

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

20153

Common Pleas Case No. 2010-CP-23-1622
Appellate Case No. 2012-212447

JP Morgan Chase Bank, National Association,.....Respondent,

v.

Brian Adrian Tucker, Jessica C. Tucker, and Half Mile Lake Homeowner's
Association, Inc., Defendants,

Of whom Brian Adrian Tucker and Jessica C. Tucker are.....Appellants.

RECORD ON APPEAL

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SC COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Charles B. Simmons, Jr., Master-in-Equity

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2012 MAY - 1 P L: 27 CASE NO. 2010-CP-23-1622

JP Morgan Chase Bank, National Association,¹

PLAINTIFF,

VS.

Brian Adrian Tucker, Jessica C. Tucker, and Half Mile Lake Homeowner's Association, Inc.,

DEFENDANT(S).

CLERK OF COURT

ORDER DENYING DEFENDANT TUCKERS' RULE 60(b) MOTIONS AND ORDERING THAT THE PROPERTY BE VACATED

(100268.00125)

ENTERED COMPUTER

This matter came before me for a hearing on August 9, 2011 pursuant to the Rule 60(b) motion of the Defendants Brian Adrian Tucker and Jessica C. Tucker ("Tuckers") to set aside the Judgment of Foreclosure and Sale and to stay eviction from the property pending consideration of the motion. The Plaintiff, JP Morgan Chase, Bank, NA ("Chase") agreed to the stay pending consideration of the Motion.

After considering the pleadings, memoranda, affidavits, arguments of counsel, and testimony, and after requiring the parties to process a new loss mitigation application, this court denies the Tuckers' motion and orders that the Tuckers vacate the property within 30 days of this Order being served upon their counsel.

SCANNED

¹ The caption was previously amended by Order of this court to reflect that Chase Home Finance, LLC merged into JP Morgan Chase Bank, National Association.



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FACTUAL/PROCEDURAL BACKGROUND

Chase commenced a foreclosure action on March 1, 2010. Personal service of the Lis Pendens, Summons and Complaint was made on Brian Tucker on March 9, 2010 and service on Jessica Tucker was made on this same date through Brian Tucker.² More than 30 days elapsed since service of the Summons and Complaint on the Defendants, and the Defendants failed to plead or otherwise defend as provided by the rules, so Chase filed affidavits of default and submitted a proposed Order of Reference which was duly signed and filed on April 20, 2010.

A hearing was scheduled before this court on July 7, 2010. Due notice of this hearing was served on the Defendants on June 21, 2010 as shown by the Notice of Hearing with Certificate of Service on file with the court. The Defendants failed to appear at the hearing. This court received a Record of Hearing with supporting documents, and executed a Judgment of Foreclosure and Sale dated July 7, 2010 and filed July 14, 2010.

Pursuant to the terms of the Order, the property was sold according to law on September 7, 2010, with deficiency demanded. Notice of this sale was advertised according to law in the Greenville News for the three Fridays preceding the sale. Chase was the successful bidder and on November 29, 2010, this court signed the deed³ which was filed with the Greenville County Register of Deeds on December 14, 2010.

² The Tuckers dispute this and this was one of the grounds for their Rule 60(b) Motion. The court will discuss the issue later in this Order.

³ The Deed was to Fannie Mae pursuant to Chase's request.



The Tuckers remain in possession of the property and on January 27, 2011, Chase filed a form Motion and this court issued an Ejectment Order filed January 31, 2011. On April 8, 2011, the Tuckers filed a Motion to stay ejectment. A hearing was scheduled before me on these motions for May 9, 2011. On May 6, 2011, the Tuckers filed a Motion to Vacate and Set Aside the default judgment pursuant to Rule 60(b). Chase objected to consideration of this Motion on May 9, 2011 without adequate prior notice, so the court rescheduled the hearing for May 23, 2011.

At the hearing on May 23, 2011, the Tuckers wanted to offer live testimony and raised the issue of service of the Summons and Complaint. This court decided that the Tuckers needed to refile their Motion to include this issue and ordered that Chase bring its process server to the rescheduled hearing. The hearing was rescheduled to August 9, 2011. At this hearing, both Brian and Jessica Tucker testified and Chase presented the testimony of its process server, Terry Moore.

Subsequent to this hearing, on August 26, 2011, this court held a telephone status conference with the parties' counsel. At this conference, the court notified the parties that it was taking this matter under advisement, but ordered Chase to consider the Tuckers for all available foreclosure alternatives and for the Tuckers to promptly apply for any programs for which they may be eligible.

Over the next several months, the parties proceeded down this path with this court's supervision. Ultimately, the court held two more status conferences with the parties, one of which included a representative from SC Help.⁴ The fundamental

⁴ SC HELP is a South Carolina Not-For-Profit assisting South Carolina citizens in foreclosure.

problem, which the Tuckers could not overcome, was the combination of their limited income and an arrearage dating back to October 2008 which exceeds \$65,000.

The SC Help program illustrates the Tuckers' problem. The Tuckers qualified for \$20,000 in funds from the SC Help program which Chase could apply to their arrearage; however, to qualify, the Tuckers had to have a mortgage debt to income ratio of 31% or less after application of the funds. In this case, because of the large arrearage, even after applying the \$20,000 from SC Help, the Tuckers mortgage debt to income ratios would still exceed the guidelines.

LAW/ANALYSIS

The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle her to relief. BB&T v. Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006).

In determining whether to grant relief under Rule 60(b)(1), the court must consider the following factors: "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party." Micronics, Inc. v. S.C. Dep't of Revenue, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct.App.2001).

In this case, each of these factors weigh against granting the Motion.

First, the Defendants have not acted promptly. As noted in the factual background, the hearing in this case was held and judgment entered on July 7, 2010, almost ten months prior to the Defendants filing their initial Rule 60(b) motion.



Moreover, since the foreclosure hearing, the property has been advertised, sold, and the deed signed and delivered. Second, the Defendants have failed to prove any reasons for their failure to act promptly.

The Defendants claim they were not served with the Summons and Complaint; however, in addition to the Affidavit of Service on file with the court, Chase offered the testimony of Terry Moore, Chase's process server. Mr. Moore is a retired police officer with over 30 years' experience serving process. Mr. Moore specifically identified Brian Tucker in the courtroom as being the person he served, said he was quite familiar with the area, and that Mr. Tucker identified himself as being Brian Tucker. Mr. Moore has no doubt he served Brian Tucker. In contrast, the Tuckers' offered circumstantial evidence that Ms. Tucker would have been home at the time and that their dog barks constantly when someone comes to the door. This court finds Mr. Moore's testimony to be credible, that the Tuckers were served with the Summons and Complaint and that the Tuckers have failed to meet their burden of proof on this issue.

Third, and perhaps most important to the court, the Defendants have no meritorious defense. As alleged in the complaint, and as shown in the payment history, the Defendants are in default under the terms of the note and mortgage and still owe Chase for all payments since October 2008. This evidence is not disputed.

Furthermore, despite the Defendants arguments to the contrary, HAMP is not a defense or cause of action. It is a matter to be decided by the court if raised in the pleadings, which it was not. Moreover, as shown by Chase's affidavit and the



Tuckers' payment history, the Defendants had earlier entered into a repayment plan and had then failed to timely make their HAMP trial payments. The Tuckers failed to offer evidence at the hearing to contradict Chase's affidavit by proving they timely made these payments. Moreover, this court ordered that Chase process a new application by the Tuckers, which Chase did and the Tuckers still could not qualify for foreclosure relief, even after applying \$20,000 in funds from the SC. Help program. The Tuckers' current income is too low and their mortgage arrearage is too high for them to qualify. Generally speaking, to qualify for the programs, after receiving all permissible loan modifications set forth in the guidelines, the modified mortgage payments must be less than 31% of the debtors' income. According to Chase's analysis, the Tuckers mortgage payment to income ratio would be over 216% and would not meet the guidelines.

Finally, Chase would be prejudiced if the judgment was vacated. Chase has already advertised and purchased the property at judicial sale. Fannie Mae received a deed which has been recorded. Furthermore, since the deed was delivered to Fannie Mae, the judicial sale is *res judicata* under the provisions of S.C. Code Ann. §15-39-870.

Rule 60(b)(3) allows the court, within its discretion, to relieve a party from a default judgment where the judgment has been obtained through some misrepresentation, fraud or other misconduct has been made by an adverse party. The rule applies, however, only to extrinsic fraud, not intrinsic fraud. Raby Const. LLP v. Orr, 358 S.C. 10, 594 S.E.2d 478 (2004). Moreover, the fraud requires a showing



that the perpetrator acted with intent to defraud. Perry v. Heirs at law of Gadsden, 357 S.C. 42, 590 S.E.2d 502 (Ct. App. 2003). Those elements are not present in this case.

Rule 60(b) motions and "independent actions in equity" do not allow a party to relitigate a case, hoping to clinch a victory in a more favorable climate the second time around, by supplying evidence they failed to muster at the first trial. See Mr. G v. Mrs. G., 320 S.C. 305, 308-309, 465 S.E.2d 101, 103 (S.C. Ct. App. 1995). A party seeking relief from a prior judgment on grounds of fraud must show he had no opportunity in the original action to fully litigate the ground on which he now seeks relief; otherwise, his claims are barred by *res judicata* and collateral estoppel.

In this case, there is no evidence of any extrinsic fraud sufficient to overturn or vacate the judgment. There is no evidence of any intent to defraud the Defendants or the court. There is no evidence that the Defendants were denied the opportunity to present evidence at the hearing on the merits. Indeed, the alleged conduct cited in Defendants' motion occurred after the judgment was already entered of record. In their Motion, the Defendants allege that in August 2010, Brian Tucker was invited to participate in a meeting concerning loan modification; however, the judgment in this case was executed on July 7, 2010. Moreover, this court ordered a *de novo* loss mitigation review and the Tuckers still did not qualify. Our courts have a "long standing policy toward final judgments." Chewning v. Ford Motor Co., 354 S.C. 72, 86, 579 S.E.2d 605, 613 (2003) (We recognize that important benefits are achieved by the preservation of final judgments. This opinion, with its unique facts, in no way alters the Court's longstanding policy towards final judgments.)



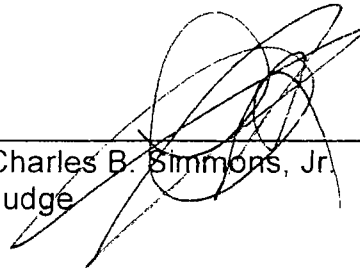
Finally, throughout their Motion, the Defendants claim that the Plaintiff misrepresents HAMP compliance in violation of Chief Justice Toal's administrative order and in paragraph 3 of the complaint. First, this allegation is not accurate since as shown by Chase's Affidavit, the Defendants' Loan Workout Agreement and payment history, the Tuckers failed to timely make their trial period payments. Second, even if the allegations were true, which this court does not find to be proven, the Defendants waived any objections and are deemed to have admitted the allegation by failing to present their objections to this court in a timely fashion. Allegations made in a complaint that are not denied in the answer are **deemed admitted** under Rule 8(d). Motors Ins. Corp. v. State by & Through Department of Highways & Pub. Transp., 313 S.C. 279, 437 S.E.2d 555 (Ct. App. 1999), reh'g denied, (Dec. 16, 1993). Third, even if the allegations were true, which the court does not find to be proven, it would be intrinsic fraud (fraud submitted to the court as part of the litigation process) for which relief from a judgment is not available. This court finds and concludes that, despite the zealous advocacy of the Tuckers' attorney, there is no basis for relief from the foreclosure judgment under Rule 60(b) (3). Further, by requiring a full *de novo* loan modification review, that lasted many months, the Court afforded the Tuckers every opportunity to attempt to save their house.

WHEREFORE, having fully considered the matter, the Defendant Tuckers' motion pursuant to Rules 60(b)(1) and 60(b)(3) is hereby denied. The Defendant Tuckers shall have 45 days following service of this Order on their attorney to peaceably vacate the property. Thereafter, the Sheriff of Greenville County is hereby



ordered to place Fannie Mae aka Federal National Mortgage Association in peaceful possession of the property.

IT IS SO ORDERED.



Charles B. Simmons, Jr.
Judge

Greenville, South Carolina
April 30, 2012

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

JP Morgan Chase Bank, NA

PLAINTIFF,

VS.

Brian Adrian Tucker, Jessica C. Tucker, and
Half Mile Lake Homeowner's Association,
Inc.

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1622

ORDER DENYING DEFENDANT
TUCKERS' MOTION TO
RECONSIDER

2012 JUN 28 PM 3:58
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
AMY S. THOMPSON

ENTERED COMPUTER

This matter comes before me on Defendants Brian Adrian Tucker and Jessica C. Tucker's motion for the Court to reconsider, alter, amend, and/or clarify its Order dated April 30, 2012, and filed May 1, 2012, in the above-captioned action. The Tuckers and their counsel received written notice of the entry of this Order on May 18, 2012, and timely served, filed, and provided the undersigned with a copy of the motion and its accompanying memorandum on May 25, 2012.

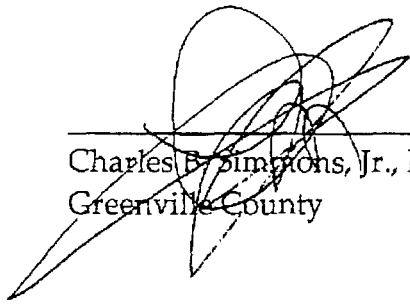
The Court elects to decide this motion on the basis of the Tucker's written motion and memorandum in accordance with Rule 59(f), SCRPC. Having reviewed the motion and memorandum, the Court concludes that it did not make any misapprehension of the facts or the law in its prior Order and therefore denies the motion.

The Court held a telephone conference with counsel for both parties and Tuckers' counsel asserted that this court had not ruled upon the Tuckers' claim pursuant to Rule 60(b)(4) SCRPC that the judgment was void because of a lack of service. The court notes that the motion refiled by the Tuckers on June 13, 2011 only asserted grounds for relief under Rules 60(b)(1) and 60(b)(3) SCRPC; however, the Tuckers did allege they were not served. To the extent this alleges a ground under Rule

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60(b)(4) that the judgment is void, the motion is denied because this court expressly found that the Tuckers had been served.

IT IS SO ORDERED.



Charles B. Simmons, Jr., Master-in-Equity
Greenville County

Greenville, South Carolina
June 27, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

Case No. 2010-CP-23-1622

Chase Home Finance, LLC,

PLAINTIFF,

2011 JAN 31 P 12: 54

vs.

EJECTMENT

Brian Adrian Tucker, Jessica C. Tucker and
Half Mile Lake Homeowner's Association, Inc.,

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
WORKING

DEFENDANTS.

(100268.00125)

2011 FEB 17 P 1: 10

GREENVILLE COUNTY
SHERIFF'S OFFICE
CIVIL DIVISION

This matter came before me regarding the above named Defendant(s) Brian Adrian Tucker and Jessica C. Tucker or any occupant of the property located at 103 Half Mile Lake, Greenville, SC 29609, to issue a Writ of Assistance by this Court to the Sheriff of Greenville County, South Carolina, ordering and directing him to remove, peaceably or forcibly, the Defendant(s) Brian Adrian Tucker and Jessica C. Tucker, together with any and all persons claiming under said defendants, and all of their personal property located within or on the subject premises described herein.

It appears that the Plaintiff was the successful bidder at the public sale of the subject premises on July 14, 2010, the subject property was sold at judicial sale, resulting in a Master's Deed filed December 14, 2010 in Book 2381 at Page 4710 of the Greenville County Register of Deeds Office. That Plaintiff is entitled to possession of the subject premises.

NOW THEREFORE,

UPON MOTION of Ronald C. Scott and/or Elizabeth R. Polk and/or Brett F. Kline and/or Angelia J. Grant and/or Douglas E. Thomas of Scott Law Firm, P.A., Attorneys for the Plaintiff,

IT IS HEREBY ORDERED that the Plaintiff is entitled to recover possession of the premises described as follows:

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as HALF MILE LAKE, PHASE 1-A, LOT 7, containing 0.39 acres, more or less, as shown on that certain plat by Site Design, Inc., dated July 28, 1997 entitled "Survey for David Nasim and Suzette Nasim", recorded in the Register of Deeds Office for Greenville County, SC in Plat Book 36-A at Page 45. Reference is hereby made to said plat for a complete metes and bounds description thereof.

This being the same property conveyed to Brian Adrian Tucker and Jessica C. Tucker, as joint tenants with rights of survivorship and not as tenants in common, by deed of Federal National Mortgage Association, a/k/a Fannie Mae, dated May 14, 2007 and

CBS

recorded May 16, 2007 in the Register of Deeds Office for Greenville County, South Carolina in Book 2267 at Page 1131.

TMS No. P041.00-01-001.07

Property address: 103 Half Mile Lake, Greenville, SC 29609

IT IS FURTHER ORDERED that upon receipt of a copy of this Order, the Sheriff of Greenville County, South Carolina, or his authorized deputies be, and thereby are, directed and authorized to post a copy of this Order, and/or serve a copy of this Order upon the occupant(s) of the referenced property.

IT IS FURTHER ORDERED that not less than **21 days** subsequent to said posting or service, the Sheriff shall be authorized to enter upon the aforementioned premises, by force if necessary, and seize the said premises and to remove therefrom any and all such persons who may be occupying the same, together with all of their possessions, and to put the Plaintiff in full, peaceful and quiet possession of the premises without delay, and thereafter, within ten (10) days, make due Return to the Clerk of Court for Greenville County, South Carolina, showing how this Order has been executed.

IT IS FURTHER ORDERED that the Sheriff shall have discretion to extend the date of seizure, but not more than 30 days from the date of said service or posting, absent a further Order.

IT IS FURTHER ORDERED that, should the Defendant(s) and/or occupant(s) of the property challenge Plaintiff's right to possession, said Defendant(s) and/or occupant(s), upon filing a Motion to Stay Writ of Ejectment, shall be entitled to an expedited hearing, which may be scheduled with the court by calling (864) 467-8556, but only after filing said motion with the Clerk of Court.

AND IT IS SO ORDERED.

s/ Charles B. Simmons, Jr.
The Honorable Charles B. Simmons, Jr.
Master in Equity for Greenville County

1/28 2011
Greenville, South Carolina



2010086530

DEED
3 PGS

Book: DE 2381 Page: 4710-4712

December 14, 2010 01:35:08 PM Cons: \$148,955.70
Rec. \$10.00 Cnty Tax: EXEMPT State Tax: EXEMPT

FILED IN GREENVILLE COUNTY, SC
MASTER'S TITLE

e

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

TO ALL WHOM THESE PRESENT SHALL CONCERN:

I, Charles B. Simmons, Jr., as Master in Equity for Greenville County, the said State, send greetings:

WHEREAS, in an action in the Court of Common Pleas in Greenville County between Chase Home Finance, LLC, as Plaintiff and Brian Adrian Tucker and Jessica C. Tucker, as Defendant(s), by an Order dated on July 14, 2010, it was decreed that the property hereinafter described should be sold by the Master in Equity for Greenville County on the terms and for the purposes mentioned in the Order(s) granted in the case (see Judgment Roll No. 2010-CP-23-1622) **(A MORTGAGE FORECLOSURE ACTION-TRANSFERRING REALTY)**

NOW THEREFORE KNOW ALL MEN, That I, the undersigned, as Master in Equity for Greenville County, pursuant to the foregoing and in consideration of the sum of one hundred forty-eight thousand nine hundred fifty-five and 70/100 (\$148,955.70) as paid by the hereinafter named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant and release the following described property unto the grantee: **Fannie Mae a/k/a Federal National Mortgage Association, organized and existing under the laws of the United States of America, International Plaza II, 14221 Dallas Parkway, Suite 100, Dallas, TX 75254**

GREENVILLE COUNTY
REGISTER'S OFFICE
CIVIL DIVISION

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as HALF MILE LAKE, PHASE 1-A, LOT 7, containing 0.39 acres, more or less, as shown on that certain plat by Site Design, Inc., dated July 28, 1997, entitled "Survey for David Nasim and Suzette Nasim", recorded in the Register of Deeds Office for Greenville County, SC in Plat Book 36-A at Page 45. Reference is hereby made to said plat for a complete metes and bounds description thereof.

This being the same property conveyed to Brian Adrian Tucker and Jessica C. Tucker, as joint tenants with rights of survivorship and not as tenants in common, by deed of Federal National Mortgage Association, a/k/a Fannie Mae, dated May 14, 2007 and recorded May 16, 2007 in the Register of Deeds Office for Greenville County, South Carolina in Book 2267 at Page 1131.

TMS No. P041.00-01-001.07

Property address: 103 Half Mile Lake, Greenville, SC 29609

This property was sold subject to any past due or accruing property taxes, assessments, existing easements and restrictions of record and any other senior encumbrances.

TOGETHER with all and singular the hereditaments, rights, members, and appurtenances whatsoever to the said property belonging or in any wise incident or

Return to Scott Law Firm, P.A., P.O. Box 2065, Columbia, SC 29202

appertaining, and the reversions and remainders, rents, issues, and profits thereof, and also any estate, right, title, interest, dower, possession, benefit, claim, or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

TO HAVE AND TO HOLD the said property, with its hereditaments, privileges, and appurtenances, unto the said grantee, its successors and assigns for their own use, benefit, and behoof, forever.

IN WITNESS WHEREOF, I, the undersigned, as Master in Equity for Greenville County under and by virtue of the said Order(s), have hereunto set my Hand and Seal the 29 day of November, 2010.

SIGNED, SEALED AND DELIVERED
IN THE Presence of:

Wanda E. Judge
Sue D. Swecker

Charles B. Simmons, Jr.
Judge

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, Sue D. Swecker, do hereby certify that Judge Charles B. Simmons, Jr., as Master in Equity for Greenville County, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 29 day of November, 2010.

Sue D. Swecker
Notary Public for South Carolina
My Commission Expires: 06/04/2011

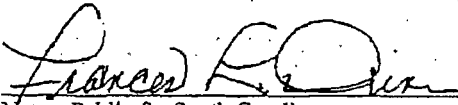
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AFFIDAVIT

PERSONALLY APPEARED before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and understand such information.
2. The property transferred by Master's Deed to Fannie Mae a/k/a Federal National Mortgage Association, organized and existing under the laws of the United States of America dated November 29, 2010.
3. Check one of the following: THE DEED IS
 - (a) ___ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth;
 - (b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary;
 - (c) EXEMPT from the deed recording fee because (exception # 3 - that are otherwise exempted under the laws and Constitution of this State or of the United States)
4. Check one of the following if either item 3(a) or 3(b) above has been checked.
 - (a) ___ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____;
 - (b) ___ The fee is computed on the fair market value of the realty which is \$ _____;
 - (c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES ___ or NO ___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The DEED recording fee is computed as follows:
 - (a) _____ the amount listed in item 4 above;
 - (b) _____ the amount listed in item 5 above (no amount place zero);
 - (c) _____ Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: attorney for Chase Home Finance LLC.
8. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit if guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this
9th day of December, 2010.

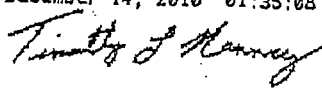


Notary Public for South Carolina
My Commission Expires: 08/02/2017



Ronald C. Scott
Elizabeth R. Polk
Brett F. Kline
Angelia J. Grant
Sara J. Volk
Douglas E. Thomas
Attorneys for the Plaintiff

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2010086530 Book: DE 2381 Page: 4710-4712
December 14, 2010 01:35:08 PM



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE 14 AM 10: 27

Chase Home Finance LLC
PLAINTIFF,
CLERK OF COURT
GREENVILLE CO. S.C.
PAUL A. WICKERT

VS.

Brian Adrian Tucker, Jessica C. Tucker, and
Half Mile Lake Homeowner's Association,
Inc.

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1622

MASTER IN EQUITY'S
ORDER AND JUDGMENT
OF FORECLOSURE AND SALE

DEFICIENCY DEMANDED AGAINST BRIAN
ADRIAN TUCKER

Non-Eligible under the Home Affordable
Modification Program

NOTICE: The original of this document was filed in
the office of the Clerk of Court for Greenville County:

File Number 100268.00125

TO: Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angelia J. Grant, SC Bar #78334
Sara J. Volk, SC Bar #74822
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

Brian A. Tucker
103 Half Mile PL
Greenville, SC 29609

Jessica C. Tucker
103 Half Mile PL
Greenville, SC 29609

Half Mile Lake Homeowner's Association, Inc.
HDQRTRS, Registered Agent
Half Mile Lake Subdivision
7 Wieuca Ct.
Greenville, SC 29609

Pursuant to Circuit Court Rule 53(e) of the South Carolina Rules of Civil Procedure, the
above-entitled matter was referred to the undersigned to make appropriate findings of facts and
conclusions of law with authority to enter a final judgment in the cause.

Copy mailed to
Attorney *Grant*
on 7.14.10

RECEIVED
JUL 13 2010
Clerk of Court
Greenville County

Pursuant to the said Order of Reference a hearing was held attended by the attorneys of record. A Record of Hearing was presented, which is herewith reported, and from the Record of Hearing and the documents and records received into evidence, I find, conclude and order as follows:

FINDINGS

This Court has jurisdiction over the subject matter of this action and the parties hereto and it is the proper forum for the litigation of this matter.

1. Based upon the facts and/or evidence presented, the Court has determined that this loan is not eligible under the Home Affordable Modification Program.
2. The Lis Pendens was filed on March 1, 2010.
3. The Summons and Complaint were filed on March 1, 2010.
4. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.
5. The Defendant(s), Brian Adrian Tucker, Jessica C. Tucker, and Half Mile Lake Homeowner's Association, Inc., are in default as is shown by the affidavit filed herein.
6. The Defendants and/or all attorneys of record were notified of the time, date, and place of the hearing of this matter.
7. According to the affidavit filed herein, any Defendant in default is not in the Military Service of the United States of America, as contemplated under The Servicemembers' Civil Relief Act of 2003 and any amendments thereto.
8. For value received, Defendant(s), Brian Adrian Tucker, made, executed and delivered a Note dated May 14, 2007, promising thereby to pay to the order of Hanover Mortgage Company the sum of 155000.00 with interest at the rate of 7.0% per annum. Other terms and conditions are stated in the Note, which is of record herein.
9. To better secure the payment of the Note described above, the said Defendant(s), Brian Adrian Tucker and Jessica C. Tucker, made, executed and delivered to Mortgage Electronic Registration Systems, Inc., solely as nominee for Hanover Mortgage Company a Mortgage in writing, dated May 14, 2007, covering real property in Greenville County, which is the same as that described in the Complaint. The Mortgage was filed on May 16, 2007, and is of record in the Office of the Clerk of Court for Greenville County in Book 4778,

at Page 1647. The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor(s). The Court finds also that this mortgage constitutes a first lien on the mortgaged premises and a purchase money lien as may apply under state law as well as the After Acquired Property Doctrine. Thereafter, said Note and Mortgage by assignment were assigned to Chase Home Finance, LLC dated March 8, 2010 and recorded March 16, 2010 in Book 5073 at Page 1352 in the ROD Office for Greenville County, South Carolina.

10. That the Court finds that the Plaintiff has complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP), if applicable; and that moreover and prior to the filing of this judicial proceeding, the Defendant(s) had not raised any compliance defense or objections as to the servicing of any applicable banking or consumer laws by the Plaintiff.

11. Payment due on the note has not been made as provided for in the note, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the note and mortgage in the hands of the attorney herein for collection.

