sav. & Loan Ass'n*, 269 S.C. 691, 239 S.E.2d 726 (1977) (holding that a lender who made a loan to finance the construction of a residence had no duty to supervise the contractor's work).

In this case, there is no precedent in South Carolina that supports Jones's counterclaim for negligence. The court accordingly concludes that First Citizens had no duty of care to Jones with respect to payment of the delinquent taxes on his property.

C. Jones has failed to allege a meritorious claim for negligent misrepresentation.

In his third counterclaim, Jones alleged that First Citizens made a representation to him that it would pay the delinquent property taxes owed on the Property. (Answer and Counterclaim p. 5, ¶ 27.) Jones further alleged that the representation was a false representation "inasmuch as [First Citizens] failed to pay the delinquent property taxes." (*Id.* ¶ 28.) These allegations fail to state a cause of action for negligent misrepresentation.

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To support a claim for negligent misrepresentation, a representation must relate to a present or pre-existing fact and be false when made. The representation cannot ordinarily be based on unfulfilled promises or statements as to future events. *Fields v. Melrose Limited Partnership*, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993). In this case, Jones did not allege that First Citizens made a representation relating to present or pre-existing fact that was false when made. Jones alleged only that First Citizens made a representation that it would do something in the future that it thereafter failed to do. These allegations will not support a claim for negligent misrepresentation.

D. Jones is not entitled to recover for breach of contract.

In his fourth counterclaim, Jones alleged that First Citizens, acting through Mr. Mossell, entered into a contract with him to lend him the money needed to pay the delinquent property taxes. Mr. Mossell denies the existence of any such contract, and the claim for breach of contract fails because any alleged promise by First Citizens to pay the delinquent property taxes (which First Citizens denies) was gratuitous and not supported by consideration.

Jones alleged that in exchange for the agreement of First Citizens to lend him the money needed to pay the delinquent property taxes, he "agreed to repay the loan with interest." (Answer and Counterclaim ¶ 36.) Jones thus attempted to allege a bilateral contract (a promise in exchange for a promise) to make a loan. See *Sauner v. Pub. Serv. Auth.*, 354 S.C. 397, 405, 581 S.E.2d 161, 166 (2003) ("A bilateral contract . . . exists when both parties exchange mutual promises."). His allegations fail to establish the existence of a contract because the consideration Jones allegedly offered, his promise to repay the loan with interest, was merely an offer to do something he was already legally obligated to do.

A promise to do something that the promising party is already obligated to do is not valid consideration. *City of Spartanburg v. Spartan Villa*, 273 S.C. 1, 5, 253 S.E.2d 501, 503 (1978) ("A



promise by a party to do that which it has already legally obligated itself to do is not a valid consideration."); *Castell v. Stephenson Fin. Co.*, 244 S.C. 45, 54, 135 S.E.2d 311, 315 (1964) ("[A]n agreement to do that which one is already legally bound to do is not sufficient consideration to support a new contract."); *Rabon v. State Fin. Co.*, 203 S.C. 183, 26 S.E.2d 501 (1943) (in a lawsuit for breach of an alleged contract to extend the time for repayment of a loan, holding that the borrower's agreement to do something that he was legally bound to do was not sufficient to support a new contract). Consideration is, of course, an essential element of a contract. *Thibault v. Cleland*, 294 S.C. 138, 140, 363 S.E.2d 114, 115 (Ct. App. 1987) ("A promise is incapable of becoming the subject of an action unless it is supported by consideration.").

In this case, Jones was already legally obligated to repay, with interest, any money First Citizens expended to pay delinquent taxes on the mortgaged property. Paragraph 7 of the Mortgage that Jones executed states, "Mortgagor [i.e., Jones] will pay all taxes . . . and other charges relating to the Property when due." (A copy of the Mortgage is attached to the Affidavit of Mark A. Mossell.) Paragraph 13 of the Mortgage further provides as follows:

If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, . . . Lender may, without notice, perform the duties or cause them to be performed. . . . Lender's right to perform for Mortgagor shall not create an obligation to perform Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time in accordance with the terms of the [Note].

Any additional promise that Jones allegedly made to repay First Citizens for money advanced to pay delinquent taxes on the mortgaged property was thus completely redundant with promises that Jones had already made in the Mortgage, and it did not constitute consideration for a new contract.

WJH

Even if the Mortgage were silent with respect to the payment of taxes, Jones would still have been legally obligated to repay First Citizens, with interest, for money advanced to pay delinquent taxes on the mortgaged property. Under South Carolina law, a mortgagee has the right, but not a duty, to pay delinquent taxes on the mortgaged property and to add the amount paid, with interest thereon, to the debt secured by the mortgage. S.C. Code § 29-3-30 (entitled "Mortgagee may pay taxes"). Jones thus gave no new consideration to First Citizens by allegedly offering to repay First Citizens with interest if First Citizens would pay the delinquent taxes on the Property.

NOW, THEREFORE, it is ORDERED, ADJUDGED, and DECREED as follows:

A. Plaintiff First Citizens Bank and Trust Company, Inc. shall have judgment against Defendant Lance E. Jones for the sum of Forty-Four Thousand, Seven Hundred Forty-Three Dollars and Nine Cents (\$44,743.09) plus \$5.98 per day for each day after June 27, 2011, until the entry of judgment. Plaintiff shall have leave to file within 30 days after the date of this order a motion, with appropriate supporting documentation, for an award of attorney's fees.

B. Plaintiff First Citizens Bank and Trust Company, Inc. shall have judgment against Defendant Lance E. Jones on the counterclaims of Defendant Lance E. Jones, and the counterclaims are dismissed with prejudice.

AND IT IS SO ORDERED.


W. Jeffrey Young
Presiding Judge

Sumter, South Carolina

28 Dec, 20 11

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COPY

COUNTY OF SUMTER

First Citizens Bank and Trust Company, Inc. (aka)
 First Citizens Bank and Trust Company of South Carolina
 2011-CP-43-283

CIVIL ACTION COVERSHEET

Plaintiff(s)

vs.

SUMTER COUNTY, S.C.

2011-CP-

2011-CP-43-283

Lance E. Jones,

Defendant(s)

(Please Print)

Submitted By: Stanley H. McGuffin
 Address: Haynsworth Sinkler Boyd, P.A.
 Post Office Box 11889
 Columbia, South Carolina 29201

SC Bar #: 3830
 Telephone #: 803.779.3080
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 Other:
 E-mail: smcguffin@hsblawfirm.com

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

DOCKETING INFORMATION (Check all that apply)

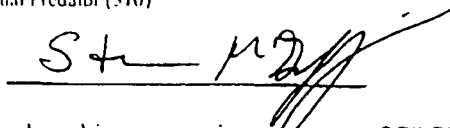
*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| Contracts
☐ Constructions (100)
☒ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Denial Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20-CP-
☐ Notice/ File Aged Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCOOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:



Date: January 21, 2011

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

FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

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

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

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

COPY

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

2011-CP-43-282
IN THE COURT OF COMMON PLEAS
FILED 11 4:03
CLERK OF COURT
COUNTY, S.C.

First Citizens Bank and Trust Company, Inc., f/k/a Community Resource Bank N.A.,
Sumter Regions,

2011-CP-43-282

Plaintiff,

v.

Lance E. Jones,

Defendant.

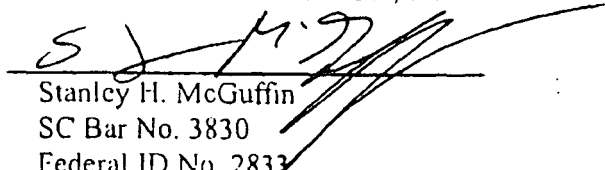
SUMMONS
(NON-JURY)
(BREACH OF CONTRACT)

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the persons whose names are subscribed below at Post Office Box 11889, Columbia, South Carolina 29211-1889, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment of default will be rendered against you for the relief demanded in the Complaint.

HAYNSWORTH SINKLER BOYD, P.A.

By:


Stanley H. McGuffin
SC Bar No. 3830
Federal ID No. 2833

1201 Main Street, Suite 2200
Post Office Drawer 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080

Attorneys for First Citizens Bank and Trust
Company, Inc. f/k/a Community Resource
Bank N.A., Sumter Regions

January 21, 2011.

000017

COPY

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

First Citizens Bank and Trust Company, Inc., f/k/a Community Resource Bank N.A.,
Sumter Regions,

Plaintiff,

v.

Lance E. Jones,

Defendant.

Case No. 2011-CP
COUNTY, S.C.

2011-CP-43-282

COMPLAINT
(NON-JURY)
(BREACH OF CONTRACT)

The Plaintiff, complaining of the Defendant, alleges that:

1. The Plaintiff, First Citizens Bank and Trust Company, Inc. f/k/a Community Resource Bank N.A., Sumter Regions, is a state chartered banking institution, duly authorized to do business and doing business in the State of South Carolina.
2. Upon information and belief, Defendant is a citizen and resident of Sumter County, State of South Carolina.
3. Upon information and belief, the Defendant is neither a minor nor incompetent.
4. The Court has jurisdiction pursuant to S.C. Code Annotated §36-2-803.
5. On or about November 18, 2006, the parties entered into a Promissory Note and on March 26, 2010, the parties entered into a Loan Modification Agreement (collectively "the Contract") (attached hereto as "Exhibit A").
6. The Defendant breached the Contract by failing to make all payments as required by the terms and conditions of the Contract.
7. The Defendant is indebted to the Plaintiff for \$49,137.21, being the balance justly due under the Contract as of December 20, 2010. Additionally, Defendant is indebted to

000018

Plaintiff for interest at the contract rate of Plaintiff's Prime Rate plus 1.0% per annum from December 20, 2010, until date of judgment and interest thereafter at the judgment rate until paid, plus reasonable attorneys' fees and costs of collections as provided by the Contract.

8. Demand has been made upon the Defendant for payment of all sums justly due the Plaintiff as aforesaid, but the balance remains unpaid.

9. The Contract is one for a commercial purpose and therefore not subject to the Fair Debt Collection Practices Act or any other consumer statutes, including any right to cure notices.

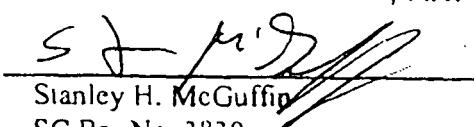
WHEREFORE, the Plaintiff prays:

1. That it have and recover from the Defendant, the sum of \$49,137.21 as of December 20, 2010, together with interest at the contract rate of Plaintiff's Prime Rate plus 1.0% per annum from December 20, 2010, until date of judgment and interest thereafter at the judgment rate until paid, plus reasonable attorneys' fees;

2. That the costs of this action be taxed against the Defendant; and

3. For such further relief as the Court deems just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Stanley H. McGuffin

SC Bar No. 3830

Federal ID No. 2833

1201 Main Street, Suite 2200

Post Office Drawer 11889 (29211-1889)

Columbia, South Carolina 29201

(803) 779.3080

Attorneys for First Citizens Bank and Trust
Company, Inc. f/k/a Community Resource
Bank N.A., Sumter Regions

January 21, 2011

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Page 3 of 31



LOAN MODIFICATION AGREEMENT
(APR COMMERCIAL LOANS)

Note Number:
Borrower Name(s): Lance Jones
Note Date: 11/16/2008
Original Note Amount: \$35,000
Contract Interest Rate: Prime + 1.00 (5.00%)
Contract Maturity Date: 11/16/2011

Modification Fee: \$ 0 ☐ Paid ☐ Financed
Flood Certification Fee: \$ 0 ☐ Paid ☐ Financed
Environmental Report: \$ 0 ☐ Paid ☐ Financed
Intangible Recording Tax: \$ 0 ☐ Paid ☐ Financed

LAND ONLY

The Borrower(s) were indebted to First Citizens Bank and Trust Company, Inc. (Bank) by the above referenced Note (including renewals and modifications thereto), which Note currently has an outstanding principal balance of \$ plus any accrued interest and other charges. At this time, the Borrower(s) wish to modify this Note. Therefore, for value received, it is the intent of all parties to modify the said Note as indicated below.

The effective date of this change will be March 18, 2010.

1. Interest Rate Change. (Complete Section A or B)

My new per annum interest rate will be:

A. Fixed Rate 4%

B. Variable Rate:

- ☐ First Citizens Bank Prime plus % ☐ Wall Street Journal Prime plus %
☐ One Month LIBOR plus % ☐ Three Month LIBOR plus %

Interest will be calculated on a 360 day basis. Variable rate interest adjustments will be made based on the applicable rate index chosen above. First Citizens Prime changes will take effect daily. First Citizens Prime is an index used to price loans and is established by you at your discretion. Wall Street Journal Prime changes will take effect daily based on the Prime Rate quoted in the "Money Rates" section of The Wall Street Journal. One Month and Three Month LIBOR changes will take effect on the first calendar day of the month. The One Month and Three Month LIBOR indexes are the London Interbank Offered Rates quoted in the "Money Rates" section of The Wall Street Journal, which section is dated for the last publishing day of the month prior to each interest rate change. If my variable rate loan has a fixed principal and interest payment, I understand and agree that if the selected variable rate index should exceed the fixed rate used for payment calculation purposes, you may, at your discretion, (a) increase the amount of periodic payments to have the loan fully amortized at the scheduled maturity, (b) extend the maturity and require additional periodic payments, or (c) require the resulting increase to be paid at maturity, or (d) select or designate any combination of the foregoing.

- ☐ If checked, my variable rate loan will have a minimum interest rate of %.
☐ If checked, my variable rate loan will have a maximum interest rate of %.

2. Payment Schedule Change. (Complete Section A, B, C, or D)

A. My new payment schedule will be:

- ☐ Single Payment. Principal plus accrued interest and other charges due at maturity on .
☐ Interest Only. Interest shall be payable in consecutive monthly payments of all accrued interest plus other charges beginning on and on the same calendar period thereafter. A final payment of principal plus accrued interest and other charges due will be due at maturity on .
☐ Amortizing Payment. Principal and interest shall be payable in equal consecutive monthly payments of \$ beginning on and on the same calendar period thereafter with a final payment of all unpaid principal plus accrued interest and other charges due at maturity on .
☐ Level Principal Payment. Principal shall be payable in consecutive monthly payments of \$ plus all accrued interest and other charges beginning on and on the same calendar period thereafter. A final payment of all unpaid principal plus accrued interest and other charges due will be due at maturity on .
☐ Mixed Principal and Interest Payment. Principal shall be payable in consecutive quarterly payments of \$ beginning on and on the same calendar period thereafter. Interest shall be payable in consecutive monthly payments of all accrued interest plus other charges beginning on and on the same calendar period thereafter. A final payment of all unpaid principal plus accrued interest and other charges due will be due at maturity on .
☒ Irregular Payment Schedule. Note will be modified to provide interest only loans for a period of 3 months beginning 3/18/2010 and ending 6/18/2010 with regular terms resuming with the 6/18/2010 payment.

B. Payment Amount Change Only. My new payment amount will be \$ beginning on payable in accordance with the provisions described in the said Note.

C. Payment Date Change Only. My next payment date will be due on with a final payment of all unpaid principal plus accrued interest and other charges due at maturity in accordance with the provisions described in the said Note.

D. Maturity Date Change Only. A final payment of all unpaid principal plus accrued interest and other charges will be due on . All other provisions described in the said Note will remain the same.

3. Line of Credit Change

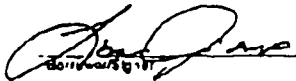
- ☐ If checked, the line amount on my line of credit will be lowered to \$.

Revised 1/2008

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Bank and Borrower(s) hereby agree to the following prepayment fees: if within ten (10) years from date of ☐ the Note or ☒ this Modification, the Bank may assess a fee on any prepayment that is made in any twelve (12) month period beginning with the date of said Note, Modification or anniversary thereof as checked above (hereinafter "Loan Year"). Borrower shall pay a prepayment fee of four percent (4%) in years one or two, three (3%) in years three, four, or five, two percent (2%) in years six, seven, or eight, and one percent (1%) in years nine or ten of the amount by which the sum of prepayments made in any Loan Year exceeds the scheduled payments under the Note. At Bank's option, prepayment fees shall be due and payable and month after the end of the Loan Year for partial prepayments or due at the time of prepayment when the account is paid in full. If the Loan Year section is not marked, then I have agreed that the prepayment fee will be based from the date of this Modification.

Borrower and each Guarantor signing below understands and agrees that in modifying the existing indebtedness, Bank is relying upon Borrower's representations, warranties, and agreements, as set forth in the provisions of the original Note. Except as expressly modified pursuant to this Loan Modification Agreement, the terms of the original Note (including renewals and modifications, therein) remain unchanged and in full force and effect. Bank's agreement to modifications to the existing indebtedness pursuant to this Loan Modification Agreement in no way shall obligate Bank to make any future modifications to the indebtedness. Nothing in this Loan Modification Agreement shall constitute a satisfaction of the indebtedness. It is the intention of Bank and Borrower to retain as valid parties all makers, endorsers, and guarantors of the original Note (including renewals and modifications therein), unless the party is expressly released by Bank in writing. No maker, endorser, or guarantor will be released by virtue of this Loan Modification Agreement.

	<u>3-26-10</u>	_____	_____
Borrower/Signer	Date	Guarantor	Date
_____	_____	_____	_____
Borrower/Signer	Date	Guarantor	Date
_____	_____	_____	_____
Borrower/Signer	Date	Guarantor	Date
_____	_____	_____	_____
Borrower/Signer	Date	Guarantor	Date
_____	_____	_____	_____
Borrower/Signer	Date	Guarantor	Date

First Citizens Bank and Trust Company, Inc.

By: 
 Title: Vice President

We consent to and acknowledge receipt of a copy of this Modification Agreement as a third party not obligated on said note.

_____ Manager/Owner	_____ Date	_____ Manager/Owner	_____ Date
------------------------	---------------	------------------------	---------------

Bank Use Only:
 Order Number: _____ Branch Number: _____ Loan Officer: _____

Revised 8/2003

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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

First Citizens Bank and Trust Company,
Inc., f/k/a Community Resource Bank N.A.,
Sumter Regions.

Case No. 2011-CP-43-282

Plaintiff,

v.

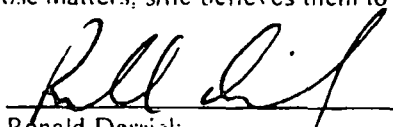
Lance E. Jones.

Defendant.

2011 FEB - 8 PM 4: 03
CLERK OF COURT
SUMTER COUNTY, S.C.

VERIFICATION

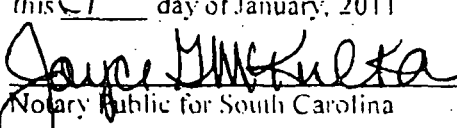
The undersigned, being duly sworn, states that s/he is a Vice President for First Citizens Bank and Trust Company, Inc. f/k/a Community Resource Bank N.A., Sumter Regions, and as such has the authority to make the Verification; that s/he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated on information and belief and, as to those matters, s/he believes them to be true.



Ronald Derrick
Vice President
First Citizens Bank and Trust Company, Inc.
f/k/a Community Resource Bank N.A.,
Sumter Regions

SWORN TO AND SUBSCRIBED BEFORE ME

this 3rd day of January, 2011



Notary Public for South Carolina

My Commission Expires: JOYCE G. MCKULKA
FEBRUARY 17, 2020

000024

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
2011 APR 13 PM 12:47
A # 2011-CP-43-282

First Citizens Bank and Trust Company, Inc.
f/k/a Community Resource Bank, N.A.,
Regions,
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ANSWER AND COUNTERCLAIM

Plaintiff(s),

(Jury Trial Requested)

vs.

Lance E. Jones,

Defendant(s).

The Defendant, Lance E. Jones, by and through his undersigned attorney, does hereby
Answer the Plaintiff's Complaint and would allege the following:

FOR A FIRST DEFENSE

1. Each and every allegation contained in the Plaintiff's Complaint not hereinafter specifically admitted is denied and strict proof is demanded thereof.
2. Defendant admits the allegations contained in Paragraph One (1) of the Plaintiff's Complaint.
3. Defendant admits the allegations contained in Paragraph Two (2) of Plaintiff's Complaint.
4. Defendant admits the allegations contained in Paragraph Three (3) of Plaintiff's Complaint.
5. Defendant admits the allegations contained in Paragraph Four (4) of Plaintiff's Complaint.
6. With regard to the allegations contained in Paragraph Five (5) of the Plaintiff's Complaint, the copies designated as Exhibit A are illegible and Defendant would crave reference to

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the original documents signed by the Defendant. Defendant does admit that he entered into a Promissory Note with Community Resource Bank, N.A., on or around November 16, 2006 for the amount Sixty Five Thousand (\$65,000.00) Dollars.

7. Defendant denies the allegations contained in Paragraph Six (6) of the Plaintiff's Complaint and would demand strict proof thereof.

8. Defendant denies the allegations contained in Paragraph Seven (7) of the Plaintiff's Complaint and would demand strict proof thereof.

9. Defendant denies the allegations contained in Paragraph Eight (8) of the Plaintiff's Complaint and would demand strict proof thereof.

10. Defendant denies the allegations contained in Paragraph Nine (9) of the Plaintiff's Complaint and would demand strict proof thereof.

FOR A SECOND DEFENSE AND BY WAY OF FIRST COUNTERCLAIM
(Breach of a Fiduciary Duty)

11. The Defendant reincorporates and realleges Paragraphs One (1) through Ten (10) of his Answer as if fully repeated herein.

12. Defendant purchased approximately 20.62 acres located in Sumter County from the Estate of Furman L. Jayroe, a/k/a F.L. Jayroe by Kevin Jayroe, Personal Representative, on April 12, 2006. This real property is designated as Tax Map No. 184-00-02-023 and reference is made to the Deed recorded in Book 1024 at Page 1097 in the Sumter County Clerk of Court for a more complete description.

13. On or about November 16, 2006, the Defendant did enter into a Loan and Mortgage Agreement with Community Resource Bank N.A., whereby the aforementioned 20.62 acres was pledged as security for a principal loan in the amount of Sixty-Five Thousand and No/100

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(\$65,000.00) Dollars. Upon information and belief, this Mortgage was transferred, assigned and is currently held by the Plaintiff.

14. On or about July 15, 2008, the Defendant sustained serious personal injuries in a motorcycle accident and was unable to work for a significant period of time. As a result, Defendant experienced a financial hardship during this period of time and was unable to pay the real property taxes due and owing on the 20.62 acre tract for the 2007 tax year. The 20.62 acre tract was eventually sold at a tax sale subject to the Defendant's right to redeem the real property by payment of all delinquent taxes, interest and penalties.

14. Defendant received a final redemption notice dated October 23, 2009 from the Sumter County Treasurer indicating that he had until December 2, 2009 to pay the sum of Five Thousand Four Hundred Sixty One Dollars and 61/100 (\$5,461.61) or the tax sale deed would be issued to the bidder. Between the dates of October 23, 2009 and October 29, 2009, Defendant did request a meeting and did, in fact, meet with Mark Mozell, an employee of the Plaintiff, at his office located on Bultman Drive in Sumter, South Carolina. The purpose of the meeting was to discuss the delinquent taxes owed on the Defendant's 20.62 acre tract. During this meeting, Mr. Mozell admitted that he had received the final redemption notice from the Sumter County Treasurer and that the delinquent taxes had to be paid. Defendant requested financial assistance from Plaintiff to pay the delinquent property taxes, and Mr. Mozell, acting on behalf of Plaintiff, advised him that Plaintiff would agree to loan the Defendant the funds necessary to pay the delinquent property taxes in full. Further, Mr. Mozell, acting on behalf of Plaintiff, advised the Defendant that Plaintiff would proceed with sending a payment to the Sumter County Treasurer's Office to pay the delinquent real property taxes owed.

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15. Subsequent to this meeting with Mark Mozell, Defendant continued making his monthly loan payments to Plaintiff pursuant to the terms of the loan agreement.