12. With respect to attorney fees and in view of the potential financial liabilities and likely continuing professional obligations inherent in legally prosecuting a real property credit matter, the attendant professional duties and responsibilities, and the size of the mortgage debt, I find that a reasonable attorney's fee in this matter would be \$3,825.00. This award is consistent with and pursuant to the common laws of this jurisdiction wherein our appellate courts have consistently held that any contract for fees that may exist or exists between the lawyer and the client (In addition to not being one of the six (6) fee review factors) is not binding on the trial court on the determination of the reasonableness of the fee. Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750(1997); Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995); and Williamson v. Middleton, 374 S.C. 419, 649 S.E.2d 57 (Ct. App. 2007). Total representation of the Plaintiff's interests in this matter have been undertaken, including among many duties the researching of the referral file to serving as custodian of the loan documents to the filing of all



pleadings and other legally required documents with the court, by the Scott Law Firm, P.A. Moreover, this Trial Court has specifically examined, and made its award herein of attorney fees to Counsel for the Plaintiff in compliance with the six (6) factors identified and enumerated in Baron Data Systems v. Loter, 297 S.C. 382, 377 S.E.2d 296 (S.C. 1989).

13. On receiving testimony and other evidence during this hearing, I find that the Scott Law Firm, P.A., was engaged by the Plaintiff to foreclose the mortgage as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the accrual of interest and related adverse economic conditions such as depreciation or possible damage to the collateralized property. Upon receipt of the case file, the title was examined and studied to identify all parties having or claiming an interest in the subject real estate as well as being researched for salient legal questions and issues. Various attorneys as well as experienced paralegal staff have been responsible for (and expended extensive professional time) in the preparation of the following pleadings and other legally required services and documents:

1. Lis Pendens and any amendment thereto
2. Summons and Complaint and any amendment thereto
3. Affidavits and proposed Order of Publication
4. Affidavit of Default
5. Consent(s) to Order of Reference
6. Order of Reference
7. Notice of Hearing
8. Proposed Judgment of Foreclosure and Sale
9. Record of Hearing
10. Notice of Sale
11. Other documents as applicable pertaining to service and finalization of the action.

Counsel may also prepare for the Plaintiff the Statutory Foreclosure Deed and any other documents necessary in this particular action as ordered or authorized by this Court.

Jurisdiction over the fee award shall be reserved as granted in the Order of Reference with the right to re-visit the question of attorney fees should the action proceed in an unexpected way and/or to facilitate the assessment and payment of any such current or additional professional compensation.

14. The amount due and owing on the Note, with interest at the rate provided in the Note, including attorney's fee and allowable costs and charges allowable under and secured by the Note and Mortgage, is as follows:

(a) Principal due \$153,014.40

(b)	Interest from September 1, 2009 to July 7, 2010	\$19,842.18
(c)	Late Charges	\$ 862.02
(d)	Escrow Adjustments (Itemized in Plaintiff's Disbursement Record)	\$6,821.09
(e)	Appraisal	\$ 0.00
(f)	Property Inspections	\$ 98.00
(g)	Bad Check Fee	\$25.00
(h)	Suspense Balance	(\$-1,192.52)
(i)	Costs of collection prior to hearing	\$ 823.76
(j)	Previous bankruptcy fees	\$ 0.00
(k)	Attorney's fees and costs	
	(Foreclosure & applicable Bankruptcy)	<u>\$3,825.00</u>
	TOTAL DEBT secured by note and mortgage including interest to date shown	<u>\$184,118.93</u>

Interest for the period from the date shown in (b) above through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt": to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 7.0% per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed. (Items (h), (i) and (j) are subject to revision by Plaintiff's counsel and/or modification by the Court.)

15. Based upon a search of the public records of the aforesaid county, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made defendants.

16. The Plaintiff is seeking the usual foreclosure of mortgage and has in the Complaint expressly demanded the right to a personal or deficiency judgment against Brian Adrian Tucker.

17. The Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71.

The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) That the Defendant, Half Mile Lake Homeowner's Association, Inc., by virtue of any lien or enforceable assessments against the subject property.

18. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

CONCLUSIONS OF LAW

I therefore, conclude as follows:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

2. The Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

3. The Plaintiff should have a personal or deficiency judgment against Brian Adrian Tucker.

Now, on motion of Plaintiff's attorney,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

2. This case is not subject to the stay provisions of the Order of the Supreme Court of South Carolina dated May 4, 2009, as amended and superceded by Order dated May 22, 2009.

3. That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$184,118.93, representing the total debt due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

6 

4. The amount due in the preceding paragraph (the "total debt" as set forth in Paragraph hereinabove, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 7.0% percent per annum.

5. That the Defendants liable for the aforesaid Mortgage debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

6. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned at public auction, after giving Notice of the time and place of such sale by advertisement according to law. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. The sale shall be according to the following terms, that is to say:

a. FOR CASH: The undersigned Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent), said 5% deposit being due and payable immediately upon the closing of the bidding, same to be applied to the purchase price only upon compliance with the bid, but in case of non-compliance within 20 days same to be forfeited and applied to the costs and Plaintiff's debt.

b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.0% percent.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions of record.

d. This mortgage constitutes a first lien covering the real estate and improvements therein described. Plaintiff would further allege and avail itself of the Purchase Money Mortgage Doctrine as may apply to the facts of this action.

e. Purchaser to pay for deed stamps and cost of recording the deed with the Plaintiff to pay the Statutory allowed fee of \$25.00 to the preparer of said deed (be it this Court or Counsel for Plaintiff).

7. If Plaintiff be the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, the Plaintiff may pay to the undersigned Clerk of Court only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

8. Personal or deficiency judgment being demanded, the bidding will remain open for a period of thirty (30) days after the sale date.

9. That the Master in Equity will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. Master in Equity will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action may become a purchaser at such sale, and that if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within 20 days after the date of sale, then the Master in Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured. In the event the Plaintiff is the successful bidder, at its/his option, or the option of its/his assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien against the property sold under this order and hereinafter more fully described. In the event the successful bidder is a third party, neither the Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder or any subsequent purchasers.

10. The sale will not be held unless the Plaintiff, its attorney, or its bidding agent is present at the sale or has advised the Master in Equity's office of its bidding instructions.

11. In the event of a third party bidder and that any third party bidder fails to deliver the required deposit in certified (immediately collectible) funds to the Office of the Master in Equity by close of bidding on the day of the sale, the Master in Equity will re-sell the subject property at the most convenient time thereafter (including the day of sale) upon notification to counsel for Plaintiff.

12. That the Master in Equity shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expense of this action, including any Guardian ad Litem fee or fees of attorneys appointed under Order of the Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and Plaintiff's attorney shall receive and disburse such funds only in total and absolute compliance with the debt, interest, escrow, and related calculations of this Court including the Court's award for attorney fees and taxable costs;

NEXT: Any surplus will be held pending further order of the Court as provided for in the South Carolina Rules of Civil Procedure and particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.


13. It is further ORDERED, ADJUDGED AND DECREED, that if the successful bidder is other than the Defendant in possession herein, the Sheriff of Greenville County is ordered and directed to evict and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

14. And it is further ORDERED, ADJUDGED AND DECREED that Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

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

16. The Master in Equity will retain exclusive jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, all matters post-sale which may effect the transfer of the title to the subject real property and all improvements thereon, as well, the issuance of a Contempt of a Writ of Assistance.

17. Upon issuance of a Master in Equity's Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

9 

Mortgage from Brian Adrian Tucker and Jessica C. Tucker to Mortgage Electronic Registration Systems, Inc., solely as nominee for Hanover Mortgage Company, dated May 14, 2007, covering real property in Greenville County, filed on May 16, 2007, and is of record in the Office of the Clerk of Court/Register of Deeds for Greenville County in Book 4778, at Page 1647.

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

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as HALF MILE LAKE, PHASE 1-A, LOT 7, containing 0.39 acres, more or less, as shown on that certain plat by Site Design, Inc., dated July 28, 1997 entitled "Survey for David Nasim and Suzette Nasim", recorded in the Register of Deeds Office for Greenville County, SC in Plat Book 36-A at Page 45. Reference is hereby made to said plat for a complete metes and bounds description thereof.

This being the same property conveyed to Brian Adrian Tucker and Jessica C. Tucker, as joint tenants with rights of survivorship and not as tenants in common, by deed of Federal National Mortgage Association, a/k/a Fannie Mae, dated May 14, 2007 and recorded May 16, 2007 in the Register of Deeds Office for Greenville County, South Carolina in Book 2267 at Page 1131.

TMS No. P041.00-01-001.07

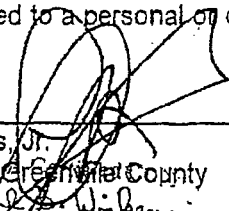
Property address: 103 Half Mile Lake
Greenville, SC 29609

19. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day as ordered by this court.

20. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

21. IT IS ORDERED that the Plaintiff is entitled to a personal or deficiency judgment against Brian Adrian Tucker.

Charles B. Simmons, Jr.
Master in Equity for Greenville County


Paul J. Walden
Clerk of Court C.P. & G.S.
Greenville County, SC

Dated 7/7/10

Greenville, South Carolina
July 7, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2011 MAY 26 P 1:56 CASE NO. 2010-CP-23-1622

Chase Home Finance, LLC,

ORDER AMENDING CAPTION

PLAINTIFF,

CLERK OF COURT
GREENVILLE CO. S.C.

VS.

ENTERED COMPUTER

Brian Adrian Tucker, Jessica C. Tucker, and
Half Mile Lake Homeowner's Association,
Inc.,

DEFENDANTS.

(100268.00125)

WHEREAS, this is a mortgage foreclosure action brought by the Plaintiff in the name of Chase Home Finance, LLC; and

WHEREAS, Chase Home Finance LLC merged with JPMorgan Chase Bank, National Association effective May 1, 2011, with JPMorgan Chase Bank, National Association being the surviving entity; and

WHEREAS, the Plaintiff's attorney moves this Court to amend the caption to reflect JPMorgan Chase Bank, National Association as the Plaintiff in this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the caption be amended to show JPMorgan Chase Bank, National Association as the Plaintiff in this action and that all previous pleadings be conformed to the caption amendment.

AND IT IS SO ORDERED.


Charles B. Simmons, Jr.
Master in Equity for Greenville County

May 25, 2011

Copy mailed to
Attorney *Grant*
on 5/26/11

(scott)

RECEIVED

MAY 26 2011

Clerk of Court
Greenville County

I SO MOVE:

SCOTT LAW FIRM, P.A.

By:

Kevin T Hardy

Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angelia J. Grant, SC Bar #78334
Douglas E. Thomas, SC Bar #76864
Priti M. Patel, SC Bar #79835
Kevin T. Hardy, SC Bar #76015
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

PLAINTIFF,

VS.

Brian Adrian Tucker, Jessica C. Tucker, and
Half Mile Lake Homeowner's Association, Inc.,

DEFENDANTS.

100268.00125

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1622

ORDER ON SALE OF REAL ESTATE

ENTERED COMPUTER

FILED
PAUL B. WICKENSIMMER
GREENVILLE CO. SC

DEC 14 2010

Pursuant to a judgment of this Court made in the above entitled action, after due legal notice, advertised and published, according to law, the undersigned Master in Equity sold the property therein described on Sales Day on September 7, 2010, as directed.

That at such sale the said premises were struck off to Chase Home Finance, LLC, its successors and assigns for one hundred forty-eight thousand nine hundred fifty-five and 70/100 (\$148,955.70).

That a deficiency judgment will be issued by separate Order.

That the EQUITY COURT JUDGE has executed and delivered to the said purchaser a good and sufficient Deed of said premises, upon their complying with terms of such sale.

DATE: October 29, 2010



Honorable Charles E. Simmons, Jr.
Greenville County Master in Equity

Return to Scott Law Firm, P.A., P.O. Box 2065, Columbia, SC 29202

RECEIVED

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

PLAINTIFF,

vs.

Brian Adrian Tucker, Jessica C. Tucker,
and Half Mile Lake Homeowner's
Association, Inc.,

DEFENDANTS.

(100268.00125)

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1622

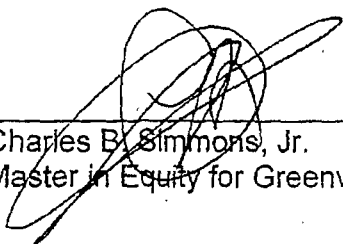
ORDER FOR DEFICIENCY JUDGMENT

ENTERED COMPUTER

OFFICE OF THE CLERK
COURT OF COMMON PLEAS
GREENVILLE CO., SC

As shown on the attached computation, I have determined the existence of a deficiency after sale of the property which is the subject of this action in the amount of Thirty-Eight Thousand Nine Hundred Sixty-One and 29/100 Dollars (\$38,961.29). It is now proper for this amount to be entered as a monetary judgment.

IT IS THEREFORE ORDERED that the Plaintiff Chase Home Finance, LLC have a judgment against the Defendants, Brian Adrian Tucker, in the amount of Thirty-Eight Thousand Nine Hundred Sixty-One and 29/100 Dollars (\$38,961.29).


Charles B. Simmons, Jr.
Master in Equity for Greenville County

October 11, 2010
Greenville, South Carolina

Return to Scott Law Firm, P.A., P.O. Box 2065, Columbia, SC 29202

Verified

COMPUTATION OF DEFICIENCY JUDGMENT

Chase Home Finance, LLC

V.

Brian Adrian Tucker and Jessica C. Tucker, et. al.

A.	Amount due Plaintiff per Master in Equity's Report and Judgment of Foreclosure and Sale	
	(a) Judgment amount with interest on principal to July 7, 2010	\$184,118.93
	(b) Interest on Judgment amount from 7/08/10 thru 9/07/10 at 7.0% per annum	\$ 1,790.35
	(c) Costs of Sale	
	Publication	\$ 430.65
	Commission	\$ 1,489.56
	Bidding Fee	\$ 35.00
	Auctioneer Fee	\$ 20.00
	Transcript Fee	\$ 32.50
		<hr/>
	TOTAL DEBT PER JUDGMENT	\$187,916.99
B.	Net proceeds of Sale to Plaintiff	<hr/> \$148,955.70
C.	Amount of Deficiency against Defendant, Brian Adrian Tucker	\$ 38,961.29

Motion Fee Paid

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

PLAINTIFF,

vs.

Brian Adrian Tucker, Jessica C. Tucker, and Half
Mile Lake Homeowner's Association, Inc.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1622

MOTION AND ORDER OF REFERENCE

(Mortgage Foreclosure Action)

100268.00125

On motion of the undersigned counsel for the Plaintiff and after review of the pleadings in the Office of the Clerk of Court and pursuant to Rules 53 and 71, SCRPC, this matter involves a mortgage foreclosure action which may be mandatorily referred for a Hearing to the Honorable Charles B. Simmons, Jr., Master in Equity for the within identified county with authority to enter a final judgment in the cause. Any appeal therefrom shall be directed to the South Carolina Court of Appeals:

IT IS THEREFORE ORDERED that this action be, and the same hereby is, referred to the Master in Equity for the within county to take the testimony arising under the pleadings and to make his/her findings of fact and conclusions of law, with authority to rule on all matters related to this action, including but not limited to, the authority to enter a final judgment in the cause and said Master in Equity is specifically granted and shall retain jurisdiction to hear any issues after sale or judgment, including but not limited to issues involving appraisal proceedings under Section 29-3-680, et. seq., and/or Rule 60 Motions and/or matters relating to the sufficiency of the successful bid and/or the marketability of title; and with the authority to sell the subject property at public auction on some convenient sales day hereafter as ordered with any appeal therefrom being directed and mandated to the South Carolina Court of Appeals.

Greenville, South Carolina
April 20, 2010

Paul B. Wilkerson
Clerk of Court or ~~Presiding Judge~~
County of Greenville

I SO MOVE:

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996

Elizabeth R. Polk, SC Bar #11673

Brett F. Kline, SC Bar #15661

Angeliá J. Grant, SC Bar #78334

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

(803) 252-3340

Copy mailed to

Attorney *Scott*

on 4 / 20 / 2010

ENTERED COMPUTER

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

PLAINTIFF,

VS.

Brian Adrian Tucker, Jessica C. Tucker, and
Half Mile Lake Homeowner's Association,
Inc.,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

FILED
MAR 9 2011
GREENVILLE
S.C.
CASE NO. 2010-CP-23-1622

SUMMONS
Foreclosure - Non-Jury

(100268.00125)

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2712 Middleburg Drive, Suite 200, Post Office Box 2065, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code §29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the mortgage identified in the Complaint is hereby perfected and Plaintiff hereby gives further notice that all

rents shall be payable directly to it by delivery of the same to its undersigned attorneys from the date of default forward. In the alternative, the Plaintiff will move a Judge of this Circuit Court on the tenth (10th) day after service hereof, or as soon as counsel for Plaintiff may be heard, for an Order enforcing the assignment of rents, if any, and/or profits, if any, compelling payments of all such funds covered by the mortgage and/or by status and/or by common law directly to the undersigned attorneys for the Plaintiff, which Motion is based upon the original Note and Mortgage identified in the Complaint therein and attached hereto as well as any applicable laws, statutes or regulations.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-In-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master In Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCAR, effective June 1, 1999.

SCOTT LAW FIRM, P.A.

By:



Ronald C. Scott, SC Bar #4996

Elizabeth R. Polk, SC Bar #11673

Brett F. Kline, SC Bar #15661

Angelia J. Grant, SC Bar #78334

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

(803) 252-3340

February 25, 2010

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

PLAINTIFF,

VS.

Brian Adrian Tucker, Jessica C. Tucker, and
Half Mile Lake Homeowner's Association,
Inc.,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

9: 20

CASE NO. 2010-CP-23-1622

COMPLAINT

Foreclosure - Non-Jury
(Deficiency demanded)

(100268.00125)

The Plaintiff above named, complaining of the Defendant(s) herein, alleges that:

1. This is an action for foreclosure of a mortgage upon certain real estate in Greenville County, South Carolina.
2. Plaintiff is a corporation or other legal entity doing business in the State of South Carolina and is the current holder of the Note and Mortgage described herein.
3. The servicer for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program (HMP), but the HMP process as specified by U.S. Treasury Department's Supplemental Directive 09-01 has been completed without resulting in a modification because the borrower(s) failed to respond to the servicer's inquiry within 30 days as set forth in the applicable guidelines.
4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
5. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of Section 15-35-840 of the Code of Laws of South Carolina (1976).
6. Heretofore, under date of May 14, 2007, Brian Adrian Tucker made, executed and delivered to Hanover Mortgage Company a certain mortgage note ("Note") in writing wherein and whereby Brian Adrian Tucker promised to pay to Hanover Mortgage Company the principal sum of \$155,000.00.
7. In order to secure the payment of said note, the said Brian Adrian Tucker and Jessica C. Tucker did on the same date, to-wit, 05/14/2007, make execute and deliver to

Mortgage Electronic Registration Systems, Inc., solely as nominee for Hanover Mortgage Company, its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of Deeds for Greenville County, on May 16, 2007, in Book 4778, at Page 1647; subsequently, the Note and Mortgage were assigned to Chase Home Finance, LLC

The description of the premises as contained in said mortgage is as follows:

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as HALF MILE LAKE, PHASE 1-A, LOT 7, containing 0.39 acres, more or less, as shown on that certain plat by Site Design, Inc., dated July 28, 1997 entitled "Survey for David Nasim and Suzette Nasim", recorded in the Register of Deeds Office for Greenville County, SC in Plat Book 36-A at Page 45. Reference is hereby made to said plat for a complete metes and bounds description thereof.

This being the same property conveyed to Brian Adrian Tucker and Jessica C. Tucker, as joint tenants with rights of survivorship and not as tenants in common, by deed of Federal National Mortgage Association, a/k/a Fannie Mae, dated May 14, 2007 and recorded May 16, 2007, in the Register of Deeds Office for Greenville County, South Carolina in Book 2267 at Page 1131.

TMS No. P041.00-01-001.07

Property address: 103 Half Mile Lake
Greenville, SC 29609

8. Plaintiff is informed and believes that its mortgage herein described constitutes a first mortgage lien on the subject real estate and improvements thereon, including any mobile home located thereon. Plaintiff would further allege and avail itself of the Purchase Money Mortgage Doctrine as may apply to the facts of this action as well as the After Acquired Property Doctrine.

9. That the Plaintiff has complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP), if applicable; and that moreover and prior to the filing of this judicial proceeding, the Defendant(s) had not raised any compliance defenses or objections as to any applicable banking laws by the Plaintiff.

10. In and by the terms of said note and the mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal and interest or any portion thereof when due, or if any of the conditions and requirements in the

mortgage securing the same be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

11. In and by the terms of the said note it is further provided that the maker thereof shall pay a reasonable attorney's fee if the note be placed in the hands of an attorney for collection after default. Any notice or compliance required by the terms of the Mortgage or by state or federal statutes has been given or complied with prior to the commencement of this action and the Defendants shall be forever barred from raising such notice or compliance.

12. The installments of principal and interest falling due from and after October 1, 2008 have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the said note and mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said note and mortgage the full and just principal sum of \$153,014.40, together with interest thereon at the rate of 7.0% percent per annum from September 1, 2009, together with reasonable attorney's fees for the collection thereof and the costs of this action. Pursuant thereto, the Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage.

13. Upon information and belief, the Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) That the Defendant, Half Mile Lake Homeowner's Association, Inc., by virtue of any lien or enforceable assessments against the subject property.

14. The Plaintiff demands a personal or deficiency judgment against Brian Adrian Tucker and any right to the same is specifically demanded.

15. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

16. In the event the subject property is sold at Judicial Sale and the successful bidder is a third party, neither the Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder.

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

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

2. Plaintiff's mortgage be declared a first lien (and purchase money mortgage first lien as does apply under the specific facts of this action as well as the After Acquired Property Doctrine) and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums and/or costs for inspecting and securing the property which may be due or which may be or have been paid by Plaintiff, with a reasonable attorney's fees, and for the costs of this action.

3. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished and that the proceeds of sale be applied as follows:

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

Second, to the payment and discharge of the amount due on Plaintiff's note and mortgage, together with attorney's fees as aforesaid; and

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

4. Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s) and/or the grantee(s) of the mortgagor(s) and or tenants occupying or exercising control over the mortgaged premises and hold said assets or the same subject to further Order of this Court.

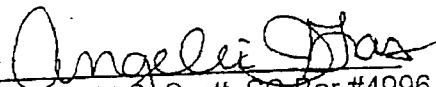
5. Issue an order directing the Sheriff of Greenville County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary; and issue an order, if necessary, directing the South Carolina Department of Motor Vehicles to issue a Certificate of Title on any mobile home collateralized under the security documents of the Plaintiff.

6. Plaintiff have judgment against the Defendant(s) Brian Adrian Tucker for the full amount found to be due Plaintiff on the note and mortgage, with the right to enter personal judgment against the Defendant for any deficiency in this action remaining after sale of the mortgaged premises.

7. For such other and further equitable and/or legal relief as the Court may deem just and proper.

SCOTT LAW FIRM, P.A.

By:



Ronald O. Scott, SC Bar #4996

Elizabeth R. Polk, SC Bar #11673

Brett F. Kline, SC Bar #15661

Angelia J. Grant, SC Bar #78334

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

(803) 252-3340

February 25, 2010

1 STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
2 COUNTY OF GREENVILLE.)

3
4 JPMorgan Chase Bank, National) Case No.: 10-CP-23-1622
Association,)
5) **TRANSCRIPT OF TESTIMONY**
Plaintiff,)
6 vs.) August 9th, 2011
) Greenville, South Carolina
7 Brian Adrian Tucker, et al.,)
)
8 Defendants,)
9)

10
11 B E F O R E:

12 The Honorable Charles B. Simmons, Jr.
13 Master in Equity for Greenville County

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

15 James Derrick Jackson, Esquire
16 Scott Law Firm
17 Attorney for Plaintiff

18 David L. Thomas, Esquire
19 Moore, Taylor & Thomas
20 Attorney for Defendant

21
22
23
24 *Ann Dickey Campbell, CVR*
25 *Court Reporter*

GREENVILLE COUNTY COURTHOUSE

I N D E X

2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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3 JESSICA TUCKER

4	By Mr. Thomas	3		22	
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5	By Mr. Jackson		16		
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7 BRIAN ADRIAN TUCKER

8	By Mr. Thomas	24			
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9	By Mr. Jackson		30		
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11 JAMES TERRY MOORE

12	By Mr. Jackson	38			
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13	By Mr. Thomas		42		
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15 JESSICA TUCKER

16	By Mr. Thomas	44			
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DEFENDANT'S EXHIBITS:

21	Description	Page
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22	#1 Letter (8/16/10) to Brian Tucker	14
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23	#2 Map - 103 Half Mile Place	35
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GREENVILLE COUNTY COURTHOUSE

1 BY THE COURT: All right, are we ready to proceed,
2 gentlemen?

3 MR. THOMAS: Yes, sir, Your Honor.

4 BY THE COURT: All right, Mr. Thomas, I will be glad to
5 hear from you, sir. I have reviewed the fine Memos submitted by
6 both counsel, so I understand what the issues are.

7 MR. JACKSON: Your Honor, I have not received any
8 Memorandum from the other side.

9 MR. THOMAS: All I sent, Your Honor, is the ---

10 MR. JACKSON: Motion and Affidavits?

11 MR. THOMAS: --- Motion and Affidavits.

12 MR. JACKSON: I did see that.

13 BY THE COURT: I misspoke, then. It's a Motion and
14 Affidavits that were filed with the Clerk's Office on June 16th.

15 MR. THOMAS: Your Honor, I think we can go through the
16 testimony that we have fairly quickly, but will take about 45
17 minutes, and I don't know how much cross there's going to be. Is
18 that within the parameters that we have here?

19 MR. JACKSON: Your Honor, my understanding, and of
20 course, all of this is in the Court's discretion, is they have
21 submitted affidavits as to their position on the Motion, and I
22 think the only question from the last hearing was, you know,
23 about the service of process, and you instructed me to bring my
24 process server here, which I have here, and he is prepared to
25 testify. I'm not certain whether we need testimony from them,

GREENVILLE COUNTY COURTHOUSE

1 but it is, of course, up to the Court.

2 BY THE COURT: It was my understanding that it would
3 just be based on the affidavits that have been previously
4 submitted by the Tuckers, but you know, if you want to take some
5 brief testimony, this has been docketed for 30 minutes, and if
6 it can get done in 30 minutes, then we'll do it.

7 MR. THOMAS: We will move through very, very quickly,
8 Your Honor.

9 BY THE COURT: Okay.

10 MR. THOMAS: I think the testimony will help the Court.

11 BY THE COURT: All right, well, will it repetitive of
12 the affidavits?

13 MR. THOMAS: We will make sure it's not, but I think if
14 the Court can just --- I'd like to get it on record, too.

15 BY THE COURT: All right, you can call your first
16 witness.

17 MR. THOMAS: Thank you, Your Honor. We would like to
18 call Mrs. Tucker.

19 BAILIFF: Place your left hand on the Bible and raise
20 your right hand and face the Judge.

21 BY THE COURT: Do you swear to tell the truth, the
22 whole truth and nothing but the truth?

23 MS. TUCKER: I do.

24 BY THE COURT: Thank you. If you would come around and
25 have a seat, please.

GREENVILLE COUNTY COURTHOUSE

Jessica Cape Tucker – Direct Examination by Mr. Thomas

1 And if you would state your full name, please, ma'am?

2 MS. TUCKER: Jessica Cape Tucker.

3 BY THE COURT: All right, thank you.

4 JESSICA CAPE TUCKER, being first duly sworn, testified
5 as follows:

6
7 DIRECT EXAMINATION BY MR. THOMAS:

8 Q Tell us how many children you have.

9 A Just one, Jackson.

10 Q And who else lives at your household?

11 A My grandmother.

12 Q How old is she?

13 A 92.

14 Q And your husband?

15 A And my husband.

16 Q Do you work?

17 A I do, at A Cut Above Hair Studio.

18 Q All right, are you familiar with the mortgage situation in
19 trying to deal with Chase?

20 A To the best of my knowledge, yes.

21 Q Who, primarily, in your household is dealing with the Chase
22 issue?

23 A I was.

24 Q Was your husband ever involved with the Chase issue?

25 A Yes, he was. But he didn't have a lot of time to talk on

1 the phone with them, so I would do it.

2 Q All right, and you've seen the assertion that there was a
3 service of process made at your house, is that correct?

4 A Yes.

5 Q And tell the Court where you live?

6 A 103 Half Mile Place.

7 Q Is there a street close by with almost the identical same
8 name?

9 A Yes ---

10 Q Tell ---

11 A --- right near to it, Half Mile Way.

12 Q All right, is there ever any problem, tell the Court, if
13 there's ever any problem with mail delivery, people coming
14 to the wrong place, and so forth?

15 A All the time. We are constantly getting mail for Half Mile
16 Way. We get packages from UPS. It's an every-month
17 occurrence. I've actually had to call the post office down
18 on Washington Street to try to resolve the issue.

19 Q All right, do you and your husband communicate freely?

20 A Yes.

21 Q If issues arose, phone calls, letters, communications, tell
22 us who, and he happened to pick them up, who they would go
23 to?

24 A They would go to me.

25 Q Why?

GREENVILLE COUNTY COURTHOUSE

1 A Because I was the one dealing with Chase.

2 Q All right, did he give you any kind of service of process
3 on or about March --- or did you ever receive a service of
4 process for a lawsuit of foreclosure?

5 A No, sir, nothing.

6 Q Is this like him?

7 A No, it's not. No, he would have to tell me.

8 Q Why?

9 A Because he's an open book, bless his heart. He can't hide
10 things from me, and my son is just like him. He would just
11 be honest with me. He would have no reason to lie to me
12 about this. This is our home.

13 Q On March the 9th of 2010, do you know where you were?

14 A Yes.

15 Q That morning, approximately 9:00 a.m.?

16 A I was still at home.

17 Q All right, how do you know that?

18 A Because I didn't have a client at work until ten o'clock
19 that morning, so I wouldn't have had to be at work until
20 9:30. It approximately takes me about ten minutes to get to
21 work. I wouldn't have left until fifteen or twenty after to
22 get to work on time.

23 Q All right, if somebody had come to the door and knocked on
24 the door, what would have happened?

25 A We have, my grandmother has a little bitty dog that yaps.

GREENVILLE COUNTY COURTHOUSE

1 anytime anybody knocks on the door, comes to the door. She
2 goes hysterical until we're able to quiet her down. There
3 is no way that we wouldn't have heard somebody knocking at
4 the door.

5 Q Have you been known to --- explain to the Court your
6 relationship with Chase over a period of approximately a
7 year and a half or so.

8 A It's been mass confusion. There just no other words. We
9 have been told one thing, told that we were okay, that our
10 mortgage modification was going to go through. We would be
11 in contact with them through phone and mail, us the whole
12 time thinking that our modification was going to go
13 through.

14 Q When is the first time you heard about this foreclosure
15 action?

16 A On April --- no, March, when we were served with the
17 eviction letter.

18 Q Had you gotten anything by mail or by hand delivered
19 service of process?

20 A Nothing.

21 Q Who gets the mail?

22 A My grandmother does. She's home all day.

23 Q What does she do with it?

24 A Puts it on the counter in the same spot.

25 Q Who then looks at it first?

GREENVILLE COUNTY COURTHOUSE

1 A I do, because I am at home first.

2 Q All right, would you say, or explain to the Court, how
3 often your communications with Chase have been over a
4 period of a year and a half?

5 A A couple of times throughout the month.

6 Q All right, who ---

7 A By mail or phone.

8 Q --- who began this process with Chase?

9 A We did.

10 Q Why?

11 A We contacted them in December of 2008 and asked if we
12 qualified for a mortgage modification. Both of our jobs are
13 in sales, and with the economy downturn, that we were going
14 to possibly need some help. We contacted them first to ask
15 if we would qualify. They told us that we did, that we
16 could qualify. They would send us a package of information
17 that we would fill out and we would begin our trial monthly
18 payments.

19 Q Since the eviction has been served on you, have you looked
20 for another possible place that you and your husband can
21 go?

22 A Yes.

23 Q And have you found one?

24 A No. I went to a couple, and we were turned down.

25 Q Why?

1 A My credit's too bad.

2 Q Have you had any other credit problems other than this?

3 A No.

4 Q Do both of you work?

5 A Yes.

6 Q How many jobs does your husband work?

7 A Two.

8 Q All right, have you had a home before this one?

9 A Yes, this is our second home.

10 Q You contacted Chase again for what reason?

11 A I saw an ad. I had an email sent to me. The ad that went
12 into the paper that the house was going up for sale. I
13 contacted them. They said it was a mistake. Within two
14 days, they sent us a letter to come to an event. This
15 event, we met with the Chase lender ---

16 MR. JACKSON: I'm sorry. Your Honor, may I interject
17 here? They're going into an area here about an alleged
18 event that occurred on August the 16th of 2010. This was
19 after Judgment had already been entered of record, and
20 they're filing a Motion to Set Aside the Judgment, and Your
21 Honor, I think this testimony is irrelevant as to whether
22 or not the Judgment should be vacated or not, because this
23 occurred after the Judgment.

24 BY THE COURT: All right, Mr. Thomas, how is a post-
25 Judgment event relevant?

1 MR. THOMAS: Your Honor, here's what we're trying to
 2 demonstrate: that in paragraph 3 of the Plaintiff's
 3 Complaint, they say all attempts at modification had been
 4 completed, a la Justice Toal's Order. What I am trying to
 5 demonstrate, nothing had stopped the modification attempts.
 6 Even after Judgment, they still were trying to say that
 7 everything was okay, the agents of Chase. So by this, I'm
 8 trying to demonstrate that there had been no cessation of
 9 modification, and even in their Complaint we find Justice
 10 Toal's Order violated. And that's part of my Motion, Your
 11 Honor. Part of my Motion is not only did they not get
 12 service of process, but they violated Justice Toal's Order.

13 BY THE COURT: All right, go ahead.

14 Q I will show you this, concerning what you call the event.
 15 Do you recall that letter?

16 A Yes.

17 Q And what is that letter?

18 A This is what we were given. After I had called about the
 19 notice they had run in the paper, that I got through email,
 20 they sent this. And then we were asked to go by invitation
 21 only to the event at McAllister Square on August 28th.

22 Q Did you go?

23 A Yes, we did.

24 Q Did you go with your husband?

25 A Yes.

- 1 Q Tell us who you saw there.
- 2 A We saw a Chase representative. Her name was Veronica. She
3 was very nice. We had all of our information, all of our
4 documents. They needed our W-2's, which this was about the
5 fifth or sixth time they had asked for the same thing over
6 and over and over again. We supplied them all of our work
7 information, all of our W-2's, everything. She sat us down
8 at her table. She was putting everything in the computer.
9 And to our knowledge, it was done. She said to just let
10 them complete everything and we could finally get some rest
11 about it.
- 12 Q Did this tell you where to go to this event?
- 13 A Yes, McAllister Square.
- 14 Q How did you know that Veronica was a Chase employee?
- 15 A Oh, she had an embroidered Chase polo, nice shirt, light
16 blue with dark blue pants. There is no way --- I mean,
17 there was no paper tag or anything.
- 18 Q Were there other people there?
- 19 A Yes, lots.
- 20 Q Were there tables set up?
- 21 A There were tables. There was like Bank of America, BB&T and
22 Chase. There was numerous. They filled the cafeteria.
- 23 Q How long were you with Veronica?
- 24 A About 45 minutes.
- 25 Q Did she have material on you?

GREENVILLE COUNTY COURTHOUSE

1 A She did.

2 Q Did she have a computer?

3 A She did.

4 Q Were you in the computer?

5 A Yes.

6 Q Did she say anything to you about a foreclosure?

7 A Uh-uh, nothing. Nothing.

8 Q Did you mention anything to her about, "What about this
9 eviction?"

10 A We did. I mentioned to her about what was in the paper, how
11 could that run in the paper without us knowing about it,
12 without us getting any information. She said it was
13 probably simply a mistake.

14 Q All right, were you told by a Chase representative that you
15 had a modification certain?

16 A Yes.

17 Q At that ---

18 A Yes, at that point.

19 Q What did they tell you to do at that point?

20 A To wait on them. Yes, that was alarming, but they said for
21 us ---

22 MR. JACKSON: Your Honor, I understand some latitude
23 here, but you know, this is clearly hearsay, telling, you
24 know, she's basically testifying what a Chase employee
25 allegedly said. That's clearly hearsay, and I would move to

GREENVILLE COUNTY COURTHOUSE

1 strike that testimony.

2 BY THE COURT: Why would that not be a statement of an
3 agent?

4 MR. JACKSON: We don't know what capacity or, you know,
5 what branch or whatever agency, but that was my objection,
6 Your Honor.

7 BY THE COURT: I understand. I'm going to overrule it.
8 You are protected on the record.

9 MR. JACKSON: Thank you, Your Honor.

10 Q All right, did you have any more communication with Chase
11 after that meeting?

12 A No, it was to sit back and wait on them. They were so
13 backed up, they would be in touch. It could take up to six
14 months at the longest.

15 Q Is what ---

16 A Is what Veronica told us.

17 Q All right.

18 A That we would begin our new modified mortgage payments.

19 MR. THOMAS: Your Honor, I would move to enter this as,
20 I'm not sure we are considered the Plaintiff at this time,
21 but I would say Defendant's Exhibit #1.

22 BY THE COURT: All right?

23 MR. JACKSON: No objection, Your Honor.

24 (Letter to Brian Tucker from Chase Homeownership
25 Preservation Office (8/16/2010) entered into evidence as

GREENVILLE COUNTY COURTHOUSE

1 Defendant's Exhibit #1)

2 Q All right, at this point --- at this point, one last
3 question, actually two. If you were told to leave your
4 house, what are you going to do?

5 A I don't know. We don't have anywhere to go. I can't
6 describe what it feels like to wake up night after night in
7 panic and not know what we're going to do.

8 Q Do you feel this is your fault because you were basically
9 negotiating this with Chase?

10 A We just asked for help before it got too bad, and had we
11 known that this would happen, that we would be here,
12 fighting the company, we would have simply stretched out
13 our mortgage payments until our house sold and put the
14 house up for sale.

15 Q As soon as you got your eviction notice, what did you do?

16 A I was on the phone with Adrian, actually, and he just kind
17 of lost it. He just felt like they were taking over, and I
18 couldn't get through to him, and I had to call his parents
19 to come to our house because I felt like his mom and dad
20 could get through to him if I couldn't. I had to remind him
21 that he had a son to come home to and that we would get
22 through this somehow.

23 Q Afterwards, did you contact an attorney?

24 A We did. We got you within twenty-four hours, and that's
25 exactly what we would have done had we been served March.

GREENVILLE COUNTY COURTHOUSE

Jessica Cape Tucker – Cross-Examination by Mr. Jackson

1 9th, 2010.

2 Q That's all the questions I have. Answer any questions.

3 BY THE COURT: All right, your witness.

4 MR. JACKSON: Thank you, Your Honor.

5

6 CROSS EXAMINATION BY MR. JACKSON:

7 Q Ms. Tucker, when did you buy this house?

8 A 2007, in May.

9 Q And how much did you pay for it?

10 A I believe 155,000.

11 Q And what was your monthly income, gross monthly income, at
12 that time?

13 A I don't remember exactly.

14 Q Did something change to make it difficult for you to make
15 payments?

16 A Yes.

17 Q What changed?

18 A Like I said, my husband and I, both of our jobs are in
19 sales. We had both taken a pay cut, and it was just, we
20 could see that it was going to get worse. We felt like it
21 was going to get worse, so we thought we were doing the
22 right thing by calling them first before it got to where we
23 couldn't make any payments.

24 Q How much were your monthly payments?

25 A 1,400.

1 Q What's your gross monthly income now?

2 A Probably 20, 24, 26 hundred dollars.

3 Q Now, you said you contacted Chase about providing you some
4 help, is that correct?

5 A Yes, sir.

6 MR. JACKSON: Your Honor, this is Exhibit #A, that I'm
7 going to show the witness.

8 BY THE COURT: All right.

9 MR. JACKSON: Attached to my Memorandum. May I approach
10 the witness, Your Honor?

11 BY THE COURT: Certainly.

12 Q I'm going to show you a document that is attached to my
13 Memorandum, and ask do you recognize that document? Take
14 your time and look through it. (Pause.)

15 A Yes.

16 Q Okay, is that your husband's signature on the last page?

17 A Yes, it is.

18 Q And what is the date on that?

19 A 6/15/2009. June 15th, 2009.

20 Q What is your understanding of what that document is?

21 A That was our trial monthly payments that we would make,
22 three of those on the date provided, and it would be due.

23 Q When were those payments due?

24 A June, July and August.

25 Q What day of the month?

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1 A I believe the 1st, the 1st and the 15th.

2 Q Did you make those payments on the 1st of every month?

3 A Yes.

4 Q That's your testimony, that you made the payments on the 1st
5 of every month?

6 A Yes.

7 Q Okay, you saw the payment history that I attached to the --
8 - and, Your Honor, I would note in the Affidavit that I
9 have attached copy of the Defendant's payment history shows
10 the June 19th payment and an August 29th payment. Your Honor,
11 may I approach the witness? I'm going to show you a copy of
12 the payment history again and see if that refreshes your
13 recollection? Do you see 8/29?

14 A I'm sorry, where's it at?

15 Q You have it up here, 8/29? And our records, Chase's
16 records, reflect a June 19th and an August 29th payment. Do
17 you have any evidence or anything here showing that you
18 made a third payment at any time?

19 A We made June --- we made all three payments.

20 Q Do you have any records or documents showing --- how did
21 you make the payments?

22 A The first month, I wrote a check. And the second two
23 months, I gave money orders.

24 Q Okay, and do you have a copy of those money orders showing
25 that you made those payments?

1 A Not for July.

2 Q Okay. Now, after this occurred, did you make any more
3 payments?

4 A No, we were told not to, to wait.

5 Q Okay, so basically from --- you made two payments in '09.
6 Did you make any payments in 2010?

7 A No. We were told not to.

8 Q Okay, and did you make any payments in 2011?

9 A No. We were told not to.

10 Q Okay, isn't it true that the last time that you effectively
11 made a payment was October of '08, beside these two
12 payments?

13 A No, I believe we made payments up until.

14 Q Up until when?

15 A Up until we were told not to, which before the trial
16 payments. We were told if we could afford to make our
17 mortgage payments, the modification would do us no good.

18 Q So you chose not to make any payments?

19 A We were not chose, we were told.

20 Q Okay. Who told you that?

21 A A Chase representative on the phone.

22 Q And did that make sense to you, that you could go for years
23 without making payments?

24 A Absolutely not. Yes, it was scary, but here we are putting
25 our faith into a company. We didn't know any difference. I

1 mean, you know, he had made it perfectly clear, yes, if you
2 can afford to make your mortgage payments, then why even
3 try to have a modification?

4 Q Let me ask you this. You said Half Mile Way. Have you been
5 over on that street? Are you familiar with that street?

6 A It runs right into ours.

7 Q Okay, do you know what's at 103 Half Mile Way?

8 A There is no 103. There's a one thousand one-o-three or
9 eleven-o-three.

10 Q So there's no 103 there?

11 A No.

12 Q In fact, about that area is where the swimming pool is,
13 isn't that correct?

14 A 1003?

15 Q Yes, about that ---

16 A No, it's at the other end of the neighborhood.

17 Q Now, you said you and your husband share a relationship
18 that everything is close and that he always shares stuff to
19 you?

20 A Yes.

21 Q Is that correct?

22 A Yes.

23 Q So I guess back in 2003, when he was arrested for an open
24 container, he shared that with you?

25 A Yes.

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1 Q And why didn't he show up for the hearing on that?

2 A I don't know.

3 Q And I guess in 2004, he shared with you that his license
4 was suspended and he was driving without a registration?

5 A In 2004?

6 Q Yes, ma'am.

7 A (Witness nods head affirmatively).

8 Q Did he or didn't he?

9 A Yes, he did.

10 Q And again, in 2007, that he didn't title a watercraft?

11 A Yes.

12 Q And in 2010 that he was driving under suspended license?

13 A Yes, that was --- yes.

14 Q Okay, he shared all that with you?

15 A Yes.

16 Q What kind of payments do you think you can afford now?

17 A What we were told was \$700, and that was very comfortable
18 for us. Very, very comfortable.

19 Q \$700?

20 A Yes.

21 Q So that's half of what your regular payments were?

22 A Yes.

23 Q And if my math is correct, your arrearage is over \$45,000.

24 How do you plan to deal with that?

25 A Well, I don't know. I mean, I can't help that they told us

Jessica Cape Tucker – Redirect Examination by Mr. Thomas

1 not to make payments. That's why we have an attorney.

2 Q Have you tried to apply to any other places besides that
3 one place you talked about in your affidavit, to find a
4 location to live?

5 A Yes. I've contacted numerous apartments and also an
6 individual landlord. And once they hear, the individual
7 landlord, once he heard of where we were coming from, that
8 our house got foreclosed on, his demeanor changed. I mean,
9 you know, he may not want to, you know, give us a home to
10 live in because he's thinking if we can't pay our mortgage,
11 then we can't pay rent. And that wasn't the case. We were
12 just asking for help.

13 Q Okay, no more questions.

14 MR. THOMAS: To follow up on what he had said, or what
15 he has asked?

16 BY THE COURT: Yes, sir.

17
18 REDIRECT EXAMINATION BY MR. THOMAS:

19 Q Let's go over briefly, how did you set up your payments for
20 the three payments that you were supposed to make for the
21 trial?

22 A We made another checking account at our same bank.

23 Q Which is the bank?

24 A First Citizens.

25 Q What did you do with that?

1 A Every week, when we would make a deposit, we would put a
2 certain amount into our mortgage account, which was just
3 another checking account, and then the other into our
4 regular savings or checking, which we used every day.

5 Q Did you send a check?

6 A The first month, we sent a check.

7 Q Why did you change to a money order?

8 A Because they called us and said we needed to change and
9 send them a money order.

10 Q Does their record indicate the third one was received?

11 A The third one was received.

12 Q Who took the check and the money order to the post office?

13 A I took them all three times to the same post office.
14 Because of the issues with our mail, I didn't want to
15 chance it, and put them in our mail box and then never get
16 it, so I physically took them to the post office, all
17 three.

18 Q All right, did anyone from Chase ever tell you or go
19 through what they told you about the quote, unquote,
20 missing the second payment?

21 A No.

22 Q Did you get a letter from them that said, "Hey, what
23 happened to the second payment?"

24 A No, sir. The only thing we got was the eviction letter from
25 Officer Posey.

GREENVILLE COUNTY COURTHOUSE

Brian Adrian Tucker – Direct Examination by Mr. Thomas

1 Q What about at the time the meeting with Veronica at the so-
2 called event at McAllister Square?

3 A Nothing.

4 Q Did she comment on the trial period?

5 A Everything about that was over and done with since we were
6 meeting with her would stop the sale of the house which was
7 supposed to take place on September 7th. We met with her the
8 28th, August 28th.

9 Q All right, that's all the questions I have.

10 BY THE COURT: Thank you, ma'am, you can step down.

11 MR. THOMAS: Call Mr. Tucker.

12 BAILIFF: Place your left hand on the Bible and raise
13 your right hand.

14 BY THE COURT: Do you swear to tell the truth, the
15 whole truth and nothing but the truth?

16 MR. TUCKER: Yes, sir.

17 BY THE COURT: Come around and have a seat, please,
18 sir. And if you would state your full name, please?

19 MR. TUCKER: Brian Adrian Tucker.

20 BRIAN ADRIAN TUCKER, being first duly sworn, testified
21 as follows:

22
23 DIRECT EXAMINATION BY MR. THOMAS:

24 Q Mr. Tucker, I won't go over too many items, but is
25 everything your wife said, is that correct?

- 1 A To my knowledge, yes.
- 2 Q All right, let's go up to service of process since that's a
3 substantial or major part of why we're here.
- 4 A Yes, sir.
- 5 Q All right, have --- well, first, who do you work for, is he
6 in the room?
- 7 A Yes, sir.
- 8 Q And who is that man?
- 9 A Clint Tucker.
- 10 Q Is that your ---
11 A Father.
- 12 Q All right, what is the business?
- 13 A It's Piano Central.
- 14 Q All right, how long have you been working for him?
- 15 A Off and on, for 20 years.
- 16 Q Are you two close?
- 17 A Yes, very.
- 18 Q All right, do you share with him most everything?
- 19 A Everything.
- 20 Q All right, let's go to what happened on March the 9th. Do,
21 you have any recollection, any personal recollection, of
22 seeing anyone in your yard; anyone knocking on the door,
23 anyone coming up to you ---
- 24 A No, sir.
- 25 Q --- handing you something?

- 1 A Not of any kind of service. The only --- the only thing
2 that I know of, was when I was on the phone with my wife,
3 she said, "Hold on a second." Went to the door, and that's
4 when an officer was at the door and handed those papers for
5 an eviction.
- 6 Q That's eviction. That's not my question yet. But that's the
7 first time ---
- 8 A That's the only time.
- 9 Q All right, did you ever get anything in the mail?
- 10 A Not to my knowledge.
- 11 Q About any proceeding concerning your house, anything in the
12 mail?
- 13 A Nothing, no.
- 14 Q Do you understand what it would mean if someone said to
15 you, or explain what it would mean if someone said to you,
16 "You've been served." What would that mean?
- 17 A It's pretty elementary. I mean, service is --- you've been
18 served and you've got to show up for whatever service
19 process it is.
- 20 Q Would you have looked at it?
- 21 A I believe so.
- 22 Q All right, if it had said "foreclosure," what would you
23 have done?
- 24 A After --- well, I guess after kind of gaining myself
25 (witness weeping).

1 Q Let me rephrase the question. Do you think you would have
2 been emotional about it at the time?

3 A Yeah, a little bit.

4 Q All right, would you have communicated with anyone?

5 A Yeah, I'd have gone to my dad.

6 Q And who else would you have gone to?

7 A My wife.

8 Q Who was handling this matter for you, this negotiation?

9 A My wife. She's the person that handled all this with Chase
10 --- everything that we're going through, all the new
11 mortgage, the modifications and everything. She's the one
12 handling all that. So to get a service paper, you know, the
13 first thing I'd have said was, "You know, Jess, what's
14 going on?" Because everything I knew was we were in
15 modification and were going by what they say. Up until
16 recently, you know, they're a major corporation. Why
17 wouldn't we? You know, I didn't go to law school, so, you
18 know, I kept on going based on what they're telling us.

19 Q All right, to the best of your knowledge, had Chase told
20 you all to hold off after a certain point and suspend
21 payments?

22 A Yes.

23 Q Did you yourself at one time, were you nervous enough so
24 you tried to call Chase?

25 A Yeah, I did. I called them. I called once just because, you

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1 know, just peace of mind, I guess, and they told me that
2 due to all the modifications and all the foreclosures, you
3 know, that they would be in touch with us, not to bombard
4 them with phone calls.

5 Q All right, I'm going to show you a map of the vicinity in
6 which you live. Do you recognize that map?

7 A That's my neighborhood.

8 Q All right, where do you live on this map? Just say it.

9 A At 103 Half Mile Place.

10 Q How close is that to --- tell the Court if there's any
11 other name of any other street that's close to what yours
12 is?

13 A Yeah, there's Half Mile Way, which is highlighted in blue.
14 We're on Half Mile Place.

15 Q Tell the Court if there have been confusions and how the
16 confusions arise with mail and people that come into the
17 neighborhood trying to find you?

18 A It's --- I mean, it's all the time. All the time. It seems
19 like our flag's up on our mailbox constantly trying to get
20 people their mail. It was so bad a couple of months ago,
21 that when we got our mail, I think there were twelve
22 articles, and not one of them was ours. And at that time,
23 we were expecting something in the mail, and I called the
24 post office and set up a --- they gave us a number because
25 we were waiting for something to come in the mail. It

1 hasn't come. On that date, we got all these articles in the
2 mail for other houses in the neighborhood, and I just was
3 kind of mad because it wasn't for one particular house, it
4 was for a bunch of different houses in our neighborhood.

5 Q All right, have people ever made mistakes coming to houses?

6 A Yeah. Yeah, I mean, it's very common in there.

7 Q All right, I am presuming something. I was actually told
8 this and I ask the Court for a little bit of leave here,
9 but I was told that they had brought someone that actually
10 accomplished service of process. Have you ever seen this
11 man before?

12 A No, sir.

13 Q Did he come up to you and hand you papers?

14 A No, sir. I've never been served.

15 Q Have you ever been served papers of any kind before?

16 A Never.

17 Q Did you go to the event?

18 A I did.

19 Q What was your understanding from the event, without quoting
20 anybody?

21 A We --- I actually left there feeling good, pretty
22 confident. When the whole thing --- after our meeting was
23 over, the last thing that I asked Veronica was, "Do we have
24 to worry about anything? Do we have to worry about leaving
25 our house?" And she said, "No," that this meeting with her

GREENVILLE COUNTY COURTHOUSE

Brian Adrian Tucker – Cross-Examination by Mr. Jackson

1 stopped all foreclosure events.

2 Q All right, tell the Court if you have attempted to find
3 another home or apartment or anything if you are evicted?

4 A My wife has, yes. And like I said, I work two jobs so she
5 handles a lot of that, but you know, from what she said we
6 haven't gotten anywhere.

7 Q You understand that you have sworn before God to tell the
8 truth?

9 A Yes, sir.

10 Q Is that serious to you, a swear?

11 A Very.

12 Q Before God on the Bible?

13 A Yes, sir.

14 Q Do you go to church anywhere?

15 A Yes, sir.

16 MR. THOMAS: That's all the questions I have, Your
17 Honor.

18 BY THE COURT: Your witness.

19 MR. JACKSON: Thank you, Your Honor.

20
21 **CROSS EXAMINATION BY MR. JACKSON:**

22 Q Now, Mr. Tucker, you testified that your wife handled all
23 of these negotiations and things on behalf of Chase, is
24 that correct?

25 A Yes, sir.

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1 Q Then, why were you the only one who signed the Exhibit #A,
2 the Loan Modification Agreement?

3 A Is this the one from McAllister Square?

4 Q This was in June of '09? Look at it for a second and see if
5 that is your signature.

6 A (Witness examines document.) The reason that my name is the
7 only one on there is because I was the primary borrower.

8 Q Okay, now, you've testified, and your wife has testified, a
9 lot about different things that so-and-so said and things
10 like that. Do you have anything in writing saying you don't
11 have to make the mortgage payments?

12 A I mean, this was all --- the majority of it was over the
13 phone.

14 Q Okay.

15 A And the only thing that we have in writing would be when we
16 met at McAllister Square with Veronica.

17 Q There was a letter there, but I'm talking about other than
18 this, which gives you a clear payment schedule and what
19 you're supposed to do, is there anything that says you
20 don't have to make any mortgage payments?

21 A No, sir. I mean, that's just why we talked to the Chase
22 representative.

23 Q And in fact, if you read the thing --- did you read this
24 document before you signed it?

25 A Yes, sir.

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1 Q Throughout this document it talks about anything in here
2 doesn't affect the loan documents or cure the arrearage?

3 A Well, what we were told was if we could make any payments,
4 then the modification would not go through, because if we
5 could afford the payments we were in now, which we called
6 Chase when we started seeing that the income was not what
7 it was when we got the house, that we knew it was the
8 beginning of the recession. Everything was going downhill.
9 Like I said, I worked two jobs. You know, I mean, I'm in
10 the piano business during the day. I'm in the restaurant
11 business at night. Those are two major luxury items. I've
12 seen people knock off. I've been in restaurants for twenty
13 years. I know when it's high and I know when it's low.
14 Before we took a chance on losing anything, you know, we
15 were the ones that made the contact to find out because I'd
16 heard through the modification.