16. At some point in time in the latter period of 2010, Defendant received notice from a third party that his 20.62 acre tract had been sold and transferred to a purchaser pursuant to a tax sale deed. According to the Register of Deeds for Sumter County, the 20.62 acre tract was sold to Bill Dyson by Sumter County Tax Deed dated December 3, 2010 and recorded December 10, 2010.

18. A fiduciary relationship existed between the Defendant and Plaintiff by virtue of the banking relationship that existed between the parties and by virtue of the trust reposed by Defendant to the Plaintiff with regard to assistance in banking and financial related matters.

19. The Plaintiff, by and through its agents, servants and employees, did make affirmations to the Defendant that it would pay the delinquent property taxes owed on Defendant's real property. The Plaintiff, by and through its agents, servants and employees, has breached its fiduciary duty to the Plaintiff by failing to pay the delinquent property taxes and the Defendant has suffered actual damages due to the Plaintiff's omissions. These actual damages include, but are not limited to, the loss of the 20.62 acre tract that has been sold and transferred by tax deed, the loan payments made to the Plaintiff after affirmations were made that the delinquent property taxes would be paid and emotional and mental distress.

20. The Defendant seeks an award of actual damages and punitive damages as a result of the Plaintiff's unlawful conduct.

FOR A THIRD DEFENSE AND BY WAY OF A SECOND COUNTERCLAIM
(Negligence)

21. The Defendant reincorporates and realleges Paragraphs One (1) through Twenty (20) above as if fully repeated herein.

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22. The Plaintiff, by and through its agents, servants and employees, owed a duty to the Defendant to act with due care and in good-faith by virtue of the special relationship that existed between the Plaintiff and the Defendant and by the voluntary undertaking made by the Plaintiff's agents, servants and employees to pay the delinquent property taxes due and owing on the Defendant's real property.

23. The Plaintiff, by and through its agents, servants and employees, has breached their duty of care by failing to pay the delinquent property taxes owed on the Defendant's real property.

24. As a result of the Plaintiff's negligent conduct, the Defendant has sustained actual damages, including but not limited to, the loss of the 20.62 acre tract that was sold and transferred by tax deed, the loan payments made to the Plaintiff after affirmations were made that the delinquent property taxes would be paid, and emotional and mental distress.

25. Defendant seeks an award of actual damages and punitive damages.

FOR A FOURTH DEFENSE AND BY WAY OF A THIRD COUNTERCLAIM
(Negligent Misrepresentation)

26. The Defendant reincorporates and realleges Paragraphs One (1) through Twenty-Five (25) above as if fully repeated herein.

27. The Plaintiff, by and through its agents, servants and employees, made a representation to the Defendant that it would pay the delinquent property taxes owed on the Defendant's real property.

28. This representation was, in fact, a false representation inasmuch as the Defendant failed to pay the delinquent property taxes.

29. The Plaintiff had a pecuniary interest in making such a statement by virtue of the Loan Agreement with the Defendant and its security interest in the real property.

30. The Plaintiff owed a duty of care to communicate truthful information.

31. The Plaintiff breached its duty to the Defendant by failing to exercise due care.
32. The Defendant justifiably relied on the representation.
33. The Defendant has suffered a pecuniary loss as a direct and proximate result of reliance on the Plaintiff's representation.
34. As a result of the Plaintiff's negligent misrepresentation, the Defendant has sustained actual damages and is also entitled to an award of punitive damages.

FOR A FIFTH DEFENSE AND BY WAY OF A FOURTH COUNTERCLAIM
(Breach of Contract)

35. The Defendant reincorporates and realleges Paragraphs One (1) through Thirty Three (33) above as if fully repeated herein.

36. A contractual relationship between the Plaintiff and Defendant already existed by virtue of the loan agreement dated November 16, 2006 entered into between the parties. Pursuant to the meeting that occurred between Mr. Mozell, an employee of the Plaintiff, and the Defendant between the dates October 23, 2009 and October 29, 2009, the Plaintiff and Defendant modified the November 16, 2006 loan agreement and entered into a new contractual agreement whereby the Plaintiff would loan the Defendant a sum sufficient to pay his delinquent property taxes and, further, Plaintiff would send payment to the Sumter County Treasurer to satisfy the delinquent property taxes. Defendant agreed to repay the loan amount with interest.

37. Plaintiff has breached this contract by failing to send payment to the Sumter County Treasurer to satisfy the Defendant's delinquent property taxes.

38. As a result of the Plaintiff's breach of contract, the Defendant has suffered actual damages. The Defendant has also sustained certain special and consequential damages as a result of the Plaintiff's breach of contract.

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39. Defendant does request an award of actual damages, special damages and consequential damages as result of Plaintiff's breach of contract.

WHEREFORE, Defendant, Lance E. Jones, does hereby Answer the Complaint and also asserts Counterclaims against the Plaintiff, First Citizens Bank and Trust Company, Inc. f/k/a First Citizens Bank and Trust Company of South Carolina, and would request the following:

- (a) A dismissal of the Plaintiff's Complaint in all manners consistent with the Defendant's Answer;
- (b) For the First Counterclaim, an award of Actual Damages and Punitive Damages;
- (c) For the Second Counterclaim, an award of Actual Damages and Punitive Damages;
- (d) For the Third Counterclaim, an award of Actual Damages and Punitive Damages;
- (e) For the Fourth Counterclaim, an award of Actual Damages, Special Damages and Consequential Damages;
- (f) An award of attorneys fees and the costs of this action; and
- (g) For such further Relief as this Court may deem just and proper.

Florence, South Carolina

April 12, 2011



ROBERT D. MCKISSICK,

Attorney for Defendant Lance E. Jones

ABBOTT & MCKISSICK LAW FIRM, LLC

702 West Evans Street

Post Office Box 148

Florence, SC 29503

(843) 669-0089 (o)

(843) 669-0085 (f)

000031

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2011 APR 3 PM 12:47

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
C/A # 2011-CP-43-282

First Citizens Bank and Trust Company, Inc.
f/k/a Community Resource Bank, N.A.,
Regions,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Plaintiff(s),

CERTIFICATE OF SERVICE

vs.

Lance E. Jones,

Defendant(s).

The undersigned, legal assistant to Robert D. McKissick, hereby certifies that on April 12, 2011, a copy of an **Answer and Counterclaim** was served at the address listed below by depositing the same in the United States Mail with the proper postage affixed thereto:

Stanley H. McGuffin, Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Drawer 11889
Columbia, South Carolina 29201


Ann C. Makris

000032

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

**First Citizens Bank and Trust Company,
Inc., f/k/a Community Resource Bank N.A.,
Sumter Regions,**

Plaintiff,

v.

Lance E. Jones,

Defendant.

Case No. 2011-CP-43-282

REPLY TO COUNTERCLAIM

Plaintiff First Citizens Bank and Trust Company ("FCB") replies to the Counterclaim of Defendant as follows:

For a First Defense

1. FCB admits so much of paragraph 12 as is supported by accurate public record, but otherwise denies same due to lack of information or belief.
2. FCB admits paragraph 13.
3. FCB lacks sufficient information or belief to admit or deny paragraph 14, except the allegation of the last sentence therein, which is admitted.
4. FCB lacks sufficient information or belief to admit or deny the first section of paragraph 14 (which is the second of two paragraphs bearing #14) and therefore denies same. As to the remaining allegations of paragraph 14, FCB acknowledges that acting through Mr. Mozell it has had one or more meetings with Defendant. FCB does not currently have sufficient information or belief to identify the date of any such meetings or the specific purpose of the meetings. FCB denies the remaining allegations of paragraph 14.

000033

5. FCB admits so much of paragraph 15 as alleges Defendant continued to make monthly loan payments after October of 2009, but qualifies this admission by stating such payments eventually ceased and the loan defaulted.

6. FCB lacks sufficient information or belief to admit or deny the first sentence of paragraph 16 and therefore denies same. FCB admits the second sentence of paragraph 16.

7. FCB denies paragraph 18 and notes there is no paragraph 17 in the Counterclaim.

8. FCB denies paragraphs 19 and 20.

9. In response to paragraph 21, FCB incorporates its prior responses.

10. FCB denies paragraphs 22, 23 24 and 25.

11. In response to paragraph 26, FCB incorporates its prior responses.

12. FCB denies paragraphs 27, 28, 29, 30, 31, 32, 33 and 34.

13. In response to paragraph 35, FCB incorporates its prior responses.

14. FCB admits the first sentence of paragraph 36. FCB denies the remaining allegations of paragraph 36.

15. FCB denies paragraphs 37, 38 and 39.

16. FCB denies each allegation of the Counterclaim not otherwise admitted, qualified or explained.

For a Second Defense

17. FCB asserts that the damage claimed by Defendant were the consequence of his own intentional acts in failing to pay the subject property tax.

For a Third Defense

18. FCB asserts that any claims of damages were the result of the negligent acts or omissions of Defendant and therefore any damages should be reduced or eliminated based upon the comparative negligence of Defendant.

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For a Fourth Defense

19. FCB specifically denies that it made any promises to lend money to Defendant or pay taxes, but based upon the allegations of Defendant such promises, if any, were of an oral nature, were not reduced to writing, and therefore are not enforceable under South Carolina law.

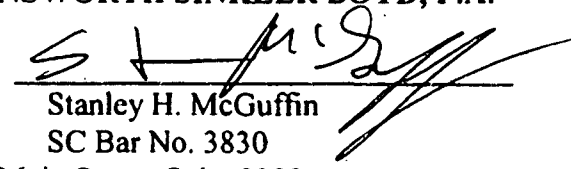
For a Fifth Defense

20. FCB asserts that it exercised good faith efforts to pay Sumter County the real property taxes at issue, but that such efforts were:

- (a) An exercise of a discretionary right by FCB which it had under its loan documents;
- (b) The efforts did not arise from any contractual, fiduciary or other duty to Defendant; and
- (c) The efforts of FCB to pay the taxes failed due to an intervening cause beyond the control of FCB.

WHEREFORE, having replied to the Counterclaim, FCB requests that the Counterclaim be dismissed and that FCB be awarded judgment on its Complaint.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Stanley H. McGuffin

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Attorneys for Plaintiff First Citizens Bank and
Trust Company

May 4, 2011

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

First Citizens Bank and Trust Company,
Inc., f/k/a Community Resource Bank N.A.,
Sumter Regions,

Plaintiff,

v.

Lance E. Jones,

Defendant.

Case No. 2011-CP-43-282

CERTIFICATE OF SERVICE

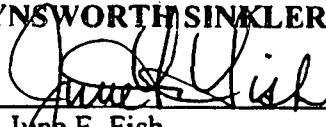
I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, or by other delivery as indicated, to all parties of record at the addresses shown below.

1. REPLY TO COUNTERCLAIM

Parties of Record

Robert D. McKissick, Esq.
Abbott McKissick Law Firm, LLC
PO Box 148
Florence, SC 29503

HAYNSWORTH SINKLER BOYD, P.A.

By: 

June F. Fish

Legal Secretary to Stanley H. McGuffin

Date: May 4, 201

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State of South Carolina)
)
County of Sumter)
)

Lance E. Jones,
Plaintiff

vs.

Motions
2011-CP-43-00282

First Citizens Bank & Trust
Company,
Defendants

December 12, 2011
Sumter, S.C.

BEFORE THE HONORABLE W. Jeffrey Young, Judge.

A P P E A R A N C E S:

Mr. Robert D. McKissick,
Attorney for Plaintiff

Mr. Hamilton Osborne,
Attorney for Defendants

Margaret T. Sullivan,
Court Reporter

1 THE COURT: Mr. Osborne, are you ready to get
2 back on course?

3 MR. OSBORNE: I am ready. Yes, Your
4 Honor. Thank you.

5 MR. MCKISSICK: Good morning, Your Honor.

6 MR. OSBORNE: Your Honor, I am Hamilton
7 Osborne again. I am the moving party on, again,
8 representing the bank. But in this situation, the
9 bank is the Plaintiff in the case.

10 THE COURT: And you are Stanley McGuffin?

11 MR. MCKISSICK: I am Robert McKissick,
12 Your Honor, representing Mr. Jones. May I hand up
13 our Memorandum?

14 THE COURT: You certainly may.

15 MR. MCKISSICK: And our Affidavit?

16 THE COURT: Mr. Osborne, you may proceed.

17 MR. OSBORNE: Thank, Your Honor. I am
18 going to try to do a little bit better job of
19 giving you the facts up front in this case, than I
20 did on the previous case. Not every fact I am
21 going to recite is necessarily in the record
22 before you. So I am going to invite Mr. McKissick
23 to stand, and interrupt me if he feels that I have
24 misstated the facts that -- if I have stated
25 something as a fact that he disputes, I am going

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1 go invite him, give him lead to interrupt and make
2 that clear.

3 This case arises from a loan made to
4 Mr. McKissick's client, the Defendant,
5 Lance E. Jones. Mr. Jones borrowed some certain
6 sum of money to purchase a 20-acre tract of land
7 adjacent to, I believe, to his home. His
8 intention is, I believe was to expand his home.

9 But in any event, he borrowed the money on
10 the mortgage loan, and he got into a motorcycle
11 accident and had some financial difficulties as a
12 result. As a consequence of those financial
13 difficulties, he couldn't pay his property taxes
14 one year. The property got sold. And during the
15 redemption period, the bank was notified by the
16 treasurer. There's also testimony from Mr. Jones,
17 and I believe it's pretty much conceded by the
18 lending officer, that during the redemption
19 period, that Mr. Jones met with the lending
20 officer and the lending officer said, you know,
21 the bank will pay the taxes. Or we will take care
22 of it. That's at least for purposes of the
23 Motion, you will have to accept that as true.

24 Now the records of the bank indicate that
25 the bank in fact issued a check for the amount

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1 necessary to redeem the property, and mailed it to
2 the box office box of the treasury. The bank does
3 not have a copy of the check, because the bank
4 apparently doesn't keep copies of its own checks
5 that it issues. But it clearly has computerized
6 records, which we have produced to Mr. McKissick,
7 indicating the payment was issued. And naturally
8 the amount was initially charged to the
9 Defendant's account, loan account. But later,
10 some many months later, it was discovered that the
11 check had never cleared. And nobody knows why.
12 Nobody knows whether the check never got to the
13 treasurer's office, or got to the treasurer's office
14 and was mishandled. We just don't know.

15 We know that there was an attempt by the
16 bank to pay---

17 THE COURT: Well wouldn't that be the
18 bank's responsibility to make sure that the check
19 had cleared in a reasonable period of time?

20 MR. OSBORNE: Your Honor, my argument---

21 THE COURT: I mean, if I write a check to
22 somebody and it just never clears, that's my
23 responsibility to reconcile my account and know
24 that that check is out.

25 MR. OSBORNE: Well, Your Honor, in the

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1 case of an individual, you would typically
2 reconcile your account every month. But a bank is
3 a very large institution, and it issues many, many
4 checks every month.

5 Your Honor, my contention in this case
6 is, that the bank had no duty to pay the taxes to
7 begin with. I would move for Summary Judgment on
8 the claim against the Defendant, and that's
9 supported by the Affidavit. Mr. McKissick and his
10 client really have not contested the amount due.
11 They don't dispute the fact of the loan. They
12 don't dispute the amount due. The defense is, the
13 bank didn't pay the taxes and the mortgage
14 property was ultimately lost because the
15 redemption period expired.

16 Now....

17 THE COURT: And you're probably arguing
18 that your guy would have paid the money had the
19 bank not volunteered.

20 MR. MCKISSMICK: Well, Your Honor,
21 essentially; yes, sir. If he had known that the
22 he needed to actually deliver the check to the
23 treasurer's office, most certainly he would have
24 gone and delivered it himself. But based on his
25 Affidavit, essentially he thought and through

1 dealing with Mr. Mozell, who he had a relationship
2 with over a period 2 or 3 years. When he said, I
3 will take care of it, he thought that meant, that
4 they would take care of it. So, yes, sir.

5 MR. OSBORNE: Note that Mr. McKissick
6 doesn't say that Mr. Jones was going to pay the
7 taxes.

8 THE COURT: Yeah, Mr. Jones was
9 responsible for paying the taxes.

10 MR. OSBORNE: He didn't have the money.
11 He said he would take the check to the treasurer's
12 office. Unfortunately that didn't - it would have
13 been better for the bank had Mr. Jones had that
14 happened. But unfortunately it didn't. The bank
15 did the reasonable thing, which was mail it to the
16 treasurer's office.

17 THE COURT: But they were just trying to
18 cover, kept from losing their security interest.

19 MR. OSBORNE: The bank and Mr. Jones had
20 the same interest here, to preserve the title to
21 the property. This is not a situation where the
22 bank -- the bank was at odds with its borrower.
23 It was at odds in the sense that he was the one
24 legally responsible both by law as the property
25 owner, and as the mortgagor, to pay the taxes, but

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1 he couldn't. So the bank had the right to pay the
2 taxes and to charge him it. That's the law. And
3 I want to get in to that in a moment.

4 But let's get into the specifics of the
5 borrower's counterclaims. The first counterclaim
6 is for Breach of Fiduciary Duty. Well this was
7 not a fiduciary relationship between the Defendant
8 and the bank. It was a contractual relationship,
9 borrower/lender. The law in South Carolina is
10 very clear that that's not -- that's fiduciary.
11 And simply doing the things necessary to
12 administer and preserve the collateral wouldn't
13 bring a fiduciary relationship. I don't care what
14 was said between the two of them when they met.

15 Now, duty of care. Now incidentally, Your
16 Honor, let me digress a moment. I have argued for
17 Summary Judgment on every counterclaim raised by
18 the Defendant. As I read Mr. McKissick's
19 Memorandum, he has argued only the counterclaim
20 asserting negligence. He appears implicitly to
21 have abandoned the counterclaim for Breach of
22 Fiduciary duty and Breach of Contract. He focuses
23 exclusively on negligence. So I am going to --
24 there's another one also for negligent
25 misrepresentation.

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1 THE COURT: Mr. McKissick.

2 MR. MCKISSMICK: Your Honor, the
3 Memorandum doesn't specifically address it. I
4 will concede though with regard to the cause of
5 action for negligent misrepresentation, I'll
6 concede that doesn't apply to the facts of this
7 case. I will be willing to strike that.

8 THE COURT: All right.

9 MR. MCKISSICK: But Breach of Contract,
10 negligence, and Breach of Fiduciary Duty, I think
11 I would like to argue.

12 THE COURT: Yes, sir.

13 MR. OSBORNE: Well, you know, I know
14 that his written Memorandum doesn't have to be
15 comprehensive so. So I have addressed fiduciary
16 duty. I think it's pretty clear that you can't
17 impose fiduciary duty in what is basically a
18 basically borrower/lender transaction. Duty of
19 care. We have encountered that in the previous
20 argument in a earlier case.

21 Lawyers love the idea of negligence, but
22 negligence absent the duty of care is meaningless.
23 In a situation like this which arises from a
24 contractual relationship, all the duties are
25 contractual in nature. You can't base a tort

1 claim on some Breach of Contract. And that's
2 basically what we have here. Now and again, I
3 have cited, if you read the two briefs, you are
4 going to see that I cited basically the same
5 cases, where the Supreme Court and our court --
6 our Appellate Courts have said, no duty of care in
7 any number of situations. I am not going to
8 belabor that for you.

9 Negligent misrepresentation has been
10 conceded. Breach of Contract. To my mind Breach
11 of Contract is the most logical cause of action
12 here. But, Your Honor, I would submit to you it
13 doesn't apply. And the reason it doesn't apply,
14 or the reason that the borrower can't rely on
15 Breach of Contract in this case is, there was no
16 consideration. I don't care whether the bank
17 officer even if he unequivocally said, I will get
18 the property taxes paid. Or Mr. Jones, the
19 borrower said, If you will pay the property taxes,
20 I will pay you back. And the bank officer said,
21 fine, I will do it. It wasn't a contract because
22 there no consideration. Why was there no
23 consideration?

24 There was no consideration for two
25 reasons. First of all, the borrower, I've argued,

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1 that in the inverse order in my brief. First of
2 all, the borrower, Mr. Jones, as the property
3 owner, was one legally obligated to pay the taxes.
4 Furthermore, there is a statute in South Carolina
5 that permits a mortgagee, a mortgage lender, if
6 the borrower or mortgagor fails to pay the taxes,
7 the lender, the mortgagee, has the right but the
8 not the obligation to advance to pay the taxes and
9 add that cost to the loan. That exists by
10 statute.

11 So when Mr. Jones purportedly said to the
12 bank officer, Mr. Mozell, if you will pay the
13 taxes, I will pay you back. He wasn't offering
14 the bank anything that the bank didn't already
15 have. The same thing pertains -- the same result
16 occurs as I have argued in my Memorandum, under
17 the loan documents. As is typical in mortgages,
18 the mortgage obligated the borrower, the mortgagor
19 to pay the taxes and provided that if the
20 mortgagor failed to pay the taxes, the lender
21 could pay them and the charge the mortgagor for
22 it.

23 So you can't base a contract or a promise
24 to do something that a party is already legally
25 bound to do, does not constitute consideration

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1 for a new promise or a new contract. So there was
2 no contract here between the bank and the borrower
3 for the bank to pay the taxes. The contract just
4 won't work. Going back to negligence, no duty of
5 care. But the evidence is pretty clear that the
6 bank in it's own interest, and in fact made a good
7 faith effort to pay the taxes.

8 We don't know why the taxes didn't get
9 paid. The records of the bank indicate that the
10 check was mailed to the proper address. Nobody
11 knows what happens to the check. But there wasn't
12 any duty there. The bank was acting in its own
13 interest. It had no duty to the borrower to do
14 what it did. I rest my case.

15 THE COURT: Mr. McKissick.

16 MR. MCKISSMICK: Thank, Your Honor. May
17 It Please the Court. Your Honor, essentially what
18 this cases boils down to is the fact that, and I
19 would agree with counsel that the bank had no
20 obligation to pay the property taxes pursuant to
21 the loan agreement. Clearly it's discretionary.
22 The bank may pay the property taxes if they feel
23 that their interest needs to be protected. Where
24 this case, the crux of the case essentially is
25 when my client, and the bank's officer, Mark

1 Mozell, had the meeting in October of 2009.

2 The bank and my client had both received a
3 notice that unless property taxes were paid on or
4 before December 2nd of 2009, the property will be
5 lost. My client's Affidavit says that he met with
6 Mr. Mozell. Mr. Mozell knew of the legal tax
7 notice. And during that conversation Mr. Mozell
8 said, I will take care of it. And what my client
9 is asking was for the bank to loan him the money
10 so that he could pay the taxes. And apparently
11 that was done, because the loan was actually
12 charged back to his loan, of which he continued to
13 pay interest on.

14 And when he---

15 THE COURT: Was that as the result of the
16 original paperwork that allowed them to do that
17 and then charge it back to him?

18 MR. OSBORNE: Yes, Your Honor. There was
19 no new promissory note.

20 THE COURT: No new.

21 MR. MCKISSMICK: No note, no new note.

22 But my point was, the loan was charged back to his
23 loan. Mr. Jones continued to pay on this note for
24 almost a year after the taxes -- after the
25 property was actual lost, when he discovered that

1 he no longer owned the property. And that's why
2 he stopped making payments on the loan.

3 THE COURT: Just out of the curiosity,
4 were they able to redeem the property?

5 MR. OSBORNE: Well unfortunately, no.
6 That's the reason we are here; is that, the
7 redemption period expired. The bank was given
8 notice during the redemption period. Probably
9 only a couple of months before the redemption
10 period expired. So once the redemption period
11 expired, my firm looked into. We were unable to
12 set aside a tax lien.

13 MR. MCKISSMICK: So by Mr. Mozell telling
14 Mr. Jones that would take care of it, the bank
15 essentially undertook a duty to pay those taxes,
16 and exercise due care when they paid them.

17 The law is clear that an individual or
18 company doesn't have any duty to act if there is
19 no legal obligation to do so. But the promise
20 that Mr. Mozell made to Mr. Jones that he would
21 take care of it, created a duty. And we have
22 cited some cases in our Memorandum, Your Honor.
23 And actually the cases are fairly factually
24 similar to the one before the court.