17 Q Okay, now, let me ask you this. Now, you said that a Chase
18 representative told you to stop making payments. Did you
19 take the money that you would have made the payments and
20 keep it in an account so you could attempt to reinstate
21 your mortgage? Did you save any money for that purpose?

22 A We had money that whenever our payments started back, that
23 we could make those payments.

24 Q How much did you save?

25 A I don't really handle all the finances.

1 Q You have no idea how much you saved?

2 A I'm pretty much a work horse. I mean, I know right now that
3 we're making monthly payments on other things, and we're
4 doing fine.

5 Q Okay, now, you say you work two jobs, so I guess in the
6 morning you're pretty tired?

7 A In the morning?

8 Q Yeah.

9 A Not really. I wake up pretty much ready to go.

10 Q Okay, and I believe it's your testimony that you've never
11 seen this gentleman before?

12 A Yes, sir.

13 Q And you're sure of that, because you know that you're under
14 oath?

15 A Yes, sir.

16 Q And you are aware of the penalties for perjury?

17 A Yes, sir.

18 Q And you also testified about you know it's important to
19 respond to legal process, is that correct?

20 A Yes, sir.

21 Q So back in 2003, when you were arrested for open container,
22 why didn't you show up for the hearing in that case?

23 A That actually was --- wasn't an arrest. It was, I left work
24 that night, and that was when I was bartending. We had some
25 stuff that was left on there, and it was in my backseat,

1 out of reach. I didn't have alcohol on my breath or
2 anything like that, and this was actually before we were
3 married.

4 Q Okay, and you were not tried in your absence in that case?

5 A Not to my knowledge. I never received anything on that. In
6 fact, when you pointed that out just a little bit ago that
7 was --- I mean, I remember receiving a ticket on that, open
8 container. But like I said, that was something that I
9 brought home from the bar that night. It was a bottle that
10 was --- I remember it was about three-quarters empty, and I
11 put it in my backseat to drive straight home with it.

12 Q Well, why was your vehicle license suspended, then?

13 A That was --- when my license was suspended --- I forgot
14 what it was that we tried to do. But that's when I found
15 out that my license had been suspended, and my license is
16 reinstated now. Everything's paid.

17 Q So you paid the fine for those convictions?

18 A Yes, sir. And the deal that you brought up with the boat,
19 that boat was bought, and the first week I bought that
20 boat, the motor blew on that. We had a game warden come to
21 my place of work because he called me and asked me where I
22 was. I said, "I'm at the piano store." And I had sold that
23 boat, actually, to a relative in good faith that that boat
24 was going to be used in a private pond because I did not
25 have the registration or anything on it. Once the motor

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1 blew, I wasn't paying for any of that stuff. I sold that
2 boat to him for \$500, and he told me it was just going to
3 be used in a private pond out in Green Pond that had no
4 motors or any restrictions. It was a private pond. And ---

5 MR. JACKSON: Your Honor, I appreciate --- it's kind of
6 getting a little far afield here, Your Honor.

7 BY THE COURT: Sustain the objection.

8 MR. JACKSON: No further questions.

9 BY THE COURT: All right, any other brief questions?

10 MR. THOMAS: Your Honor, just one. I'd like the map
11 that we have, I'd like to have that marked as a Defendant's
12 Exhibit #2.

13 BY THE COURT: All right, thank you, sir. You can step
14 down.

15 MR. JACKSON: I have no objection to that, Your Honor.

16 (Map - 103 Half Mile Place entered into evidence as
17 Defendant's Exhibit #2)

18 BY THE COURT: Anything else, Mr. Thomas?

19 MR. THOMAS: Your Honor, I actually have the father
20 here who would confirm what his testimony was. I also have Sue
21 Berkowitz (spelled phonetically) here who we're going to ask to
22 be admitted as an expert on the issue of Chase's practices.

23 MR. JACKSON: Your Honor, I would certainly object to
24 that. That's going way far afield.

25 BY THE COURT: It is too late to bring all this in. I'm

GREENVILLE COUNTY COURTHOUSE

1 denying that motion.

2 MR. THOMAS: All right, Your Honor, my question would
3 be, since my motion partially contains, in the title of my
4 motion, that there is a Justice Toal violation, if we can submit
5 an affidavit to that effect, from an expert.

6 BY THE COURT: No, sir. It is simply too late in the
7 ballgame to do that.

8 MR. THOMAS: All right, Your Honor, then all I have
9 left is the dad.

10 BY THE COURT: All right, then we'll start back at
11 1:30. This matter, as I told you all, was set for thirty
12 minutes. I've got a ---

13 MR. JACKSON: Your Honor, I think we can wrap up fairly
14 quickly. I understand it's thirty minutes. My witness here is
15 the process server. He should be fairly quick, and I think the
16 rest of it is legal arguments. You have our brief. I would
17 certainly not want to ---

18 BY THE COURT: Mr. Thomas, what can the father add that
19 has not already been submitted here?

20 MR. THOMAS: The father can add this, if you will allow
21 him to submit an affidavit, we could, if you needed five
22 minutes, we could do that. It would be simply the testimony,
23 would be that he and the son are extraordinarily close. If he
24 had been served, the boy would have absolutely come to him in a
25 panic.

GREENVILLE COUNTY COURTHOUSE

1 MR. JACKSON: Your Honor, I would stipulate that that
2 would be his testimony. That communication.

3 BY THE COURT: That would be fine. I don't have any
4 reason to question that anyway.

5 MR. THOMAS: Then, that's it, given your ruling on Sue
6 Berkowitz, that's all we have.

7 BY THE COURT: I have tremendous respect for Ms.
8 Berkowitz and know she does a magnificent job, but again, I'm
9 also the gatekeeper and required to follow certain procedures
10 and rules.

11 MR. THOMAS: That's all the witnesses we have, Your
12 Honor. Thank you, Your Honor.

13 BY THE COURT: Thank you. All right, you can call your
14 witness.

15 MR. JACKSON: Your Honor, I would call Terry Moore to
16 the stand.

17 BY THE COURT: If you would place your left hand on the
18 Bible and raise your right hand. Do you swear to tell the truth,
19 the whole truth and nothing but the truth?

20 MR. MOORE: Yes, sir, I do.

21 BY THE COURT: If you would come around and have a
22 seat, please. And if you will state your full name?

23 MR. MOORE: James Terry Moore.

24 BY THE COURT: All right, thank you.

25 JAMES TERRY MOORE, being first duly sworn, testified

GREENVILLE COUNTY COURTHOUSE

James Terry Moore – Direct Examination by Mr. Jackson

1 as follows:

2

3 DIRECT EXAMINATION BY MR. JACKSON:

4 Q Mr. Moore, where do you live?

5 A I live in Easley.

6 Q And where do you work?

7 A Upstate Legal Process Service.

8 Q How long have you served process?

9 A Forty years, since I was 21.

10 Q Okay, did you do anything before service of process?

11 A Yes, sir, I was an Easley police officer. I retired as a
12 lieutenant for the Easley Police Department.

13 Q How long did you work in the Easley Police Department?

14 A I think it was 19 years, sir. I had a heart attack and
15 retired.

16 Q Okay, and are you familiar with the Greenville area?

17 A Yes, sir, very much so.

18 Q And you have been retained by the Scott Law Firm to serve
19 process?

20 A Yes, sir, I have.

21 Q Were you retained to serve process in this case?

22 A Yes, sir, I was.

23 Q And were you sent an address to serve process?

24 A Yes, sir, I was.

25 Q And what address were you sent to serve process in this

GREENVILLE COUNTY COURTHOUSE

1 case?

2 A I received an email, sir, on March the 8th at 1:16 p.m. from
3 the Scott Law Firm from Ms. Angel Comings (spelled
4 phonetically), which I have attached letter, asking me to
5 serve Brian Tucker at 103 Half-Mile Place, his wife,
6 Jessica Tucker, and Half Mile Homeowners Association there
7 at Half Mile Lake.

8 Q Are you familiar with the location of Half Mile Place and
9 Half Mile Way?

10 A Yes, sir, I am.

11 Q Are you confused by the difference between Half Mile Place
12 and Half Mile Way?

13 A No, sir, I am not.

14 Q And have you served process in that area many times?

15 A Yes, sir, I have.

16 Q What did you do in response to the email request to serve
17 process on Brian Tucker, Jessica Tucker and Half Mile Lake?

18 A I went to the residence at 103 Half Mile Place on that
19 morning of March the 9th --- correction --- March the 9th at
20 9:05 a.m. I had been there just prior. There were no cars
21 in the driveway. I knocked on the door a lot. I couldn't
22 tell if anybody lived, really, lived in the house or not.
23 And I got a map from Greenville County's website.

24 Q Is that substantively the map offered into evidence?

25 A It's a little better description of the property.

1 Q Okay, let me show it to Senator Thomas first before we go
2 into detail on that. And let me show it to the Court.

3 (Pause.)

4 Okay, please continue.

5 A Yes, sir. If you travel up State Park Road from Cherrydale,
6 when you get to Half Mile Lake, you turn into the right on
7 Half Mile Way. As soon as you turn right into the
8 subdivision, the swimming pool is on the left. Your next
9 right is Half Mile Place. His house is 103, which is on
10 your left. I knocked on that door. Couldn't get anybody to
11 the door. I seen some gentlemen putting some golf clubs in
12 the back of what appeared to be an S.U.V. across the
13 street. I drove over to their house and talked to them. We
14 talked about golf briefly for a minute. I asked those
15 gentlemen, I said, "Is anybody still living in that house?"
16 and pointed it out. He said, "Yeah, far as I know." He
17 said, "People still live there." Said, "They must be
18 asleep. Go back and knock." So I left them after talking
19 for a minute, went back to that house, I knocked on that
20 door pretty hard. This gentleman seated to my left in the
21 reddish orange shirt came to the door. He identified
22 himself. As a matter of fact, I asked for Brian Adrian
23 Tucker. He said, "That's me." And I told him, I said, "I'm
24 a process server. I deliver court documents. I have a
25 Summons I need to deliver to you and your wife." He agreed.

GREENVILLE COUNTY COURTHOUSE

1 I handed them toward him, and there was also a question
2 that Scott has me ask the people, "Are you a member or is
3 your wife a member of the military service or National
4 Guard," and even on my report, my affidavit, I put non-
5 military where he told me they were non-military. But this
6 gentleman did appear that he had just waken up. He had a
7 sleepy look on his face. I don't know whether he had or
8 not, but he did look like he'd just woke up. I handed him
9 the papers. I walked away. I've never seen this gentleman
10 or anybody again.

11 Q Okay, just to make sure, we'll clarify this. So this
12 gentleman answered the door?

13 A Yes, sir, he did.

14 Q He identified himself as Brian Tucker?

15 A Yes, sir, he did.

16 Q You gave him a copy of all the paperwork, the Summons and
17 Complaint and all the Lis Pendens, the whole shooting
18 match?

19 A I have a copy right here, is actually what I gave to him.

20 Q And you gave him a copy for, you know, Ms. Tucker?

21 A Yes, sir, I did.

22 Q Okay, and you explained to him that this was an important
23 process, that he had to respond to you?

24 A Yes, I told him it was a Summons, he had thirty days from
25 the day to respond to them in writing and explained where

GREENVILLE COUNTY COURTHOUSE

James Terry Moore – Cross-Examination by Mr. Thomas

1 to mail it.

2 Q And you've served papers countless times in that general
3 area, and you are familiar with that area?

4 A Yes, sir, I've served thousands of papers.

5 Q And there's no doubt in your mind this is the gentleman
6 that you got served?

7 A There is no doubt whatsoever.

8 Q No further questions.

9 BY THE COURT: Your witness.

10 CROSS EXAMINATION BY MR. THOMAS:

11 Q Well, you didn't mention the noise that the dog made.

12 A Excuse me?

13 Q The noise the dog made. You said nobody was there.
14 Apparently, you couldn't tell if anybody was there, didn't
15 even know if it was being occupied, but the dog would have
16 exploded.

17 A I don't know nothing about no dogs there. I don't know if
18 there was a dog there or not. I didn't hear a dog. I don't
19 know about no dog.

20 Q You're not familiar that there are two dogs there,
21 actually?

22 A I don't even know the people, sir.

23 Q You didn't hear any dogs when you knocked on that door?

24 A No, sir, I did not hear any dogs.

25 Q Did you ring the door bell or did you knock on the door?

GREENVILLE COUNTY COURTHOUSE

1 A I am tone deaf, so I knocked on the door.

2 Q Right, okay. No cars out front?

3 A No, sir, there was no cars.

4 Q All right, that's all the questions I have.

5 BY THE COURT: All right, thank you, sir.

6 A Thank you, sir.

7 MR. THOMAS: Your Honor, I'm not sure if he has any
8 more witnesses, but I need to call one in rebuttal.

9 BY THE COURT: Anything else?

10 MR. JACKSON: No, Your Honor. That's fine.

11 BY THE COURT: Yes, sir?

12 MR. THOMAS: I would like to call Mrs. Tucker.

13 BY THE COURT: Okay.

14 MR. JACKSON: Your Honor, may I ask that Mr. Moore be
15 excused? He has several other things ---

16 BY THE COURT: Any objection to the process server ---

17 MR. THOMAS: No, sir.

18 BY THE COURT: All right, thank you, the process server
19 is excuse. Appreciate you coming in.

20 A Thank you, Your Honor.

21 BY THE COURT: If you would come back around, and I
22 just remind you that you're still under oath.

23 JESSICA CAPE TUCKER, being previously duly sworn,
24 testified as follows:

25

GREENVILLE COUNTY COURTHOUSE

Jessica Cape Tucker – Direct Examination by Mr. Thomas**1 DIRECT EXAMINATION BY MR. THOMAS:**

2 Q All right, just very quickly, tell us what happens when
3 somebody knocks on the door at your house.

4 A The dog goes hysterical. It's a little bitty chick-a-poo,
5 Chihuahua. She goes nuts and she will not stop barking
6 until you pet her or go to the door and see what she wants.
7 You can hear her outside of our house. That would have
8 alarmed my grandmother, who lives with us, who would have
9 tried to go to the door. That would have got the dog in the
10 back yard to start barking. It's a chain reaction. There's
11 no way that anybody can come to our house, knock on the
12 door, without the dog going hysterical.

13 Q And we're talking about, now, a year and a half, two years
14 ago.

15 A Yes.

16 Q The same dog situation?

17 A Same dog. She's still alive.

18 Q So ---

19 A Both of them.

20 Q Both of them?

21 A Both of the dogs.

22 Q You are absolutely certain that if someone comes to, if the
23 Judge or I come to your house, knock on the door, you're
24 going to get an explosion?

25 A Yes.

1 Q You're sure?

2 A Yes, I'm absolutely sure. You can set a glass down on the
3 coffee table downstairs, and the dog will start barking,
4 thinking there's somebody knocking on the door. Any kind of
5 sound that sounds like a knock or a thump, the dog is going
6 to go hysterical.

7 Q All right, concerning that day, let's go back through it
8 again. Tell the Court, have you checked the date against
9 your record at work?

10 A Yes, sir, I had a ten o'clock client that morning, so I
11 wouldn't have had to be at work until 9:30. I wouldn't have
12 left until 15 after.

13 Q Was there any knocking sound?

14 A Nothing. Nothing.

15 Q Would you have been up?

16 A Yes.

17 Q Why?

18 A I'd have got up at 7:30 to get ready for work, to get my
19 son ready, and out we go.

20 Q That's all the questions we have.

21 MR. JACKSON: Nothing on re-cross, Your Honor.

22 BY THE COURT: Thank you. You can step down. Anything
23 else?

24 MR. THOMAS: That's it, Your Honor, thank you.

25 BY THE COURT: Anything else from Plaintiff?

GREENVILLE COUNTY COURTHOUSE

1 MR. JACKSON: Nothing from me, Your Honor. I have a
2 brief and have the argument in it. I don't want to waste
3 the Court's time.

4 BY THE COURT: All right, and at this point, I truly
5 don't know what I'm going to do. I am going to look back
6 through the file, but Mr. Thomas, let me ask just a real
7 practical question that was raised. If your client's
8 \$45,000 in arrears and have a mortgage they can't afford,
9 what's the practical relief the Court can grant, even if
10 the Court is inclined to favorably look at your motion?

11 MR. THOMAS: The process would start over, Your Honor,
12 and I presume they would begin the process with proper
13 service of process, which we would certainly have some way
14 of acknowledging this time so there would be no issue, or
15 we would accept service. I mean, that, obviously, is the
16 first practical step. Your Honor, I will just tell the
17 Court, my office in Columbia, Banking and Insurance
18 Committee, with the Consumer Affairs all under that, we
19 work literally with hundreds of people all the time trying
20 to do work-outs on situations worse than this. And we do
21 get them worked out. But you first have to actually get to
22 somebody who's going to deal seriously with the
23 modification. Mrs. Riley, Research Director in my office,
24 had a lot of success with that. As you probably know,
25 there's \$200,000,000 that's been dedicated in South

GREENVILLE COUNTY COURTHOUSE

1 Carolina to this very program, that is, people who get
 2 behind. I think --- he didn't lose his job, but I mean,
 3 they were afraid of it. He might fit in that category to
 4 qualify for some of that money. So there are ways to do it.

5 But you first have to have people that are serious
 6 about actually doing it. I contend that Chase has not been
 7 that, and I do think they can work it out, but we're going
 8 to have to have some help from that \$200,000,000 fund.
 9 That's one possibility. And I think Chase can be a little
 10 more reasonable, because the information that we've got,
 11 you know, the overwhelming information, is that it was not
 12 their decision. They didn't get behind. They were told not
 13 to make payments. And, Your Honor, this is what Ms.
 14 Berkowitz was going to testify to, frankly. This is going
 15 on nationwide, Your Honor.

16 BY THE COURT: All right, I'll let you all know
 17 something within seven days.

18 MR. THOMAS: Thank you, Your Honor.

19 BY THE COURT: Thank you.

20 MR. JACKSON: Thank you, Your Honor.

21 ----- END OF TRANSCRIPT -----

22
 23
 24
 25

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Chase Home Finance, LLC)

Plaintiff,)

-vs-)

Brian Adrian Tucker, Jessica C.)

Tucker and Half Mile Lake Homeowners')

Association, Inc.,)

Defendants.)

2011 APR -3 PM 2:15
FILED-CLERK OF COURT
GREENVILLE SC S.C.
PAUL R. WICK

IN THE COURT OF COMMON PLEAS

C. A. NO.: 2010-CP-23-1622

2010

**EMERGENCY MOTION TO STAY
EJECTMENT FROM HOME**

ENTERED COMPUTER

The Defendants, Brian Adrian Tucker and Jessica C. Tucker, by and through their attorney, David L. Thomas, will move before this Court on the _____ day of _____, 2011, at _____ o'clock ____ M., or as soon thereafter as this matter may be heard, to request a Stay of Ejectment of Defendant Tuckers' home. This Motion is based on the following:

1. The Defendants, Brian Adrian Tucker and Jessica C. Tucker, did not receive Service or Summons of Ejectment in this action. Defendants Tucker had been in negotiations with the Plaintiff for more than six (6) months wherein Plaintiff did promise to negotiate in good faith, and began such negotiations, and promised to modify and refinance Mr. and Mrs. Tucker's mortgage, in keeping with Justice Toal's Order of May 22, 2009.

2. Defendants Tucker relied, to their detriment, upon Plaintiff to continue such negotiations when they might have sought legal counsel in this foreclosure and/or another lender.

3. The third reason to stay this ejectment is that Defendants Tucker assert Plaintiff has unclean hands which is in violation of an equitable solution and should not be allowed to benefit from the sale of Defendants Tuckers' home because Plaintiff mislead Defendants Tucker with their promises of modification.

4. Defendants Tuckers are seeking a reconsideration of the entire action based on excusable neglect and the meritorious defense available to the Tuckers given the definite commitment by the Defendant Chase during the loan modifications in August 2010. An absolute commitment was given by Plaintiff Chase, provided in August 2010 at a special "event" called for by the Plaintiff, and they gave an absolute commitment that all actions concerning the Defendants' home would be called off pending the final paperwork of the modification.

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Based upon the above stated reasons, Defendants Tucker do hereby request that the Ejectment from Home as described in the Plaintiff's action be stayed until this Court can hear from the attorneys regarding above.

MOORE, TAYLOR & THOMAS, P.A.

 By:

David L. Thomas – SC Bar # 09952
23 Wade Hampton Boulevard
Greenville, South Carolina 29609
(864) 271-6371

Attorneys for Defendants Adrian Brian Tucker
And Jessica C. Tucker

Greenville, South Carolina
April 8, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C. A. NO.: 2010-CP-23-1622

2011 MAY -5 P 4: 26

Chase Home Finance, LLC,)
)
Plaintiff,)
)
-vs-)
)
Brian Adrian Tucker, Jessica C.)
Tucker and Hall Mile Lake Homeowners)
Association,)
)
Defendants.)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
MAY 5 2011

**MOTION TO SET ASIDE and
VACATE DEFAULT**

ENTERED COMPUTER

TO THE PLAINTIFFS ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that the Defendants Brian Adrian Tucker and Jessica C. Tucker ("Tucker") will move before this Court on the _____ day of _____, 2011, at _____ o'clock ____ .m., or as soon thereafter as counsel may be heard, for an Order to Set Aside and Vacate Default in the above-captioned action.

Under Rule 60(b), South Carolina Rules of Civil Procedure, the above-named Defendants Tucker, move for default judgment to be set aside and vacated based upon excusable neglect under 60(b)(1) and 60(b)(3) of SCRPC.

1. Tucker has been consistently negotiating in good faith with agents of the Plaintiff for over a year to establish a new payment system and modification of their home loan. In August of 2010, Tucker attended, at invitation by Plaintiff, an "event" to negotiate modification to their loan. Tucker provided all information to Plaintiff's agent as required and Plaintiff's agent advised that a packet of information regarding payment amounts, etc., would be sent to them in the mail. This packet of information was never received by Tucker and Tucker followed up with numerous phone calls to Plaintiff's agent and was advised it could take up to six months for this information to be received.

2. Under Plaintiff's Complaint, Paragraph 3, the Plaintiff asserts "The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP") but the HMP process as specified by U. S. Treasury Department's Directive 09-01 has been completed without resulting in a modification because the borrower(s) failed to respond to the servicer's inquiry within 30 days as set forth in the applicable guidelines". Such allegation is clearly false as the negotiations have never been terminated. There

has been a recent letter sent by the servicing agent which internally conflicts with itself and with the verbal discussions ongoing with the servicing agent. Tucker was even assured by Plaintiff's agent at the August, 2010 "event" that they need not fear the legal proceedings of the foreclosure because their modification would be forthcoming and the foreclosure would simply be dismissed.

3. Under Rule 60(b)(3), SCRPC, Plaintiff has overtly misrepresented to Tucker the status of the entire action, and such misrepresentation has exhibited itself with inconsistent and repeated efforts demanded by the servicing agent to send specified materials from Tucker to the servicing agent for purposes of HMP modification. The servicing agent, who is subject to Justice Toal's Order has, in fact, not complied with HMP requirements to provide attempts at modification.

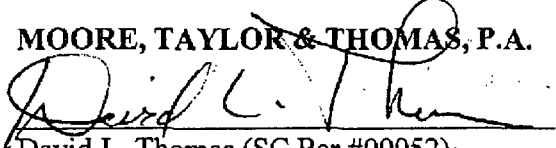
4. The Plaintiff has blatantly violated Justice Toal's Administrative Order (see Exhibit A, Paragraph 7), which states that "the complaint shall state the facts showing that the loan is not subject to modification under the HMP, or state the facts showing that the HMP modification process specified by the Guidelines or Supplemental Directive has been completed without resulting in a modification." When the filing of the Complaint took place, the negotiations were still very much in progress and the assertion made in Paragraph 3 of Plaintiff's Complaint that "the HMP modification has been completed without a modification", was clearly untrue and a violation of Justice Toal's Order, which should invalidate the complaint *ab initio*.

5. The above will constitute a cause of action that should be a meritorious defense which is based on detrimental reliance. Further, Tucker will argue that on several occasions Plaintiff's agent had assured Tucker that a modification would be forthcoming and that the foreclosure action would be dismissed. Hence, there is a breach of contract which also constitutes a meritorious defense.

Based on the above reasons, Tucker moves for the default to be set aside and vacated, and the case placed back in the position of *status quo ante*.

MOORE, TAYLOR & THOMAS, P.A.

By:


David L. Thomas (SC Bar #09952)
23 Wade Hampton Boulevard
Greenville, South Carolina 29609
(864) 271-6371

Greenville, South Carolina

Attorneys for Defendants Tucker

May 5, 2011.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) C. A. NO.: 2010-CP-23-1622

Chase Home Finance, LLC,)
)
Plaintiff,)
)
-vs-)
)
Brian Adrian Tucker, Jessica C.)
Tucker and Hall Mile Lake Homeowners)
Association,)
)
Defendants.)

ENTERED COMPUTER

FILED CLERK OF COURT
GREENVILLE CO SC
PAUL B. WILSON

2011 JUN 16 PM 3:49

WLR

**MOTION TO SET ASIDE FOR LACK OF PERSONAL JURISDICTION
and/or SUBJECT MATTER JURISDICTION BASED ON A LACK OF
SERVICE OF PROCESS or RECEIPT OF ANY VALID NOTICE CONCERNING
THIS FORECLOSURE NOR NOTICE OF SALE OF HOME; MOTION TO
SET ASIDE AND VACATE DEFAULT; MOTION TO STAY EVICTION; and
MISLEADING THE COURT BY IMPROPERLY VIOLATING JUSTICE
TOAL'S ORDER OF May 22, 2009, IN THE ORIGINAL COMPLAINT**

TO THE PLAINTIFF ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that the Defendants Brian Adrian Tucker and Jessica C. Tucker ("Tucker") will move before this Court on the _____ day of _____, 2011, at _____ o'clock ____m., or as soon thereafter as counsel may be heard; for an Order on the above Motions.

1. The Defendants Tucker have never been served with the Summons and Complaint in this action, nor have they been noticed of the sale of their home.

2. The Defendants, Brian Adrian Tucker and Jessica C. Tucker ("Defendants Tucker"), did not receive service of the Summons and Complaint in this action. Defendants Tucker have been consistently negotiating in good faith with agents of the Plaintiff for over a year to establish a new payment system and modification of their home loan. In August of 2010, Tucker attended, at invitation by Plaintiff, an "event" to negotiate modification to their loan. Tucker provided all information to Plaintiff's agent as required and Plaintiff's agent advised that a packet of information regarding payment amounts, etc., would be sent to them in the mail. This packet of information was

never received by Tucker and Tucker followed up with numerous phone calls to Plaintiff's agent and was advised it could take up to six months for this information to be received.

3. Defendants Tucker relied, to their detriment, upon Plaintiff to continue such negotiations when they might have sought legal counsel in this foreclosure and/or another lender.

4. Further, Defendants Tucker seek to stay this eviction by asserting that the Plaintiff has unclean hands which is in violation of an equitable solution and should not be allowed to benefit from the sale of Defendants Tuckers' home as Plaintiff misled Defendants Tucker with their promises of modification.

5. Under Plaintiff's Complaint, Paragraph 3, the Plaintiff asserts "The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP") but the HMP process as specified by U. S. Treasury Department's Directive 09-01 has been completed without resulting in a modification because the borrower(s) failed to respond to the servicer's inquiry within 30 days as set forth in the applicable guidelines". Such allegation is clearly false as the negotiations have never been terminated. There has been a recent letter sent by the servicing agent which internally conflicts with itself and with the verbal discussions ongoing with the servicing agent. Tucker was even assured by Plaintiff's agent at the August, 2010 "event" that they need not fear the legal proceedings of the foreclosure because their modification would be forthcoming and the foreclosure would simply be dismissed. Plaintiff, in its Complaint, asserts this process had failed. Such assertion is untrue.