25 In the case of Caldwell vs. Jim Walter

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1 Homes, that is a case where and it's 293 S.C. 229.
2 That's a case where an individual was buying a
3 mobile home or some type of modular home from Jim
4 Walter Homes. And Jim Walter Homes is going to
5 finance it for him. The borrower was obligated
6 pay the taxes, but Jim Walter homes actually paid
7 taxes for a number of years. The tax notices were
8 being sent to Jim Walter Homes.

9 One year they decided not to pay the taxes
10 because the borrower was probably behind on his
11 payments. So they decided we are not going to pay
12 it this year. And the property was eventually
13 lost. Very similar to this one that we are here
14 about today.

15 And in that case the court held that Jim
16 Walter Homes undertook a duty to inform the
17 borrower that the property was in danger of being
18 sold.

19 THE COURT: But wouldn't that be based
20 upon their prior actions though? I mean, that
21 didn't happen here. You didn't have a history of
22 their going in and paying taxes for your client;
23 did you?

24 MR. MCKISSMICK: Well I would argue there
25 is of course dealing between with Mr. Jones and

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1 Mr. Mozell. And I think what's important to this
2 case is Mr. Jones had a relationship with
3 Mr. Mozell over a 2 or 3 year period. And that's
4 confirmed in Mr. Mozell's deposition, which I
5 cited several examples in our Memorandums. I
6 probably need to hand up a copy of his deposition
7 transcript, if Your Honor choses to review it. I
8 also have the original here.

9 THE COURT: Okay.

10 MR. MCKISSICK: But Mr. Mozell admits over
11 on several different pages that every time
12 Mr. Jones came in, they would talk 5 or 10
13 minutes. Whenever he needed anything, he would
14 call Mr. Mozell. This was not simply a situation
15 where Mr. Jones had a brief conversation with
16 somebody he had never met, and said are you going
17 to pay the taxes, and the bank employee said,
18 yeah, we will take care of it. In that situation,
19 I think there wouldn't be that type of special
20 relationship that exists. But in this case where
21 Mr. Jones had been dealing with Mr. Mozell for
22 2 and a half, 3 years, when Mr. Mozell said, I
23 know about the tax situation, the bank will loan
24 you the money, we will take care of it.

25 I think he had the right to rely on that

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1 statement. And by Mr. Mozell making that
2 statement, he undertook a duty on behalf of First
3 Citizens to pay those taxes. The second case we
4 cited, Your Honor, is the matter of Murray versus
5 Bank of America. 354 S.C. 337. In that case an
6 imposter opened up an account in a person's name
7 who had no relationship with the bank, the Bank of
8 America. And eventually checks were written on
9 that account.

10 The customer called the bank and said
11 look, you know, that's not me. You need to close
12 the account. You need to notify vendors. You
13 need to notify third parties. And, you know, that
14 is not me. That's a fraudulent account. And the
15 bank waited about 30 days according to the facts
16 of the case before they ever closed the account.
17 They failed to notify any third parties, any
18 vendors that the account was fraudulent.

19 Eventually the customer was arrested,
20 exonerated; brought suit against the bank under
21 several causes of action. One being negligence.
22 And the bank -- I mean, excuse me, the court said
23 that based upon the bank telling that customer
24 that they would close the account; that there was
25 a sufficient relationship between the parties to

1 impose a duty of care upon the bank to the
2 customer.

3 So the point of my raising these two cases
4 is when the bank makes -- takes some action to do
5 something either by paying the taxes when they
6 don't have to, or by the bank telling this other
7 customer that they're going to close the account,
8 by that affirmative act they basically -- there is
9 a duty that's imposed upon them by their
10 affirmative acts. And with that duty comes a duty
11 to act in due care. And see that they exercise
12 due care when they take such actions.

13 The facts of this case, Your Honor, are
14 undisputed. The taxes were not paid. We know
15 that. There is no check that the bank has
16 produced showing that there was ever a check even
17 generated.

18 Counsel seems to say, seems to suggest
19 that's it undisputed that the check was mailed.
20 I would submit there is no evidence the check was
21 ever mailed. There is no evidence the check was
22 ever printed out. They have produced copies from
23 a computer screen showing that the check was
24 requested. And showing where the address was
25 where the check was going to be sent. But there

1 is no evidence the check was ever actually printed
2 out. There is no evidence the check was ever
3 mailed.

4 There was also been testimony through some
5 depositions we took on Thursday of last week, that
6 there was no tickler system in place at that time.
7 They didn't call to check up on if the check had
8 been received. They didn't have a tickler system
9 in place to verify that, you know, the check
10 hasn't cleared. We don't have a receipt showing
11 that the check has been received. There was
12 nothing in place at that time, Your Honor.

13 So we feel that under the facts of this
14 case clearly, there is a genuine issue of material
15 fact. And also just to touch very briefly on
16 fiduciary duty again, the nature of the
17 relationship between Mr. Jones and Mr. Mozell, I
18 submit would create that of a fiduciary duty.
19 With regard to the Breach of Contract, the
20 contract that we're alleging that was breached,
21 did not arise pursuant to the loan documentation.
22 It was a contract between Mr. Mozell and Mr. Jones
23 during this meeting in October.

24 THE COURT: What was the consideration?

25 MR. MCKISSICK: The consideration was they

1 were going to pay the taxes. They would loan him
2 the money. They would give -- they would loan him
3 the money, \$5,000 to pay the taxes. They would
4 add it back to the loan with interest. And
5 they---

6 THE COURT: They didn't need a contract.
7 But they could have done that anyway. So where's
8 the consideration?

9 MR. MCKISSMICK: Well I would submit that
10 they didn't have to do it. They could have done
11 it. But during that conversation they agreed to
12 do it. And also more importantly, they agreed to
13 mail the check, or to somehow get the taxes paid.

14 THE COURT: I understand that. But what
15 is the consideration? I understand they're saying
16 they would do, but I don't see where there any
17 consideration. The day that they undertook
18 anything that were not already entitled to do.

19 MR. MCKISSMICK: Well I would simply -- I
20 would agree with Your Honor on that. But they
21 didn't have to do it. So I guess the -- what---

22 THE COURT: We know if your client had
23 paid the taxes they wouldn't have to do it either.

24 MR. MCKISSICK: And again, that could be
25 an issue that we have to explain to a jury if we

1 can get past this Motion for a Summary Judgment.
2 But again, clearly it was his obligation to pay
3 the taxes. And the purpose of the meeting between
4 he and Mr. Mozell was to ask the bank to loan him
5 the money to pay the taxes, which they agreed to
6 do. And also to pay the taxes which wasn't done.

7 THE COURT: I will review the briefs.

8 MR. OSBORNE: May I respond briefly---

9 THE COURT: Yes.

10 MR. OSBORNE: ---because I do want to
11 distinguish these two cases. I would like to
12 point out that Mr. McKissick, he keeps saying that
13 the duty of care that he keeps trying to impose on
14 the bank, arose from the promise that Mr. Mozell
15 supposedly made.

16 Well, Your Honor, duties of care don't
17 arise from promises. If there is a duty arising
18 from a promise, it's called a contract. Duties of
19 care arise from the law. The law imposing the
20 duty and not from a promise. Your Honor, with
21 respect to the Jim Walter Homes case, you hit the
22 nail square on your head. Here is what, keeping
23 in mind, that what was happening here and very
24 importantly the Jim Walter Homes case, this was a
25 Contract for Sale of land. Jim Walters Homes

1 owned the land. So the tax notices were going to
2 Jim Walter Homes, not to the borrower. The
3 borrower didn't have access to them of course
4 unless they went to the Tax Collector's office.

5 Jim Walter Homes paid the taxes and
6 notices for several years. And then without
7 noticing the borrower to the buyer, decided not to
8 pay them. Here is what the Court of Appeals said,
9 by course of dealing Jim Walter Homes failed to
10 inform the Caldwell's that there property was in
11 danger of being sold. Now notice the Court of
12 Appeals didn't say that Jim Walter Homes undertook
13 the duty to pay the taxes. It simply said in the
14 context of this case, Jim Walter Homes had to duty
15 to inform the buyers, the borrowers that their
16 property was in danger of being sold. Because Jim
17 Walter Homes was in a position to know the
18 borrowers didn't know that. They weren't getting
19 their tax notices.

20 In this case, it is undisputed that
21 Mr. Jones knew that his property had been sold for
22 taxes. In the Jim Walter Homes case is clearly
23 distinguishable from this case. The Merley vs.
24 Bank of America is similarly distinguishable
25 because what happened there is, according to the

1 opinion by the Court of Appeals, the bank did not
2 notify any merchants that the account was
3 fraudulent. And here's what happened there, the
4 Plaintiff notified the bank that they had an
5 account in the Plaintiff's name that was
6 fraudulent. It wasn't the Plaintiff. The bank
7 was bouncing checks on the account sending them
8 back with NFS's notices to the payees. But even
9 after being told by the Plaintiff that the account
10 was fraudulent, the bank continued to bounce
11 checks and didn't inform the payees that the
12 account was fraudulent. And it was not the
13 Plaintiff who was responsible.

14 It's hardly any surprise under those
15 circumstances that the Court of Appeals affirmed
16 the verdict in favor of the Plaintiff. And those
17 are simply the facts in this case. So anyway, I
18 will stop.

19 THE COURT: Thank you, gentlemen.

20 MR. OSBORNE: Thank you.

21 MR. MCKISSICK: Thank you.

22 THE COURT: I will let you know what I
23 find. Thank you.

24 End of Requested Transcript of Record---

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the Court of Common Pleas/nonjury on December 2, 2011, in Sumter County, Sumter, South Carolina.

I do further that I am neither kin, counsel nor interest to any party hereto.

4/30/12
DATE

Margaret T. Sullivan
COURT REPORTER
My Commission expires: 9/7/21

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

First Citizens Bank and Trust Company,
☒ Plaintiff

v.

Lance E. Jones,
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-43-00282

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

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- ☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: 30 minutes. Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

- ☒ **PAID – AMOUNT: 25.00**
☐ **EXEMPT:** ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- ☐ **MOTION FEE COLLECTED:** _____
☐ **CONTESTED – AMOUNT DUE:** _____

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

First Citizens Bank and Trust Company, Inc.,
f/k/a Community Resource Bank N.A., Sumter
Regions,

Plaintiff,

v.

Lance E. Jones,

Defendant.

Case No. 2011-CP-43-282

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56, SCRCP, Plaintiff First Citizens Bank and Trust Company, Inc. ("First Citizens") moves for summary judgment on its claim against Defendant Lance E. Jones ("Jones") and on his counterclaims against First Citizens. This motion is based upon the accompanying Affidavit of Mark A. Mossell and the exhibits attached thereto.

INTRODUCTION

In this action, First Citizens seeks to collect the debt owed on a promissory note dated November 11, 2006 (the "Note") executed by Jones to Community Resource Bank N.A., which later merged into First Citizens. The Note was secured by a mortgage (the "Mortgage") encumbering real property in Sumter County (the "Property"), but the Property was sold for taxes and the redemption period has expired. The Property has now been conveyed to a third party.

Jones admits executing the Note but denies any liability thereon. Jones has counterclaimed against First Citizens, alleging that Mark A. Mossell, an employee of First Citizens, agreed on behalf of First Citizens to lend Jones the money needed to pay the delinquent

taxes owed on Property. Jones further alleges that Mr. Mossell told him that First Citizens would pay the taxes.

First Citizens submits that for the reasons that follow, it is entitled to summary judgment on its claim against Jones and on Jones's counterclaims against First Citizens.

ARGUMENT

I. FIRST CITIZENS IS ENTITLED TO SUMMARY JUDGMENT ON ITS CLAIM AGAINST JONES.

Jones admits executing the Note that First Citizens is seeking to collect, and the accompanying Affidavit of Mark A. Mossell states that Jones has failed to make payments due on the Note. The Affidavit further states that First Citizens is the owner and the holder of the Note and that First Citizens has declared the principal balance and all accrued interest owed on the Note immediately due and payable. Finally, the Affidavit states the amount of the debt owed on the Note. The Affidavit thus establishes that First Citizens is entitled to judgment against Jones for the debt owed on the Note.

II. FIRST CITIZENS IS ALSO ENTITLED TO SUMMARY JUDGMENT ON THE COUNTERCLAIMS JONES HAS ASSERTED AGAINST FIRST CITIZENS.

A. First Citizens did not breach a fiduciary duty to Jones.

In his first counterclaim, Jones alleges that First Citizens breached a fiduciary duty to him by failing to pay the delinquent taxes on the Property. This counterclaim fails as a matter of law because the relationship between a bank and a borrower is not fiduciary in nature. *Burwell v. South Carolina National Bank*, 288 S.C. 34, 340 S.E.2d 786 (1986) (holding that a bank did not have a fiduciary relationship with the guarantor of a loan); *American Federal Bank, FSB v. Parker*, 301

S.C. 509, 392 S.E.2d 798 (Ct. App. 1990) (holding that a bank did not have a fiduciary relationship with a borrower).

Under South Carolina law, whether a fiduciary relationship exists between two parties is an equitable issue to be determined by the court. *Pittman v. Grand Strand Entertainment, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005) (affirming an order granting summary judgment on the grounds that no fiduciary duty existed between parties to a contract). This Court thus has the authority to determine in this case that no fiduciary relationship existed between First Citizens and Jones.

B. First Citizens had no duty of care to Jones.

In his second counterclaim, Jones alleges that First Citizens owed him a duty of care and that it negligently failed to pay the delinquent property taxes. This counterclaim fails as a matter of law because First Citizens had no duty of care to Jones and was accordingly not negligent.

Any duty that First Citizens owed to Jones arose from the contractual relationship between them, and “the law is well-settled that breach of contractual duties does not give rise to an action in tort for negligence.” *Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 503 n.5, 473 S.E.2d 52, 55 n.5 (1996). “A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie.” *Tommy L. Griffin Plumbing & Heating Co. v. Jordon, Jones & Goulding*, 320 S.C. 49, 54-55, 463 S.E.2d 85, 88 (1995) (“In most instances, a negligence action will not lie when the parties are in privity of contract.”). Only if a duty arises independently from any contractual duties between the parties can there possibly be a tort action. *Id.*¹

¹ *Accord, Seebaldt v. First Fed. Sav. & Loan Ass’n*, 269 S.C. 691, 693, 239 S.E.2d 726, 727 (1977) (holding that “[b]are allegations of negligence cannot convert a breach of contract action into an action in tort”); *Sheppard v. Nienow*, 254 S.C. 44, 49, 173 S.E.2d 343, 345 (1970)

Whether First Citizens had a duty of care to Jones is an issue of law for the Court to determine.

An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. In a negligence action, the court must determine, as a matter of law, whether the defendant owed a duty of care to the plaintiff. If there is no duty, the defendant is entitled to judgment as a matter of law.

Huggins v. Citibank, N.A., 355 S.C. 329, 332, 585 S.E.2d 275, 276-77 (2003) (citations omitted).

South Carolina has not recognized the existence of a duty of care under the circumstances that Jones alleges. In other circumstances, the South Carolina Supreme Court has been very reluctant to recognize new duties of care that expand the scope of traditional tort liability. *E.g.*, *McCullough v. Goodrich & Penning Mtg. Fund, Inc.*, 373 S.C. 43, 644 S.E.2d 43 (2007) (holding that South Carolina does not recognize a secured party's right to bring a claim against a third party for negligent impairment of the secured party's collateral); *Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co.*, 355 S.C. 614, 586 S.E.2d 586 (2003) (declining to recognize a general duty of care from an independent insurance adjuster or insurance adjusting company to the insured); *Huggins v. Citibank, N.A.*, 355 S.C. 329, 585 S.E.2d 275 (2003) (holding that a bank does not have a duty to exercise due care in issuing a credit card so as to

(holding that the plaintiff could not maintain an action in negligence for failure to perform a contractual promise and explaining that "actionable negligence is the neglect to perform a legal duty, as distinguished from the failure to perform a mere contractual duty"); *Carolina Winds Owners' Ass'n v. Joe Harden Builder, Inc.*, 297 S.C. 74, 82, 374 S.E.2d 897, 902 (Ct. App. 1988) ("[I]f the ground for complaint is the defendant's negligent performance of a duty arising solely from a contract, the action lies in contract, not negligence.") (citation omitted), *overruled on other grounds*, *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989); *Brown v. South Carolina Ins. Co.*, 284 S.C. 47, 53, 324 S.E.2d 641, 645 (Ct. App. 1984) ("[I]f the defendant's neglect results only in nonperformance of the contract and he is under no duty to act apart from the contract, he is not liable in negligence, but in contract."), *overruled on other grounds*, *Charleston County Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993); *Troutman v. Facetglas, Inc.*, 281 S.C. 598, 601, 316 S.E.2d 424, 426 (Ct. App. 1984) ("A mere breach of contract is not actionable as a tort in South Carolina, no matter what the intent of the breaching party was.").

prevent harm to the credit of an individual whose identity has been stolen and used to apply for a credit card); *Hendricks v. Clemson University*, 353 S.C. 449, 578 S.E.2d 711 (2003) (holding that a school owes no duty of care to a student in giving advice concerning the courses he should take); *Wyatt v. Fowler*, 326 S.C. 97, 484 S.E.2d 590 (1997) (holding that the state does not owe its citizens a duty of care to proceed without error when it brings legal action against them); *Citizens & S. Nat'l Bank of South Carolina v. Lanford*, 313 S.C. 540, 443 S.E.2d 549 (1994) (holding that a bank did not owe a duty to tell a guarantor that his liability was for the entire loan amount where that information was disclosed by the terms of the written guaranty); *Byerly v. Connor*, 307 S.C. 441, 415 S.E.2d 796 (1992) (holding that the South Carolina Public Service Authority had no duty to discover and warn of a latent hazardous condition on land that it leased to another); *Seebaldt v. First Fed. Sav. & Loan Ass'n*, 269 S.C. 691, 239 S.E.2d 726 (1977) (holding that a lender who made a loan to finance the construction of a residence had no duty to supervise the contractor's work).

In this case, there is no precedent in South Carolina that supports Jones's counterclaim for negligence. His second counterclaim should thus be dismissed.

C. Jones has failed to allege a meritorious claim for negligent misrepresentation.

In his third counterclaim, Jones alleges that First Citizens made a representation to him that it would pay the delinquent property taxes owed on the Property. (Answer and Counterclaim p. 5, ¶ 27.) Jones further alleges that the representation was a false representation "inasmuch as [First Citizens] failed to pay the delinquent property taxes." (*Id.* ¶ 28.) These allegations fail to state a cause of action for negligent misrepresentation.

To support a claim for negligent misrepresentation, a representation must relate to a present or pre-existing fact and be false when made. The representation cannot ordinarily be based on

unfulfilled promises or statements as to future events. *Fields v. Melrose Limited Partnership*, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993). In this case, Jones has not alleged that First Citizens made a representation relating to present or pre-existing fact that was false when made. Jones has alleged only that First Citizens made a representation that it would do something in the future that it thereafter failed to do. These allegations will not support a claim for negligent misrepresentation.

D. Jones is not entitled to recover for breach of contract.

In his fourth counterclaim, Jones alleges that First Citizens, acting through Mr. Mossell, entered into a contract with him to lend him the money needed to pay the delinquent property taxes. Mr. Mossell denies the existence of any such contract, and the claim for breach of contract fails because any alleged promise by First Citizens to pay the delinquent property taxes (which First Citizens denies) was gratuitous and not supported by consideration.

Jones alleges that in exchange for the agreement of First Citizens to lend him the money needed to pay the delinquent property taxes, he “agreed to repay the loan with interest.” (Answer and Counterclaim ¶ 36.) Jones thus attempts to allege a bilateral contract (a promise in exchange for a promise) to make a loan. *See Sauner v. Pub. Serv. Auth.*, 354 S.C. 397, 405, 581 S.E.2d 161, 166 (2003) (“A bilateral contract . . . exists when both parties exchange mutual promises.”). His allegations fail to establish the existence of a contract because the consideration Jones allegedly offered, his promise to repay the loan with interest, was merely an offer to do something he was already legally obligated to do.

A promise to do something that the promising party is already obligated to do is not valid consideration. *City of Spartanburg v. Spartan Villa*, 273 S.C. 1, 5, 253 S.E.2d 501, 503 (1978) (“A promise by a party to do that which it has already legally obligated itself to do is not a valid consideration.”); *Castell v. Stephenson Fin. Co.*, 244 S.C. 45, 54, 135 S.E.2d 311, 315 (1964)

("[A]n agreement to do that which one is already legally bound to do is not sufficient consideration to support a new contract."); *Rabon v. State Fin. Co.*, 203 S.C. 183, 26 S.E.2d 501 (1943) (in a lawsuit for breach of an alleged contract to extend the time for repayment of a loan, holding that the borrower's agreement to do something that he was legally bound to do was not sufficient to support a new contract). Consideration is, of course, an essential element of a contract. *Thibault v. Cleland*, 294 S.C. 138, 140, 363 S.E.2d 114, 115 (Ct. App. 1987) ("A promise is incapable of becoming the subject of an action unless it is supported by consideration.").

In this case, Jones was already legally obligated to repay, with interest, any money First Citizens expended to pay delinquent taxes on the Property. Paragraph 7 of the Mortgage that Jones executed states, "Mortgagor [i.e., Jones] will pay all taxes . . . and other charges relating to the Property when due." (A copy of the Mortgage is attached to the Affidavit of Mark A. Mossell filed herewith.) Paragraph 13 of the Mortgage further provides as follows:

If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, . . . Lender may, without notice, perform the duties or cause them to be performed. . . . Lender's right to perform for Mortgagor shall not create an obligation to perform Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time in accordance with the terms of the [Note].

Any additional promise that Jones allegedly made to repay First Citizens for money advanced to pay delinquent taxes on the Property was thus completely redundant with promises that Jones had already made in the Mortgage, and it did not constitute consideration for a new contract.

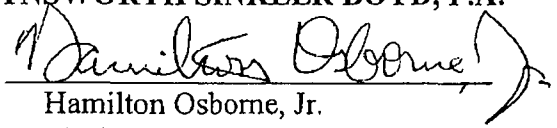
Even if the Mortgage were silent with respect to the payment of taxes, Jones would still have been legally obligated to repay First Citizens, with interest, for money advanced to pay delinquent taxes on the Property. Under South Carolina law, a mortgagee has the right, but not a duty, to pay delinquent taxes on the mortgaged property and to add the amount paid, with interest

thereon, to the debt secured by the mortgage. S.C. Code § 29-3-30 (entitled "Mortgagee may pay taxes"). Jones thus gave no new consideration to First Citizens by allegedly offering to repay First Citizens with interest if First Citizens would pay the delinquent taxes on the Property.

CONCLUSION

For the foregoing reasons, First Citizens is entitled to summary judgment on its claim against Jones and on Jones's counterclaims against First Citizens.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Hamilton Osborne, Jr.

1201 Main Street, Suite 2200

P.O. Drawer 11889 (29211-1889)

Columbia, SC 29201

(803) 779.3080 Tel

(803) 765.1243 Fax

Attorneys for Plaintiff First Citizens Bank and
Trust Company

July 19, 2011

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., certify that I served the attached document on Defendant by causing a true copy thereof to be mailed by first-class mail, postage prepaid, to Defendant's attorney of record addressed as follows:

Robert D. McKissick, Esquire
Abbott & McKissick Law Firm, LLC
P.O. Box 148
Florence, SC 29503

WITNESS my hand this 19th day of July, 2011.

Charlotte D. Ariail
Charlotte D. Ariail

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

First Citizens Bank and Trust Company, Inc.,
f/k/a Community Resource Bank, N.A., Sumter
Regions,

Plaintiffs,

vs.

Lance E. Jones,

Defendant.

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

C/A #2011-CP-43-282

**DEFENDANT'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

Defendant Lance E. Jones submits this Memorandum in Opposition to the Plaintiff's Motion for Summary Judgment dated July 19, 2011. For the reasons stated herein, the Court should deny this Motion.

FACTUAL BACKGROUND

Defendant entered into a Loan and Mortgage Agreement with Community Resource Bank, N.A. on November 16, 2006, for the sum of \$65,000.00. As collateral for this loan, the Defendant did pledge a certain 20.62 acre tract of land he owned in Sumter County. This tract of land was not the Defendant's residence. Community Resource Bank was later purchased by First Citizens Bank & Trust Company.

Defendant made all scheduled monthly payments on the Note. On July 15, 2008, Defendant was involved in a serious motorcycle accident and was unable to work for several months. As a result of his loss of income, he was unable to pay some of his bills and also was unable to pay the 2008 property taxes that were due and owing on the 20.62 acre tract. The property was eventually sold at a tax sale in December 2008 subject to the Defendant's right to

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redeem the property within a year if all taxes, penalties and interest were paid. Despite his financial difficulties, Defendant continued making his monthly loan payments to First Citizens.

Over a period of years, Defendant developed a relationship with Mr. Mark Mossell, who was employed with First Citizens as Vice President in their Sumter branch office. Mr. Mossell was the loan originator for the Defendant's loan that is the subject of this litigation. As confirmed by Mr. Mossell during his deposition, he and the Defendant talked frequently by telephone and when the Defendant came into the Sumter branch office to make payments on the loan. (*Depo. of Mark Mossell, p 12, ll. 15-24*). Mosell testified that they met "regularly" during the time period when Defendant was recovering from his injuries. (*Depo. of Mark Mosell, p. 15, ll.19-21*). They would typically converse about Defendant's business and the conversations would normally last between 5 and 10 minutes. (*Depo. of Mark Mossell, p. 18, ll. 15-24*). Defendant appreciated the "small town bank" attention that he received from Mr. Mossell and would call upon him whenever he experienced any problems or needed assistance. (*Defendant's Affidavit dated September 5, 2011*).

By notice dated October 23, 2009, the Sumter County Treasurer issued a Final Redemption Notice to both First Citizens and the Defendant advising that the property taxes in the amount of \$5,461.61 had to be paid by 5:00 p.m. on December 2, 2009 or a tax sale deed would be issued to the bidder. The following facts are undisputed:

1. Both the First Citizens and the Defendant received the October 23, 2009 notice and had actual knowledge that the property taxes had to be paid before December 2, 2009;
2. That First Citizens, by and through its employees, made the decision to pay the property taxes;

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3. That First Citizens, by and through its employees, did send a check request to their accounting department requesting that a check in the amount of \$5,461.61 be issued and mailed to the Sumter County Treasurer's office;
4. The property taxes due on the Defendant's real property were never paid and a Tax Deed was issued to bidder;
5. Once the decision was made by First Citizens to pay the property taxes, they never requested that the Defendant deliver the check for payment of the taxes to the Sumter County Treasurer's office.

In addition, Defendant attests that he specifically called Mr. Mossell when he received the Final Redemption Notice in late October 2009. During this telephone conversation, Mossell stated that he already knew about the delinquent taxes and stated that they had to be paid. Defendant asked him if First Citizens could loan him the funds to pay the taxes and deliver the check to the Treasurer's office and Mossell responded it "would be taken care of." (*Jones Affidavit*).

SUMMARY JUDGMENT STANDARD

In determining whether summary judgment is proper, the Court must view all evidence in the light most favorable to the non-moving party. Summary judgment is appropriate when it is clear that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. 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 light most favorable to the nonmoving party. *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 285, 543 S.E.2d 563, 566 (Ct. App. 2001).

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DISCUSSION

The central crux of this case is that First Citizens, by the affirmative acts of their employee, Mark Mossell, undertook a duty to pay the property taxes due on the Defendant's property. This factual allegation, along with the undisputed fact that the property taxes were not paid, creates a genuine issue of material fact for the jury's consideration.

As a general rule, a person has no duty to act affirmatively to protect the interest of others. However, there are exceptions to this general rule and they include where a person voluntarily undertakes to act for the benefit of the Plaintiff. Also, an affirmative legal duty to act exists if created by statute, contract, relationship, status, property interest, or some other special circumstance. *Carson v. Adgar*, 326 S.C. 212, 486 S.E.2d 3 (1997). Where a person has an affirmative duty to act or voluntarily undertakes to act, a person must use a duty of due care to prevent injury to the other person.

At the outset, Plaintiff argues in their Motion for Summary Judgment that the only duty that arose between the parties' was that of a contractual duty and that there exists no action in tort this case. This is simply erroneous. A breach of duty arising independently of any contract duties between the parties may support a tort action, and when "there is a special relationship between the alleged tortfeasor and the injured party not arising in contract, the breach of that duty will support a tort action." *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding*, 320 S.C. 49, 463 S.E.2d 85 (1995) (case involving a building contractor who asserted various tort claims against the Engineer for failing to properly design and oversee a construction project; there was a contact between the building contractor and the engineer).

Several South Carolina appellate court decisions have addressed the issue of a party undertaking a duty in the context of economic damages and with facts similar to the case before the Court. In Caldwell v. Jim Walter Homes, Inc., 293 S.C. 229, 359 S.E.2d 518 (Ct. App. 1987), Caldwell purchased a home from Jim Walter Homes subject to an installment sales contract. Caldwell was contractually obligated to pay the property taxes, but the record revealed that the tax notices were mailed to the Jim Walter Home's corporate office and they had been paying the taxes for a number of years. When the Caldwell's account became delinquent, Jim Walter Homes made the decision not to pay the delinquent taxes and failed to send Caldwell any of the notices they received from the treasurer's office. The property was eventually sold at a tax sale.

Caldwell eventually filed suit against Jim Walter Homes, Inc. alleging negligence. At trial, a jury returned a verdict for Caldwell. The Court of Appeals affirmed the verdict and held that by "course of dealing, Jim Walter Homes undertook a duty to inform the Caldwells their property was in danger of being sold when Kershaw County officials" notified it of this fact." *Id* at 519-520.

The matter of Murray v. Bank of America, 354 S.C. 337, 580 S.E.2d 194 is also particularly relevant to the case *sub judice*. An imposter opened an account in Murray's name at Bank of America and eventually multiple checks were written against insufficient funds. Murray notified the bank that she had not opened the account and requested that the bank close the account and inform the merchants where the checks had been written that she was the victim of fraud. The Bank, however, waited almost 30 days to close the account and never contacted any merchants. Murray was eventually arrested for writing fraudulent checks and later exonerated of all charges. She eventually brought an action against the Bank alleged negligence. The Court held that there was a sufficient relationship between the parties to impose a duty of

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care upon the Bank to Murray when she went to the Bank seeking closure of the account. Id. at p. 198.

Both Caldwell and Murray support Defendant's assertion that Mossell's affirmative act of stating that First Citizen would pay the property taxes created a duty on part to act with due care. Further, the course of conduct between Mossell, acting on behalf of First Citizens, and Defendant created a "special relationship" that created a duty on the part of First Citizens to exercise due care in ensuring that the property taxes were paid. There is sufficient evidence to support the lack of due care exercised by First Citizens in this matter. First Citizens has failed to produce a copy of the check that it allegedly sent to the Sumter County Treasurer's office. There is also no evidence that any one acting on behalf of First Citizens ever followed up or called the treasurer's office to confirm if the check had been received. In their depositions taken on Thursday, December 8, 2011, Ronald Derrick and Joyce McKulka, both employed with First Citizen's in their Credit Resolution Department, testified that there was no "tickler" or calendaring system in place during the time period of November 2009. In addition, they both testified that as a direct result of the property taxes not being paid in this case, First Citizens has changed its internal policy with regard to payment of delinquent property taxes. The bank now attaches a note to their check requesting a paid receipt and also has a "tickler system" in place to follow up on files where receipts have not been received. This evidence provides more than a sufficient basis to create a genuine issue of fact in this case as to whether First Citizens acted with due care in paying the property taxes on the Defendant's property.

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CONCLUSION

For reasons stated herein, the Defendant respectfully requests that the Court deny Plaintiff's Motion for Summary Judgment.

A handwritten signature in black ink, appearing to read 'R. D. McKissick', is written over a horizontal line.

ROBERT D. MCKISSICK
Attorney for Defendant

ABBOTT & MCKISSICK LAW FIRM, LLC
702 West Evans Street
Post Office Box 148
Florence, SC 29503
(843) 669-0089 (o)
(843) 669-0085 (f)

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STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

First Citizens Bank and Trust Company, Inc.,
f/k/a Community Resource Bank, N.A., Sumter
Regions,

Plaintiff,

vs.

Lance E. Jones,

Defendant.

IN THE COURT OF COMMON PLEAS

THIRD JUDICIAL CIRCUIT

CASE NUMBER: 2011-CP-43-280

**AFFIDAVIT OF
DEFENDANT LANCE E. JONES**

PERSONALLY APPEARED before me, Lance E. Jones, who, being duly sworn, deposes and says:

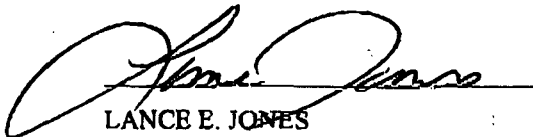
1. My name is Lance E. Jones and I am the Defendant in this matter
2. I took out a loan with Community Resource Bank in November 2006. As collateral for the loan, I pledged approximately 20⁰⁰ acres of land I owned in Sumter, South Carolina near Lens Heavens Road.
3. The loan originator for this loan at Community Resource Bank was Mark Mozell. After I took out this loan, I would typically take my monthly payment by the office of Community Resource Bank, which was located in Sumter, and walk inside to make the payment. I would usually stop by Mr. Mozell's office and we would have a conversation about my business and how things were going in my life. I always appreciated his "small town bank" attention. Whenever I needed anything at the bank, I always called upon Mr. Mozell and he would always do his best to help me with any problems or give me any assistance I needed.
4. I was involved in a serious motorcycle accident on July 15, 2008. I was unable to work for several months after the accident and, as a result, experienced some financial hardship and

got behind on behind of some of my bills. I also was unable to pay the property taxes on the 20 acres and it was sold at a tax sale in December 2008. I was aware that I could redeem the property if I paid the past due taxes plus interest and penalties.

5. On or around October 2009, I received a tax notice from the Sumter County Treasurer's office, a copy of which is attached as Exhibit "1", indicating that I owed \$5,461.61 in property taxes. Upon receiving this tax notice, I immediately called Mr. Mozell at his office. When I discussed the notice with him, he responded that he was already aware of the past due taxes and that the taxes had to be paid. I asked him if he would add the amount due for the taxes to my loan and pay the taxes on the property. He said it "would be taken care of." It was my understanding from speaking with Mr. Mozell that Community Resource Bank (or the bank may have merged with First Citizens Bank by this time) would add \$5,461.61 back to my loan, and that they would be responsible for sending the payment to the Sumter Co. Treasurer's office to pay the taxes.
6. After that meeting with Mr. Mozell in October 2009, I continued to make the monthly payments on the loan. I never received any letters or information that would have led me to believe that the property taxes had not been paid. Around October or November of 2010, a friend called me to ask me if I had sold my 20 acres because he had been told by another friend that he now owned my 20 acres. I called Mr. Mozell immediately upon hearing this information and Mr. Mozell told me that my 20 acres had been sold and the bank's lawyers were already looking into it. He also told me that the bank's lawyers were going to try to get the property back and that I should continue to make my monthly payments on the loan.
7. At some time after I discovered that the property taxes had not been paid, I went to one of the bank's offices in Sumter to see what information another employee, aside from Mr. Mozell,

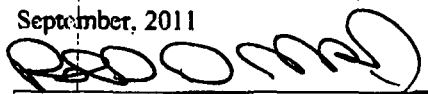
would give me concerning the situation. I had a conversation with Judy Pandorf and she wrote down some information of a bank stick-it note concerning my property taxes and gave it to me. A copy of the note is attached to this affidavit as Exhibit "2", and it indicates that the amount of \$5461.61 was added back to my loan and the property taxes were paid on October 29, 2009.

8. I last talked to Mr. Mozell around the end of November 2010. He said that the bank's lawyers had not been able to get the tax sale reversed and that it might take months before it happened. It was during this conversation, he suggested that I perhaps retain a lawyer to represent me in this matter.


LANCE E. JONES

Sworn to me this 5 day of

September, 2011


Notary Public for South Carolina

My Commission Expires: 11-13-18

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Unclaimed by you



Office of the Sumter County Treasurer

Sumter County Administration Building
13 East Canal Street
Sumter, South Carolina 29150

Telephone: (803)436-2213

CAROLINA B. RICHARDSON
TREASURER

FINAL REDEMPTION NOTICE

October 23, 2009

Spence E. Jones
2975 Lrs Heavens Rd.
Sumter SC 29154

Ref: TMS# 1840002093

Lrs Heavens Rd.

Dear Sir/Madam,

On December 1, 2008 the above referenced property was sold at a tax sale for 2007 delinquent taxes.

You may redeem your property by paying \$ 5461⁶¹. This amount represents 2007 taxes with penalties & delinquent costs, 2008 taxes and 12 % interest of the bid price. If you intend to redeem, you must do so by 5:00 p.m. on December 2, 2009. After this date a tax sale deed will be issued to the bidder.

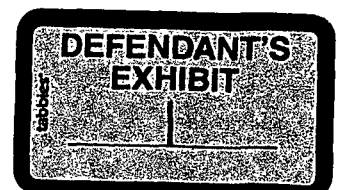
Please remit with cash, cashiers check or money order.

Sincerely,

Carolina B. Richardson

Carolina B Richardson
County Treasurer/Tax Collector

000030



First Citizens
We're on it.

Judy
Pandroff.

\$5461.61 paid
10/29/09
Add back loan

SET THE PACE

000081



STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

First Citizens Bank and Trust Company, Inc.,
f/k/a Community Resource Bank N.A., Sumter
Regions,

Case No. 2011-CP-43-282

Plaintiff,

v.

Lance E. Jones,

Defendant.

**PLAINTIFF'S RESPONSES TO
DEFENDANT'S REQUESTS FOR ADMISSION**

Plaintiff responds as follows to Defendant's Requests for Admission dated November 14, 2011:

1. Please admit or deny that the Plaintiff had actual knowledge that the Defendant had to redeem the real property that is the subject of this litigation on or before December 2, 2009 or lose the real property to a tax sale deed.

Admitted.

2. Please admit or deny that the Plaintiff sent a check for \$5,461.61 representing payment of the Defendant's real property taxes for 2007 and 2008 to the Sumter County Treasurer at the address of Post Office Box 1775, Sumter, South Carolina 29151.

Admitted.

3. Please admit or deny that the correct mailing address for the Sumter County Treasurer, both during 2009 and currently, is 13 East Canal Street, Sumter, South Carolina 29150.

Denied. The Sumter County Treasurer receives mail at 13 East Canal Street, Sumter, South Carolina 29150, but the Treasurer also receives, and in 2009 received, mail at Post Office Box 1775, Sumter, SC 29151.

4. Please admit or deny that the check for \$5,461.61 representing payment of the Defendant's real property taxes for 2007 and 2008 was mailed on or around November 2, 2009.

Admitted.

5. Please admit or deny that the sum of \$5,461.61, representing payment of the Defendant's real property taxes for 2007 and 2008, was added to the loan agreement between the Plaintiff and Defendant, and then later removed when it was discovered that the real property taxes were not paid.

Admitted.

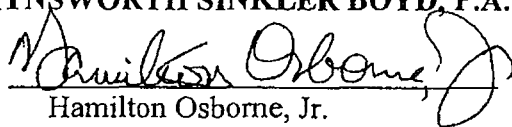
6. Please admit or deny that once the decision was made by the Plaintiff to pay the real property taxes owed on the Defendant's real property, that the Plaintiff never made any request to the Defendant that he or anyone acting on his behalf deliver the actual payment to the Sumter County Treasurer's Office.

Admitted.

7. Please admit or deny that the Plaintiff never communicated to the Defendant that the payment for the real property taxes had not been received by the Sumter County Treasurer until some period in 2010.

Admitted on information and belief; however, Plaintiff itself did not become aware until sometime in 2010 that the Treasurer had not deposited the check. Plaintiff does not know, and has no way of knowing, whether the Treasurer did not receive the check or received the check and failed to deposit it.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Hamilton Osborne, Jr.

1201 Main Street, Suite 2200

P.O. Drawer 11889 (29211-1889)

Columbia, SC 29201

(803) 779.3080 Tel

(803) 765.1243 Fax

Attorneys for Plaintiff First Citizens Bank and
Trust Company

November 21, 2011

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., certify that I served the attached document on Defendant by causing a true copy thereof to be mailed by first-class mail, postage prepaid, to Defendant's attorney of record addressed as follows:

Robert D. McKissick, Esquire
Abbott & McKissick Law Firm, LLC
P.O. Box 148
Florence, SC 29503

WITNESS my hand this 21 day of November, 2011.



Charlotte D. Ariail

State of South Carolina
County of Sumter

In Common Pleas Court

First Citizens Bank and Trust
Company, Inc. f/k/a Community
Resource Bank, N.A., Sumter Regions,

COPY

Plaintiff,

V.

2011-cp-43-280

Lance E. Jones,

Defendant.

Deposition of: Mark Mossell

Location: 683 Bultman Drive
Sumter, South Carolina

Date: Thursday, August 18, 2011

Time: 9:30 a.m. - 10:35 a.m.

Court Reporter: Kathleen M. Hagood

The deposition is taken pursuant to notice and/or
agreement, in the above-entitled cause pending in
the above-named court and pursuant to the
South Carolina Rules of Civil Procedure.

Q & A Court Reporting Services
Post Office Box 4563 (29502)
Florence, South Carolina
Toll Free (866) 673-9845 Local (843) 673-9845
Fax (843) 661-2960
e-mail: Info@qacourtreporting.com
visit: www.qacourtreporting.com

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1 A P P E A R A N C E S

2 For the Plaintiff:
Haynsworth, Sinkler, Boyd, P.A.
3 1201 Main Street, 22nd Floor
PO Box 11889
4 Columbia, SC 29201-3232
By: Hamilton Osborne, Esq.
5

6
7 For the Defendant:
Abbott & Mckissick
8 402 West Evans Street
Florence, SC 29501
9 By: Robert D. Mckissick, Esq.

10
11 Also Present: Lance E. Jones

12

13 I N D E X
Examination by Mr. Mckissick

3

14

15 E X H I B I T S

16 Defendant's:

17	Pg/ln	Ex.	Description
		1	Final Redemption Notice
18		2	Accounts Payable form
		3	Copy of sticky note

19

20

21

22

23

24

25

** uh-huh = affirmative
huh-uh = negative

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1 S T I P U L A T I O N S

2 It is stipulated between Counsel that
3 this deposition is being taken pursuant to the
4 South Carolina Rules of Civil Procedure; and that
5 all objections, except as to the form of the
6 question, are reserved until the time of trial.

7 It is also stipulated between Counsel
8 for the respective parties and the deponent that
9 the deponent will exercise the right to read and
10 sign this transcript.

11 Thereupon,

12 Mark Mossell,
13 being first duly sworn by the Court Reporter, as
14 hereinafter certified, testified as follows:

15 E X A M I N A T I O N

16 BY MR. MCKISSICK:

17 Q Good morning, Mr. Mossell.

18 A Good morning.

19 Q We met just a minute ago, but for the
20 record my name is Robert McKissick. I'm
21 representing Lance Jones in this litigation that
22 we're here about today. The court reporter had
23 already kind of given you some ground rules of
24 some things you need to do this morning. It's my
25 understanding you've never had your deposition

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1 taken before?

2 A That's correct.

3 Q Okay. Like she indicated, if you will,
4 try to give a verbal response to my questions. If
5 it -- if the response requires a yes or no
6 response, if you will, say yes or no instead of
7 uh-huh or huh-uh. I'll know what you're talking
8 about as we sit here today, but when we go back
9 and read the transcript -- uh-huh and huh-uh are
10 actually spelled the same way, so we may not be
11 able to tell what you actually meant when we go
12 back and read the transcript, so...

13 A Okay.

14 Q If we need to take a break, just let me
15 know. I'll be happy to accommodate you in any way
16 I can.

17 A Okay.

18 Q I don't anticipate we're going to be
19 here too long, but if you need to take a break
20 just let me know. I'm just here to find out what
21 you know about this particular case. I'm not here
22 to trick you, I'm not here to confuse you in any
23 way. So if for any reason you don't understand my
24 question, if you would, ask me to rephrase it,
25 reword it. I'm here to -- we're here -- I'm here

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1 to try to just find out information.

2 A Okay.

3 Q So I just want to make sure we're on
4 the same page when you answer my questions. If --
5 I'm going to assume that if you answer my
6 question, that you did understand the question and
7 you answered it truthfully.

8 A Okay.

9 Q Is that -- is that fair?

10 A That's fair.

11 Q Okay. All right. Just want to get a
12 little bit of background information about you.
13 Could you tell me your full name?

14 A Mark Alan Mossell.

15 Q Okay. And where do you currently live?

16 A Here in Sumter.

17 Q And how long have you lived in Sumter?

18 A For 26 years.

19 Q Okay. Are you married?

20 A Yes.

21 Q And what is your wife's name?

22 A Laura.

23 Q Any children?

24 A Yes.

25 Q How many?

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1 A Three.

2 Q And where did you go to school?

3 A I attended Sumter High School here in
4 Sumter and then the University of South Carolina.

5 Q And what year did you graduate from
6 Carolina?

7 A 2006.

8 Q And what is your date of birth?

9 A June 30th of '70.

10 Q Okay. And your degree from Carolina,
11 what is that in?

12 A Business Management.

13 Q And just want to find out a bit about
14 your employment background, the jobs that you've
15 worked at --

16 A Sure.

17 Q -- since you graduated from Carolina.
18 Maybe we can start from the first job that you
19 worked at after graduation.

20 A Well, I took the circuitous route
21 through my educational career and I was employed
22 by this bank -- actually Community Resource Bank,
23 which was the predecessor to First Citizens, at
24 the time that I graduated from school.

25 Q Okay. And what was your job title

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1 while you were working with the Community Resource
2 while attending school?

3 A I was an assistant vice president,
4 commercial relationship manager.

5 Q And do you remember what year you
6 actually started at Community Resource?

7 A 2005. And that was actually at Sumter
8 National Bank, which became Community Resource,
9 which then became First Citizens.

10 Q Okay. And so my understanding, you
11 were attending school while you were actually
12 employed --

13 A Correct.

14 Q -- with the bank? Okay. And have you
15 remained with Community Resource and then
16 subsequently First Citizens since?

17 A Yes.

18 Q Okay. So all total, how many years
19 have you been employed with this particular bank?

20 A With First Citizens?

21 Q Well, I guess starting with Community
22 Resource and then once they merged with --

23 A I was hired in --

24 Q -- First --

25 A -- January of 2005 by Sumter National

1 Bank, and through the two name changes my
2 employment has been continuous.

3 Q Okay. And have your responsibilities
4 or job titles changed at all since January of
5 2005?

6 A When we became First Citizens my role
7 evolved to more of a small-business banker as
8 opposed to an individual focusing primarily on
9 commercial activities. First Citizens allows me
10 to expand the -- the customer base that I'm
11 allowed to deal with, so I -- I do some -- some
12 retail lending, some small-business lending, some
13 small commercial lending.

14 Q Okay. And how many branches does First
15 Citizens have here in Sumter?

16 A We have three.

17 Q Is this the -- the largest branch as
18 far as the number of employees or --

19 A Yes.

20 Q -- amount of deposits?

21 A Yes.

22 Q Okay. So I'm assuming as being in the
23 retail lending, dealing with small commercial
24 loans, that you originate loans?

25 A I do.

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1 Q Okay. How many loans would you say you
2 originate per year? Do you -- and I -- I'm not
3 going to hold you to a specific figure, just --

4 A In---

5 Q -- just ballpark.

6 A Including new loans and renewals of
7 existing loans, probably between 150 and 200.

8 Q Okay. And are some of these loans
9 mortgage loans?

10 A Yes.

11 Q Okay. Are the larger percentage of the
12 loans that you originate per year mortgage loans?

13 A The larger percentage would probably be
14 loans secured by other collateral or unsecured.

15 Q And when you mean by other collateral,
16 you mean not by land?

17 A Correct.

18 Q Okay.

19 A Car titles, equipment.

20 Q Okay. And for the -- the loans that
21 you originate that are secured by land that have
22 mortgages, what is First Citizens' policy with
23 regard to escrowing property taxes?