6. Under Rule 60(b)(3), SCRCP, Plaintiff has overtly misrepresented to Tucker the status of the entire action, and such misrepresentation has exhibited itself with inconsistent and repeated efforts demanded by the servicing agent to send specified materials from Tucker to the servicing agent for purposes of HMP modification. The servicing agent, who is subject to Justice Toal's Order has, in fact, not complied with HMP requirements to provide attempts at modification.

7. The Plaintiff has blatantly violated Justice Toal's Administrative Order which states that "the complaint shall state the facts showing that the loan is not subject to modification under the HMP, or state the facts showing that the HMP modification process specified by the Guidelines or Supplemental Directive has been completed without resulting in a modification.". When the filing of the Complaint took place, the negotiations were still very much in progress and the assertion made in Paragraph 3 of Plaintiff's Complaint that "the HMP modification has been completed without a modification", was clearly untrue and a violation of Justice Toal's Order, which should invalidate the complaint.

8. The above will constitute a cause of action that should be a meritorious defense which is based on detrimental reliance. Further, Tucker will argue that on several occasions Plaintiff's agent had assured Tucker that a modification would be forthcoming and that the foreclosure action would be dismissed. Hence, there is a breach of contract which also constitutes a meritorious defense.

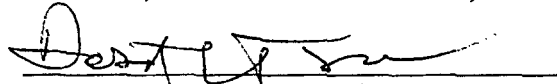
9. All of the above constitute a fraud upon the Court and should disallow the Plaintiff from proceeding with the taking of the Tucker home.

Under Rule 60(b), South Carolina Rules of Civil Procedure, the above-named Defendants Tucker, move for default judgment to be set aside and vacated based upon excusable neglect under 60(b)(1) and 60(b)(3) of SCRPC.

Based on the above reasons, Defendants Tucker move for a judgment accomplishing the Motions listed above.

MOORE, TAYLOR & THOMAS, P.A.

By:



David L. Thomas (SC Bar #09952)
23 Wade Hampton Boulevard
Greenville, South Carolina 29609
(864) 271-6371

Greenville, South Carolina

Attorneys for Defendants Tucker

June 16, 2011.

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Chase Home Financial, LLC,)

Plaintiff,)

-vs-)

Brian Adrian Tucker and Jessica C.)
Tucker,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-23-1622

**AFFIDAVIT
OF JESSICA CAPE TUCKER**

PERSONALLY appeared before me the undersigned, who after being duly sworn, deposes and states as follows:

1. I am Jessica Cape Tucker. I am the spouse of Brian Adrian Tucker. Together we have one son named Jaxson Meade Tucker. My 92 year old grandmother also lives with us. We live at 103 Half Mile Place, Greenville, SC 29609.

2. We have lived at this residence since May of 2007. There is also another street in our subdivision of Half Mile Lake that is named Half Mile Way. Since living there we have had numerous times when we have received mail for Half Mile Way.

3. Knowing how many times we have gotten other residence's mail, and not knowing how much and or what type of our mail other residences may have received, which should have come to us, could be the reason we never received the proper Service of Process in this case.

4. I was the one who received the **only** Service of Process which was an Eviction letter given to me on March 22, 2011 at 12:32 by Officer Posey. He asked who I was and then handed me the papers and said that I had been served.

5. I do believe that it was very possible that the person/agent or officer that has said in documented papers that he served an Affidavit of Service on my husband Adrian, and myself through service on my husband, on March 9, 2010 at 9:05 a.m. could have gone to the wrong address due to the street names being so close in vicinity and name.

6. From the day we were served with the Eviction letter, the emotional distress that my husband and I have suffered, not knowing how or what we were going to do has been overwhelming. There is no way my husband would have been served with the Affidavits dated March 9, 2010, without being able to tell me. My husband is good, honest man, kind man, a wonderful father and husband and he takes his responsibilities for our family very seriously, working two jobs to provide for our family's future well-being.

7. On March 22, 2011, at the very moment I was being served Eviction papers, I was on the phone my husband to tell him I had gotten home with my grandmother from the hospital. When Officer Posey told me what was happening and I read it myself and then told my husband over the phone. I cannot describe the 1,000 things going through my mind for the next few minutes. We were a family, with my 92 year old grandmother, two dogs and a house full of furniture and belongings that I had no idea where or what I was going to do.

8. At that instant, I felt as though we were helpless with no place to go with no answers to why this was happening to us. My husband on the other hand became so panic-stricken I was afraid for his well being; so much so, that I felt that though I was trying to talk to him to calm him down it wasn't getting through to him. It was then that I called his parent to come to our house, thinking that his mother and father would be some comfort to him and maybe help me calm him down. I have known my husband for eight (8) years and have never seen him get that upset. I honestly feared for his life. I had to remind him we would figure something out and that he had a five-year-old little boy

who was expecting to see him after he got out of school that day. Because of his actions on that day, I am adamantly confident that there was no possible way my husband had been served previously on March 9th 2010, and had been able for over a year to keep that serious matter from me.

9. I have been the one who has been negotiating with Chase and if Adrian had been served, he would have instantly called me and told me of these legal papers relative to the house.

10. Since the day we got the eviction papers, we haven't had a full night's sleep. We both toss and turn worrying about how we are going to provide a roof over our family's head. I wake up almost nightly in panic attacks not knowing anymore what our future will be; not even a day at a time.

11. Immediately we began the search for some place to live. I did seem somewhat optimistic when we found some apartments close by to our current home that had openings available. However, I was only to be defeated again by being turned down for an apartment and again by an individual landlord once he knew why we were looking for a place to rent. Our credit has been destroyed because of having a foreclosure on our home. We honestly are without any place to go.

12. The process with Chase Home Financial, LLC began in December of 2008 when Brian and I realized that our jobs could be affected by the downturn in the economy. We had hear and seen on the news and radio of all the Home Affordable Modification Programs ("HMP") and decided to call Chase before our finances became bad ; to see if we could qualify. To our surprise we were told we did. We had thought, up to that time without talking to Chase or any other mortgage servicer, that modifications were for people who were already struggling financially and needed help. We wouldn't have even considered that choice and would have put our house up for sale if we had known that the Chase modification plan would end up making us lose our home.

13. Up until the Spring of 2009 we continued to make house payments when our "trial"

payments were then actually in place with Chase. We made "trial" payments in June, July and August of 2009. I sent in all three payments and even Chase's own records indicate that they got the first and last one.

14. We made the "trial" payment amounts of \$1,192.52 which, frankly, were not that much cheaper than our original mortgage payments of \$1,400.00 monthly. After the last "trial" payment was sent I then called on August 17th 2009 to see what our next amount was to be and/or what to do. To our amazement we were then told **NOT** to resume making any payments. Furthermore, I was told if we could continue to make and afford the payments the modification would be of no good or use to us. I was afraid not to do what they directed us to do; afraid of it messing up our modification, so we did nothing.

15. We continued to receive phone calls to our home from Chase to let us know we were still in modification processing. This went on for months. A few times my husband and I would ask what is the hold up, starting to think something could be wrong, but we were constantly assured nothing was wrong. They told us they had lots of modifications coming through and they would be in touch with us.

16. On August 23, 2010, I received a phone call from a friend of mine that my house was due to go up for sale on September 7, 2010. Blind sided and irate I called Chase to ask what was going on and how this happened. Again, I was abundantly reassured that no sale was going to happen and was a mistake on their end. All within that week and previous week we were sent letters from Chase followed by a letter "invitation only" to go to an even that was being held at McAlister Square in Greenville, SC to meet with a Chase representative to finalize our modification.

17. We went to the event on August 28, 2010 and met with a Chase representative named "Veronica". She went over our loan and assured us the sale was not going through. She told us our

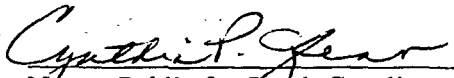
modification had been successfully submitted and our new payment information would be mailed to us. To make sure that they had all open communications with us, we gave them all of our work phone numbers, cell phone numbers and even both sets of our parent's phone numbers just in case they needed to relay a message to us.

18. Leaving there feeling some kind of peace that this living mess was not straightened out, little did we know that was only the beginning of the extreme duress we have suffered since being served with Eviction papers.

FURTHER, AFFIANT SAITH NOT.


JESSICA CAPE TUCKER

SWORN to before me this
16th day of June, 2011.


Notary Public for South Carolina
My Commission expires 12/12/16

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Chase Home Financial, LLC)

Plaintiffs,)

-vs-)

Brian Adrian Tucker and Jessica
C. Tucker,)

Defendants.)

IN THE COURT OF COMMON PLEAS
Case No. 2010-CP-23-1622

**AFFIDAVIT
OF BRIAN ADRIAN TUCKER**

PERSONALLY appeared before me the undersigned who, after being duly sworn, deposes and states as follows:

1. I am Brian Adrian Tucker, married to Jessica Cape Tucker. We have one son named Jaxson Meade Tucker. The three of us live at 103 Half Mile Place, Greenville, SC 29609. There is also an address known as Half Mile Way which is a street in the same subdivision which is less than a half mile away.

2. We constantly get mail delivered to us at Half Mile Place; mail meant for Half Mile Way.

3. This may be the reason why I never received Service of Process concerning the foreclosure of our home, nor have I received any sort of notice by mail concerning any legal action on our home.

4. I did receive an Eviction Service of Process from the Greenville County Sheriff's Department on March 22, 2011 at 12:32 p.m. This actually was received by my wife while I was on

the phone with her. This is the first Service of Process that we have ever received concerning foreclosure on our home.

5. I believe the service of process agent, if he was telling the truth, had the address wrong and served the wrong people at the wrong house minutes away.

6. Had I been served foreclosure papers I can absolutely assert what I would have done. My wife and I had been in ongoing discussions with Chase for modification of our loan. My wife had basically been in charge of that negotiation with Chase and had I received foreclosure papers to take our home in an emotional panic I would have instantly called her to tell her of the catastrophic news that I had just received.

7. Furthermore, I am very close to my father with whom I work; and always throughout my life have sought his advice and counsel. I work with him six days a week and he is my best friend. Had I been served with foreclosure papers on my home; after calling my wife, I would have instantly called my father probably panic stricken at the very thought of losing our home.

8. Not only is this home the home for my wife and my son, but also my wife's grandmother lives with us and she is 92 years old and completely dependent on us.

9. Therefore, I know I could not, and did not receive Service of Process because no one has ever handed me papers and said something to the effect of "you are being sued" or "you have been served" which is what my attorney says would have been told to me.

10. I, by necessity, would have had to tell my wife of the Service of Process because she would have needed to know this vital piece of information to deal with it in her discussions with Chase.

11. My credit has been destroyed by this action of Chase. After receiving eviction papers

Jessica and I had to immediately begin looking for a new home. We looked for an apartment for the four of us. Once our credit had been checked no one will let us rent. Our credit is now too bad to get any kind of accommodation . The fact that we are in a desperate situation is an understatement. I do not know what to do.

12. This all began when in December of 2008 when we heard modifications were available through the HMP program. My wife called Chase and told them that even though we were not behind in our \$1400 per month mortgage payment, we needed a modification because we were afraid of the downturn in the economy. In an effort to be careful, we wanted to see if Chase would modify our loan.

13. Chase assured us that they could modify the mortgage in December 2008. Chase sent us paperwork in the Spring of 2009 we were given a trial modification for June, July and August. We made all three payments even though I understand now from our attorney that Chase is saying they did not receive the second of the three payments.

14. Even the Chase statement shows they received and deposited the first and third payments of \$1192.52. No phone call or past due notice was sent to us at that time, or ever, that we had failed to make the trial payment. We were then told by Chase that according to the Home Affordable Modification Program ("HMP") standards that if we could afford to make the \$1400 house payments we were making, that we would not qualify for HMP and the Chase agent told us not to make any more payments so that HMP would be applicable to us. No one at any time told us we had missed one of the trial payments and somehow this would disqualify us from HMP, and we were actually instructed, as mentioned above, not to make house payments so that we would qualify for HMP.

15. My wife, a few weeks earlier, had gotten an email from a friend who buys foreclosed homes, that she thought our house had been listed for sale. My wife believed that was impossible because we were in negotiations and had been assured that modification was on go, also since we had not received any legal papers, my wife knew that this must be a terrible mistake. At that point my wife called Chase on August 23, 2010 very irrate since no service had been given to us of any kind. She was told that no sale was taking place and that there must be some mistake. We immediately received within a few days a letter from Chase inviting us to the "Event" on August 28, 2010.

16. My wife and I received a written invitation to come to a special "Mortgage Modification Event" at McAlister Square on August 28, 2010. Both of us attended with all of our paperwork which we had previously sent to Chase numerous times. A number of other lenders were present in addition to Chase. We met with a Chase agent named "Veronica". Veronica looked at our paperwork and checked on her computer and happily told us that we were qualified and definitely would receive a HMP modification.

17. When Veronica told us that the foreclosure/sale of the house would not go through because we had met with her before any sale date, which we had just been e-mailed was September 7, 2010, and we would shortly receive our final modification papers from Chase. She told us to be patient because Chase was backed up and it might take up to six (6) months for final papers to be given to us. My wife and I were extremely happy in our meeting with Veronica and she too shared our joy. We all three were just ecstatic at the conclusion of this horrible ordeal. We finally believed that all had been finalized and the confusion of the past year was over. She told us emphatically not to bother Chase with follow-up phone calls. Everything was now finalized with her in her capacity

with Chase and her actions in our presence on the computer that day.

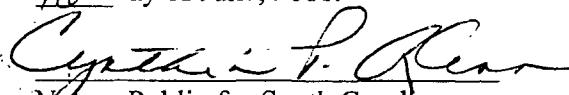
18. I did ask Veronica how it was possible that there could be a sale of our home when we had not gotten any foreclosure notice or letter of any kind. Veronica was mystified but assured us again and again that this whole process was over. There would be no sale of the home. We had definitely been approved for the HMP modification at the lower rate.

19. We quit worrying about any of this and never heard anything else from Chase until we received Eviction papers. I became hysterical with panic, and my wife was so concerned about me that she called my parents to come to the house to help calm me down and make sure I was all right. I was totally distraught with this unexpected action and all I could think of at that moment was how I was going to take care of my family if our home was taken away.

FURTHER, AFFIANT SAITH NOT.


BRIAN ADRIAN TUCKER

SWORN to before me this
16th day of June, 2011.


Cynthia P. Reno
Notary Public for South Carolina
My Commission Expires 12/13/14

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2010-CP-23-1622

JP Morgan Chase Bank, National
Association,

Plaintiff,

vs.

Brian Adrian Tucker, Jessica C. Tucker,
and Half Mile Lake Homeowner's
Association, Inc.,

Defendants.

MOTION TO RECONSIDER

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSTEIN
2012 MAY 25 PM 12:21

TO: THE HONORABLE CHARLES B. SIMMONS, JR., MASTER-IN-EQUITY FOR
GREENVILLE COUNTY; AND
THE PLAINTIFF AND ITS ATTORNEY, J. DERRICK JACKSON, ESQ.:

YOU WILL PLEASE TAKE NOTICE that Defendants Brian Adrian Tucker and Jessica C. Tucker (hereinafter "the Tuckers") move before this Court pursuant to Rules 52(b) and 59(e), SCRCP, as well as pursuant to all other applicable law, for an Order that reconsiders and/or clarifies this Court's Order dated April 30 2012, and filed May 1, 2012¹, and alters and amends that Order in accordance with the following:

1. The Court should find and rule that the Court erred in applying an incorrect analysis with respect to whether relief from the judgment should be granted due to lack of service of process. While a movant seeking relief under Rule 60(b), SCRCP, usually must demonstrate the applicability of one of the Rule's subsections and a meritorious defense, this analysis is not the same under Rule 60(b)(4), SCRCP which deals with void judgments (such as ones where no personal jurisdiction was obtained, for example, due to lack of service of

process). If a movant demonstrates by the preponderance of the evidence that no service was had and no personal jurisdiction obtained, then relief from the judgment must be granted. Our Supreme Court has stated that analysis of the promptness with which relief is sought, the reason for any failure to act promptly, and the prejudice to the other party is not part of the analysis of whether to grant relief on the grounds that the court lacked jurisdiction.

2. The Court should find and rule that the Court erred in granting the Plaintiff (who was not the purchaser at the foreclosure sale, the Plaintiff having assigned its bid to "Fannie Mae a/k/a Federal National Mortgage Association") any relief at all concerning its application to have an "ejectment" order or writ of assistance issue against the Tuckers or anyone else. The Plaintiff lacked and lacks any standing to seek such relief.
3. The Court should find and rule that the Court erred in granting the Plaintiff any relief at all concerning its application to have an "ejectment" order or writ of assistance issue without any hearing being held about whether such an order should issue. The procedure used by the Court, which grants the relief sought, then puts the burden on the occupants to challenge that relief, turns due process on its head. This procedure unlawfully shifted the burden to the Tuckers.
4. The Court should find and rule that the Court erred in ruling that the Home Affordable Modification Program categorically does not provide grounds for a borrower to defend a foreclosure action or to seek any affirmative relief. The agreements entered into between HAMP-participating servicers and the United

¹ The Tuckers and their counsel received written notice of the entry of this Order on May 18, 2012.

States Treasury Department are contracts of which applicable borrowers, such as the Tuckers, are third-party beneficiaries.

5. The Court should find and rule that the Court erred in ruling that issues concerning HAMP applicability and compliance must be raised by the pleadings. No order, rule, or statute requires this, and that interpretation contravenes the language of the governing South Carolina Supreme Court Administrative Orders.
6. The Court should find and rule that the Court erred in deeming all allegations of the complaint admitted in the context of whether to grant relief from the judgment. To apply such an analysis would significantly, and unlawfully, raise the burden needed for a movant to prevail on a motion for relief from a judgment.
7. The Court should find and rule that the Court erred in finding that the Tuckers were served with process in this action, when the specific evidence they offered shows that they were not.
8. The Court should find and rule that the Court erred in failing to rule on Rule 60(b)(4), SCRCF, as a basis for the Tuckers' motion.
9. The Court should find and rule that the Court erred in finding or ruling that any neglect by the Tuckers to answer the complaint was not excusable.
10. The Court should find and rule that the Court erred in finding that granting the Tuckers' motion would prejudice the Plaintiff and that the judicial sale is *res judicata* per S.C. Code Ann. § 15-39-870. The Plaintiff did not show that

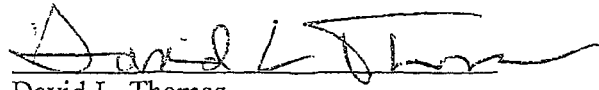
Fannie Mae was a bona fide purchaser for value without notice of the matters giving rise to the Tuckers' motions.

11. The Court should find and rule that the Court erred in ruling that the Plaintiff's misrepresentations were intrinsic rather than extrinsic. The Plaintiff's conduct induced the Tuckers to believe that no foreclosure action existed and, thus, that there was no action that they needed to take to oppose one.
12. The Court should find and rule that the Court erred in finding and/or ruling that the Plaintiff correctly processed the Tuckers to determine their eligibility for a HAMP modification.
13. The Court should find and rule that the Court erred in finding that the Tuckers did not act promptly with regard to this action. The record shows that the Tuckers took prompt action once they discovered the existence of this foreclosure action.
14. The Court should find and rule that the Court erred in determining that the Tuckers have no meritorious defense to this action. The Plaintiff led the Tuckers to believe that the default of the loan subject of this action was in the process of settlement.
15. This motion is also based upon the Tucker's memorandum submitted with this motion or thereafter (which memorandum is incorporated herein as if here set forth verbatim), all applicable statutory law, case law, common law, and the record in this action.

Consultation by the undersigned with opposing counsel about the substance of this motion in advance of the making hereof would serve no useful purpose.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS
BRIAN ADRIAN TUCKER AND
JESSICA C. TUCKER

Greenville, South Carolina
May 25, 2012

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2010-CP-23-1622

JP Morgan Chase Bank, National
Association,

Plaintiff,

vs.

Brian Adrian Tucker, Jessica C. Tucker,
and Half Mile Lake Homeowner's
Association, Inc.,

Defendants.

DEFENDANTS BRIAN AND JESSICA
TUCKER'S MEMORANDUM IN
SUPPORT OF MOTION TO
RECONSIDER

Defendants Brian Adrian Tucker and Jessica C. Tucker (hereinafter "the Tuckers") hereby submits this memorandum in support of their motion for the Court to reconsider its Order filed May 1, 2012, in the above-captioned action.

THE COURT APPLIED AN INCORRECT ANALYSIS TO THE 60(b) MOTION

In deciding a motion under Rule 60(b), SCRCP, the court hearing the motion is tasked with deciding whether the party seeking relief has shown, by the preponderance of the evidence, that the conditions of a subsection of the Rule are met and, ordinarily, that he has a meritorious defense. See Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456, 458 (Ct. App. 2005); Bowers v. Bowers, 304 S.C. 65, 67-68, 403 S.E.2d 127 (Ct. App. 1991). In examining whether there is a meritorious defense, a court is not tasked with deciding whether the movant will necessarily win the case; rather, the appropriate assessment of this factor is whether the defense in question "is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence." Micronics, Inc. v. S.C. Dept. of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223 (Ct. App. 2001) (quoting Graham v. Town of Loris, 272 S.C. 442, 453, 248 S.E.2d 594

(1978)). To require more would essentially substitute the motion hearing for a trial on the merits; and one in which the burden has shifted from the plaintiff to the defendant. Cf. id.

The subsections of Rule 60(b) provide relief for the following:

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

Rule 60(b), SCRCF:

An exception to the usual requirement of showing of a meritorious defense to the underlying action exists where relief is sought under Rule 60(b)(4), SCRCF; if the judgment is void, relief must be granted, and there is no need for further analysis. BB&T v. Taylor, 369 S.C. 548, 552 n. 1, 633 S.E.2d 501, 503 n. 1 (2006). Another way to express this principle might be to say that the fact that the judgment is void is itself a meritorious (and, indeed, complete) defense. See id. The Court erred in applying extra analytical steps to the analysis of whether relief from the judgment should be granted on the grounds that the judgment was void for lack of jurisdiction.

A party may achieve relief from a final judgment where the party demonstrates "fraud, misrepresentation, or other misconduct of an adverse party." In South Carolina, in order for a party to be entitled to relief based on fraud, the moving party must demonstrate extrinsic fraud.

Raby Constr., LLP v. Orr, 358 S.C. 10, 20-21, 594 S.E.2d 478, 484 (2005); Hagy v. Pruitt, 339 S.C. 425, 431, 529 S.E.2d 714, 717 (2000) (“A judgment may be set aside on the ground of fraud only if the fraud is ‘extrinsic’ and not ‘intrinsic.’”). Fraud is extrinsic when it is collateral to the issues tried in a case and effectively deprives the litigant of a fair hearing or the opportunity to present its case. Id. (citing Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm’n of S.C., 294 S.C. 9, 362 S.E.2d 176 (1987); Mr. G. v. Mrs. G., 320 S.C. 305, 465 S.E.2d 101 (Ct. App. 1995). “Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action.” Chewning v. Ford Motor Co., 354 S.C. 72, 81, 579 S.E.2d 605, 610 (2003) (citing Hilton Head, 294 S.C. at 11, 362 S.E.2d at 177).

Mistakes of fact are sufficient to support relief under 60(b)(1) where the moving party “make[s] a showing that failure to avoid the mistake was justified.” Coleman v. Dunlap, 306 S.C. 491, 495, 413 S.E.2d 15 (1992). This is not limited to mistakes about the underlying facts of the action but may extend to mistakes about procedural facts as well. Micronics, Inc. v. S.C. Dept. of Revenue, 345 S.C. 506, 508, 548 S.E.2d 223 (Ct. App. 2001) (relief proper under 60(b)(1) where party mistaken about hearing date).

Here, regardless of whether the Court believes the Tuckers’ testimony about having no notice of the foreclosure action until after its conclusions, the Tuckers’ position was that the Plaintiff actively led them to believe that there were no pending foreclosure proceedings when, in fact, there were. This activity by the Plaintiff falls within the ambit of extrinsic misrepresentation, as it induced the Tuckers to take no action to appear in or contest the foreclosure action. Further, in the face of the Plaintiff’s promises that there would be no foreclosure, any neglect of the Tuckers to defend this action was excusable. If the Tuckers

cannot excusably rely on the repudiation by the very Plaintiff itself of there being any foreclosure action, what can they excusably rely on?

The availability of a challenge to a default judgment under Rule 60(b), SCRC, is one of the primary reasons the Rule exists. See Winesett v. Winesett, 287 S.C. 332, 334, 338 S.E.2d 340 (1985) (“default judgment may not be appealed”; correct practice is to move for relief from judgment); Belue v. Belue, 276 S.C. 120, 121, 276 S.E.2d 295 (1981) (“no appeal lies for a default judgment”; correct practice is to move for relief from judgment); Jean Hoefler Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina 99 (2d ed. 2002). Here, by deeming all allegations of the complaint admitted for the purpose of analyzing the motion, the Court’s Order uses circular reasoning to make the burden of achieving relief from a judgment practically impossible to meet. This is not the proper analysis and not what is intended by the Rule. See id.

THE 60(b) MOTION SHOULD HAVE BEEN GRANTED

Here, the Tuckers presented specific (and uncontradicted) testimony that the Plaintiff’s employees repeatedly denied that there was any foreclosure process. This is the only evidence in the record on this point. The Tuckers met their burden to prove entitlement to relief under subsections (1) and (3) of Rule 60(b). Relying on what the Plaintiff told them, they believed there was no foreclosure action to oppose. The Plaintiff’s misrepresentations induced the Tuckers not to act and were, thus, extrinsic. In light of the Plaintiff’s representations, any neglect of the Tuckers to defend the foreclosure action is indeed excusable.

Further, the Tuckers have meritorious defenses, including, but not necessarily limited to, ones based on the Plaintiff’s conduct: unclean hands, estoppel, waiver of acceleration, and

defenses based on the settlement of the underlying loan default. It was error for the Court not to grant the Tuckers' motion for relief from the judgment.

Rule 60(b)(4), SCRCP, provides for relief from a judgment where the judgment is void. "A judgment is void if a court acts without personal jurisdiction. A court generally obtains personal jurisdiction by the service of a summons." BB&T, 369 S.C. at 551 (internal citations omitted).

"The movant in a Rule 60(b) motion has the burden of present evidence proving the facts essential to entitle her to relief." Id. at 552. An affidavit of service is "*prima facie* evidence of service which may be impeached by extrinsic evidence." Richardson Construction Co., Inc. v. Meek Engineering and Construction Inc., 274 S.C. 307, 311, 262 S.E.2d 913 (1980).

Here, the Tuckers did present specific facts, through affidavits and live testimony, contravening the Plaintiff's process server's assertion that he served the Tuckers. While the process server's testimony did offer some more detail than his affidavit of service, it is insufficient to trump the Tuckers' detailed showing that they were not served. Further, the Tuckers' explanation for why they took no action to oppose the foreclosure case – because they did not know about it – makes sense. The Plaintiff has offered no alternative explanation. As in Richardson Construction, the following is true here:

The proof by affidavit in this case is insufficient when confronted with the other facts and circumstances attending it. When these factors are coupled with [a] counter affidavit denying service, the cumulative effect entitled [the defendant] to relief from judgment as a matter of right[.]

Id. (internal citation omitted). Accordingly, the Tuckers have shown that they were not served, and their motion should have been granted.

THE COURT'S ORDER DOES NOT FOLLOW SUPREME COURT DIRECTIVES

The Order ruled that "HAMP is not a defense or cause of action. It is a matter to be decided by the court if raised in the pleadings, which it was not." This ruling was error in at least two respects.

First, both the 2009 and 2011 South Carolina Supreme Court Administrative Orders concerning mortgage foreclosure actions provide that the court with jurisdiction over the foreclosure action is to decide *any* dispute concerning the Home Affordable Modification Program or the applicability of or process under the Administrative Orders. There is no requirement that disputes concerning HAMP be raised by a mortgagor defendant in pleadings.

Second, the HAMP agreements entered into by HAMP servicers and the United States Treasury Department are made for the benefit of mortgage loan borrowers who are behind on their mortgage payments; these people, people like the Tuckers, are third-party beneficiaries of those agreements. Violation of those agreements can provide a borrower with a substantive claim or defense. At least one circuit judge has refused to dismiss claims against a servicer by borrowers based on breach of the servicer's duties under HAMP, as shown by the attached order.

Further, the Court's Order appears to place all the burden of demonstrating the Plaintiff's noncompliance with HAMP and the Administrative Orders on the Tuckers, which is neither required by nor intended by the Administrative Orders.

THE ORDER IMPROPERLY ASSESSES THE TUCKERS' HAMP ELIGIBILITY

A borrower is eligible to be processed for a HAMP modification if his monthly mortgage payment exceeds 31 percent of his monthly income. Here, the Court's Order states that "to qualify [for a HAMP modification], the Tuckers had to have a mortgage debt to income ratio of 31% or less after application of the funds [from the SC help program]. In this case, because of

the large arrearage, even after applying the \$20,000 from SC help, the Tuckers mortgage debt to income ratios would still exceed the guidelines.” The Order also stated that “[a]ccording to Chase’s analysis” – which is not in the record – “the Tuckers mortgage payment to income ratio would be over 216% and would not meet the guidelines.”

The first step of a HAMP modification and, indeed, its overall purpose, is to lower a borrower’s mortgage payments to 31 percent or less of his gross monthly income. Based on the Court’s own findings, it is difficult to see how the Tuckers are anything but plainly eligible for a HAMP modification.

THE EJECTMENT PROCEDURE VIOLATED DUE PROCESS

Without ever holding a hearing or providing the Tuckers with advance notice, the Court issued an “ejectment” order (more properly termed a writ of assistance), and then in that order shifted the burden of proof about whether such an order should be issued from the Plaintiff (who had not met its burden to achieve such an order, as discussed below) to the Tuckers. This was a structural defect that infected the entire procedure on this issue, and it was error for the Court to issue this order to begin with; as well as error for the Court to uphold it.

Our state Supreme Court has discussed writs of assistance as follows:

The power to issue the writ [of assistance] results from the principle that the jurisdiction of the Court to enforce its decree is coextensive with its jurisdiction to determine the rights of the parties, and to subject to sale the property mortgaged. But, “the learned Justice adds, “the writ of assistance can only issue against parties bound by the decree,” which is only saying that the execution cannot exceed the decree which it enforces; that the owner of the property mortgaged, which is directed to be sold, can only be bound when he has notice of the proceedings for its sale, if he has acquired his interest previous to their institution, it is too obvious to require either argument or authority. *It is a rule as old as the law that no man shall be condemned in his rights of property, as well as in his rights of person, without his day in*

Court; that is, without being duly cited to answer respecting them, and being heard or having an opportunity of being heard thereon."

James v. Graham, 114 S.C. 107, 78 S.E. 82 (1912) (emphasis added, internal citations omitted).

Our Supreme Court has also stated:

It is commonly declared that the issuance of a writ of assistance rests in the sound discretion of the Court, *and that it is issued only when the right is clear and free from doubt—when there is no equity or appearance of equity in defendant*, and when the decree, and the sale and proceedings thereunder, are beyond suspicion; and it is certainly not customary to issue the writ where there is a *bona fide* contest as to the right to the possession of the land under the sale, or where the occupant claims by a new and independent right or title, or where the rights of the respective parties have been fully and finally adjudicated in the principal suit.

Griggs v. Griggs, 205 S.C. 272, 31 S.E.2d 505 (1944) (emphasis added, internal citations and quotation marks omitted).

In other words, particularly since a foreclosure action adjudicates ownership, not possession, a writ of assistance ordinarily may not issue without a hearing first being held on whether it should issue. Indeed, this has been the process followed across this state for quite some time. While it is a summary process, it does adjudicate a right not determined by the underlying foreclosure action: the right of possession. “[D]ue process of law requires that a person shall have a reasonable opportunity to be heard before a legally appointed and qualified tribunal before any binding decree, order, or judgment can be made affecting his rights to life, liberty, or property.” LaSalle Bank Nat’l. Ass’n. v. Davidson, 386 S.C. 276, 279, 688 S.E.2d 121, 122-23 (2009) (quoting State v. Brown, 178 S.C. 294, 300, 182 S.E. 838, 841 (1935)). Due process was not afforded here.

“The law recognizes two kinds of errors: trial errors and structural defects. The former are subject to ‘harmless error’ analysis while the latter are not. . . . [S]tructural defects in the

constitution of the trial mechanism defy analysis by harmless error standards.” Id. at 280 (internal quotation marks omitted).

The Court erred in issuing an order for the Tuckers’ removal from the property subject of this case.

THE WRONG PARTY SOUGHT THE WRIT OF ASSISTANCE

If there had been a hearing on whether a writ of assistance should issue in favor of the Plaintiff, there is no way the Plaintiff could have prevailed at it. As shown by the very deed attached to the “ejectment” order (presumably submitted by the Plaintiff in support of the order being issues), the Plaintiff does not own the property subject of this case. The grantee of the master’s deed was “Fannie Mae a/k/a Federal National Mortgage Association,” not the Plaintiff. No matter what the outcome of any other proceedings in this case, the Plaintiff is not entitled to the issuance of any order purporting to authorize the sheriff “to put the Plaintiff in full, peaceful and quiet possession of the premises[.]”

Further, it was error for the Court to order in the Order filed on May 1, 2012, that “the Sheriff of Greenville County is hereby ordered to place Fannie Mae aka Federal national Mortgage Association in peaceful possession of the property.” Fannie Mae never sought such relief, and the Plaintiff lacks standing to seek such relief for Fannie Mae.

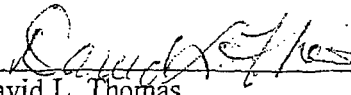
CONCLUSION

The Court should reconsider its rulings and rule in favor of the Tuckers.

Respectfully submitted,

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Greenville, South Carolina
May 25, 2012


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ATTORNEYS FOR DEFENDANTS
BRIAN ADRIAN TUCKER AND
JESSICA C. TUCKER

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

U.S. Bank National Association as
Trustee for RAMP 2005EFC2,

Plaintiff,

vs.

Brenda J. Love; and John J. Love,

Defendants.,

vs.

GMAC Mortgage, LLC, and
Homecomings Financial, LLC,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2009-CP-32-5511

ORIGINAL

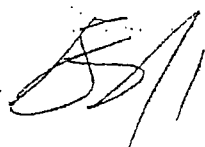
ORDER

FILED
JUL 29 2010 11:11 AM
BETH A. CARROLL
CLERK OF COURT
LEXINGTON, SC

This matter came before me on July 28, 2010, at a hearing on the Third-Party Defendants' motion to dismiss the Defendants' third-party claims for violation of the South Carolina Consumer Protection Code, violation of the Fair Debt Collection Practices Act, and for breach of contract and breach of contract accompanied by fraudulent act. In attendance were Andrew S. Radeker, Esquire, as attorney for the Defendants, and Michael C. Griffin, Esquire, who represents the Plaintiff and the Third-Party Defendants.

The parties resolved the motion with respect to the claim concerning violation of the South Carolina Consumer Protection Code by the Defendants withdrawing this claim as it was pled in the Defendants' Answer, Counterclaim, and Third-Party Complaint, with the parties consenting to the Court granting the Defendants leave to amend their pleading to assert a violation of S.C. Code Ann. § 37-10-102.

The ruling on a motion to dismiss under Rule 12(b)(6), SCRPC, for failure to state facts sufficient to constitute a cause of action must be based solely upon the allegations set forth in the



pleading. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601 (1995). "The motion cannot be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the [pleading party] to relief on any theory of the case. The question is whether in the light most favorable to [the pleading party], and with every doubt resolved in her behalf, the [pleading] states any valid claim for relief." Dye v. Gainey, 320 S.C. 65, 67-68, 463 S.E.2d 97, 98-99 (Ct. App. 1995).

The Third-Party Defendants argued that the claim that they violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, should fail because they are mortgage servicers; however, the exemption from the Act for mortgage servicers is not absolute. 15 U.S.C. § 1692a(6)(F)(iii). The Defendants' claim alleges that the Third-Party Defendants are debt collectors, are subject to the Fair Debt Collection Practices Act, and committed violations of the Act. The Defendants have alleged facts sufficient to constitute a cause of action in this regard.

With respect to the claims for breach of contract and breach of contract accompanied by fraudulent act, the parties argue and the Court agrees that the central issue is whether the Defendants are third-party beneficiaries of the mortgage-servicer Third-Party Defendants' agreement with the United States Treasury Department to participate in the Home Affordable Modification Program (HAMP). HAMP has only existed since March of 2009, and there are no cases in South Carolina that address whether homeowners whose mortgage servicers have entered into HAMP participation agreements with the Treasury Department are the intended third-party beneficiaries of those agreements or merely incidental beneficiaries. This is a novel issue in South Carolina. These claims should not be dismissed at the 12(b)(6) stage. See Garner v. Morrison Knudsen Corp., 318 S.C. 223, 226, 456 S.E.2d 907, 909 (1995) (novel issues



“should not ordinarily be decided in ruling on a 12(b)(6) motion to dismiss”); Tyler v. Macks Stores of S.C., Inc., 275 S.C. 456, 459, 272 S.E.2d 633, 634 (1980) (“[a] novel issue . . . is best decided in light of the testimony to be adduced at trial”).

Accordingly, it is therefore hereby ORDERED as follows:

1. The Defendants’ claim for violation of the South Carolina Consumer Protection Code is withdrawn as it is currently pled;
2. The Defendants are granted 30 days from their counsel’s receipt of a copy of this filed Order to serve an amended pleading alleging violation of S.C. Code Ann. § 37-10-102;
3. The Plaintiff and Third-Party Defendants shall have 30 days from the service of that amended pleading to serve a responsive pleading thereto; and
4. The Third-Party Defendants’ motion to dismiss is denied as to the Defendants’ claims for violation of the Fair Debt Collection Practices Act, breach of contract, and breach of contract accompanied by fraudulent act.

And IT IS SO ORDERED.



The Honorable George C. James, Jr.
Circuit Judge

Sumter, South Carolina

August 4, 2010

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC.

2010 AUG - 6 A 11:40

FILED

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

JP Morgan Chase Bank, National Association,)
Plaintiff)

-vs-)

Brian Adrian Tucker, Jessica C. Tucker et.al.,)
Defendants)

IN THE COURT OF COMMON PLEAS
13TH JUDICIAL CIRCUIT

CASE 2011-CP-2012

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS

2012 MAY 25 PM 12: 21

CERTIFICATE OF SERVICE

I, Michele L. Harney, Legal Assistant for the law offices of MOORE TAYLOR & THOMAS, PA, do hereby certify that I have mailed a copy of the Defendants' Motion to Reconsider in the above-captioned matter by U.S. Mail, postage paid this 25th day of May 2012 to:

The Honorable Charles B. Simmons, Jr. and
Master-In-Equity for Greenville County
Greenville County Courthouse
305 East North Street, Suite 313
Greenville, South Carolina 29601

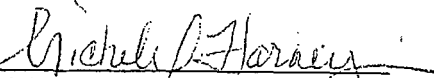
J. Derrick Jackson, Esq.
TOBIAS G. WARD, JR. PA
Attorneys for Plaintiff
6 Calendar Court, Suite 3
Columbia, South Carolina 29206

and:

Erica G. Lybrand, Attorney
SCOTT LAW FIRM
Attorneys for Plaintiff
Post Office Box 2065
Columbia, South Carolina 29202

MOORE TAYLOR & THOMAS, PA
Attorneys for Defendants
23 Wade Hampton Blvd.
Greenville, South Carolina 29609
Telephone: 864-271-6371
Facsimile: 864-271-1707

Greenville, South Carolina
May 25, 2012

By 
Michele L. Harney

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

PLAINTIFF,

VS.

Brian Adrian Tucker, Jessica C. Tucker, and
Half Mile Lake Homeowner's Association,
Inc.

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1622

**CHASE'S MEMORANDUM IN
OPPOSITION TO DEFENDANT
TUCKERS' MOTION TO SET ASIDE
AND VACATE DEFAULT**

100268.00125

JPMorgan Chase Bank, National Association, successor by merger to Chase Home Finance LLC ("Chase") by way of return to Defendants Brian and Jessica Tucker's motion to vacate and set aside default, would show this court as follows:

FACTUAL BACKGROUND

On June 15, 2009, Brian Tucker executed a HAMP Loan Workout Plan and submitted it to Chase. (Exhibit A.) Under the terms of the plan, Tucker was required to make trial payments of \$1,192.52 on or before June 1, July 1, and August 1, 2009. As the attached payment history shows, Tucker made the first payment on June 16, 2009, and another payment on August 31, 2009, and no further payments. (Exhibit B.)

Chase commenced a foreclosure action on March 1, 2010. Personal service of the Lis Pendens, Summons and Complaint was made on Brian Tucker on March 9, 2010 and service on Jessica Tucker was made on this same date through Brian Tucker (Exhibit C.) More than 30 days elapsed since service of the Summons and Complaint on the

Defendants, and the Defendants failed to plead or otherwise defend as provided by the rules, so Chase filed affidavits of default and submitted a proposed Order of Reference which was duly signed and filed on April 20, 2010. (Exhibit D.)

A hearing was scheduled before this court on July 7, 2010. Due notice of this hearing was served on the Defendants on June 21, 2010 as shown by the Notice of Hearing with Certificate of Service on file with the court. The Defendants failed to appear at the hearing; thereafter, this court received a Record of Hearing with supporting documents, and executed a judgment of foreclosure and sale dated July 7, 2010 and filed July 14, 2010. (Exhibit E)

Pursuant to the terms of the order, the property was sold according to law on September 6, 2010. Notice of this sale was advertised according to law. Chase was the successful bidder and on November 29, 2010, this court signed the deed which was filed with the Greenville County Register of Deeds on December 14, 2010. (Exhibit F.)

LAW/ANALYSIS

The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle her to relief. BB & T v. Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006).

In determining whether to grant relief under Rule 60(b)(1), the court must consider the following factors: "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party." Micronics, Inc. v. S.C. Dep't of Revenue, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct.App.2001).

In this case, each of these factors weighs against granting the motion.

First, the Defendants have not acted promptly. As noted in the factual background, the hearing in this case was held and judgment entered on July 7, 2010, almost eleven months ago. Moreover, since the hearing, the property has been advertised, sold, and

the deed signed and delivered. Second, the Defendants have failed to articulate any reasons for their failure to act promptly. Lack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney. Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct.App.2001). As discussed later, the Defendants allegations about HAMP compliance lack merit and are based on alleged conduct which occurred post judgment.

Third, the Defendants have no meritorious defense. As alleged in the complaint, and as shown in the payment history, after applying the partial payments made by the Defendants under the proposed Loan Workout plan, the Defendants' still owe for all payment since October 2008. Furthermore, despite the Defendants arguments to the contrary, HAMP is not a defense or cause of action. It is a matter to be decided by the court if raised in the pleadings, which it was not. Moreover, as shown by the payment history, the Defendant Brian Tucker failed to timely make his HAMP Trial payments.

Finally, Chase would certainly be prejudiced if the judgment was vacated. It has already advertised and purchased the property at judicial sale. Fannie Mae received a deed which has been recorded. Furthermore, since the deed was delivered to Fannie Mae, the judicial sale is res judicata under the provisions of S.C. Code Ann. §15-39-870.

Rule 60(b)(3) allows the court, within its discretion, to relieve a party from a default judgment where the judgment has been obtained through some misrepresentation, fraud or other misconduct has been made by an adverse party. The rule applies, however, only to extrinsic fraud, not intrinsic fraud. Raby Const. LLP v. Orr, 358 S.C. 10, 594 S.E.2d 478 (2004). Moreover, the fraud requires a showing that the perpetrator acted with an intent to defraud. Perry v. Heirs at law of Gadsden, 357 S.C. 42, 590 S.E.2d 502 (Ct. App. 2003). Those elements are not present in this case.

Rule 60(b) motions and "independent actions in equity" do not allow a party to relitigate a case, hoping to clinch a victory in a more favorable climate the second time around, by supplying evidence they failed to muster at the first trial. See Mr. G v. Mrs. G., 320 S.C. 305, 308-309, 465 S.E.2d 101, 103 (S.C. Ct. App. 1995). A party seeking relief from a prior judgment on grounds of fraud must show he had no opportunity in the original action to fully litigate the ground on which he now seeks relief; otherwise, his claims are barred by res judicata and collateral estoppel.

In this case, there is no evidence of any extrinsic fraud sufficient to overturn or vacate the judgment. There is no evidence of any intent to defraud the Defendants or the court. There is no evidence that the Defendants were denied the opportunity to present evidence at the hearing on the merits. Indeed, the alleged conduct cited in Defendants' motion occurred after the judgment was already entered of record. In their motion, the Defendants allege that in August 2010, Brian Tucker was invited to participate in a meeting concerning loan modification; however, the judgment in this case was executed on July 7, 2010. This court should deny the motion and follow the courts' "long standing policy toward final judgments." Chewning v. Ford Motor Co., 354 S.C. 72, 86, 579 S.E.2d 605, 613 (2003) (We recognize that important benefits are achieved by the preservation of final judgments. This opinion, with its unique facts, in no way alters the Court's longstanding policy towards final judgments.)

Finally, throughout their motion, the Defendants claim that the Plaintiff misrepresents HAMP compliance in violation of Chief Justice Toal's administrative order and in paragraph 3 of the complaint. First, this allegation is not accurate since as shown by the Defendants Loan Workout Agreement and payment history, he failed to timely make his trial period payments. Second, even if the allegation was true, which it is not, then Defendants waived any objections and are deemed to have admitted the allegation by failing to present their objections to this court in a timely

fashion. Allegations made in a complaint that are not denied in the answer are **deemed admitted** under Rule 8(d). Motors Ins. Corp. v. State by & Through Department of Highways & Pub. Transp., 313 S.C. 279, 437 S.E.2d 555 (Ct. App. 1993), reh'g denied, (Dec. 16, 1993). Third, even if the allegation was true, which it's not, it would be intrinsic fraud (fraud submitted to the court as part of the litigation process) for which relief from a judgment is not available. This court should find that there is no basis for relief from the foreclosure judgment under Rule 60(b)(3).

CONCLUSION

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The Defendants have failed to prove the facts essential to relief. They have failed to show any reasons they could not have answered or participated in the legal process. The Defendants did not raise any claims until after the judgment had been entered, after the property advertised for sale, and after the deed had been delivered. The Defendant was given the opportunity for a Loan Workout, but failed to make the trial payments. Moreover, the Defendants have no meritorious defense as he owes for payments due since October 2008. The Defendants claims concerning HAMP relate to a seminar attended after judgment was already entered and therefore cannot serve as the basis for relief from judgment. For these reasons, the reasons set forth herein, and the strong policy favoring the finality of judgments and the timely assertion of defenses, the Defendants' motion should be denied.

Respectfully Submitted,

SCOTT LAW FIRM, PA

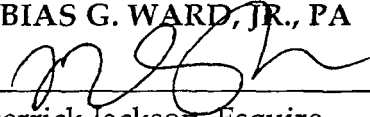
2712 Middleburg Drive, Suite 200

Columbia, SC 29204

(803) 252-3340

Attorney for the Plaintiff

TOBIAS G. WARD, JR., PA



J. Derrick Jackson, Esquire

6 Calendar Court, Suite 3

Columbia, SC 29206

803-708-4200

Fax 803-403-8754

dj@tobywardlaw.com

Associated Counsel for Plaintiff

Dated: 5-19-11

COMPLETE YOUR CHECKLIST

This is the information we need to help you modify your mortgage payments.

Act Now!

To accept this offer, and see if you qualify for a Home Affordable Modification, send the 5 items listed below to Chase Home Finance LLC, 31 Inwood Road, Rocky Hill, CT 06067, no later than June 17, 2009. Use the return envelope provided for your convenience.

1. Two copies of the enclosed Workout Plan signed by all borrowers,
2. Your first month's trial period payment in the amount of \$1,192.52,
3. The enclosed Hardship Affidavit completed and signed by all borrowers (no notary required),
4. A signed and dated copy of the IRS Form 4506-T (Request for Transcript of Tax Return) for each borrower (borrowers who filed their tax returns jointly may send in one IRS Form 4506-T signed and dated by both of the joint filers), and
5. Documentation to verify all of the income of each borrower (including any alimony or child support that you choose to rely upon to qualify). This documentation should include:
 - For each borrower who is a salaried employee:
 - Copy of the most recent filed federal tax return with all schedules; and
 - Copy of the two most recent pay stubs.
 - For each borrower who is self-employed:
 - Copy of the most recent filed federal tax return with all schedules, and
 - Copy of the most recent quarterly or year-to-date profit/loss statement.
 - For each borrower who has income such as social security, disability or death benefits, pension, public assistance, or unemployment:
 - Copy of most recent federal tax return with all schedules and W-2 or copies of two most recent bank statements.
 - Copy of benefits statement or letter from the provider that states the amount, frequency and duration of the benefit. Such benefit must continue for at least 3 years to be considered qualifying income under this program.
 - For each borrower who is relying on alimony or child support as qualifying income:
 - Copy of divorce decree, separation agreement or other written agreement or decree that states the amount of the alimony or child support and period of time over which it will be received. Payments must continue for at least 3 years to be considered qualifying income under this program.
 - Proof of full, regular and timely payments; for example deposit slips, bank statements, court verification or filed federal tax return with all schedules.
 - For each borrower who has rental income:
 - Copies of most recent two years filed federal tax returns with all schedules, including Schedule E—Supplement Income and Loss. Rental income for qualifying purposes will be 75% of the gross rent.

If you have other types of income or have questions about the documentation required, please contact us at 1-800-435-3412.

You must send in both signed copies of the Workout Plan, all required income documentation, and your first trial period payment by this date June 17, 2009. If you cannot provide the documentation within the time frame provided, please contact us to request an extension of time to gather your documents.

Keep a copy of all documents for your records. Don't send original income documentation as copies are acceptable.

Your remaining trial period payments in the amount of \$1,192.52 will be due on or before July 1, 2009 and August 1, 2009. These payments should be sent instead of, not in addition to, your normal monthly mortgage payment. If the trial period payments are made in amounts different from the amount stated your loan may not be modified.

If you cannot afford the trial period payments shown above, but want to remain in your home, or if you want to leave your home and avoid foreclosure, please call us at 1-800-435-3412. We may be able to help you.

**HOME AFFORDABLE MODIFICATION PROGRAM
LOAN WORKOUT PLAN
(Step One of Two-Step Documentation Process)**

Loan Workout Plan Effective Date: June 1, 2009
Borrower ("I")¹: BRIAN TUCKER
Lender ("Lender"): CHASE HOME FINANCE LLC
Date of first lien Security Instrument ("Mortgage") and Note ("Note"): May 14, 2007
Loan Number:
Property Address ("Property"): 103 HALF MILE PLACE
GREENVILLE, SC 29609

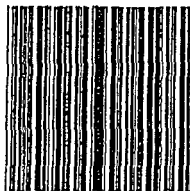
If I am in compliance with this Loan Workout Plan (the "Plan") and my representations in Section 1 continue to be true in all material respects, then the Lender will provide me with a Loan Modification Agreement ("Modification Agreement"), as set forth in Section 3, that would amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage. The Mortgage and Note together, as they may previously have been amended, are referred to as the "Loan Documents." Capitalized terms used in this Plan and not defined have the meaning given to them in the Loan Documents.

If I have not already done so, I am providing confirmation of the reasons I cannot afford my mortgage payment and documents to permit verification of all of my income (except that I understand that I am not required to disclose any child support or alimony unless I wish to have such income considered) to determine whether I qualify for the offer described in this Plan (the "Offer"). I understand that after I sign and return two copies of this Plan to the Lender, the Lender will send me a signed copy of this Plan if I qualify for the Offer or will send me written notice that I do not qualify for the Offer. This Plan will not take effect unless and until both I and the Lender sign it and Lender provides me with a copy of this Plan with the Lender's signature.

1. My Representations. I certify, represent to Lender and agree:

- A. I am unable to afford my mortgage payments for the reasons indicated in my Hardship Affidavit and as a result, (i) I am either in default or believe I will be in default under the Loan Documents in the near future, and (ii) I do not have access to sufficient liquid assets to make the monthly mortgage payments now or in the near future;

¹ If there is more than one Borrower or Mortgagor executing this document, each is referred to as "I". For purposes of this document, words signifying the singular (such as "I") shall include the plural (such as "we") and vice versa where appropriate.



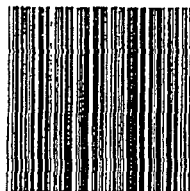
- B. I live in the Property as my principal residence, and the Property has not been condemned;
 - C. There has been no change in the ownership of the Property since I signed the Loan Documents;
 - D. I am providing or already have provided documentation for all income that I receive (except that I understand that I am not required to disclose any child support or alimony that I receive, unless I wish to have such income considered to qualify for the Offer);
 - E. Under penalty of perjury, all documents and information I have provided to Lender pursuant to this Plan, including the documents and information regarding my eligibility for the program, are true and correct; and
 - F. If Lender requires me to obtain credit counseling, I will do so.
2. **The Loan Workout Plan.** On or before each of the following due dates, I will pay the Lender the amount set forth below ("Trial Period Payment"), which includes payment for Escrow Items, including real estate taxes, insurance premiums and other fees, if any, of U.S. \$1,192.52.

Trial Period Payment #	Trial Period Payment	Due Date On or Before
1	\$1,192.52	June 1, 2009
2	\$1,192.52	July 1, 2009
3	\$1,192.52	August 1, 2009

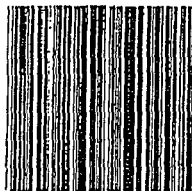
The Trial Period Payment is an estimate of the payment that will be required under the modified loan terms, which will be finalized in accordance with Section 3 below.