24 A On a loan where we -- on -- on a -- a
25 loan secured by residential land is the question

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1 that you're asking me?

2 Q Yes, sir.

3 A Okay. For example, in -- in -- in
4 Lance's case, we would call that an in-house loan.
5 That's not a loan that's run through our mortgage
6 department, and as such we would not typ--- we --
7 we do not escrow taxes or insurance on that type
8 of a loan.

9 Q And what is the -- the reason for that?

10 A That, I can't answer. I don't know if
11 it's a -- if it's a strategic decision by the bank
12 or if it's demand from customers. Most -- I -- I
13 can't answer that question. I don't know.

14 Q Okay. You know Lance Jones; correct?

15 A Yes.

16 Q How long have you known Mr. Jones?

17 A I guess since 2006 when the loan was
18 originated.

19 Q Okay. Did you have any relationship
20 with Mr. Jones prior to 2006, when this particular
21 loan came into being?

22 A I don't believe so.

23 Q Okay.

24 A I don't think so.

25 Q Do you have any social or personal

1 relationships with Mr. Jones or anyone in his
2 family outside of the --

3 A No.

4 Q -- this business relationship?

5 A No.

6 Q Okay. What do you recall about the --
7 the loan that you originated for Mr. Jones back in
8 2006?

9 A Be more specific as far as what you're
10 looking for.

11 Q Is there any -- aside from the -- the
12 documents that I've been provided, is there
13 anything that stands out in your mind about the
14 loan?

15 A No. I would say it was a fairly
16 routine transaction.

17 Q Okay. And this was a mortgage that you
18 kept, I guess, in-house?

19 A Yes.

20 Q Okay. So taxes and insurance were not
21 required to be escrowed?

22 A Correct.

23 Q Okay. And the original loan amount was
24 for 65,000 dollars?

25 A I don't have the documents in front of

1 me --

2 Q Okay.

3 A -- but if you say that, that sounds
4 like it would be correct.

5 Q And it appears that there was a balloon
6 feature on this particular loan?

7 A I believe that was correct, yes.

8 Q Okay. And in 2006, 2007, 2008 were you
9 aware of any problems that Mr. Jones was having as
10 far as making his regular scheduled payment?

11 A Yes.

12 Q You were aware of some problems?

13 A Yes.

14 Q Okay. Tell me about that.

15 A Lance and I -- and I don't remember
16 specifically when it began, but Lance and I would
17 have frequent contact, usually initiated by me
18 when I was attempting to speak with him regarding
19 a past-due payment. And so I -- usually that
20 would happen by a telephone call and then we'd
21 speak, and then usually the last or the
22 second-to-last business day of the month we would
23 get together and -- and have nice conversations
24 and at that time he'd make a -- a loan payment.

25 Q Okay.

1 A So I was aware that -- that he was
2 struggling and -- of course you're aware of his
3 motorcycle incident that -- that he had. And I
4 don't know if -- I -- I just -- I don't recall if
5 there were repayment issues prior to that, but
6 certainly that was a critical incident that
7 impacted his ability to repay.

8 Q Okay. Is it fair to say that the --
9 these repayment issues that you just spoke about,
10 the majority of them, if not all, occurred after
11 his motorcycle accident?

12 A That, I can't say.

13 Q Okay. So there could have been some
14 instances where you had to make a phone call to
15 Mr. Jones prior to the accident?

16 A There could have been; yes, sir.

17 Q Okay. How does that work? You would
18 get a notice from the bank that this particular
19 account was past due?

20 A I have a report that I manage, and
21 the -- and the report contains information
22 regarding loans that are current, loans that are
23 past due, and loans -- loans that need attention.

24 Q Okay. How often do you receive that
25 particular report?

1 A It's available to me on a daily basis.

2 Q Okay. So is it generated like through
3 email or --

4 A It's on our database.

5 Q -- a paper document?

6 A It's on our database.

7 Q Okay. So it's something you can just
8 access from your computer?

9 A Yes.

10 Q If there were some times where
11 Mr. Jones was behind on his payment prior to his
12 accident, do you recall any of the reasons or --
13 that he would've given you for not being able to
14 make the payment on a timely basis?

15 A I don't recall any specific reasons for
16 the time period before or after his accident, but
17 I can tell you that typically the conversations
18 that we had revolved around lack of cash flow from
19 the business, lack of consistency -- a consistency
20 in work, routine stuff that was not uncommon to --
21 to Lance or other customers of mine.

22 Q Okay. How -- what did you know about
23 his -- this motorcycle accident? How -- what did
24 you know and how did you find out about this
25 particular accident?

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1 A Well, I knew he had been in an
2 accident. And I don't recall how I was informed,
3 but I do rem--- I do re--- recall being told that
4 he had been in the accident and that he -- perhaps
5 it was his wife that told me. I -- I just -- I
6 don't remember, but -- but knew that he had been
7 in -- in the accident and that it was a bad
8 accident and -- and then we had conversations for
9 some time thereafter during his recovery,
10 detailing the issues he was facing with his
11 business and -- and loan repayment.

12 Q Okay. So did you meet with Mr. Jones
13 during this time or was it more of just by
14 telephone?

15 A During the time of his accident?

16 Q Yes, sir.

17 A During the time of his accident he was
18 in the hospital for a period of time. I -- I
19 can't say for how long he had been out of the
20 hospital before we first met, but I -- he and I
21 did meet. We met regularly. And I can't say how
22 long it was after he was released from the
23 hospital that we met, but we did meet during his
24 recuperation period.

25 Q Okay. Did First Citizens restructure

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1 the loan as a result of this hardship, or did --
2 or were payments continued to be made as
3 scheduled?

4 A Payments were continued to be made as
5 scheduled, however there was a point of time where
6 we restructured the loan to allow a three-month
7 interest-only repayment period where principal was
8 deferred.

9 Q Yes, sir. And I think I received some
10 documentation concerning that particular
11 restructuring. Is that the restructuring that
12 occurred in 2010?

13 A I don't recall the date, but that's --
14 that could be correct.

15 Q Was there more -- was there more than
16 one restructuring of his loan?

17 A No.

18 Q So I've been provided some
19 documentation from your attorney; presumably it
20 came from your office. Says that a payment
21 schedule change was made, note will be modified to
22 provide interest-only terms for a period of three
23 months beginning 3-18, 2010 and ending 5-18, 2010
24 with regular terms resuming with the June 16, 2010
25 payment?

1 A That sounds correct.

2 Q Is that the restructuring you were
3 discussing?

4 A Yes.

5 Q Okay. No other modifications were made
6 aside from that?

7 A None that I'm aware of.

8 Q Okay. And this would -- this is your
9 account; correct?

10 A Correct.

11 Q So you would have been aware if there
12 would have been other --

13 A Correct.

14 Q -- restructuring? Okay. Do you recall
15 having a meeting with Mr. Jones at some period in
16 October of 2009 towards the latter period of the
17 month?

18 A I don't recall any specific meetings
19 that Lance and I had, no. However as I said,
20 Lance and I would meet very regularly, and I --
21 at -- at least once a month to collect a payment.

22 Q Okay.

23 A So did we meet in October of '09? I
24 don't know, but I would speculate that we probably
25 did for the reason of collecting a payment.

1 Q Okay. So the -- the regular schedule
2 would be for Lance to come into the bank and
3 actually give you the payment?

4 A Usually that's how it would happen.
5 Sometimes he would send it by his wife, but
6 usually Lance would bring it in.

7 Q Okay. And would he just leave it with
8 the -- the teller, or would he actually come to
9 your office and would -- would y'all actually --

10 A Some--- sometimes he would leave it,
11 sometimes he would come to my office. It depended
12 on what my situation was at that time, if I had
13 someone with me.

14 Q Sure.

15 A If I was available I would always try
16 to speak with him.

17 Q Okay. Would y'all -- what would y'all
18 talk about? I mean, what...

19 A I -- I always -- I always like to know
20 what's happening with my customers and -- and
21 what's happening with their business and their
22 lives, and so the -- the conversations would
23 usually revolve around what's going on with his
24 business.

25 Q Okay. How long would the meetings --

1 when y'all met, how long would they last?

2 A They were brief. Five or ten minutes.

3 Q Okay. Do you recall an issue arising
4 in 2009 with regard to delinquent property taxes?

5 A No.

6 Q Okay. I'm going to show you --

7 MR. MCKISSICK: If we can have that
8 marked...

9 (Defendant's Exhibit number 1
10 Marked for identification.)

11 BY MR. MCKISSICK:

12 Q I'm going to show you what's been
13 marked as Defendant's Exhibit number 1. Do you
14 recognize that particular document?

15 A I've seen this type of form before,
16 yes.

17 Q Okay. Have you ever specifically seen
18 this particular document as it relates to Lance
19 Jones and the property that -- that was secured by
20 the First Citizens loan?

21 A To my recollection, the first time I
22 saw this was when I received the package that you
23 have there with all of our documents.

24 Q Okay. But you have seen this type of
25 notice from the Treasurer's Office?

1 A I have, yes.

2 Q And in conjunction with any of the
3 loans that you've originated?

4 A With most of the loans that -- that
5 have this type of a notice, I would usually see
6 it.

7 Q And is -- is the policy for the notice
8 to -- it's not -- for instance, this particular
9 document is not addressed to you, it's addressed
10 to Community Resource Bank?

11 A Correct.

12 Q Is the bank's policy -- when this type
13 of document is received by the bank, is it
14 forwarded to the person who was responsible for
15 originating the loan?

16 A I can't answer that because the
17 processes have changed as the bank has evolved.
18 When we were Sumter National Bank in 2006 and 2007
19 I saw these notices fairly regularly. As we
20 became Community Resource Bank our loan operations
21 were centralized out of our Orangeburg office,
22 which is this address that this document was
23 mailed to. I typically would not have seen them
24 in that case. As we became First Citizens, our
25 Orangeburg operations migrated over to Columbia

1 and there was a period of time to where we --
 2 there was dual operations. And if a document like
 3 that were to be mailed to Orangeburg today it
 4 would be forwarded to Columbia and Columbia would
 5 handle it out of our loan operation center with
 6 First Citizens.

7 Q Okay. So in October of 2009 the bank
 8 was still Community Resource Bank --

9 A No.

10 Q -- is that correct?

11 A We were First Citizens at that point.

12 Q You were First Citizens at that point?

13 A Yes.

14 Q Okay. So in -- in October of 2009, if
 15 this notice was sent to the Community Resource
 16 Bank in Orangeburg, as I understand your
 17 testimony -- and correct me if I'm wrong -- this
 18 notice would have been sent to Columbia?

19 A You're asking me if this particular
 20 notice, if it was mailed in October of 2009 would
 21 it have been -- if it was mailed to Orangeburg
 22 would it have been sent to Columbia?

23 Q Well, if -- yes. If you can -- if you
 24 can answer that question, yes.

25 A My assumption is that it would've been.

1 Because that's where these -- that -- that's --
2 you know, that -- that's where this would be
3 handled at that point.

4 Q Okay. And once it's delivered to the
5 Columbia office -- which is I guess the main
6 central operating office of First Citizens?

7 A Yes.

8 Q Once it's received in Columbia, what
9 happens to it at that point?

10 A Well, this is a document that requires
11 critical attention. And so if there is a threat
12 to loss to the bank, then the bank would evaluate
13 its options with regard to whether we need to
14 contact the customer to determine if taxes had
15 been paid. And if -- if the customer says that
16 taxes haven't been paid, then we would make the
17 decision as to whether the bank needed to pay the
18 taxes to protect our interest in the property.

19 Q Okay. Have you had an opportunity or
20 an occasion before throughout your employment with
21 Community Resource or First Citizens to receive a
22 notice like this on a customer of yours?

23 A Have I received a notice like this --

24 Q Yes.

25 A -- before on a customer of mine? Yes.

1 Q On how many occasions?

2 A I can't -- I can't specify.

3 Q Okay. More than ten?

4 A Yes.

5 Q Okay. And what would your response be
6 when you would receive a notice like this?

7 A Well, again it would depend on when I
8 received the response, because again with
9 processes that have changed -- when we were Sumter
10 National Bank and then when we became Community
11 Resource Bank, during that time when we were
12 Sumter National Bank I would have handled this
13 myself. When we became Community Resource Bank,
14 that function was centralized out of Orangeburg.
15 I would've been notified when the document was
16 received and it would've been my job to contact
17 the customer to determine if taxes had been paid.
18 But when we became First Citizens that role was
19 taken away.

20 Q And do you know when the date that you
21 became First Citizens?

22 A We became First Citizens October 31st
23 of 2008. We converted operationally to the First
24 Citizens computer system on December 8, 2008.

25 Q Okay. So is it my understanding of

1 your testimony that after December of 2008 you
2 would not have been -- you would not have received
3 a delinquent tax notice like this on the loans
4 that you had originated?

5 A Correct.

6 Q So that would have been handled in the
7 Columbia office?

8 A Correct.

9 Q So there would not be any contact or
10 communication at all between Columbia and you or
11 this office with regard to delinquent tax notices?

12 A I -- I can't remember receiving any
13 contact regarding any of my customers who have
14 delinquent taxes since that operational conversion
15 has occurred.

16 Q Okay. Well, prior to the -- that
17 con--- prior to the changing in December of 2008,
18 if you did get a notice like this you would have
19 called the customer?

20 A Pr--- yes. I would have -- that
21 would've been my first call.

22 Q Why is this such an important document?

23 A Well, as we know from this situation,
24 if the taxes are not paid then the property is
25 sold at tax sale and then there's a redemption

000108

1 period. And if the property is not redeemed
2 during that redemption period, then the property
3 can be lost. And if the property is lost, then
4 our mortgage becomes invalidated and we no longer
5 have collateral securing the underlying loan.

6 Q And have -- have you ever had the
7 occasion to -- with loans that you've been
8 involved with and originated, have you ever had
9 the occasion to just pay the delinquent property
10 taxes without notifying the customer?

11 A Have I had the occasion? I don't
12 believe so. I don't believe so.

13 Q Have you ever had the occasion where
14 you talked with a customer about delinquent
15 property taxes and they did not have the funds
16 available to pay the property taxes?

17 A Yes. I've had that conversation
18 before.

19 Q Okay. And with one of your customers?

20 A Yes.

21 Q And do you recall how that situation
22 was resolved?

23 A The one time that I can remember having
24 that type of a conversation with a customer -- I
25 can't remember who the customer was, but this was

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1 when we were Sumter National. And at that time I
2 believe we issued a check and had the -- the taxes
3 paid and the bank paid the taxes.

4 Q Okay. And how did that -- and
5 understanding -- I understand this was with Sumter
6 National. How was that amount that was paid for
7 the property taxes, how was that added back into
8 the loan? Or was it?

9 A It was.

10 Q Okay.

11 A It was -- it was added back as an other
12 charge to the loan and it showed a -- it -- it --
13 it showed in the balance on the loan.

14 Q Okay. So would it -- if the property
15 taxes were -- and I'm just using this as an
16 example -- a thousand dollars, a thousand dollars
17 would have been added to the principal balance due
18 and owing at that time?

19 A I believe that's correct; yes.

20 Q And then it would just continue to
21 accrue interest at the contract rate?

22 A Correct.

23 Q Okay. What is your first memory or
24 knowledge that there was a particular problem with
25 Mr. Jones' loan and delinquent property taxes?

1 A I think it was December of last year.
2 And I can't remember how I was notified, whether I
3 was notified by someone within the bank or --
4 or -- or whether Lance notified me. But I was
5 notified that the property had been actually lost
6 after the redemption period.

7 Q Okay. So you're not certain who
8 notified you?

9 A I don't recall.

10 Q And that would have been December of
11 2010?

12 A Correct.

13 Q Okay. And what steps or action did you
14 take when you first received notification?

15 A I contacted our loan operations
16 department and --

17 Q And where is that located?

18 A That's in Columbia.

19 Q Okay.

20 A -- and asked for assistance on whe---
21 on determining whether that indeed was the case.

22 Q Okay. And was that confirmed that the
23 property had been sold at a tax sale?

24 A Yes.

25 Q Okay. Has First Citizens attempted to

000111

1 make any inquiry to the Treasurer's Office in
2 Sumter with regard to --

3 A I can't --

4 Q -- to the non-paid taxes?

5 A I can't say for certain, but I believe
6 we have.

7 Q Okay. Have you made that inquiry
8 yourself?

9 A I have not.

10 Q I'm going to show you what I want --
11 what we'll mark as Defendant's Exhibit number 2,
12 which has also been produced through the discovery
13 process.

14 (Defendant's Exhibit number 2
15 Marked for identification.)

16 BY MR. MCKISSICK:

17 Q And can you tell me what that
18 particular document is?

19 A This apparently is a request for a
20 check, which is an internal document from the
21 bank, to where we can track when a check is
22 issued, who's authorizing the check and to whom
23 it's to be paid.

24 Q Okay. And what is the request for --
25 what's the check amount request in this particular

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1 document?

2 A \$5,451.61 (sic), I believe.

3 Q And is that the same amount that -- of
4 taxes that are indicated on Defendant's Exhibit
5 number 1?

6 A 5461.61. It appears to be, yes.

7 Q Okay. Do you have any knowledge of how
8 this document came into being, as far as who --

9 A No, I don't.

10 Q -- who requested this check to be
11 issued?

12 A On the document it indicates that Ron
13 Derrick -- Ronald Derrick requested the check.

14 Q And who is Ronald Derrick?

15 A He is a -- a member of our loan
16 operations department team.

17 Q And where is his office?

18 A In Columbia.

19 Q And was he working in Columbia in
20 October of 2009?

21 A I don't know that for certain, but I
22 believe so.

23 Q Has he ever worked at this particular
24 branch?

25 A No.

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1 Q Do you know Mr. Derrick?

2 A I've spoken with him on the phone
3 before, but I don't know him.

4 Q Have you ever had any conversations
5 with Mr. Derrick concerning Mr. Jones' account?

6 A Not with him, no.

7 Q Okay. Is this a document --
8 Defendant's Exhibit number 2, is this a document
9 that is generated for all checks that are issued
10 by the bank?

11 A No.

12 Q Okay. How was this document -- what's
13 the significance of this particular document?

14 A It's to document that a check has been
15 requested and issued.

16 Q Okay. Have you ever seen this
17 particular form before?

18 A Not --

19 Q Not the specific form, but the general
20 form that the information is printed on, have you
21 ever seen this specific --

22 A Not until I saw this one.

23 Q -- this particular form? Okay. So
24 this is not something that this branch or -- or
25 you in particular use with regard to issuing

1 checks?

2 A No.

3 Q And the vendor's name on this
4 particular check is who?

5 A Sumter County Treasurer.

6 Q And what is -- am I assuming correctly
7 that that would be who the check is being issued
8 to?

9 A Yes.

10 Q And the date that it was approved by
11 Mr. Derrick is what?

12 A October 29th of 2009.

13 Q Okay. There is a box in the
14 right-hand -- upper right-hand corner of the form.
15 Can you read that, what your interpretation...

16 A It appears to read check number 1775.

17 Q And what do you believe that reference
18 to be?

19 A I believe this to indicate that the
20 bank issued a check in that amount with that check
21 number payable to the Sumter County Treasurer.

22 Q And do you have any knowledge that that
23 particular check was ever returned -- well, let me
24 strike that. Do you know how that check would
25 have been delivered to the Treasurer's Office?

1 A I don't.

2 Q In your prior experience in paying
3 delinquent property taxes -- I think you said
4 there have been occasions where you've done that?

5 A Yes.

6 Q How would you ordinarily have that
7 check delivered to the appropriate treasurer's
8 office?

9 A Well, being in Sumter, I would deliver
10 it directly to the courthouse here in Sumter by --
11 in -- in person.

12 Q Okay. So you would have walked it over
13 there personally yourself?

14 A If it was Sumter County taxes, yes.

15 Q Okay. And would you have obtained a
16 receipt?

17 A Yes.

18 Q Okay. Do you -- but you don't have
19 knowledge of how this particular check was
20 delivered?

21 A I don't.

22 Q Is there a -- is there a monthly
23 reconciliation of checks that are issued by the
24 bank done?

25 A I would assume so. But it's not done

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1 by me.

2 Q Okay. And when I say -- and I'm
3 ignorant when it comes to these things. But on a
4 monthly basis I balance my checkbook to see what
5 checks that I've written have cleared. And I'm
6 assum--- I'm not -- what would you call that on
7 the banking side?

8 A What you would call it with your -- I
9 mean it would be a check reconciliation.

10 Q Okay. And is it your understanding
11 that that's done every month?

12 A Again, I'm not involved in that. But I
13 would assume it's done on a -- on a periodic
14 basis. Whether it's every month or every week or
15 quarterly, I can't speak to that.

16 Q Okay. What do you -- do you have any
17 knowledge of what particular department or what
18 particular individuals do that for the checks that
19 are issued?

20 A I don't have any knowledge of that.

21 Q Okay. Do you think it's done in
22 Columbia?

23 A I would assume so, but I do not know
24 for certain.

25 Q Okay. You don't know of somebody that

1 I could contact or -- or depose who could speak to
2 those type of questions?

3 A I don't know who handles that.

4 Q Okay. I'm going to show you what's
5 going to be marked as Defendant's Exhibit number
6 3.

7 MR. MCKISSICK: Got you a copy.

8 (Defendant's Exhibit number 3
9 Marked for identification.)

10 BY MR. MCKISSICK:

11 Q Have you ever seen this particular --

12 A Nope.

13 Q -- piece of paper?

14 A Nope.

15 Q Okay. I'll represent to you that it
16 was originally a sticky note.

17 A Okay.

18 Q And it appears that it has the First
19 Citizens name and emblem in the top left-hand
20 corner.

21 A Correct.

22 Q Can you recognize or read to me the
23 name in the right-hand corner?

24 A Judy Pandorf.

25 Q Okay. Who is Judy Pandorf?

1 A She's a team member her in the branch.

2 Q And is she still employed here?

3 A Yes.

4 Q Okay. And she's a team member. What
5 is -- is that her particular title?

6 A She -- she is a commercial office
7 assistant.

8 Q Commercial office assistant? Do you
9 know if Ms. Pandorf was employed at this
10 particular branch in October of 2009?

11 A Yes, she was.

12 Q She was? And what does -- can you read
13 to me what this document -- what is indicated on
14 this particular exhibit?

15 A Well, it would appear that she wrote
16 this out and indicated that 5461.61 was paid on
17 October 29th of 2009 and that that balance was
18 added back to the loan.

19 Q Okay. Do you know -- do you have
20 personal knowledge that -- if in fact that was
21 done?

22 A I do--- I don't recall this being done,
23 but I -- I've -- I've not seen this before. But
24 you have a copy of the loan transaction history;
25 it would be in there.

1 Q Okay. Well, let me -- I'm going to
2 represent to you that these are the documents that
3 were provided to me by your attorney and that it
4 appears that the first, maybe, four pages appear
5 to be some type of transaction history. Can you
6 look through that -- through those documents and
7 show me or indicate to me where this particular
8 amount, 5,461 dollars would have been added back
9 into Mr. Jones' loan?

10 A (Deponent complies.) Doesn't appear
11 that we have a history covering that date time.

12 Q If in fact a check was requested and
13 issued as it appears from Defendant's Exhibit
14 number 2, would it be unusual for there not to be
15 some notation in the payment history that that
16 particular amount has been added back into the
17 loan?

18 A A notation in the payment history?

19 Q Or something in the payment history
20 letting bank -- the bank officials know that that
21 amount has been added back into the loan?

22 A It can be done I guess a number of
23 ways. It can be tracked on a manual ledger, it
24 can be tracked -- I -- I -- I don't handle that; I
25 can't speak to how that's done. You -- you

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1 would -- I mean, during this time period being
2 First Citizens, I assume that that's -- that --
3 that that was something that was being tracked
4 through loan operations on some sort of a ledger
5 report where that money was owed on this
6 particular loan. Similarly to how attorney fees
7 would be tracked. But I -- I -- I don't know that
8 it would -- I don't know that it would
9 specifically show up in the loan history or not.

10 Q Is there any -- and I just want to make
11 sure that in the documents that I've been provided
12 and the documents that you've just reviewed, is
13 there anything, any notation in the payment
14 history or the loan history that would reflect
15 that am--- that loan being charged back to his --
16 this particular loan? The loan for the \$5,461.61.

17 A I don't see anything.

18 Q Okay.

19 A So, no.

20 Q And is it fair to say that that is an
21 unusual occurrence? If in --

22 MR. OSBORNE: I object to the form of
23 the question. It's ambiguous.

24 BY MR. MCKISSICK:

25 Q If in fact a check was -- a check was

1 requested and -- and apparently a check was made
2 on the First Citizens account, is it unusual for
3 there not to be something in the payment history
4 reflecting that amount's been charged back to the
5 loan?

6 A I really can't answer that because it's
7 an unusual occurrence, to begin with, if the taxes
8 had to be paid by the bank. But not -- be---
9 because I don't handle that type of a -- of a
10 transaction any longer, I'm -- I just -- I don't
11 come across it. I don't know that -- I don't know
12 if it shows up in the transaction history or if
13 we're maintaining it on a separate ledger account.
14 I can't answer that question.

15 Q Okay.

16 A Just don't know.

17 Q Did you continue -- you described
18 before that it was a regular occurrence for
19 Mr. Jones to come into the bank and pay the check
20 and you might speak to him. Is that correct?

21 A That was a regular occurrence, yes.

22 Q Okay. After October of 2009 did those
23 type of occurrences continue, as far him coming
24 into the bank?

25 A Yes.

1 Q Okay. And Mr. Jones continued to make
2 his payments as scheduled with the exception of
3 the loan modification that had to be entered into
4 in 2010?

5 A Payments were made regularly.

6 Q Okay. When did he stop making his
7 regular payments? According to the documents that
8 you have in front of you.

9 A It would appear that the last payment
10 would have been sometime around December of 2010.

11 Q Okay. And did you receive some
12 notification from Columbia that he had not made a
13 payment in December of 2010?

14 A I was aware that -- that he hadn't made
15 a payment after that time period.

16 Q Okay. Is that before or after you
17 first had knowledge that the property had been
18 sold?

19 A He stopped making payments on the loan
20 after we were informed that the property had been
21 sold.

22 Q Okay. Do recall if Mr. Jones brought
23 that to your attention --

24 A I --

25 Q -- that the property had been sold?

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1 A I don't recall how I was informed. I
2 just -- I -- I just don't.

3 Q Okay. Have you had any conversation or
4 communication with Mr. Jones since you first
5 gained knowledge that the property had been sold?

6 A We may have spoken once or twice after
7 that. And it was probably in that month of
8 December of -- of 2010, when that last payment was
9 made.

10 Q And how would you describe the -- the
11 tone of those particular conversations?

12 A Fairly normal in terms of the tone;
13 however, the -- obviously we were both concerned
14 over what had happened.

15 Q And do you recall specifically what
16 Mr. Jones said to you as far as why the taxes were
17 not paid?

18 A Do I recall what he said to me
19 specifically --

20 Q Yes.

21 A -- no.

22 Q So do you have any specific
23 recollection of any statements that Mr. Jones made
24 about the delinquent property taxes?

25 A We had conversations regarding what --

1 you know, what the ramifications were going to be
2 in terms of, you know, the bank's potential for
3 loss and -- and -- but I -- I -- I can't recall
4 any specific conversations that we had, any
5 specific statements that he made.

6 Q And you don't re--- do you recall if
7 you had any of these type conversations around
8 October of 2009?

9 A I don't recall having any of these
10 convers--- this -- if -- if we would have had this
11 conversation in October of 2009. If that was the
12 critical period in time when the taxes needed to
13 be paid, we would have made every effort to ensure
14 that those taxes had been paid.

15 Q Okay.

16 A I just don't -- I just don't recall
17 having the conversation.

18 Q Is it fair to say that the bank had
19 knowledge that these taxes were delinquent and
20 needed to be paid?

21 A It would appear that that's the case
22 because of the -- Exhibit 1 that you've provided,
23 which is the -- the notice that was sent to our
24 Orangeburg address, which I assume would have been
25 sent to our loan operations department which I

1 assume would have resulted in the issuance of the
2 check that's issued -- that's described in Exhibit
3 number 2.

4 Q Okay. And if -- and I may have asked
5 you this. Has any -- have you, or do you know of
6 anyone on behalf of the bank that has made any
7 inquiry about whether this check that apparently
8 was issued was ever received by the Treasurer's
9 Office?

10 A What I was told was the check was
11 issued and -- and sent, but not received.

12 Q And who told you that?

13 A I believe Joyce McKulka told me that.

14 Q Could you spell her last name?

15 A I believe it's M-C-K-U-L or C-U-L-K-A.

16 Q M--- I'm sorry. M---

17 A M-C-K-U-L-C-K-A (sic).

18 Q Okay.

19 A I'm not -- I'm not exactly certain how
20 to spell it. Joyce McKulka.

21 Q Okay. And where is she employed?

22 A In Columbia.

23 Q And what is her title?

24 A I don't know her exact job title.

25 Q Do you know if anyone with First

1 Citizens has been in contact with the owner of
2 this property, the owner who received the property
3 by tax deed?

4 A I do not know if anyone's been in
5 contact with him.

6 Q But you -- you have not attempted to do
7 anything?

8 A I have not. Well, when you say I've
9 not attempted to do anything, I've not attempted
10 contact Mr. Dyson.

11 Q Okay. Well, tell me what actions you
12 have taken since you discovered that the property
13 had been sold by tax deed.

14 A All I was able to do is make inquiries
15 at that point.

16 Q And inquiries were made to who?

17 A I -- I -- I spoke with Joyce and asked
18 if -- if there was any remedy to where the bank
19 could have the tax sale invalidated or reversed
20 because I had been told that we had sent a check
21 and the check had not been received.

22 Q And has any legal action been taken by
23 the bank with regard to invalidating that
24 particular tax deed?

25 A I don't know.

1 Q If -- hypothetically if a customer came
2 into your office on a -- on a loan that you had
3 originated and brought a delinquent tax notice
4 that indicated that the property was going to be
5 sold in a -- in a few weeks unless the taxes were
6 paid, what would be your ordinary and customary
7 response to that?

8 A My response to receiving the notice
9 from the customer?

10 Q Yes.

11 A If they were unable to pay it?

12 Q Yes.

13 A I would have put it in the hands of our
14 loan operations department to make sure that the
15 bank evaluated its options with regard to whether
16 to pay it or not.

17 Q And that would be in Columbia?

18 A Yes.

19 Q And is it possible that you did in fact
20 notify the loans operation office in Columbia with
21 regard to the delinquent tax notice issued on this
22 particular property?

23 A Is it -- is it possible that I notified
24 them?

25 Q Yes.

1 A I -- I suppose it is, but I have no
2 recollection of having received this notice. And
3 Lance and I spoke very frequently, and it's --
4 it -- it would seem that if this was something
5 that was pressing, that -- that we would have had
6 that conversation. I just -- I don't recall
7 having the conversation with him.

8 Q And in 2009 -- I think in October of
9 2009 I think we've established that those types of
10 notices were handled by the Columbia --

11 A Correct.

12 Q -- office?

13 A To my knowledge that's how it's
14 handled, yes.

15 Q The one time that you said that you
16 actually physically delivered a check to the
17 Sumter Treasurer's Office, I believe you testified
18 that was when the bank was still Sumter National?

19 A Yes. Now, I -- now, when we
20 subsequently became Community Resource, I would be
21 directed to issue a check and take it to the
22 county -- to the -- to the courthouse to -- to pay
23 taxes. But I can remember one specific incident
24 where we had a customer that -- that could not pay
25 the taxes and notified me as such and we -- we

1 paid them ourselves.

2 Q Okay. When you said you would be
3 directed, who would direct you to do that?

4 A An employee in the loan operations
5 department in -- in Orangeburg at that time when
6 we were Community Resource.

7 Q Okay. So it would not necessarily be
8 your account or your loan?

9 A No, not necessarily.

10 Q Okay. But they -- they would have
11 gotten in touch with you and said issue a check
12 for this amount, and you would have taken it
13 yourself to the --

14 A Correct.

15 Q -- Treasurer's Office?

16 A Correct.

17 Q How many occasions can you recall that
18 happening?

19 A Less than five.

20 Q Less than five? Do you know what the
21 First Citizens policy is with regard to the
22 appropriate means of delivering checks for
23 delinquent property taxes?

24 A I don't know any policy on that.

25 Q Okay. Is there a policy?

1 A I don't know.

2 Q Okay. And in October of 2009,
3 hypothetically if a customer on a loan that you
4 had originated had come into your office and said
5 taxes have not been paid, showed you a notice that
6 they had not been -- have not been paid and was
7 scheduled to be sold unless it was paid in a few
8 weeks and that customer told you that he didn't
9 have the funds to pay those taxes, in 2009 --
10 October of 2009 what would you have done?

11 A As I said earlier, I would have
12 involved our loan operations department and had
13 the -- the situation evaluated as to whether the
14 bank needed to pay the taxes or not.

15 Q Okay. And once you evaluated -- once
16 you contacted the loan department, is it fair to
17 say that they would have asked you to pay the
18 taxes that were delinquent?

19 A I wouldn't have been involved in --
20 in -- in the actual payment, I don't believe.

21 Q Okay. So that changed when operations
22 shifted to Columbia?

23 A We became a -- a -- a bank not
24 operating primarily in one county, but we became
25 a -- a statewide bank. And with -- with all --

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1 all counties of South Carolina being areas of our
2 operation, it -- it's, I -- I -- I assume, easier
3 to handle it centrally out of the one location.

4 Q Okay.

5 MR. MCKISSICK: That may be all the
6 questions that I have, but I just want to take a
7 minute to speak with my client and we'll be right
8 back.

9 (Whereupon, a break was taken
10 from the proceedings.)

11 BY MR. MCKISSICK:

12 Q Just a quick question. This Ronald
13 Derrick, I believe we have -- you testified that
14 he's in the Columbia office?

15 A Yes.

16 Q Okay. Do you have any knowledge of --
17 is there a department in the Columbia office that
18 deals with delinquent taxes on real property?

19 A I don't think there's a specific
20 department earmarked specifically to do that, but
21 it falls under our loan operations department is
22 all I know. And they're -- whether -- how they're
23 internalized, I don't know.

24 Q Okay. And is it your understanding
25 that Mr. Derrick is part of that loan operations

1 office?

2 A Yes.

3 Q And your testimony is you -- you cannot
4 have -- you do not recall having any conversations
5 with Mr. Derrick with regard to this check that
6 apparently was issued in the amount of \$5,461.61?

7 A I don't recall speaking with him about
8 it.

9 MR. MCKISSICK: Okay. Well, thank you.
10 That's all the questions I have.

11 THE DEPONENT: Okay.

12 MR. OSBORNE: I have no questions. The
13 witness would like to read and sign.

14 MR. MCKISSICK: Okay.

15 (Deponent excused.)

16 (Whereupon, at 10:35 a.m., the
17 taking of the foregoing
18 deposition was concluded.)

19

20

21

22

23

24

25

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Business AFS 235286-1236652



Office of the Sumter County Treasurer

Sumter County Administration Building
13 East Canal Street
Sumter, South Carolina 29150

Telephone: (803)438-2213

CAROLINA B. RICHARDSON
TREASURER

FINAL REDEMPTION NOTICE

October 23, 2009

Community Resource Bank, N.A.

P.O. Box 2086

Orangeburg, SC 29116

Ref: TMS# 184-00-02-023

Lance E. Jones

2062 Mc Lenn Heavens Road

Dear Sir/Madam:

According to the records of the Office of Register of Deeds or Sumter County, South Carolina, a mortgage dated 11-16-06 was recorded in Book 1053 on Page 1699 in your favor for the above referenced property.

On December 1, 2008 the above referenced property was sold at a tax sale for 2007 delinquent taxes.

You may redeem the property by paying \$ 5461.61. This amount represents 2007 taxes with penalties & delinquent costs, 2008 taxes and 12% interest of the bid price. If you intend to redeem, you must do so by 5:00 p.m. on December 2, 2009. After this date a tax sale deed will be issued to the bidder.

Please remit with cash, cashiers check or money order.

Sincerely,

Carolina B. Richardson
Carolina B Richardson
County Treasurer/Tax Collector *CR*

DEFENDANT'S
EXHIBIT

Mossell

8-19-11

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ACCOUNTS PAYABLE FORM

(MUST BE COMPLETED FOR ALL PAYMENT REQUESTS)

SPECIAL INSTRUCTIONS:

Vendor Code:

Vendor that is located on the Intranet under Web tools

Vendor Name: Sumter County Treasurer

Invoice Date: 10/23/2009

Do not use the Invoice due date.

Invoice Number: 184-00-02-023

Do not use account number. If there is no invoice number use a dummy invoice number.

Invoice Amount: \$5,461.61

Customer/Account Number: If applicable

235286-1236652

Reference: Lance Jones

Reason for payment

(DO NOT WRITE IN THIS AREA)

OK #1
1775

GL ACCT #	COST CENTER	AMOUNT
5292	358	\$5,461.61

APPROVAL MUST INCLUDE FUNCTIONAL TITLE FOR BRANCH AND OFFICER TITLE FOR HOME OFFICE

Refer to the bottom of this form authorized signers and limits.

APPROVED BY:

SVP

SIGNATURE

TITLE - REQUIRED

Ronald Derrick

10/29/2009

APPROVER'S PRINTED NAME

DATE

NOTE: ALL Advertising expenses must be approved by Marketing prior to engaging a vendor.
Advertising Invoices must be sent to Marketing before AP will process.

APPROVAL LIMITS

Branches (Including Transaction Centers)		Home Office (Non-Recurring)	
RM, PB	Up to \$ 10,000	AVP	Up to \$ 10,000
BRM, CRM, CSM II, RSM, PBGRM	Up to \$ 25,000	Vice President	Up to \$ 25,000
RME, CAE, CME, PBG DIR	Up to \$50,000	Senior Vice President	Up to \$50,000
Division Executive	Up to \$100,000	Executive Vice President	Up to \$100,000
Acct. Director, COO, CIO, CFO, CEO, Chairman, President, Controller	Over \$100,000	Acct. Director, COO, CIO, CFO, CEO, Chairman, President, Controller	Over \$100,000

* These limits DO NOT apply to personal or bankcard expense reimbursements. Refer to the BOS manual for expense reimbursement policy.

* Home Office Departments should refer to the Recurring Payables List maintained by AP to determine authorization levels. If an expense is not on this list, it is deemed to be non-recurring.

* Branch employees should refer to job title, not officer title, for approval limits (RC's < 900).

Send with ORIGINAL Invoice attached to Accounting 994001

DEFENDANT'S EXHIBIT

Mosser 2 8-18-11

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First Citizens *Judy*
Pardoff
We're on it.

\$5461.61 paid
10/29/09

add back loan

SET THE **PAGE**

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DEFENDANT'S
EXHIBIT

10/29/11 3 8-18-11

1 A P P E A R A N C E S

2 For the Plaintiff:
3 Abbott & McKissick Law Firm
4 702 West Evans Street
5 Florence, SC 29501
6 By: Robert D. McKissick, Esq.

7 For the Defendant:
8 Haynsworth Sinkler Boyd, PA
9 1201 Main Street, 22nd Floor (29201)
10 PO Box 11889 (29211-1889)
11 Columbia, SC
12 By: Hamilton Osborne, Esq.

13 Also Present: Ronald Derrick

14 I N D E X

15	Examination by Mr. McKissick	3
16	Examination by Mr. Osborne	37
17	Further Examination by Mr. McKissick	46

18 E X H I B I T S

19	Pg/l	Ex.	Description
20	14/16	1	- accounts payable form
21	26/07	2	- e-mail from McKulka to Derrick, Mossell
22	30/06	3	- e-mail from McKulka to Robinson, et. al.
23	31/23	4	- e-mail from McKulka to Sanders, et. al.
24	48/02	5	- print screens from Ms. McKulka

25 ** uh-huh = affirmative
huh-uh = negative

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1 S T I P U L A T I O N S

2 It is stipulated between Counsel that this
3 deposition is being taken pursuant to the South
4 Carolina Rules of Civil Procedure; and that all
5 objections, except as to the form of the question,
6 are reserved until the time of trial.

7 It is also stipulated between Counsel for
8 the respective parties and the deponent that the
9 deponent will exercise the right to read and sign
10 this transcript.

11 Thereupon,

12 Joyce McKulka,
13 being first duly sworn by the Court Reporter, as
14 hereinafter certified, testified as follows:

15 E X A M I N A T I O N

16 BY Mr. McKissick:

17 Q Mrs. McKulka, good morning.

18 A Hey.

19 Q For the record, my name is Robert
20 McKissick, and I'm here today to take your
21 deposition in the case of First Citizens Bank
22 versus Lance Jones. Have you ever had your
23 deposition taken before?

24 A No. No. Not like this.

25 Q You have not? Okay. Well, this 000139

1 A Columbia.

2 Q Okay. Any other banks that you work
3 for?

4 A No, sir.

5 Q And when did you become employed with
6 First Citizens?

7 A September of '96.

8 Q And you've been employed with First
9 Citizens consecutively since then?

10 A Yes.

11 Q Uninterrupted?

12 A Yes.

13 Q Okay. And what were you hired as?
14 What was your job title when you were first hired?

15 A A scanner in the operations area.

16 Q Okay. And what is your current
17 position?

18 A I am an administrative assistant for
19 Ron Derrick in the credit resolution group.

20 Q And what is Mr. Derrick's job title?

21 A He is a senior vice-president of the
22 credit resolution group.

23 Q Okay. And how long have you been
24 employed as Mr. Derrick's administrative
25 assistant? Just approximately.

000140

1 A I want to say December of 2004, but
2 I'm not 100 percent sure of that date.

3 Q Have you ever been a plaintiff or a
4 defendant in a lawsuit before?

5 A No, sir, not in a lawsuit.

6 Q And do you have any family members
7 that live in Sumter County? The reason I ask
8 that, if the lawsuit is pending in -- in Sumter
9 County and if for some reason we had to go to
10 trial and you were a witness in the case, I
11 wouldn't want to put anybody that knows you --

12 A No.

13 Q -- or any family members on the jury.
14 So that's why I ask.

15 A No, sir. Not that I know of.

16 Q Okay. Can you describe for me just
17 generally what your day-to-day job duties are as
18 an administrative assistant?

19 A All sorts of things.

20 Q Okay.

21 A I mean, I write reports. I do what
22 I'm asked.

23 Q Okay. Tell me some things that you're
24 asked.

25 A We image files. I pull documents 000141

1 handle questions about different systems that we
2 use that -- that officers in the credit resolution
3 group have. I order real estate appraisals. We
4 pay property taxes. We -- I think that's probably
5 it in a nutshell.

6 Q Okay. So when property that is
7 subject to a First Citizens mortgage, when the --
8 when the property taxes go delinquent, the
9 delinquent tax notices would come to -- to -- into
10 your office, the credit resolution office?

11 A Currently, those notices are going to
12 a different area.

13 Q Okay.

14 A At the time of this, that notice came
15 to me.

16 Q Okay. And how many -- how many -- I
17 guess how many people are employed in the credit
18 resolution department?

19 A Today?

20 Q Well, let me ask you how many are
21 employed today, if you know.

22 A Five and one temp in our area today.

23 Q And back in 2009, do you recall how
24 many were employed?

25 A Actually, I do not -- I do not 000142

1 remember Annette's date of hire with us. I -- I
2 do not remember.

3 Q Okay. Do you remember if there would
4 have been more or less employees employed in the
5 credit resolution department back in 2009 than
6 there are today?

7 A There would have been less.

8 Q Less? Okay. How do you receive --
9 when a -- I guess I want to ask you specifically
10 about 2009 --

11 A Okay.

12 Q If you can recall. How do you receive
13 tax notices? Or I should say delinquent tax
14 notices on real estate.

15 A I receive notices interoffice mail --
16 in 2009, it would have been either regular mail
17 mailed to me or through interoffice.

18 Q And when you receive a delinquent tax
19 notice, what do you do? What's the first thing
20 that you do?

21 A I find the account on the system to
22 see who it belongs to.

23 Q Okay.

24 A I check with the county to confirm
25 they haven't been paid since the notice was issued

1 and the amount is due still and what date it needs
2 to be there by.

3 Q Okay.

4 A And I discuss with Ron whether we
5 needed to pay them.

6 Q Would you -- would you call the
7 particular loan originator with regard to your
8 question of whether or not the taxes need to be
9 paid? Is that something that you would do?

10 A I would do that if that's what Ron had
11 asked me to do. If you're referring to this
12 particular case, because it was a redemption and
13 we were going to lose the property, my
14 instructions were to pay the taxes and let the
15 lender know that we're doing it.

16 Q Okay. So what's significant about the
17 redemption? Tell me what made this case different
18 because it was in redemption.

19 A Because the -- the redemption date --
20 after the redemption date, we knew the -- the
21 property transfers ownership.

22 Q Okay. Is there ever -- is there ever
23 any times when the bank would not pay the taxes if
24 they were delinquent?

25 A Yes.

000144

1 Q Okay. What are some of those reasons?

2 A That would be a call made by Ron or a
3 credit resolution officer. I'm not sure what
4 would make them -- I mean...

5 Q Okay. So that's not a decision that
6 you would make?

7 A Right. It's not a decision that I
8 would make.

9 Q Okay. Do you ever call -- do you ever
10 personally call the customer --

11 A I do not.

12 Q -- the customer themselves?

13 A I do not.

14 Q So you've never done that? You've
15 never had the opportunity to call a customer with
16 regard to receiving a delinquent tax notice on
17 some real estate?

18 A In -- in 2009, no, I had never
19 contacted any customer.

20 Q Well, I'm asking just in your
21 employment at First Citizens, since you've been
22 employed in the credit resolution department, have
23 you ever had the opportunity to call a customer to
24 let -- to talk to the customer about a delinquent
25 tax notice. Have you ever called anyone --

1 A No.

2 Q Okay. Then when the -- you receive
3 the tax notice and you said that you communicate
4 in some fashion with Mr. Derrick with regard to
5 paying the taxes, once that decision is made to
6 pay the taxes, what happens next?

7 A I draw up an A/P sheet for accounting.
8 We send them the information to have the check cut
9 and mailed to the county for the taxes.

10 Q Is the A/P sheet something like a
11 check request?

12 A Similar. Yes, sir.

13 Q Okay. And the accounting department
14 at First Citizens, is it in the same building that
15 you're physically located in?

16 A No, sir.

17 Q Okay. Where is the accounting
18 department?

19 A It's in our main office on Main
20 Street.

21 Q Okay.

22 A 1301, I think. I'm not sure about
23 that address, though.

24 Q So we're pretty close?

25 A Yeah.

000146

1 Q Okay. And where is your physical
2 location where you're -- where you're located?

3 A 1314 Park Street.

4 Q And when you send over this A/P sheet
5 to accounting, how is that done?

6 A I actually don't remember.

7 Q You don't remember how it was done in
8 2009?

9 A That's correct.

10 Q Okay.

11 A There -- there were times it was
12 requested by e-mail and there were times that it
13 was sent interoffice.

14 Q I'm going to show you a document that
15 we'll have marked as exhibit 1.

16 (Plaintiff's exhibit number 1
17 marked for identification.)

18 BY Mr. McKissick:

19 Q I'm going to represent to you that was
20 sent to me by your attorney and appears to be some
21 type of request for a check in this Lance Jones,
22 account.