During the period (the "Trial Period") commencing on the date of this Plan and ending on the earlier of: (i) the first day of the month following the month in which the last Trial Period Payment is due (the "Modification Effective Date") or (ii) termination of this Plan, I understand and acknowledge that

- A. TIME IS OF THE ESSENCE under this Plan;
- B. Except as set forth in Section 2.C. below, the Lender will suspend any scheduled foreclosure sale, provided I continue to meet the obligations under this Plan, but any pending foreclosure action will not be dismissed and may be immediately resumed from the point at which it was suspended if this Plan terminates, and no new notice of default, notice of intent to accelerate, notice of acceleration, or similar notice will be necessary to continue the foreclosure action, all rights to such notices being hereby waived to the extent permitted by applicable law;
- C. If my property is located in Georgia, Hawaii, Missouri, or Virginia and a foreclosure sale is currently scheduled, the foreclosure sale will not be suspended and the lender may foreclose if I have not made each and every Trial Period Payment that is due before the scheduled foreclosure sale. If a foreclosure sale occurs pursuant to this Section 2.C., this agreement shall be deemed terminated;
- D. The Lender will hold the payments received during the Trial Period in a non-interest bearing account until they total an amount that is enough to pay my oldest delinquent monthly payment on my loan in full. If there is any remaining money after such payment is applied, such remaining funds will be held by the Lender and not posted to my account until they total an amount that is enough to pay the next oldest delinquent monthly payment in full;




- E. When the Lender accepts and posts a payment during the Trial Period it will be without prejudice to, and will not be deemed a waiver of, the acceleration of the loan or foreclosure action and related activities and shall not constitute a cure of my default under the Loan Documents unless such payments are sufficient to completely cure my entire default under the Loan Documents;
 - F. If prior to the Modification Effective Date, (i) the Lender does not provide me a fully executed copy of this Plan and the Modification Agreement; (ii) I have not made the Trial Period payments required under Section 2 of this Plan; or (iii) the Lender determines that my representations in Section 1 are no longer true and correct, the Loan Documents will not be modified and this Plan will terminate. In this event, the Lender will have all of the rights and remedies provided by the Loan Documents, and any payment I make under this Plan shall be applied to amounts I owe under the Loan Documents and shall not be refunded to me; and
 - G. I understand that the Plan is not a modification of the Loan Documents and that the Loan Documents will not be modified unless and until (i) I meet all of the conditions required for modification, (ii) I receive a fully executed copy of a Modification Agreement, and (iii) the Modification Effective Date has passed. I further understand and agree that the Lender will not be obligated or bound to make any modification of the Loan Documents if I fail to meet any one of the requirements under this Plan.
3. **The Modification.** I understand that once Lender is able to determine the final amounts of unpaid interest and any other delinquent amounts (except late charges) to be added to my loan balance and after deducting from my loan balance any remaining money held at the end of the Trial Period under Section 2.D. above, the Lender will determine the new payment amount. If I comply with the requirements in Section 2 and my representations in Section 1 continue to be true in all material respects, the Lender will send me a Modification Agreement for my signature which will modify my Loan Documents as necessary to reflect this new payment amount and waive any unpaid late charges accrued to date. Upon execution of a Modification Agreement by the Lender and me, this Plan shall terminate and the Loan Documents, as modified by the Modification Agreement, shall govern the terms between the Lender and me for the remaining term of the loan.
4. **Additional Agreements.** I agree to the following:
- A. That, unless a borrower or co-borrower is deceased, all persons who signed the Loan Documents have signed this Plan.
 - B. To comply, except to the extent that they are modified by this Plan, with all covenants, agreements, and requirements of Loan Documents, including my agreement to make all payments of taxes, insurance premiums, assessments, Escrow Items, impounds, and all other payments, the amount of which may change periodically over the term of my loan.
 - C. That this Plan constitutes notice that the Lender's waiver as to payment of Escrow Items, if any, has been revoked, and I have been advised of the amount needed to fully fund my Escrow Account.
 - D. That all terms and provisions of the Loan Documents remain in full force and effect; nothing in this Plan shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents. The Lender and I will be bound by, and will comply with, all of the terms and provisions of the Loan Documents.



E. Notwithstanding anything herein to the contrary, if my final two Trial Period Payments are received by Servicer after the close of business on the 15th calendar day of the last month of the Trial Period but before the end of the Trial Period, I agree that the Trial Period shall be extended by one calendar month (the "Additional Trial Period"). I agree to abide by all terms and provisions of this Loan Workout Plan during the Additional Trial Period. In addition, I agree to make a Trial Period Payment in the amount of \$1,192.52 no more than 30 days after the last due date listed in the chart in Section 2 above.

In Witness Whereof, the Lender and I have executed this Plan.

CHASE HOME FINANCE LLC

 (Seal)
BRIAN TUCKER

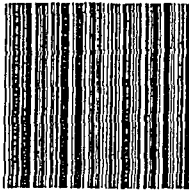
12-15-09
Date

By: _____

_____ (Seal)

Date

Date

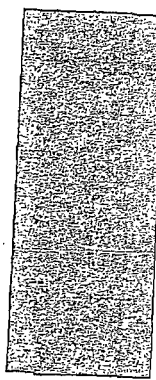


3270 Explorer: Customer Service Workstation (SER1/HIST)

JPMORGAN CHASE BANK, N.A. -- 465

Borrower Name: TUCKER,BRIAN ADRIAN

BRIAN ADRIAN TUCKER CUSTOMER SERVICE INV 499/002 05/07/11 09:10:15
 C TYPE CONV. PMI MAN 0
 000-00-0000 IR 7.00000 BR 00 864-363-4456
 103 HALF MILE PL GREENVILLE SC 29609 1 864-271-6097
 < SENT BIDDING INSTRUCTIONS TO MELISSA.SKELLON@CRFSE >: 03/30/11
 -----HIST-----* END OF LOAN HISTORY *----- (MORE)
 PROC-DT DUE-DT TRAN TRAN-DESCRIPTION TRAN-EFFECTIVE-DATE
 TRAN-AMT PRINCIPAL INTEREST ESCROW AMOUNT/CD/DESCRIPTION
 08-31-09 10-08 173 PAYMENT 08-29-09
 1,192.77 138.64 892.58 338.74 177.19-
 152,875.76 2,473.30-
 08-22-09 10-08 161 ESCROW ADVANCE
 183.42 0.00 0.00 183.42
 08-22-09 08-09 310 MORTGAGE INSURANCE DISBURSEMENT
 183.42- 0.00 0.00 183.42- PAYEE = 003
 2,812.04-
 08-17-09 10-08 152 LATE CHARGE ASSESSMENT
 0.00 0.00 0.00 0.00 51.56-1 LATE CHARGE
 07-23-09 10-08 161 ESCROW ADVANCE
 183.42 0.00 0.00 183.42



3270 Explorer: Customer Service Workstation (SER1/HIST)

JPMORGAN CHASE BANK, N.A. -- 465

Borrower Name: TUCKER,BRIAN ADRIAN

BRIAN ADRIAN TUCKER CUSTOMER SERVICE INV 499/002 05/07/11 09:10:15
 TYPE CONV. PMI MAN 0

103 HALF MILE PL GREENVILLE SC 29609 IR 7.00000 BR 00 864-363-4456
 1 864-271-6097

< SENT BIDDING INSTRUCTIONS TO MELISSA.SKELLON@CRFSE >: 03/30/11

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

PROC-DT DUE-DT TRAN TRAN-DESCRIPTION TRAN-EFFECTIVE-DATE

TRAN-AMT PRINCIPAL INTEREST ESCROW AMOUNT/CD/DESCRIPTION

07-23-09 07-09 310 MORTGAGE INSURANCE DISBURSEMENT
 183.42- 0.00 0.00 183.42- PAYEE = 003
 2,628.62-

07-16-09 00-00 632 STATUTORY EXPENSES
 5.74 0.00 0.00 0.00 5.74 NON REC CORP ADV

07-16-09 00-00 632 STATUTORY EXPENSES
 73.72 0.00 0.00 0.00 73.72 NON REC CORP ADV

07-03-09 07-09 161 ESCROW ADVANCE
 2,445.20 0.00 0.00 2,445.20

07-03-09 07-09 310 MORTGAGE INSURANCE DISBURSEMENT
 1,100.52- 0.00 0.00 1,100.52-
 2,445.20-

3270 Explorer: Preconversion History Screen (HISC)

JPMORGAN CHASE BANK, N.A. -- 465

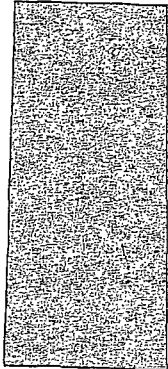
Borrower Name: TUCKER, BRIAN ADRIAN

HISC TRAN CODE _____ PREVIOUS SERVICER HISTORY _____ 05/07/11
 PART SEQ: _____

NAME: BA TUCKER

SEQ	TRAN	DESCRIPTION	PRINCIPAL	BATCH	SOURCE	SUSP
PST DT EFF DT DUE DT TOT TRN	LATE	MISC AMT PRINCIPAL	ESCROW	INTEREST	ESCROW	SUBSIDY
				SUSPENSE	PAYEE	
0001	0911	UNAP CR CASH		06960	IBV	
061909	061609	090108	1192.52	.00	.00	1192.52
	.00	.00	153014.40	2445.20-	1192.52	0000000
0001	GLTC	*GENR LT CHRG*		00000		
061609	061609	090108	51.56	.00	.00	.00
	51.56	.00	153014.40	2445.20-	.00	0000000
0002	GEAD	*GEN ES OD A/R*		00000		
061009	061009	090108	183.42	.00	183.42	.00
	.00	.00		.00	0000000	.00
0001	GESD	*GEN ESC DISB*	GESD PM01	00000		
061009	061009	090108	183.42	.00	183.42	.00
	.00	.00	153014.40	2445.20-	.00	89918
0003	3852	FEE 3 COLLECT		07010	UIG	
052809	052809	090108	42.00	.00	.00	.00
	.00	42.00	153014.40	2261.78-	.00	0000000

OPTIONS: (PF7) BACKWARD (PF8) FORWARD (PF9) FIRST SCREEN (CLEAR) EXIT



STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Chase Home Finance, LLC)
Plaintiff,)
vs.)
Brian Adrian Tucker, et al)
Defendant.)

IN THE COURT OF COMMON PLEAS
C.A. No.: 2010-CP-23-1622

MAR 17 9:59

AFFIDAVIT OF SERVICE

SLF NO: 100268.00125

PERSONALLY appeared before me the undersigned, who being duly sworn, states that he/she served:

- (X) Civil Action Coversheet
- (X) Certificate of Exemption/Withdrawal From Arbitration
- (X) Lis Pendens
- (X) Summons
- (X) Complaint


IN THIS ACTION ON: Brian Adrian Tucker

(X) by personal delivery to him

(X) Non-Military

and leaving with him a copy of the same at: 103 Half Mile Pl.
Greenville, SC 29609

on the 9th day of March, 2010 at 9:05 a.m. and that the deponent is not a party to this action, and has no interest therein or in connection therewith.


Terry Moore

SWORN to and subscribed before me
this 9th day of March, 2010


Angela S. Moore

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 09/15/16

SCA
ENTERED COMPUTER

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Chase Home Finance, LLC

C.A. No.: 2010-CP-23-1622

Plaintiff,

vs.

Brian Adrian Tucker, et al

Defendant.

AFFIDAVIT OF SERVICE

SLF NO: 100268.00125

PERSONALLY appeared before me the undersigned, who being duly sworn, states that he/she served:

(X) Civil Action Coversheet (X) Certificate of Exemption/Withdrawal From Arbitration
(X) Lis Pendens (X) Summons (X) Complaint

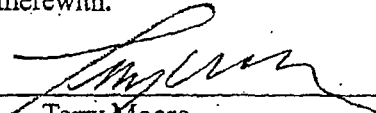
IN THIS ACTION ON: Jessica C. Tucker

(X) by delivery to: Brian Adrian Tucker (husband) a person of discretion residing in the same residence as the defendant and being present in such residence at the time of service.

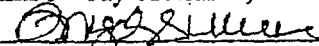
(X) Non-Military

and leaving with him a copy of the same at: 103 Half Mile Pl
Greenville, SC 29609

on the 9th day of March, 2010 at 9:05 a.m. and that the deponent is not a party to this action, and has no interest therein or in connection therewith.


Terry Moore

SWORN to and subscribed before me
this 9th day of March, 2010


Angela S. Moore

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 09/15/16

SCANNED

ENTERED COMPUTER

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

PLAINTIFF,

vs.

Brian Adrian Tucker, Jessica C. Tucker, and Half
Mile Lake Homeowner's Association, Inc.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1622

AFFIDAVIT OF DEFAULT

100268.00125

PERSONALLY appeared before me the undersigned attorney for Plaintiff, who, being duly sworn, says that (s)he is the attorney for the Plaintiff in the above entitled action; that upon information and belief and to the best of his/her knowledge, that the Defendants were duly served with the Summons and Complaint as indicated by the proofs of service filed herein and as stated below:

(a) Upon the Defendant, Brian A. Tucker, via personal service on March 9, 2010, as evidenced by the Affidavit of Service filed herein.

(b) Upon the Defendant, Jessica C. Tucker, via service on Brian Adrian Tucker, said Defendant's Husband, a person of discretion residing at the residence of said Defendant, on March 9, 2010, as evidenced by the Affidavit of Service filed herein.

(c) Upon the Defendant, Half Mile Lake Homeowner's Association, Inc., via service on Tom Berg; a person authorized to accept service, on March 9, 2010, as evidenced by the Affidavit of Service filed herein.

That more than thirty (30) days, exclusive of the day of service, have elapsed since the service aforesaid, and no Answer, Demurrer or Notice of Appearance has been received by or served upon the Plaintiff or its attorneys by or on behalf of Defendant, to wit: Brian Adrian Tucker, Jessica C. Tucker, and Half Mile Lake Homeowner's Association, Inc.; and that said Defendants are now in default. This affidavit is submitted in reliance on the business records of the Plaintiff and the filed records in the court, wherein

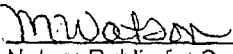
this action is pending.

SCOTT LAW FIRM P.A.

By: 

Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angelia J. Grant, SC Bar #78334
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

SWORN TO before me April 9, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 8/3/2010

ENTERED COMPUTER

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

PLAINTIFF,

vs.

Brian Adrian Tucker, Jessica C. Tucker, and Half
Mile Lake Homeowner's Association, Inc.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1622

AFFIDAVIT OF
NON-MILITARY SERVICE

100268.00125

PERSONALLY appeared before me the undersigned attorney for the Plaintiff, who, after being duly sworn, says that (s)he is familiar with the provisions of 50 U.S.C.A. App. § 501, Servicemembers Civil Relief Act (SCRA), and to the best of his/her knowledge as to the Defendants, Brian Adrian Tucker and Jessica C. Tucker, Affiant represents to the Court that from his/her file in this matter, and on information and belief based on the hereinafter enumerated facts, the Defendants above-mentioned are not in the military service of the United States and are not entitled to the protection of the Servicemembers Civil Relief Act (SCRA) nor any amendments thereto.

The source of the information on which I base my belief is as follows: Information furnished to me by the Plaintiff from the records of its office does not indicate mortgagor is in the active duty of the military service of the United States.

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996

Elizabeth R. Polk, SC Bar #11673

Brett F. Kline, SC Bar #15661

Angelia J. Grant, SC Bar #78334

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200

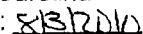
Columbia, SC 29204

(803) 252-3340

SWORN TO before me April 9, 2010.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 

ENTERED COMPUTER

SCOTT LAW FIRM, P.A.
Attorneys and Counselors at Law

Street Address:
2712 Middleburg Drive, Suite 200
Columbia, SC 29204

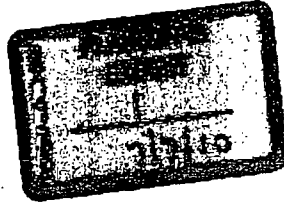
TELEPHONE: (803) 252-3340
FACSIMILE: (803) 799-1726

Mailing Address
P.O. Box 2065
Columbia, SC 29202

June 21, 2010

Occupant
103 Half Mile Lake
Greenville, SC 29609

Brian A. Tucker
103 Half Mile PL
Greenville, SC 29609



Jessica C. Tucker
103 Half Mile PL
Greenville, SC 29609

Half Mile Lake Homeowner's Association, Inc.
HDQRTRS, Registered Agent
Half Mile Lake Subdivision
7 Wieuca Ct.
Greenville, SC 29609

**RE: Chase Home Finance, LLC v. Brian Adrian Tucker, Jessica C. Tucker, and Half Mile Lake Homeowner's Association, Inc.
Case Number: 2010-CP-23-1622; SLF No. 100268.00125**

Dear Sir and/or Madam:

A foreclosure hearing has been set in the above referenced matter for **July 7, 2010 at 2:00 p.m.**, before the Honorable Charles B. Simmons, Jr., Master in Equity for Greenville County, at Courtroom 5, 3rd Floor, 305 E. North Street, Greenville, South Carolina, for the purpose of taking testimony, finding of facts and conclusions of law and to enter final judgment therein without further order of the court. If you plan to attend, we would respectfully appreciate your sending an email to maria@scottlaw.com or leaving a message for the undersigned at (803) 252-3340. Plaintiff's attorney will be available approximately fifteen (15) minutes prior to the scheduled hearing to discuss any issues or request that any defendant(s) may have.

Pursuant to S.C. Code Ann. § 14-11-110 (as amended) and/or applicable case law, the Plaintiff's attorney intends to submit written testimony on behalf of the Plaintiff at the hearing on Plaintiff's behalf.

Records in the possession of the undersigned as of this date reflect only the above parties and the above counsel (if any). Please contact the undersigned immediately if any counsel has filed an appearance and their name is not reflected above as a recipient of this Notice.

Occupants who are tenants under a valid lease agreement dated on or before May 20, 2009 may be entitled to protections under The Protecting Tenants at Foreclosure Act (Title VII, S.896). If the occupant believes this Act applies, then occupant should attend the hearing listed above to present supporting documentation.

SCOTT LAW FIRM, P.A.

By: 

Legal Assistant for:
Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angelia J. Grant, SC Bar #78334
Sara J. Volk, SC Bar #74822
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CASE NO. 2010-CP-23-1622

Chase Home Finance, LLC,

PLAINTIFF,

CERTIFICATE OF SERVICE BY MAIL

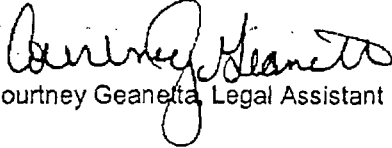
VS.

Brian Adrian Tucker, Jessica C. Tucker, and Half
Mile Lake Homeowner's Association, Inc.,

DEFENDANT(S).

100268.00125

I, Courtney Geanetta, an employee of the law office of Scott Law Office, P.A., attorneys for the Plaintiff, do hereby certify that I have mailed a copy of the Notice of Hearing, which is attached hereto and incorporated herein by reference, dated June 21, 2010, and in connection with the above-referenced case, by mailing a copy of the same by United States mail, postage prepaid, to each of the Addresses, listed on the Notice of Hearing and in separate envelopes, at each of their respective addresses shown thereon, this June 21, 2010.


Courtney Geanetta, Legal Assistant

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

PLAINTIFF,

VS.

Brian Adrian Tucker, Jessica C. Tucker, and
Half Mile Lake Homeowner's Association,
Inc.

DEFENDANT(S).

100268.00125

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1622

RECORD OF HEARING

DEFICIENCY DEMANDED

Deficiency Demanded Against Brian Adrian
Tucker



Greenville, South Carolina - July 7, 2010 at 2:00 p.m.

Pursuant to the Order of Reference granted in the above entitled case, a hearing was held before The Honorable Charles B. Simmons, Jr. as Master in Equity for Greenville County on July 7, 2010, attended by counsel as follows:

APPEARANCES: Ronald C. Scott
and/or Elizabeth R. Polk
and/or Brett F. Kline
and/or Angelia J. Grant
and/or Sara J. Volk
Attorneys for Plaintiff

RECORD OF HEARING BY: Barbara Barnes

BY THE MASTER IN EQUITY: Mr. Ronald C. Scott and/or Elizabeth R. Polk and/or Brett F. Kline and/or Angelia J. Grant and/or Sara J. Volk, attorneys for the Plaintiff, calls attention to the filing of the original Summons and Complaint in the office of the Clerk of Court for Greenville County on March 1, 2010.

Also calls attention to the affidavit showing service of copy of the Summons and Complaint on each Defendant as follows:

(a) Upon the Defendant, Brian A. Tucker, via personal service on March 9, 2010, as evidenced by the Affidavit of Service filed herein.

(b) Upon the Defendant, Jessica C. Tucker, via service on Brian Adrian Tucker, said Defendant's Husband, a person of discretion residing at the residence of said Defendant, as evidenced by the Affidavit of Service filed herein.

(c) Upon the Defendant, Half Mile Lake Homeowner's Association, Inc., via service on Tom Berg, The President, said Defendant's, a person authorized to accept service, on March 9, 2010, as evidenced by the Affidavit of Service filed herein.

Also calls attention to the filing of the notice of pendency of the within action in the office of the Clerk of Court for Greenville County on March 1, 2010;

Also calls attention to the affidavit filed herein showing the Defendant(s), Brian Adrian Tucker, Jessica C. Tucker, and Half Mile Lake Homeowner's Association, Inc., are in default;

Also calls attention to the affidavit filed herein showing that the individual Defendants who are in default are not in the Military Service of the United States of America, as contemplated under The Servicemembers' Civil Relief Act of 2003 and any amendments thereto;

Also calls attention to the Order of Reference filed April 20, 2010, wherein the above entitled case was referred to The Honorable Charles B. Simmons, Jr. as Master in Equity, to take the testimony and other evidence offered with authority to enter a final judgment in this cause.

WHEREUPON, RONALD C. SCOTT AND/OR ELIZABETH R. POLK AND/OR BRETT F. KLINE AND/OR ANGELIA J. GRANT AND/OR SARA J. VOLK, DO HEREIN, REPORT AS FOLLOWS:

I am an attorney for the Plaintiff in this action and report to the best of my knowledge, information and belief as follows:

Plaintiff has complied with the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that the servicer for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program (HMP), but the HMP process as specified by U.S. Treasury Department's Supplemental Directive 09-01 has been completed without resulting in a modification because the borrower(s) failed to respond to the servicer's inquiry within 30 days as set forth in the applicable guidelines.

From the business records in my possession and from examination of the records in the office of the Clerk of Court/Register of Deeds for Greenville County, I found that on May 14,

2007, Brian Adrian Tucker gave a certain promissory note unto Hanover Mortgage Company in the principal amount of \$155000.00, together with interest thereon from the date thereof at the rate of 7.0% percent per annum, said principal and interest being payable in monthly installments of \$1031.22, commencing on July 1, 2007.

I offer a copy of the original note in evidence.

NOTE IDENTIFIED, OFFERED AND RECEIVED
IN EVIDENCE AS EXHIBIT A.

I call attention to the provisions of the note with reference to default.

I also call the Court's attention to the provisions in the note with reference to payment of collection costs and attorney's fee.

On the same date, May 14, 2007, Brian Adrian Tucker and Jessica C. Tucker gave a certain written mortgage unto Mortgage Electronic Registration Systems, Inc., solely as nominee for Hanover Mortgage Company, which mortgage contains the same terms and provisions as the note just offered in evidence, and conveyed by way of mortgage the identical property described in the Complaint in this action, which property is situate in Greenville County, South Carolina.

Thereafter, on May 16, 2007, the mortgage was recorded in the office of the Register of Deeds/Clerk of Court for Greenville County, South Carolina, in Book 4778 at Page 1647.

Upon information and belief, this mortgage constitutes a first lien on the mortgaged premises and a purchase money lien as may apply under state law as well as the After Acquired Property Doctrine. Plaintiff would further allege and avail itself of the Purchase Money Mortgage Doctrine as may apply to the facts of this action.

I offer a copy of the original mortgage in evidence.

MORTGAGE IDENTIFIED, OFFERED AND
RECEIVED IN EVIDENCE AS EXHIBIT B.

Thereafter, said Note and Mortgage by assignment were assigned to Chase Home Finance, LLC dated March 8, 2010 and recorded March 16, 2010 in Book 5073 at Page 1352 in the ROD Office for Greenville County, South Carolina.

I offer a copy of the assignment in evidence.

ASSIGNMENT IDENTIFIED, OFFERED AND
RECEIVED IN EVIDENCE AS EXHIBIT C.

Upon information and belief, the Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there

is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) That the Defendant, Half Mile Lake Homeowner's Association, Inc., by virtue of any lien or enforceable assessments against the subject property.

Upon examination of the records in said Clerk of Court/Register of Deeds office, it appeared there were no persons other than the parties to this action having any liens or claims against the subject property as of the date of filing of the notice of pendency of this action.

Pursuant to and in reliance thereon to the business records of the Plaintiff, we report that there is due and owing on the Plaintiff's note and mortgage as of October 1, 2008, the principal sum of \$153,014.40, together with interest thereon from September 1, 2009 at the rate of 7.0% per annum (in the amount of \$19,842.18 to date) plus escrow advances and attorney fees and costs. The Defendant(s) were required to pay certain funds monthly into an escrow account to defray the costs of taxes and insurance. Pursuant to the business records of the Plaintiff, this amount is likewise in default and there exists a deficit in this account at the present time of \$6,821.09. Pursuant to the business records of the Plaintiff, the Plaintiff has computed the total late charges from the date of default through July 7, 2010, and has determined this amount to be \$ 862.02. Pursuant to the business records of the Plaintiff, the Plaintiff has computed the total Property Inspection Fee to be \$98.00, Bad Check Fee to be \$25.00, and Suspense Balance from the date of default and has determined this amount to be (\$-1,192.52). At this time the Plaintiff would respectfully direct the Court's Attention to the provisions of the Mortgage Note and Mortgage regarding the assessment of attorney's fees and costs and would show that it has expended the sum of \$ 823.76 by way of filing fees and service costs on the judicial collection of this note and mortgage debt prior to the hearing. The Plaintiff has, pursuant to its business records, calculated a total debt in the amount of \$184,118.93 through July 7, 2010 including proper attorney fees and costs.

I offer a copy of the Affidavit of Indebtedness and Letter of Authorization in evidence.

AFFIDAVIT OF INDEBTEDNESS IDENTIFIED, OFFERED
AND RECEIVED INTO EVIDENCE AS EXHIBIT D

With respect to attorney fees and in view of the potential financial liabilities and likely continuing professional obligations inherent in judicially prosecuting a real property mortgage

credit matter, the attendant professional duties and responsibilities, and the size of the mortgage debt and consistent with similar case proceedings before this Honorable Court, we, based on such past judicial experiences, respectfully submit to this Court for its consideration and approval a reasonable attorney's fee for this matter in the amount of \$3,825.00. More particularly and in judicial conformity and compliance with the laws of this state in the awarding of attorney fees, this trial court must consider only six (6) factors as follows: (1) the nature, extent and difficulty of the legal service rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. Baron Data Systems v. Loter, 297 S.C. 382, 377 S.E.2d 296 (S.C. 1989). The attorney fee award by this Court is also consistent with and pursuant to the common laws of this jurisdiction wherein our appellate courts have repeatedly held that any contract for attorney fees that may exist or exists between the lawyer and the client (in addition to not being one of the six (6) fee review factors) is specifically not binding on the trial court the determination of the reasonableness of the attorney fee. Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750(1997); Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995); and Williamson v. Middleton, 374 S.C. 419, 649 S.E.2d 57 (Ct. App. 2007). Total representation of the Plaintiff's interests in this matter have been undertaken (including among many duties the researching of the referral file to serving as custodian of the loan documents to the filing of all pleadings and legally required documents with the court) by the Scott Law Firm, P.A. As to the Scott Law Firm, P.A. and its professional standing, counsel for the Plaintiff is regionally and nationally recognized for its professional expertise in mortgage default credit matters as evidenced by its listing in BEST LAWYERS IN AMERICA™ and Martindale-Hubbell Registry of Pre-Eminent Lawyers in this field of law.

The Scott Law Firm, P.A., was engaged by the Plaintiff to foreclose the mortgage as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the accrual of interest and related adverse economic conditions such as depreciation or possible damage to the collateralized property. Upon receipt of the case file, the title was examined to identify all parties having or claiming an interest in the subject real estate as well as being researched for salient legal questions and issues. Various attorneys as well as experienced paralegal staff have been responsible for (and expended extensive professional time) in the preparation of the following pleadings and other documents:

1. Lis Pendens and any amendment thereto

2. Summons and Complaint and any amendment thereto
3. Affidavits and proposed Order of Publication
4. Affidavit of Default
5. Consent(s) to Order of Reference
6. Order of Reference
7. Notice of Hearing
8. Proposed Judgment of Foreclosure and Sale
9. Record of Hearing
10. Notice of Sale
11. Other documents as applicable pertaining to service and finalization of the action

Future responsibilities include forwarding copies of the Decree to appearing defendants, obtaining bidding instructions from Plaintiff or its designee, representing Plaintiff at the sale or arranging for such representation, preparing an Order of Sale or Report on Sale and Disbursements and Order Confirming Sale, and preparing the Foreclosure Deed and any other documents necessary in this particular action.