23 A Uh-huh.

24 Q Is that the A/P form that you're
25 referring to?

000147

1 A It is.

2 Q Okay. And is that the same form that
3 First Citizen uses now?

4 A It is.

5 Q Okay. And it appears that in the copy
6 that I have there was a -- looks like a sticky
7 note --

8 A There was.

9 Q -- over the -- over the page. Is that
10 your handwriting or do you know if that's --

11 A That is my handwriting.

12 Q Okay. And on this exhibit, it appears
13 that in this little box it says do not write in
14 this area, there's a check number of 1775. Do you
15 see that?

16 A I do.

17 Q Is -- is that the actual check number
18 that was supposed to be sent or was sent allegedly
19 to the treasurer's office?

20 A I don't know. I don't know.

21 Q All right. I'm just going to take
22 this back from you. So once -- excuse me. Once
23 you send the request for the check to accounting,
24 what other involvement do you have in the -- the
25 notice, the delinquent tax notice?

000143

1 A In 2009, this was sent to the county
2 to be -- to have the taxes paid. And that is the
3 extent of my involvement with that payment.

4 Q Okay.

5 A Until we discovered that the check
6 wasn't there.

7 Q Okay. Where does the -- where is the
8 check actually printed from?

9 A From our accounting department.

10 Q Okay. And do you receive any type of
11 verification or proof that the check was actually
12 sent?

13 A I do not.

14 Q Do you know how the checks are sent?

15 A I know the checks are mailed.

16 Q Okay. And how do you know that?

17 A In asking accounting how they process
18 their payments.

19 Q Okay. Do you know if a letter, any
20 type of transmittal letter is generated to be sent
21 with that check?

22 A I know that there is not a letter of
23 transmittal generated with the check.

24 Q So you just put a check in the mail
25 with no -- with no reference to what it's about? 000143

1 The Deponent: No, that's not unusual.

2 BY Mr. Osborne:

3 Q All right. So the fact that the bank
4 doesn't have a copy of the check that it issued to
5 pay Mr. Jones' taxes doesn't indicate that the
6 check -- the check was not in fact issued, does
7 it?

8 A No, sir.

9 Q And in fact, you have determined that
10 the accounting department has records indicating
11 that a check was in fact issued to pay Mr. Jones'
12 taxes. Is that correct?

13 Mr. McKissick: Object to the form.

14 The Deponent: Yes, sir.

15 BY Mr. Osborne:

16 Q When you called the county treasurer's
17 office, Sumter County treasurer's office to
18 determine whether the treasurer's office had
19 received the check that the bank had issued to pay
20 the taxes on Mr. Jones' property, did -- do you
21 know with whom you spoke?

22 A No, sir.

23 Q All right. Did you just speak with
24 whoever answered the phone?

25 A Yes, sir.

000150

1 Q You explained why you were calling?

2 A Yes, sir.

3 Q And you inquired whether the check had
4 been received?

5 A Yes, sir.

6 Q And the answer was, no, we don't have
7 any record of it?

8 A Yes, sir.

9 Q Okay. Or in effect, that was the
10 answer.

11 A Yes, sir.

12 Q We don't have any record. But you do
13 not -- you do not in fact know whether the check
14 actually reached the treasurer's office, do you?

15 A That is correct.

16 Q All right. It's quite conceivable,
17 isn't it, based on the limited knowledge you have,
18 that the check could have been received in the
19 treasurer's office and simply misplaced or lost.
20 Is that correct?

21 A Yes, sir.

22 Q How long have you worked for First
23 Citizens Bank?

24 A Fifteen years.

25 Q Do you recall any other occasion on

000151

1 which a check that the bank issued to pay property
2 taxes for a borrower did not actually reach the
3 tax authority to which it was directed?

4 A All right. Say that one more time.
5 Do I recall --

6 Q All right. Well, in this case, it
7 appears that the -- with respect to Mr. Jones, it
8 appears that the bank issued a check and mailed it
9 to the Sumter County treasurer. Would you agree
10 with that?

11 A Yes.

12 Q That's what the bank re--- the records
13 of the bank indicate. Is that correct?

14 A Yes.

15 Q All right. Now, but for some reason,
16 the county treasurer says they never -- the staff
17 in the treasurer's office claim that they never
18 received the check. Is that your understanding?

19 A Yes.

20 Q All right. Can you recall a similar
21 instance involving the payment of property taxes
22 by the bank that has occurred in your 15 years of
23 experience at the bank?

24 A Yes.

25 Q All right. It did happen once 000152

1 other time?

2 A Yes.

3 Q When was that?

4 A It was after this.

5 Q After this. Okay.

6 A And it was a check to Sumter County.

7 Q All right. So Sumter County treasurer
8 has twice asserted that they didn't receive a
9 check that the bank mailed. Is that correct?

10 A Yes.

11 Q Have you had that experience with any
12 other county in South Carolina?

13 A No.

14 Q All right. And up until these two
15 instances, the one involving Mr. Jones and the
16 subsequent one, the process of mailing the checks
17 to the tax collector or treasurer worked entirely
18 well. Right?

19 A Yes.

20 Q Each occasion, the taxes actually got
21 paid. Is that correct?

22 A I'm not aware of a situation where it
23 didn't.

24 Q Okay. So the situation with
25 Mr. Jones, when his taxes didn't get paid for some

000153

1 reason was the first occasion on which you had had
2 that experience?

3 A Yes.

4 Q The check being issued, but the
5 treasurer claims didn't receive it. Is that
6 right?

7 A Yes.

8 Q And then there was a subsequent
9 occasion involving another borrower, but the same
10 county treasurer, Sumter County. Right?

11 A Yes.

12 Q And you've never had a similar
13 experience with any other county?

14 A No, sir.

15 Q Okay. Up until the time that the
16 check was issued to pay the -- the taxes on
17 Mr. Jones' property, how many times do you think
18 you requested that the -- or requested to
19 authorize the accounting department of the bank to
20 pay property taxes on -- owed by a borrower?
21 Would it be dozens or hundreds of times?

22 A Dozens.

23 Q All right. So over the years, on
24 dozens of occasions, you had followed the same
25 procedure that you followed with respect to

000154

1 Mr. Jones. Is that correct?

2 A Yes, sir.

3 Q And on each of those occasions, the
4 taxes in fact got paid?

5 A Yes, sir.

6 Q Okay. Only until Mr. Jones' taxes
7 didn't get paid for some reason was there a
8 problem with the procedure. Is that correct?

9 A That is correct.

10 Q All right. Or that the procedure
11 didn't produce the result that you intended?

12 A That's correct.

13 Q And you still today don't know
14 where -- what happened. You don't have any reason
15 to believe, do you, that the bank didn't actually
16 mail the check?

17 Mr. McKissick: Object to the form.

18 The Deponent: That's correct.

19 BY Mr. Osborne:

20 Q All right. So it's more likely, then,
21 isn't it, that the check either was not delivered
22 by the post office or it was lost by the treasurer
23 after it was delivered to the treasurer. Is that
24 correct?

25 A Yes.

000155

1 Mr. Osborne: Thank you. I have no
2 further questions.

3 F U R T H E R E X A M I N A T I O N
4 BY Mr. McKissick:

5 Q Ms. McKulka, just a couple. Do you
6 have any proof as you sit here today that the
7 check was in fact sent by the accounting
8 department?

9 A I have the documentation that was sent
10 to me from accounting that they generated the
11 check and mailed it.

12 Q And what documentation is that? Is it
13 an exhibit that we've already marked?

14 A It's going to probably be in
15 that pi--- in that --

16 Q Okay. I'm going to --

17 A Okay.

18 Q I'm going to represent to you that
19 that is the complete set of the documentation that
20 your attorney provided to me.

21 A These are documents from accounting
22 where I asked for -- where I asked them if I could
23 get a copy of the check and they couldn't provide
24 a copy of the check. This is where they sent --
25 what they sent me to -- to show me -- here's my

000156

1 check number and the amount and that it went to
2 Sumter County, and the post office box that they
3 had as their address of record at the time.

4 Mr. McKissick: And I'm going to --
5 let's get these marked.

6 Mr. Osborne: Before you mark these,
7 be sure that she has presented to you every
8 document that she considers a record of issuance
9 of the check.

10 Mr. McKissick: I am. I just want to
11 go ahead and get him to mark these while she is
12 looking.

13 The Deponent: Well, what these are,
14 these are copies of different screen prints that
15 were sent to me from accounting, but -- or when I
16 asked them for a copy of the check or proof of
17 payment of -- of the taxes. And this is what they
18 sent me, which shows me the address it was mailed
19 to, the check number that was cut, the amount of
20 it and all of that -- those appear -- that appears
21 to be all the documents that I got from them.

22 Mr. McKissick: Okay.

23 Mr. Osborne: That's five pages, I
24 believe.

25 Mr. McKissick: Correct. Let's get

1 these marked.

2 (Plaintiff's exhibit number 5, consisting of 5
3 pages, marked for identification.)

4 BY Mr. McKissick:

5 Q So these five pages represent
6 everything that you are testifying here today that
7 establishes that a check was actually sent to the
8 Sumter County treasurer's department?

9 A Everything that was sent to me
10 indicating that a check was sent. Yes. There may
11 be an e-mail where they said they mailed the
12 check, but that was the document that they
13 generated when I asked them for a copy of the
14 check so that I could provide proof of payment.

15 Q Well --

16 A So there may indeed be an e-mail that
17 says, yes, we paid it.

18 Q Well, how would I go about -- how
19 would we go about finding out if there is an
20 e-mail? I'm assuming that all the e-mails are
21 saved on your server? An e-mail from I guess 2009
22 would be retrievable?

23 A Actually, that would be an
24 I.T. question, but I believe the answer to that is
25 no.

ACCOUNTS PAYABLE FORM
(MUST BE COMPLETED FOR ALL PAYMENT REQUESTS)

SPECIAL INSTRUCTIONS:

Vendor Code:

Vendor list is located on the Intranet under Web tools

Vendor Name: Sumter County Treasurer

Invoice Date: 10/23/2009

Do not use the invoice due date.

Invoice Number: 184-00-02-023

Do not use account number. If there is no invoice number use a dummy invoice number.

Invoice Amount: \$5,461.61

Customer/Account Number: If applicable

235286-1236652

Reference: Lance Jones

Reason for payment

(DO NOT WRITE IN THIS AREA)

OK #1
1775

**PLAINTIFF'S
EXHIBIT**

GL ACCT #	COST CENTER	AMOUNT
5292	358	\$5,461.61

**APPROVAL MUST INCLUDE FUNCTIONAL
TITLE FOR BRANCH AND OFFICER TITLE FOR
HOME OFFICE**

Refer to the bottom of this form authorized signers and limits.

APPROVED BY:

(Signature)

SVP

SIGNATURE

TITLE - REQUIRED

Ronald Derrick

10/29/2009

APPROVERS PRINTED NAME

DATE

Check request
Sent to
Accounting

acting prior to engaging a vendor.
process.

LIMITS

Home Office (Non-Recurring)	
P	Up to \$ 10,000
President	Up to \$ 25,000
Senior Vice President	Up to \$50,000
Executive Vice President	Up to \$100,000
Act. Director, COO, CIO, CFO, O, Chairman, President, ntroller	Over \$100,000

* These limits DO NOT apply to personal or bankcard expense reimbursements. Refer to the BOS manual for expense reimbursement policy.

* Home Office Departments should refer to the Recurring Payables List maintained by AP to determine authorization levels. If an expense is not on this list, it is deemed to be non-recurring.

* Branch employees should refer to job title, not officer title, for approval limits (RC's < 900).

Send with ORIGINAL invoice attached to Accounting 994001

000150

First Citizens Bank - Microsoft Business Solutions - 11/05/21 SUMMIT COURNEY TRANSMER - Vendor Ledger Entries									
Shortcut	Period	Date	Doc#	Amount	Vendor	Description	Debit	Credit	Balance
Navigation									
Invoices									
Payment Journals									
Credit Memos									
Vendor Payments									
Vendor Account Detail									
General Journals									
Bank Accounts									
Create FTIAP File									
Cross Ref. by Source									
Recurring Journals									
Check Details									
Detail Trial Balance									
Unposted Purchase Batch									
Open Vendor Entries									
Trial Balance Detail/Summary									
Vendor 1099 Information									
Dimensions									
	11/02/09	L...	PP345641	102309	105521	Invoice P349883	-5,461.61	0.00	
	11/02/09	P...	PP345641	102309	105521	Payment of Invoice PP345641	5,461.61	0.00	
	11/09/09	L...	PP346947	1169895	105521	Invoice P351219	-2,781.89	0.00	
	11/09/09	L...	PP346949	1169900	105821	Invoice P351221	-3,640.88	0.00	
	11/09/09	P...	PP346947	698952	105421	Payment of Invoice PP346947	2,781.89	0.00	
	11/09/09	P...	PP346949	698953	105521	Payment of Invoice PP346949	3,640.88	0.00	
	11/18/09	L...	PP347927	6123336	105521	Invoice P352275	-996.07	0.00	
	11/18/09	L...	PP347928	6123337	105821	Invoice P352276	-981.27	0.00	
	11/18/09	P...	PP347927	699537	105521	Payment of Invoice PP347927	996.07	0.00	
	11/18/09	P...	PP347928	699538	105821	Payment of Invoice PP347928	981.27	0.00	
	12/02/09	L...	PP349711	6179113	105521	Invoice P354182	-2,067.93	0.00	
	12/02/09	P...	PP349711	700465	105821	Payment of Invoice PP349711	2,067.93	0.00	
	12/11/09	L...	PP351119	200961964177	105521	Invoice P355690	-12,353.88	0.00	
	12/11/09	L...	PP351120	96143580	105521	Invoice P355591	-217.33	0.00	
	12/11/09	L...	PP351121	96173871	105521	Invoice P355592	-24,667.78	0.00	
	12/11/09	L...	PP351122	6173869	105821	Invoice P355593	-2,491.65	0.00	
	12/11/09	L...	PP351123	6173870	105521	Invoice P355594	-12,236.40	0.00	
	12/11/09	P...	PP351119	701378	105521	Payment of Invoice PP351119	12,353.88	0.00	
	12/11/09	P...	PP351120	701379	105521	Payment of Invoice PP351120	217.33	0.00	
	12/11/09	P...	PP351121	701380	105521	Payment of Invoice PP351121	24,667.78	0.00	
	12/11/09	P...	PP351122	701381	105821	Payment of Invoice PP351122	2,491.65	0.00	
	12/11/09	P...	PP351123	701382	105521	Payment of Invoice PP351123	12,236.40	0.00	
	01/07/10	L...	PP354541	5908804	105521	Invoice P359162	-250.21	0.00	
	01/07/10	L...	PP354542	6115818	105521	Invoice P359163	-141.30	0.00	
	01/07/10	P...	PP354541	703332	105521	Payment of Invoice PP354541	250.21	0.00	
	01/07/10	P...	PP354542	703332	105821	Payment of Invoice PP354542	141.30	0.00	
	01/13/10	L...	PP355171	20096180140	105521	Invoice P359787	-1,482.64	0.00	
	01/13/10	P...	PP355171	703792	105521	Payment of Invoice PP355171	1,482.64	0.00	
	02/22/10	L...	PP360083	1170105	105521	Invoice P361891	-2,546.87	0.00	
	02/22/10	L...	PP360085	2301603021	105521	Invoice P361893	-6,228.71	0.00	
	02/22/10	P...	PP360083	706697	105521	Payment of Invoice PP360083	2,546.87	0.00	
	02/22/10	P...	PP360085	706698	105521	Payment of Invoice PP360085	6,228.71	0.00	
	03/09/10	L...	PP362138	5177994	105521	Invoice P367043	-606.69	0.00	

Vendor Account Detail
First Citizens Bank

April 18, 2011 11:46 AM
Page 1
Gladys

Document Number is External Document No.
Vendor: No.: 105521, Date Filter: 11/01/09..12/31/09

Vendor	Document	Description	Transaction Amount	Transaction Currency	Op	Net Change	Running Balance
Posting D	Typ	Number				Debits Credits	
105521		SUMTER COUNTY TREASURER	Phone:		Contact:		
11/02/09	Inv	102309	Invoice P340883	-5,481.81	No	5,481.81	5,481.81
11/02/09	Pay		Payment of Invoice PP346841	5,481.81	No	5,481.81	0.00
11/09/09	Inv	1169898	Invoice P351219	-2,781.89	No	2,781.89	2,781.89
11/09/09	Inv	1169900	Invoice P351221	-3,640.88	No	3,640.88	6,422.77
11/09/09	Pay		Payment of Invoice PP346847	2,781.89	No	2,781.89	3,640.88
11/09/09	Pay		Payment of Invoice PP346849	3,640.88	No	3,640.88	0.00
11/18/09	Inv	8123336	Invoice P352275	-988.07	No	988.07	988.07
11/18/09	Inv	8123337	Invoice P352278	-851.27	No	851.27	1,847.34
11/18/09	Pay		Payment of Invoice PP347927	988.07	No	988.07	951.27
11/18/09	Pay		Payment of Invoice PP347928	851.27	No	851.27	0.00
12/02/09	Inv	6179113	Invoice P354182	-2,057.93	No	2,057.93	2,057.93
12/02/09	Pay		Payment of Invoice PP349711	2,057.93	No	2,057.93	0.00
12/11/09	Inv	200981864177	Invoice P355590	-12,353.88	No	12,353.88	12,353.88
12/11/09	Inv	98143880	Invoice P355591	-217.33	No	217.33	12,571.21
12/11/09	Inv	98173871	Invoice P355592	-24,887.78	No	24,887.78	37,238.99
12/11/09	Inv	8173889	Invoice P355593	-2,491.85	No	2,491.85	39,730.84
12/11/09	Inv	8173870	Invoice P355594	-12,236.40	No	12,236.40	51,967.04
12/11/09	Pay		Payment of Invoice PP351119	12,353.88	No	12,353.88	39,813.16
12/11/09	Pay		Payment of Invoice PP351120	217.33	No	217.33	39,395.83
12/11/09	Pay		Payment of Invoice PP351121	24,887.78	No	24,887.78	14,728.05
12/11/09	Pay		Payment of Invoice PP351122	2,491.85	No	2,491.85	12,236.40
12/11/09	Pay		Payment of Invoice PP351123	12,236.40	No	12,236.40	0.00
12/31/09			Ending Balance for 105521			67,858.89	67,858.89
1 Vendors	22 Entries		Report Totals (\$)			67,858.89	67,858.89

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First Citizens Bank - Microsoft Business Solutions - Microsoft Dynamics - Vendor Ledger Entries									
Shortcuts									
☐ Invoices	07/24/09	8882335CR	8882335CR	109521	105521	CA RECD DUE TO OVE...	336.34	0.00	
☐ Payment Journals	07/24/09	8882335CR	8882335CR	105521	105521	CA RECD DUE TO OVE...	336.34	0.00	
☐ Credit Memos	09/24/09	PP340846	92109	105521	105521	Invoice P341936	-178.78	0.00	
☐ Vendor Payments	09/24/09	PP340847	402600609	105521	105521	Invoice P341937	-3,229.73	0.00	
☐ Vendor Account Detail	09/24/09	PP340848	402600609	105521	105521	Invoice P341938	-1,786.68	0.00	
☐ General Journals	09/24/09	PP340849	402600609	105521	105521	Invoice P341939	-684.84	0.00	
☐ Bank Accounts	09/24/09	PP340850	402600609	105521	105521	Invoice P341940	-1,705.64	0.00	
☐ Create PFIAP File	09/24/09	P...	695481	105521	105521	Payment of Invoice PP340846	178.78	0.00	
☐ Cross Ref. by Source	09/24/09	P...	695481	105521	105521	Payment of Invoice PP340847	3,229.73	0.00	
☐ Recurring Journals	09/24/09	P...	695481	105521	105521	Payment of Invoice PP340848	1,786.68	0.00	
☐ Check Details	09/24/09	P...	695481	105521	105521	Payment of Invoice PP340849	684.84	0.00	
☐ Detail Trial Balance	09/24/09	P...	695481	105521	105521	Payment of Invoice PP340850	1,705.64	0.00	
☐ Unposted Purchase Batch	10/26/09	PP344889	6149278	105521	105521	Invoice P341982	-1,491.00	0.00	
☐ Open Vendor Entries	10/26/09	P...	697177	105521	105521	Payment of Invoice PP344889	1,491.00	0.00	
☐ Trial Balance Detail/Summary	11/02/09	PP345641	102309	105521	105521	Invoice P341983	-5,461.61	0.00	
☐ Vendor 1099 Information	11/02/09	P...	698198	105521	105521	Payment of Invoice PP345641	5,461.61	0.00	
☐ Dimensions	11/09/09	PP346947	1169996	105521	105521	Invoice P351219	-2,781.89	0.00	
	11/09/09	PP346949	1169900	105521	105521	Invoice P351221	-3,640.88	0.00	
	11/09/09	P...	698952	105521	105521	Payment of Invoice PP346947	2,781.89	0.00	
	11/09/09	P...	698953	105521	105521	Payment of Invoice PP346949	3,640.88	0.00	
	11/18/09	PP347927	6123336	105521	105521	Invoice P352276	-996.07	0.00	
	11/18/09	PP347928	6123337	105521	105521	Invoice P352276	-961.27	0.00	
	11/18/09	P...	699537	105521	105521	Payment of Invoice PP347927	996.07	0.00	
	11/18/09	P...	699538	105521	105521	Payment of Invoice PP347928	961.27	0.00	
	12/02/09	PP349711	6179113	105521	105521	Invoice P354182	-2,057.93	0.00	
	12/02/09	P...	700465	105521	105521	Payment of Invoice PP349711	2,057.93	0.00	
	12/11/09	PP351119	20096194177	105521	105521	Invoice P355590	-12,353.88	0.00	
	12/11/09	PP351120	96143680	105521	105521	Invoice P355591	-217.53	0.00	
	12/11/09	PP351121	96173871	105521	105521	Invoice P355592	-24,667.78	0.00	
	12/11/09	PP351122	6170869	105521	105521	Invoice P355593	-2,491.65	0.00	
	12/11/09	PP351123	6173870	105521	105521	Invoice P355594	-12,236.40	0.00	
	12/11/09	P...	701378	105521	105521	Payment of Invoice PP351119	12,353.88	0.00	
	12/11/09	P...	701379	105521	105521	Payment of Invoice PP351120	217.53	0.00	

Payments to Vendors

Date Range: 11/01/09..12/31/09

Vendor No.105521

Date	Account No.	Cost Ctr.	Comments	Amount
105521 - SUMTER COUNTY TREASURER				
Total: 67,866.69				
12/02/09	2717	994990	2080301016 BRANCH 359	2,057.93
12/11/09	2717	994990	2280508017 BRANCH 286	12,368.88
12/11/09	2717	994990	228080358 BRANCH 48 REESE ST	217.33
12/11/09	2717	994990	2280902001 BRANCH 683 BULTMAN	24,667.78
12/11/09	2717	994990	1850001055 - 3416 PATRIOT PKWY	2,481.86
12/11/09	2717	994990	208030101100001 - 1136 W. LIBERTY	12,298.40
2717 Total:				54,024.97
* 11/02/09	5292	358000	1840002023	5,461.61
11/09/09	5292	285000	WILSON 2280901014	2,781.89
11/09/09	5292	285000	MONTGOMERY/2370002049	3,640.68
5292 Total:				11,884.38
11/18/09	5307	998000	2211401016 OREG	988.07
11/18/09	5307	358000	2490701028 OREG	981.27
5307 Total:				1,947.34

*Vendor
payment
Sumter County*

*property
TM # for
Lance Jones*

000165

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

First Citizens Bank and Trust Company, Inc.,
f/k/a Community Resource Bank N.A., Sumter
Regions,

Plaintiff,

v.

Lance E. Jones,

Defendant.

Case No. 2011-CP-43-282

AFFIDAVIT OF MARK A. MOSSELL

I, the undersigned Mark A. Mossell, being duly sworn, depose and state on oath as follows:

1. I am a vice president of First Citizens Bank and Trust Company, Inc. ("First Citizens"), and my office is in Sumter, South Carolina.
2. I was formerly an assistant vice president of Community Resource Bank N.A.
3. Community Resource Bank N.A. merged into First Citizens as of November 1, 2008, at which time I became an employee of First Citizens.
4. On November 16, 2006, Community Resource Bank N.A. made a loan in the principal amount of \$65,000.00 to Lance E. Jones, and I was the loan officer who originated the loan.
5. To evidence his indebtedness for the loan, Lance E. Jones executed to Community Resource Bank N.A. a promissory note dated November 16, 2006 (the "Note"), a true copy of which is attached hereto. My signature as the originating loan officer appears in the lower left-hand corner of the first page of the Note.

(Signature)

6. To secure payment of the Note, Lance E. Jones executed to Community Resource Bank N.A. a mortgage dated November 16, 2006 (the "Mortgage"), a true copy of which is attached hereto.

7. On or about March 26, 2010, Lance E. Jones and First Citizens entered into a Loan Modification Agreement effective as of March 16, 2010, a true copy of which is attached hereto. I signed the Loan Modification Agreement on behalf of First Citizens.

8. The Loan Modification Agreement provided that the Borrower, Lance E. Jones, would be required to pay interests only on the Note for a three-month period beginning March 16, 2010, and ending May 16, 2010.

9. Lance E. Jones has failed to make payments due on the Note, and First Citizens, which is the owner and the holder of the Note, has declared the principal balance and all accrued interest owed on the Note immediately due and payable.

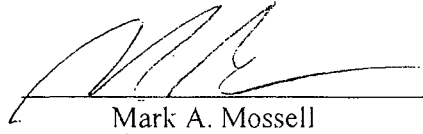
10. The debt owed on the Note as of June 27, 2011, is as follows:

Principal balance	\$49,137.21
Interest accrued as of June 27, 2011	1,059.51
Late charges	<u>609.03</u>
Total amount due as of June 27, 2011	\$44,743.09

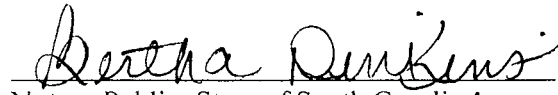
Interest is continuing to accrue on the principal balance at the rate of \$5.98 per day for each day after June 27, 2011, and the Note provides that First Citizens may recover all costs of collection, including reasonable attorney's fees.



WITNESS MY HAND this 12 day of June, 2011, at Sumter, South Carolina.


Mark A. Mossell

Sworn to and subscribed before me
this 12th day of June, 2011.


Notary Public, State of South Carolina
My commission expires 12/12/2016

(SEAL)

LANCE E. JONES 2975 LENS HEAVENS ROAD SUMTER, SC 29154 BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	COMMUNITY RESOURCE BANK N.A. 102 FOUNDERS COURT POST OFFICE BOX 2086 ORANGEBURG, SC 29116 LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	Loan Number <u>11111824</u> Date <u>11-16-2008</u> Maturity Date <u>11-16-2011</u> Loan Amount <u>\$ 65,000.00</u> Renewal Of _____
--	---	---

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of SIXTY FIVE THOUSAND AND NO/100

Dollars \$ 65,000.00

☒ **Single Advance:** I will receive all of this principal sum on 11-16-2008. No additional advances are contemplated under this note.

☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

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

☐ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 11-16-2008 at the rate of 9.250% per year until 11-17-2008.

☒ **Variable Rate:** This rate may then change as stated below.

☒ **Index Rate:** The future rate will be 1.000 PERCENT ABOVE the following index rate: THE BASE RATE ON CORPORATE LOANS POSTED BY AT LEAST 75% OF THE NATION'S 30 LARGEST BANKS KNOWN AS THE WALL STREET JOURNAL PRIME RATE. THE RESULT OF THIS CALCULATION WILL BE ROUNDED TO THE NEAREST 0.001

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ **Frequency and Timing:** The rate on this note may change as often as EVERY DAY BEGINNING 11-17-2008

A change in the interest rate will take effect ON THE SAME DAY

☒ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than 10.000 % or less than 5.000 %. The rate may not change more than _____ % each _____.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☒ The amount of each scheduled payment will change.

☒ The amount of the final payment will change.

☐ _____

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

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☐ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ **LATE CHARGE:** If a payment is not made within 30 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MAX OF \$100.00

☐ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above: _____

PAYMENTS: I agree to pay this note as follows:

69 MONTHLY PAYMENTS OF \$838.90 BEGINNING 12-16-2008 AND 1 BALLOON PAYMENT OF \$40,793.40 ON 11-16-2011. THIS IS A VARIABLE RATE LOAN AND THE PAYMENT AMOUNTS MAY CHANGE. THE FINAL PAYMENT MAY ALSO CHANGE.

ADDITIONAL TERMS:

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date): MORTGAGE DATED 11/16/2008 ON APPROXIMATELY 20.82 ACRES OF UNIMPROVED LAND AT 2975 LENS HEAVENS RD, SUMTER, SC

(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

PURPOSE: The purpose of this loan is DEBT CONSOLIDATION

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

Signature for Lender

MARK MOSSELL, ASSISTANT VICE PRESIDENT

LANCE E. JONES

FILED, RECORDED, INDEXED
 11/16/2006 04:24:24 PM
 REC. FEE: 15.00 CD FEE:
 STATE FEE: .00 TOTAL FEES: 15.
 PAGES: 9
 VICKI M. MCCARTHY - REGISTER OF DEEDS
 SUMTER COUNTY

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

COMMUNITY RESOURCE BANK N.A.
 102 FOUNDERS CT.
 ORANGEBURG, SC 29116
 (803) 635-1060

1111824

State of South Carolina

Space Above This Line For Recording Date

REAL ESTATE MORTGAGE

(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 11-16-2006 and the parties and their addresses are as follows:

MORTGAGOR: LANCE E. JONES, AN INDIVIDUAL
 2975 LENS HEAVENS ROAD
 SUMTER, SC 29154

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

LENDER: COMMUNITY RESOURCE BANK N.A.
 ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
 102 FOUNDERS COURT
 POST OFFICE BOX 2086 ORANGEBURG, SC 29116

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

The property is located in SUMTER at APPROXIMATELY 20.82 ACRES OF
 (County)

UNIMPROVED LAND AT 2975 LENS HEAVENS ROAD, SUMTER, South Carolina 29154
 (Address) (City) (Zip Code)

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

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 85,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:

- A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., *borrower's name, note amount, interest rate, maturity date*):

\$85,000.00 REAL ESTATE NOTE DATED 11/10/08 I/N/O LANCE E. JONES

- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
- C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
- E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
- To make all payments when due and to perform or comply with all covenants.
 - To promptly deliver to Lender any notices that Mortgagor receives from the holder.
 - Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 691), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

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10. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. ENTITY WARRANTIES AND REPRESENTATIONS. If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

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

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

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

14. ASSIGNMENT OF LEASES AND RENTS. Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

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

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

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

(page 3 of 8)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(page 6 of 8)

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

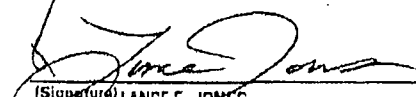
29. **OTHER TERMS.** If checked, the following are applicable to this Mortgage:

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

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

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

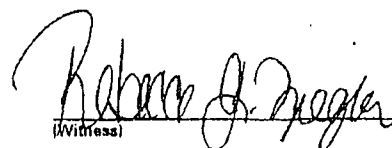
Entity Name: _____


(Signature) LANCE E. JONES (Date) _____ (Seal)

(Signature) _____ (Date) _____ (Seal)

Signed, Sealed and delivered in the presence of:

(Witness)


(Witness)

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

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF SUMTER } ss.

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

Sworn to and subscribed before me this 16TH dayof NOVEMBER, 2000

[Signature]
Notary Public for South Carolina

[Signature]

My commission expires: Nov 15, 2012

Lance E. Jones
2975 Lens Heavens Road
Sumter, SC 29154
Tax Parcel #:184-00-02-023(P)

Community Resource Bank
Loan #: 11111824

ATTACHMENT "A"

All that certain piece, parcel or lot of land, situate, lying and being in the Township of Sumter, County of Sumter, State of South Carolina and being shown and delineated as **26.91 acres** on that certain plat by Carl J. Croft, PLS, dated October 11, 1991 and recorded in the Office of the Register of Deeds for Sumter County in **Plat Book 92, at Page 20**. Pursuant to Section 30-5-250 of the Code of Laws of South Carolina, (1976, as amended) reference to said plat is hereby craved for the metes, bounds, courses and/or distances of the property delineated thereon. **LESS, HOWEVER, 4.29 acres**, shown on plat recorded in **Plat Book 93, at Page 352** and conveyed by deed recorded in Volume 570, at Page 165 on April 30, 1993 and **LESS, HOWEVER, 2.0 acres**, shown on plat recorded in **Plat Book 2006, at Page 193** conveyed to Lance E. Jones recorded in Volume 1024, at Page 1093. This property is shown on the maps for Sumter County as **tax map parcel 184-00-02-023(P)**.

This being the same property conveyed to mortgagor herein by that certain deed from the Estate of Furman L. Jayroe, a/k/a F. L. Jayroe, by Kevin Jayroe, Personal Representative to Lance E. Jones dated April 12, 2006, and recorded in the Office of Deeds for Sumter County, in Volume 1024, at Page 1097, on April 17, 2006.

CG



LOAN MODIFICATION AGREEMENT
(AFS COMMERCIAL LOANS)

Note Number: 235288/1236852
Borrower Name(s): Lance Jones
Note Date: 11/16/2008
Original Note Amount: \$ 65,000
Contract Interest Rate: Prime + 1.00 (5.00% floor)
Contract Maturity Date: 11/16/2011

Modification Fee: \$ 0

Flood Certification Fee: \$ 0.00

Environmental Report: \$ _____

Intangible Recording Tax: \$ _____

☐ Paid ☐ Financed

☐ Paid ☐ Financed

☐ Paid ☐ Financed

☐ Paid ☐ Financed

The Borrower(s) is/are indebted to First Citizens Bank and Trust Company, Inc. (Bank) by the above referenced Note (including renewals and modifications thereto), which Note currently has an outstanding principal balance of \$ _____ plus any accrued interest and other charges. All parties now desire to modify this Note. Therefore, for value received, it is the intent of all parties to modify the said Note as indicated below.

The effective date of this change will be March 16, 2010.

1. Interest Rate Change. (Complete Section A or B)

My new per annum interest rate will be:

A. Fixed Rate _____ %

B. Variable Rate:

☐ First Citizens Bank Prime plus _____ %

☐ Wall Street Journal Prime plus _____ %

☐ One Month LIBOR plus _____ %

☐ Three Month LIBOR plus _____ %

Interest will be calculated on a 360 day basis. Variable rate interest adjustments will be made based on the applicable rate index chosen above. First Citizens Prime changes will take effect daily. First Citizens Prime is an index used to price loans and is established by you at your discretion. Wall Street Journal Prime changes will take effect daily based on the Prime Rate quoted in the "Money Rates" section of The Wall Street Journal. One Month and Three Month LIBOR changes will take effect on the first calendar day of the month. The One Month and Three Month LIBOR indexes are the London Interbank Offered Rates quoted in the "Money Rates" section of The Wall Street Journal, which section is dated for the last publishing day of the month prior to each interest rate change. If my variable rate loan has a fixed principal and interest payment, I understand and agree that if the selected variable rate index should exceed the fixed rate used for payment calculation purposes, you may, at your discretion, (a) increase the amount of periodic payments to have the loan fully amortize at the scheduled maturity, (b) extend the maturity and require additional periodic payments to require the resulting increase to be paid at maturity, or (d) select or designate any combination of the foregoing.

☐ If checked, my variable rate loan will have a minimum interest rate of _____ %.

☐ If checked, my variable rate loan will have a maximum interest rate of _____ %.

2. Payment Schedule Change. (Complete Section A, B, C, or D)

A. My new payment schedule will be:

☐ Single Payment. Principal plus accrued interest and other charges due at maturity on _____.

☐ Interest Only. Interest shall be payable in consecutive monthly payments of all accrued interest plus other charges beginning on and on the same calendar period thereafter. A final payment of principal plus accrued interest and other charges due will be due at maturity on _____.

☐ Amortizing Payment. Principal and interest shall be payable in equal consecutive monthly payments of \$ _____ beginning on _____ and on the same calendar period thereafter with a final payment of all unpaid principal plus accrued interest and other charges due at maturity on _____.

☐ Level Principal Payment. Principal shall be payable in consecutive monthly payments of \$ _____ plus all accrued interest and other charges beginning on _____ and on the same calendar period thereafter. A final payment of all unpaid principal plus accrued interest and other charges due will be due at maturity on _____.

☐ Mixed Principal and Interest Payment. Principal shall be payable in consecutive quarterly payments of \$ _____ beginning on _____ and on the same calendar period thereafter. Interest shall be payable in consecutive monthly payments of all accrued interest plus other charges beginning on _____ and on the same calendar period thereafter. A final payment of all unpaid principal plus accrued interest and other charges due will be due at maturity on _____.

☒ Irregular Payment Schedule. Note will be modified to provide interest only terms for a period of 3 months beginning 3/16/2010 and ending 5/16/2010 with regular terms resuming with the 6/16/2010 payment.

B. Payment Amount Change Only. My new payment amount will be \$ _____ beginning on _____ payable in accordance with the provisions described in the said Note.

C. Payment Date Change Only. My next payment date will be due on _____ with a final payment of all unpaid principal plus accrued interest and other charges due at maturity in accordance with the provisions described in the said note.

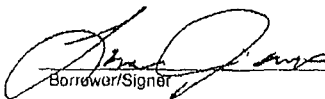
D. Maturity Date Change Only. A final payment of all unpaid principal plus accrued interest and other charges will be due on _____. All other provisions described in the said Note will remain the same.

3. Line of Credit Change.

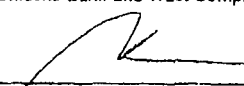
☐ If checked, the line amount on my line of credit will be lowered to \$ _____.

Bank and Borrower(s) hereby further agree to the following prepayment fee: If within ten (10) years from date of ☐ the Note or ☒ this Modification, the Bank may assess a fee on any prepayment that is made in any twelve (12) month period beginning with the date of said Note, Modification, or anniversary thereto as checked above (hereinafter "Loan Year"). Borrower shall pay a prepayment fee of four percent (4%) in years one or two, three (3%) in years three, four, or five, two percent (2%) in years six, seven, or eight, and one percent (1%) in years nine or ten of the amount by which the sum of prepayments made in any Loan Year exceeds the scheduled payments under the Note. At Bank's option, prepayment fees shall be due and payable one month after the end of the Loan Year for partial prepayments or due at the time of prepayment when the account is paid in full. If the Loan Year section is not marked, then it is agreed that the prepayment fee will be based from the date of this Modification.

Borrower and each Guarantor signing below understands and agrees that in modifying the existing indebtedness, Bank is relying upon Borrower's representations, warranties, and agreements, as set forth in the provisions of the original Note. Except as expressly modified pursuant to this Loan Modification Agreement, the terms of the original Note (including renewals and modifications thereto) remain unchanged and in full force and effect. Bank's agreement to modifications to the existing indebtedness pursuant to this Loan Modification Agreement in no way shall obligate Bank to make any future modifications to the indebtedness. Nothing in this Loan Modification Agreement shall constitute a satisfaction of the indebtedness. It is the intention of Bank and Borrower to retain as liable parties all makers, endorsers, and guarantors of the original Note (including renewals and modifications thereto), unless the party is expressly released by Bank in writing. No maker, endorser, or guarantor will be released by virtue of this Loan Modification Agreement.

	3-26-10		
Borrower/Signer	Date	Guarantor	Date
Borrower/Signer	Date	Guarantor	Date
Borrower/Signer	Date	Guarantor	Date
Borrower/Signer	Date	Guarantor	Date
Borrower/Signer	Date	Guarantor	Date

First Citizens Bank and Trust Company, Inc.

By: 
 Title: Vice President

I/We consent to and acknowledge receipt of a copy of this Modification Agreement as a third party not obligated on said note.

Mortgagor / Grantor	Date	Mortgagor / Grantor	Date
---------------------	------	---------------------	------

Bank Use Only:

Officer Number: _____ Branch Number: _____ Loan Grade: _____

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

First Citizens Bank and Trust Company, Inc.,
f/k/a Community Resource Bank N.A., Sumter
Regions,

Plaintiff,

v.

Lance E. Jones,

Defendant.

Case No. 2011-CP-43-282

AFFIDAVIT OF JOYCE McKULKA

I, the undersigned Joyce McKulka, being duly sworn, depose and state on oath as follows:

1. I am an administrative assistant in the Credit Resolution Group of First Citizens Bank and Trust Company, Inc. ("First Citizens"), and my office is in Columbia, South Carolina.

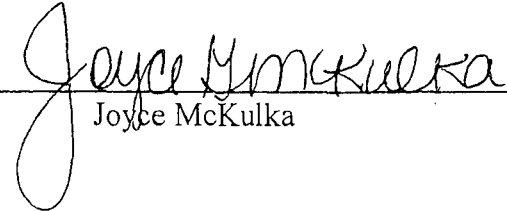
2. On April 26, 2011, I sent an e-mail message to Gladys Sanders at First Citizens stating, in effect, that P.O. Box 1775, Sumter, SC 29151, is not the correct mailing address for the Sumter County Treasurer and that the correct mailing address is 13 East Canal Street, Sumter, SC 29150.

3. I have since learned that my e-mail message to Gladys Sanders was not correct. The Sumter County Treasurer receives mail at 13 East Canal Street, Sumter, South Carolina 29150, but the Treasurer also receives mail at P.O. Box 1775, Sumter, SC 29151.

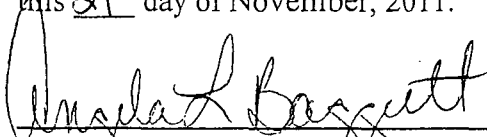
4. To determine whether the Sumter County Treasurer received mail at P.O. Box 1775, Sumter, SC 29151 in late 2009, I obtained a copy of a 2009 Sumter County Tax Notice that First Citizens received and a copy of the cancelled check by which First Citizens paid the taxes shown on the bill. Copies of the bill and the cancelled check are attached hereto.

5. The attached copy of the 2009 Sumter County Tax Notice states that payment should be mailed to the Sumter County Treasurer at P.O. Box 1775, Sumter, SC 29151. The attached copy of the check paying the taxes indicates that it was mailed to the Sumter County Treasurer at P.O. Box 1775, Sumter, SC 29151, and that the Treasurer deposited the check less than two weeks after it was issued.

WITNESS MY HAND this 21st day of November, 2011, at Sumter, South Carolina.


Joyce McKulka

Sworn to and subscribed before me
this 21 day of November, 2011.


Notary Public, State of South Carolina
My commission expires 6-14-16.

(SEAL)

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., certify that I served the attached document on Defendant by causing a true copy thereof to be mailed by first-class mail, postage prepaid, to Defendant's attorney of record addressed as follows:

Robert D. McKissick, Esquire
Abbott & McKissick Law Firm, LLC
P.O. Box 148
Florence, SC 29503

WITNESS my hand this 29 day of November, 2011.

Charlotte D. Ariail

Charlotte D. Ariail

2009 SUMTER COUNTY TAX NOTICE

www.sumtercountysc.org
Carolina B. Richardson - County Treasurer

Receipt#: 6149278 District: 17
Date Billed: 10/06/09
Tax Map#: 2481602033

CLASSIFICATION ASSESSED VALUE

Improvements @ .0%	0
Improvements @ 6.0%	3,720
Land @ .0%	0
Land @ 6.0%	460

Your property is assessed at 6%
If this is your legal residence, contact the Assessor's
Office at (803) 436-2115 or (803) 436-2117

32141 1 AT 0.357 *****AUTO**3-DIGIT 292
BANK FIRST CITIZENS & TRUST CO 032141
INC 32141
PO BOX 29 132
COLUMBIA SC 29202-0029

CURRENT YEAR

County Tax:	412.15
Legislative Mandates:	4.18
Solid Waste Disposal Fee:	34.00
Technology Fee:	1.50
Public Schools Tax:	784.59
City Operations:	384.56
City Bond Indebtedness:	54.34
Other Education:	17.56
REDUCED BY:	
Homestead Credit:	.00
County Sales Tax Relief:	88.19
City Sales Tax Relief:	113.69
Total Tax:	1,491.00

**Pay this amount on or
Before January 15, 2010 1,491.00**

Pay from 1/16/10 to 2/01/10	
Payment includes 3% penalty	1,534.67
Pay from 2/2/10 to 3/16/10	
Includes additional 7% penalty	1,636.55

Pay after March 16, 2010	
Includes additional 5% penalty	
Plus \$15 collection cost	1,724.32
Additional \$30 cost will be added after May 1, 2010	



DESCRIPTION:

1 LOT 2 BLD
LOT 6 BLK E Z24 3
70 FT AV
38 WILSON ST

Transfer: BULLOCK JOHN C

Keep this statement for your records

DETACH AND RETURN THIS STUB WITH PAYMENT

**Please allow at least
3 weeks for processing**

Avoid long lines; Pay by mail or online

PLEASE DO NOT STAPLE, CLIP, TAPE, FOLD, OR MUTILATE

Receipt#: 2009- 6149278	1,491.00
Parcel#: 2481602033	1,534.67
Owner Id: 1067260	1,636.55
	1,724.32

BANK FIRST CITIZENS & TRUST CO
INC
P O BOX 29
COLUMBIA, SC 29201



TREASURER'S COPY
Please remit payment to:

BANK FIRST CITIZENS & TRUST CO
SUMTER COUNTY TREASURER
PO BOX 1775
SUMTER SC 29151-1775



Check No. 697797
Date October 26, 2009

*** ONE THOUSAND FOUR HUNDRED NINETY ONE AND 0/100

SUMTER COUNTY TREASURER
P O BOX 1775
SUMTER, SC 29151

Amount *****1,491.00

Authorized Signature

⑈00 697797⑈ ⑆053201487⑆9805994990⑈

⑈0591011214 8887 #540⑈
1251 ARROWLINE DR PKT016
CHARLOTTE, NC 28209
7802655482

EMPOST CHECK HERE
X
FOR DEPOSIT ONLY
SUMTER COUNTY
CAROLINA B RICHARDSON TRS
11/05/2009 1,491.00
TREAS 1332 966063

Account Number	Posting Date	Amount	Serial Number	Source	Type	Status	Sequence Number
9805994990	2009-11-09	\$1,491.00	697797	Check	Debit	Posted	0000000005600301931

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

**APPEAL FROM SUMTER COUNTY
COURT OF COMMON PLEAS**

W. Jeffrey Young, Presiding Judge Third Judicial Circuit

Case No. 2011-CP-43-282

First Citizens Bank and Trust Company, Inc f/k/a/ Community Resource Bank,
N.A., Sumter Region Respondent

v.

Lance E. Jones Appellant

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 30, 2012



Robert D. McKissick
ABBOTT & McKISSICK LAW FIRM, LLC
702 W. Evans Street
Post Office Box 148
Florence, SC 29503
(843) 669-0089
Attorney for Appellant

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SUMTER COUNTY
COURT OF COMMON PLEAS

W. Jeffrey Young, Presiding Judge Third Judicial Circuit

Case No.: 2011-CP-43-282

First Citizens Bank and Trust Company, Inc.
f/k/a Community Resource Bank, N.A., Sumter
Region,

Respondent,

v.

Lance E. Jones,

Appellant.

PROOF OF SERVICE

I certify that I have served one copy of the Final Brief of the Appellant, one copy of the Record on Appeal, and Appellant's Certificate of Compliance with Rule 211(b), SCACR on Hamilton Osborne, Jr., Esquire, by depositing a copy of it in the United States Mail, postage prepaid, on September 19, 2012, addressed to Hamilton Osborne, Jr., Esquire, Haynsworth, Sinkler, Boyd, P.A., Post Office Box 11889, Columbia, SC 29211-1889.



Robert D. McKissick
ABBOTT & McKISSICK LAW FIRM, LLC
702 W. Evans Street
Post Office Box 148
Florence, SC 29505
(843) 669-0089
(843) 669-0085 (fax)

Attorney for Appellant

RECEIVED

SEP 20 2012

SC Court of Appeals