In addition to the time expended to date in prosecution of this action, we anticipate expending several hours of professional time after the hearing. Moreover, depending upon the interest shown by defendants, third parties, or counsel for either and the inherent negotiations required thereby, other time may also be committed to the completion of the case. Jurisdiction over the fee award shall be reserved as granted in the Order of Reference with the right to revisit the question of attorney fees should the action proceed in an unexpected way and/or to facilitate the assessment and payment of any such current or additional professional compensation.

Furthermore, this fee proposal is in line and consistent with the fee customarily charged by counsel with similar experience in this particular locality. Also, the Plaintiff's attorneys have achieved the beneficial result of a reasonably prompt foreclosure of the mortgage for the Plaintiff under the existing legal circumstances. Finally, counsel for the Plaintiff is informed and believes that, to the best of his/her/their knowledge, the foregoing information is germane, reliable, and consistent with these professional matters as decided by the Appellate Courts of South Carolina as the same are more particularly set forth in BB&T of South Carolina v. Fleming, 360 S.C. 341, 601 S.E.2d 540 (2004) and Rowell v. Whisnant, 360 S.C. 181, 600 S.E.2d 96 (Ct. App. 2004).

Demand was made upon the Defendants, Brian Adrian Tucker and Jessica C. Tucker, but payment has not been received and the Plaintiff does herein accelerate the entire amount due and owing under its Note and Mortgage.

By the Complaint, the Plaintiff specifically demanded the right to a personal or deficiency judgment against Brian Adrian Tucker.

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angelia J. Grant, SC Bar #78334
Sara J. Volk, SC Bar #74822
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

All taxes have been paid through the year 2009.

There are no paving or other special assessments against this property.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

PLAINTIFF,

VS.

Brian Adrian Tucker, Jessica C. Tucker, and
Half Mile Lake Homeowner's Association, Inc.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1622

ASSIGNMENT OF BID

2010 NOV 29 P 2:37

FOR VALUABLE CONSIDERATION, receipt whereof is hereby acknowledged, the Plaintiff, by and through its undersigned counsel, does hereby assign their successful bid in the foregoing foreclosure action unto **Fannie Mae a/k/a Federal National Mortgage Association**, organized and existing under the laws of the United States of America, International Plaza II, 14221 Dallas Parkway, Suite 100, Dallas, TX 75254, and does hereby direct The Honorable Charles B. Simmons, Jr., as Master in Equity for Greenville County to execute his/her deed to the subject premises unto said assignee.

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996

Elizabeth R. Polk, SC Bar #11673

Brett F. Kline, SC Bar #15661

Angelia J. Grant, SC Bar #78334

Sara J. Volk, SC Bar #74822

Douglas E. Thomas, SC Bar #76864

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

(803) 252-3340

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENVILLE) 2011 MAR 30 AM 9:39 Case No. 2010-CP-23-1622

Chase Home Finance, LLC,

FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WILKINS

PLAINTIFF,

AFFIDAVIT OF BRIAN A. TUCKER

vs.

Brian Adrian Tucker, Jessica C. Tucker,
And Half Mile Lake Homeowner's
Association, Inc.

DEFENDANTS.

PERSONALLY appeared before me the undersigned who, after being duly sworn, deposes and states as follows:

1. I am Brian A. Tucker who is a Defendant in the above-case. I never received Service of Process for the Foreclosure action above, either personally or by mail.
2. I did receive an Eviction Service of Process from the Greenville County Sheriff's Department on March 22, 2011.
3. This Eviction was the first Service of Process that my wife and I had received in this Foreclosure action. My wife and I have no place to move to and are destitute if forced to leave our home.
4. Further, my wife and I had been in non-stop negotiations all the way into August 2010 when we attended a special Chase Home Finance sponsored event and were guaranteed by the Chase representative who serviced us that there would be no foreclosure because Chase had approved our modification. We were specifically instructed not to make any further payments until we were notified by Chase of the payment amount to be received under a new modification agreement.

FURTHER, AFFIANT SAITH NOT.

Brian A. Tucker
BRIAN A. TUCKER

SWORN to before me this
28th day of March, 2011.

Cynthia P. O'Leary
Notary Public for South Carolina
My Commission Expires: 12/13/16

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF GREENVILLE)

2011 MAR 30 AM 9:59 Case No. 2010-CP-23-1622)

Chase Home Finance, LLC,)

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL R. WICKERSHAM

PLAINTIFF,)

AFFIDAVIT OF JESSICA C. TUCKER

vs.)

Brian Adrian Tucker, Jessica C. Tucker,)
And Half Mile Lake Homeowner's)
Association, Inc.)

DEFENDANTS.)

PERSONALLY appeared before me the undersigned who, after being duly sworn, deposes and states as follows:

1. I am Jessica C. Tucker who is a Defendant in the above-case. I never received Service of Process for the Foreclosure action above, either personally or by mail.
2. I did receive an Eviction Service of Process from the Greenville County Sheriff's Department on March 22, 2011.
3. This Eviction was the first Service of Process that my husband and I had received in this Foreclosure action. My husband and I have no place to move to and are destitute if forced to leave our home.
4. Further, my husband and I had been in non-stop negotiations all the way into August 2010 when we attended a special Chase Home Finance sponsored event and were guaranteed by the Chase representative who serviced us that there would be no foreclosure because Chase had approved our modification. We were specifically instructed not to make any further payments until we were notified by Chase of the payment amount to be received under a new modification agreement.

FURTHER, AFFIANT SAITH NOT.

Jessica C. Tucker
JESSICA C. TUCKER

SWORN to before me this
28th day of March, 2011.

Cynthia P. Allen
Notary Public for South Carolina
My Commission Expires: 12/13/16

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

JPMorgan Chase Bank, N.A.,

PLAINTIFF,

VS.

Brian Adrian Tucker, Jessica C. Tucker, and
Half Mile Lake Homeowner's Association, Inc.

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1622

AFFIDAVIT

(SLF No. 100268.00125)

STATE OF Ohio
Franklin COUNTY

Kathleen M. Kahle, being first duly sworn on oath, deposes and states as follows:

1. I am authorized to execute this affidavit on behalf of JPMorgan Chase Bank, National Association ("Chase"). The statements made in this Affidavit are based on my personal knowledge.

2. In my capacity as Vice President, I have access to Chase's business records, including the business records for and relating to the loan of Brian Adrian Tucker. These records include the historic records of Chase Home Finance LLC, which merged with Chase effective May 1, 2011. I make this affidavit based upon my review of those records relating to the Borrower's loan and from my own personal knowledge of how they are kept and maintained. The loan records for the Borrower are maintained by Chase has in the course of its regularly conducted business activities.

3. I have reviewed the exhibits attached to the memorandum in opposition to the motion to vacate, and the payment history and Loan Workout Agreement are true and accurate copies of the computer business records held by Chase.

4. From these records, it appears that Brian Adrian Tucker executed a Loan Workout Agreement on June 15, 2009 and pursuant to that agreement was required to make trial period payments on June 1, 2009; July 1, 2009. and August 1, 2009.

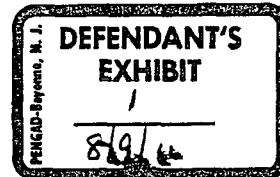


Homeownership Preservation Office
3415 Vision Drive
OH4-7305
Columbus, OH 43219

August 16, 2010

BRIAN TUCKER
103 HALF MILE PL
GREENVILLE SC 29609-1500

4768



Dear Brian,

More and more Americans are struggling to keep up with their mortgage payments. If you are experiencing financial difficulty, you have a variety of options that might help you get back on track, and keep you out of foreclosure.

As the enclosed flyer explains, you have an opportunity to meet in person with specialists from Chase, your lender, at a local event. We'll walk through the options available, and work out the best solution to your current needs. This event is just one part of Chase's overall efforts to help our valued customers who are struggling in these challenging economic times. We're working with partners across the country – HUD approved non-profit counseling agents and local community leaders – to provide free foreclosure prevention assistance to homeowners who need help.

When you come to the event, please bring a short letter explaining why you need assistance at this time, and include how long you believe you will not be able to make your monthly payments. Also, please bring the documentation listed on the back of this letter. With this information in hand, we'll be able to help you faster.

If you are struggling, it's easy to start to feel as if you simply have no way out... but it doesn't have to be that way. You have options and you have a chance to get the help you need. Please join us at this upcoming event, and let's work together to help you through these challenging times. The enclosed flyer has all the details you need.

Sincerely,

Home Preservation Office

Can't Make This Event? You Do Have Other Options...

If you are experiencing financial difficulty, we have a variety of options that might help you keep your monthly payments up to date, and keep you out of foreclosure – but we need to talk to you as quickly as possible. Call us today at **1-866-326-0086** – the sooner you contact us the more options you'll have.





P.O. Box 469030
Glendale, CO 80246



0-746-49751-0016868-004-2-000-000-000-000

BRIAN ADRIAN TUCKER
103 HALF MILE PL
GREENVILLE SC 29609-1500

**THIS IS YOUR SECOND NOTICE.
TIME IS RUNNING OUT.**

**Chase may be able to lower your
monthly mortgage
payments.
BUT YOU MUST CALL US
IMMEDIATELY.**

August 20, 2010

Dear Brian Adrian Tucker:

We sent you a letter about four weeks ago explaining that we may be able to help make your mortgage more affordable if you are having difficulty making your payments. Time is running out, but you could still be eligible to take advantage of the **Home Affordable Modification Program ("HAMP")**, part of a federal initiative to help homeowners - if you contact us immediately.

We're ready, right now, to work with you to lower your mortgage payments. You will not pay any fees for a modification, but you must call now to take advantage of this opportunity. We cannot make these changes to your account automatically - you must call 1-866-550-5705 as soon as possible.

After you call:

- We will send you a Modification Information packet.
- The packet will include some forms for you to fill out, and a short list of documentation you'll need to provide – like tax and income documentation, and information about any financial hardship you are experiencing.
- You will need to complete, sign and return the information as soon as possible so we can begin the evaluation process.

Once we receive all of your documentation we'll determine if you are eligible for the HAMP program. If you are, we'll send you a letter with details about your new, affordable mortgage payment – and you will start paying that new amount during a trial period. If you make those trial payments on time and fulfill all the other program conditions, we will offer you a permanent modification to keep your payments low.

A modification may involve some or all of the following: bringing your account current, reducing the interest rate, extending the term, and/or delaying your repayment of a portion of the principal until the end of the loan.

THIS IS YOUR LAST NOTICE REGARDING THE HAMP PROGRAM.

We are here to help, but you must contact us now. If we do not hear from you within seven (7) days from the date of this letter, we will proceed with other collection efforts, including foreclosure. Even if you do not qualify for the program, we can still work with you on other options to help you keep your home or avoid a foreclosure. But remember - all of the available options depend on you calling us now.

Sincerely,

Chase Homeowner's Assistance Department

**Here's what must happen
now for us to lower your
mortgage payments...**

- 1. Contact Chase immediately
1-866-550-5705.**
- 2. You will receive a
Modification
Information packet in
the mail.**
- 3. You must complete,
sign and return the
packet immediately.**

We must receive the required documentation BEFORE we can review your account to see if we can lower your payments.

Don't wait - call us today!

Account: 1991455545
Property Address:
103 HALF MILE PL
GREENVILLE SC 29609-1500



0-746-49751-0016868-004-3-000-000-000-000

IMPORTANT NOTE: IF YOUR HOME IS ALREADY IN FORECLOSURE: YOU MUST PROVIDE US ALL OF THE DOCUMENTS REQUIRED TO EVALUATE YOU FOR THE HAMP PROGRAM AT LEAST SEVEN (7) BUSINESS DAYS BEFORE A FORECLOSURE SALE OR YOU WILL LOSE YOUR ELIGIBILITY FOR A MODIFICATION.

Chase is attempting to collect a debt, and any information obtained will be used for that purpose.

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

If you are represented by an attorney, please refer this letter to your attorney and provide us with the attorney's name, address, and telephone number.

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation.

FOR CALIFORNIA CUSTOMERS ONLY: For California customers, the state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at (877) FTC-HELP or www.ftc.gov.

Beware of Foreclosure Rescue Scams. Help is free!

- There is never a fee to get assistance or information about the Making Home Affordable Program from your lender or a HUD-approved housing counselor (for a HUD-approved counselor, visit: <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>).
- Beware of any person or organization that asks you to pay a fee in exchange for housing counseling services or modification of a delinquent loan.
- Beware of anyone who says they can "save" your home if you sign or transfer over the deed to your house. Do not sign over the deed to your property to any organization or individual unless you are working directly with your mortgage company to forgive your debt.
- Never make your mortgage payments to anyone other than your mortgage company without their approval.

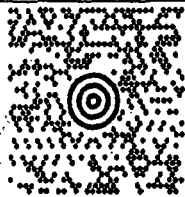
Handwritten notes at the top of the page, possibly including a date and time.

LTR

1 of 1

Chase Home Finance LLC
PO Box 469030
Glendale, CO 80246

SHIP BRIAN ADRIAN TUCKER
TO: 103 HALF MILE PL
GREENVILLE SC 29609-1500



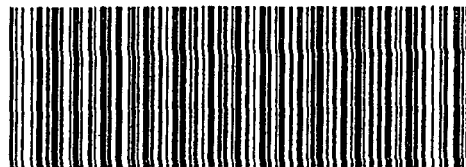
SC 296 0-02



UPS NEXT DAY AIR SAVER

1P

TRACKING #: 1Z W0X 049 13 4325 2820



BILLING P/P

70.5A08/2007

49751 0016868 004

Google maps

DEFENDANT'S EXHIBIT
2
8/9/11

To see all the details that are visible on the screen, use the "Print" link next to the map.



Driving directions to 7 Wieuca Ct, Greenville, SC 29609

103 Half Mile Pl
Greenville, SC 29609

1. Head east on Half Mile Pl
2. Turn right onto Half Mile Way
3. Take the 1st left onto Howlong Ave/Old Paris Mountain Rd

allegedly served @ 9:05 am 3/14/16

allegedly served @ 5:18 pm 3/10/10

** 103 Half Mile Place*

** Old Paris Mtn - turn off Wieuca Ct*

HALF MILE WAY

** 7 Wieuca Court is where president of Half Mile Homeowners Assoc lives & was served as addl. Defendant (Tom Berg)*

Continue to follow Howlong Ave

0.3 mi

4. Take the 3rd right onto **Waters Edge Dr**

466 ft

5. Take the 2nd left onto **Wieuca Ct**

Destination will be on the left

210 ft



7 Wieuca Ct
Greenville, SC 29609


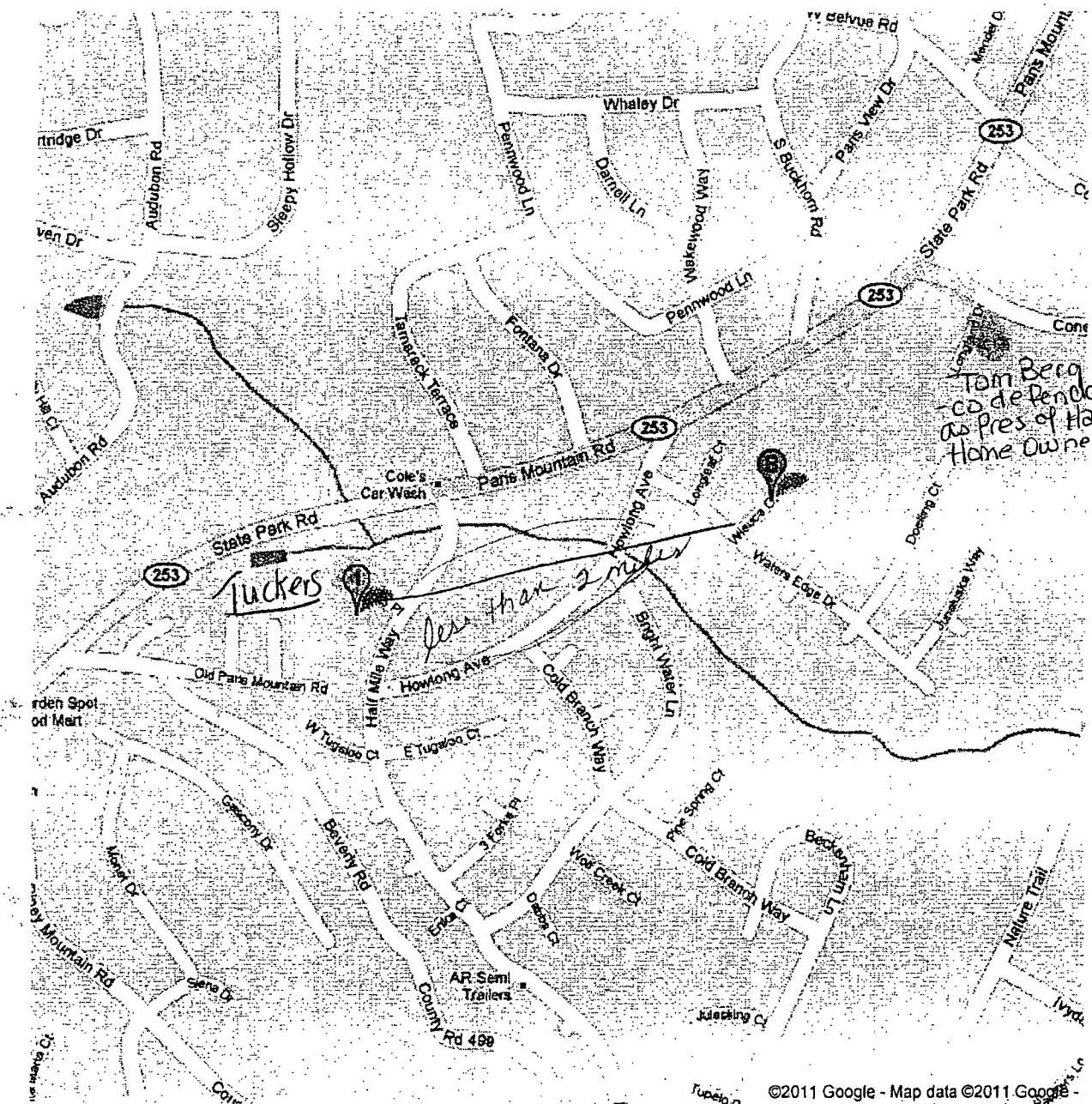
These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2011 Google

[Report a problem](#)

Google maps

Save trees. Go green!
 Download Google Maps on your phone at google.com/gmm

From Tuckers (served @ 9 Am) to Tom Berg (served @ 5¹⁰ pm)
 Less than 2 miles distance

Michele

To: Simmons, Judge Charles
Cc: rons@scottlaw.com; Priti M. Patel
Subject: Chase vs. Tucker (CP Case No. 2010-23-1622)

March 7, 2012

Dear Judge Simmons:

I strenuously object to the Order of Eviction requested by plaintiff's counsel.

A hearing was held on August 9, 2011 wherein the defendants Brian and Jessica Tucker asserted the lack of service of process. Overwhelming evidence was presented at that hearing by way of testimony of both the Tuckers and the uncontroverted fact that the Tucker's dogs made no sound at the purported knocking on the door twice; which according to testimony would have caused an explosion of barking activity. The process server asserted that he heard no such barking noise and from this it is clear he had served the wrong home.

Further the process server asserted that the man that he served looked like he had just gotten out of bed at approximately 9:05 a.m. We know from both testimonies of the Tuckers that they were wide awake and ready to leave their home for the respective jobs at this time of the morning. Again, the server's testimony refutes what had to be reality.

Your Honor knows from the testimony that Mr. Tucker instantly goes to both his father and his wife with any and all serious issues. If he had been served a foreclosure paper inside his own home and failed to immediately tell both his wife and father, but supposedly hid or threw away the service of process, then this is totally outside his own proven reaction to serious issues.

Mr. Tucker's father, Clint Tucker, was present and ready to testify about his son's behavior when emotional and substantial matters existed and that the father would have been told of such mental conditions on the part of the son again giving credence to the argument that the son never received service of process. Importantly, the Court also should remember that the street name of the Tucker's home is nearly identical to another street name in their neighborhood only blocks away.

Sue Berkowitz, Director of SC Appleseed Legal Justice Center was present to testify concerning the behavior of plaintiff Chase as having a standard business practice wherein they will lead individuals to believe that legitimate modifications are underway when, in fact, they are not. The Court only allowed approximately thirty (30) minutes for all of this testimony and while Mr. Clint Tucker's testimony was admitted, if memory serves me correctly, Ms. Berkowitz's testimony was not allowed due to time constraint.

In addition, defendants would remind the Court of the extraordinary and outrageous conduct of plaintiff Chase in luring the Tuckers into a modification promise made, in person, at a Modification Event held by Chase in August of 2010 where they were absolutely promised a modification. Even though Justice Toal's Orders concerning these issues apparently fall outside the time frame, we would implore the Court to consider that this Court is a Court of Equity. How can it possibly be equitable and fair that the plaintiff Chase promised and assured the Tuckers a modification and, at the same time, foreclosed on their property contrary to those promises?

Your Honor issued a Letter Order pursuant to a teleconference held on August 26, 2011 which gave instructions for serious negotiation. The defendants strenuously contend that they are totally able to make payments and that the modification attempt rejected by plaintiff, in an email dated February 24, 2012 referencing Matt Rivers, Director of SC Help which offered \$20,000 to assist in the catch up arrangements, was based on plaintiff's calculations of only nine (9)

months of defendants' income. This was a glaring miscalculation that further advances defendants' argument of the intentional acts on the part of the plaintiff reflecting their previous action in August 2010 wherein the Tuckers were intentionally misled at Chase's McAllister Square Modification Event held here in Greenville, SC.

Hence, we would ask on ground of lack of personal jurisdiction, as well as equitable considerations of unclean hands together with all other equitable remedies available to the Court that the Court rule based on the hearing evidence of August 9, 2011, that the lawsuit be voided as a matter of law.

Defendants' counsel will accept service of process of a new lawsuit and further, to expedite the legal proceedings, will promise an Answer within ten (10) days of service.

The defendants are asking for a specific decision on the August 9, 2011 hearing. Defendants need time to appeal this decision and would, therefore, ask of the Master's Court a delay of an Order of Eviction until appeals have been satisfied and all other judicial issues concerning this case are resolved.

Again, if Your Honor voids the plaintiff's lawsuit and the sale of the property then defendants will accept service of process on a new lawsuit by their attorney, David L. Thomas, undersigned, and further will respond within ten (10) days of such service of process.

Respectfully submitted,
David L. Thomas
MOORE TAYLOR & THOMAS, PA
23 Wade Hampton Blvd.
Greenville, SC 29609
Telephone: (864) 271-6371
Facsimile: (864) 271-1707

to for

S. JAHUE MOORE
J. MARK TAYLOR*
DAVID L. THOMAS
C. VANCE STRICKLIN, JR.
JAMES EDWARD BRADLEY
SHEILA McNAIR ROBINSON
ROBERT D. HAZEL
CHRISTIAN G. SPRADLEY††
C. DAVID SAWYER, JR.††
WILLIAM H. EDWARDS
STANLEY L. MYERS
JANE H. DOWNEY**



23 WADE HAMPTON BOULEVARD
GREENVILLE, SOUTH CAROLINA 29609
TELEPHONE (864) 271-6371
FAX (864) 271-1707

RECEIVED
MAR 22 2012
Master in Equity

MELISSA K. MOORE
JAHUE MOORE, JR.
WILLIAM B. FORTINO
R. NICHOLS "NICK" RILEY, JR.
JONATHAN M. GOODE

RETIRED:
BILLY C. COLEMAN††

††SALUDA OFFICE:
(864) 445-4544 or (866) 604-4544
WEST COLUMBIA OFFICE:
(803) 796-9160

March 21, 2012

Honorable Charles B. Simmons, Jr.
Greenville County Courthouse
305 E. North Street
Greenville, South Carolina 29601

Re: Chase vs. Tucker, et al.
C. A. No.: 2010-CP-23-1622

FILED-CLERK OF COURT
GREENVILLE CO S.C.
MAR 26 2012

2012 MAR 26 P 2:05

Dear Judge Simmons:

Relative to your Order being drawn, I want to make sure it addresses the hearing issues of August 2011, heard by you. The salient matters were defendants assertion of lack of jurisdiction because of lack of service of process on the defendants. I merely want to make sure the issues brought before the Court reflected in my motion and heard by you in August were, in fact, ruled upon in the Order now being prepared by Ms. Patel. Obviously, the contention concerning lack of service of process is the primary basis upon which we asked for the hearing and, second, the fact that the Modification Event sponsored by the plaintiff was put forward in August of the same year promising a modification to the Tuckers and, in fact, asserting that such was already done. By lying to the defendants about this modification promise, the plaintiff, at least, has unclean hands and, by such, a foreclosure should be precluded.

These items we would expect to be ruled upon within the Order Ms. Patel is preparing. These are the items we most wish the Court of Appeals to hear.

Very truly yours,
MOORE, TAYLOR & THOMAS, P.A.

David L. Thomas
David L. Thomas

*Fellow of the American Academy of Matrimonial Lawyers
**Certified Specialist in Bankruptcy & Debtor/Creditor Law

ENTERED COMPUTER

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

Common Pleas Case No. 2010-CP-23-1622
Appellate Case No. 2012-212447

JP Morgan Chase Bank, National Association,.....Respondent,

v.

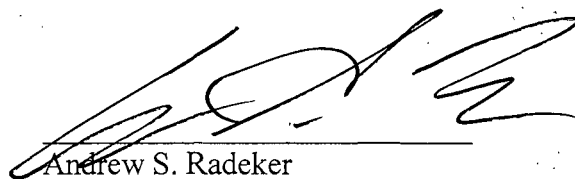
Brian Adrian Tucker, Jessica C. Tucker, and Half Mile Lake Homeowner's
Association, Inc., Defendants,

Of whom Brian Adrian Tucker and Jessica C. Tucker are.....Appellants.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be
included by any of the parties and not any other material.

Respectfully submitted,



Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211

David L. Thomas
Moore, Taylor & Thomas, P.A.
23 Wade Hampton Boulevard
Greenville, South Carolina 29609
(864) 271-6371
Attorneys for Appellants

DLT/cpg

cc: Priti Patel, Esq.
Katherine Goode, Esq.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

Common Pleas Case No. 2010-CP-23-1622
Appellate Case No. 2012-212447

JP Morgan Chase Bank, National Association,.....Respondent,

v.

Brian Adrian Tucker, Jessica C. Tucker, and Half Mile Lake Homeowner's
Association, Inc., Defendants,

Of whom Brian Adrian Tucker and Jessica C. Tucker are.....Appellants.

PROOF OF SERVICE

I certify that I served the Record on Appeal on counsel for the Respondent by
depositing a copy of it on the date shown below in the United States Mail, postage
prepaid, addressed as follows:

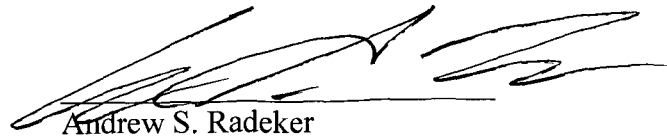
Hamilton Osborne, Jr., Esq.
Haynsworth Sinkler Boyd, P.A.
P.O. Box 11889
Columbia, SC 29211

J. Derrick Jackson, Esq.
Tobias G. Ward, Jr. PA
P.O. Box 6138
Columbia, SC 29260

Ronald C. Scott, Esq., Priti M. Patel, Esq.,
and Erica G. Lybrand, Esq.
Scott Law Firm, PA
P.O. Box 2065
Columbia, SC 29202

RECEIVED
DEC 07 2012
SC Court of Appeals

December 5, 2012

A handwritten signature in black ink, appearing to read "Andrew S. Radeker", written over a horizontal line.

Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellant