

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Civil Action Case No. 2012-CP-15-00262
Appellate Case No. 2013-002555

Melissa Jean Marks, ...Appellant,

Old South Mortgage Corporation, John Does v.
1-100, Nationstar Mortgage, LLC, Defendants,
Of whom Nationstar Mortgage, LLC, is the.....

Respondent.

RECORD ON APPEAL
VOLUME III of IV

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Appellant/Plaintiff *Pro Se*

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STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-15-00262

MELISSA JEAN MARKS, *Pro Se*,

Plaintiff,

vs.

OLD SOUTH MORTGAGE
CORPORATION; and
NATIONSTAR MORTGAGE, LLC,

Defendants.

PLAINTIFF'S OPPOSITION TO
DEFENDANT NATIONSTAR
MORTGAGE, LLC'S MOTION FOR
JUDGMENT ON THE PLEADINGS
OR IN THE ALTERNATIVE,
MOTION FOR SUMMARY
JUDGMENT

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2013 APR 16 AM 8:56

Now comes the undersigned pro se Plaintiff and submits this opposition to Defendant Nationstar Mortgage, LLC's ("Nationstar") Motion for Judgment on the Pleadings, or in the alternative, Motion for Summary Judgment and respectfully requests the motion be denied for the following reasons and for any other reasons as this honorable Court deems just and proper.

Plaintiff Has Legal Standing to Bring This Action

Nationstar's allegation that Plaintiff lacks standing to bring this lawsuit is incorrect because the federal authorities Nationstar cites in support of its position involve Chapter 7 debtors and are inapplicable to Chapter 13 debtors who have filed a bankruptcy case.

The U.S. District Court, District of South Carolina held *In re: Lee*, 432 B.R. 212, 2010 U.S. Dist. LEXIS 44965 in pertinent part:

"Debtor argues that she has the ability to pursue litigation on behalf of the bankruptcy estate. That proposition is not particularly controversial. Though the Fourth Circuit has not yet considered the issue, each circuit to have considered it has found that **Chapter 13 debtors have standing to bring claims in their own name on behalf of the bankruptcy estate.** See, e.g., *Smith v. Rockett*, 522 F.3d 1080, 1081 (10th Cir. 2008); *Crosby v. Monroe County*, 394 F.3d 1328, 1331 n.2 (11th Cir. 2004); *Cable v. Ivy Tech State College*, 200 F.3d 467, 474 (7th Cir. 1999) (ADA claim); *Olick v. Parker & Parsley Petroleum Co.*, 145 F.3d 513 (2d Cir. 1998)(class action fee application)." (emphasis added)

The Tenth Circuit held in *Smith v. Rockett*, 522 F.3d 1080, 1081 (10th Circ. 2008) in pertinent part:

"Rule 6009 of the Federal Rules of Bankruptcy Procedure also supports the conclusion that the Chapter 13 debtor has standing to bring a civil complaint: 'With or without court approval, the trustee or *debtor in possession* may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding in behalf of the estate before any tribunal.' *Fed. R. Bankr. P. 6009* (emphasis added). We recognize that 'debtor in possession' is a term of art found only in the Chapter 11 context. **However, 'the Chapter 13 debtor has been considered analogous to Chapter 11, which grants the debtor full authority as representative of the estate typical of a trustee.'** *Cable*, 200 F.3d at 472 (citation omitted); see *Champion v. Credit Bureau Servs.*, 206 F.R.D. 663, 669 (E.D. Wash. 2001). We find this authority persuasive. We therefore hold that Plaintiff, as a Chapter 13 debtor, had standing to file this complaint on behalf of the bankruptcy estate." (emphasis added)

Pursuant to the foregoing authorities, Plaintiff, as a Chapter 13 debtor in possession of the property of the bankruptcy estate, may bring any action she wants to bring in state court pro se in her own name on behalf the bankruptcy estate and herself without any limitations and without the bankruptcy court's prior permission.

Plaintiff did not file an action in federal court claiming to have the same strong-arm avoiding powers of the Chapter 13 trustee under Title 11 of the U.S. Code; therefore, those federal statutes and related federal cases are irrelevant and inapplicable to this state court action. Nationstar cites 11 U.S.C. § 544 to support its allegation that only the trustee has the power to avoid transfers of property or liens of the bankruptcy estate, but that is not what the statute actually says and means when interpreted within its legislative and historical context. For purposes of illustration, Plaintiff offers the following.

If a secured creditor obtains a lift in stay and files a foreclosure action against a Chapter 13 debtor in state court based on claims and instruments that are invalid, the Chapter 13 debtor would do the same thing Plaintiff is doing in this state court action, which is to seek the state

court's ruling that the mortgage and note are invalid and unenforceable and/or the foreclosing plaintiff does not own the mortgage and therefore does not have standing and the legal right to foreclose on the property. If it were true that only the trustee has the power to avoid transfers of property or liens of the bankruptcy estate pursuant to 11 U.S.C. § 544, the Chapter 13 debtor would be statutorily barred from personally defending the bankruptcy estate and herself against a foreclosure in state court and would have no defense if the trustee refused to appear and defend.

For good reason it is well settled that a Chapter 13 debtor in possession of the property may personally appear and defend a foreclosure action even though the exempt property may still be technically considered part of the bankruptcy estate; therefore, Nationstar's interpretation of 11 U.S.C. § 544 that only the bankruptcy trustee has power to avoid transfers of property or liens on property of the bankruptcy estate is nonsensical.

In fact, at the hearing on Nationstar's Motion for Clarification on May 17, 2012, Judge Waites, the chief bankruptcy judge presiding over Plaintiff's Chapter 13 case, acknowledged before the trustee's counsel, Nationstar's counsel, Plaintiff and her counsel that the state court can remove the lien, that he is happy for Plaintiff to remove it wherever she wants to do it, and that he was not looking to do the work.

Nationstar's counsel ignored what Judge Waites said at the clarification hearing and proceeded to misrepresent and misapply federal statutes and federal cases before this state court in an attempt to have Plaintiff's action dismissed before being tried and adjudicated based upon the merits, which, if granted, would improperly and unjustly prejudice Plaintiff's constitutional rights to equal protection under the law and due process of law with respect to her money and property. This behavior is repugnant to the administration of justice and should not be rewarded.

Plaintiff filed a declaratory judgment complaint in state court pursuant to Title 15,

Chapter 53, of the S.C. Code governing declaratory judgment actions, and she has standing to do so pursuant to *Fed. R. Bankr. P. 6009*. In addition, Plaintiff is a party and signatory to the subject mortgage contract and related note, and she is the holder of title and in possession of the subject real property.

Plaintiff's Action is Not Barred under the
Doctrines of *Res Judicata*, *Collateral Estoppel* or *Judicial Estoppel*

Since the Colleton County Court of Common Pleas is a state court, this Court must rule on the issues of *res judicata*, *collateral estoppel* or *judicial estoppel* pursuant to state law as applied to the facts and circumstances of Plaintiff's case. The highest state authorities we must look to for guidance on state law are the South Carolina Court of Appeals and the South Carolina Supreme Court.

The South Carolina Supreme Court held in *Sealy v. Dodge*, 289 S.C. 543, 347 S.E.2d 504, 1986 S.C. LEXIS 413 in pertinent part:

"In order to establish a plea of *res judicata*, three elements must be established: (1) identity of parties; (2) identity of subject matter; and (3) adjudication of the issue in the former suit."

None of the three elements can be established; therefore, this action is not barred under the doctrine of *res judicata*.

Plaintiff properly sued the Defendant Old South Mortgage Corporation ("Old South") in this action because Old South was the originator of the subject mortgage and note, Old South intentionally caused itself to be falsely identified as the "Lender" in the subject mortgage and note and caused the recording of a false first mortgage lien against Plaintiff's home, and Old South, although a dissolved domestic corporation since 2008, was still the only mortgage lien holder of record at the county register of deeds at the time Plaintiff filed this action on April 6, 2012. According to Nationstar, Fannie Mae currently owns the note and mortgage. Old South

and Fannie Mae are not parties to Plaintiff's bankruptcy case, so the first element pursuant to *Sealy*, "identity of parties," is not established here.

Plaintiff's three causes of action against the originator of the mortgage, Old South, in her declaratory judgment complaint are as follows: "Fraudulent Misrepresentations of Material Facts", "Mortgage and Note Invalid and Unenforceable Due to Fraudulent or Illegal Acts", and "Unconscionable Mortgage Contract". None of the several issues Plaintiff complained of in her declaratory judgment complaint were raised and actually litigated in the bankruptcy court because Plaintiff decided to bring and litigate those issues in this state court. Therefore, the second and third elements pursuant to *Sealy*, "identity of subject matter" and "adjudication of the issue in the former suit" are not established here.

The South Carolina Court of Appeals held in *Price v. City of Georgetown*, 297 S.C. 185, 375 S.E.2d 335, 1988 S.C. App. LEXIS 180 in pertinent part:

"The appealed order used the words *res judicata* and collateral estoppel interchangeably, and this is understandable because in this state the doctrine of collateral estoppel has been usually stated in conjunction with the related doctrine of *res judicata*; however, the following quote from material entitled 'Offensive Collateral Estoppel,' prepared by the Honorable Karen LeCraft Henderson, Judge of the U.S. District Court for South Carolina, for the South Carolina Judicial Conference of August 24, 1984, is most applicable; we quote: 'In South Carolina, the doctrine of *collateral estoppel* is usually stated in conjunction with the related doctrine of *res judicata*: 'The doctrines of *res judicata* and collateral estoppel are, of course, two different concepts. A final judgment on the merits in a prior action will conclude the parties and their privies under the doctrine of *res judicata* in a second action based on the same claim as to issues actually litigated and as to issues which might have been litigated in the first action. Under the doctrine of collateral estoppel, on the other hand, the second action is based upon a different claim and the judgment in the first action precludes relitigation of only those issues 'actually and necessarily litigated and determined in the first suit.' Stewart, *Res Judicata and Collateral Estoppel in South Carolina*, 28 S.C.L. Rev. 451, 452 (1977). *Beall v. Doe* [281] S.C. [363], 315 S.E. (2d) 186, 189 n. 1 (S.C. App. 1984). The modern trend is to refer to collateral estoppel as *issue preclusion* and to *res judicata* as *claim preclusion*. 46 Am. Jur. (2d) *Judgments* Section 397; see also *RESTATEMENT (SECOND) OF JUDGMENTS* Section 27 at 250 (1982)."

Plaintiff simply reported to her bankruptcy attorneys that she was making her mortgage payments to Nationstar; consequently, her attorneys included Nationstar in her bankruptcy schedules and sent Nationstar a notice of her filing a Chapter 13 bankruptcy on or about April 20, 2011.

On or about April 29, 2011, Nationstar reported in its bankruptcy Form 10 proof of claim that Nationstar is the secured creditor; consequently, Plaintiff's attorneys simply took Nationstar at its word and identified Nationstar as the secured creditor in Plaintiff's amended Chapter 13 Plan ("the Plan"), which was signed by Plaintiff's attorney, approved by the trustee, and confirmed the bankruptcy court in June 2011. In other words, everyone involved simply took Nationstar at its word that Nationstar owned the mortgage because no one had a reason to question or suspect otherwise prior to the Plan being confirmed by the bankruptcy court.

Since Plaintiff had never defaulted in making her mortgage payments, no dispute had arisen between Nationstar and Plaintiff in the bankruptcy case prior to the Plan's confirmation, and since there was no pre-petition arrearage, no dispute between the Nationstar and Plaintiff was resolved by the Plan's confirmation. The only dispute that arose and was resolved by the Plan's confirmation was between Plaintiff and her unsecured creditors. Therefore, Nationstar will not receive any portion of Plaintiff's monthly payments to the trustee as ordered by the Plan, so for all intents and purposes, Nationstar is exempt from the Plan that is being administered by the trustee for the benefit of Plaintiff's unsecured creditors. Nationstar is merely subject to the automatic stay the same as all other creditors until the Chapter 13 case is dismissed.

A common thread in the bankruptcy cases Nationstar relies upon for its position is as follows. The Chapter 13 debtors had defaulted on their mortgages and had agreed to repay the arrearages within their reorganization plans, and the secured creditors were actually the secured

creditors at the time the bankruptcy cases were filed. Since Nationstar did not own the mortgage at the time Plaintiff's Chapter 13 was filed but had falsely claimed it was the secured creditor, and since there was no pre-petition arrearage in the Plan, neither of those circumstances applies in Plaintiff's case.

In addition, since the bankruptcy court would determine whether a particular action is barred under the doctrine of *res judicata* on a case-by-case basis, the federal authorities Nationstar cites in support of its position are inapplicable and irrelevant to Plaintiff's state court action. In Plaintiff's case, the bankruptcy court may have been persuaded to apply the fraud exception, but we will never know, because Plaintiff chose to litigate this action in this state court instead.

Another important, distinctive fact is a dispute arose between Plaintiff and Nationstar after the Plan's confirmation. On November 8, 2011, and on December 19, 2011, Nationstar sent letters to the South Carolina Department of Consumer Affairs ("the Department") refusing to reinstate Plaintiff's monthly billing statements and online account access, and in doing so, disregarded Plaintiff's repeated requests, disregarded her bankruptcy attorney's letter of permission, and disregarded her complaint to the Department that Nationstar's refusal was unreasonably prejudicial to her consumer rights under the circumstances.

In its letters to the Department, Nationstar basically stated as follows: "Please be advised Nationstar Mortgage does not provide contractual statements or online access to customers that have been involved in bankruptcy unless the debt was reaffirmed. Should Ms. Marks have documentation substantiating that the debt was reaffirmed, she may submit it to our Bankruptcy Department via facsimile at (972) 315-7759. Since the debt has not been reaffirmed through the Bankruptcy court, Nationstar Mortgage has agreed to send a payment coupon booklet in lieu of

contractual statements.”

Plaintiff considered Nationstar's actions as acts of bad faith and as a red flag that something was wrong, which prompted Plaintiff to spend the next several weeks investigating all aspects of the subject mortgage until she was in a position to write and file her declaratory judgment complaint in this state court in April 2012.

Although Nationstar did not own the mortgage at the time Plaintiff filed for bankruptcy and does not currently own the mortgage, Nationstar falsely claimed to own the mortgage before this state court to obtain permission to intervene, and now Nationstar apparently believes it is the servicer and is here to “enforce” the note and believes it can do so by virtue of possession of the note without having to show Plaintiff or this Court any contractual evidence whatsoever proving it has servicing rights to the specific mortgage in question.

A fact that seems lost to Nationstar is that there is nothing to “enforce” while Plaintiff is current on her payments. In Plaintiff's prayer for relief, she did not request that this state court declare whether or not she has to continue to make mortgage payments to Nationstar, so again, there is nothing for Nationstar to “enforce” here in this state court action.

Obviously, this action is not a foreclosure action, rather, it is clearly a contract action, and generally only the parties to the contract in question have standing to litigate the action. Nationstar is not a party to the mortgage contract in question, Nationstar lied to obtain permission to intervene in this action, and Nationstar technically lacks standing to be here defending this action in the first place, so it lacks standing to move to dismiss Plaintiff's case.

In Plaintiff's prayer for relief, the declaratory judgment and relief she is seeking is clearly related to the removal of an invalid mortgage lien from her property title in the records of the county register of deeds and permanent injunctions to prevent the recording of unlawful

assignments and unlawful foreclosure arising from the invalid mortgage lien. This state court action clearly has absolutely nothing to do with the intentions and purposes of Plaintiff's confirmed Chapter 13 bankruptcy plan to resolve her unsecured debts within her ability to pay.

Since the issues that have been brought before this state court in Plaintiff's complaint have not been brought before the bankruptcy court, have not been actually litigated in the bankruptcy court, and have not been adjudicated by the bankruptcy court based upon the merits, and pursuant to *Sealy* and *Price* as quoted and cited above, Plaintiff's state court action is not barred under the doctrines of *res judicata*, *collateral estoppel* or *judicial estoppel*.

Plaintiff's Action is Not Barred by the Statute of Limitations

In its motion, Nationstar failed to adequately explain why this Court should apply to this action the three-year statute of limitations pursuant to S.C. Code Ann. § 15-3-530 and S.C. Code Ann. § 15-3-535 rather than the twenty-year statute of limitations pursuant to S.C. Code Ann. § 15-3-520.

S.C. Code Ann. § 15-3-520(a) states, "Within twenty years: (a) an action upon a bond *or other contract in writing secured by a mortgage of real property*" (emphasis added). Clearly, the South Carolina Legislature intended that the statute of limitations on an action upon a mortgage contract be 20 years. Their intention is reinforced under S.C. Code Ann. § 15-3-530(1) which states, "Within three years: (1) an action upon a contract, obligation, or liability, express or implied, *excepting those provided for in Section 15-3-520*" (emphasis added). Their intention is further reinforced under S.C. Code Ann. 15-3-530(5) which states, "an action for assault, battery, or any injury to the person or rights of another, *not arising on contract* and not enumerated by law, and those provided for in Section 15-3-545" (emphasis added).

From a review of Plaintiff's complaint, Plaintiff's action is clearly a declaratory judgment

action upon a mortgage contract in writing, and she included no special causes of action in her complaint which would require the Court to apply a shorter statute of limitations than 20 years. Therefore, the earliest date the statute of limitations would expire on this action is October 5, 2027, which is 20 years from the date of the mortgage contract. However, often the courts will consider other factors when determining the date an action accrues and the date the action becomes statutorily time-barred.

Even if Nationstar can persuade this Court to ignore the unambiguous wording of S.C. Code Ann. § 15-3-520 that the statute of limitations on an action upon a mortgage contract is 20 years, Plaintiff did not discover the fraudulent or illegal acts that she complained of in her complaint until she investigated all aspects of the mortgage during the time period of November 2011 and April 2012 as a result of Nationstar's refusal to reinstate Plaintiff's monthly billing statements and online account access in November 2011. Nationstar's refusal to reinstate those things and disregarding the Department's inquiry on Plaintiff's behalf could be construed by any court of law as a breach in the mortgage contract that would put a reasonable person on notice of a potential claim.

Therefore, even if a three-year statute of limitations applied to this action, and Plaintiff does not believe it does, arguably the earliest date the statute would expire is November 8, 2014, which is three years from the date of Nationstar's letter to the Department refusing to reinstate Plaintiff's monthly billing statements and online account access.

Plaintiff finds ridiculous Nationstar's allegation that Plaintiff is somehow bound by what her closing attorney, Docas Tuten, allegedly knew but did not disclose to Plaintiff at the closing. Nationstar did not explain in its motion how and when Nationstar discovered what Ms. Tuten knew at the time of the closing. Ms. Tuten has not been subpoenaed or deposed by Plaintiff in

this action, and Plaintiff is unaware of any of the defendants serving discovery requests upon Ms. Tuten in this action.

How could Nationstar possibly know for sure that Ms. Tuten knew Old South did not finance the purchase of Plaintiff's home at the time of the closing on October 5, 2007, when the wire transfer of funds was received by Ms. Tuten's office late in the afternoon that day at 5:25 PM, her office apparently may have seen the wire advice at the earliest at about 5:50 PM that day, and the wire advice does not identify the originator of the funds by name. We know from the wire advice that Flagstar Bank wired the funds, but the actual source of the funds has not been confirmed yet through discovery.

Even if Ms. Tuten knew the source of the funds at the time of the closing, Ms. Tuten did not disclose that to Plaintiff. On the contrary, during the closing while Plaintiff was reviewing the closing documents, Ms. Tuten specifically pointed it out to Plaintiff in the mortgage and note and stated that Old South is the lender. Consequently, Plaintiff believed Old South was the actual lender at the time of the closing, Plaintiff did not know at the time of the closing that the funds would come from an entity other than Old South, and Plaintiff still does not know for certain the source of the funds because that would require further discovery to determine.

Plaintiff is Entitled to Receive a Declaratory Judgment from this Court
Regardless of Whether or Not Further Relief Is or Could Be Claimed

Pursuant to Title 15, Chapter 53, of the S.C. Code, Plaintiff is entitled as a matter of law to petition and receive a declaratory judgment from this Court without having to prove that she has been injured and without having to prove that further relief is or could be claimed.

S.C. Code Ann. § 15-53-20 states, "Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a

declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree."

S.C. Code Ann. § 15-53-30 states, "Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder."

S.C. Code Ann. § 15-53-120 states, "Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted forthwith."

S.C. Code Ann. § 15-53-130 states, "This chapter is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. *It is to be liberally construed and administered.*" (emphasis added)

Since Plaintiff filed the declaratory judgment complaint and petition for injunctive relief, it would be improper for this court to grant Nationstar's motion and thereby deny Plaintiff the possibility of a non-jury trial and a judgment based upon the merits of her complaint.

Nationstar alleged in its motion that Plaintiff has not been injured. Plaintiff has been injured, and in her complaint she explained those injuries, which include but are not limited to servicer frauds and abuses and a clouded property title, and she explained she is concerned about

sustaining greater injuries in the future up to and including an unlawful foreclosure, loss of her home, and loss of her over \$30,000 investment based upon false claims and invalid documents brought by a predatory servicer who has no interest in equity in her home.

To obtain summary judgment, the moving party must demonstrate there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, and in deciding whether to grant summary judgment, trial courts must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. *Rule 56, South Carolina Rules of Civil Procedure.*

Nationstar has repeatedly suggested to this Court that Plaintiff's primary complaint is that an assignment of mortgage has not been recorded in the county register of deeds. This is not only completely false, but it is insulting to Plaintiff's intelligence, her knowledge of the law, and her 40-page complaint wherein she raised several meritorious issues before this Court.

Since Nationstar apparently does not understand the contents of Plaintiff's 40-page complaint or disagrees with most of the allegations therein, Nationstar is not the proper party to present Plaintiff's case to this Court for a judgment on the pleadings or summary judgment. Clearly, Nationstar has failed to establish in its motion the absence of a genuine issue of material fact and has failed to establish it is entitled to judgment as a matter of law.

In order for justice to be done in this case, Plaintiff must be granted the opportunity for a non-jury trial and adjudication of this action based upon the merits, unless this action can be settled and voluntarily dismissed before trial. It would be improper and unjust to deny Plaintiff her day in court while Title 15, Chapter 53, of the S.C. Code provides that this chapter governing declaratory judgments is to be liberally construed and administered by the trial courts in this state.

For the foregoing reasons, and for any other reasons as this Court may deem just and proper, Plaintiff respectfully requests that Nationstar's Motion for Judgment on the Pleadings, or in the Alternative, Motion for Summary Judgment be denied.

Respectfully submitted,

A handwritten signature in cursive script, reading "Melissa J. Marks", written in black ink.

Melissa Jean Marks
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Round O, South Carolina
April 16, 2013

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

MELISSA JEAN MARKS, *Pro Se*,

Plaintiff,

vs.

OLD SOUTH MORTGAGE
CORPORATION; and
NATIONSTAR MORTGAGE, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2012-CP-15-00262

CERTIFICATE OF SERVICE

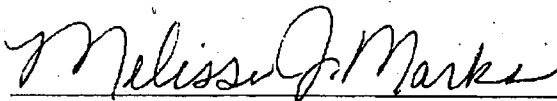
I certify that, on this date, I served a copy of Plaintiff's Opposition to Defendant Nationstar Mortgage, LLC's Motion for Judgment on the Pleadings, Or In the Alternative, Motion for Summary Judgment filed on April 16, 2013, by mailing it to him/her, at his/her last known address, by depositing them in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Attorney for the Defendant Old South Mortgage Corporation at:

John F. Knobloch, Esq.
King & Knobloch, P.C.
808 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

Attorney for Defendant Nationstar Mortgage, LLC at:

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Round O, South Carolina
April 16, 2013

2013 APR 16 AM 8:56
PATRICIA C. BRANT
COLLETON COUNTY
COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Melissa Jean Marks,

Plaintiff,

vs.

Old South Mortgage Corporation, John Does 1-100, Fictitious Corporations 1-100, Nationstar Mortgage, LLC

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL CASE NO. 2012-CP-15-262

**DEFENDANT NATIONSTAR MORTGAGE,
LLC'S MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

(HPW 501904-00001)

Nationstar Mortgage, LLC ("Nationstar") submits this Memorandum of Law in support of its Motion for Summary Judgment.

LEGAL STANDARD

"Any party may move for a judgment on the pleadings under Rule 12(c), SCRCP. When considering such motion, the court must regard all properly pleaded factual allegations as admitted." *Falk v. Sadler*, 341 S.C. 281 (Ct. App. 2000). If "matters outside the pleadings are presented and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." Rule 12(c), SCRCP.

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SCRCP, Rule 56. In considering a summary judgment motion, the court must view the facts in the light most favorable to the non-moving party. *Koester v. Carolina Rental Ctr. Inc.* 313 S.C. 490, 493, 443 S.E.2d 392, 294 (1994); *Baughman v. Carolina Rental Ctr., Inc.* 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

UNDISPUTED FACTS

The following facts are undisputed:

- (1) On October 5, 2007, Plaintiff executed and delivered to Old South Mortgage Corp. a promissory note in the amount of \$76,000.00 dollars (the "Note", which is attached to the Complaint as Exhibit "4"), and a mortgage on property known generally as 209 Presidential Ct., Round O, South Carolina 29474-4374 (the "Mortgage," which is attached to the Complaint as Exhibit "4") to secure the re-payment of the Note (Compl., Apr. 6, 2012, ¶6).
- (2) Plaintiff was represented by counsel at the closing, which occurred on October 5, 2007. (Compl., ¶ 8; Ex. 4, Compl., Engagement Letter.)
- (3) Flagstar wired the loan proceeds to Plaintiff's counsel, which were used to purchase the property. (Compl., ¶ 84; Ex. 4, Compl., Wire Transfer.)
- (4) At the closing, Plaintiff signed several documents disclosing Old South's right and intention to transfer the loan and servicing rights. (*See, e.g.* Ex. 4, Compl.: Mortgage, ¶20; Note, ¶1 (the note was already endorsed in to Flagstar at the closing); Loan Closing Disclosure Acknowledgments, ¶ 5; Itemization of Amount Financed (showing Old South Mortgage receiving a broker fee. The documents signed at closing were provided to Plaintiff by her closing attorney on or about October 8, 2007. (Ex. 4, Compl., Ltr to Marks from Tuten, Oct. 7, 2013.)
- (5) Subsequently, Flagstar transferred the servicing rights to Nationstar. (Comp. ¶ 28; Ex. 12, Compl.)
- (6) On or about April 20, 2011, Plaintiff filed a Chapter 13 bankruptcy petition.
- (7) Plaintiff named Nationstar as the secured creditor of the loan in her Chapter 13 bankruptcy petition and schedules. (*In re Marks*, 11-02619-jw, Bankruptcy Petition, Doc. 1, pp.16, 30, attached to Nationstar's Motion for Summary Judgment.)

- (8) The confirmed Chapter 13 Plan orders that Plaintiff will continue to make mortgage payments to Nationstar. (Chapter 13 Plan, Doc. 9, p. 3, attached to Nationstar's Motion for Summary Judgment.)
- (9) Nationstar is the current loan servicer and Fannie Mae is the investor of the loan.
- (10) Nationstar has never filed or threatened to file a foreclosure action against Plaintiff.
- (11) Plaintiff is current in her post-petition payments to Nationstar.¹

PROCEDURAL SUMMARY

On or about April 6, 2012, Plaintiff filed this action in state court naming only Old South Mortgage Corporation and John Does 1-100 and Fictitious Corporations 1-100.² Nationstar was not named as a party and neither the bankruptcy court nor any of the creditors, including Nationstar were informed about this action by Plaintiff.

After learning about the action, on or about May 9, 2012, Nationstar filed a motion to modify the bankruptcy stay in order to intervene and defend this action, which was granted. On or about May 14, 2012, after notice that Nationstar was seeking to intervene in the action, but prior to the hearing in the bankruptcy court, Plaintiff filed a Motion for Summary Judgment in state court.³

After obtaining leave from the Bankruptcy Court, Nationstar filed a Motion to Intervene in this action. After a hearing, Nationstar's Motion to Intervene was granted, subject to the caveat that Nationstar was required to file an answer to the complaint and answer discovery, as opposed to filing dispositive motions, such as motions to dismiss, in lieu of an answer.

After, Nationstar timely responded to lengthy interrogatories, requests for production, and requests to admit, Plaintiff filed a Motion to Compel Discovery, and a Motion to Amend Complaint

¹ Nationstar has filed two Notices of Post Petition Fees in the Chapter 13 bankruptcy, totaling approximately \$46,100 as of April 19, 2013 to comply with Bankruptcy Rule 3002.1. However, Nationstar has not sought to collect these fees from Plaintiff due to the fact that the state court action is still pending and has, therefore, not sought approval from the Bankruptcy Court to collect these fees.

² John Does 1-100 and Fictitious Corporations 1-100 has since been dismissed with consent of all the parties.

³³ Plaintiff has since withdrawn her Motion for Summary Judgment.

to Add Fannie Mae as a defendant. The Motion to Amend was denied after a hearing on the grounds that it would be futile to add Fannie Mae as a party because: (1) Plaintiff lacked standing as a result of her Chapter 13 bankruptcy filing and (2) Nationstar is the proper party to enforce the note and mortgage by virtue of the Bankruptcy Court's Order and by being in possession of the original note endorsed in blank. Based on the Order Denying Plaintiff's Motion to Amend, the Court also denied the Motion to Compel on the grounds it was moot. Plaintiff subsequently filed a Motion to Reconsider these two Orders, which was denied.

Other motions filed by Plaintiff include a Motion to Defer ADR, which was denied, and a Motion to Stay the Action in order to seek guidance from the Bankruptcy Court, which was denied.

After the hearing on Nationstar's Motion for Summary Judgment was scheduled, Plaintiff filed a Motion for Continuance and Motion for Recusal of The Honorable Perry M. Buckner, which are scheduled to be heard on May 15, 2013.

LEGAL ANALYSIS

Nationstar is entitled to an order dismissing the action on the pleadings pursuant to Rule 12(c), of the South Carolina Rules of Civil Procedure, or in the alternative, an order granting summary judgment in favor of Nationstar as to all claims raised by Plaintiff in her "Declaratory Judgment Complaint and Petition for Injunction," pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the following grounds:

I. PLAINTIFF LACKS STANDING TO BRING THE ACTION.

Plaintiff lacks standing to bring this lawsuit. 11 U.S.C. § 541(a)(1); *Wright v. Guess*, 2010 U.S. Dist. LEXIS 5532 (D.S.C. 2010). Plaintiff filed for Chapter 13 Bankruptcy on April 20, 2011. *In re Marks*, Case Number 11-02619-jw, Doc. 1, Vol. Pet. and Sch. (Apr. 20, 2011). Even though the alleged facts set forth in the Complaint date back to 2007, her schedules do not disclose the causes of action set forth in the Complaint in this case. Therefore, her schedules and Chapter 13

Bankruptcy Plan judicially establish that Nationstar is the proper party to receive payments on the mortgage note which is the subject of this action. *Id.*, Doc. 1, Vol. Pet. and Schedules (Apr. 20, 2011); *Id.*, Doc. 9, Chpt. 13 Plan (Jun. 8, 2011); *Id.*, Doc. 12, Or. Confirming Chpt. 13 Plan (Jun. 21, 2011).

In *Wright v. Guess*, the District Court for South Carolina held that a Chapter 13 debtor did not have standing to pursue pre-petition claims in a lawsuit against the plaintiff's employer. *Wright*, 2010 U.S. Dist. LEXIS 5532).

All of a debtor's property, including existing causes of action, becomes assets of her bankruptcy estate at the time that she files her bankruptcy petition. 11 U.S.C. § 541(a)(1). This rule is applied to both Chapter 7 and Chapter 13 proceedings. See *Wright v. Guess*, 2010 U.S. Dist. LEXIS 5532 at *2-3 (D.S.C. 2010). According, that debtor loses standing to pursue those pre-petition claims, and any such lawsuit must be dismissed for lack of subject matter jurisdiction. *Wright*, 2010 U.S. Dist. LEXIS 5532 at *2-3.

Imus v. Circle-Y Saddles, Inc., 2011 U.S. Dist. LEXIS 37992 (S.D. Tx. 2011 citing *Wright*, 2010 U.S. Dist. LEXIS 5532.)

Nationstar acknowledges that in her Memorandum in opposition to Nationstar's Motion for Summary Judgment, Plaintiff cited a case for the proposition that Chapter 13 debtors do have standing to bring a cause of action "*on behalf of the estate before any tribunal*". (Pl. Opposition to Def. Nationstar Mortgage, LLC's Motion for Judgment on the Pleadings, or in the Alternative, Motion for Summary Judgment at 1-2 citing *In re Lee*, 432 B.R. 212, 2010 U.S. Dist. LEXIS 44965.) Nationstar's counsel was not familiar with *In re Lee* until receiving and reviewing Plaintiff's Memorandum. After a careful review, *In re Lee* does not appear to overrule *Wright* which is still good law according to Shepard's. In addition, the facts in *In re Lee* are distinguishable from the facts in the present action. In *In re Lee*, the Chapter 13 debtor was attempting to bring real property into her bankruptcy estate, and therefore the action was brought "on behalf of the [bankruptcy] estate. *Lee*, at 213. In the present case, Plaintiff failed to disclose the action to the bankruptcy court, the bankruptcy trustee, and her creditors, until after Plaintiff was informed Nationstar learned about this action from Old South Mortgage and after the Bankruptcy Court granted its Motion to Modify the

Stay in order to intervene in this action. Furthermore, the amended schedules filed by Plaintiff only place a value on this action of \$1.00. If Plaintiff were successful in her attempt to set aside the mortgage, according to the schedules filed by Plaintiff, she would actually receive the benefit of owning property valued at \$80,000⁴ free and clear of any liens. Withholding important information about her claim from the bankruptcy trustee and other creditors is not meaningful notice of a claim.

The claims have not been judicially abandoned by the Trustee, as required by 11 U.S.C. § 554 and Bankruptcy Rule 6007.⁵ As a result of Plaintiff's bankruptcy filing, the claims in this case belong only to the Chapter 13 Trustee.⁶ 11 U.S.C. § 554; Bankr. R. 6007.

Plaintiff also lacks standing because even if the Chapter 13 Trustee had judicially abandoned the claim which is the subject of this action, because only a bankruptcy trustee has the power to avoid transfers of property or liens on property of the bankruptcy estate. 11 U.S.C. § 544. In the present case, the gravamen of Plaintiff's complaint is that the note and mortgage are unenforceable because an assignment of mortgage was not recorded in the public records. If successful, the result could be that Plaintiff owns the Property free and clear of any liens. Plaintiff places an \$80,000 value on the Property. *In re Marks*, Doc. 26, Am. Sch. (May 29, 2012). Since the relief sought by Plaintiff is to have her mortgage declared void or stricken from the public records, only the trustee in the

⁴ This is based on Plaintiff's bankruptcy schedules.

⁵ In Plaintiff's Motion for Temporary Stay of Proceedings, filed on March 11, 2013, Plaintiff appears to allege that the Trustee abandoned Plaintiff's claim and attaches a copy of the transcript from the hearing on Nationstar's Motion for Clarification of Stay. The transcript only shows that the Trustee consented to the modification of the stay so that Nationstar could intervene in this state court action; it does not establish that the Trustee abandoned its right to Plaintiff's cause of action, which is consistent with the facts that Plaintiff did not file her amended schedules until after the Order Modifying Stay was issued, and the Amended Schedules (when they were filed) only valued the claim at \$1.00. See *In re Marks*, Doc. 26, Am. Sch.

⁶ In Plaintiff's Motion for Temporary Stay of Proceedings, filed on March 11, 2013, Plaintiff appears to be alleging that the Trustee abandoned Plaintiff's claim and attaches a copy of the transcript from the hearing on Nationstar's Motion for Clarification of Stay. The transcript only shows that the Trustee consented to the modification of the stay so that Nationstar could intervene in this state court action; it does not establish that the Trustee abandoned its right to Plaintiff's cause of action, which is consistent with the facts that Plaintiff did not file her amended schedules until after the Order Modifying Stay was issued, and the Amended Schedules (when they were filed) only valued the claim at \$1.00. See *In re Marks*, Doc. 26, Am. Sch.

bankruptcy action has standing to pursue this claim and Nationstar is entitled to summary judgment to dismiss this action because the Plaintiff lacks standing.

II. PLAINTIFF'S CLAIMS ARE BARRED BY RES JUDICATA AND/OR JUDICIAL ESTOPPEL

Regardless of whether the Court follows the standing analysis set forth in *Wright* or *In re Lee*, it is undisputed by case law that Plaintiff's claims are barred by the doctrine of *res judicata*. *In re Nix*, CA 10-01103-HB, 2012 WL 27667 (Bankr. D.S.C. Jan. 5, 2012) (holding that debtor's claims based on pre-confirmation activity were barred by doctrine of *res judicata* based on confirmed Chapter 13 plan). The petitions filed in Plaintiff's Chapter 13 bankruptcy and the confirmed plan state that Nationstar is the secured creditor entitled to receive payment on the mortgage note. The confirmation of Plaintiff's bankruptcy plan serves as *res judicata* to the claims brought in this lawsuit.

"The *res judicata* effect of a confirmed Chapter 13 plan on the debtor and creditors is set forth in 11 U.S.C. § 1327." *In re Nix*, CA 10-01103-HB, 2012 WL 27667 at *20. The "rights of creditors and responsibilities of the debtor are defined" in the confirmed plan. *Id.* (citations omitted.) Therefore, parties are precluded from raising issues which could have been raised prior to the plan confirmation. *Id.*; see also *Abraham v. Bank of America, N.A. (In re Abraham)*, Adversary No. 10-80118-jw, 2010 WL 5437253 (Bankr. D.S.C. Sept. 20, 2010) (holding that debtor was judicially estopped from asserting contrary position in state court litigation based on his failure to list any causes of actions against defendant in bankruptcy schedules).

The fact that Plaintiff claims she was unaware of her claims until after plan confirmation, and finally amended her schedules to disclose the existence of the state court action is of no consequence. "Judicial estoppel will be imposed when the debtor has knowledge of enough facts to know that a potential cause of action exists during the pendency of the bankruptcy but fails to amend his schedules or disclosure statements to identify the cause of action as a contingent asset. *In re Family*

Dollar FLSA Litigation, 2011 U.S. Dist. LEXIS 119281 at *17 (W.D. N.C. 2011). In *In re Family Dollar*, the debtor's failure to disclose a state court action to the bankruptcy court was deemed intentional because the debtor had reason to know of the existence of the claims when she filed bankruptcy, and had motive for concealment of the claim from the bankruptcy because disclosure would have resulted in a less favorable payment plan. *Id.* at *16-*18. It does not matter whether or not the debtor is aware that she has a duty to disclose her claims. *Id.* at 19.

In the present case, Plaintiff had motive to conceal the existence of her claim from the bankruptcy court because she could have received a less favorable plan payment due to the increase in the value of her assets as a result of the avoidance of the mortgage, and because Nationstar would have discovered the action before Plaintiff was able to obtain an order from the state court. *Brockington v. Jones*, 207 U.S. Dist. LEXIS 96248, *12 (D.S.C. 2007.)

As a result, even if the Court deems Plaintiff has standing to pursue the state court action, Plaintiff's claims are barred by the doctrine of *res judicata*.

III. FRAUD CLAIMS BARRED BY STATUTE OF LIMITATIONS AND FAILURE TO ESTABLISH DAMAGES

To the extent it can be interpreted that Plaintiff alleges a fraud cause of action, which Nationstar specifically denies, Nationstar is entitled to summary judgment for two reasons. First, Plaintiff's claims are barred by the three-year statute of limitations. S.C. Code Ann. §15-3-530; S.C. Code Ann. §15-3-535. On or about October 5, 2007, more than three years before this case was filed, Plaintiff signed the loan documents, including documents confirming that she was aware the loan was being simultaneously assigned to Flagstar. See loan documents attached to the Complaint and incorporated by reference.

Plaintiff's attempt to claim she was unaware of the alleged facts set forth in her complaint until after she filed bankruptcy is without legal merit. Plaintiff had actual knowledge of the alleged facts giving rise to her claims by virtue of being represented by counsel at the closing and her

attorney's actual knowledge of the issues in question. See Compl. ¶ 8. As the agent of Plaintiff, all notices to the closing attorney constitute actual knowledge to Plaintiff. See *Spence v. Spence*, 368 S.C. 106, 118, 628 S.E.2d 859, 875 (2006). As such, the applicable statute of limitations began to run on October 5, 2007.

Second, Plaintiff got exactly what she bargained for, which was a loan to purchase the Property, and has not alleged any facts sufficient to show she was injured. For example, Plaintiff cannot show an injury with regard to her claim that Old South did not actually fund the loan, since her loan was funded enabling her to purchase the Property. Plaintiff received the benefit of the loan, based on the terms set forth in the note. Plaintiff was represented by counsel at the closing and her attorney was aware at the closing that the loan was being funded by Flagstar and not Old South. *Faulkner v. Millar*, 319 S.C. 216, 221, 460 S.E.2d 378, 381 (S.C. 1995). Furthermore, Plaintiff is current in her payments and assured the Bankruptcy Court that she would continue to remain current. Pl.'s Motion for Temp. Stay of Proceedings, Ex. A, page 8, lines: 4 – 9. *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 445 (Ct. App. 2003) (citing *First State Sav. & Loan v. Phelps*, 299 S.C. 441, 446-47, 385 S.E.2d 821, 824 (1989); *Moorhead v. First Piedmont Bank & Trust*, 273 S.C. 356, 359, 256 S.E.2d 414, 416 (1979); *Kiriakides v. Atlas Food Sys. & Servs., Inc.*, 338 S.C. 572, 586, 527 S.E.2d 371, 378 (Ct. App. 2000); *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct.App.1993)).

IV. UNCONSCIONABILITY, IF ALLEGED, BARRED BY *RES JUDICATA*

To the extent Plaintiff's Complaint can be interpreted to allege a cause of action for unconscionability, which Nationstar specifically denies, the cause of action is barred by the doctrine of *res judicata*. In *re Nix*, CA 10-01103-HB, 2012 WL 27667 (Bankr. D.S.C. Jan. 5, 2012) (holding debtor's unconscionability cause of action was barred by doctrine of *res judicata* since it existed prior to the confirmation of the bankruptcy plan).

V. NOTE AND MORTGAGE ARE ENFORCEABLE AS A MATTER OF LAW

To the extent Plaintiff's claims are based on the failure to record an assignment of mortgage, it fails as a matter of law. It is well-established that the mortgage follows the note and that assignment of the mortgage is not required. *Union Nat'l Bank v. Cook*, 110 S.C. 99, 96 S.E. 484 (1918); *Midfirst Bank, SSB v. C.W. Haynes*, 893 F.Supp. 1304 (D.S.C. 1994). As recently as July 2012, the South Carolina Supreme Court again held that an "assignment of a mortgage does not need to be recorded, and failure to do so has no effect on the rights of the assignee." *BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 623, 731 S.E.2d 547, 549 (2012). See also *In re Woodberry*, 383 B.R. 373, 377 (Bankr. D.S.C. 2008).

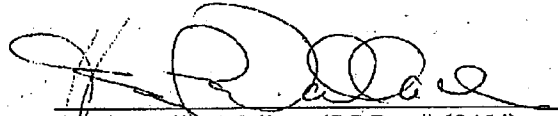
South Carolina's version of Article 3 of the Uniform Commercial Code governs the enforceability of negotiable instruments including promissory notes secured by mortgages on real estate. *Swindler v. Swindler*, 355 S.C. 245, 584 S.E.2d 438 (Ct. App. 2007). S.C. Code Ann. Section 36-3-301 provides there are three categories of persons entitled to enforce a negotiable instrument: (1) the holder of the instrument; (2) a nonholder in possession of the instrument who has the rights of the holder; and (3) a party who once had possession of a now lost instrument. S.C. Code Ann. § 36-3-301. Most importantly, a party may be entitled to enforce an instrument even though it "is not the owner of the instrument." *Id.* By virtue of its possession of the original note, if the loan were in default, Nationstar would be the proper party to enforce the note.

CONCLUSION

Based on the grounds set forth above, Nationstar respectfully requests an Order Granting its Motion for Judgment on the Pleadings, or in the alternative, an Order Granting its Motion for Summary Judgment. Due to the automatic stay imposed by Plaintiff's Chapter 13 bankruptcy, Nationstar reserves its right to file an application for fees and costs with the United States Bankruptcy Court instead of in this state court action, but does not waive its right for reimbursement of these fees and costs.

This motion is based on the pleadings and other filings of record herein, the filings in Plaintiff's Chapter 13 bankruptcy action, including but not limited to, the petition, schedules, and amendments thereto, statement of financial affairs, her confirmed Chapter 13 plan including all amendments, and the other orders issued by the Bankruptcy Court and/or filed with the Bankruptcy Court for the District of South Carolina, the South Carolina Rules of Civil Procedure, the relevant case law, and such other and further matters as may be properly presented to the Court.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Harriet Pollitt Wallace', is written over a horizontal line.

Harriet Pollitt Wallace (SC Bar # 69454)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive
Post Office Box 100200 (29202)
Columbia, SC 29210
(803) 771-7900
Attorneys for Defendant Nationstar Mortgage, LLC

May 13, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 12-CP-15-262

I, Missie Wessinger, an employee for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the following upon counsel of record and parties in interest by electronic mail and U.S. Mail, postage prepaid, on May 13, at the following addresses:

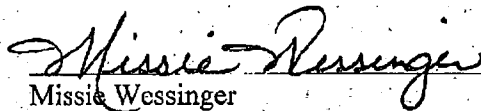
Document Served:

Defendant Nationstar Mortgage, LLC's Memorandum in Support of Motion for Summary Judgment

Counsel/Parties Served:

Melissa J. Marks, Pro Se
209 Presidential Court
Round O, SC 29474
mjmarks68@hotmail.com

John F. Knobeloch, Esquire
King & Knobeloch, P.C.
808 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
docs@kingknob.com


Missie Wessinger

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

MELISSA JEAN MARKS, PRO SE,

Plaintiff,

vs.

OLD SOUTH MORTGAGE CORP., ET AL.

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-15-00262

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

~~Plaintiff's Attorney:~~ *Pro Se*

Melissa Jean Marks, Bar No. N/A

Address:

209 Presidential Court, Round O, SC 29474

Phone: 843-599-3156 Fax _____

E-mail: mjmarks68@hotmail.com Other: _____

Defendant's Attorney:

_____, Bar No. _____

Address:

Phone: _____ Fax _____

E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss Nationstar Mortgage, LLC

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

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

Melissa J Marks

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

June 26, 2013

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25.00**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☒ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

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

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$ _____**

☐ **CONTESTED - AMOUNT DUE: \$ _____**

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-15-00262

MELISSA JEAN MARKS, *Pro Se*,
Plaintiff,

vs.

OLD SOUTH MORTGAGE
CORPORATION; and
NATIONSTAR MORTGAGE, LLC,
Defendants.

PLAINTIFF'S
NOTICE OF MOTION AND
MOTION TO DISMISS
NATIONSTAR MORTGAGE, LLC

2013 JUN 26 AM 11:22

PATRICK J. GRANT
COLLETON COUNTY
COMMON PLEAS

TO: THE PARTIES AND COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the undersigned pro se Plaintiff on the tenth day after service hereof or at such time and place as the Court may set will move before the Court for an Order dismissing solely Nationstar Mortgage, LLC ("Nationstar") from this action with prejudice pursuant to Rule 21 of the South Carolina Civil Rules of Procedure for misjoinder and for other good grounds and just cause shown.

In May-July 2012 in its pleadings and at hearings related to Nationstar's efforts to intervene in this action, Nationstar clearly and intentionally misrepresented to the federal bankruptcy court and to this Court that it was the current holder of the subject note or owner of the subject mortgage on certain dates when Nationstar was not and therefore knew it was not. Plaintiff's table "Nationstar's Fraudulent Claims of Ownership of the Mortgage and Note Submitted to the Courts" is attached hereto as Exhibit 1 and incorporated herein by reference. Subsequently, on October 4, 2012, Nationstar stated in its answers to interrogatories under oath that "Fannie Mae is the owner of the note and mortgage."

Since Nationstar knew it did not own the subject mortgage and note, Nationstar

committed perjury or a fraud upon this Court, slandered the subject mortgage and note, and slandered Plaintiff's property title at the hearing before this Court on July 18, 2012, when it intentionally misled this Court to believe Nationstar purchased the note from Flagstar Bank, it actually owned the mortgage and was not merely servicing in order to ensure that this Court would determine Nationstar is a necessary party and grant its motion to intervene in this action.

Since Nationstar does not own the mortgage, obviously, Nationstar did not purchase the mortgage from Flagstar and does not have an interest in equity in Plaintiff's home to defend; therefore, Rule 24, SCRPC, and S.C. Code 15-53-80 do not apply to Nationstar because it does not have a legally recognized interest to defend in this action. Since Nationstar lacks standing to defend, Nationstar's misconduct resulted in misjoinder of Nationstar as a defendant in this action.

Based upon Nationstar's subsequent admissions in discovery under oath and other evidence, the foregoing misconduct could not have been an honest mistake on Nationstar's part, and this Court's Order entered on August 2, 2012, granting Nationstar's motion to intervene clearly shows its motion was granted on the basis of its false claim of ownership of the mortgage. The Order states in pertinent part, "Nationstar then filed its Motion to Intervene claiming it is the current owner and holder of the Note and Mortgage, and is the real party in interest in this case." The Order is attached hereto as **Exhibit 2** and incorporated herein by reference. Consequently, pursuant to the common law doctrines of estoppel, Nationstar is estopped from changing its position in this action from "owner" to "servicer" of the mortgage; nevertheless, it is improperly attempting to do so in order to continue profiting from its frauds upon Plaintiff and the courts.

In addition, Plaintiff requested but Nationstar refused to produce any contractual evidence proving that the alleged current owner of the mortgage, Fannie Mae, had granted

Nationstar express written authorization to service the subject mortgage specifically in October 2009 and to intervene in this action specifically before Nationstar intervened on May 9, 2012. Nationstar's answers to Plaintiff's discovery requests are attached hereto as **Exhibit 3** and incorporated herein by reference (document production redacted). Therefore, it is fair and reasonable to assume no such contractual evidence exists.

Plaintiff prays this Court will dismiss Nationstar from this action with prejudice on the following grounds or other grounds as this Court determines just and proper:

(1) Nationstar lacks standing; therefore, its misconduct resulted in its misjoinder as a defendant and caused Plaintiff to unjustly suffer delays, multiplication of proceedings, and additional expenses to prosecute this action and therefore was not harmless error;

(2) Nationstar's misconduct was intentional and not honest mistake because it willfully or recklessly disregarded the fact that it did not own the subject mortgage and was not the holder of the subject note on the relevant dates;

(3) Nationstar was granted the opportunity yet refused to produce contractual evidence proving the legitimacy of its claims during discovery;

(4) Nationstar misled this Court to believe Plaintiff lacks standing and *res judicata* applies in this action, which unjustly prejudiced Plaintiff's case;

(5) Nationstar improperly intervened and filed unmeritorious claims and contentions for purposes that are improper, predatory, unconscionable, fraudulent or unlawful, which constitutes an abuse of process;

(6) Nationstar's claim that it is the "holder of the note" is misleading and irrelevant;

(7) The subject mortgage and note are invalid, unenforceable, non-transferrable and are
therefore dead; and

(8) The Defendant Old South Mortgage Corporation, the party Plaintiff had properly sued in the first place, is the only necessary party in this action.

Summary of the Case

In April 2012, Plaintiff originally brought this declaratory judgment action and petition for injunctive relief against Old South Mortgage Corporation, John Does 1-100, and Fictitious Corporations 1-100 alleging the subject mortgage and note are invalid and unenforceable on the grounds of fraudulent misrepresentations of material facts, fraudulent or illegal acts, and unconscionable mortgage contract.

Plaintiff is seeking a declaration by the Court that the mortgage and note are invalid and unenforceable as to the lien against her home, an order to the county register of deeds to remove the invalid lien from her property title, and for related injunctive relief to prevent the subsequent recording of assignments and foreclosure. Plaintiff is not seeking a monetary award against any party in this action; rather, she brought this action for the purpose of protecting and defending herself from financial losses arising from false claims and invalid documents.

Plaintiff alleged in her complaint that she had not received any actual notice of who currently owns the mortgage, there are no lawful owners, and Old South Mortgage Corporation, a dissolved domestic corporation since 2008, is the only mortgage lien holder of record at the county register of deeds with no assignments having been recorded according to a report of Edisto Title Services and the clerks who responded to Plaintiff's personal inquiries. The report of Edisto Title Services is attached hereto as **Exhibit 4** and incorporated herein by reference. Plaintiff named as defendants John Does 1-100 and Fictitious Corporations 1-100, which she intended to represent all unknown persons and entities that may claim to have an interest in equity in the mortgage and her home but had not obtained it lawfully.

With consent of the parties, the John Doe and Fictitious Corporation defendants were recently voluntarily dismissed from this action without prejudice, so the only remaining defendants are currently Old South Mortgage Corporation ("Old South") and Nationstar.

Plaintiff's Motion to Dismiss Nationstar With Prejudice

Nationstar lacks standing; therefore, its misconduct resulted in its misjoinder as a defendant and caused Plaintiff to unjustly suffer delays, multiplication of proceedings, and additional expenses to prosecute this action and therefore was not harmless error.

Nationstar lacks standing to defend this action because it does not own the subject mortgage and note, it produced no contractual evidence proving its alleged servicing rights in the mortgage specifically, it produced no evidence that it had obtained Fannie Mae's written permission to appear and defend this action specifically before Nationstar intervened, and it has no interest in equity in Plaintiff's home to defend.

Nationstar refused to disclose whether or not it had paid anything when it allegedly obtained servicing rights to the subject mortgage; therefore, it is fair and reasonable to assume Nationstar paid nothing when Flagstar transferred Plaintiff's home loan account to Nationstar in October 2009 for servicing.

During its efforts to intervene, Nationstar claimed Plaintiff incorrectly refers to Nationstar as the servicer and that it was not merely servicing the mortgage. In light of Nationstar's actions in this case, combined with other evidence, Plaintiff believes that Nationstar is correct in the sense that Fannie Mae did not actually intend for Nationstar to become the servicer of the mortgage in October 2009.

On August 21, 2009, reporter Carrie Bay of dsnews.com reported in her article, "Flagstar Asked to Relinquish Servicing Rights on Troubled Fannie Loans" that, "Fannie Mae has asked

Flagstar Bancorp Inc. to sell its mortgage servicing rights (MSRs) on delinquent loans owned or guaranteed by the GSE, according to a *Bloomberg* report. Fannie Mae wants late or defaulted loans at Flagstar to instead be serviced by specialists, the news agency said, quoting people briefed on the matter. **Flagstar would retain its MSRs on loans that are current.**" (emphasis added) The article is attached hereto as **Exhibit 5** and incorporated herein by reference.

Since Plaintiff had never defaulted and was current on the mortgage payments in August 2009, Plaintiff believes what most likely happened in her case is Flagstar transferred her home loan account to Nationstar in error in October 2009 as part of Flagstar's bulk transfer of a large number of delinquent loans, and Nationstar apparently never reported the error to Flagstar and Fannie Mae because the error was never corrected.

Since Plaintiff's account would have been assumed to be delinquent, Fannie Mae would not have necessarily been prompted to independently investigate and discover the error in consideration of the millions of mortgages the GSE owns or guarantees and the large number of financial institutions that service loans for the GSE, including Nationstar. Unfortunately, this environment is naturally conducive to servicer abuses and frauds, which partly explains why those problems are rampant nationwide and why Plaintiff felt compelled to take legal action to protect and defend her property rights by filing this action.

As a result of Nationstar's misconduct, Plaintiff suffered delays, multiplication in proceedings, and additional expenses that she would not have suffered but for Nationstar's frauds upon her and the courts and therefore they cannot be reasonably viewed as harmless error.

For example, the delays and extra proceedings, including Plaintiff having to file a motion to compel against Nationstar, Nationstar's counsel continuing the hearing in early December 2012, and then Plaintiff having to wait until the next term of court at the end of January 2013,

brought Plaintiff's case up to the 300 day deadline for mandatory mediation.

The Court ignored everything Plaintiff had explained about the subject matter and procedural status of her case, ignored Nationstar's frauds upon the courts and lack of standing, and ordered the parties to attend mediation within 30 days just because Nationstar insisted on formal mediation right away. In obvious contradiction, Nationstar was at the same time complaining about its rising attorney fees and expenses incurred in this action.

If Nationstar had simply consented to Plaintiff's motion to defer ADR, Nationstar would have saved money as well, but instead, Nationstar's actions resulted in Plaintiff having to pay \$350.00 to a court-appointed mediator whereas her case probably could have been resolved between the parties months ago without being required to hold a formal mediation.

The Defendant Old South did not oppose Plaintiff's motion to defer ADR. In fact, Plaintiff can only recall once where the Defendant Old South had expressly joined Nationstar in opposing any of Plaintiff's motions, albeit via its counsel's email to this Court, and that was as to her motion for temporary stay.

Nationstar's intervention by committing frauds upon the courts also resulted in this Court in essence instructing Plaintiff at the hearing on Nationstar's motion to intervene to engage in discovery and identify and serve all necessary parties with her complaint since she disputed the alleged transfer of the subject mortgage and note from Flagstar to Nationstar.

The Court did so apparently without first carefully reviewing and seriously considering the contents of Plaintiff's complaint and her reasons for and her evidence in support of nonjoinder that she provided therein. This most likely would not have occurred but for Nationstar's misconduct and making it appear as though it was Plaintiff who was wrong when Nationstar knew she was right in saying Nationstar does not own the mortgage, it had been

falsely claiming ownership, it has no interest in equity in her home and therefore lacks standing to defend this action.

Nationstar's misconduct was intentional and not honest mistake because it willfully or recklessly disregarded the fact that it did not own the subject mortgage and was not the holder of the subject note on the relevant dates.

On April 29, 2011, Nationstar filed its Form 10 proof of claim in Plaintiff's Chapter 13 bankruptcy case ("proof of claim") and attached thereto a forged or invalid copy of the note that Nationstar says came from its "imaging systems." According to Nationstar, Nationstar did not have the original note in its possession to copy and attach to its proof of claim on April 29, 2011. (Exhibit 3)

Since Nationstar attached a forged or invalid copy of the note to its proof of claim, its fraudulent claim on the form that "Nationstar Mortgage, LLC" is the actual "Creditor" was not an honest mistake, rather, it was an intentional misrepresentation to the bankruptcy court and all interested parties that Nationstar actually owned the mortgage and was not merely servicing.

In comparing the note attached to the proof of claim and the alleged original note that Nationstar subsequently produced to this Court, the two notes do not match. Page 3 of 3 of the note attached to the proof of claim contains an error at the bottom below the bar code showing the address as "229 Presidential Ct" whereas Plaintiff's address is "209 Presidential Ct" and "209 Presidential Ct" is what appears in the same spot on Page 3 of 3 of the alleged original note. The proof of claim and enlarged copies of the note pages are attached hereto as Exhibit 6 and incorporated herein by reference. In addition, the note attached to the proof of claim does not include the alleged endorsement from Flagstar whereas Flagstar's alleged endorsement appears on the alleged original note. Since there is an error on it, the copy is incomplete, and Nationstar

did not have the original note in its possession at the time to copy it, the note attached to Nationstar's proof of claim could not be a true and correct copy of the original note and therefore must be a forgery or invalid copy.

Nationstar answered under oath that notification regarding the complaint Plaintiff filed in this action was sent to "Bankruptcy.Administration@fanniemae.com on May 29, 2012," and that Nationstar requested and then received the alleged original note from "Fannie Mae's custodian, Bank of NY Mellon," on "May 31, 2012," and thereafter forwarded the original note to its counsel. In its responses to Plaintiff's request for admissions, Nationstar admitted that "during the time period October 2009 to May 2012, the Bank of New York Mellon was at all times the custodian and in possession of the original note" and stated, "To the extent this Request is intended to request whether the first time Nationstar was in possession of the original note was May 2012, this Request is admitted." (Exhibit 3) Thus, according to Nationstar, it did not have the original note on April 29, 2011.

This also means that Nationstar did not have possession and was not the "holder" of the original note on other relevant, significant dates such as the following: on April 6, 2012, the date Plaintiff filed this action; on May 9, 2012, the date Nationstar filed a motion and notice in the bankruptcy court and in this Court falsely claiming to be "the current holder" of the note; and on May 17, 2012, when Nationstar appeared before the bankruptcy court falsely claiming to be the "holder" of the note during the hearing on its motion seeking clarification or modification regarding the automatic stay in Plaintiff's Chapter 13 to intervene in this action. (Exhibit 1)

Since Nationstar claims to have requested and then received the alleged original note from Fannie Mae's custodian, Bank of NY Mellon, on May 31, 2012, Nationstar had to have known it was not the owner of the mortgage and note, yet Nationstar still intentionally and

falsely claimed it was the owner before this Court at the hearing on its motion to intervene weeks later on July 18, 2012. Consequently, it is not plausible or believable to suggest that this was honest mistake on Nationstar's part, rather, it clearly was an intentional fraud upon this Court that has resulted in harm and prejudice to the Plaintiff that she would not have suffered but for Nationstar's misconduct.

Nationstar was granted the opportunity yet refused to produce contractual evidence proving the legitimacy of its claims during discovery.

In response to Nationstar's notice and motion to intervene, the Court granted Nationstar the opportunity to prove the legitimacy of its claims during discovery. Instead, Nationstar refused to completely answer most of Plaintiff's discovery requests and refused to make any voluntary good faith effort to cure the deficiencies that she complained of in her letter of October 15, 2012. Therefore, it is fair and reasonable to assume that Plaintiff's allegations in her pleadings are true and correct as to Nationstar.

In addition, on November 7, 2012, Nationstar filed a notice in Plaintiff's bankruptcy case regarding its intent to add to the principal of the mortgage approximately \$20,000 for its attorney fees and costs on the same date Plaintiff had emailed her October 15, 2012 letter to Nationstar's counsel, Ms. Wallace, who claimed she not had not seen it and suggested Plaintiff may not have mailed it.

Since Nationstar does not own the mortgage and therefore is not entitled to recover its attorney fees and costs from Plaintiff, she reasonably saw this notice as a threat or intimidation tactic intended to discourage her from pursuing the outstanding discovery responses, which was improper and abusive. The foregoing actions are not ones that an innocent, respectable party
would typically engage in.

The Court denied Plaintiff's motion to compel against Nationstar and her motion for reconsideration without a hearing on her motion for reconsideration, not because her motion and discovery requests lacked relevancy or merit, but rather, the denial was largely based upon Nationstar's erroneous interpretations and applications of bankruptcy law to this action. Consequently, it is fair and reasonable to dismiss Nationstar from this action based upon the discovery documents that are currently available, none of which prove the legitimacy of Nationstar's claims.

Nationstar misled this Court to believe Plaintiff lacks standing and res judicata applies in this action, which unjustly prejudiced Plaintiff's case.

Nationstar apparently believed that a Chapter 13 debtor does not have standing to file a declaratory judgment action in state court, that only the Chapter 13 trustee has standing to file such an action, and that a confirmed Chapter 13 plan is automatically *res judicata* now and forevermore on all issues related to the mortgage and note. The foregoing conclusions are false and not supported by applicable law, reality in practice, or common sense, but unfortunately, Nationstar misled the Court to believe its conclusions were true.

As a result, the Court arbitrarily declined to grant Plaintiff a hearing on her motion for reconsideration of the orders denying her motion to amend and motion to compel on those grounds and also denied her motion for temporary stay. In doing so, the Court denied Plaintiff sufficient time and opportunity to prove Nationstar's conclusions were incorrect before the Court prejudiced her case even further by ordering her to attend a formal mediation with Nationstar. In addition, the Court's actions emboldened Nationstar to file a meritless motion seeking dismissal of this case, even though Nationstar lacks standing to be here as a defendant in the first place,

and to file a second notice of intent to charge Plaintiff thousands of dollars more in attorney fees

and costs in the bankruptcy court, which added insult to injury.

Plaintiff, a Chapter 13 debtor in possession of the property of the estate, has standing to file, prosecute and resolve this state court action in her own name with or without permission of the bankruptcy court or the trustee, and her confirmed Chapter 13 plan is not automatically now and forevermore *res judicata* as to any issue she has raised in this action. Plaintiff's detailed explanation of the facts, circumstances and applicable law, which demonstrate Plaintiff's interpretations, applications and conclusions are correct on these issues, is attached hereto as **Exhibit 7** and incorporated herein by reference.

Nationstar improperly intervened and filed unmeritorious claims and contentions for purposes that are improper, predatory, unconscionable, fraudulent or unlawful, which constitutes an abuse of process.

Nationstar improperly intervened and filed unmeritorious claims and contentions in an attempt to delay or avoid suffering the consequences of its own abusive, fraudulent or criminal actions, as well as those of Old South, Flagstar and Fannie Mae. Nationstar committed a fraud upon this Court seeking to protect other frauds or unlawful acts that had been committed so that it could continue to collect payments and maintain the right to foreclose based upon fraudulent claims and invalid documents while it has no interest in equity in Plaintiff's home, which is unjust enrichment and unconscionable. Nationstar knows or should know that it is not the proper function of any court of law to aid and reward wrongdoers whose intentional torts or illegal acts have been proven before the court by a preponderance of the evidence. Therefore, Nationstar's actions demonstrate its contempt of the courts, of the law, and of Plaintiff's rights.

Nationstar has made its predatory intentions clear by its statements during hearings
before this Court as well as its two notices filed in Plaintiff's bankruptcy case that it intends to

add approximately \$46,000 to the principal of the mortgage in attorney fees and costs it has allegedly incurred or paid defending this action to date. Nationstar also intends to thereby create an artificial arrearage on the mortgage while Plaintiff is current on her payments and then attempt foreclose on her home for being unable to pay a \$46,000 debt she does not owe because it is based upon fraudulent claims and invalid documents. Nationstar is apparently planning to further abuse the court system seeking to punish Plaintiff for exposing what the Defendants have done and for attempting to protect and defend her interests and rights in her property by filing this action. An excerpt of a hearing transcript and the notices demonstrating these facts are attached hereto as **Exhibit 8** and incorporated herein by reference.

This is not only predatory but also unconscionable. First, Nationstar has intentionally lied to the courts about material facts whereas Plaintiff's allegations have been proven true or are supported by documentary evidence and applicable law when applied correctly and justly. Second, Plaintiff is pro se and bankrupt whereas Nationstar is represented by counsel and receives millions of dollars in income. Third, Plaintiff's home is a de-titled double wide trailer in a rural area situated on an unpaved road in between an unfinished house with an unkempt yard and another de-titled double wide trailer. It is far from prime real estate; on the contrary, manufactured homes in Plaintiff's neighborhood have sold for about \$40,000 or less, which is also less than the \$46,000 Nationstar intends to bill Plaintiff for its attorney fees and costs.

Nationstar's claim that it is the "holder of the note" is misleading and irrelevant.

We do not know why exactly Bank of NY Mellon purportedly sent the alleged original note to Nationstar upon request in late May 2012, and we do not know what exactly Nationstar told Fannie Mae's bankruptcy department on May 29, 2012, because Nationstar refused to produce a copy of the email it purportedly sent to Fannie Mae's bankruptcy department on that

date.

Nationstar's actions demonstrate that it did not intervene to defend Fannie Mae's alleged interests in this action. Nationstar is not here representing or defending Fannie Mae and cannot reasonably be permitted to do so after falsely claiming ownership of the mortgage before the courts to obtain permission to intervene. In addition, Nationstar refused to provide any contractual evidence that Fannie Mae had authorized it to do so before Nationstar intervened on May 9, 2012. Consequently, it is fair and reasonable to assume that Fannie Mae has not granted its informed consent to what Nationstar has been doing in this action exactly and for what reasons exactly.

Furthermore, since Nationstar does not own the mortgage and note, it is not the "holder of the note" and to suggest otherwise is misleading. Nationstar's counsel is purportedly storing the alleged original note in her office as a temporary custodian while this action is pending, but this does not mean that Nationstar has any actual contractual rights or authority with respect to the subject mortgage and note and in this action specifically. Indeed, Plaintiff contends Nationstar does not have any such rights or authority.

Fannie Mae's silence cannot be interpreted as consent in this case where Nationstar has intentionally and falsely claimed ownership of the mortgage before this Court, then improperly attempted to change its position from "owner" to "servicer" in this action, and then refused to produce any contractual evidence showing that Fannie Mae had intentionally or expressly authorized Nationstar to do anything it has been doing since 2009 to the present. Worse yet, Nationstar also refused to disclose whether or not it has been sending Plaintiff's mortgage payments to Fannie Mae since 2009, so it is fair and reasonable to assume that Nationstar had not sent those payments to Fannie Mae and Nationstar had kept those funds for its own use, which

amounts to conversion.

Furthermore, if Nationstar truly had all the rights, informed consents or written authorizations on or before the relevant dates, it made little sense for Nationstar to work so hard to prevent Plaintiff from naming and serving Fannie Mae as a defendant in this action. Nationstar complained of rising attorney fees and costs yet it chose to spend the time and money opposing rather than simply consenting to Plaintiff's motion to amend for that purpose.

There would have been no harm to Nationstar if Plaintiff had served the complaint on Fannie Mae if Fannie Mae supposedly knew everything and then had consented to everything that has been going on here. It seems more likely that the appropriate managing officers at Fannie Mae did not necessarily know *everything* that has been going on here and would not necessarily consent to *all* of it if they did, which means Nationstar's claim that it is "holder of the note" is misleading and irrelevant. Although Nationstar claims to have shown the original note to this Court and Plaintiff in July 2012, the alleged original note has not been confirmed to be the original by an expert document examiner; therefore, Plaintiff does not know for sure that it is the original she signed at the closing, so she has not and will not admit that it is the original.

The subject mortgage and note are invalid, unenforceable, non-transferrable and are therefore dead.

Plaintiff's signature was obtained on the mortgage and note and other closing documents under false pretenses on October 5, 2007. There were fraudulent misrepresentations of material facts, omissions of material facts, and illegal acts that render the mortgage and note invalid, unenforceable, non-transferable and dead as of the dates of origination and first recording at the county register of deeds on October 9, 2007. The mortgage contract does not meet all the required common law elements. There was no meeting of the minds, there was no informed

consent, there was no consideration and performance, and it is an unconscionable contract to which Plaintiff cannot be justly bound.

The original mortgage and note identified Old South Mortgage Corp as the "Lender" and so Plaintiff reasonably assumed Old South was the actual "Lender" and that the separate notices she had signed at the closing identifying Flagstar Bank as the "Servicer" meant that Flagstar was going to be the "Servicer" for Old South (i.e., the collector of Plaintiff's mortgage payments and manager of Plaintiff's escrow account for Old South). There was no other logical interpretation of the closing documents since the mortgage would be subsequently recorded in the county register of deeds and would and did establish a first mortgage lien in the name of Old South. The mortgage, note and notices are attached hereto as **Exhibit 9** and incorporated herein by reference.

The documents speak for themselves and show there were two distinct, separate roles in the transaction—Old South was the "Lender" and Flagstar was the "Servicer"—and since Old South was the only "Lender" identified in the mortgage and note, it was reasonable for Plaintiff to assume that Old South owned the mortgage and that Flagstar would be servicing the mortgage for the owner, Old South, because no one explained otherwise to Plaintiff at the closing. On the contrary, Plaintiff's closing attorney pointed it out in the mortgage and note that Old South was the "Lender." Any reasonable person would interpret "Lender" in an original mortgage and note as the one who actually financed the purchase of the home and who owns those instruments, and that is how Plaintiff interpreted "Lender" at the closing when she signed the closing documents.

Those were the pretenses under which Plaintiff signed the mortgage and note and began making her payments on November 1, 2007. During the time period November 2007 to November 2011, Plaintiff did not know or suspect that anything fraudulent or unlawful had

occurred and therefore made her payments believing that the mortgage and note were valid and enforceable, and if she defaulted, she would lose her home to foreclosure. It was in November 2011 when she became very suspicious that Nationstar does not own the mortgage or that the mortgage and note may be invalid for some reason after Nationstar started behaving unreasonably and abusive toward Plaintiff.

In April 2011, Plaintiff filed a Chapter 13 to resolve her unsecured debts within her ability to repay. Since Plaintiff had never defaulted in making the mortgage payments, there was no arrearage on the mortgage, and so for all intents and purposes, Nationstar was going to be exempt from the Chapter 13 plan that is administered by the trustee. Nevertheless, Nationstar terminated Plaintiff's monthly billing statements, online account access, and automated account access over the phone. At first, Plaintiff did not see that as unreasonable when she filed her Chapter 13 case, but after her amended Chapter 13 plan was confirmed in June 2011, she called Nationstar demanding that it reinstate her monthly billing statements, etc., because it is a Chapter 13 and she was going to continue to pay the mortgage payments to Nationstar directly just as she had been doing since 2009 and like nothing had changed. The amended plan basically says a secured creditor sending such statements is not a violation of stay.

Nationstar repeatedly refused to reinstate Plaintiff's monthly billing statements and online account access. In doing so, Nationstar ignored the letter Plaintiff's bankruptcy attorney sent indicating it has permission and ignored the inquiries the South Carolina Department of Consumer Affairs had made on Plaintiff's behalf in response to her complaint that Nationstar's actions were unreasonably prejudicial to her consumer rights.

Nationstar wrote letters to the Department basically stating Nationstar "does not provide contractual statements or online access to customers that have been involved in bankruptcy

unless the debt was reaffirmed. [...] Since the debt has not been reaffirmed through the Bankruptcy court, Nationstar Mortgage has agreed to send a payment coupon booklet in lieu of contractual statements." The letters are attached hereto as **Exhibit 10** and incorporated herein by reference.

Plaintiff viewed those actions as abusive, predatory, bad faith and a breach in the contract that a court may determine would put a reasonable person on notice he/she may have a claim. This prompted Plaintiff to investigate all aspects of the mortgage from start to finish over a period of several weeks beginning in November 2011, and based on her discoveries, she was then in a position to write and file her declaratory judgment complaint in this action in March-April 2012.

During the November 2011-May 2012 time period, Plaintiff discovered that Old South was not the actual "Lender" and that she had been defrauded and unlawful acts occurred that render the mortgage and note invalid. Old South admitted in its answer to the complaint that "it did not loan money to Plaintiff" and admitted "Flagstar did not loan money to Plaintiff for the purchase of her home." Old South again admitted in its response to interrogatories in effect that Old South was not the actual "Lender" but had intentionally caused or allowed itself to be identified as the "Lender" in the original mortgage and note purportedly because, "This was required by Flagstar Bank." In addition, since Old South did not respond to Plaintiff's Request for Admissions, all the matters therein are deemed admitted pursuant to Rule 36, SCRCP. Old South's answer to complaint, response to interrogatories and admissions are attached hereto as **Exhibit 11** and incorporated herein by reference.

~~In its response to interrogatories, Old South retracted its admission in its answer to the~~
complaint that Flagstar was not the actual lender either, presumably at Nationstar's coaching to

support Nationstar's contrived defenses raised in Nationstar's motion and memoranda seeking dismissal of this action.

If necessary, Plaintiff was going to conduct further discovery to determine the source of the funds given to the seller at the closing on the purchase of her home. However, on April 26, 2013, Plaintiff discovered another public website of Fannie Mae's, "KnowYourOptions.com" that states, "Fannie Mae Loan Acquisition Date: 10-01-2007". Since Plaintiff signed the mortgage and note at the closing on October 5, 2007, Fannie Mae's records show that Fannie Mae was the source of the funding, which means neither Old South nor Flagstar were the actual "Lenders" just as Plaintiff had suspected and alleged in her pleadings and just as Old South had initially admitted in its answer to Plaintiff's complaint. The "KnowYourOptions" website printout is attached hereto as **Exhibit 12** and incorporated herein by reference.

Some attorneys refer to what Old South and Flagstar had done as "pretender lenders" and "decoy assignments" on the note to hide who was really lending in the primary market behind the scenes without the borrowers' knowledge and consent and without being licensed or authorized by federal or state law to do so. Fannie Mae admits in its official website that, "Our charter does not permit us to originate loans or lend money directly to consumers in the primary mortgage market." Fannie Mae's "Our Charter" website page printout is attached hereto as **Exhibit 13** and incorporated herein by reference.

Fannie Mae cannot lawfully hire "pretender lenders" who affix "decoy assignments" on notes and immediately slide the notes under the table to Fannie Mae without the borrowers' prior knowledge and consent, and Fannie Mae cannot lawfully violate its government charter and lend money directly to consumers in the primary mortgage market in this fraudulent manner. Doing that and often getting away with it does not make it right or legal. Plaintiff contends this is not

only unlawful, but it is also unconscionable because what they did prejudiced her consumer right of choice between lenders and loan products. She was not seeking a loan from Fannie Mae or any form of government loan, and Old South had promised her conventional financing, which means it was not supposed to be guaranteed by the federal government. Old South's prequalification letter is attached hereto as Exhibit 14 and incorporated herein by reference.

Plaintiff did not authorize Fannie Mae to "lend" her money to finance the purchase of her home in October 2007, and she did not enter into a mortgage contract with Fannie Mae. Consequently, Fannie Mae of its own free will voluntarily gave the money to the seller without obtaining Plaintiff's informed consent and therefore has no legal right of repayment and has no legal right to assert and maintain a lien against her home.

During the time period October 2007 to 2011, Plaintiff was not unreasonably researching a mortgage she thought was valid and transferable when she signed it, and she was not looking for Fannie Mae or anyone else hiding under the covers, because Old South was supposed to have owned the mortgage, her loan was supposed to have been "conventional", Fannie Mae was not supposed to be lending in the primary market, and no one had mailed her any actual notice clearly explaining what had actually happened at the closing and thereafter.

In addition, pursuant to the South Carolina Statute of Frauds, any agreement that involves real property must be in writing and signed by Plaintiff, and since there is no such agreement between Fannie Mae and Plaintiff, Fannie Mae cannot bring any civil action against Plaintiff on such a contract that does not exist in writing and is not signed by her. Since Old South did not lend Plaintiff any money, the mortgage contract lacks the essential common law elements of consideration and performance by Old South, and is therefore invalid and non-transferable on those grounds as well.

When Plaintiff signed the mortgage and note in 2007, she had never heard of MERS, which is akin to a shell company, and she was completely unaware of the unconscionable scheme Fannie Mae and others involved in the mortgage industry created through the use of MERS in order to hide from borrowers who was going to be the actual owner of the mortgage and primary beneficiary of the mortgage payments as of the dates of the origination and recording of the mortgage and thereafter because the hidden entity was not authorized to lend in the primary market or would be subject to punitive taxes or fees for doing so, as it is in the case of a REMIC.

Plaintiff discovered that they created MERS, who operates an electronic registry for its members, with the intent to bypass proper recordings of mortgages and assignments in the county register of deeds, and that MERS was not being audited or regulated by federal authorities; consequently, the MERS registry is an unreliable source to determine with certainty who owns Plaintiff's mortgage, and loan servicers routinely lie about that material fact.

This means just like Nationstar did in Plaintiff's case, any company can come forward at any time and falsely claim ownership of the mortgage without actually purchasing it and make false claims against Plaintiff based on invalid documents because nothing will ever be properly disclosed to her in the form of actual, unambiguous notice and then recorded and tracked at the county register of deeds. This makes it an unconscionable contract. No reasonable person would agree to that, and Plaintiff did not knowingly and intentionally agree to that. Plaintiff had a right at all times to know who actually owned the mortgage and who was profiting from her payments. She has done nothing wrong, she pays thousands of dollars in federal, state and local taxes annually, and she did not deserve to be told lies about those material facts and to be defrauded by those who claim to be acting on behalf of a government-sponsored enterprise.

When Plaintiff signed the mortgage and note, she disregarded the mention of MERS in the mortgage as meaningless boilerplate form language because MERS was not mentioned in the note and because Old South was identified as the "Lender" in both the mortgage and note.

In South Carolina, the mortgage follows the note, so if the note says Old South is the "Lender", then it is a fiction to say that MERS is mortgagee in the mortgage. First, "nominee for lender" is not a legally recognized term that has existed in over 100 years of property law. Second, one cannot legally split the mortgage from the note. The mortgage and note were not sold or transferred to MERS, and it was a fiction to suggest MERS is the first mortgagee while Old South is the first note holder. That is impossible under South Carolina law and is therefore a nullity, and that is why I disregarded that form language in the mortgage at the closing. What was most relevant and important was the material fact of who was identified as the "Lender" in the mortgage and note, and that was Old South.

In fact, when Plaintiff called and later visited the county register of deeds in person to inquire, the clerks told her on both occasions that "Old South Mortgage Corp" is the lien holder of record against her home. The clerks likewise did not recognize and record MERS as the lien holder, presumably for the same or similar reasons that Plaintiff had disregarded the reference to MERS as meaningless boilerplate form language in the mortgage. Only the actual "Lender" would own the note, have an interest in equity, and have the legal right to record and maintain a lien against real property in the county register of deeds, and any reasonable person would understand and interpret the mortgage that way.

What makes this even more ridiculous is Old South admitted in its answers to interrogatories that it was not a member of MERS and had no dealings with MERS, so there was no contractual relationship between Old South and MERS that would authorize MERS to act as

"nominee for lender" in the mortgage in any event. (Exhibit 11)

Generally, it is considered criminal offenses to obtain someone's signature under false pretenses and to intentionally file or cause the filing of a document in a government office that contains false or misleading statements. Since Old South was not the actual lender, and since Old South knew that and intentionally caused or allowed itself to be falsely identified as the "Lender" in the mortgage, and since Old South knew that mortgage would be subsequently recorded, the mortgage was obtained and recorded in the register of deeds unlawfully.

The mortgage does not identify an actual lender; therefore, the first mortgage lien was not recorded and perfected in the name of an actual lender in the county register of deeds and is therefore invalid, non-transferable, and dead. The mortgage lien is dead also because Old South has been a dissolved domestic corporation since December 2008 with no assignments having been recorded in the register of deeds prior to its dissolution. Old South had a mortgage lending license and therefore had to have known its actions were fraudulent and unlawful.

Apparently, Old South knowingly and intentionally participated in this scheme so that it could make fast cash without having to actually lend to borrowers and risk losses. Conveniently, when the financial crisis of 2008 hit and Fannie Mae and Freddie Mac were placed under federal government conservatorship, Old South decided to dissolve and destroyed its records. It is not believable the timing of that is mere coincidence, rather, it is more believable Old South anticipated that Plaintiff or others similarly situated would eventually discover and expose what Old South had done to the courts and to the federal, state and county governments, which would then subject it to potential claims.

The Defendant Old South Mortgage Corporation, the party Plaintiff had properly sued in the first place, is the only necessary party in this action.

This was Plaintiff's original position when she filed this action. Plaintiff subsequently filed a motion to amend her complaint to name and serve Fannie Mae as a defendant as a result of what the Court had done and said at the hearing on Nationstar's motion to intervene. However, the Court determined Fannie Mae is not a necessary party, denied Plaintiff's motion to amend, and arbitrarily denied Plaintiff's motion for reconsideration without a hearing; therefore, Plaintiff is not going to re-litigate that issue but reserves the right to raise it on appeal, if necessary.

Nevertheless, Plaintiff reported this matter to the Federal Bureau of Investigations, and the FBI agent recently recommended that she also report this matter to the Office of Inspector General, and she did so on April 26, 2013. The letters Plaintiff received from the Office of Inspector General and the Federal Housing Finance Agency in May 2013 are attached as **Exhibit 15** and incorporated herein by reference.

Plaintiff's declaratory judgment action does not prejudice any legal rights or remedies that Fannie Mae or the federal government may have to obtain compensation from those responsible for what happened in this case. On the contrary, Plaintiff voluntarily provided them with the pertinent information they would need to investigate and potentially recover on claims against those responsible if so minded.

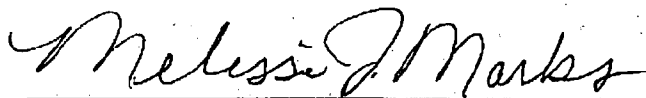
Plaintiff is not personally responsible or to blame for what happened and she is not legally liable for what happened because she did not knowingly and intentionally grant her informed written consent to any of it. Consequently, Plaintiff does not owe Nationstar, Fannie Mae or the federal government a dime, and they do not have the legal right to assert a lien against her home. Neither Fannie Mae nor Nationstar has any lawfully-obtained rights to defend in this action. Not only was the entire mortgage contract a disgraceful sham as of day one, but

they did not even bother to affix effective or credible endorsements as their "decoy assignments" on the alleged original note either.

Upon information and belief, the alleged endorsement on the note from Old South to Flagstar was not signed by an officer of Old South, rather, it was signed by a resident of Michigan situated in the same county as Flagstar's headquarters. Upon information and belief, the alleged "endorsement in blank" from Flagstar to no one is not actually hand-signed by an officer of the bank, rather, it is some form of stamp in its entirety, there is no blank line in the endorsement for the payee to fill in, and so it is not in proper form. In addition, according to Nationstar, there are no other unrecorded assignments in existence other than those endorsements on the note, which means there was no effective or credible assignment of the note to anyone and this brings us back to Old South, whom Plaintiff had properly sued in the first place. Clearly, Old South is the only necessary party in this action to be permitted to appear and defend if so minded.

WHEREFORE, in consideration of the foregoing, Plaintiff prays this honorable Court will dismiss solely Nationstar Mortgage, LLC from this action with prejudice.

Respectfully submitted,



Melissa Jean Marks
Plaintiff pro se
209 Presidential Court
Round O, SC 29474
(843) 599-3156
mjmarks68@hotmail.com

Round O, South Carolina
June 26, 2013

EXHIBIT 1

Nationstar's Fraudulent Claims of Ownership of the Mortgage and Note Submitted to the Courts

<u>Date</u>	<u>Document</u>	<u>Statement</u>
	<u>Bankruptcy Court:</u>	
4/29/2011	Form 10 Proof of Claim	"Name of Creditor (the person or other entity to whom the debtor owes money or property): Nationstar Mortgage, LLC"
5/9/2012	Motion for Clarification	"Movant is the current holder of a note ("Note") given by Melissa Marks ("Marks") to Old South Mortgage Corp, a South Carolina Corporation."
5/17/2012	Hearing on Nationstar's Motion for Clarification	Page 2, Lines 22-25: "And since Nationstar is the holder of that note, and the mortgage secures that note, Nationstar feels like we need to Intervene in that action to protect our interest and make sure that the mortgage isn't satisfied."
	<u>Colleton County Court of Common Pleas:</u>	
5/9/2012	Nationstar's Notice of Plaintiff's Chapter 13 Bankruptcy Filing and Notice of Appearance	"Nationstar Mortgage, LLC is the current holder of a promissory note which is secured by a mortgage originally made by Plaintiff to Defendant Old South Mortgage Corporation [...]"
5/31/2012	Nationstar's Motion to Intervene	"Nationstar respectfully requests that the court enter an order: a. Substituting Nationstar in place of Old South, John Does 1-100, and Fictitious Corporations 1-100 as the sole defendant in the present action; [...]"
7/16/2012	Nationstar's Opposition to Plaintiff's Motion for Summary Judgment	"In Plaintiff's Motion, she incorrectly refers to Nationstar as the servicer of the obligation. [...] Nationstar is the legal holder of the Note."
7/18/2012	Transcript of Hearing on Nationstar's Motion to Intervene	Page 4, Lines 12-25 - Page 5, Lines 1-3: "MS. WALLACE: We are the holder of the note and, actually, I have the original note. THE COURT: And how did you become the holder of the note? MS. WALLACE: It was transferred to us from Flagstar. THE COURT: So you purchased it from Flagstar?"

<u>Date</u>	<u>Document</u>	<u>Statement</u>
		MS. WALLACE: I don't have -- I would assume we did because I know that we had -- we're not part of Flagstar. I don't have all of that --- THE COURT: Your client is not as set forth in the Memorandum, merely servicing this account. MS. WALLACE: That is correct, Your Honor. We are not merely servicing --- THE COURT: You're the actual holder of this paper and you believe the plaintiff is indebted to you for the amount on the paper? MS. WALLACE: That is correct, Your Honor." Page 5, Lines 16-25: "THE COURT: All right. Now, since you tell me it was not transferred to you by Mr. Knobeloch's client, explain to me the history of this paper insofar as this mortgage is concerned so that I will understand how you came to be the person who claims to be the owner of this indebtedness. MS. WALLACE: The original note, Your Honor, is endorsed specifically to Flagstar Bank, without recourse, and then Flagstar Bank endorsed it and now Nationstar --- THE COURT: Old South to Flagstar, Flagstar to you? MS. WALLACE: Yes, Your Honor."
7/23/2012	Nationstar's proposed Order granting Nationstar's Motion to Intervene	"Nationstar then filed its Motion to Intervene claiming it is the current owner and holder of the Note and Mortgage, and is the real party in interest in this case."
8/2/2012	Order Granting Nationstar's Motion to Intervene	"Nationstar then filed its Motion to Intervene claiming it is the current owner and holder of the Note and Mortgage, and is the real party in interest in this case."

EXHIBIT 2

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Melissa Jean Marks,

Plaintiff,

vs.

Old South Mortgage Corporation; John Does 1-100; Fictitious Corporations 1-100; Nationstar Mortgage, LLC,

Defendant(s).

(501904-00001 HPW)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL DISTRICT
DOCKET NO.: 2012-CP-15-00262

**ORDER GRANTING NATIONSTAR
MORTGAGE, LLC'S MOTION TO
INTERVENE, DENYING MOTION TO
SUBSTITUTE PARTIES, AND
GRANTING PLAINTIFF'S MOTION TO
CONTINUE HEARING ON MOTION
FOR SUMMARY JUDGMENT**

This matter came before me at a hearing on July 18, 2012, on Nationstar Mortgage, LLC's ("Nationstar") Motion to Intervene filed June 4, 2012, and Plaintiff's Motion for Summary Judgment filed May 14, 2012. Harriet Pollitt Wallace, Esquire, appeared on behalf of Nationstar Mortgage, LLC, John F. Knobeloch, Esquire, appeared on behalf of Defendant Old South Mortgage Corporation, and Melissa Jean Marks appeared pro se. At the hearing, Marks moved for a continuance and leave to amend her Motion for Summary Judgment. These motions are also addressed in this Order.

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2012 AUG -2 AM 9:18

Nationstar's Motion to Intervene

On April 6, 2012, Plaintiff filed a complaint in the Court of Common Pleas of Colleton County seeking declaratory and injunctive relief from her obligations under the note dated October 4, 2007, in the original principal sum of \$76,000 ("Note") payable to Old South Mortgage Company ("Old South") and mortgage of the same date ("Mortgage") on property located at 209 Presidential Court, Round O, South Carolina 29474-4374 ("Property") which secures the Note. The named defendants in the action are Old South Mortgage Corporation, John Does 1-100, and Fictitious Corporations 1-100.

Because Plaintiff was in bankruptcy at the time Nationstar learned of this action, Nationstar sought and obtained an Order Modifying Stay from the United States Bankruptcy Court for the District of South Carolina granting it leave to intervene and assert its rights to the Note and Mortgage. Nationstar then filed its Motion to Intervene claiming it is the current owner and holder of the Note and Mortgage, and is the real party in interest in this case. To that end, Nationstar presented the original Note, endorsed in blank, to the Court at the hearing.

Upon timely application, the court shall allow anyone to intervene in an action: "(1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest." Rule 24(a), SCRPC. Nationstar points to Section 15-53-80 of South Carolina's Declaratory Judgment Act in support of relief under Rule 24(a)(1), which states that when declaratory relief is sought in an action "all persons shall be made parties who have or claim any interest which could be affected by the declaration, and no declarations shall prejudice the rights of persons not parties to the proceeding." S.C. Code Ann. § 15-53-80 (West 2012).

I find that Nationstar may intervene as a matter of right because both prongs of Rule 24(a) are satisfied. Section 15-53-80 grants Nationstar an unconditional right to intervene because the Plaintiff seeks a declaratory judgment that could affect Nationstar's claim under the Note and Mortgage, which satisfies Rule 24(a)(1). Nationstar claims an interest in the action that is not being protected by any other named party as contemplated in Rule 24(a)(2), because Old South is a dissolved corporation and is not claiming any interest in the Note and Mortgage, and none of the other defendants have been served. Since Plaintiff seeks declaratory and injunctive relief that would effectively allow her to avoid her obligations under the Note and Mortgage,

Nationstar is so situated that the disposition of the current action may, as a practical matter, impair or impede its ability to protect its' interests.

Despite Plaintiff's argument that allowing Nationstar to intervene would cause delay and expense as Old South consents to the relief Nationstar is seeking, and because John Docs 1-100 and Fictitious Corporations 1-100 were not served with process, I find that no named party will be prejudiced by Nationstar's intervention in this case.

Thus, Nationstar's Motion to Intervene is hereby GRANTED, and Nationstar shall have thirty (30) days from July 18, 2012, to serve its answer. I further find that Nationstar may not file a Motion to Dismiss in lieu of an answer.

Nationstar's Motion to Substitute Parties

In its Motion to Intervene, Nationstar also asked the court to dismiss the named parties in this action and substitute Nationstar as the sole defendant pursuant to Rule 25, SCRPC. Rule 25(c) provides that an "action may be continued by or against the original party unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party." At this time, while Nationstar Mortgage shall be joined with the original parties, I find that the original parties will remain parties in the action and I order the caption of the case be amended to include Nationstar Mortgage, LLC. Therefore, Nationstar's Motion to Substitute Parties is hereby DENIED.

Plaintiff's Motion To Continue Hearing on her Motion for Summary Judgment

In light of Nationstar's Motion to Intervene, Plaintiff was given the opportunity to request a continuance for the hearing on her Motion for Summary Judgment and, should she so desire, to amend her Motion for Summary Judgment upon receipt of Nationstar's Answer. Accordingly,

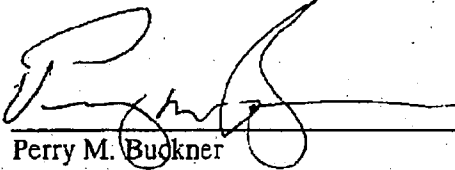
Plaintiff's Motion for Continuance and Motion to Amend are hereby GRANTED.

25(c) provides that an "action may be continued by or against the original party unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party." At this time, while Nationstar Mortgage shall be joined with the original parties, I find that the original parties will remain parties in the action and I order the caption of the case be amended to include Nationstar Mortgage, LLC as a defendant. Therefore, Nationstar's Motion to Substitute Parties is hereby DENIED.

Plaintiff's Motion To Continue Hearing on her Motion for Summary Judgment

In light of Nationstar's Motion to Intervene, Plaintiff was given the opportunity to request a continuance for the hearing on her Motion for Summary Judgment and, should she so desire, to amend her Motion for Summary Judgment upon receipt of Nationstar's Answer. Accordingly, Plaintiff's Motions for Continuance on her Motion for Summary Judgment and for leave to Amend her Motion for Summary Judgment are hereby GRANTED.

IT IS SO ORDERED.


Perry M. Buckner
Judge, Fourteenth Judicial Circuit

July 26, 2012
Walterboro, SC

EXHIBIT 3

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

MELISSA JEAN MARKS,

Plaintiff,

Vs.

OLD SOUTH MORTGAGE
CORPORATION, JOHN DOES 1-100, AND
FICTITIOUS CORPORATIONS 1-100,

Defendants.

AND

Nationstar Mortgage, LLC,

Intervenor/Defendant.

(HPW 501904-00001)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL CASE NO. 2012-CP-15-262

NATIONSTAR MORTGAGE, LLC'S
ANSWER TO PLAINTIFF'S
INTERROGATORIES TO DEFENDANT
NATIONSTAR MORTGAGE, LLC

1. Give the names and addresses of persons known to you or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

A. A representative of Nationstar is expected to testify concerning the payment history, the loan account, loan documents and business records pertaining to the loan which is the subject of this action. No written or recorded statements have been taken from this witness. Nationstar has not yet identified the representative which will be called in this case. Once it does, Nationstar will update this Interrogatory.

B. Melissa Jean Marks is the Plaintiff in this matter. She is expected to ~~testify regarding the facts and circumstances that are the subject matter of this case.~~ Plaintiff is not aware of any written or recorded statements of this party.

2. List the names and addresses of any expert witnesses whom you propose

to use as a witness at trial of the case.

ANSWER: Nationstar has not retained an expert witness at this time, but reserves the right to name one in the future. In that event, Nationstar will update its answer to this interrogatory.

3. For each person known to you or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

ANSWER: See Answer to Interrogatory 1 above.

4. State the name, address, and corporate title(s) or affiliation of each of your agents, officers, directors, shareholders, employees, contractors, or affiliates that have provided or will provide the required information and documents to respond to Plaintiff's pleadings, discovery requests, and at trial.

ANSWER: Monica Nguyen, Bankruptcy Manager. Address: Nationstar Mortgage LLC, 350 Highland Drive, Lewisville, TX 75067

5. Explain how you obtained the note, a copy of which is attached as Exhibit A for your reference, and the original of which was presented to the Colleton County Court of Common Pleas for in camera inspection during the hearing on your Motion to Intervene on July 18, 2012, and include in the response from whom the note was obtained, from where the note was obtained, and the date the note was obtained.

ANSWER: Nationstar requested the original note from Fannie Mae's custodian, Bank of NY Mellon, and Nationstar received the original note from Bank of NY Mellon on May 31, 2012. Thereafter, Nationstar forwarded the original note to its counsel, Rogers Townsend &

Thomas, PC.

6. Explain how you obtained the servicing rights to Plaintiff's home loan account #0596566959 and the subject mortgage and note, and include in the response the name of the entity or person that assigned or transferred the servicing rights to you, the date of the assignment or transfer, and the amount you paid to obtain the servicing rights, if any.

ANSWER: Nationstar objects to this Interrogatory on the grounds that the information requested is not discoverable under Rule 26, SCRPC because the information requested is not relevant to the subject matter and allegations in the Complaint and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, Fannie Mae, as the owner of the loan, transferred the servicing rights of the loan to Nationstar on or about October 1, 2009.

7. Did Flagstar Bank transfer Plaintiff's home loan account and the subject mortgage and note to you for servicing as part of a bulk transfer along with a number of other home loan accounts, mortgages and/or notes during the time period August 2009 through October 2009?

ANSWER: Nationstar objects to this Interrogatory on the grounds that the information requested is not discoverable under Rule 26, SCRPC because the information requested is not relevant to the subject matter and allegations in the Complaint and is not reasonably calculated to lead to the discovery of admissible evidence.

8. Do you own the subject mortgage and note? If so, state the amount you paid for the purchase. If not, state the name, address and agent for service of process of the current owner of the subject mortgage and note.

ANSWER: Fannie Mae is the owner of the note and mortgage. Fannie Mae's address and agent for service of process is of public record.

9. Do you disburse or have you disbursed to another entity or person a percentage of

Plaintiff's mortgage payments toward principal and interest? If so, state the name(s) of each entity or person to whom the disbursements are/were made, the percentage of the payments that entity or person receives/received, and how often the disbursements are/were made to each entity or person.

ANSWER: Nationstar objects to this Interrogatory on the grounds that the information requested is not discoverable under Rule 26, SCRPC because the information requested is not relevant to the subject matter and allegations in the Complaint and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, South Carolina's version of Article 3 of the Uniform Commercial Code and the contractual terms of the Note and loan documents signed by Plaintiff controls how the amount of the monthly payments are determined, who is entitled to enforce the terms of the note and mortgage, and who is entitled to receive loan payments.

10. Explain in detail the methods and amounts that you have been and are being paid to service Plaintiff's home loan account # 0596566959 and the subject mortgage and note, and include in the response details such as whether you retain a percentage of Plaintiff's mortgage payments toward principal and interest, and if so, the percentage you retain, or whether you receive periodic lump sum payments from the owner or other entity or person, and if so, whether such lump sum payments are for servicing a group of home loan accounts which includes Plaintiff's account, and if so, the name of the group, and whether the lump sum payments would be reduced if Plaintiff paid off her mortgage today, and if so, the amount of reduction.

ANSWER: Nationstar objects to this Interrogatory on the grounds that the information requested is not discoverable under Rule 26, SCRPC because the information requested is not relevant to the subject matter and allegations in the Complaint and is not reasonably calculated to

lead to the discovery of admissible evidence. Subject to this objection, see Answer to Interrogatory #9.

11. State the name(s) of the entity or person who currently pays you or authorizes you some form of compensation in payment for servicing Plaintiff's home loan account # 0596566959 and the subject mortgage and note, and if applicable, the names of each entity or person who has done so in the past.

ANSWER: Nationstar objects to this Interrogatory on the grounds that the information requested is not discoverable under Rule 26, SCRCP because the information requested is not relevant to the subject matter and allegations in the Complaint and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, see Answer to Interrogatory #9.

12. Did you notify Fannie Mae and/or any other entity or person that may claim to have an interest in the subject mortgage and note regarding the contents of Plaintiff's Complaint and/or forward a copy of Plaintiff's Complaint? If so, list the document(s) in which this information was disclosed or forwarded, including the name(s) of the recipient(s) and date(s) of such document(s).

ANSWER: Yes. Notification was sent to Bankruptcy.Administration@fanniemae.com on May 29, 2012.

13. Do you have the express written permission of Fannie Mae and other entities or persons that may claim to have an interest in the subject mortgage and note to appear and defend their interests on their behalf in this particular action? If so, list the document(s) in which such permission was granted, including the date(s) of such document(s).

ANSWER: Nationstar objects to this Interrogatory on the grounds that the Interrogatory

is vague, the information requested is not discoverable under Rule 26, SCRCP because the information requested is not relevant to the subject matter and allegations in the Complaint and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, Nationstar, as the loan servicer, qualifies as a "person entitled to enforce" the Note pursuant to S.C. Code Ann. § 36-3-301." *In re Full*, 09-05650-jw, Doc. 65, p.16 (Bankr. D.S.C. 2012) (citing *In re Neals*, 459 B.R. 612, 617-19 (Bankr. D.S.C. 2011)).

14. Explain why you misrepresented to the federal bankruptcy court in your Form 10 claim form, a copy of which is attached as **Exhibit B** for your reference, that you are the "Creditor (the person or other entity to whom the debtor owes money or property)" instead of disclosing the name of the entity or person who owns the subject mortgage and note in that block of the form.

ANSWER: Nationstar objects to the form of this Interrogatory on the grounds that it implies Nationstar made a misrepresentation to the Court, which is untrue. See *In re Full*, 09-05650-jw, Doc. 65, p.16 (Bankr. D.S.C. 2012) (citing *In re Neals*, 459 B.R. 612, 617-19 (Bankr. D.S.C. 2011)). Furthermore, Plaintiff admitted in her bankruptcy petition and Chapter 13 plan that Nationstar was the proper party to enforce the terms of the Note and collect payments, and Plaintiff's attempt to take a contrary position on this issue is barred.

15. Explain why you did not disclose to the federal bankruptcy court in the Motion for Clarification you filed in Plaintiff's Chapter 13 case on May 9, 2012, and at the hearing before the court regarding same on May 17, 2012, that you are not the owner of the subject mortgage and note, the name of the owner, and under what capacity and authority you are authorized to act on behalf of the owner.

ANSWER: Nationstar, as the loan servicer, qualifies as a "person entitled to enforce" the

Note pursuant to S.C. Code Ann. § 36-3-301." *In re Full*, 09-05650-jw, Doc. 65, p.16 (Bankr. D.S.C. 2012) (citing *In re Neals*, 459 B.R. 612, 617-19 (Bankr. D.S.C. 2011)). Furthermore, Plaintiff admitted in her bankruptcy petition and Chapter 13 plan that Nationstar was the proper party to enforce the terms of the Note and collect payments, and Plaintiff's attempt to take a contrary position on this issue is barred.

16. Explain why you in effect misrepresented to the federal bankruptcy court in the Form 10 claim form, the Motion for Clarification, and at the hearing before the court regarding same that you are the only interested party in the subject mortgage and note.

ANSWER: Nationstar objects to the form of this Interrogatory on the grounds that it implies Nationstar made a misrepresentation to the Court, which is untrue. *See In re Full*, 09-05650-jw, Doc. 65, p.16 (Bankr. D.S.C. 2012) (citing *In re Neals*, 459 B.R. 612, 617-19 (Bankr. D.S.C. 2011)). Furthermore, Plaintiff admitted in her bankruptcy petition and Chapter 13 plan that Nationstar was the proper party to enforce the terms of the Note and collect payments, and Plaintiff's attempt to take a contrary position on this issue is barred.

17. Explain why you did not disclose to the Colleton County Court of Common Pleas at the hearing before the court on your Motion to Intervene on July 18, 2012, or in any of your notices and pleadings filed in the court prior to the hearing date, that you are not the owner of the subject mortgage and note, the name of the owner, and under what capacity and authority you are authorized to act on behalf of the owner.

ANSWER: Nationstar objects to the form of this Interrogatory on the grounds that it implies Nationstar made a misrepresentation to the Court, which is untrue. Furthermore, Nationstar, as the loan servicer, qualifies as a "person entitled to enforce" the Note pursuant to S.C. Code Ann. § 36-3-301." *See In re Full*, 09-05650-jw, Doc. 65, p.16 (Bankr. D.S.C. 2012)

(citing *In re Neals*, 459 B.R. 612, 617-19 (Bankr. D.S.C. 2011)). In addition, Nationstar is the holder of the Note in that it is possession of the original note, endorsed in blank, and has authority to enforce the Note. Finally, Plaintiff admitted in her bankruptcy petition and Chapter 13 plan that Nationstar was the proper party to enforce the terms of the Note and collect payments and any attempt by Plaintiff to take a contrary position on this issue is barred.

18. Explain why you in effect misrepresented to the Colleton County Court of Common Pleas that you are the only interested party in the subject mortgage and note on July 18, 2012, and in all communications or documents submitted to the court prior to that date.

ANSWER: Nationstar objects to the form of this Interrogatory on the grounds that it implies Nationstar made a misrepresentation to the Court, which is untrue. Furthermore, Nationstar, as the loan servicer, qualifies as a "person entitled to enforce" the Note pursuant to S.C. Code Ann. § 36-3-301." See *In re Full*, 09-05650-jw, Doc. 65, p.16 (Bankr. D.S.C. 2012) (citing *In re Neals*, 459 B.R. 612, 617-19 (Bankr. D.S.C. 2011)). In addition, Nationstar is the holder of the Note in that it is possession of the original note, endorsed in blank, and has authority to enforce the Note. Furthermore, Plaintiff admitted in her bankruptcy petition and Chapter 13 plan that Nationstar was the proper party to enforce the terms of the Note and collect payments, and Plaintiff's attempt to take a contrary position on this issue is barred.

19. Explain why you, by and through your counsel, reported to Judge Buckner and the parties via email subsequent to the hearing on your Motion to Intervene on July 18, 2012, that you are not the owner of the subject mortgage and note and that you wished to strike the word "owner" from your proposed Order granting your Motion to Intervene in this action.

ANSWER: Any failure to disclose Fannie Mae as the owner of the Note was inadvertent and brought to the Court's attention as soon as the error was discovered and prior to any order

being signed by the Court. Nationstar, as the loan servicer, qualifies as a "person entitled to enforce" the Note pursuant to S.C. Code Ann. § 36-3-301." See *In re Full*, 09-05650-jw, Doc. 65, p.16 (Bankr. D.S.C. 2012) (citing *In re Neals*, 459 B.R. 612, 617-19 (Bankr. D.S.C. 2011)). In addition, Nationstar is the holder of the Note in that it is possession of the original note, endorsed in blank, and has authority to enforce the Note. Finally, Plaintiff admitted in her bankruptcy petition and Chapter 13 plan that Nationstar was the proper party to enforce the terms of the Note and collect payments.

20. Explain why the bar code at the bottom of Page 3 of 3 of the copy of the note in Exhibit A is different than the bar code at the bottom of Page 3 of 3 of the copy of the note in Exhibit B, and include in the response an explanation why the bar code on Page 3 of 3 of the note in Exhibit B bears the wrong address of "229 Presidential Ct" and why the bar code on Page 3 of 3 of the note in Exhibit A bears the correct address of "209 Presidential Ct". To aid you in your response, enlarged copies of these bar codes are attached as Exhibit C.

ANSWER: All copies of the notes on this file the bar code are all the same.

21. Explain why the copy of the note you attached to your bankruptcy Form 10 claim form does not include a copy of Flagstar Bank's purported endorsement in blank. (Exhibit B)

ANSWER: The endorsement is on the back of the original Note, and only the front of the Note was copied. Furthermore, Plaintiff admitted in her bankruptcy petition and Chapter 13 plan that Nationstar was the proper party to enforce the terms of the Note and collect payments, and Plaintiff's attempt to take a contrary position on this issue is barred.

22. Explain why none of the endorsements on the copy of the note you submitted to the Colleton County Court of Common Pleas are dated and notarized to validate the dates on which the note was endorsed and to validate that the person or persons that signed the

endorsements were in fact the persons that had lawful authority to do so. (Exhibit A)

ANSWER: See Answer to Interrogatory #21.

23. Explain why Flagstar Bank's purported endorsement in blank on the note does not contain a blank line or blank space between "PAY TO THE ORDER OF" and "WITHOUT RECOURSE FLAGSTAR BANK, FSB" in the endorsement. (Exhibit A)

ANSWER: Nationstar objects to this Interrogatory on the grounds it implies a legal requirement which does not exist.

24. Explain on what legal basis you believe you can lawfully collect on the note while the note has a purported endorsement in blank from Flagstar Bank that has not been signed or stamped by the payee/assignee and therefore does not identify the current owner of the note and does not show that the assignment or transfer of the note has been perfected. (Exhibit A)

ANSWER: Nationstar objects to this Interrogatory on the grounds it implies a legal requirement which does not exist.

25. Explain how you obtained the copy of the note that is attached to the Form 10 claim form that you submitted to the federal bankruptcy court in Plaintiff's Chapter 13 case, and include in the response from whom the copy of the note was obtained, from where the copy was obtained, and the date the copy was obtained. (Exhibit B)

ANSWER: The copy of the note was obtained from Nationstar's imaging systems.



Harriet Pollitt Wallace (S.C. Bar # 69454)
ROGERS TOWNSEND & THOMAS, P.C.
220 Executive Center Drive
Post Office Box 100200
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harriet.wallace@rtt-law.com

October 4, 2012

ATTORNEY FOR NATIONSTAR MORTGAGE, LLC

This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only an enforcement of the lien against the property.

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

MELISSA JEAN MARKS,

Plaintiff,

Vs.

OLD SOUTH MORTGAGE
CORPORATION, JOHN DOES 1-100, AND
FICTITIOUS CORPORATIONS 1-100,

Defendants.

AND

Nationstar Mortgage, LLC,

Intervenor/Defendant.

(HPW 501904-00001)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL CASE NO. 2012-CP-15-262

NATIONSTAR MORTGAGE, LLC'S
ANSWER TO PLAINTIFF'S REQUEST
FOR PRODUCTION OF DOCUMENTS
TO DEFENDANT NATIONSTAR
MORTGAGE, LLC

1. Produce paper copies of the contents of the entire "Collateral File", including copies of any and all original documents, instruments, notes, mortgages, assignments, or agreements evidencing, securing or relating to the loan and subject mortgage and note, credit agreements, guarantees, title and casualty insurance policies.

ANSWER: Please see enclosed documents Bates Stamped 000001 Nationstar through 000287 Nationstar.

2. Produce a paper copy of the unrecorded assignment (or similar document) that evidences the sale, assignment or transfer of the subject mortgage and note from Flagstar Bank to Fannie Mae pursuant to Fannie Mae servicing guidelines.

ANSWER: Please see copy of enclosed original note, endorsed in blank, Bates Stamped 000288 Nationstar through 000291 Nationstar.

3. Produce a paper, color copy of the original Note on legal size paper (8 1/2 inches by 14 inches), including copies of the endorsements on the back of each page where they appear.

[Note: A letter size (8 1/2 inches by 11 inches) black and white copy of the Note is attached as Exhibit A to Plaintiff's First Set of Interrogatories to you.]

ANSWER: Please see copy of enclosed original note, endorsed in blank, Bates Stamped 000288 Nationstar through 000291 Nationstar.

4. Produce copies of any and all contracts and agreements between you and Fannie Mae that are or were in effect during 2009 to the present and are or were applicable to your servicing rights, duties, responsibilities, and compensation with respect to your servicing of Plaintiff's home loan account #0596566959 and the subject mortgage and note, and any and all other documents that evidence, describe, and explain such servicing rights, duties, responsibilities, and compensation.

ANSWER: Nationstar objects to this Interrogatory on the grounds that the information requested is not discoverable under Rule 26, SCRCP because the information requested is not relevant to the subject matter and allegations in the Complaint and is not reasonably calculated to lead to the discovery of admissible evidence.

5. Produce copies of any and all documents that you list, mention, and/or describe in your responses to Plaintiff's First Set of Interrogatories to you.

ANSWER: Please see the documents enclosed Bates Stamped 000001 Nationstar through 000408 Nationstar.

6. Produce copies of any and all documents that indicate or evidence the truthfulness and accuracy of your responses to Plaintiff's First Set of Interrogatories to you and in your answers to the allegations in the Complaint.

ANSWER: Please see the documents attached hereto Bates Stamped 000001 Nationstar through 000408 Nationstar.

7. Produce any and all statements, whether written, oral, or transcribed, of any individual that relate in any manner to the allegations of the Complaint or any of your defenses.

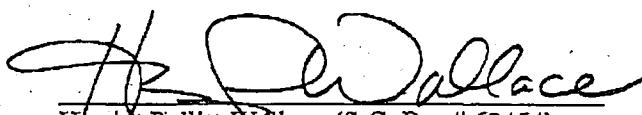
ANSWER: Nationstar objects to this request on the grounds that it is overly vague, overly broad and unduly burdensome and not likely to lead to the discovery of admissible evidence. Subject to this objection, please see the documents enclosed hereto Bates Stamped 000001 Nationstar through 000408 Nationstar.

8. Produce any and all reports, studies, analyses, or other documentation of any investigator, expert, consultant, or independent contractor that relate in any manner to the allegations in the Complaint or any of your defenses.

ANSWER: Nationstar is not aware of any documents that are responsive to this request.

9. Produce any and all documents and writings in the possession, custody, or control of you or your counsel that you contend are relevant to the case or are intended to be produced in the trial of the case.

ANSWER: Please see the enclosed documents enclosed hereto Bates Stamped 000001 Nationstar through 000408 Nationstar.



Harriet Pollitt Wallace (S.C. Bar # 69454)
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harriet.wallace@rtt-law.com

ATTORNEY FOR NATIONSTAR MORTGAGE,
LLC

10/4/12

CERTIFICATE OF SERVICE BY MAIL

2012-CP-15-262

I, Missie Wessinger, an employee with the law firm of Rogers Townsend & Thomas, PC,
do hereby certify that I have on served a copy of the following upon the Plaintiff by U.S. Mail,
postage prepaid, on October 4, 2012, at the following address:

Documents Served:

Nationstar Mortgage, LLC's Answers to Plaintiff's Interrogatories to Defendant Nationstar
Mortgage, LLC

Nationstar Mortgage, LLC's Answers to Plaintiff's Request for Production of Documents to
Defendant Nationstar Mortgage, LLC

Parties Served:

Melissa J. Marks
209 Presidential Court
Round O, SC 29474


Missie Wessinger

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

MELISSA JEAN MARKS,

Plaintiff,

Vs.

OLD SOUTH MORTGAGE
CORPORATION, JOHN DOES 1-100, AND
FICTITIOUS CORPORATIONS 1-100,

Defendants.

AND

Nationstar Mortgage, LLC,

Intervenor/Defendant.

(HPW 501904-00001)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL CASE NO. 2012-CP-15-262

**NATIONSTAR MORTGAGE, LLC'S
RESPONSES TO PLAINTIFF'S
REQUEST FOR ADMISSIONS TO
DEFENDANT NATIONSTAR
MORTGAGE, LLC**

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Intervenor/Defendant Nationstar Mortgage, LLC ("Nationstar"), by and through its undersigned counsel, submits the following Answers to Plaintiff's Requests for Admissions to Defendant Nationstar Mortgage, LLC.

REQUESTS TO ADMIT

1. Admit that Nationstar does not own the subject mortgage and is not the holder in due course of the subject note.

ANSWER: Nationstar objects to this Request on the grounds it is impossible to admit or deny. Subject to this objection, Nationstar admits it is the holder of the note which is secured by the subject mortgage and that FNMA is the investor of the note which is secured by the mortgage.

2. Admit that Nationstar did not pay any consideration to purchase the subject mortgage and note.

ANSWER: Nationstar objects to this Request on the grounds this is outside the scope of Rule 26(b), SCRCP.

3. Admit that Nationstar did not pay any consideration to purchase the servicing rights to

Plaintiff's home loan account or subject mortgage and note.

ANSWER: Nationstar objects to this Request on the grounds this is outside the scope of Rule 26(b), SCRCP, and has no applicability to the pleadings or relief sought.

4. Admit that Nationstar was never the custodian of the purported original note that Nationstar produced to the Court for in camera inspection on July 18, 2012 (hereinafter "original note").

ANSWER: Nationstar objects to this Request on the grounds it is outside the scope of Rule 26(b), SCRCP, has no applicability to the pleadings or relief sought, and is ambiguously worded.

Nationstar admits that the note presented at the July 18, 2012 hearing was the original note.

Nationstar admits is not the custodian of the original note, but also admits it was the holder at the July 18, 2012 hearing. Nationstar denies that the original note was presented in camera, but admits the original note was presented to the Court and all parties at the July 18, 2012, without objection.

To the extent this Request is deemed to mean anything other than what has been responded to, this Request is denied.

5. Admit that during the time period October 2009 to May 2012, the Bank of New York Mellon was at all times the custodian and in possession of the original note.

ANSWER: Admit.

6. Admit that the first time Nationstar obtained and held the original note in its possession was on May 31, 2012.

ANSWER: Nationstar objects to this Request to the extent it is outside the scope of Rule 26(b), SCRCP, has no applicability to the pleadings or relief sought, and is so vague or misleading that it is impossible to admit or deny as written. To the extent this Request is intended to request whether Nationstar is the holder of the note, this Request is admitted. To the extent this Request is intended to request whether Nationstar and/or its agent was in possession of the original note in May 2012, this Request is admitted. To the extent this Request is intended to request whether the first time Nationstar was in possession of the original note was May 2012, this Request is admitted. To the extent this Request is interpreted to mean anything else, this Request is denied.

7. Admit that the copy of the note that Nationstar attached to its Form 10 proof of claim that it filed in Plaintiff's Chapter 13 bankruptcy case on or about April 29, 2011, is not a true and correct copy of the original note.

ANSWER: Nationstar objects to this Request to the extent that "true and correct copy of the original note" is not defined. Nationstar admits the copy of the note attached to the proof of claim in Plaintiff's bankruptcy did not include a copy of the back of the note.



Harriet Pollitt Wallace (S.C. Bar # 69454)
ROGERS TOWNSEND & THOMAS, P.C.
220 Executive Center Drive
Post Office Box 100200
Columbia, South Carolina 29202-3200
Tel: (803) 771-7900
Fax: (803) 343-7017
harriet.wallace@rtt-law.com

ATTORNEY FOR NATIONSTAR MORTGAGE, LLC

November 14, 2012
Columbia, South Carolina

This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only an enforcement of the lien against the property.

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 2012-CP-15-262

I, Missie Wessinger, an employee for the law firm of Rogers Townsend & Thomas, PC,
do hereby certify that I have caused a copy of the following to be served upon the following by
U.S. Mail, postage prepaid, on November 14, 2012 at the following address:

Document Served:

Responses to Plaintiff's Requests for Admissions to Defendant Nationstar Mortgage, LLC

Plaintiff Served:

Melissa Jean Marks, Plaintiff pro se
209 Presidential Court
Round O, SC 29474

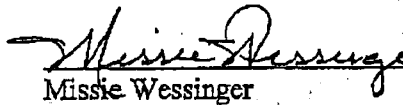

Missie Wessinger

EXHIBIT 4

EDISTO TITLE SERVICES, INC.

November 29, 2011

Melissa Marks
[REDACTED]

RE: Melissa J. Marks, 209 Presidential Court, Round O SC
Our File 11-3053

Greetings:

At your request we have searched the records of Colleton County for mortgages (only) against the above referenced property.

We find one mortgage to Old South Mortgage Corp. (MERS, Inc.) recorded in Book 1567, Page 193. We find no assignments of record.

We have checked Old South Mortgage Corp. and NorthStar, NationStar and Flagstar Bank for any name changes or mergers and find none.

Should you have any questions or require anything further just let me know.

EDISTO TITLE SERVICES

T
Todd Balish

8535 RANDELL COURT, NORTH CHARLESTON, SOUTH CAROLINA 29420
PHONE: 843/813-2354 FACSIMILE: 843/552-0884 edistotitle@knology.net

EXHIBIT 5



Flagstar Asked to Relinquish Servicing Rights on Troubled Fannie Loans

By: Carrie Bay

08/21/2009

Fannie Mae has asked Flagstar Bancorp Inc. to sell its mortgage servicing rights (MSRs) on delinquent loans owned or guaranteed by the GSE, according to a *Bloomberg* report. Fannie Mae wants late or defaulted loans at Flagstar to instead be serviced by specialists, the news agency said, quoting people briefed on the matter. Flagstar would retain its MSRs on loans that are current. The Michigan-based savings and loan is among the 10 largest mortgage underwriters in the United States, and services about \$60.5 billion of loans for mortgage giants Fannie Mae and Freddie Mac. Flagstar's total MSRs are valued at \$658.2 million. The percentage of these servicing rights that are delinquent was not disclosed, but their sale would likely result in a loss for the lender. According to *Bloomberg*, several other banks are also under pressure from Fannie Mae to pursue delinquent loans more aggressively. The GSEs must extract troubled loans from mortgage securitities and incur the consequential losses if they move to modify the mortgages "a commitment they are bound to under the government's Making Home Affordable Program. Flagstar reported in its latest regulatory filing that Fannie Mae and Freddie Mac had implemented a number of programs and new servicer requirements intended to limit foreclosures and minimize losses on such securitized loans, as well as those mortgages the enterprises hold on their own books. "These additional programs and requirements may increase operating expenses or otherwise change the costs associated with servicing loans for others, which may result in lower margins or an impairment in the expected value of our mortgage servicing rights," Flagstar wrote in the filing.

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EXHIBIT 6

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF SOUTHERN DISTRICT OF NEW YORK
 CHARLESTON DIVISION
 Case No. 11-02619-JEW
 Debtor: Melissa Jean Marks
 Case Number: 11-02619-JEW
 Page 4 of 23

Name of Debtor: Melissa Jean Marks

Case Number: 11-02619-JEW

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property):
 Nationstar Mortgage, LLC

☐ Check this box to indicate that this claim amends a previously filed claim.

Name and address where notices should be sent:
 Nationstar Mortgage, LLC
 P. O. Box 829009
 Dallas, Texas 75382-9009

Court Claim Number: _____
 (If known)

Filed on:

Name and address where payment should be sent (if different from above):
 Nationstar Mortgage, LLC
 Bankruptcy Department
 350 Highland Dr
 Lewisville, Texas 75067

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
☐ Check this box if you are the debtor or trustee in this case.

Telephone Number: (469) 549-2234

1. Amount of Claim as of Date Case Filed: \$73,301.84

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☒ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

2. Basis for Claim: Money Loaned
 (See instruction #2 on reverse side.)

☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

3. Last four digits of any number by which creditor identifies debtor: xxxxxx6959

3a. Debtor may have scheduled account as: _____
 (See instruction #3a on reverse side.)

☐ Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507 (a)(4).

4. Secured Claim (See instruction #4 on reverse side.)

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☒ Real Estate ☐ Motor Vehicle ☐ Other: _____
 Describe: 209 Presidential Ct, Round O, South Carolina 29474

☐ Contributions to an employee benefit plan - 11 U.S.C. § 507 (a)(5).

Value of Property: \$ _____ Annual Interest Rate: _____

Amount of arrearage and other charges as of time case filed included in secured claim.

if any: _____ Basis for perfection: Recordation of Lien

☐ Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507 (a)(7).

Amount of Secured Claim: \$73,301.84 Amount Unsecured: \$0.00

☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507 (a)(8).

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

☐ Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)().

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)

Amount entitled to priority:

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

Date: April 29, 2011
 Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.
 /s/ Craig Edelman as Creditor's Authorized Agent
 972.643.6600

FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

PROOF OF CLAIM - EXHIBIT A - ITEMIZATION OF CLAIM AND SUMMARY OF SUPPORTING DOCUMENTS
 8553-N-9324

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE:

MELISSA JEAN MARKS

AKA MELISSA JEAN TANNER

§
§
§
§
§
§

CASE NO. 11-02619-JEW

CHAPTER 13

JUDGE JOHN E. WAITES

EXHIBIT A
ITEMIZATION OF CLAIM AND SUMMARY OF SUPPORTING
DOCUMENTS FOR CLAIM OF NATIONSTAR MORTGAGE, LLC
REGARDING CERTAIN COLLATERAL DESCRIBED AS:
209 PRESIDENTIAL CT, ROUND O, SOUTH CAROLINA 29474

SECTION 1. ITEMIZATION OF CLAIM

• Total Debt (As of April 20, 2011)	\$73,301.84
• Interest Rate as of April 20, 2011	7.00%
• Interest from Last Paid Installment	\$283.96
• Detail of Pre-Petition Arrearage through April 20, 2011	
TOTAL PRE-PETITION ARREARAGE:	\$0.00
TOTAL ARREARAGE	\$0.00

Your monthly payment amount may change due to an escrow requirement and/or interest rate adjustment.
Your current payment amount and any upcoming changes are provided below:

Effective Date
05/01/2011

Effective Amount
\$701.09

NOTE

100052550168409273

OCTOBER 5, 2007
[Date]

Walterhorn,
[City]

SOUTH CAROLINA
[State]

209 PRESIDENTIAL CT, ROUND O, SC 29474-4374
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$76,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is OLD SOUTH MORTGAGE CORP, A SOUTH CAROLINA CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.

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

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.000%.

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

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on NOVEMBER 1, 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on OCTOBER 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

4. CARRIAGE LN

403

CHARLESTON, SC 29407

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

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$505.63.

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any

Initials: *mm*

MULTISTATE FIXED RATE NOTE-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3200 1/01

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Page 1 of 3

F5200NOT 0701

10-04-2007 12:11



209 Presidential Ct, Round O, SC 29474-4374

sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

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

(B) Default

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

(C) Notice of Default

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

(D) No Waiver By Note Holder

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

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

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

7. GIVING OF NOTICES

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

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

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

9. WAIVERS

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

10. UNIFORM SECURED NOTE

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

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which

Initials: Ma

Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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

Melissa Marks (Seal)
MELISSA MARKS

PAY TO THE ORDER OF
FLAGSTAR BANK, FSB
WITHOUT RECOURSE

OLD SOUTH MORTGAGE CORP.

BY:

PRINTED NAME

ITS:

PAY TO THE ORDER OF
Flagstar Bank, FSB
WITHOUT RECOURSE

Old South Mortgage Corp

By: Sandra Yavello
Sandra Yavello
Loan Operations Associate

NOTE ENDORSEMENT VOID

[Sign Original Only]



Instrument Volume Page
200700039539 OR 1567 193

After Recording Return To:
FLAGSTAR BANK
5151 CORPORATE DRIVE
TROY, MI 48098
FURNAL DOCUMENTS, MAIL STOP W-530-3

200700039539
Filed for Record in
COLLETON COUNTY SC
KARLA DADDYCO
10-09-2007 At 09:14 am.
MORTGAGE 18.00
OR Volume 1567 Page 193 - 204

200700039539
DORCAS H TUTEN
ATTORNEY AT LAW

This instrument was prepared by:

[Space Above This Line For Recording Data]

MORTGAGE

MIN 100052550160409273

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 18.

(A) "Security Instrument" means this document, which is dated OCTOBER 5, 2007, together with all Riders to this document.

(B) "Borrower" is Melissa Marks.

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2028, Fint, Michigan 48501-2028, tel. (888) 879-MERS.

(D) "Lender" is OLD SOUTH MORTGAGE CORP.

Lender is a CORPORATION,
SOUTH CAROLINA.
CHARLESTON, SC 29407.

organized and existing under the laws of
Lender's address is 4 CARRIAGE LN, 403,

(E) "Note" means the promissory note signed by Borrower and dated OCTOBER 5, 2007. The Note states that Borrower owes Lender *****SEVENTY SIX THOUSAND AND NO/100 ***** Dollars (U.S. \$76,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than OCTOBER 1, 2037.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☒ Other(s) (specify)
☐ 1-4 Family Rider	☐ Biweekly Payment Rider	MANUFACTURED HOME RIDER
☐ V.A. Rider		

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

Initials: *MM*

REDACTED

BY: _____

PRINTED NAME _____

ITS: _____

NOTE ENDORSEMENT
SK

By: Sandra Y
Sandra Y
Loan Operatio

MULTISTATE FIXED RATE NOTE-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
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4092

209 Presidential Ct. Round D. SC 29474-434

Enlarged copy of page 3 of alleged
original note. mm

PAY TO THE ORDER OF
FLAGSTAR BANK, FSB
WITHOUT RECOURSE

OLD SOUTH MORTGAGE CORP.

BY: _____

PRINTED NAME _____

ITS: _____

NOTE ENDORSEMENT VOID
SY

Flagstar
WITHOUT RECOURSE

Old South Mortgage Corp

By: Sandra Yavello

Sandra Yavello
Loan Operations Associate

MULTISTATE FIXED RATE NOTE-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 320
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229 Presidential Ct. Road G. SC 29474-4

Enlarged copy of page 3 of note
attached to Nationstar's Form 10
proof of claim filed in bankruptcy court,
which does not match alleged original
note. mm

EXHIBIT 7

**Explanation Regarding Plaintiff's Standing and the
Inapplicability of *Res Judicata* to this Action**

Plaintiff Has Legal Standing to Bring This Action

The allegation that Plaintiff lacks standing to bring this declaratory judgment action in state court is incorrect because the federal authorities Nationstar and this Court cited in support of their position involve Chapter 7 debtors and are inapplicable to Chapter 13 debtors who have filed a bankruptcy case. Since Plaintiff is a Chapter 13 debtor, she has standing.

The U.S. District Court, District of South Carolina held *In re: Lee*, 432 B.R. 212, 2010 U.S. Dist. LEXIS 44965 in pertinent part:

"Debtor argues that she has the ability to pursue litigation on behalf of the bankruptcy estate. That proposition is not particularly controversial. Though the Fourth Circuit has not yet considered the issue, each circuit to have considered it has found that **Chapter 13 debtors have standing to bring claims in their own name on behalf of the bankruptcy estate.** See, e.g., *Smith v. Rockett*, 522 F.3d 1080, 1081 (10th Cir. 2008); *Crosby v. Monroe County*, 394 F.3d 1328, 1331 n.2 (11th Cir. 2004); *Cable v. Ivy Tech State College*, 200 F.3d 467, 474 (7th Cir. 1999) (ADA claim); *Olick v. Parker & Parsley Petroleum Co.*, 145 F.3d 513 (2d Cir. 1998) (class action fee application). If the pursuit of litigation in the name of the estate was all that Debtor sought, there would be little issue with her chosen course." (emphasis added)

The Tenth Circuit held in *Smith v. Rockett*, 522 F.3d 1080, 1081 (10th Cir. 2008) in pertinent part:

"Rule 6009 of the Federal Rules of Bankruptcy Procedure also supports the conclusion that the Chapter 13 debtor has standing to bring a civil complaint: 'With or without court approval, the trustee or debtor in possession may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding in behalf of the estate before any tribunal.' *Fed. R. Bankr. P. 6009* (emphasis added). We recognize that 'debtor in possession' is a term of art found only in the Chapter 11 context. However, **'the Chapter 13 debtor has been considered analogous to Chapter 11, which grants the debtor full authority as representative of the estate typical of a trustee.'** *Cable*, 200 F.3d at 472 (citation omitted); see *Champion v. Credit Bureau Servs.*, 206 F.R.D. 663, 669 (E.D. Wash. 2001). We find this authority persuasive. We therefore hold that Plaintiff, as a Chapter 13 debtor, had standing to file this complaint on behalf of the bankruptcy estate." (emphasis added)

On or about May 29, 2012, Plaintiff filed an amended Schedule C in her Chapter 13 bankruptcy case reporting this state court action valued at \$1.00 as exempt property since she made no claim for monetary damages. Since no one filed an objection within 30 days, this

action is now exempt from the claims of her creditors. *Schwab v. Reilly*, 130 S.Ct. 2652, 2657 (2010). Since the time for filing an objection has expired, this action is now exempt property of the Plaintiff, the trustee was properly notified and expressed no interest in it within 30 days; consequently, the trustee has in effect abandoned this action to the Plaintiff, the Plaintiff does not need the trustee's permission to prosecute or resolve this action, and the trustee has no interest in this action.

Plaintiff did not file an action in federal court claiming to have the same strong-arm avoiding powers of the Chapter 13 trustee under Title 11 of the U.S. Code; therefore, those federal statutes and related federal cases are irrelevant and inapplicable to this state court action. 11 U.S.C. § 544 was cited to support the allegation that only the trustee has the power to avoid transfers of property or liens of the bankruptcy estate, but that is not what the statute actually says and means when interpreted within its legislative and historical context. If it were true that only the trustee has the power to file an action to avoid transfers of property or liens of the Chapter 13 bankruptcy estate pursuant to 11 U.S.C. § 544, the Chapter 13 debtor would be statutorily barred from personally defending the bankruptcy estate and herself against a foreclosure in state court and would have no defense if the trustee refused to appear and defend, which is a nonsensical proposition. Consequently, Chapter 13 debtors generally have standing to take legal action to protect and defend their interests in the property of the estate, which is in their possession and usually exempt from the claims of their unsecured creditors any way.

In fact, at the hearing on Nationstar's Motion for Clarification on May 17, 2012, Judge Waites, the chief bankruptcy judge presiding over Plaintiff's Chapter 13 case, acknowledged before the trustee's counsel, Nationstar's counsel, Plaintiff and her counsel that the state court can remove the lien, that he is happy for Plaintiff to remove it wherever she wants to do it, and that he was not looking to do the work. Nationstar's counsel ignored what Judge Waites said at the clarification hearing and proceeded to misrepresent and misapply federal statutes and federal cases before this state court in an attempt to have Plaintiff's action dismissed before being tried and adjudicated or settled based upon the merits.

Res Judicata is Inapplicable to this Action

The doctrine of *res judicata* is inapplicable to this state court action and therefore does not bar this action and does not bind and prevent this state court from granting the relief Plaintiff has requested in this action, which all relates to the permanent removal of an invalid mortgage lien from her property title. Nationstar is constantly citing federal case law disregarding the obvious fact that this action is in state court, and therefore state law should be applied to determine whether the doctrine of *res judicata* applies to this action. The South Carolina Supreme Court held in *Sealy v. Dodge*, 289 S.C. 543, 347 S.E.2d 504, 1986 S.C. LEXIS 413 in pertinent part:

"In order to establish a plea of *res judicata*, three elements must be established: (1) identity of parties; (2) identity of subject matter; and (3) adjudication of the issue in the former suit."

None of the three elements can be established; therefore, this action is not barred under the

doctrine of *res judicata*.

Plaintiff properly sued the Defendant Old South Mortgage Corporation ("Old South") in this action because Old South was the originator of the subject mortgage and note, Old South intentionally caused or allowed itself to be falsely identified as the "Lender" in the subject mortgage and note and caused or allowed the recording of a false first mortgage lien against Plaintiff's home, and Old South, although a dissolved domestic corporation since 2008, was still the only mortgage lien holder of record at the county register of deeds at the time Plaintiff filed this action on April 6, 2012. According to Nationstar, Fannie Mae currently owns the note and mortgage. Old South and Fannie Mae are not parties to Plaintiff's bankruptcy case, so the first element pursuant to *Sealy*, "identity of parties," is not established here in this action.

Plaintiff's three causes of action against the originator of the mortgage, Old South, in her declaratory judgment complaint are as follows: "Fraudulent Misrepresentations of Material Facts", "Mortgage and Note Invalid and Unenforceable Due to Fraudulent or Illegal Acts", and "Unconscionable Mortgage Contract". None of the several issues Plaintiff complained of in her 40-page declaratory judgment complaint were raised and actually litigated in the bankruptcy court because Plaintiff decided to bring and litigate those issues in this state court action. Therefore, the second and third elements pursuant to *Sealy*, "identity of subject matter" and "adjudication of the issue in the former suit" are not established here. See also *Price v. City of Georgetown*, 297 S.C. 185, 375 S.E.2d 335, 1988 S.C. App. LEXIS 180.

Plaintiff simply reported to her bankruptcy attorneys that she was making her mortgage payments to Nationstar; consequently, her attorneys included Nationstar in her bankruptcy schedules and sent Nationstar a notice of her filing a Chapter 13 bankruptcy on or about April 20, 2011. On or about April 29, 2011, Nationstar reported in its bankruptcy Form 10 proof of claim that Nationstar is the secured "creditor"; consequently, Plaintiff's attorneys simply took Nationstar at its word and identified Nationstar as the secured creditor in Plaintiff's amended Chapter 13 plan, which was signed by Plaintiff's attorney, approved by the trustee, and confirmed by the bankruptcy court in June 2011. In other words, everyone involved simply took Nationstar at its word that Nationstar owned the mortgage because they did not have a reason to question or suspect otherwise prior to the plan's confirmation, and no one involved suspected or knew that the mortgage was invalid at the time. Plaintiff's bankruptcy attorneys, the trustee and the bankruptcy court reasonably relied on Nationstar's claim because it is a criminal offense to intentionally file a bankruptcy Form 10 proof of claim with false or misleading information, and presumably, Nationstar's counsel at the time would have verified the accuracy prior to filing the claim.

Since Plaintiff had never defaulted in making her mortgage payments, no dispute had arisen between Nationstar and Plaintiff in the bankruptcy case prior to the Chapter 13 plan's confirmation, and since there was no pre-petition arrearage, no dispute between the Nationstar and Plaintiff was resolved by the plan's confirmation. The only dispute that arose and was resolved by the plan's confirmation was between Plaintiff and her unsecured creditors. For all intents and purposes, Nationstar is exempt from the plan that is being administered by the trustee for the benefit of Plaintiff's unsecured creditors. Nationstar is merely subject to the automatic stay the same as all other creditors until the Chapter 13 case is dismissed, which is why it had to

obtain a modification in stay to appear and defend this action.

A common thread in the bankruptcy cases Nationstar relies upon for its position is as follows. The Chapter 13 debtors had defaulted on their mortgages and had agreed to repay the arrearages within their Chapter 13 plans, and the secured creditors were actually the secured creditors (i.e., they actually owned the mortgages) at the time the bankruptcy cases were filed. Since Nationstar did not own the mortgage at the time Plaintiff's Chapter 13 was filed but had falsely claimed it was the secured "creditor," and since there was no pre-petition arrearage in the plan, neither of those circumstances applies in Plaintiff's case.

Another important, distinctive fact is a dispute arose between Plaintiff and Nationstar after the plan's confirmation. On November 8, 2011, and on December 19, 2011, Nationstar sent letters to the South Carolina Department of Consumer Affairs refusing to reinstate Plaintiff's monthly billing statements and online account access, and in doing so, disregarded Plaintiff's repeated requests, disregarded her bankruptcy attorney's letter of permission, and disregarded her complaint to the Department that Nationstar's refusal was unreasonably prejudicial to her consumer rights under the circumstances. This was the red flag that caused Plaintiff to suspect something was wrong and prompted her to investigate, which led to the discoveries she reported in the pleadings she has filed in this action to date.

Since the bankruptcy court would determine whether a particular action is barred under the doctrine of *res judicata* on a case-by-case basis, the federal authorities Nationstar cites in support of its position are inapplicable and irrelevant to Plaintiff's state court action. A confirmed Chapter 13 plan is not always and automatically *res judicata* regarding absolutely everything mentioned in the plan now and forevermore as Nationstar seems to believe, and unfortunately, apparently persuaded the state court to believe while denying all my motions. In Plaintiff's case, the bankruptcy court may have been persuaded to apply the fraud exception, but we will never know, because Plaintiff chose to litigate this action in this state court instead.

A fact that seems lost to Nationstar is that there is nothing to "enforce" while Plaintiff is current on her payments. In Plaintiff's prayer for relief in this action, she did not request that this state court declare whether or not she has to continue to make mortgage payments to Nationstar or whether Nationstar is the proper party to receive her payments, and, obviously, this action is not a foreclosure action, so here again, there is nothing for Nationstar to "enforce" or defend in this action. If Nationstar is merely the servicer (a fact that is also in dispute), Nationstar's contract is with someone else and not with the Plaintiff; therefore, Nationstar lacks standing to defend this action. The bankruptcy court granted Nationstar a limited modification of stay to defend this action due to Nationstar's false claim that it was the holder of the note at the time when it was not. However, this state court has the truth and the evidence and has the independent authority to adjudicate the issues Plaintiff has raised in this action.

The *res judicata* effect of a Chapter 13 plan is generally limited to the issue of the ~~payments ordered under the plan and who is entitled to receive a portion of those payments~~ during the term of the plan, which in Plaintiff's case is a four-year term to expire in 2015, and who has the right to receive a lift in stay upon petition. Plaintiff is technically only "ordered" to pay \$170.00 per month to the trustee for the benefit of her unsecured creditors. Plaintiff's

requested relief in this state court action has nothing to do with those issues. Therefore, if the law is being applied correctly and justly, all other issues are fair game in state court.

Attached is Plaintiff's amended Chapter 13 plan as signed by her bankruptcy attorney on June 8, 2011. In Section IV, it states in pertinent part, **"Confirmation of this plan does not bar a party in interest from objecting to a claim."** Generally, the debtor, the trustee or a creditor can file an objection to a claim after a Chapter 13 plan has been confirmed, the court can decide to reject a creditor's claim after confirmation for good cause shown, and a Chapter 13 plan can be amended as many times as necessary during the term of the case, which is usually three to five years. Procedurally, a debtor may opt to file a case first, such as Plaintiff did by filing this declaratory judgment action in state court, and then object to an exempt secured creditor's claim and amend the plan after obtaining a judgment showing that claim to be invalid. Plaintiff's Chapter 13 plan is a voluntary plan she can quit and close, and she is only "ordered" to make monthly payments to the trustee to the extent she wants to continue to enjoy the protections and benefits of resolving her unsecured debts through the bankruptcy court process.

In addition, in Section V of the Chapter 13 plan it explains confirmation of the plan does not waive or affect adversely any rights of the debtor with respect to any causes of action owned by the debtor, the property of the estate remains in the possession of the debtor, and that the debtor "is responsible for protecting the non-exempt value of all property of the estate [...]."

Generally, the automatic stay in a Chapter 13 applies to bar a creditor from filing or prosecuting an action against the debtor while the case is open but does not bar the debtor from filing or prosecuting an action against a creditor, although a creditor usually will be granted a lift or modification in stay to allow it to defend an action that the debtor filed. The Chapter 13 is intended to protect Plaintiff as the Chapter 13 debtor, not the creditors, and to fairly distribute her plan payments to her unsecured creditors. The Chapter 13 is not intended and does not automatically and forever bind the Plaintiff to the false claims and invalid documents of an exempt secured creditor who is paid directly by her and is not paid anything by the trustee.

Plaintiff has a legal duty pursuant to the Chapter 13 plan to protect the non-exempt value of all property of the estate, and this includes defending the bankruptcy estate against false claims and invalid liens against the property in Plaintiff's possession. She also has a duty to take legal action to protect and defend her own personal interests in the property, which extend far beyond the four-year term of her Chapter 13 case.

Finally, *In re: Lee*, 432 B.R. 212, 2010 U.S. Dist. LEXIS 44965, suggests that federal bankruptcy courts favor deferring the resolution of real property disputes to the state courts whenever possible, which further supports Plaintiff's decision to file this action in this state court where jurisdiction and venue are proper as to the issues she raised in her pleadings.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Melissa Jean Marks
209 Presidential Court
Round O, SC 29474
SSN xxx-xx-6701

DEBTOR

CASE NO: 11-02619
CHAPTER: 13

NOTICE OF PLAN MODIFICATION BEFORE
CONFIRMATION, AMENDED CHAPTER 13
PLAN, MOTIONS TO VALUE SECURITY,
AVOID JUDICIAL LIEN, AVOID A
NONPURCHASE-MONEY, NONPOSSESSORY
SECURITY INTEREST AND LIEN, AND/OR
TO ASSUME OR REJECT AN EXECUTORY
CONTRACT/UNEXPIRED LEASE

I. NOTICE TO AFFECTED CREDITORS AND PARTIES IN INTEREST: The above-captioned debtor¹ previously proposed a chapter 13 plan and motions; debtor now moves, pursuant to 11 U.S.C. § 1323 and Fed. R. Bankr. P. 2002(a)(5), to modify the proposed plan and motions as detailed below:

The debtor's plan is amended to extend the length of the plan in order to resolve Chapter 13 Trustee's objection. No other specific creditor or other party in interest is directly affected by the change.

This modification to the chapter 13 plan and motions, and the remaining terms of the chapter 13 plan and motions set forth below, may affect your rights. Failure to object may constitute an implied acceptance of and consent to the relief requested.

A. ADDITIONS, MODIFICATIONS, OR DELETIONS: All additions or modifications to the Court's form plan (See exhibits to SC LBR 3015-1 and 3015-2, "SC LBR" refers to the SC Local Bankruptcy Rules, available at www.scb.uscourts.gov) are highlighted by italics. Deletions are noted as "Not Applicable" or by striking through the deleted provisions. If changes are substantial or if an alternative plan is proposed, a cover sheet that summarizes and identifies the changes shall be filed and served herewith.

B. DEADLINE FOR FILING OBJECTIONS, NOTICE OF HEARING ON CONFIRMATION OF CHAPTER 13 PLAN AND MOTIONS: Objections to the motions and any provision of the plan must be made in accordance with SC LBR 9014-1, properly served, and filed with the United States Bankruptcy Court, 1100 Laurel Street, Columbia, SC 29201, within twenty-eight (28) days from the date this document is filed. Timely objections will be heard at the confirmation hearing, notice of which is given separately in the Notice of Meeting of Creditors. If a timely objection is filed after the confirmation hearing, a separate hearing on the objection will be scheduled and notice of such a hearing will be given. If no timely objection is filed, the Court, upon recommendation of the chapter 13 trustee and without further hearing or notice, may enter an order confirming the plan and granting the motions.

II. MOTION TO VALUE SECURITY, AVOID JUDICIAL LIEN, AVOID A NONPURCHASEMONEY, NONPOSSESSORY SECURITY INTEREST AND LIEN, AND/OR TO ASSUME OR REJECT AN EXECUTORY CONTRACT/UNEXPIRED LEASE. The debtor requests that confirmation of this plan alter the rights of the following creditor:

A. Nonpossessory, Nonpurchase-Money Lien: The debtor moves, pursuant to 11 U.S.C. § 522(f), to avoid the following nonpossessory, nonpurchase-money security interest and lien in household goods:

Name of creditor and description of property securing lien	Value of Debtor's interest in property	Total of all other liens	Exemption Claimed	Estimated security interest/debt	Security interest Not avoided (see IV(B)(4) below)	Security interest to be avoided (see IV(E) below)
N/A						

B. Judicial Lien: The debtor moves, pursuant to 11 U.S.C. § 522(f), to avoid the following judicial lien.²

¹ When used herein, the term "debtor" shall apply as applicable either in the singular or in the plural, if there are joint debtors in the case.

² For co-owned property, see *In re Ware*, 274 B.R. 206 (Bankr. D.S.C. 2001) and Exhibit C to SC LBR 4003-2.

Name of creditor and description of property securing lien	Value of Debtor's interest in property	Total of all other liens	Exemption Claimed	Estimated judicial lien	Judicial lien Not avoided (see IV(B)(4) below)	Judicial lien avoided (see IV(E) below)
N/A						

C. Valuation of Security: The debtor moves, in accordance with 11 U.S.C. § 506, to establish the value of a lien as follows:

Name of creditor and description of property securing lien	Value of Debtor's interest in property	Holder and amount of superior liens	Estimate of creditor's claim	Value of lien (see IV(B)(4) below)	Unsecured claim after valuation (see IV(E) below)
N/A					

D. Assumption or Rejection of Executory Contract/Unexpired Lease: The debtor moves for the assumption of the following executory contract and/or unexpired lease. The debtor agrees to abide by all terms of the agreement and to cure any pre-petition arrearage or default in the manner below. Any executory contract or unexpired lease not specifically mentioned is rejected.

Name of Creditor and lease or contract to be assumed	Amount of regular payment	Estimated amount of Default (state if none)	Cure Provisions for any default paid by (Debtor or trustee)	Regular payments to be paid by Debtor directly to creditor beginning (month/year)
N/A				

III. THE CHAPTER 13 PLAN: PAYMENT OBLIGATIONS OF THE DEBTOR.

A. Payments from the debtor to the chapter 13 trustee (the "trustee"): The debtor submits to the supervision and control of the trustee all or such portion of future earnings or other future income as is necessary for the execution of the plan. In addition, the debtor will pay to the trustee any portion of a recovery under a pre-petition claim or cause of action that constitutes disposable income or is not exempt.

The debtor shall pay to the trustee the sum of \$170.00 per month for a period of 48 months unless all allowed claims (other than long-term claims) are fully paid pursuant to the plan.

B. Payments from the debtor directly to creditors: The debtor shall pay all post-petition priority obligations, including but not limited to taxes and post-petition domestic support, and pay regular payments on assumed executory contracts or leases, directly to the holder of the claim as the obligations come due, unless otherwise ordered by the Court. The debtor may be required to pay some or a portion of pre-petition debts directly to a creditor in addition to required payments to the trustee, as indicated in paragraph II(D) above and/or in the paragraphs that follow.

IV. PLAN DISTRIBUTIONS TO CREDITORS. To receive a distribution from the trustee, a proof of claim, including adequate supporting documentation, must be filed with the Court. If a claim designated in this plan as secured is filed as an unsecured claim and the plan is confirmed, the claim may be treated as unsecured for purposes of plan distributions by the trustee. If a creditor files a proof of claim alleging that the claim is secured, but does not timely object to the confirmation of the plan and the claim is treated as unsecured in a confirmed plan, the claim may be treated as unsecured for purposes of plan distributions by the trustee. Confirmation of this plan does not bar a party in interest from objecting to a claim. The trustee, after the deduction of the trustee's commission and expenses, or the debtor, as indicated, shall make payments as follows:

A. Attorney for the debtor:

1. The debtor and the debtor's attorney have agreed to an attorney's fee in the amount of \$3,000.00 for the services identified in the Rule 2016(b) disclosure statement filed in this case. The amount of \$486.00 was paid prior to the filing of the case. The remaining fee shall be disbursed by the trustee as follows: Following confirmation of the plan and unless the Court orders otherwise, the trustee shall disburse \$500.00 to the attorney from the initial disbursement.³ Thereafter, the balance of the attorney's compensation as allowed by the Court shall be paid, to the extent then due, with all funds remaining each month after payment of allowed secured claims and pre-petition arrearages on domestic support obligations. In instances where an attorney assumes representation in a pending *pro se* case and a plan is confirmed, a separate order may be entered by the Court, without further notice, which allows for the payment of a portion of the attorney's fees in advance of payments

³ The chapter 13 trustee shall not at any time disburse to the debtor's attorney more than: (a) the unpaid balance of (1) the fee to be paid under the plan pursuant to paragraph 1 herein, or (2) the fee previously applied for and authorized pursuant to paragraph 2 herein, plus (b) any supplemental fee then applied for and authorized under the terms of the applicable Procedures for Approval of Attorney's Fees in Chapter 13 Cases.

to creditors.

2. If, as an alternative to the above treatment, the debtor's attorney has received a retainer and cost advance and agreed to file fee applications for compensation and expenses in this case pursuant to 11 U.S.C. § 330, the retainer and cost advance shall be held in trust until fees and expense reimbursements are approved by the Court. Prior to the filing of this case, the attorney has received \$N/A and for plan confirmation purposes only, the fees and expenses of counsel are estimated at \$N/A or less.

B. Secured Creditor Claims: The plan treats secured claims as follows:

1. General Provisions: The terms of the debtor's pre-petition agreement with a secured creditor shall continue to apply except as modified by this plan, the order confirming the plan, or other order of the Court. Holders of secured claims shall retain liens to the extent provided by 11 U.S.C. § 1325(a)(5)(B)(i). Secured creditors paid the full secured claim provided for by this plan shall timely satisfy any liens in the manner required by applicable law or order of this Court. Any creditor holding a claim secured by property that is removed from the protection of the automatic stay by order, surrender, or through operation of the plan will receive no further distribution from the chapter 13 trustee on account of any secured claim. This also applies to creditors who may claim an interest in, or lien on, property that is removed from the protection of the automatic stay by another lienholder or released to another lienholder, unless the Court orders otherwise. Any funds that would have been paid to any such creditor will be distributed according to the remaining terms of the plan. (The preceding language does not apply if the sole reason for its application arises under 11 U.S.C. § 362(c)(3) or (c)(4)). Any creditor affected by this provision may file an itemized proof of claim for any unsecured deficiency within a reasonable time after the removal of the property from the protection of the automatic stay. Secured creditors that will be paid directly by the debtor may send standard payment and escrow notices, payment coupons, or inquiries about insurance, and such action will not be considered a violation of the automatic stay.

2. Long-term or mortgage debt. No default: The debtor is current on obligations to Nationstar Mortgage, LLC and will continue regular payments directly to that creditor. Description of collateral: Detitle mobile home and lot located at 209 Presidential Court, Round O, SC 29474

3. Long term or mortgage debt. Curing default: 11 U.S.C. 1322(b)(3) and/or (5):

a. Arrearage payments. The trustee shall pay the arrearage as stated in the creditor's allowed claim or as otherwise ordered by the Court to N/A at the rate of \$N/A or more per month, for (describe collateral here), including 0% interest. The creditor shall apply trustee payments solely to those designated arrearages, i.e., those arrearages accruing before the month specified in (b) below. For so long as the debtor complies with this plan, a creditor may not declare a default based on any payment delinquency to be cured by this paragraph and the creditor shall not impose any post-petition fee on account of any arrearage paid by the trustee.

b. Maintenance of regular non-arrearage payments. Beginning N/A the Debtor shall pay directly to the creditor non-arrearage payments arising under the agreement with the secured creditor. The creditor shall apply each payment under this paragraph solely to post-petition obligations that accrue during or after the month specified herein.

4. Secured portion of claims altered by valuation and lien avoidance: The trustee shall pay N/A the sum of \$N/A or more per month, including 5.25% interest until the secured claim of \$N/A established above is paid in full. The remaining portion of the allowed claim will be treated as a general unsecured claim.

5. Other secured debts (allowed claim to be paid in full without valuation or avoidance of lien): The trustee shall pay N/A the sum of \$N/A or more per month, including 5.25% interest until the allowed secured claim is paid in full.

The trustee shall pay N/A the sum of \$N/A or more per month, including 5.25% interest until the allowed secured claim is paid in full.

6. Surrender of property: The debtor will surrender the following property upon confirmation of the plan. The order confirming plan shall terminate the automatic stay as to that property: N/A. Any creditor affected by this provision may file an itemized proof of claim for any unsecured deficiency within a reasonable time after the surrender of the property.

7. Secured tax debt: The trustee shall pay N/A the sum of \$N/A or more per month until the (net balance or value) of creditor's secured claim including N/A% interest has been paid. If the lien is to be valued, the debtor shall file a separate

motion to value the claim and establish priority of any remaining tax obligations. If a tax priority creditor files a claim designated as secured, is not treated as secured in this paragraph, and does not timely object to confirmation of this plan, then the claim may be paid as a priority claim for purposes of distributions from the trustee.

C. Priority Creditors: Priority claims shall be paid as follows:

1. Domestic Support Claims. 11 U.S.C. § 507(a)(1):

a. Pre-petition arrearages. The trustee shall pay the pre-petition domestic support obligation arrearage to N/A, at the rate of \$N/A or more per month until the balance, without interest, is paid in full.

b. The debtor shall pay all post-petition domestic support obligations as defined in 11 U.S.C. § 101(14A) on a timely basis directly to the creditor.

c. Any party entitled to collect child support or alimony under applicable non-bankruptcy law may collect those obligations coming due after this case was filed from the income or assets of the debtor-parent/spouse without further order or relief from the automatic stay. (Any claim for child support or alimony due before this case was filed must be collected in accordance with 11 U.S.C. § 507(a)(1) and 11 U.S.C. § 1322(a)(2).)

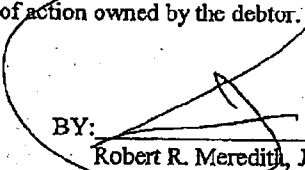
2. Other Priority debt. The trustee shall pay all remaining pre-petition 11 U.S.C. § 507 priority claims on a *pro rata* basis.

D. Executory Contracts and Unexpired Leases: Regular payments that arise post-petition under an executory contract or lease that is being assumed shall be paid directly by the debtor according to the terms of the contract or lease. Pre-petition defaults will be cured by payments of the sum of \$N/A or more per month by the trustee or the debtor according to paragraph II(D). Claims arising from the rejection of executory contracts or leases shall be general unsecured claims unless otherwise ordered by the Court.

E. General Unsecured Creditors: General unsecured creditors shall be paid allowed claims *pro rata* by the trustee to the extent that funds are available after payment of all other allowed claims. The debtor does not propose to pay 100% of general unsecured claims.

V. PROPERTY OF THE ESTATE, STATUS AND OBLIGATIONS OF THE DEBTOR AFTER CONFIRMATION: Upon confirmation of the plan, property of the estate will remain property of the estate, but possession of property of the estate shall remain with the debtor. The chapter 13 trustee shall have no responsibility regarding the use or maintenance of property of the estate. The debtor is responsible for protecting the non-exempt value of all property of the estate and for protecting the estate from any liability resulting from operation of a business by the debtor. Nothing herein is intended to waive or affect adversely any rights of the debtor, the trustee, or party with respect to any causes of action owned by the debtor.

Date: Ce/slu

BY: 

Robert R. Meredith, Jr.
Elizabeth R. H. Jenkins
Meredith Law Firm, LLC
Attorneys for Debtors
District Court ID No. 6152
4000 Faber Place Drive, Suite 120
North Charleston, SC 29405
843-529-9000

CERTIFICATE OF SERVICE

The above signing parties certify that the foregoing Notice, Plan and Motions was served on all creditors and parties in interest entitled to such notice on the above stated date. The parties served are individually listed on the accompanying list or mailing matrix.

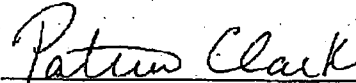
VIA US MAIL

Melissa Jean Marks
209 Presidential Court
Round O, SC 29474

ELECTRONICALLY

James M. Wyman, Esquire
Chapter 13 Trustee
PO Box 997
Mt. Pleasant, SC 29465-0997

Date: 6/8/11



Patricia Clark, Legal Assistant to
Robert R. Meredith, Jr.
Elizabeth R. H. Jenkins
Meredith Law Firm, LLC
Attorneys for Debtor
District Court ID No. 6152
4000 Faber Place Drive, Suite 120
North Charleston, SC 29405
843-529-9000

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 11-02619-jw

Order Modifying Stay

The relief set forth on the following pages, for a total of 2 pages including this page, is hereby ORDERED.

FILED BY THE COURT
05/25/2012



Entered: 05/25/2012


Chief US Bankruptcy Judge
District of South Carolina

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF SOUTH CAROLINA

IN RE:

Melissa Jean Marks aka Melissa Jean
Tanner,

DEBTOR(S).

CHAPTER 13
CASE NO.: 11-02619-jw

ORDER MODIFYING STAY

This matter comes before the Court upon motion of Nationstar Mortgage ("Movant"), seeking relief from the automatic stay for the limited purpose of being able to intervene in and defend state court litigation filed by Debtor *pro se* against Old South Mortgage Corporation, John Does 1-100, and Fictitious Corporations, 1-100, in Colleton County Court of Common Pleas, 2012-CP-15-262.

It is not disputed by either the Debtor or the Movant that Debtor is current on her post-petition payments to Movant, and in fact, Debtor was current on the loan payments when the bankruptcy was filed. However, Movant would be prejudiced if Debtor were granted the relief she is seeking in the State Court Action unless Movant is allowed to intervene and asserts its rights to the mortgage and underlying obligation in such action.

NOW THEREFORE, upon motion of Movant, it is hereby

ORDERED THAT:

The stay pursuant to 11 U.S.C. §362 is lifted to the extent necessary to allow Movant to appear, intervene and otherwise defend State Court Action 2012-CP-15-262. Movant is otherwise still bound by the automatic stay.

EXHIBIT 8

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON) CASE NO.: 2012-CP-12-00262

MELISSA MARKS,

PLAINTIFF,

v.

TRANSCRIPT OF RECORD

OLD SOUTH MORTGAGE,
NATIONSTAR, JOHN DOE, 1 - 100,
AND FICTITIOUS CORPORATIONS
1 - 100,

DEFENDANTS.

FEBRUARY 15th, 2013
COLLETON COUNTY COURTHOUSE, SOUTH CAROLINA
BEFORE THE HONORABLE CLIFTON NEWMAN, JUDGE.

APPEARANCES:

MS. MELISSA J. MARKS
209 PRESIDENTIAL COURT
ROUND O, SC 29474
PRO SE PLAINTIFF

MS. HARRIET POLLITT WALLACE, ESQUIRE
ROGERS, TOWNSEND & THOMAS
SYNERGY BUSINESS PARK
220 EXECUTIVE CENTER DRIVE
COLUMBIA, SC 29210
ATTORNEY FOR NATIONSTAR

Rebecca H. Hill
Official Court Reporter

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1 MS. WALLACE: Because the debtor is the one who filed
2 the action and not a creditor. And that is procedural
3 saying which it's confusing to me and my associates are
4 pursuing a modification, this should be something in front
5 of Judge Waites, to the extent that there is any merit which
6 I disagree that there isn't any merit in the case, but I'm
7 also concerned that the amount of money that's been spent.
8 As you're aware, under the note and mortgage, there are
9 provisions saying fees and costs incurred to protect a
10 secured party interest in their property as collateral is
11 going to be charged back to the loan; as far as I know, that
12 hasn't been done yet.

13 So what Ms. Marks is incurring now, the more litigation
14 fees and costs that incur, that could potentially make her
15 no longer current if all that becomes due and payable. So
16 not only is her information (sic) is perspective, but also
17 under the ADR rule, the speed of this case needs to be
18 concluded quickly or sent back to bankruptcy court in the
19 interest of saving Ms. Marks' home potentially, and in the
20 interest of not incurring additional fees and costs.

21 MS. MARKS: Objection, Your Honor.

22 THE COURT: To what?

23 MS. MARKS: I would like to answer ---

24 THE COURT: ~~Well, you can stay there and state your~~
25 objection. You will get an opportunity to respond. An

UNITED STATES BANKRUPTCY COURT

The District of South Carolina

In re Melissa Jean Marks
DebtorCase No. 11-02619-JEWChapter 13**Notice of Postpetition Mortgage Fees, Expenses, and Charges**

If you hold a claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any postpetition fees, expenses, and charges that you assert are recoverable against the debtor or against the debtor's principal residence. File this form as a supplement to your proof of claim. See Bankruptcy Rule 3002.1.

Name of creditor: Nationstar Mortgage, LLCCourt claim no. (if known): 2-1

Last four digits of any number you use to identify the debtor's account:

6 9 5 9

Does this notice supplement a prior notice of postpetition fees, expenses, and charges?

☒ No☐ Yes. Date of the last notice: / / **Part 1: Itemize Postpetition Fees, Expenses, and Charges**

Itemize the fees, expenses, and charges incurred on the debtor's mortgage account after the petition was filed. Do not include any escrow account disbursements or any amounts previously itemized in a notice filed in this case or ruled on by the bankruptcy court.

Description	Dates Incurred	Amount
1. Late charges		(1) \$
2. Non-sufficient funds (NSF) fees		(2) \$
3. Attorney fees	<u>5/3/12 - 11/6/12*</u>	(3) \$ <u>19,417.50</u>
4. Filing fees and court costs	<u>5/31/12 (Motion to Intervene)</u>	(4) \$ <u>25.00</u>
5. Bankruptcy/Proof of claim fees		(5) \$
6. Appraisal/Broker's price opinion fees		(6) \$
7. Property inspection fees		(7) \$
8. Tax advances (non-escrow)		(8) \$
9. Insurance advances (non-escrow)		(9) \$
10. Property preservation expenses. Specify:		(10) \$
11. Other. Specify: <u>Mileage for travel to hearings</u>	<u>5/17/12; 7/18/12</u>	(11) \$ <u>234.29</u>
12. Other. Specify: <u>Copy charges</u>	<u>7/17/12</u>	(12) \$ <u>49.80</u>
13. Other. Specify: <u>Federal Express Fee</u>	<u>10/8/12</u>	(13) \$ <u>14.93</u>
14. Other. Specify:		(14) \$

The debtor or trustee may challenge whether the fees, expenses, and charges you listed are required to be paid. See 11 U.S.C. § 1322(b)(5) and Bankruptcy Rule 3002.1.

* The attorneys' fees reflected herein have been incurred pursuant to Paragraph 9 of the mortgage in connection with a postpetition state court action brought by Debtor, and are therefore recoverable (Marks v. Old South Mortgage Corp. et al, 12-CP-15-262). Although these fees and costs have not yet been submitted to the court for approval because the case is still ongoing, this Notice is being filed for informational purposes and to comply with Rule 3002.1.

Part 2: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

- ☐ I am the creditor.
☐ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this Notice is true and correct to the best of my knowledge, information, and reasonable belief.

X s/Harriet Pollitt Wallace

Signature

Date 11, 07, 2012

Print:

Harriet Pollitt Wallace (ID #10451)

First Name

Middle Name

Last Name

Title Attorney for Nationstar Mortgage, LLC

Company

Rogers Townsend & Thomas, P.C.

Address

P.O. Box 100200

Number

Street

Columbia, SC 29202

City

State

ZIP Code

Contact phone

(803) 744-1846

Email Harriet.Wallace@rtt-law.com

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF SOUTH CAROLINA

IN RE:

Melissa Jeans Marks aka Melissa Jean Tanner,
Debtor(s).

501904-1 HPW

CHAPTER 13
CASE NO.: 11-02619-jw
CERTIFICATE OF SERVICE

I, the undersigned employee of ROGERS TOWNSEND & THOMAS, PC, do hereby certify that on November 7, 2012, a copy of the Notice of Postpetition Mortgage Fees, Expenses, and Charges were mailed electronically and by U.S. Mail, postage prepaid, to the parties listed below:

Robert R. Meredith, Jr., Esquire
4000 Faber Place Drive
Suite 120
N. Charleston, SC 29405

Melissa Jean Marks
209 Presidential Court
Round O, SC 29474

James M. Wyman, Esquire
Post Office Box 997
Mount Pleasant, SC 29465-0997

ROGERS TOWNSEND & THOMAS, PC

/s Missie Wessinger
Missie Wessinger
Paralegal to Harriet Pollitt Wallace (#10451)

Post Office Box 100200
Columbia, SC 29202-3200
(803) 771-7900

November 7, 2012

B 10 (Supplement 2) (12/11)

UNITED STATES BANKRUPTCY COURT

The District of South Carolina

In re: Melissa Jean Marks
Debtor

Case No. 11-02619-JDW

Chapter 13

NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES

If you hold a claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any postpetition fees, expenses, and charges that you assert are recoverable against the debtor or against the debtor's principal residence. File this form as a supplement to your proof of claim. See Bankruptcy Rule 3002.1.

Name of creditor: Nationstar Mortgage, LLC

Court Claim no. (if known): 2-1

Last four digits of any number you use
to identify the debtor's account:

6 9 5 9

Does this notice supplement a prior notice of postpetition fees,
expenses, and charges?

No
X Yes. Date of the last notice: 11/07/12

Part 1: Itemize Postpetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges incurred on the debtor's mortgage account after the petition was filed. Do not include any escrow account disbursements or any amounts previously itemized in a notice filed in this case or ruled on by the bankruptcy court.

Description	Dates Incurred	Amount
1. Late charges		(1) \$
2. Non-sufficient funds (NSF) fees		(2) \$
3. Attorney fees	<u>11/7/12 - 4/19/13*</u>	(3) \$ 25,928.00
4. Filing fees and court costs	<u>11/28/12; 3/14/13; 3/20/13</u>	(4) \$ 75.00
5. Bankruptcy/Proof of claim fees		(5) \$
6. Appraisal/Broker's price opinion fees		(6) \$
7. Property inspection fees		(7) \$
8. Tax advances (non-escrow)		(8) \$
9. Insurance advances (non-escrow)		(9) \$
10. Property preservation expenses. Specify:		(10) \$
11. Other. Specify:		(11) \$
12. Other. Specify:		(12) \$
13. Other. Specify: Federal Express Fee	<u>2/5/13 (2); 2/12/13</u>	(13) \$ 36.48
14. Other. Specify: Mileage for travel to hearings	<u>2/15/13; 3/12/13; 4/2/13</u>	(14) \$ 319.02

The debtor or trustee may challenge whether the fees, expenses, and charges you listed are required to be paid. See 11 U.S.C. § 1322(b)(5) and Bankruptcy Rule 3002.1.

* The attorneys' fees reflected herein have been incurred pursuant to Paragraph 9 of the mortgage in connection with a postpetition state court action brought by Debtor, and are therefore recoverable (Marks v. Old South Mortgage Corp. et al, 12-CP-15-262). These fees and costs have not yet been submitted to the court for approval because the case is still ongoing and this Notice is being filed for informational purposes and to comply with Rule 3002.1.

B 10 (Supplement 2) (12/11)

Page 2

NOTICE TO CREDITORS

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

- ☐ I am the creditor.
☐ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this Notice is true and correct to the best of my knowledge, information, and reasonable belief.

s/Harriet Pollitt Wallace

Date 04/22/13

☒ Signature

Print: Harriet Pollitt Wallace (#10451)

Title Attorney for Nationstar Mortgage, LLC

First Name Middle Name Last Name

Company Rogers Townsend & Thomas, P.C

Address P.O. Box 100200
Number Street
Columbia, SC 29202

City

State

ZIP Code

Contact phone (803) 744--1846

Email Harriet.Wallace@rtt-law.com

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF SOUTH CAROLINA

IN RE:

Melissa Jean Marks aka Melissa Jean Tanner,
Debtor(s).

CHAPTER 13
CASE NO.: 11-02619-jw

CERTIFICATE OF SERVICE

I, the undersigned employee of ROGERS TOWNSEND & THOMAS, PC, do hereby certify that on April 22, 2013, a copy of the Notice of Postpetition Mortgage Fees, Expenses, and Charges was mailed electronically and by U.S. Mail, postage prepaid, to the parties listed below:

Robert R. Meredith, Jr., Esquire
4000 Faber Place Drive
Suite 120
N. Charleston, SC 29405

Melissa Jean Marks, Debtor
209 Presidential Court
Round O, SC 29474

James M. Wyman, Esquire
Post Office Box 997
Mount Pleasant, SC 29465-0997

ROGERS TOWNSEND & THOMAS, PC

/s Missie Wessinger

Missie Wessinger
Paralegal to Harriet Pollitt Wallace (#10451)
Post Office Box 100200
Columbia, SC 29202-3200
(803) 771-7900

EXHIBIT 9

After Recording Return To:
FLAGSTAR BANK
5151 CORPORATE DRIVE
TROY, MI 48098
FINAL DOCUMENTS, MAIL STOP W-530-3

This instrument was prepared by:

VI WBCD LOAN # 501684092

[Space Above This Line For Recording Data]

MORTGAGE

MIN 100052550168409273

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated OCTOBER 5, 2007, together with all Riders to this document.

(B) "Borrower" is Melissa Marks.

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is OLD SOUTH MORTGAGE CORP.

Lender is a CORPORATION,
SOUTH CAROLINA.
CHARLESTON, SC 29407.

organized and existing under the laws of
Lender's address is 4 CARRIAGE LN, 403,

(E) "Note" means the promissory note signed by Borrower and dated OCTOBER 5, 2007. The Note states that Borrower owes Lender *****SEVENTY SIX THOUSAND AND NO/100 ***** Dollars (U.S. \$76,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than OCTOBER 1, 2037.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☒ Other(s) [specify]
☐ 1-4 Family Rider	☐ Biweekly Payment Rider	MANUFACTURED HOME RIDER
☐ V.A. Rider		

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than Insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS the following described property located in the

COUNTY [Type of Recording Jurisdiction] of Colleton

[Name of Recording Jurisdiction]:

TMS #168-00-00-147

APN #: 168-00-00-147

which currently has the address of 209 PRESIDENTIAL CT, ROUND O,

[Street] [City]

South Carolina 29474-4374 ("Property Address"):

[Zip Code]

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, forever; together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and cancelling this Security Instrument.

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

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

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

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received

Initials: *Man*

by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 8. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Initials: *mm*

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property. If the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

Initials: *MM*

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property, if it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination, or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the

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mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits

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under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

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

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

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

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY

Initials: Man

APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in § 12-37-250 of the South Carolina Code of Laws.

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

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

Signed, sealed and delivered in the presence of:

Mary-Margaret Wilson

Melissa Marks (Seal)
MELISSA MARKS

Danawell

State of SOUTH CAROLINA
County of COLLETON

The foregoing instrument was acknowledged before me this 10/3/07 (date)
by Melissa Marks

(name of person acknowledged).

Danawell

Signature of Person Taking Acknowledgement

My commission expires: 11/15/2016

Exhibit "A"

All that certain piece, parcel or lot of land situate, lying and being South of Cottageville in the County of Colleton, State of South Carolina, as shown on a plat entitled "AN AS-BUILT SURVEY OF 1.03 ACRES TMS 168-00-00-147 LOT 7 - PRESIDENTIAL ESTATES SURVEYED FOR LEPAUL EDWARDS FLETCHER" prepared by Jerry L. Fowler, R.L.S. 15178, dated July 28, 2003, and recorded in the Office of the Clerk of Court for Colleton County in Plat Book 34 at Page 277. Said lot measuring and bounding as follows:

On the North measuring One Hundred Eighty-Seven and Fifty Hundredths (187.50') feet, more or less, and being bounded thereon by lands now or formerly of Jay P. Campbell, Jr.; on the East measuring Two Hundred Forty (240.00') feet, more or less, and being bounded thereon by lands now or formerly of Paul Walker; on the South measuring One Hundred Eighty-Seven and Fifty Hundredths (187.50') feet, more or less, and being bounded thereon by the Fifty (50') foot Right-of-Way of Presidential Court; and on the West measuring Two Hundred Forty (240.00') feet, more or less, and being bounded thereon by lands now or formerly of Paul Walker.

Subject to easements, restrictions, and rights of way of record.

This being the same property conveyed to Melissa Marks by deed of Paul Walker dated October 5, 2007 and recorded October ____, 2007 in the Office of the Register of Deeds for Colleton in Record Book ____ at Page ____.

TMS# 168-00-00-147

V1 WBOD LOAN # 501684092

**MANUFACTURED HOME RIDER TO THE MORTGAGE/
DEED OF TRUST/TRUST INDENTURE**

This Rider is made this 5TH day of OCTOBER, 2007, and is Incorporated into and shall be deemed to amend and supplement the Mortgage/Deed of Trust/Trust Indenture (the "Security Instrument") of the same date given by the undersigned
MELISSA MARKS

(the "Borrower")
to secure Borrowers' Note to OLD SOUTH MORTGAGE CORP, A SOUTH CAROLINA CORPORATION

(the "Note Holder")
of the same date (the "Note") and covering the property described in the Security Instrument and located at 209 PRESIDENTIAL CT, ROUND O, SC 29474-4374

LEGAL DESCRIPTION:
TMS #168-00-00-147

(Property Address)

MODIFICATIONS: In addition to the covenants and agreements made in the Security Instrument, Borrowers and Note Holder further covenant and agree as follows:

A. PROPERTY:

Property, as the term is defined herein, shall also encompass the Manufactured Home described as follows:

Manufacturer's Name: OAKWOOD
Model Name: OAK/FR
Model Year: 2002 Model Number:
Serial Number(s): H0NC07715247A&B
Width and Length:

which, by intention of the parties, shall constitute a part of the realty and shall pass with it.

B. ADDITIONAL COVENANTS OF BORROWER:

(a) Borrower(s) covenant and agree that they will comply with all state and local laws and regulations regarding the affixation of the Manufactured Home to the real property described herein including, but not limited to, surrendering the Certificate of Title (if required) and obtaining the requisite governmental approval and accompanying documentation necessary to classify the Manufactured Home as real property under state and local law.

Online Documents, Inc.

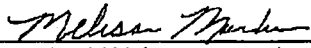
Page 1 of 2

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VI WBCD LOAN # 501684092

- (b) That the Manufactured Home described above shall be, at all times, and for all purposes, permanently affected to and part of the real property legally described herein.
- (c) Borrower(s) covenant that affixing the Manufactured Home to the real property legally described herein does not violate any zoning laws or other local requirements applicable to manufactured homes and further covenant that the Manufactured Homes has been delivered and installed to their satisfaction and is free from all defects.

By signing this, Borrower(s) agree to all of the above.


MELISSA MARKS (Seal)

NOTE

OCTOBER 5, 2007
[Date]

Walterboro,
[City]

SOUTH CAROLINA
[State]

209 PRESIDENTIAL CT, ROUND O, SC 29474-4374
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$76,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is OLD SOUTH MORTGAGE CORP, A SOUTH CAROLINA CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.

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

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.000%.

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

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on NOVEMBER 1, 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on OCTOBER 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

4 CARRIAGE LN
403

CHARLESTON, SC 29407

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

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$505.63.

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any

Initials: Am

sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

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

(B) Default

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

(C) Notice of Default

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

(D) No Waiver By Note Holder

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

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

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

7. GIVING OF NOTICES

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

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

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

9. WAIVERS

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

10. UNIFORM SECURED NOTE

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

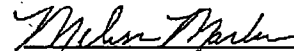
If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which

Initials: MM

Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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

 (Seal)
MELISSA MARKS

PAY TO THE ORDER OF
FLAGSTAR BANK, FSB
WITHOUT RECOURSE

OLD SOUTH MORTGAGE CORP

BY: _____

PRINTED NAME: _____

ITS: _____

[Sign Original Only]

NOTE

OCTOBER 5, 2007
[Date]

Walterboro,
[City]

SOUTH CAROLINA
[State]

209 PRESIDENTIAL CT, ROUTED 0, SC 29474-4374
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$76,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is OLD SOUTH MORTGAGE CORP, A SOUTH CAROLINA CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.

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

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.000%.

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

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1ST day of each month beginning on NOVEMBER 1, 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on OCTOBER 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

4 CARRIAGE LN
403
CHARLESTON, SC 29407
or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$505.63.

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any

Initials: PM

sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

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(B) Default

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

(C) Notice of Default

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(D) No Waiver By Note Holder

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

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

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

7. GIVING OF NOTICES

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

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

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

9. WAIVERS

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

10. UNIFORM SECURED NOTE

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

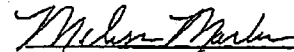
If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which

Initials: Ma

Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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

 (Seal)
MELISSA MARKS

PAY TO THE ORDER OF
FLAGSTAR BANK, FSB
WITHOUT RECOURSE

OLD SOUTH MORTGAGE CORP

BY: _____

PRINTED NAME: _____

ITS: _____

[Sign Original Only]

NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS

Borrower Name & Address:
MELISSA MARKS
209 PRESIDENTIAL CT
ROUND O, SC 29474-4374

You are hereby notified* that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from **OLD SOUTH MORTGAGE CORP**

to **FLAGSTAR BANK, FSB**

effective **NOVEMBER 1, 2007**

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer, or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing. [In this case, all necessary information is combined in this one notice.]

Your present servicer is **OLD SOUTH MORTGAGE CORP**

If you have any questions relating to the transfer of servicing from your present servicer call their Servicing Department at (800) 968-7700 between 8:30 AM - 5 PM EST on the following days:

This is a toll-free or collect call number.

Your new servicer will be **FLAGSTAR BANK, FSB**

The business address for your new servicer is: **5151 CORPORATE DRIVE**
TROY, MI 48098

The toll-free or collect call telephone number of your new servicer is (800)968-7700 If you have any questions relating to the transfer of servicing to your new servicer call their Servicing Department at (800)968-7700 between 8:30 AM - 5 PM EST on the following days: Monday through Friday

The date that your present servicer will stop accepting payments from you is **NOVEMBER 1, 2007** Send the date that your new servicer will start accepting payments from you is **NOVEMBER 1, 2007** all payments due on or after that date to your new servicer.

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. Section 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C. Section 2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. If you want to send a "qualified written request" regarding the servicing of your loan, it must be sent to this address:

5151 CORPORATE DRIVE
TROY, MI 48098

Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

V1 WBCD LOAN # 501684092

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

* This notification is a requirement of Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. Section 2605).

Melissa Marks
MELISSA MARKS

10/5/07
Date

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

* This notification is a requirement of Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. Section 2605).


MELISSA MARKS

10/5/07
Date

OLD SOUTH MORTGAGE CORP
4 CARRIAGE LN
403
CHARLESTON, SC 29407
(843) 573-4780

Notice of Transfer of Loan Servicing Rights

MELISSA MARKS
5572 TRAILWOOD DRIVE
NORTH CHARLESTON, SC 29418

You are hereby notified that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from OLD SOUTH MORTGAGE CORP

to Flagstar Bank, FSB, effective NOVEMBER 1, 2007.

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage Instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of the transfer, or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing. In this case, all necessary information is combined in this one notice.

Your present servicer is OLD SOUTH MORTGAGE CORP.

If you have any questions relating to the transfer of servicing from your present servicer call (843) 573-4780 between the hours of 9:00 a.m. and 5:00 p.m., on the following days: Monday through Friday. This is a toll-free or collect-call number.

Your New Servicer will be Flagstar Bank, FSB.

The business address for your new servicer is: Flagstar Bank, FSB, 5151 Corporate Drive, Troy MI, 48068-2639. The toll-free telephone number of your new servicer is (800) 968-7700. If you have any questions relating to the transfer of servicing to your new servicer call (800) 968-7700 to speak with a Customer Service Department representative, between 7:30 a.m. and 5:00 p.m. Eastern Standard Time, Monday through Friday.

The date that your present servicer will stop accepting payments from you is NOVEMBER 1, 2007.

The date that your new servicer will start accepting payments from you is NOVEMBER 1, 2007. Send all payments due on or after that date to your new servicer. Always send the mortgage payment with the payment coupon to the address specified on the coupon.

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C. 2605) gives you certain consumer rights. If you send a "qualified written request" to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 Business Days of the receipt of the request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. If you want to send a "qualified written request" regarding the servicing of your loan, it must be sent to this address: Flagstar Bank, FSB, 5151 Corporate Drive, Troy, MI, 48068-2639, Attn: Customer Service Department.

Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period of "qualified written request." However, this does not prevent the servicer from initiating a foreclosure if proper grounds exist under the mortgage documents.

V1 WBCD LOAN # 50168409:

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA (12 U.S.C. 2605) also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

OLD SOUTH MORTGAGE CORP

OCTOBER 5, 2007

AND

Flagstar Bank, FSB

OCTOBER 5, 2007

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA (12 U.S.C. 2605) also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that Section. You should seek legal advice if you believe your rights have been violated.

OLD SOUTH MORTGAGE CORP

OCTOBER 5, 2007

AND

Flagstar Bank, FSB

OCTOBER 5, 2007

501904-1

V1 NBOD LOAN # 501684092
MIN: 100052550168409273

NOTE

OCTOBER 5, 2007
[Date]

Walterboro,
[City]

SOUTH CAROLINA
[State]

209 PRESIDENTIAL CT, ROUND O, SC 29474-4374
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$76,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is OLD SOUTH MORTGAGE CORP, a SOUTH CAROLINA CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.

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

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.000%.

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

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on NOVEMBER 1, 2007. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on OCTOBER 1, 2037, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

4 CARRIAGE LN
403

CHARLESTON, SC 29407

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

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$505.63.

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any

Initials: *Man*

MULTISTATE FIXED RATE NOTE-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3209 1/01
© 1999-2007 Online Documents, Inc. Page 1 of 3

P3200NOT 0701
10-04-2007 12:11



501684092

209 Presidential Ct Round O, SC 29474-4374

000288 Nationstar

sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

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

(B) Default

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

(C) Notice of Default

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

(D) No Waiver By Note Holder

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

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

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

7. GIVING OF NOTICES

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

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8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

9. WAIVERS

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

10. UNIFORM SECURED NOTE

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

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which

Initials: *Ma*



501684092

200 President III St. East St. Louis, IL 60604-0001

V1 MCD LOAN # 501684092

Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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

Melissa Marks (Seal)
MELISSA MARKS

PAY TO THE ORDER OF
FLAGSTAR BANK, FSB
WITHOUT RECOURSE

OLD SOUTH MORTGAGE CORP.

BY: SX

PRINTED NAME

ITS:

PAY TO THE ORDER OF
Flagstar Bank, FSB
WITHOUT RECOURSE

Old South Mortgage Corp

By: Sandra Yavello
Sandra Yavello
Loan Operations Associate

[Sign Original Only]

MULTISTATE FIXED RATE NOTE-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3200 1/01
© 1992-2007 Online Documents, Inc. Page 3 of 3

F3200NOT: 0701
10-04-2007 12:11



501684092

2007 Presidential A Bond D. SE 1942-151

000290 Nations'ar

PAY TO THE ORDER OF
WITHOUT RECD. FROM
FLAGSTAFF, ARIZ. FOR

BY: [Signature]
JOHN F. HARRIS, JR. SECRETARY

BY: [Signature]
JOHN F. HARRIS, JR. SECRETARY

000291 Nationsia

EXHIBIT 10

November 8, 2011

John T. Smith
Department of Consumer Affairs
3600 Forest Drive, 3rd Floor
P.O. Box 5757
Columbia, South Carolina 29250-5757

RE: Complaint Activity No. 1060983
Consumer: Melissa Marks
Loan No. 596566959

Sent Via U.S. Standard Mail and Facsimile: (803) 734-4286

Dear Mr. Smith,

We are in receipt of your letter dated October 25, 2011 in which you brought to our attention the above referenced consumer's complaint. We thank you for bringing this matter to our attention and for allowing Nationstar Mortgage the opportunity to research the claims cited and provide a response.

First and foremost, we send our sincerest apology to Ms. Marks for any inconvenience or miscommunication that she may have experienced while working with Nationstar Mortgage LLC ("Nationstar"). It is our goal to provide exceptional service to each customer, and we truly apologize if she has received anything less.

Please be advised Nationstar Mortgage does not provide contractual statements or online access to customers that have been involved in bankruptcy unless the debt was reaffirmed. Should Ms. Marks have documentation substantiating that the debt was reaffirmed, she may submit it to our Bankruptcy Department via facsimile at (972) 315-7759.

Since the debt has not been reaffirmed through the Bankruptcy court, Nationstar Mortgage has agreed to send a payment coupon booklet in lieu of contractual statements. Our records indicate Ms. Marks was provided this booklet on November 8, 2011 via standard mail so that she may continue to remit monthly payments.

Please note that in order to comply with current bankruptcy guidelines, we ask that all future correspondence from Ms. Marks be directed as follows:

Nationstar Mortgage
Attn: Bankruptcy Department
350 Highland Drive
Lewisville, TX 75067

Email: Bankruptcy.Department@Nationstar.com
Phone: (800) 776-7751
Fax: (972) 353-6545

At Nationstar, our customers' business and total satisfaction are very important. Our Customer Service Department is available Monday through Thursday, 8:00 a.m. to 8:00 p.m. CDT, and 8:00 a.m. to 5:00 p.m. CDT, on Friday. The toll-free number is 1-888-430-2432.

We thank you for bringing this matter to our attention. We trust that the information provided has satisfied your request. Should you have any questions, please do not hesitate to contact me directly.

Sincerely,



Lauren Summerville
Compliance Specialist
Nationstar Mortgage, LLC.
350 Highland Drive
Lewisville, TX 75067
Office 469-549-3366
Phone: 972-956-6403
Fax: 972-966-4520
Lauren.Summerville@nationstar.com

cc: Ms. Marks

If this debt is in or has been discharged in a bankruptcy proceeding, be advised this communication is not an attempt to collect a debt against you and any information obtained or given will be for informational purposes.

DEC 19 2011 9:48AM

NO. 3792 P. 2

December 19, 2011

Sent Via U.S. Standard Mail and Facsimile: 180317344886

John T. Smith
Department of Consumer Affairs
3600 Forest Drive, 3rd Floor
P.O. Box 5757
Columbia, South Carolina 29250-5757

RE: Complaint Activity No. 1060983
Consumer: Melissa Marks
Loan No. 596566559

Dear Mr. Smith,

We are in receipt of your supplementary correspondence dated December 1, 2011 regarding Ms. Marks' concerns with her account.

As previously advised, we send our sincerest apology to Ms. Marks for any inconvenience or miscommunication that she may have experienced while working with Nationstar Mortgage LLC ("Nationstar"). However, Nationstar Mortgage does not provide contractual statements or online access to customers that have been involved in bankruptcy unless the debt was reaffirmed. Should Ms. Marks have documentation substantiating that the debt was reaffirmed, she may submit it to our Bankruptcy Department via facsimile at (972) 315-7759.

Since the debt has not been reaffirmed through the Bankruptcy court, Nationstar Mortgage has agreed to send a payment coupon booklet in lieu of contractual statements. Our records indicate Ms. Marks was provided this booklet on November 8, 2011 via standard mail so that she may continue to remit monthly payments.

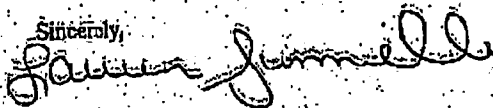
Please note that in order to comply with current bankruptcy guidelines, we ask that all future correspondence from Ms. Marks be directed as follows:

Nationstar Mortgage
Attn: Bankruptcy Department
350 Highland Drive
Lewisville, TX 75067

Email: Bankruptcy.Department@Nationstar.com
Phone: (800) 776-7751
Fax: (972) 353-6545

At Nationstar, our customers' business and total satisfaction are very important. Should Ms. Marks have any questions regarding the account, our Customer Service Department is available Monday through Thursday, 8:00 a.m. to 8:00 p.m. EDT, and 8:00 a.m. to 5:00 p.m. CDT, on Friday. The toll-free number is 1-888-480-2432.

Sincerely,



Lauren Summerville
Compliance Specialist
Nationstar Mortgage, LLC
350 Highland Drive
Lewisville, TX 75067
Office 469-549-3366
Phone 972-956-5403
Fax 972-966-4520
Lauren.Summerville@nationstar.com

cc: Ms. Marks

If this debt is in or has been discharged in a bankruptcy proceeding, be advised this communication is not an attempt to collect a debt against you and any information obtained or given will be for informational purposes.

EXHIBIT 11

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT

Melissa Jean Marks,
Plaintiff,

Case #: 12-CP-15-262

vs.

ANSWER

Old South Mortgage Corporation, John Does)
1-100, Fictitious Corporations 1-100.)
Defendants,)

THE DEFENDANT, Old South Mortgage Corporation, above-named, answering and counterclaiming to the Complaint of the Plaintiff herein, would respectfully show and allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE

Each and every allegation of the Complaint not herein specifically admitted is denied and demands strict proof thereof.

1. Defendant is without sufficient knowledge to either admit or deny the allegations as to Paragraphs 1, 3, 7, 9, 10, 11, 12, 13, 14, 17, 18, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 84, 88, 89, 90, 91, 93, 94, 96, 98, 99, 100, 101, 102, 103, 104, 111, 112, 113, 115, 116, 117, 118, 119, 121, 122, 123, 124, 125, 126, 130, 132, 136, 137, 144, 145, 146, 147, 149, 150, 154, 159, 160, 161, 162, 163, 171, 172, 176, 177, 178, 179, of the Complaint.

Therefore, these allegations are denied and strict proof thereof is demanded.

2. Defendant admits Paragraphs 2, 6, 8, 21, 142 of the Complaint.

3. Defendant denies Paragraphs 4, 5, 19, 20, 86, 87, 92, 106, 107, 108, 109, 114, 120, 127, 128, 129, 131, 135, 138, 151, 152, 155, 156, 158, 165, 166, 167, 168, 169, 170, 173, 174, 175 and strict proof thereof is demanded.

4. Defendant is not required to answer Paragraphs 97, 153 as they call for conclusions of law.

5. Paragraphs 105, 134, 157 do not require an answer.

6. Defendant denies it abandoned its lien against Plaintiff's home immediately after the closing and demands strict proof thereof. Defendant is without knowledge as to the remainder of paragraph 15 and demands strict proof thereof.

7. Defendant admits so much of Paragraph 16 which alleges Old South was dissolved on December 29, 2008. Defendant is without knowledge as to the remainder of Paragraph 16 and therefore demands strict proof thereof.

8. Defendant admits so much of Paragraph 83 which states Old South was identified as the Lender on the Note and Mortgage and that Old South placed a stamp on the note, but Defendant denies the remainder of paragraph 83 and demands strict proof thereof.

9. Defendant admits it did not loan money to Plaintiff and that Defendant is identified as the Lender on the Note and Mortgage. Plaintiff denies the remainder of Paragraph 85.

10. Defendant admits Flagstar did not loan money to Plaintiff for the purchase of her home. Defendant is without knowledge as to the rest of paragraph 87 and demands strict proof thereof.

11. Defendant admits Fannie Mae is not identified as the mortgagee or lender on the mortgage or note. Defendant is without knowledge as to the remainder of paragraph 95 and demands strict proof thereof.

12. Defendant admits a mortgage and note was prepared for Old South for Plaintiff signature for closing dated October 5, 2007 and subsequently recorded in the Colleton County Register of Deeds. Defendant denies the remainder of Paragraph 106 and demands strict proof thereof.
13. Defendant admits Ms. Tuten was the closing attorney. Defendant is without knowledge as to the remainder of Paragraph 110 and demands strict proof thereof.
14. Defendant denies it made fraudulent misrepresentations to the Plaintiff, and is without knowledge as to the remainder of Paragraph 133. Defendant demands strict proof thereof.
-
15. Defendant admits the Settlement Statement discloses a loan origination fee of \$855.00 and a processing fee of \$150.00 to Old South and an administrative fee of \$620 to Flagstar. Defendant is without knowledge as to the remainder of Paragraph 139 and demands strict proof thereof.
16. Defendant admits the Truth in Lending Disclosure Statement states, "At or after the closing, Flagstar Bank, FSB will pay a broker yield spread premium to Old South Mortgage Corp in connection with your loan of \$1,076.92. This amount is not part of your closing costs". Defendant is without knowledge as to remainder of Paragraph 140 and demands strict proof thereof.
17. Defendant admits Plaintiff received a Notice of Assignment, Sale or Transfer of Servicing Rights and a Notice of Transfer of Loan Servicing Rights informing her that Flagstar would become the servicer of her loan. Defendant is without knowledge as to the remainder of Paragraph 143 and demands strict proof thereof.
-

18. Defendant admits MERS is identified as nominee for the lender and as mortgagee, and that MERS is not named as a note holder on the original note. Defendant admits Old South is identified as the Lender on the note. Defendant denies the remainder of Paragraph 148 and demands strict proof thereof.

19. Defendant denies the terms of Plaintiff's loan are oppressive, but admits the remainder of Paragraph 164.

FOR A SECOND DEFENSE

20. Plaintiff has failed to state facts sufficient to constitute a cause of action and Plaintiff's case should be dismissed pursuant to SCRPC Rule 12(b) (6).

FOR A THIRD DEFENSE

21. If Plaintiff's case is not dismissed, then Flagstar Bank, FSB is a necessary party and should be joined as a party pursuant to SCRPC Rule 19.

WHEREFORE, having fully answered the Complaint, the Defendant Old South Mortgage Corporation, prays this court inquire into this matter and dismiss the Complaint of the Plaintiff and grant such further and other relief as may be just and proper.

John F. Knobeloch
King & Knobeloch, P.C.
808 Johnnie Dodds Blvd.
Mount Pleasant, SC 29464
(843) 884-3670

Mount Pleasant, SC

May 3, 2012

COUNTY OF COLLETON

Case #: 12-CP-15-262

VS.

CERTIFICATE OF MAILING

Old South Mortgage Corporation, John Does)
1-100, Fictitious Corporations 1-100,)
Defendants,)

I, Kevin King, of King & Knobloch, P.C., certify I mailed a copy of Defendant, Old South Mortgage Corporation, Answer on May 3, 2012 by mailing a copy first class mail and certified mail to:

Melissa Jean Marks
209 Presidential Court
Round O, South Carolina 29474

Kevin ~~King~~

Sworn before me May 3, 2012

Notary Public for South Carolina
My commission expires 01/12/2014

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT

Melissa Jean Marks,
Plaintiff,

vs.

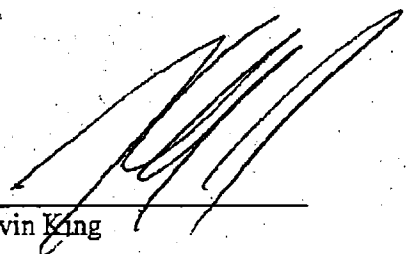
Old South Mortgage Corporation, John Does
1-100, Fictitious Corporations 1-100.
Defendants,

Case #: 12-CP-15-262

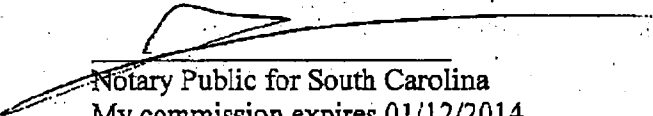
CERTIFICATE OF MAILING

I, Kevin King, of King & Knobloch, P.C., certify I mailed a copy of Defendant, Old South Mortgage Corporation, Answer on May 3, 2012 by mailing a copy first class mail and certified mail to:

Melissa Jean Marks
209 Presidential Court
Round O, South Carolina 29474


Kevin King

Sworn before me May 3, 2012


Notary Public for South Carolina
My commission expires 01/12/2014

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

MELISSA JEAN MARKS, *Pro Se*,

Plaintiff,

vs.

OLD SOUTH MORTGAGE CORPORATION,
JOHN DOES 1-100,
FICTITIOUS CORPORATIONS 1-100, and
NATIONSTAR MORTGAGE, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2012-CP-15-262

)
) DEFENDANT OLD SOUTH MORTGAGE
) RESPONSE TO

)
) PLAINTIFF'S FIRST SET OF
) INTERROGATORIES TO DEFENDANT
) OLD SOUTH MORTGAGE CORPORATION

Defendant, Old South Mortgage, provides the following responses to Plaintiff's First Set of Interrogatories.

Defendant respectfully reserves the right to supplement any or all of the discovery responses contained herein should additional, potentially responsive information or materials become available. In reserving this right, however, Plaintiff does not admit that any response herein is incomplete or will require supplementation

INTERROGATORIES

1. Give the names and addresses of persons known to you or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Bob Graybill — 154 Hampton Crest Trail Columbia, SC 29209

Sean Davis (whereabouts unknown)

There are no written or recorded statements.

2. List the names and addresses of any expert witnesses whom you propose to use as a witness at trial of the case.

none

3. For each person known to you or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

4. State the name, address, and corporate title(s), position(s) or affiliation of each of your former agents, officers, directors, shareholders, employees, contractors, or affiliates that have provided or will provide the required information and documents to respond to Plaintiff's pleadings, discovery requests, and at trial.

Bob Graybill was 100% owner and president

Sean Davis — employee (loan officer)

Ned Claasen — employee (loan officer)

5. Did you have a mortgage lending license that was in effect during the time period August 2007 to November 2007? If so, state the name(s) of the license(s), the issuing jurisdiction(s), and the license number(s).

Yes. Dept. of Consumer Affairs MB-0517302-0517302

6. State the name, address, and corporate title(s) of each of your former officers, directors and shareholders during the time period August 2007 to November 2007.

Bob Graybill – President and owner – 154 Hampton Crest Trail, Columbia, SC 29209

7. Was Sean Davis your affiliate, agent, employee, officer, director, or shareholder during the time period August 2007 to November 2007? If so, state his title(s), position(s) or affiliation with Old South.

Sean Davis was a loan officer and employee

8. State the name and address of the entity or person that financed the purchase of Plaintiff's home at 209 Presidential Court, Round O, South Carolina, on or about October 5, 2007.

Flagstar Bank 5151 Corporate Drive, Troy, MI 48098

9. State the name and address of the entity or person that was the actual or intended owner of the subject mortgage and note on or about November 1, 2007.

Flagstar Bank 5151 Corporate Drive, Troy, MI 48098

10. State the name and address of the actual or intended beneficiary of Plaintiff's mortgage payments other than Flagstar Bank beginning with Plaintiff's first payment on or about November 1, 2007.

Old South Mortgage did not have knowledge as to who may service the loan if transferred from Flagstar Bank

11. Did anyone affiliated with Old South ever disclose to Plaintiff in writing that Old South and Flagstar Bank intended to assign or transfer the subject mortgage and note to Fannie

Mae, a trust pool of mortgage investors, a REMIC, or any other entity or person within 60, 45, or 30 days or less of the date of the closing on October 5, 2007? If so, list the document(s) in which this information was disclosed to Plaintiff, including the date(s) of such document(s).

This loan file has been purged, but Old South Mortgage had every customer sign a servicing disclosure that explained that Old South did not service mortgage loans and that the servicing of the mortgage loan could change in the future but the terms of the loan could not be changed if the servicing was transferred.

12. Prior to Plaintiff filing this action, did anyone affiliated with Old South ever ~~disclose to Plaintiff in writing that neither Old South nor Flagstar Bank had financed the~~ purchase of her home on October 5, 2007? If so, list the document(s) in which this information was disclosed to Plaintiff, including the date(s) of such document(s).

Old South Mortgage explained verbally and provided documents that explained that Old South was not the entity lending the funds. Old South Mortgage files have been destroyed.

13. Did anyone affiliated with Old South ever disclose to Plaintiff in writing that the term "Lender" in the subject mortgage and note was to be defined and interpreted by the parties in a different way than the term is normally defined and interpreted in such legal instruments throughout the United States (i.e., the "Lender" actually loaned money to the borrower)? If so, list the document(s) in which this information was disclosed to Plaintiff, including the date(s) of such document(s).

Old South Mortgage file has been destroyed. I do not recall making this disclosure.

14. Did anyone affiliated with Old South ever disclose to Plaintiff in writing prior to the closing on October 5, 2007, that MERS would be named as a "nominee for Lender" in the

mortgage she would be asked to sign at the closing? If so, list the document(s) in which this information was disclosed to Plaintiff, including the date(s) of such document(s).

Old South Mortgage file has been destroyed. I do not recall making this disclosure.

15. Did anyone affiliated with Old South ever disclose to Plaintiff in writing the definition of the term "nominee for Lender" and that MERS was founded and is utilized by Fannie Mae and others in the mortgage industry in order to avoid recording assignments of mortgage in the county register of deeds? If so, list the document(s) in which this information was disclosed to Plaintiff, including the date(s) of such document(s).

~~Old South Mortgage file has been destroyed. I do not recall making this disclosure.~~

16. Did anyone affiliated with Old South ever disclose to Plaintiff in writing that Flagstar Bank would be or was servicing her home loan account on behalf of Fannie Mae or another entity or person other than Old South? If so, list the document(s) in which this information was disclosed to Plaintiff, including the date(s) of such document(s).

Old South Mortgage file has been destroyed. I do not recall making this disclosure. First Payment Letter states servicing was transferred to Flagstar. RESPA servicing disclosure states Old South does not service loans. Notice of Assignment states servicing was transferred to Flagstar.

17. Did anyone affiliated with Old South ever verbally disclose to Plaintiff the information described in Interrogatories 8 through 16 above? If so, describe each disclosure that was made, the name of the person that made each disclosure, and the date each disclosure was verbally made to Plaintiff.

As a general practice, Old South Mortgage's practice was to verbally and in writing explain to the customer that Old South did not and never previously serviced mortgage loans. It was a practice to explain that the servicing would be initially handled by the lender that was funding the loan and that the servicing could be transferred in the future but the loan terms would never change. I do not recall specifically making this disclosure in this case.

First Payment Letter states servicing was transferred to Flagstar. RESPA servicing disclosure states Old South does not service loans. Notice of Assignment states servicing was transferred to Flagstar.

18. To the extent no one affiliated with Old South disclosed to Plaintiff the information described in Interrogatories 8 through 16 above, explain why no one affiliated with Old South disclosed this information to Plaintiff.

Old South file has been destroyed. I do not recall specifically what disclosures were made on this transaction.

19. With respect to the MERS mortgage transactions that you processed during Old South's existence, was it your routine business practice to disclose to the applicants or mortgagors either verbally or in writing any of the information described in Interrogatories 8 through 16 above? If so, describe each such disclosure that was routinely made to the applicants or mortgagors by those acting on behalf of Old South, and include in the response whether each such disclosure was usually made verbally or in writing.

Old South was not a member of MERS and had no dealings with MERS.

20. Explain why you caused or allowed yourself to be identified as the "Lender" in the subject mortgage and note.

This was required by Flagstar Bank.

21. Explain why you believe it was lawful and was not fraudulent misrepresentation to cause or allow yourself to be identified as the "Lender" in the subject mortgage and note.

Settlement statement identifies Flagstar as the lender. Plaintiff's attorney was aware of source of funds.

22. Explain why you caused or allowed the subject mortgage to be recorded in the Colleton County Register of Deeds while you knew that you had not actually financed the purchase of Plaintiff's home and did not have an interest in equity in Plaintiff's home.

This procedure was required by Flagstar.

23. Explain why you believe it was lawful and not fraudulent misrepresentation to cause or allow the recording of a lien against Plaintiff's home in the Colleton County Register of Deeds in your own name instead of in the name of the entity or person who actually financed the purchase of Plaintiff's home.

See 21 and 22 above

24. Explain why you did not report to the credit reporting agencies in October 2007 that Plaintiff owed you the debt described in the subject mortgage and note.

Old South Mortgage never serviced the mortgage and therefore did not generate any information that could be reported to a credit bureau

END OF DOCUMENT EXCEPT FOR SIGNATURE ON FOLLOWING PAGE

Bob Graybill

Old South Mortgage
By Bob Graybill Its President
154 Hampton Crest Trail
Columbia, SC 29209

October 29th, 2012
Columbia, South Carolina

Sworn before me this Oct 29, 2012
by Old South Mortgage by Bob Graybill
Its President.

Shirley M. Paul

Notary for South Carolina

My commission expires: August 1, 2022

Certificate of Mailing

It is certified that I, Marcia Leuck, mailed Defendant's Response to Plaintiff's First Set of
Interrogatories on 11/5, 2012 by first class mail postage prepaid to:

Melissa Jean Marks
209 Presidential Court
Round O, SC 29474

Marcia Leuck

Sworn before me by Marcia Leuck on 11-5-12, 2012

[Signature]
Notary for South Carolina

My commission expires: 1/22/14

) IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2012-CP-15-262

1

1

vs.

**PLAINTIFF'S REQUEST FOR ADMISSIONS
TO DEFENDANT**

OLD SOUTH MORTGAGE CORPORATION;
JOHN DOES 1-100,
FICTITIOUS CORPORATIONS 1-100, and
NATIONSTAR MORTGAGE, LLC,

OLD SOUTH MORTGAGE CORPORATION

Defendants.

TO: JOHN F. KNOBELOCH, ESQUIRE, ATTORNEY FOR THE DEFENDANT OLD SOUTH MORTGAGE CORPORATION:

The following written Request for Admissions is served on you pursuant to the provisions of Rule 36 of the South Carolina Rules of Civil Procedure. You are required to respond to each request, in writing, under oath and serve a copy of such responses upon the undersigned pro se Plaintiff within thirty (30) days after service hereof.

Plaintiff requests that Defendant Old South Mortgage Corporation (hereinafter "Old South") admit or deny each of the following statements. If objection is made, please state the reason for the objection. If denying the matter, please set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter.

When Plaintiff refers to Old South herein, she is also referring to anyone employed by, affiliated with, or acting on behalf of Old South as to the processing of Plaintiff's home loan application and the origination of the subject mortgage and note during the time period August 2007 to October 2007.

1. Admit that Old South did not disclose to Plaintiff prior to the closing on October 5, 2007, that Mortgage Electronic Registration Systems, Inc. or MERS (hereinafter "MERS") would appear as nominee for lender in the mortgage she would be asked to sign at the closing.

2. Admit that Old South never disclosed to Plaintiff an explanation of MERS and that it was the intention of the parties to never create and record assignments of mortgage in the county register of deeds unless a party desired to foreclose on her home.

3. Admit that the first time Old South disclosed to Plaintiff that neither Old South nor Flagstar Bank financed the purchase of her home was in Old South's Answer to Plaintiff's Complaint in May 2012.

4. Admit that Old South did not disclose to Plaintiff on or before the closing on October 5, 2007, the name of the hidden entity that financed the purchase of her home.

5. Admit that Old South never disclosed to Plaintiff before she filed this action the name of the hidden entity that financed the purchase of her home.

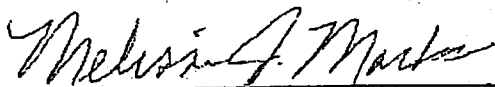
6. Admit that Old South never disclosed to Plaintiff that it was the intention of Old South and Flagstar Bank to assign or transfer her mortgage and note to Fannie Mae within approximately 30 days of the date she signed the closing documents on October 5, 2007.

7. Admit that Old South never disclosed to Plaintiff that her mortgage would be securitized along with other mortgages and sold to investors in mortgage-backed securities administered by Fannie Mae.

8. Admit that Old South was completely aware that it was fraudulently misrepresenting itself to be the lender in the mortgage contract and related closing documents it produced for Plaintiff's signature at the closing on October 5, 2007.

9. Admit that Nationstar Mortgage, LLC was never a party to and was not involved in the origination of the mortgage and the closing on October 5, 2007.

10. Admit that Flagstar Bank was not collecting payments on the subject mortgage and note as a servicer for Old South.



Melissa Jean Marks, Plaintiff pro se
209 Presidential Court
Round O, SC 29474
(843) 599-3156
mjmarks68@hotmail.com

Round O, South Carolina
October 15, 2012

EXHIBIT 12

Rent Buy Refinance Modify Avoid Foreclosure Find Resources

Fannie Mae Loan Lookup Results: Match Found

It appears that Fannie Mae owns your loan, based on the information you entered:

MELISSA MARKS
209 PRESIDENTIAL CT
ROUND O, SC 29474
Last 4 Digits of Social Security Number: ****
Fannie Mae Loan Acquisition Date: 10-01-2007
Mortgage Company: NATIONSTAR MORTGAGE, LLC

Results—Our Records Indicate:

- Your loan was acquired by Fannie Mae on or before May 31, 2009. Knowing the Fannie Mae Loan Acquisition Date is important because some programs, such as HARP, are available only on loans acquired by Fannie Mae on or before May 31, 2009.
- Your mortgage company is NATIONSTAR MORTGAGE, LLC.
- You may be eligible for the Home Affordable Refinance Program (HARP) or for the Home Affordable Modification Program (HAMP)—or other programs available exclusively for Fannie Mae borrowers.

Next Steps:

To help you find the option(s) that might be best for your situation, please answer the questions below:

Have you been delinquent on your mortgage in the past 12 months? ☐ Yes ☐ No

Note: In this case, "delinquent" means you have paid your mortgage payment late by 30 days or more at any time in the last 6 months. Or, that you had more than one late payment or made a payment more than 30 days late in the 6-month period prior to the last 6 months.

Do you anticipate having difficulty paying your mortgage in the near future (next 2-3 months)? ☐ Yes ☐ No

[Get Options](#)

Other Steps You Can Take:

[Get Help Now](#)

Contact a Fannie Mae Mortgage Help Center for free housing counseling and assistance with your mortgage.

[Explore KnowYourOptions.com](#)

Review the useful information and tools on this site to learn more about your options.

[Contact Your Mortgage Company](#)

Confirm these results and obtain additional information regarding your mortgage by contacting your mortgage company.

EXHIBIT 13

Our Charter



Fannie Mae was chartered by Congress in 1938 to support liquidity, stability, and affordability in the secondary mortgage market, where existing mortgage-related assets are purchased and sold. Our charter does not permit us to originate loans or lend money directly to consumers in the primary mortgage market.

Our most significant activities are securitizing mortgage loans originated by lenders into Fannie Mae mortgage-backed securities – which we call Fannie Mae MBS – and purchasing mortgage loans and mortgage-related securities for our mortgage portfolio. We obtain funds to purchase mortgage-related assets for our mortgage portfolio by issuing a variety of debt securities in the domestic and international capital markets. We also make other investments that increase the supply of affordable housing.

Federal National Mortgage Association Charter Act (As Amended Through July 30, 2008) (PDF)

Page last revised: 09/23/11

EXHIBIT 14

OLD SOUTH MORTGAGE CORPORATION
Mortgages Made Easy

Sean Christian Davis
Old South Mortgage Corp.
4 Carriage Lane, Suite 403
Charleston, SC 29407

27 August 2007

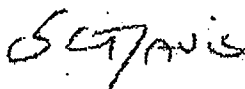
Melissa Marks
5572 Trailwood Drive
N Charleston, SC 29418

Dear Melissa,

Please be advised that upon review of your application you have been approved through conventional financing for the purchase of a primary residence with a sales price of \$85,000. Analysis of your credit, income, assets, and character qualify you for this loan.

Should you have any questions please feel free to contact me at 843.814.9238 or 843.573.4780.

With Confidence,



Sean Christian Davis
Loan Officer

EXHIBIT 15



OFFICE OF INSPECTOR GENERAL
Federal Housing Finance Agency
400 7th Street, SW, Washington DC 20024

May 2, 2013

Ms. Melissa Marks
209 Presidential Court
Round O, SC 29474

File# H-13-0477

Dear Ms. Marks:

The Federal Housing Finance Agency - Office of the Inspector General (FHFA-OIG) is in receipt of your complaint dated April 26, 2013.

Thank you for your complaint. We have forwarded it to the appropriate personnel at the Federal Trade Commission and the Federal Housing and Finance Agency for their review and appropriate handling.

A report may or may not be generated upon conclusion of an investigation. If you wish to request documentation pertaining to your complaint, you may submit a written request to FHFA's FOIA Office pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and/or the Privacy Act of 1974, 5 U.S.C. § 552a. Please note that otherwise responsive information may be protected from disclosure under one or more exemptions to the FOIA and/or Privacy Act. For more guidance, please refer to FHFA's website, www.fhfa.gov.

Sincerely,

Karen E. Briscoe
Operations Officer
Office of Investigations



Federal Housing Finance Agency

Constitution Center
400 7th Street, S.W.
Washington, D.C. 20024
Telephone: (202) 649-3800
Facsimile: (202) 649-1071
www.fhfa.gov

May 17, 2013

Melissa Marks
209 Presidential Ct.
Round O, SC 29474

RE: CMS 20130516-1211 H-13-0477

Ms. Marks,

Thank you for contacting the Federal Housing Finance Agency (FHFA), the regulator and conservator for Fannie Mae and Freddie Mac (the Enterprises) and regulator for the Federal Home Loan Banks. Please be advised that neither FHFA nor the Enterprises have regulatory or supervisory authority over banks, mortgage lenders, or servicers. The FHFA Office of Inspector General sent us your information.

We are forwarding your information to Fannie Mae personnel for a more detailed review. As a result, if appropriate, they may contact you to discuss your concerns and to obtain additional information as needed. They will advise us of any communication with you and the resolution of your concern.

Office of Congressional Affairs and Communications - Consumer Communications
Federal Housing Finance Agency

Notice: The Federal Housing Finance Agency is the regulator and conservator for Fannie Mae and Freddie Mac, and regulator for the Federal Home Loan Banks. FHFA has no regulatory authority over mortgage lenders or servicers. As disclosed on our website: "FHFA has delegated certain authorities to the Enterprises, including responsibility for day-to-day operations. FHFA generally does not intervene in matters involving individual mortgages, property sales or transfers, foreclosure or other actions. The Enterprises each have a review process to look into situations that arise involving their mortgages or property transactions." In addition, "we cannot follow up on the status of your issue, advocate or resolve individual consumer issues, act as a court of law or lawyer on your behalf, give you legal advice, become involved in complaints that are in litigation or have been litigated, or become involved in complaints that involve parties we do not regulate."

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

MELISSA JEAN MARKS, *Pro Se*,

Plaintiff,

vs.

OLD SOUTH MORTGAGE
CORPORATION; and
NATIONSTAR MORTGAGE, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2012-CP-15-00262

CERTIFICATE OF SERVICE

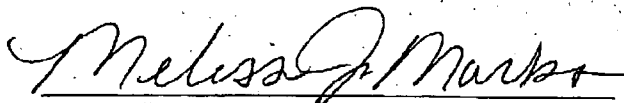
I certify that, on this date, I served a copy of Plaintiff's Motion and Order Information Form and Coversheet and Plaintiff's Notice of Motion and Motion to Dismiss Nationstar Mortgage, LLC, filed on June 26, 2013, by mailing it to him/her, at his/her last known address, by depositing them in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Attorney for the Defendant Old South Mortgage Corporation at:

John F. Knobloch, Esq.
King & Knobloch, P.C.
808 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

Attorney for Defendant Nationstar Mortgage, LLC at:

Harriet Pollitt Wallace, Esq.
Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210



Melissa Jean Marks, Plaintiff pro se
209 Presidential Court
Round O, SC 29474
(843) 599-3156

mjmarks68@hotmail.com

Round O, South Carolina
June 26, 2013

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Melissa Jean Marks,

Plaintiff,

vs.

Old South Mortgage Corporation, John Does 1-100, Fictitious Corporations 1-100, Nationstar Mortgage, LLC

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL CASE NO. 2012-CP-15-262

**DEFENDANT NATIONSTAR MORTGAGE,
LLC'S MEMORANDUM IN OPPOSITION
OF PLAINTIFF'S MOTION TO DISMISS
NATIONSTAR MORTGAGE, LLC**

(HPW 501904-00001)

Nationstar Mortgage, LLC ("Nationstar") submits this Memorandum of Law in opposition of Plaintiff's Motion to Dismiss Nationstar Mortgage, LLC for misjoinder pursuant to Rule 21 of the South Carolina Rules of Civil Procedure.

LEGAL STANDARD

The law of the case doctrine "prevents the parties from seeking a new ruling from each judge that oversees the case." James F. Flanagan, *South Carolina Civil Procedure* 687 (3d ed. 2010 & Supp. 2012). Rule 43(l) states, "[i]f any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action." Rule 43(l), SCRPC. South Carolina courts strictly enforce Rule 43(l) and the law of the case doctrine. James F. Flanagan, *South Carolina Civil Procedure* 687 (3d ed. 2010 & Supp. 2012).

The rule relied upon in Plaintiff's most recent motion, Rule 21 of the South Carolina Rules of Civil Procedure, allows misjoinder of parties which do not satisfy Rule 20 of the South Carolina

Rules of Civil Procedure. James F. Flanagan, *South Carolina Civil Procedure* 173 (3d ed. 2010 & Supp. 2012). Rule 20(a) states:

All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

Rule 20(a), SCRCP.

Joinder of a party under Rule 19(a) is more stringent and is not just allowable, but is required when a party "claims an interest relating to the subject of the action and is so situated that the disposition of the subject of the action in his absence may . . . as a practical matter impair or impede his ability to protect that interest." Rule 19(a), SCRCP.

In addition, Rule 24 of the South Carolina Rules of Civil Procedure allows a non-party to intervene in an action "(1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest." Rule 24(a), SCRCP.

PROCEDURAL POSTURE

The relief sought by Plaintiff is barred because it has already been raised and ruled on in this action. On or about April 6, 2012, Plaintiff filed this state court action (the "state court action") naming only Old South Mortgage Corporation and John Does 1-100 and Fictitious Corporations 1-100. Nationstar was not named as a party and neither the bankruptcy court nor any of the creditors, including Nationstar, were informed about this action by Plaintiff.

After learning about the state court action, on or about May 9, 2012, Nationstar filed a motion to modify the bankruptcy stay in order to intervene and defend the action. On or about May 14, 2012, after notice that Nationstar was seeking to intervene in the state court action, but prior to

the hearing in the bankruptcy court on Nationstar's motion to modify the bankruptcy stay and intervene, Plaintiff filed a Motion for Summary Judgment in the state court action.

The Bankruptcy Court issued an Order Modifying Stay, which stated:

It is not disputed by either the Debtor [Plaintiff] or the Movant [Nationstar] that Debtor is current on her post-petition payments to Movant, and in fact, Debtor was current on the loan payments when the bankruptcy was filed. However, Movant would be prejudiced if Debtor were granted the relief she is seeking in the State Court Action unless Movant is allowed to intervene and asserts its rights to the mortgage and underlying obligation in such action.

Order Modifying Stay at 2, In re Marks, No. 11-02619-jw (Bankr. D.S.C. May 25, 2012), Doc. No. 24.

Following the Order issued by the Bankruptcy Court, Nationstar sought to intervene in the state court action. After a hearing, Nationstar's Motion to Intervene was granted. The Order Granting Nationstar Mortgage, LLC's Motion to Intervene found as follows:

I find that Nationstar may intervene as a matter of right because both prongs of Rule 24(a) are satisfied. Section 15-53-80 grants Nationstar an unconditional right to intervene because the Plaintiff seeks a declaratory judgment that could affect Nationstar's claim under the Note and Mortgage, which satisfies Rule 24(a)(1). Nationstar claims an interest in the action that is not being protected by any other named party as contemplated in Rule 24(a)(2), because Old South is a dissolved corporation and is not claiming any interest in the Note and Mortgage, and none of the other defendants have been served. Since Plaintiff seeks declaratory and injunctive relief that would effectively allow her to avoid her obligations under the Note and Mortgage, Nationstar is so situated that the disposition of the current action may, as a practical matter, impair or impede its ability to protect its' interests.

Despite Plaintiff's argument that allowing Nationstar to intervene would cause delay and expense as Old South consents to the relief Nationstar is seeking, and because John Does 1-100 and Fictitious Corporations 1-100 were not served with process, I find that no named party will be prejudiced by Nationstar's intervention in this case.

(Order Granting Nationstar Mortgage, LLC's Mot. to Intervene, Den. Mot. to Substitute Parties, & Granting Pl.'s Mot. to Continue Hr'g on Mot. for Summ. J. 2-3, Aug. 2, 2012).

Thereafter, Nationstar timely responded to lengthy interrogatories, requests for production, and requests to admit, served by the Plaintiff. Despite this, Plaintiff filed a Motion to Compel Discovery and then filed a Motion to Amend Complaint to add Fannie Mae as a defendant.

Plaintiff's Motion to Amend was denied, after a hearing, because the court determined it would be futile to add Fannie Mae as a party for the following reasons: (1) Plaintiff lacked standing as a result of her Chapter 13 bankruptcy filing; and (2) Nationstar is the proper party to enforce the note and mortgage, because it is the holder of the original note, endorsed in blank. (Order Den. Pl.'s Mot. for Leave to Amend Compl. & Granting Pl.'s Mot. to Withdraw Mot. for Summ. J. 3-5, Feb. 27, 2013). In addition to denying the Plaintiff's Motion to Amend, the Court also denied the Motion to Compel on the grounds it was moot. (Order, Feb. 20, 2013). Plaintiff then filed a Motion to Reconsider, which was denied. (Order Den. Pl.'s Mot. for Recons. of Leave to Amend Compl. and of Order Den. Pl.'s Mot. to Compel Answers to Interrogs. & Reqs. for Produc., Apr. 12, 2013). Plaintiff's Motion to Dismiss Nationstar Mortgage, LLC was filed on June 26, 2013, requesting dismissal of Nationstar based upon many allegations already heard and ruled upon by this court.

UNDISPUTED FACTS

The following facts are undisputed:

(1) On October 5, 2007, Plaintiff executed and delivered to Old South Mortgage Corp. a promissory note in the amount of \$76,000.00 dollars (the "Note", which is attached to the Complaint as Exhibit "4"), and a mortgage on real property known generally as 209 Presidential Ct., Round O, South Carolina 29474-4374 (the "Mortgage," which is attached to the Complaint as Exhibit "4") to secure the re-payment of the Note (Compl. ¶ 6, Apr. 6, 2012).

(2) Plaintiff was represented by counsel at the closing, which occurred on October 5, 2007. (Compl. ¶ 8; Compl. Ex. 4, Engagement Letter).

(3) Flagstar wired the loan proceeds to Plaintiff's counsel, which were used to purchase the property. (Compl. ¶ 84; Compl. Ex. 4, Wire Transfer).

(4) At the closing, Plaintiff signed several documents, disclosing Old South's right and intention to transfer the loan and servicing rights. (See, e.g., Compl. Ex. 4; Mortg. ¶ 20; Note ¶ 1 (the note was already endorsed in to Flagstar at the closing); Loan Closing Disclosure Acknowledgments ¶ 5; Itemization of Amount Financed (showing Old South Mortgage receiving a broker fee). The documents signed at closing were provided to Plaintiff by her closing attorney on or about October 8, 2007. (Compl. Ex. 4, Letter to Marks from Tuten, Oct. 7, 2013).

(5) Subsequently, Flagstar transferred the servicing rights to Nationstar. (Compl. ¶ 28; Compl. Ex. 12).

(6) On or about April 20, 2011, Plaintiff filed a Chapter 13 bankruptcy petition.

(7) Plaintiff named Nationstar as the secured creditor of the loan in her Chapter 13 bankruptcy petition and schedules. (Bankruptcy Petition at 16, 30, In re Marks, No. 11-02619-jw (Bankr. D.S.C. April 20, 2011), Doc. No. 1 (attached to Nationstar's Mot. for Summ. J.)).

(8) The confirmed Chapter 13 Plan orders that Plaintiff will continue to make mortgage payments to Nationstar. (Amended Chapter 13 Plan at 3, In re Marks, No. 11-02619-jw (Bankr. D.S.C. June 8, 2011), Doc. No. 9 (attached to Nationstar's Mot. for Summ. J.)).

(9) Nationstar is the current loan servicer and Fannie Mae is the investor of the loan.

(10) Nationstar has never filed or threatened to file a foreclosure action against Plaintiff.

(11) Plaintiff is current in her post-petition payments to Nationstar.¹

LEGAL ANALYSIS

Plaintiff's Motion to Dismiss Nationstar should be denied because Nationstar properly intervened in this action and is a necessary party pursuant to Rules 19(a) and 20(a) of the *South Carolina Rules of Civil Procedure*. Nationstar must remain in this action to protect its interest in and

¹ Nationstar has filed two Notices of Post Petition Fees in the Chapter 13 bankruptcy, totaling approximately \$46,100 as of April 19, 2013 to comply with Bankruptcy Rule 3002.1. However, Nationstar has not sought to collect these fees from Plaintiff due to the fact that the state court action is still pending and has, therefore, not sought approval from the Bankruptcy Court to collect these fees.

the ability to enforce the note and mortgage. If Nationstar was to be dismissed, this action would impede its ability to protect that interest. Further, and pursuant to the Law of the Case Doctrine, the relief sought by Plaintiff should be barred because it contains the same arguments and allegations raised in other motions already heard and ruled upon in this state court action and in Plaintiff's bankruptcy action.

In her Motion to Dismiss Nationstar from this action, Plaintiff relies on Rule 21 of the South Carolina Rules of Civil Procedure, alleging that Nationstar was improperly joined in this action. Plaintiff alleges that Nationstar is "merely servicing" the loan and is not "the holder of the subject note or owner of the subject mortgage" and therefore does not have standing to defend the action (Mot. to Dismiss 1-2). This issue has already been adjudicated by both the state court and the bankruptcy court. The previous rulings, finding that Nationstar is entitled to enforce the note which is secured by the mortgage, are law of the case. Plaintiff now seeks to persuade the Court that Nationstar misstated its authority to enforce the note, secured by the mortgage. As described herein, it is undisputed that Nationstar is the servicer of Plaintiff's loan and that Plaintiff identified Nationstar as the proper party to receive payments in her bankruptcy action. In fact, Plaintiff continues to make her post-petition payments to Nationstar.

Although Nationstar did inadvertently misstate that it was the owner and not just the holder and servicer of the loan in the original proposed order granting its Motion to Intervene, Nationstar promptly corrected the misstatement in an email to the Court and all parties to this litigation, prior to the Court's issuance of its order; therefore, there is no prejudice to any party. (Email from Wallace to Buckner, Jul. 25, 2012, attached hereto as Ex. A; *see also* Order Den. Pl.'s Mot. for Recons., Aug. 2, 2012). Further, the misstatement and the fact that Nationstar does not own the note does not affect Nationstar's position and interest with regard to its standing to enforce the note because it remains the holder of the note, endorsed in blank.

South Carolina courts have long recognized that the holder of an original promissory note, endorsed to it or in blank has standing to enforce the note, even if it is not the owner. A prior ruling in this case explained as follows:

South Carolina's version of Article 3 of the Uniform Commercial Code governs the enforceability of negotiable instruments including promissory notes secured by mortgages on real estate. *Swindler v. Swindler*, 355 S.C. 245, 584 S.E.2d 438 (Ct. App. 2007). S.C. Code Ann. Section 36-3-301 provides there are three categories of persons entitled to enforce a negotiable instrument: (1) the holder of the instrument; (2) a nonholder in possession of the instrument who has the rights of the holder; and (3) a party who once had possession of a now lost instrument. S.C. Code Ann. § 36-3-301. Most importantly, a party may be entitled to enforce an instrument even though it "is not the owner of the instrument." *Id.*

By virtue of its possession of the original note, Nationstar is the proper party to enforce the note. It follows that Nationstar is the only necessary party to defend against Plaintiff's claims that the note is unenforceable.

(Order Den. Pl.'s Mot. for Leave to Amend Compl. 4, Feb. 20, 2012).

In addition, by virtue of the schedules and confirmed plan filed in her bankruptcy action, Plaintiff is now barred from alleging Nationstar cannot enforce the Note. *See In re Nix*, Bankr. No. 10-01103-HB, 2012 WL 27667, at *5-7 (Bankr. D.S.C. Jan. 5, 2012); *see also Abraham v. Bank of America, N.A. (In re Abraham)*, Bankr. No. 10-05354-jw, 2010 WL 5437253 (Bankr. D.S.C. Sept. 20, 2010) (holding that debtor was judicially estopped from asserting contrary position in state court litigation based on his failure to list any causes of actions against defendant in bankruptcy schedules); *In re Full*, No. 09-05650-JW, 2012 Bankr. LEXIS 4704 (Bankr. D.S.C. Sept. 24, 2012).

In sum, the issues and allegations raised by Plaintiff in her Motion to Dismiss have been previously raised and ruled upon. The orders of this Court and the Bankruptcy Court finding that Plaintiff has standing to defend this state court action represent the law of the case and should not be disturbed. Further, Plaintiff's own bankruptcy pleadings contradict her allegations, and she should, therefore, be barred from raising such contradictory positions in this action. Finally, because Nationstar is the holder of the note and entitled to enforce the obligations thereunder, Nationstar has

both standing to defend this action and has an unconditional right to remain in this action and defend its position as it is "so situated that the disposition of the subject of the action in [its] absence may . . . as a practical matter impair or impede [its] ability to protect that interest." Rule 19(a), SCRPC. Misjoinder is an inappropriate remedy based upon the law of this case; Nationstar is a proper party to this action and should not be dismissed.

CONCLUSION

Based on the grounds set forth above, Nationstar respectfully requests Plaintiff's Motion to Dismiss be denied. Due to the automatic stay imposed by Plaintiff's Chapter 13 bankruptcy, Nationstar specifically reserves its right to file an application for fees and costs with the United States Bankruptcy Court upon resolution of this case and does not waive its right for reimbursement of its litigation fees and costs.

Respectfully submitted,



Harriet Pollitt Wallace (SC Bar # 69454)

Erica G. Lybrand (SC Bar # 79052)

ROGERS TOWNSEND & THOMAS, PC

220 Executive Center Drive

Post Office Box 100200 (29202)

Columbia, SC 29210

(803) 771-7900

Attorneys for Defendant Nationstar Mortgage, LLC

August 1, 2013
Columbia, South Carolina

Harriet Wallace

From: Harriet Wallace
Sent: Wednesday, July 25, 2012 11:16 AM
To: Melissa Marks; pbucknerj@sccourts.org
Cc: pbucknerlc@sccourts.org; docs@kingknob.com; Sheri McClendon
Subject: RE: Marks v. Old South Mortgage Corporation et al. C/A # 12-CP-15-00262
Attachments: REDLINED Proposed Order Granting Nationstar Motion to Intervene with Marks_Wallace revisions.docx; Proposed Order Granting Nationstar Motion to Intervene with Marks_Wallace revisions.docx

Dear Judge Buckner,

We have reviewed Ms. Marks' proposed changes to the proposed order we submitted on Monday. We do not object to some of Ms. Marks changes. Attached please find a revised proposed order which incorporates those changes we had no issue with, and a revised redline to Ms. Marks' proposed Order. Our objections are otherwise stated below.

We have no objection to how Ms. Marks has characterized her complaint in Paragraph Two and left her changes in tact. However, we removed "and Note Holder".

Ms. Marks struck any reference to her bankruptcy from Paragraph Three claiming it is irrelevant. We object to this change because it goes to timing, which is relevant under Rule 24.

We also struck use of the word "owner" from Paragraph Three. Your Honor, we learned yesterday that we were given misinformation as to Fannie Mae's involvement with this loan. Fannie Mae is, in fact, an investor. We never referred to Nationstar as being the owner in our Motion and I do not believe I ever stated to the Court that Nationstar was the owner of the Note at the hearing. However, out of an abundance of caution, I wanted to bring this to the Court's attention. Irrespective of Fannie Mae's investor status, Nationstar is the holder (as shown at the hearing by presentment of the original note) and, as such, is afforded the benefits and remedies provided for under Article 3 of the Commercial Code.

We believe the supporting law is proper and consistent with the Court's findings.

Please do not hesitate to contact me if you have any questions. Thank you.



ROGERS TOWNSEND
ATTORNEYS AT LAW

Harriet Wallace
Shareholder

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Direct 803.744.1846
Fax 803.343.7017

Main 803.771.7900
Visit rtt-law.com

From: Melissa Marks [mailto:mjmarks68@hotmail.com]
Sent: Tuesday, July 24, 2012 9:48 PM
To: Harriet Wallace; pbucknerj@sccourts.org
Cc: pbucknerlc@sccourts.org; docs@kingknob.com; Sheri McClendon
Subject: RE: Marks v. Old South Mortgage Corporation et al. C/A # 12-CP-15-00262

Your Honor,

Please find attached my proposed revisions to Nationstar's proposed order for the Court's consideration, and please find below my objections. Although the attached proposed order is reduced and re-written in part, you will see that I left some of Nationstar's language intact to the extent it appeared entirely consistent with the Court's rulings and instructions given at the hearing. I have also attached a redlined version for your convenience.

I object and move to strike the second paragraph of Nationstar's proposed order on the grounds it mischaracterizes my civil action in a manner that may be misleading to persons who are unfamiliar with the pleadings. Nationstar keeps bringing up the debt issue but the security interest/lien issue is the issue I brought before this Court. In addition, Nationstar's wording may be construed to imply that the Court is thinking my reasons for bringing the action are frivolous and improper, and the hearing transcript doesn't support that.

I object and move to strike the third paragraph of Nationstar's proposed order on the grounds it is irrelevant, and by mentioning the bankruptcy and the bankruptcy order in this manner, this may be misleading to persons who are unfamiliar with the pleadings. The Court was not persuaded at the hearing that the bankruptcy has any effect or relevancy to this action, and the bankruptcy order has already been incorporated into my case records in both courts.

I object and move to strike the fourth and fifth paragraphs of Nationstar's proposed order on the grounds that they cite rules and statutes suggesting their applications to this Court's ruling in a manner that does not appear entirely consistent with what was actually stated by the Court and what actually occurred at the hearing, which is the ownership of the mortgage is in dispute. I believe this is Nationstar's attempt to bind this Court to conclusions of law that are Nationstar's and not necessarily the conclusions of the Court.

I object and move to strike the sixth paragraph of Nationstar's proposed order on the grounds it does not appear entirely consistent with what the Court stated at the hearing. The Court denied Nationstar's Motion to Substitute Parties, so arguably, it goes without saying that no one's legal rights will be prejudiced.

In consideration of the foregoing, I respectfully request that the Court accept and sign the attached proposed revised order in lieu of Nationstar's proposed order, or in the alternative, to order Nationstar to revise its proposed order in consideration of the objections raised herein and resubmit it with the requested revisions.

Respectfully submitted,
Melissa J. Marks, Plaintiff pro se
209 Presidential Court
Round O, SC 29474
(843) 819-4890

From: Harriet.Wallace@rtt-law.com
To: pbucknerj@sccourts.org
CC: pbucknerj@sccourts.org; mimarks68@hotmail.com; docs@kingknob.com; Sheri.McClendon@rtt-law.com
Subject: Marks v. Old South Mortgage Corporation et al. C/A # 12-CP-15-00262
Date: Mon, 23 Jul 2012 16:15:41 +0000

Judge Buckner,

I hope this email finds you well. As you requested at the hearing on July 18, attached please find the Proposed Order Granting Nationstar's Motion to Intervene, Denying Nationstar's Motion to Substitute Parties, and Granting Plaintiff's Request for a Continuance of her Motion for Summary Judgment.

I have copied Ms. Marks, Mr. Knobloch, and your law clerk, and will also send a hard copy of the proposed order by mail with a self-addressed stamped envelope.

If you have any questions, please do not hesitate to contact me.



Harriet Wallace
Shareholder

Direct 803.744.846
Fax 803.343.7017

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Main 803.771.7900
Visit rtt-law.com

NOTICES

PRIVILEGED AND CONFIDENTIAL: *This electronic message (including any attachments) is intended only for the use of the individual or entity to which it is addressed and may contain information that is attorney-client privileged, may be confidential work product, or may be exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is wrongful, is strictly prohibited, and may subject you to civil liability. If you have received this communication in error, please immediately notify us by telephone at 803-771-7900 (Columbia office) or 704-442-9500 (Charlotte office) or by return e-mail, and destroy any copies (electronic, paper, or otherwise) that you may have of this communication.*

DEBT COLLECTOR: *This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.*

IRS CIRCULAR 230 DISCLOSURE: *To ensure compliance with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties that may be imposed by the IRS or to promote, market or recommend to any party any tax-related matter addressed herein. In addition, if any such tax advice is used or referred to by other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, then (i) the advice should be construed as written in connection with the promotion or marketing by others of the transaction(s) or matter(s) addresses in this communication and (ii) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.*

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 12-CP-15-262

I, Missie Wessinger, an employee for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the following upon counsel of record and parties in interest by electronic mail and U.S. Mail, postage prepaid, on August 1, 2013, at the following addresses:

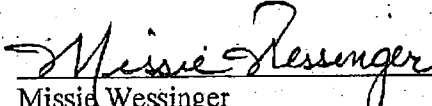
Document Served:

Defendant Nationstar Mortgage, LLC's Memorandum in Opposition to Plaintiff's Motion to Dismiss Nationstar Mortgage, LLC

Counsel/Parties Served:

Melissa J. Marks, Pro Se
209 Presidential Court
Round O, SC 29474
mjmarks68@hotmail.com

John F. Knobloch, Esquire
King & Knobloch, P.C.
808 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
docs@kingknob.com


Missie Wessinger

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2012-CP-15-00262

MELISSA JEAN MARKS, *Pro Se*,
Plaintiff,

vs.

OLD SOUTH MORTGAGE
CORPORATION; and
NATIONSTAR MORTGAGE, LLC,
Defendants.

) PLAINTIFF'S MEMORANDUM
) IN SUPPORT OF PLAINTIFF'S
) MOTION TO DISMISS
) NATIONSTAR MORTGAGE, LLC

2013 AUG 22 AM 9:33

PATRICIA A. ORR
CLERK OF COURT
COMMON PLEAS

COMES NOW the Plaintiff *pro se* and submits this Memorandum of Law in support of her Motion to Dismiss Nationstar Mortgage, LLC ("Nationstar") from this action with prejudice.

The Law of the Case

During the hearing on Nationstar's motion to intervene in this action on July 18, 2012, the hearing transcript clearly shows this Court allowed Nationstar to intervene for the limited purposes of answering the complaint and Plaintiff's discovery requests so that it would be granted the opportunity to prove it was the current holder of the note as it had claimed it was in the pleadings it filed in the courts on May 9, 2012. The hearing transcript is attached hereto as **Exhibit 1** and incorporated herein by reference.

As a result of Nationstar filing those pleadings, this Court informed Plaintiff via email in essence that this Court will not permit her case to proceed until Nationstar has been granted the opportunity to appear and be heard. This Court thereby tied Plaintiff's hands as she could not raise an objection to Nationstar's motion seeking a modification of the automatic stay in her Chapter 13 case, because if she did, this Court was not going to allow this case to proceed.

The Court also made it clear at the hearing that Nationstar did not have standing to bring

a motion to dismiss Plaintiff's case or to dismiss any other parties from this action. The Court acknowledged that Plaintiff questioned the transfer of the note and mortgage to Nationstar, and since the Court allowed Nationstar to intervene on this limited basis, the Plaintiff had obviously persuaded the Court that Nationstar had failed to prove that it owned the note and mortgage and that it had standing to defend this action. The Court stated,

"I don't think just because you [Nationstar] alleged you were there because she questions the transfer of this interest, and I think that's a matter that should be subject to an evidentiary hearing, and not done on a motion for intervention."

The Court has not yet held such evidentiary hearing because this is the first time that Plaintiff has brought a motion to dismiss Nationstar, which has resulted in the scheduling of an evidentiary hearing to determine the merits of Nationstar's claims. Therefore, contrary to what Nationstar alleges, Plaintiff contends the Court may determine and rule upon the merits of Nationstar's claims by reviewing the facts, evidence, circumstances and citations of law *de novo*.

At the same hearing, the Court also acknowledged Plaintiff's residential property and the mortgage was not part of her Chapter 13 bankruptcy in the beginning, and Nationstar acknowledged there was no precondition arrearage being paid to Nationstar through her confirmed plan and that Plaintiff makes her mortgage payments to Nationstar directly. This means, for all intents and purposes, Nationstar is considered exempt from the plan that is being administered by the trustee for the benefit of Plaintiff's unsecured creditors.

At the same hearing, it was also acknowledged that Plaintiff and Nationstar had previously appeared before the bankruptcy court, the bankruptcy court had granted permission for Nationstar to appear in this action, and rightly so, the Court was not persuaded that the bankruptcy in any way precluded this action from proceeding on its merits in this state court. The Court obviously believed Plaintiff had standing to bring and prosecute this action at that

time, and Plaintiff has since cited the applicable law to the Court showing the Court was absolutely correct about that.

At the same hearing, the Court instructed Plaintiff, "Ms. Marks, you do not get the chance to argue this motion again, and I want to make sure you understand that." As a result of Nationstar's frauds upon the courts by falsely claiming to be the current holder of the note in its pleadings filed on May 9, 2012, Plaintiff was obviously harmed and prejudiced. As a result, the Court required Plaintiff to allow Nationstar to file an answer, to serve discovery requests on the parties, to join all necessary parties, and then the Court would entertain her amended motion for summary judgment (or other appropriate motion) and hold an evidentiary hearing to determine the merits of Nationstar's claims.

As explained in the motion to dismiss, Nationstar subsequently admitted in its discovery responses that Fannie Mae is the owner of the note and mortgage, so upon receipt of those discovery responses, and pursuant to the Court's instructions, Plaintiff promptly filed a motion for leave to amend her complaint seeking to add Fannie Mae as a defendant so she could serve Fannie Mae with the original complaint.

Inexplicably, the Court denied Plaintiff's motion for leave to amend complaint to add the actual owner of the mortgage as a defendant, denied her motion to compel Nationstar to completely answer her discovery requests, and denied her motion for reconsideration without granting her a hearing. The Court apparently had failed to remember the foregoing law of the case and had also made other errors of law when disposing of those two motions as Plaintiff was not granted sufficient time and opportunity to find and show the Court the applicable law.

Unfortunately, Nationstar persuaded the Court to arbitrarily hold that Plaintiff lacks standing to bring and prosecute this action, which is clearly not true as to a Chapter 13 debtor in

possession of the property of the estate, and to arbitrarily hold in essence that Nationstar is the only necessary party by virtue of possession of the note alone as the Court's basis for denying and disposing of those two motions.

In doing so, the Court was completely aware and yet arbitrarily ignored the fact that Nationstar had not only lied to the court when it claimed ownership but Nationstar also refused to produce any credible documentary evidence whatsoever proving that it had any legally recognizable rights or interests in this mortgage specifically. The Court also arbitrarily held that the actual owner of the mortgage is not a necessary party in this action, which did not make sense because that was in direct contradiction to the Court's prior rulings in this case. Long story short, upon Plaintiff's motion, the presiding judge recused himself from this case.

Nationstar is still here trying to persuade the Court to ignore what the applicable law actually says and means and to ignore that the facts, evidence and law support Plaintiff's claims and contentions against it in this action. Plaintiff is here trying to show the Court that the injustice Nationstar has caused her to suffer for the past two years can still be corrected right here and right now at the trial court level so that she will not be forced to unjustly suffer the labor, time and expense of an appeal seeking to undo all the harm and prejudice it has caused.

The Doctrine of *Ultra Vires*

The doctrine of *ultra vires* supports Plaintiff's contention in her pleadings in essence that the mortgage and note are invalid and unenforceable as a matter of law and that she is merely seeking this Court's declaration of an obvious fact. Neither Nationstar nor any other party has a legal right to enforce an invalid mortgage and note; there is no credible evidence before this court that a lawful transfer of ownership of the note has ever taken place; and as a matter of law, a dissolved domestic corporation cannot maintain assets, a mortgage in this case, in its name.

Nevertheless, Nationstar has turned Plaintiff's *prima facie* case into a circus and probably would not have been permitted to do so but for its frauds upon the courts.

Nationstar not only lacks standing for the reasons explained in the motion to dismiss, but pursuant to the doctrine of *ultra vires*, Nationstar cannot assert a valid claim or defense in this action upon which relief can be granted by this Court. Since this Court cannot prejudice legal rights that are nonexistent as a matter of law, Nationstar is not a necessary party to this action pursuant to the state's statutes and civil rules of procedure.

The Supreme Court of South Carolina in *Howard & Foster Co. v. Citizens' Nat'l Bank*, 133 S.C. 202, 130 S.E. 758 (1926) cited and explained the doctrine as follows:

"In *Central Co. v. Pullman*, 139 U.S. 24 at page 59; 11 S. Ct. 478, 488 (35 L. Ed. 55), the Court sums up the question thus: 'A contract of a corporation, which is ultra vires, in the proper sense (that is to say, outside the object of its creation as defined in the law of its organization, and therefore beyond the powers conferred upon it by the Legislature), is not voidable only, but wholly void, and of no legal effect. The objection to the contract is, not merely that the corporation ought not to have made it, but that it could not make it. The contract cannot be ratified by either party, because it could not have been authorized by either. No performance on either side can give the unlawful contract any validity, or be the foundation of any right of action upon it.'

The Court proceeds to show that there can be no estoppel upon the corporation to set up the defense of ultra vires; that, while it may be estopped from urging the lack of certain formalities which might have been observed--'but when the contract is beyond the powers conferred upon it by existing laws, neither the corporation, nor the other party to the contract, can be estopped by assenting to it, or by acting upon it, to show that it was prohibited by those laws.' *Central Co. v. Pullman*, 139 U.S. 24 at page 60; 11 S. Ct. 478, 488 (35 L. Ed. 55).

In *Penn. R. Co. v. St. Louis R. Co.*, 118 U.S. 290, 6 S. Ct. 1094; 30 L. Ed. 83, the Court said, 'But we understand the rule in such cases to stand upon the broad ground that the contract itself is void, and that neither what has been done under it, nor the action of the Court, can infuse any vitality into it.'"

The Black's Law Dictionary defines *ultra vires* in pertinent part:

"Ultra vires [...] Acts beyond the scope of the powers of a corporation, as defined by its charter or laws of state of incorporation. *State ex rel. v. Holston Trust Co.*,

168 Tenn. 546, 79 S.W.2d 1012, 1016. The term has a broad application and includes not only acts prohibited by the charter, but acts which are in excess of powers granted and not prohibited, and generally applied either when a corporation has no power whatever to do an act, or when the corporation has the power but exercises it irregularly. *People ex rel. Barrett v. Bank of Peoria*, 295 Ill.App. 143, 15 N.E.2d 333, 335. [...] By doctrine of *ultra vires* a contract made by a corporation beyond the scope of its corporate powers is unlawful. *Community Federal Sav. & Loan Ass'n of Independence, Mo. v. Fields, C.C.A. Mo.*, 128 F.2d 705, 708. [...]"

Pursuant to the doctrine of *ultra vires*, Plaintiff cannot be lawfully or justly bound to a mortgage contract that the corporations involved had no legal authority to draft and induce her to sign in the first place and that is wholly void and of no legal effect as a matter of law.

As explained in Plaintiff's motion to dismiss, Old South Mortgage Corporation ("Old South"), a domestic corporation, is prohibited by South Carolina law from intentionally misrepresenting a material fact on the face of original legal instruments, an original mortgage and note in this case, by falsely identifying itself as the "Lender" while it knew it was not the actual "Lender" as the term "Lender" is generally defined and interpreted by the public in order to obtain Plaintiff's signature, her money, and a first mortgage lien against her home under false pretenses.

It is obviously illegal and generally considered a crime to knowingly and intentionally record or cause the recordation of a falsified mortgage lien against anyone's real property title in the county register of deeds. In addition, slander of title is an actionable tort in the civil courts of this state and a clouded title is an actionable damage as upheld by the state's common law.

Old South did not have the authority to override existing laws to cause the recordation of a falsified first mortgage lien in its own name while it knew it did not lend Plaintiff any money and was not the owner of a loan on the date the lien was recorded. The lien is invalid as a matter of law and therefore Plaintiff is here seeking its removal from her property title.

Pursuant to Flagstar Bank's "Purchase Commitment Letter" dated October 4, 2007, which Nationstar produced to Plaintiff in discovery, Flagstar identified Old South as the "Originator" of the loan and purported to purchase the loan from Old South one day before the closing. Plaintiff signed the mortgage and note on October 5, 2007, and the mortgage was subsequently recorded on October 9, 2007. This Letter is attached hereto as **Exhibit 2** and incorporated herein by reference.

This Letter states in pertinent part: "THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH AT CLOSING OR THE PURCHASE CONTRACT IS NULL AND VOID [...] 7) Flagstar Bank to Have First and Only Lien. [...]"

Old South claims in essence that Flagstar required Old South to identify itself as the "Lender" in the original mortgage and note Plaintiff was asked to sign at the closing. However, in doing so, Old South caused the first and only lien to be recorded in the name of Old South in the county register of deeds rather than in the name of Flagstar Bank. Thus, pursuant to the foregoing purchase agreement, the mortgage and note are null and void also because the first and only mortgage lien was not recorded in the name of Flagstar Bank.

As mentioned in the motion to dismiss, identifying MERS as the nominee for lender and mortgagee in the mortgage is a fiction, a nullity and irrelevant to this analysis because in South Carolina the mortgage follows the note, one cannot lawfully split the mortgage from the note in this state, and the evidence shows the note was not sold, assigned or transferred to MERS in this case. The Supreme Court of South Carolina held in *Union Nat'l Bank v. Cook*, 110 S.C. 99, 96 S.E. 484 (1918) as follows:

"The assignment and delivery of the note carries with it the mortgage securing the same. The note is the principal and the mortgage is the incident and follows the note in its delivery from one person to another. When a negotiable note payable to order is indorsed generally by the payee the note and its incidents pass in the

commercial world by delivery.”

As shown in the motion to dismiss, Fannie Mae claims to have acquired the loan on October 1, 2007, which was a few days before Plaintiff signed the closing documents on the purchase of her home, whereas Fannie Mae admits publicly at its website in essence that Fannie Mae’s charter does not permit it to originate loans and lend directly to borrowers in the primary market but it may only purchase existing loans in the secondary market.

Since Fannie Mae is a government-sponsored enterprise and a creation under federal law, Fannie Mae does not have the authority to do what it did in Plaintiff’s case—originate a loan through the use of “pretender lenders,” fraudulent closing documents and fraudulent note endorsements designed to obfuscate or conceal from all interested parties that Fannie Mae was acting outside the scope of its charter and in violation of various federal and state laws by originating new loans to consumers in the primary market and hiring servicers who were willing to falsify documents to make it appear that Fannie Mae had bought existing mortgages.

Consequently, pursuant to the doctrine of *ultra vires*, Plaintiff cannot ratify the mortgage contract, and nothing Plaintiff has done in the past can be deemed an estoppel against her from raising the argument that the mortgage contract is unlawful and therefore invalid and unenforceable as a matter of law. In addition, Plaintiff cannot be lawfully or justly bound by a fraud that was perpetrated against her without her knowledge and consent, as a homeowner and taxpaying citizen, and also against the public at large through a large number of fraudulent mortgage contracts that are substantially the same or similar to the one she signed.

Upon information and belief, Fannie Mae accepted or approved the use of those fraudulent closing documents. Indeed, the bottom of the mortgage form states, “SOUTH CAROLINA Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form

3041 1/01," and the bottom of the note form states, "MULTISTATE FIXED RATE NOTE- Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3200 1/01."

In addition, according to Fannie Mae at its website, Fannie Mae was a founding member of MERS when MERS was launched in 1997, and as a founding member, Fannie Mae was involved in the creation and establishment of the MERS system with an apparent intent to disregard, replace or bypass state and county laws and customs regarding the recordation and tracking of mortgages in the name of who actually owns them. The printouts from the MERS and Fannie Mae websites regarding MERS are attached hereto as **Exhibit 3** and incorporated herein by reference.¹

Upon information and belief, in its first reporting of the mortgage to the credit reporting agencies, Flagstar reported that the mortgage was a "Fannie Mae account" as of the date opened in October 2007, the same month and year Plaintiff signed the mortgage, and in doing so, represented to the credit bureau that Fannie Mae owned the mortgage at the time Flagstar first reported the account. This evidence also shows that Flagstar believed Fannie Mae owned the mortgage as of October 2007, and that Flagstar was merely servicing for Fannie Mae.

As Plaintiff explained in her complaint, she had reviewed her credit report in January 2012 for the first time after the closing as part of her investigation into the mortgage. The pertinent pages of Plaintiff's Equifax Credit Report as of January 3, 2012, is attached hereto as **Exhibit 4** and incorporated herein by reference.

Also during her investigation, Plaintiff contacted her closing attorney's office and

¹ The website printouts at **Exhibit 3** support Plaintiff's interpretation of the closing documents at the time she signed them that the documents intended to create and did create a lender and a servicer as two separate, distinct entities with two different, distinct roles and rights arising from the transaction. Both printouts include the statement, "MERS acts as nominee in the county [local] land records for the lender and servicer." [Emphasis added.]

obtained the Wire Advice to see if she could determine the source of the funds that were paid to the seller. She found that the Wire Advice does not identify the "Originator" of the funds by name and only lists a Federal Reserve Bank Account number. The Wire Advice is attached hereto as Exhibit 5 and incorporated herein by reference.

During her investigation, Plaintiff discovered that attorneys and investigative journalists reported in the public domain that the Federal Reserve has been involved in money laundering as to transactions like these to aid financial institutions to obfuscate or conceal the money trail. Consequently, some attorneys and reporters reasonably argue there was no consideration because the consideration was not provided by the "Lender" that was identified in the original mortgage and note, rather, "free money" was apparently created out of thin air by the Federal Reserve, and that "free money" or credit is not traceable or chargeable back to any specific entity involved in transactions like these.

In other words, Flagstar, as the servicer in the transaction, obviously wired the funds to Plaintiff's closing attorney so that she could disburse those funds as appropriate, but that does not mean Flagstar was the lender or the source of those funds or that the funds were chargeable against Flagstar as a credit or debt that Flagstar was required to repay to the Federal Reserve. Indeed, the evidence shows Flagstar was not claiming to be the lender either but was at all times acting as merely the servicer for Fannie Mae who was hiding behind the scenes, and therefore Flagstar could not have reasonably owed such a debt to the Federal Reserve.

Such a debt could be deemed unlawful pursuant to the doctrine of *ultra vires*, because interestingly, in the very same South Carolina Supreme Court case discussed above, *Howard & Foster Co. v. Citizens' Nat'l Bank*, it states in pertinent part,

"It has been settled beyond controversy that a national bank, under the federal law, being limited in its powers and capacity, cannot lend its credit by

guaranteeing the debt of another. All such contracts, entered into by its officers, are ultra vires, and not binding as such upon the corporation. Although national banks are expressly authorized by the National Banking Act to lend money upon personal security, they are without right to loan their credit, either under such express authority or under their incidental powers. The bank's power of guaranty is confined to paper bought and sold by it in the ordinary course of business."

How it used to work and is supposed to work as to a conventional loan that Old South had promised to Plaintiff is the "Lender" lends money to the borrower out of its own financial resources and thereby lends real money, which establishes an interest in equity, the borrower repays the loan according to the terms agreed upon, and it is not guaranteed by the federal government. However, as to transactions like these, the consideration was severed from the transaction so that the entities collecting and profiting from the payments do not have an interest in equity and have assumed no risk of loss to justify a high interest rate of seven percent, the oppressive terms of the 30-year mortgage, including the right to foreclose for nonpayment, which renders it an unconscionable contract no reasonable person would enter into.

The Federal Reserve has reportedly devised "quantitative easing" programs to purchase and liquidate "toxic" or "phantom" mortgage assets, putting more "free money" in the hands of private entities, which expands the money supply, devalues the dollar, and results in inflation. Upon information and belief, most of our federal tax dollars, including the thousands of dollars Plaintiff pays annually, goes to the Federal Reserve to pay off the national debt.

Arguably, if the Federal Reserve funded the purchase of Plaintiff's home, Plaintiff has already paid off her home in full through a combination of her mortgage payments and tax payments since 2007. But of course no creditor will voluntarily give her credit for that because they want to collect obscene profits while keeping the taxpayers, including Plaintiff, on the hook to pay off their gambling losses. It is an unconscionable scheme but they refuse to see it. Their greed has blinded them to the truth, and they have lost their moral compass.

According to Fannie Mae's own admission in the public domain, and unbeknownst to the Plaintiff at the time, Fannie Mae was there hiding in the background while Plaintiff's home loan application was being processed by Old South and Flagstar and therefore Fannie Mae was obviously in collusion with them to defraud her and all other parties that have been affected by this transaction, either directly or indirectly, including private investors, the governments, and the taxpayers in this Ponzi scheme of epic proportions.

In a similar vein as to the doctrine of *ultra vires*, the Supreme Court of Virginia, in *Norton Grocery Co. v. People's Nat'l Bank*, 151 Va. 195, 144 S.E. 501 (1928), held:

"Banks should not be permitted to engage in undertakings out of their line of business, and thus to put stockholders and depositors to unanticipated hazards. Such are not incidents of banking business."

The courts have an interest pursuant to the doctrine of *ultra vires* to hold corporations accountable when they are found to have acted outside the scope of their charters and in violation of existing laws because unauthorized and unlawful acts harm not only each party to an unlawful contract arising from such acts, but such acts also tend to harm investors and the public at large.

In the case of Fannie Mae, the federal taxpayers, including the Plaintiff, were required to guarantee and pay off some of its fraudulent mortgages, toxic assets and bad debts with federal government funds during the huge trillion-dollar bailout of the mortgage industry in 2009, with more bailouts being considered since. The meltdown and bailout of the mortgage industry has had a devastating effect on the American economy, and upon Plaintiff, a blue collar working middle class citizen, who is financially strained and struggling to make ends meet as a result.

With the federal government's budget deficits and debts in the trillions of dollars, the value of the U.S. Dollar is diminished, taxes have increased, wages have stagnated, and the price of fuel, groceries and other life-sustaining necessities have gone up, which forced Plaintiff into

bankruptcy due to her inability to meet all her financial obligations.

Pursuant to the doctrine of *ultra vires*, the intentions of each party involved in the origination and recordation of the mortgage is irrelevant. Plaintiff believes the actors involved were motivated by entirely selfish interests, and she contends it does not matter if they were to come here and claim they had good intentions and did not mean to defraud or harm anyone. As wise people have observed, the pathway to hell is sometimes paved by good intentions. One cannot reasonably do that which is unlawful and then claim one had nothing but good intentions.

Regardless of the intentions, the mortgage contract is unlawful, wholly void and of no legal effect as a matter of law because the corporations involved did not have the legal authority to draft and induce Plaintiff to sign it in the form it was presented to her at the closing and to thereby assist Fannie Mae to violate its charter and existing laws by originating a loan in the primary market in this manner.

The Uniform Commercial Code, Chapter 3

The Uniform Commercial Code, Chapter 3, S.C. Code sections 36-3-203, 36-3-205, 36-3-303, and 36-3-403 support Plaintiff's contentions in her motion to dismiss that the note indorsements are not effective or credible and that Nationstar does not have the rights of a holder in due course by virtue of possession of the note in this case.

S.C. Code § 36-3-203, Transfer of instrument; rights acquired by transfer, states in pertinent part [emphasis added]:

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, **but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument. [...]**

(d) If a transferor purports to transfer less than the entire instrument, negotiation

of the instrument does not occur. **The transferee obtains no rights under this chapter and has only the rights of a partial assignee.**

OFFICIAL COMMENTS:

[...] "Because the transferee's rights are derivative of the transferor's rights, those rights must be proved. Because the transferee is not a holder, there is no presumption under section 3-308 that the transferee, by producing the instrument, is entitled to payment. The instrument, by its terms, is not payable to the transferee and the transferee must account for possession of the unindorsed instrument by proving the transaction through which the transferee acquired it. [...] There is one exception to this rule stated in the concluding clause of subsection (b). **A person who is party to fraud or illegality affecting the instrument is not permitted to wash the instrument clean by passing it into the hands of a holder in due course and then repurchasing it.**" [...]

Subsection (d) restates former Section 3-202(3). **The cause of action on an instrument cannot be split. Any indorsement which purports to convey to any party less than the entire amount of the instrument is not effective for negotiation.**" [...]

As alleged and shown in the motion to dismiss, the alleged transferees, Fannie Mae and Nationstar in this case, were both a party to fraud and illegality affecting the note, and the note cannot be washed clean after the fact now that the evidence clearly shows that the note has been falsified, slandered and defaced.

After intentionally falsely claiming ownership of the note before the courts to obtain permission to intervene, Nationstar subsequently admitted under oath that Fannie Mae owns the note and mortgage. This means Fannie Mae has not transferred the entire instrument to Nationstar by indorsement or otherwise, Nationstar would be a partial assignee at most, which is disputed because that has not been proven as to this mortgage specifically, and the statute is clear that a cause of action on an instrument cannot be split. Consequently, pursuant to S.C. Code § 36-3-203, Nationstar cannot lawfully acquire the rights of the holder in due course by virtue of possession of the note in this case. Nationstar is not the proper party to enforce the note and therefore lacks standing to defend this action.

S.C. Code § 36-3-205, Special indorsement; blank indorsement; anomalous indorsement, states in pertinent part [emphasis added]:

(a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, **and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement."** When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in Section 36-3-110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) **The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable. [...]**

OFFICIAL COMMENT:

[...] "A blank indorsement is usually the signature of the indorser on the back of the instrument without other words." [...]

S.C. Code § 36-3-403, Unauthorized signature, states in pertinent part [emphasis added]:

(a) **Unless otherwise provided in this chapter or Chapter 4, an unauthorized signature is ineffective** except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this chapter.

(b) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) **The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this chapter which makes the unauthorized signature effective for the purposes of this chapter.**

OFFICIAL COMMENT:

[...] "Unauthorized" signature is defined in Section 1-201(43) as one that includes a forgery as well as a signature made by one exceeding actual or apparent authority." [...]

According to Old South in its discovery responses, Bob Graybill, the president and owner of Old South, was the only officer of the corporation during the relevant time period August 2007 to November 2007, and Sean Davis and Ned Claasen were the only other employees Old South identified that have provided or will provide the required information to respond to Plaintiff's pleadings, discovery requests and at trial.

Upon information and belief, the indorsement on the note that is purportedly by Old South to Flagstar Bank is signed by Sandra Yavello, a "Loan Operations Associate." Upon information and belief, Ms. Yavello was not an officer or employee of Old South and therefore did not have the legal authority to transfer Old South's asset by executing a note indorsement payable to Flagstar Bank.

Even though the Uniform Commercial Code provides for ratification of a forged or unauthorized signature under certain circumstances, it is still considered a crime and therefore the payor is not required to accept such a note indorsement as legitimate. Plaintiff disputes the legitimacy of this indorsement and contends it is not a credible or effective transfer of the note.

When Plaintiff investigated to determine the whereabouts of Ms. Yavello, she discovered that a Sandra Yavello resides in Oakland County, Michigan, which is the same state and county as the headquarters of Flagstar Bank in Troy, Michigan, and that Ms. Yavello has apparently always resided in Michigan. The Intelius People Search Plus Report for Sandra Yavello is attached hereto as **Exhibit 6** and incorporated herein by reference.

Plaintiff does not know how, when or why Ms. Yavello purportedly signed this note indorsement. Nevertheless, what matters for our purposes here is there is no evidence before this Court that Ms. Yavello was an officer or employee of Old South and therefore she lacked legal authority to sign this note indorsement on its behalf.

Nationstar alleges that Flagstar's indorsement on the back of the note is an indorsement in blank, but Plaintiff disputes that and contends it is not a credible or effective indorsement either. Upon information and belief, the indorsement is not actually hand-signed by officers of Flagstar, it is some form of robostamp in its entirety, and it is in the form of a special indorsement payable to the order of Flagstar Bank because there is no blank space provided in the indorsement where the payee could fill in a name if so minded, and it is not just a signature(s) without any other words. Consequently, the intentions of Flagstar cannot be determined within a reasonable degree of certainty by this indorsement alone. According to Nationstar at the hearing on Plaintiff's motion to compel, there are no other unrecorded assignments of mortgage, so there is no evidence of a lawful transfer of the note.

Consequently, pursuant to S.C. Code sections 36-3-205 and 36-3-403, neither Fannie Mae nor Nationstar can lawfully negotiate the instrument. S.C. Code § 36-3-303, Value and consideration, states in pertinent part [emphasis added]:

[...] (b) "Consideration" means any consideration sufficient to support a simple contract. **The drawer or maker of an instrument has a defense if the instrument is issued without consideration.** [...]

In the cross-references to this statute, it states,

"Lack and failure of consideration given in exchange for an instrument are defenses that the issuer can assert against a transferee other than a holder in due course. *Section 36-3-305(a)(2) and (b).*"

As explained above, Old South was the first note holder but Old South, according to its own admissions before this court, did not finance the purchase of Plaintiff's home. The funds given to the seller at the closing were given by an undisclosed, unauthorized source, and the funds are not traceable or chargeable as a legitimate debt against any particular financial institution that was involved in this transaction. Consequently, the instrument, the note in this

case, was issued without consideration.

In addition, Plaintiff believes that Nationstar does not have an independent interest in equity to defend in this action. Since Nationstar refused to disclose to Plaintiff whether it had paid any consideration, Plaintiff fairly and reasonably assumes that Nationstar paid nothing or an insignificant amount when it obtained Plaintiff's home loan account in 2009.

In consideration of the foregoing, and pursuant to S.C. Code sections 36-3-303 and 36-305(a)(2) and (b), the Court may consider Plaintiff's defenses with regard to the lack of consideration and deem Nationstar's claims invalid because Nationstar refused to show how it might be damaged when it was given the chance to do so in its discovery responses.

The Fair Debt Collection Practices Act

Nationstar is acting as nothing more than an aggressive third party debt collector in this case because it does not own the mortgage. The federal Fair Debt Collection Practice Act, which established national standards binding upon Nationstar and all other debt collection companies in the United States, supports Plaintiff's contention that Nationstar committed a fraud upon her and the courts when it falsely claimed to be the secured "creditor" in the Form 10 proof of claim it filed in the federal bankruptcy court and when it falsely claimed to be the owner of the note and mortgage before this state court.

The evidence shows Nationstar knew or had to have known it was not the secured "creditor" as the term is defined by the Fair Debt Collection Practices Act and is generally interpreted by the public and that it was not the actual owner of the note and mortgage. Therefore, when Nationstar claimed otherwise before the courts, that was clearly an intentional misrepresentation of a material fact and therefore a fraud upon the courts in order to ensure it could continue to collect Plaintiff's payments under false pretenses. Nationstar's frauds upon the

courts misled the courts and prevented the courts from discovering the actual owner of the mortgage at the time those misrepresentations were made and resulted in the courts granting rulings in Nationstar's favor in error.

The courts apparently merely assumed that because attorneys were involved in making those representations before the courts on behalf of Nationstar, the attorneys involved would have verified the accuracy of those representations and that those representations were therefore true and correct.

However, Nationstar's own admissions in its discovery responses show that obviously the accuracy of those representations were not verified by the attorneys involved, rather, just like the courts, the attorneys involved apparently took Nationstar's word for it when it claimed it was the actual owner of the mortgage.

Now that their client has been caught committing frauds upon the courts and they see that they have aided their client to do so, Nationstar's counsel is here trying to backpedal and claim that was an innocent mistake and to downplay that as mere misstatement so they can try to win this case and collect their attorney fees and costs. No reasonable person would believe Nationstar made innocent mistakes here. The evidence and law shows it was frauds upon the courts, and Nationstar sent its attorney here to lie on its behalf.

Nationstar's counsel, Ms. Wallace, sent an email to the Court on July 25, 2012, stating in pertinent part [emphasis added], "I do concede that it was conveyed to me that Nationstar was the servicer and owner of the note, which was corrected by Nationstar yesterday." Who would have "conveyed" that to Ms. Wallace? It is fair and reasonable to assume her client, Nationstar, "conveyed" that to Ms. Wallace so she would come to Court and lie and then turn around and try to insult everyone's intelligence by claiming that was somehow an innocent mistake. These

mortgages are tracked in electronic databases, so Nationstar knows darn right well who claims to own each and every one of them. The referenced email is attached hereto as **Exhibit 7** and incorporated herein by reference.

In the Fair Debt Collection Practices Act, 15 USC Sec. 1692, Definitions, it defines "creditor" as follows [emphasis added]:

"(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another."

In 15 USC Sec. 1692e, False or misleading representations, it states in pertinent part:

"A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." [...]

In 15 USC Sec. 1692g, Validation of debts, it states in pertinent part:

"(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing - [...]

(2) the name of the creditor to whom the debt is owed; [...]

(c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer." [...]

The national standard is that a debt collector must identify the actual creditor for whom it is collecting the debt and to whom the debt is actually owed, otherwise, that will be considered a misleading communication to the consumer that the act intended to prohibit.

Nationstar apparently does not believe that the identity of the actual owner of the mortgage is a material fact, but, obviously, who actually owns the mortgage is a material fact

because the originator and first owner of the mortgage and a subsequent purchaser of the mortgage may be treated differently under the law, depending on the facts and circumstances.

In this case, at the relevant times, Plaintiff did not know Fannie Mae was claiming it owned the mortgage since its origination in October 2007, and if Nationstar had disclosed to her in writing that Fannie Mae claimed to own the mortgage, this would have prompted Plaintiff to investigate the mortgage and discover her damages and causes of action must sooner.

If Nationstar had identified Fannie Mae as the secured "creditor" in its bankruptcy proof of claim, Plaintiff's bankruptcy attorneys probably would have questioned her about that, and if so, she would have directed her attorneys to object to Nationstar's claim in the bankruptcy court prior to the confirmation of her Chapter 13 Plan because no one had sent her a notice informing her that Fannie Mae owned her mortgage and the date of purchase. Consequently, Nationstar's lie that it was the secured "creditor" prejudiced Plaintiff's rights.

After Nationstar committed frauds upon the courts to get what it wants, it is outrageous that Nationstar is here claiming the doctrines of *estoppel* and *res judicata* somehow apply to bar this action while those doctrines clearly do not apply because of Plaintiff's lack of prior knowledge and the fraud exception.

In addition, as explained above, pursuant to the doctrine of *ultra vires*, Plaintiff cannot ratify the mortgage contract and cannot be estopped from arguing the invalidity of the mortgage contract, and since she cannot be estopped, the bankruptcy court could not rightly deem that *res judicata* applies either. If the bankruptcy court was trying this case, the two doctrines would normally go hand and in hand as the bankruptcy court determined what effect, if any, the confirmation of Plaintiff's Chapter 13 Plan has on her claims or defenses related to the mortgage.

The Servicers' Pattern of Frauds or Abuses Against Consumers

Plaintiff discovered that in 2012, Flagstar entered into a settlement agreement with the United States to resolve the government's investigation into its fraudulent or faulty loan processing practices in *United States of America v. Flagstar Bank, F.S.B.*, U.S. District Court, Southern District of New York, Case No. 12 Civ. 1392. Flagstar agreed to pay back millions to the government to resolve the litigation.

During her investigation, Plaintiff discovered evidence indicating that Nationstar routinely engages in frauds or abuses against consumers nationwide. Plaintiff attached exhibits to her complaint showing that about 760 consumer complaints were filed against Nationstar with the Better Business Bureau, that number has since climbed up to about 1,642 complaints filed within the past 3 years, and she attached about 100 pages containing consumer complaints against Nationstar at various consumer websites. Some consumers have indicated they, like Plaintiff, reported Nationstar's conduct to the Federal Trade Commission and the Federal Bureau of Investigations. Plaintiff also discovered that a Kentucky lawyer, Heather Boone McKeever, had filed a Racketeer Influenced and Corrupt Organization Act (RICO) class action against various defendants in the U.S. District Court, Western District of Kentucky, including MERS and Nationstar making similar complaints therein. Reportedly, Ms. McKeever voluntarily dismissed the suit because she felt she could not prosecute the litigation as a sole practitioner.

More recently, Plaintiff discovered that Nationstar had attempted to foreclose on a home in Ohio by claiming it purchased the note from Flagstar without attaching the note to the complaint, alleging the note had been misplaced and could not be located, and had recorded an assignment of mortgage from Gold Star to Nationstar on September 13, 2010 (Gold Star had purportedly transferred the note to Flagstar), with the Lucas County Recorder whereas Nationstar had filed its complaint on August 23, 2010. *Nationstar Mtge., L.L.C. v. Van Cott*, 2012-Ohio-

5807. In that case, the Ohio Court of Appeals, Sixth District, overturned the summary judgment ruling in Nationstar's favor, remanded the case and cited to an Ohio Supreme Court case, *Federal Home Loan Mtge. Corp. v. Schwartzwald*, Slip Opinion No. 2012-Ohio-5017 in which the court held that a party bringing an action in foreclosure must establish an interest in the note and mortgage at the time it filed suit for it to have standing to invoke the jurisdiction of the common pleas court in the case. The court further held that lack of standing at commencement of a foreclosure action cannot be cured by subsequently obtaining an interest in the subject litigation, and that the lack of standing at commencement requires dismissal of the complaint without prejudice.

The Ohio case is relevant because it shows this is what Nationstar does—it comes to court without any proof it owns the note and then tries to manufacture paperwork during the litigation. Why some courts and federal regulators allow Nationstar to get away with actions like these is a good question, but getting away with it in some cases does not make what Nationstar is doing morally right or legal. Indeed, it is not. If the party does not own the note on the date the complaint is filed, it does not have standing and cannot legally lie about that and manufacture paperwork after the fact to get what it wants from a court of law. That is an obvious fact.

Plaintiff explained and showed in her complaint how she has been a victim of servicer frauds and abuses, and she is at substantial risk of further harm up to an unjustified foreclosure on her home based on false claims and invalid documents due to servicers like Nationstar being able to obtain her account and falsely claim ownership of the mortgage. Plaintiff referenced and attached as an exhibit to her complaint one page from the Housing Policy Debate, Volume 15, Issue 3, apparently compiled by the Fannie Mae Foundation 2004, entitled "Limiting Abuse and Opportunism by Mortgage Services" wherein it states in the Abstract in pertinent part,

"This article discusses the opportunistic and abusive behavior of some servicers of residential mortgages toward the borrowers whose loans they service. Such abuse includes claiming that borrowers are in default and attempting to foreclose even when payments are current, charging borrowers unwarranted late fees and other kinds of fees, force-placing insurance even when borrowers already have a policy, and mishandling escrow funds."

The referenced page is attached hereto as **Exhibit 8** and incorporated herein by reference.

The foregoing evidences that Fannie Mae is aware of the suffering of consumers at the hands of servicers who claim to be servicing mortgages for Fannie Mae. Therefore, being aware of these problems, Fannie Mae is ultimately responsible to control or fire servicers who are found routinely committing frauds or abuses against consumers, and to the extent Fannie Mae fails to do so, Fannie Mae cannot be reasonably viewed as an innocent bystander while servicer frauds or abuses are still taking place routinely on a national scale. Fannie Mae is liable for that.

A Secondary Source on Bankruptcy Law

To further aid the Court to deflect Nationstar's irrelevant bankruptcy-related arguments, Plaintiff is citing herein from the *Bankruptcy Issues for State Trial Court Judges, Third Edition*, a Publication of the American Bankruptcy Institute ("the Publication"), which is now available to the public free of charge via the Internet. The Publication states in pertinent part [emphasis added]:

"State court judges must understand when the Code stays state actions and when it does not. Otherwise, some proceedings might continue in violation of the stay, needlessly wasting the state's and the litigants' resources, while other actions might be unnecessarily and erroneously halted. [...]"

Generally speaking, the §362 stay applies to all entities, other than the debtor, debtor-in-possession or trustee. [...]"

The §362 stay is intended to protect the debtor and preserve the estate. By its nature, the stay generally does not apply to actions by the debtor or the trustee. Thus, a debtor or trustee may file a state court action irrespective of the automatic stay, because the stay applies to suits against the debtor, not suits by the debtor. Indeed, if a debtor or trustee fails to file an action within the

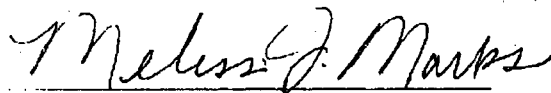
applicable statute of limitations, as such may be affected by the Code, the right to file the action will be lost. [...]

The district courts are directed to abstain and allow state courts to proceed in civil matters where comity or the interest of justice indicates that the matter should be heard by a state court. Section 1334 of Title 28, U.S. Code, also requires mandatory abstention upon timely motion by a party (1) where the federal courts, absent bankruptcy, would lack jurisdiction over the proceeding, and (2) **the proceeding is either (a) pending in a state court at the time the motion is filed or (b) the proceeding arises under state law and the proceeding can be timely adjudicated in the state court.**"

Plaintiff, a Chapter 13 debtor in possession of the property of the estate, has standing and was not required to obtain permission of the bankruptcy court prior to filing this action, and now that this action is proceeding in state court, the federal courts must defer to the decisions of this state court as to the issues being actually litigated here for the first time. The state court is in no way bound by anything that has occurred in the bankruptcy court, and Nationstar errs by persistently claiming otherwise.

WHEREFORE, Plaintiff moves this honorable Court to dismiss Nationstar with prejudice, for an order that Nationstar shall bear its own attorney's fees and costs incurred in this action, and for any other relief as this Court deems just and proper.

Respectfully submitted,



Melissa Jean Marks
Plaintiff pro se
209 Presidential Court
Round O, SC 29474
(843) 599-3156
mjmarks68@hotmail.com

Round O, South Carolina
August 22, 2013

EXHIBIT 1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON) CASE NO.: 2012-CP-12-262

MELISSA MARKS,

PLAINTIFF,

v.

TRANSCRIPT OF RECORD

OLD SOUTH MORTGAGE,
NATIONSTAR, JOHN DOE, 1 - 100,
AND FICTITIOUS CORPORATIONS
1 - 100,

DEFENDANTS.

WEDNESDAY, JULY 18th, 2012
WALTERBORO, SOUTH CAROLINA
BEFORE THE HONORABLE PERRY M. BUCKNER, III, JUDGE.

APPEARANCES:

MS. MELISSA J. MARKS, PRO SE
209 PRESIDENTIAL COURT
ROUND O, SC 29474

MS. HARRIET POLLITT WALLACE, ESQUIRE
ROGERS, TOWNSEND & THOMAS
SYNERGY BUSINESS PARK
220 EXECUTIVE CENTER DRIVE
COLUMBIA, SC 29210
ATTORNEY FOR NATIONSTAR

MR. JOHN KNOBELOCH, ESQUIRE
808 JOHNNIE DODDS BLVD.
MT. PLEASANT, SC 29464
ATTORNEY FOR OLD SOUTH MORTGAGE

Rebecca H. Hill
Official Court Reporter

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1 THE COURT: All right. I'm hearing, first,
2 Nationstar's motion to intervene. This is 2012 at 262,
3 Becky. It is entitled Melissa Marks v. Old South Mortgage
4 Corporation, John Doe, 1-100, and fictitious corporations, 1
5 - 100, defendants.

6 I'd ask that the parties who are present identify
7 themselves, beginning with the plaintiff.

8 MS. MARKS: I am Melissa G. Marks, plaintiff, pro se.

9 THE COURT: Thank you. Counsel for the defendant, Old
10 South Mortgage.

11 MR. KNOBELOCH: John Knobloch, appearing for Old
12 South.

13 MS. WALLACE: Harriett Wallace, appearing for
14 Nationstar Mortgage.

15 THE COURT: Very well. We agreed to hear your motion,
16 first, on behalf of Nationstar, to intervene. Happy to hear
17 from you. You asked for 15 minutes. Your time begins now.

18 MS. WALLACE: Thank you, Your Honor. Nationstar
19 Mortgage is seeking to intervene under Rule 24(a), which
20 states that, "Upon timely application anyone shall be
21 permitted to intervene in an action, subsection 1, when a
22 statute confers individual right to intervene, or, two, when
23 the applicant claims an interest relating to the property or
24 transaction which is the subject of the action and he is so
25 situated that the disposition of the action may oppress the

1 matter impair or impede his ability to protect that
2 interest."

3 The statute that we are relying on for Rule 24(a) is
4 section 15-58-80 of the South Carolina Declaratory Judgment
5 Act. This action is -- Ms. Marks seeks in this action a
6 declaratory judgment seeking an order that denotes a
7 mortgage and that they be canceled with the Register of
8 Deeds office.

9 THE COURT: What relationship, counsel, does your
10 client have to the plaintiff in this matter, by virtue of
11 this mortgage?

12 MS. WALLACE: We are the holder of the note and,
13 actually, I have the original note.

14 THE COURT: And how did you become the holder of the
15 note?

16 MS. WALLACE: It was transferred to us from Flagstar.

17 THE COURT: So you purchased it from Flagstar?

18 MS. WALLACE: I don't have -- I would assume we did
19 because I know that we had -- we're not part of Flagstar. I
20 don't have all of that ---

21 THE COURT: Your client is not as set forth in the
22 Memorandum, merely servicing this account.

23 MS. WALLACE: That is correct, Your Honor. We are not
24 merely servicing ---

25 THE COURT: You're the actual holder of this paper and

1 you believe the plaintiff is indebted to you for the amount
2 on the paper?

3 MS. WALLACE: That is correct, Your Honor.

4 THE COURT: All right.

5 MS. WALLACE: And 15-58-80, that statute states that
6 when declaratory relief is sought, all persons shall be made
7 parties who have had or claimed any interest, which would be
8 effective by the declaration. The fact that Nationstar ---

9 THE COURT: Now, the mortgage that was filed in
10 connection with this property in Colleton County does not
11 reflect you as being the mortgage holder; do you agree?

12 MS. WALLACE: That is correct.

13 THE COURT: It reflects another entity, Mr. Knobloch's
14 client; is that correct?

15 MS. WALLACE: That is correct, Your Honor.

16 THE COURT: All right. Now, since you tell me it was
17 not transferred to you by Mr. Knobloch's client, explain to
18 me the history of this paper insofar as this mortgage is
19 concerned so that I will understand how you came to be the
20 person who claims to be the owner of this indebtedness.

21 MS. WALLACE: The original note, Your Honor, is
22 endorsed specifically to Flagstar Bank, without recourse,
23 and then Flagstar Bank endorsed it and now Nationstar ---

24 THE COURT: Old South to Flagstar, Flagstar to you?

25 MS. WALLACE: Yes, Your Honor.

1 THE COURT: All right.

2 MS. WALLACE: And the mortgage in South Carolina
3 follows the note. So there has not been an assignment of
4 mortgage filed, but we're not seeking foreclosure; actually,
5 the loan is current right now. It's been current as far as
6 I know; she's not ever been in default in the payment of the
7 loan. She is in Chapter 13 bankruptcy.

8 THE COURT: But she got relief from the bankruptcy
9 court because this was her residence, according to what she
10 puts in her Memorandum.

11 MS. WALLACE: Well, we filed a motion ---

12 THE COURT: To bring the action that she brought. She
13 brought the action against Old South ---

14 MS. WALLACE: Prior. She didn't get permission from
15 the bankruptcy court to bring the action against Old South;
16 I don't have any recollection of that. We filed an action -
17 --

18 THE COURT: What I meant was that the residential
19 property, which is the subject matter of this mortgage was
20 not part of the bankruptcy in the beginning.

21 MS. WALLACE: No, there was no precondition arrearage,
22 but it is being planned upstate that payments are to
23 continue to be made to Nationstar for this mortgage. So to
24 that extent, we filed a proof of claim and we are under the
25 jurisdiction of the bankruptcy court, and I needed to get

1 their permission to even appear to make sure that it is
2 clear that we are not trying to ---

3 THE COURT: Which you did.

4 MS. WALLACE: Exactly. Yes, Your Honor. And so that's
5 what brings us here, because we do have an interest in the
6 note, which I think is clear based on both the bankruptcy
7 action and the fact that I'm holding the original note,
8 which I did show to Ms. Marks during the break. And since
9 the mortgage follows the note, it's Nationstar's position
10 that we have an interest, and unless we are allowed to
11 intervene in this action, our rights will not be protected
12 by Old South, because Old South, number one, they're
13 dissolved, and number two, they have transferred any rights
14 that they have to these documents and would have really no
15 reason to, you know, to ---

16 THE COURT: Well, there's a difference between
17 intervention and dismissal. You ask for both reliefs; I
18 haven't heard from Mr. Knobloch yet, but you asked that you
19 be allowed to intervene and dismiss other parties. I'm not
20 sure that you have standing to raise that. However, that's
21 what you put in your motion.

22 MS. WALLACE: Yes, sir.

23 THE COURT: But this is a motion to intervene,
24 pursuant to Rule 24, is it not?

25 MS. WALLACE: Yes, sir. Under Rule 25, it deals with

1 substitution of parties when the subject of the matter has
2 been transferred.

3 THE COURT: And I think it deals with death and
4 incompetency and a transfer of interest; does it not?

5 MS. WALLACE: Yes, sir, under 25(c).

6 THE COURT: Yes.

7 MS. WALLACE: And that is what I was relying on. Old
8 South has been noticed of our intervention, and I don't
9 think they desire to be in this action any further. You
10 know, obviously, that would be a ruling for the Court, but
11 we would not object if they were dismissed from the action.

12 THE COURT: Very well.

13 MS. WALLACE: Thank you, Your Honor.

14 THE COURT: Mr. Knobloch, before I hear from the
15 plaintiff on the motion to intervene, because I'm taking
16 them in the order in which the parties agreed upon, do you
17 wish to be heard?

18 MR. KNOBELOCH: Two sentences.

19 THE COURT: Yes, sir.

20 MR. KNOBELOCH: Basically, we join in the relief
21 requested by Nationstar for the reasons stated: Nationstar
22 is named over 40 times in the complaint. Nationstar holds
23 the original note in their possession. And we have reason
24 to believe they are a necessary party.

25 THE COURT: You actually have the note in your file,

1 counsel?

2 MS. WALLACE: Yes, sir. I have it right here, Your
3 Honor, if you would like to see it.

4 THE COURT: You want to hand it up to me?

5 MS. WALLACE: May I approach?

6 THE COURT: Just hand it to my bailiff. He'll bring
7 it right on up here.

8 MS. WALLACE: And the last endorsement is on the back
9 of the note.

10 THE COURT: Ms. Marks, would you like to see what the
11 Court has reviewed?

12 MS. MARKS: I have.

13 THE COURT: You've already looked at the note?

14 MS. MARKS: Yes, I've looked at it.

15 THE COURT: Mr. Knobeloch, would you like to see it?

16 MR. KNOBELOCH: We've reviewed it.

17 THE COURT: Very well. Ms. Marks, I'll be happy to
18 hear from you.

19 MS. MARKS: Thank you, Your Honor. First of all, I
20 have been making payments and investing in maintenance, and
21 so forth, so over \$30,000 ---

22 THE COURT: All right, now. Hold on a second.
23 There's no -- according to -- this is a motion to intervene.

24 MS. MARKS: Right.

25 THE COURT: So we're going to stay on track. We're

1 not going to try the case today. This is purely the motion
2 to intervene and they concede that you're current in
3 payment.

4 MS. MARKS: Okay. On October 12th, 2009, Nationstar
5 sent me a letter that said that the transfer of the mortgage
6 had not been recorded, but to see who the ownership was I
7 could check on the MERS Database. So I checked on the MERS
8 Database and the MERS Database says that the investor is
9 Fannie Mae and the servicer is Nationstar, which implies
10 that they're the investor.

11 They're the ones that have money, you know, equitable
12 interest, allegedly. And also when I pulled up my credit
13 report, my credit report says that as of October 2007, which
14 was the date we signed this mortgage, is that it's a Fannie
15 Mae account and that continues into Nationstar's reporting
16 that it's a Fannie Mae account.

17 So Nationstar is holding itself out that like it is
18 actually the owner of the note, but everything that I'm
19 finding suggests that Fannie Mae was the lender and ---

20 THE COURT: There has been no transfer recorded of the
21 mortgage.

22 MS. MARKS: Right.

23 THE COURT: And notes are not normally recorded, as
24 you know.

25 MS. MARKS: That's correct, yes.

1 THE COURT: However, she holds the note and she holds
2 the -- the reason I asked you to look at it, she holds an
3 assignment of the note. And the mortgage secures the note,
4 so let's talk about intervention first, Ms. Marks. I
5 understand you've reached the conclusion that you did not
6 believe that they were the holder of the note from your
7 checking; I understand that. You thought they were just the
8 servicer of the note.

9 MS. MARKS: Right. And if you look at the UCC, section
10 36-3-302(c), part 2 where it says, "Except to the extent to
11 transfer, predecessor and interest has right to the holder
12 in due course. A person does not acquire rights of a holder
13 in due course of an instrument taken by purchase as part of
14 a bulk transaction not in ordinary course of business of a
15 transfer."

16 And I submitted as an exhibit to my complaint, an
17 article, dated August 21, 2009, which was right before my
18 account was transferred from Flagstar to Nationstar, and the
19 account -- this article explains that Fannie Mae has asked
20 Flagstar Bank to sell its mortgage servicing rights on
21 delinquent loans owned or guaranteed by the GFC, according
22 to Bloomberg. Fannie Mae wants late or defaulted loans at
23 Flagstar to be serviced and handled by the specialist," the
24 news agency said, quoting people briefed on the matter.
25 "Flagstar would retain its MSR on loans that are current."

1 So -- and then Flagstar ---

2 THE COURT: You did not sue Flagstar, though.

3 MS. MARKS: No, because ---

4 THE COURT: You just sued Old South Mortgage
5 Corporation.

6 MS. MARKS: That's right. Because, really, the crux of
7 what I'm getting at is that here, you know, Flagstar was
8 just the servicer. They didn't lend me the money, and Old
9 South had admitted that in their answer. Flagstar was not
10 the lender either. Flagstar at all times, and according to
11 everything that's out there that I've produced to this
12 Court, Flagstar was just a servicer. So how can a servicer
13 that has no interest in equity have the ability to transfer
14 what it doesn't have?

15 And that's been my argument why these documents are all
16 sham. I mean, basically, we started at the top with this
17 sham. Old South wasn't the lender, didn't have equitable
18 interest in my property. And then we start with the sham
19 that they stamped it "Pay to the order of Flagstar." Well,
20 Flagstar didn't lend either. And now, they want to continue
21 the sham by, "Okay, here's a blank endorsement by Nationstar
22 saying, "Okay, well, now, it's yours." And they slip all
23 this under the table and they don't record anything at the
24 county.

25 And it's true that in South Carolina, you do not have

1 to record assignments. However, according to, you know, the
2 law, in order to be valid, it must be recorded. Otherwise,
3 how can the Court decide the parties' interest?

4 We come in this Court and ---

5 THE COURT: Okay. Now, hold on a second, Ms. Marks.
6 You're trying this case and we're dealing with intervention.

7 MS. MARKS: Well, the intervention, they want to
8 intervene ---

9 THE COURT: Well, tell me your position on
10 intervention.

11 MS. MARKS: My position is ---

12 THE COURT: --- instead of trying to ---

13 MS. MARKS: --- on intervention ---

14 THE COURT: --- tell me ---

15 MS. MARKS: --- is that they don't have ---

16 THE COURT: Hold on. Only one of us can talk at a
17 time. I don't interrupt you and you're not going to
18 interrupt me.

19 MS. MARKS: Yes, sir.

20 THE COURT: We understand each other?

21 MS. MARKS: Yes, Your Honor.

22 THE COURT: So don't talk over me, because she can't
23 take that down. And that's being discourteous to everybody.

24 MS. MARKS: Yes, Your Honor.

25 THE COURT: Now, when I'm speaking, you stop. When

1 you're speaking, I'll listen. We understand each other?

2 MS. MARKS: Yes, Your Honor.

3 THE COURT: All right. Proceed. Now what is your
4 position on intervention?

5 MS. MARKS: My position is that they lack legal
6 standing because there is no real proof that there was a ---

7 THE COURT: How would you be prejudiced if I made
8 Nationstar a party to this matter? I understand you don't
9 agree with the dismissal of Old South. I understand that
10 you don't agree with the dismissal of -- although I'm not
11 sure you can get a judgment against John Doe's 1 through 100
12 and fictitious corporations 1 through 100 when you can't
13 serve them. And you didn't ask this Court for permission to
14 do so otherwise, such as by publication. So alleging what
15 interest, if any, these people might have. So I'm not sure
16 you can get relief there, but that's not before me today.

17 What is before me today is just the motion of
18 Nationstar Mortgage to intervene. How would you, Ms. Marks,
19 be legally prejudiced if this Court granted intervention?

20 MS. MARKS: Delay of proceedings.

21 THE COURT: How would it delay it?

22 MS. MARKS: In the even they were to file more ---

23 THE COURT: See, this is a 2012 case, so I don't see
24 this being unnecessarily delayed in any way. You would need
25 an answer from them if I allowed them to do it, and you

1 would know their position, and they would be subject to your
2 discovery requests. You can file interrogatories, serve it
3 on them. You can serve them with requests to admit, if they
4 are a party. You can also serve a request to produce on
5 them; do you understand that?

6 MS. MARKS: Yes, Your Honor, I do.

7 THE COURT: All right. I realize you're not a member
8 of the Bar, are you, Ms. Marks?

9 MS. MARKS: No, Your Honor, I am not.

10 THE COURT: All right. So again, my question to you
11 on this motion, because we've used up now our time, and I
12 want to make sure I've heard you, is what is your position
13 on why you would, other than delay, why you would be legally
14 prejudiced if the Court made Nationstar Mortgage a party to
15 this action?

16 MS. MARKS: If the inclination of the Court is to
17 potentially make them a party, but if the inclination of the
18 Court is not to ----

19 THE COURT: I'm not asking you what my inclination is.
20 I'm asking you to tell me how you would be legally
21 prejudiced?

22 MS. MARKS: I would only be caused more expense and
23 more ---

24 THE COURT: What expense would you be caused if they
25 become a party? They want to be a party. You don't even

1 have to serve them. So what expense are you talking about?

2 MS. MARKS: It costs time and money, and I'm full-time
3 employed.

4 THE COURT: What do you do?

5 MS. MARKS: And plus ---

6 THE COURT: Where are you employed?

7 MS. MARKS: I'm employed at Motley Rice, LLC.

8 THE COURT: All right.

9 MS. MARKS: They were -- I'm sorry.

10 THE COURT: Anything else, Ms. Marks?

11 MS. MARKS: Well, basically, the whole point is they
12 were not a party to the origination of the loan. This is
13 more sounding in contract. And you know, that was ---

14 THE COURT: And that's a matter that can be taken up at
15 a hearing, but right now, I'm trying to make sure we've got
16 all the proper parties before the Court; you understand
17 that?

18 MS. MARKS: Yes, Your Honor.

19 THE COURT: Thank you very much. Anything in reply?

20 MS. WALLACE: No, Your Honor.

21 THE COURT: I disagree with you, counsel, about
22 automatically whether or not Rule 24 or 25, I think your
23 motion purely is to intervene. Listen carefully, because
24 you're going to draw this Order and you're going to send a
25 copy to Ms. Marks.

1 Now, Ms. Marks, I'm granting the motion, because I
2 definitely think I need to have all necessary parties before
3 the Court, and I don't think it necessary -- you brought the
4 action and I want to get as much information as possible
5 from everybody. I'm not dismissing anybody from this action.
6 Now, I question very much whether or not Ms. Marks can get
7 any judgment against these fictitious corporations or John
8 Doe's, because she hasn't served anybody, so they haven't
9 been put on notice and they haven't had any opportunity to
10 be heard. And you don't just name them in a complaint and
11 say I'm asking for relief from unknown people. You have to
12 do more than that, and that may require that you do seek
13 legal advice about your lawsuit, but that's not before me
14 today.

15 Now, let me make sure, Ms. Wallace that you understand
16 my ruling. I'm granting Nationstar Mortgage's motion to
17 intervene. You've got 30 days from today -- first of all,
18 I'm going to let them be a defendant to the action you've
19 already brought. You follow me? So all of the allegations
20 you've alleged against Old South and the John Doe's, apply
21 now to Nationstar; you understand?

22 MS. MARKS: Yes, Your Honor.

23 THE COURT: All right. You have 30 days from today to
24 answer her complaint. I decline to dismiss any other
25 parties on your motion to intervene, which I don't think is

1 proper anyway. I don't think just because you alleged you
2 were there because she questions the transfer of this
3 interest, and I think that's a matter that should be subject
4 to an evidentiary hearing, and not done on a motion for
5 intervention.

6 MS. WALLACE: Yes, Your Honor.

7 THE COURT: You understand my ruling, Ms. Marks?

8 MS. MARKS: Yes, Your Honor.

9 THE COURT: You understand my ruling, Ms. Wallace?

10 MS. WALLACE: Yes, Your Honor.

11 THE COURT: You understand my ruling, Mr. Knobeloch?

12 You're going to be right here at the tea party with me.

13 MR. KNOBELOCH: Yes, Your Honor.

14 THE COURT: All right, now, you will prepare that
15 Order, Ms. Wallace. You will send it to Ms. Marks and Mr.
16 Knobeloch. You're going to send it to me within seven days
17 of today. Send it to me at P.O. Drawer 470, Walterboro,
18 29488. You will copy all parties of record on your
19 transmittal to the Court.

20 Now, if she drafts an Order inconsistent with what I've
21 put on the record, Becky is making a record of it; then you
22 have to immediately notify in writing and copy them why you
23 think it's inconsistent. Ms. Marks, you do not get the
24 chance to argue this motion again, and I want to make sure
25 you understand that. Only if her Order is inconsistent with

1 the court reporter's record.

2 MS. MARKS: Yes, Your Honor.

3 THE COURT: If not, I will assume after I receive the
4 Order that it accurately portrays the ruling I've placed on
5 the record this day. I will expect your Order within seven
6 days of today at that address. You can e-mail it to me --
7 do you have an e-mail address, Ms. Marks?

8 MS. MARKS: I do, Your Honor.

9 THE COURT: All right. You get her e-mail address.
10 Make sure you have it, Lori, do you have Ms. Marks' e-mail
11 address?

12 CLERK: Yes, Your Honor, I do.

13 THE COURT: All right. You can e-mail it to me at
14 pbucknerj@sccourts.org and give my law clerk a working copy,
15 because she's making notes as I'm speaking, as well as the
16 court reporter making a verbatim transcript. That would be
17 pbucknerlc@sccourts.org. Include a self-addressed, stamped
18 envelope and I'll expect you to file an answer to her
19 complaint within 30 days of today. Now, I don't want a
20 motion to dismiss; I want an answer.

21 MS. MARKS: Yes, Your Honor.

22 THE COURT: Now, Ms. Marks, your next motion is a
23 motion for summary judgment. Because I've just added a
24 party, I'm going to give you the chance to see her answer,
25 because I don't think it's fair for you to argue a motion

1 for summary judgment when I've just added a party, because
2 you might want to include in your motion for summary
3 judgment, once you get her answer, and I'm requiring her to
4 answer within 30 days; do you understand that?

5 MS. MARKS: Yes, Your Honor.

6 THE COURT: Would you like to continue your motion for
7 summary judgment so that you might amend it if you so desire
8 after 30 days have expired?

9 MS. MARKS: Yes, Your Honor.

10 THE COURT: Very well. Then I will continue it for you
11 today. We will hear it at a future date. Ms. Wallace, I
12 will expect your Order within seven days. Any questions
13 about the proposed order procedure from counsel for the
14 moving party?

15 MS. WALLACE: Yes, Your Honor. The only question I had
16 was whether ---

17 THE COURT: Lift your head up, Ms. Wallace. Don't put
18 your head down talking into your file. What is it?

19 MS. WALLACE: The only question I have is whether or
20 not I needed to e-mail Ms. Marks prior to sending it to you
21 or copy her when I send it to you?

22 THE COURT: You prepare the Order. You send her a
23 copy. It's her job to notify me if she thinks your Order is
24 inconsistent with my ruling on the record. My law clerk is
25 taking notes. I'm making a note. And the court reporter is

1 making a verbatim record. If your Order is inconsistent
2 with my ruling, either Mr. Knobeloch or Ms. Marks has to
3 copy you back, either by e-mail or by written form, however
4 you transmit it, and send it to me and say "This is why I
5 think it's inconsistent." I will then decide once I hear
6 that and I'll even check the court reporter's record and I
7 will check my law clerk's notes and I will check my notes.
8 Then, I will make the decision; do you understand?

9 MS. WALLACE: Yes, Your Honor.

10 THE COURT: Good. Any questions about the proposed
11 Order procedure from you, Ms. Marks?

12 MS. MARKS: No, Your Honor.

13 THE COURT: Any question about the proposed Order
14 procedure from you, Mr. Knobeloch?

15 MR. KNOBELOCH: No, Your Honor.

16 THE COURT: Now, Ms. Marks, because I have just added a
17 party, and I want you to put that in there, Ms. Marks has
18 leave to amend her motion for summary judgment after she
19 receives your answer to include you, since you are now a
20 party to this action, in her motion, that is Nationstar
21 Mortgage; do you understand, Ms. Wallace?

22 MS. WALLACE: Yes, Your Honor.

23 THE COURT: Very well. I think that now covers
24 everything in regards to that and I will hear the motion for
25 summary judgment at a future date.

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON) CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had in the
hearing of the captioned case, in the Court of Common Pleas
Non-Jury for Colleton County, South Carolina, on the 18th day
July of 2012.

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

August 1, 2012

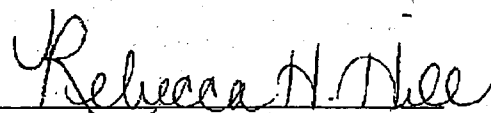

Rebecca H. Hill,
Official Court Reporter

EXHIBIT 2

THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH AT CLOSING OR THIS PURCHASE CONTRACT IS NULL AND VOID

- 1) SELLER CONTRIBUTIONS MUST BE COMPLIED WITH AT CLOSING OR THIS PURCHASE CONTRACT IS NULL, AND VOID
2) Full Contributions set to exceed \$ (15K) or less must be pre-underwritten and commitment made by bank and yield. All additional lender costs, or seller concessions that have not been approved by Flagstar are prohibited. Seller's acceptance, payment instructions or side agreements are forbidden to the lender are not permitted.
- 3) Short and Debt Types/Lien Application
- 4) Total First Home Payment Including Taxes and Insurance Cannot Exceed \$ (600)
- 5) Borrower's Cash Used for Closing, Net of the Original Real Estate Broker's Deposit (if applicable), Cannot Exceed \$ (400).
- 6) If Title Work Shows Any Gap, Oil, or Mineral Rights, Title Company Must Give a Letter Stating Title Policy Will Insure Over These Rights
- 7) All Applicable Easements and Disclosures per Product Description and FURIA/FULMASC Guidelines
- 8) If Title Work Shows Any Gap, Oil, or Mineral Rights, Title Company Must Give a Letter Stating Title Policy Will Insure Over These Rights
- 9) All Applicable Easements and Disclosures per Product Description and FURIA/FULMASC Guidelines
- 10) Flagstar Bank to Have First and Only Lien
- 11) Flood Hazard Notice Zone
- 12) Title Work to Prove no Delinquent Taxes, Unfiled/Unpaid Liens, Judgments or Assessments or Approval May Be Mail and Yield
- 13) Can General Affidavits Be Used
- 14) Zero-out first monthly M.I. has been ordered on this loan. The monthly M.I. premium must be included in the payment letter and the Trust is leading.
- 15) Any property tax figures that are available at the time of settlement must be paid at closing. Do NOT reserve for these taxes, as they will be due before the loan has been set up on our servicing system.
- 16) This product is eligible for a Short Term Title Policy. Title work should be presented on the proper ALTA short term with commitment at closing.
- 17) Provide Sale of Servicing Disclosure (DOC #3208 or similar document) dated within 3 days of application and signed prior to closing.
- 18) The Manufactured Home Rider must contain the following phrase "which is affixed and attached to the real property and is part of the real property."
- 19) Homeowners Policy must include Wind Storm coverage. If Wind Storm is covered under separate policy, however, deductible cannot exceed 5% of the Cash Value of the policy.
- 20) Proof of proof of needed Manufactured Home Affidavit for the Release of Title Certification and confirmation of insurability from DMV.
- 21) Any proof of title work must be approved by a Flagstar underwriter.
- 22) The loan is to be closed on a MERS servicer only.
- 23) Satisfaction letter with an ALTA 7 and document must accompany all title work for a manufactured home. The endorsement should cover that the loan described in the policy is the insured property includes the manufactured home unit located on the basis of the date of the policy.
- 24) Acknowledgment of Receipt of Disclosures Form (Doc #365-4) to be executed by all borrower.
- 25) Title Company to provide copies of all manufactured home title documents from in closing package.
- 26) Policy Description of Manufactured Home Rider. Manufactured Home Rider must be completed with Manufactured Home, Model Name, Model Number, and Serial Number, and Length and Width (if applicable).
- 27) Closing Documents must be prepared by Web-Based Closing Documents.
- 28) Closing Documents must be prepared by Web-Based Closing Documents
- 29) The Manufactured Home Rider must contain the following phrase "which, by operation of the parties, shall constitute a part of the realty and shall pass with it."
- 30) All Seller Contributions must be received by Underwriting or Purchase Commitment must be mail and yield.
- 31) You are required to retain your original underwriting package. Flagstar retains an imaged copy of all underwriting documents filed to your underwriting office. At Flagstar liberty has a copy of your underwriting package, do not send the original to Flagstar.

ALL DATA FOR INFORMATIONAL PURPOSES ONLY. Absence of data does not negate requirements.

ICI, Company Name: GENWORK II FINANCIAL, Certificate # 630681450
 Coverage amt: 25% Option Type: ??
 Note: Loan charges may affect coverage and premium - refer to actual ICI certificate.

This Loan Purchase Commitment is given, this mortgage is void if this loan includes and/or has above a revolving personal or other account which would give a special disclosure as defined by the Equal Community Development Act Regulatory Interpretation Act of 1994 (Pub. L. 103-325 Stat. 2160) enacted in September 1994, containing the Home Ownership and Equity Protection Act of 1994. Required by 12CFR 226.22 (Requirements for certain closed-end home mortgages). The Bank recognizes that the Bank is responsible and holds all credit and underwriting officers. The Bank agrees to approve credit to close the mortgage. The Bank acknowledges that the Bank is only acting as an intermediary to purchase the mortgage loan subject to Federal Bank requirements.

Undersecretary Valerij J. Williams
77

ALL CONDITIONS ON THIS LOAN MUST BE FAXED TO

Flagstar Bank Headquarters 4151 Corporate Drive Irvine, CA 92618

Fluor Bank Headquarters 5151 Connaught Drive West, Unit 40-000
This correspondence may contain information that is confidential, proprietary or "non-public personal information", as that term is defined in the Gramm-Leach-Bliley Act (collectively, "Confidential Information"). The Confidential Information is disclosed conditioned upon your agreement that you will treat all Confidential Information confidentially and in accordance with applicable law, ensure that such information is not used or disclosed except for the limited purpose for which the being provided and not copy and retransmit without Fluor Bank regarding any requested disclosure or any unauthorized disclosure or use of any Confidential Information. By accepting and reviewing the Confidential Information you agree to indemnify Fluor Bank against any losses or expenses, including attorney's fees that Fluor Bank may incur as a result of any unauthorized use or disclosure of the Confidential Information due to your acts or omissions. If this correspondence is received by a party other than the intended recipient, you are requested to immediately notify us of the incorrect delivery and return to us all information so delivered.

EXHIBIT 3



[Home](#) > [Single-Family](#) > [Guides](#) > [Selling & Servicing Guide](#) > [Related Selling Information](#) > MERS®

MERS®



Mortgage Electronic Registration System

Streamline Assignments of Mortgages

The Mortgage Electronic Registration System (MERS) was created by mortgage industry participants to streamline the mortgage process by eliminating the need to prepare and record paper assignments of mortgages. Fannie Mae was a founding member of MERS when MERS was launched in 1997.

MERS acts as nominee in the local land records for the lender and servicer. Loans registered with MERS are protected against future assignments because MERS remains the nominal mortgagee no matter how often servicing is traded between MERS members. MERS as original mortgagee (MOM) is approved by Fannie Mae. Our MERS Organization ID is 1000130.

[Learn More About Our MERS Requirements and Procedures](#)
(.pdf, 66K, 4 pages)

For More Information

To learn more, contact MERS directly at 1-888-680-6377 or visit their Web site.
[Visit www.mersinc.org](http://www.mersinc.org)


[Home Page](#) | [Members Only](#) | [Contact Us](#) | [Location](#) | [Privacy Policy](#) | [Site Map](#)
[Newsroom](#) | [About Us](#) | [Events](#) | [Why MERS?](#) | [Knowledge Base](#) | [Careers](#)
Tools & Services

[Downloads](#)
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[Payment Options](#)
[MERS for Homeowners](#)
[Property Preservation](#)
[Contacts](#)
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Join Now!
Become a Member

MERS Products

MERS System	MERS [®] Link	MERS [®] 1-2-3	MERS [®] Commercial
MERS [®] Registry	MERS [®] Delivery	MERS [®] ServicerID	MERS [®] Fraud Tools
MERS [®] Del. of Banks	MISMO [®]	MERS [®] FraudALERT	

[Home](#) » [About Us](#) » Overview
About MERS

MERS was created by the mortgage banking industry to streamline the mortgage process by using electronic commerce to eliminate paper. Our mission is to register every mortgage loan in the United States on the MERS[®] System.

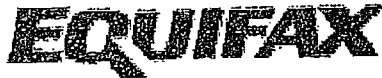
Beneficiaries of MERS include mortgage originators, servicers, warehouse lenders, wholesale lenders, retail lenders, document custodians, settlement agents, title companies, insurers, investors, county recorders and consumers.

MERS acts as nominee in the county land records for the lender and servicer. Any loan registered on the MERS[®] System is inoculated against future assignments because MERS remains the mortgagee no matter how many times servicing is traded. MERS as original mortgagee (MOM) is approved by Fannie Mae, Freddie Mac, Ginnie Mae, FHA and VA, California and Utah Housing Finance Agencies, as well as all of the major Wall Street rating agencies.

[TOP](#)
[Home Page](#) | [Members Only](#) | [Contact Us](#) | [Location](#) | [Privacy Policy](#) | [Site Map](#)

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EXHIBIT 4



Equifax Credit Report™ for Melissa J. Marks

As of: 01/03/2012

Available until: 02/02/2012

Confirmation #: 2503397858

Report Does Not Update

Section Title	Section Description
1. Credit Summary	Summary of account activity
2. Account Information	Detailed account information
3. Inquiries	Companies that have requested or viewed your credit information
4. Negative Information	Bankruptcies, liens, garnishments and other judgments
5. Personal Information	Personal data, addresses, employment history
6. Dispute File Information	How to dispute information found on this credit report
7. Summary of Your Rights Under the FCRA	Summary of Your Rights Under the FCRA
8. Remedying the Effects of Identity Theft	Remedying the Effects of Identity Theft
9. Your Rights Under State Law	Your Rights Under State Law

Credit Summary

Your Equifax Credit Summary highlights the information in your credit file that is most important in determining your credit standing by distilling key credit information into one easy-to-read summary.

Accounts

Lenders usually take a positive view of individuals with a range of credit accounts - car loan, credit cards, mortgage, etc. - that have a record of timely payments. However, a high debt to credit ratio on certain types of revolving (credit card) accounts and installment loans will typically have a negative impact.

Open Accounts	Total Number	Balance	Available	Credit Limit	Debt to Credit Ratio	Monthly Payment Amount	Accounts with a Balance
Mortgage	0	\$0	N/A	N/A	N/A	\$0	0
Installment	0	\$0	N/A	N/A	N/A	\$0	0
Revolving	2	\$0	\$3,300	\$3,300	0 %	\$26	0
Other	0	\$0	N/A	N/A	N/A	\$0	0
Total	2	\$0	\$3,300	\$3,300	0 %	\$26	0

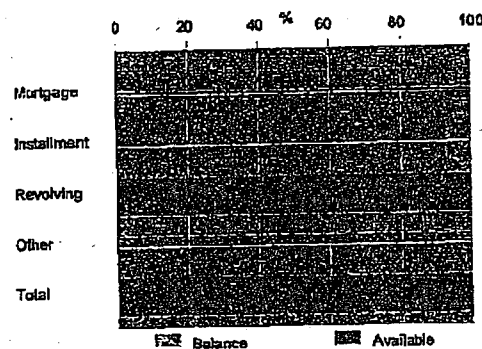
Debt by Account Type

No Data to Display

- Mortgage-0%
- Installment-0%
- Revolving-0%
- Other-0%

NOTE: Total may not equal 100% due to rounding

Debt to Credit Ratio by Account Type



Account Age

Usually, it is a good idea to keep your oldest credit account open, as a high average account age generally demonstrates stability to lenders. Also, especially if you have been managing credit for a short time, opening many new accounts will lower your average account age and may have a negative impact.

Length of Credit History

0

Average Account Age
Oldest Account
Most Recent Account

NaN Year
SC STUDENT LOAN-GUAR (Opened N/A)
CREDIT ONE FINANCIAL (Opened 07/2008)

Inquiries - Requests for your Credit History

Numerous inquiries on your credit file for new credit may cause you to appear risky to lenders, so it is usually better to only seek new credit when you need it. Typically, lenders distinguish between inquiries for a single loan and many new loans in part by the length of time over which the inquiries occur. So, when rate shopping for a loan it's a good idea to do it within a focused period of time.

Inquiries in the Last 2 Years

Most Recent Inquiry

1
ONLINE CREDIT REPORTING ::2503397858
(04/19/11)

Potentially Negative Information

Late payments, collections and public records can have a negative impact on your credit standing. The more severe and recent they are, the more negative the potential impact might be.

Public Records
Negative Accounts
Collections

1
8
0

Mortgage Accounts

Mortgage accounts include first mortgages, home equity loans, and any other loans secured by real estate you own.

Closed Accounts

Account Number	Account Type	Open Date	Balance	Close Date	Close Reason

FLAGSTAR BANK	27450168XXXX	10/2007	\$0	09/2009	PAYS AS AGREED

FLAGSTAR BANK	27450168XXXX	10/2007	\$0	09/2009	PAYS AS AGREED

5151 Corporate Dr
Troy, MI-480982639
(800) 945-7700

Account Number:	27450168XXXX	Current Status:	PAYS AS AGREED
Account Owner:	Individual Account	High Credit:	\$ 76,000
Type of Account:	Mortgage	Credit Limit:	
Term Duration:	30 Years	Terms Frequency:	Monthly (due every month)
Date Opened:	10/2007	Balance:	\$ 0
Date Reported:	09/2009	Amount Past Due:	
Date of Last Payment:	09/2009	Actual Payment Amount:	\$ 680
Scheduled Payment Amount:		Date of Last Activity:	09/2009
Date Major Delinquency First Reported:		Months Reviewed:	23
Creditor Classification:		Activity Description:	Transfer/Sold
Charge Off Amount:		Deferred Payment Start Date:	

Balloon Payment Amount:		Balloon Payment Date:	
Date Closed:		Type of Loan:	Conventional RE Mortgage
Date of First Delinquency:	N/A		
Comments:	Fannie Mae account		

81-Month Payment History

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2009												
2008												
2007												

NATIONSTAR MORTGAGE59656XXXX

10/2007

\$0

08/2011

WAGE
EARNER
PLAN

NATIONSTAR MORTGAGE

PO Box 109111
Dallas, TX-752199111
(214) 111-1111

Account Number:	59656XXXX	Current Status:	WAGE EARNER PLAN
Account Owner:	Individual Account	High Credit:	\$ 76,000
Type of Account:	Mortgage	Credit Limit:	
Term Duration:	30 Years	Terms Frequency:	
Date Opened:	10/2007	Balance:	\$ 0
Date Reported:	08/2011	Amount Past Due:	
Date of Last Payment:	08/2011	Actual Payment Amount:	
Scheduled Payment Amount:		Date of Last Activity:	N/A
Date Major Delinquency First Reported:	04/2011	Months Reviewed:	20
Creditor Classification:		Activity Description:	N/A
Charge Off Amount:		Deferred Payment Start Date:	
Balloon Payment Amount:		Balloon Payment Date:	
Date Closed:		Type of Loan:	Conventional RE Mortgage
Date of First Delinquency:	03/2011		
Comments:	Bankruptcy chapter 13, Fannie Mae account		

EXHIBIT 5

DORCAS M. TUTEN
Attorney at Law

222 Wichman Street
Post Office Box 1694
Walterboro, South Carolina 29488

Telephone (843) 542-9495
Facsimile (843) 542-9536

October 8, 2012

Ms. Melissa J. Marks
209 Presidential Court
Round O, South Carolina 29474

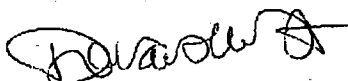
Re: 209 Presidential Court, Round O, South Carolina 29474
TMS#: 168-00-00-147

To Whom It May Concern:

Melissa J. Marks retained me to handle the closing on her purchase of real property known and designated as 209 Presidential Court, Round O, South Carolina, bearing TMS Number 168-00-00-147, which closed on October 5, 2007. The attached are true and correct copies of the incoming wire confirmation and certified check from my file which was provided to Melissa J. Marks at her request by Jamie L. Avant, my assistant, via electronic mail on March 30, 2012 at 11:10 a.m.

With best regards, I am

Very truly yours,



Dorcas M. Tuten

DMT/jla
Enclosures

[Help](#)

Notifications - Print

[Print](#) | [Close](#)

TBB Incoming Wire Advice

TBB Incoming Wire Advice

Date: 10/05/2007

Account: 1005320211

Name: Bank of Walterboro

Notification Of: Incoming Wire

Received On: 10/05/2007 5:25:12 PM

Amount: 76,092.85

Ref: 01791 Sending FI: 272471852 FLAGSTAR BK FSB

Sender:	272471852	FLAGSTAR BK FSB	Amount:	76,092.85
Receiver:	061083415	THE BANKERS BK	Business Function:	CTR
Type Code:		1000		
Originator:		991558000		
		FEDERAL RESERVE BANK ACCOUNT		
		5151 CORPORATE DRIVE		
		TROY MI 48068		
Beneficiary's FI:		BA		
		BANK OF WALTERBORO		
		DORCAS M. TUTIN , REAL ESTATE		
Beneficiary:		1005320211		
		EDISTO TITLE INSURANCE		
Ref for BNF:		1518747		
ORG to BNF Info:		LN501684092		
		BN MARKS , MELISSA		
		010032310		
IMAD:		20071005 LLLYRQOC 000638		
TimeStamp:		1085 1724 FT01		
OMAD:		20071005 FLB7281C 001791 1005 1724 FT01		

NAVY
FEDERAL
Credit Union

NAVY FEDERAL CREDIT UNION
PO Box 3000
Merrifield VA 22119-3000
navyfcu.org

68-7487
2560

CASHIER'S CHECK

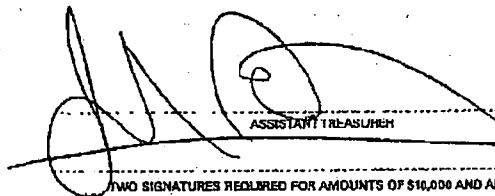
SERIAL NO.	ACCOUNT NO.	DATE	AMOUNT
0422916733	0000001217737103	10/05/07	*****5,945.54

PAY
TO THE
ORDER OF

DORCAS TUTEN

C 36 (5-05)

REMITTER=MELISSA J MARKS


ASSISTANT TREASURER

TWO SIGNATURES REQUIRED FOR AMOUNTS OF \$10,000 AND ABOVE

⑆256074974⑆

⑈002

DORCAS M. TUTEN
Attorney at Law
Post Office Box 1694
Walterboro, SC 29488

CHARLESTON SC 294

09 OCT 2012 PM 2 L



Ms. Melissa J. Marks
209 Presidential Court
Round O, South Carolina 29474

29474+4374

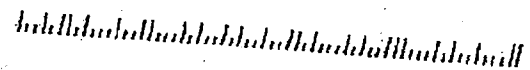


EXHIBIT 6

People Search Plus Report for Sandra Yavello

Is This You? Claim Your Profile

Run unlimited searches in Premier

- Report Summary
- People Search Report
- Social Network Summary
- Email Lookup
- View All

Available Addons:

- Phone and Address Check + Report in PDF

[View Report](#)

- Criminal Check Addon

[View Report](#)

- Phone and Address Check + Report in PDF

[View Report](#)

- Criminal Check Addon

[View Report](#)

What is a People Search Report?

This section lists current and historical people search records that share the same name and state as your search subject. The People Search Summary can be helpful in providing a consolidated view of matching current and historical records for your subjects name across multiple public sources.

Name / Aliases	Address / Phone	Previous Cities
1 <u>Sandra Marie Yavello</u>	Address 1: 1215 W Marshall St Ferndale, MI 48220 (248) 255-8456	Ferndale, MI Detroit, MI
<u>Sandra M Franklin</u>	Address 2: 24290 W 7 Mile Rd Detroit, MI 48219 (248) 398-8077	Complete Background Check
DOB: Dec 8th, 1954	Address 3: 4444 Chrysler Dr Detroit, MI 48207 (248) 542-4753	
AGE: 58 years old	Address 4: 15891 Steel St Detroit, MI 48227	
RELATIVES: <u>Robert Yavello</u> (54) <u>Susan Yavello</u> <u>Linda Franklin</u> (52) <u>Johnny Franklin</u> (51) <u>Yolanda Franklin</u> (44) <u>Earl Franklin</u> (54) <u>Phyllis Franklin</u> (49) <u>James Franklin</u> (49)	Address 5: 14253 Hazelridge St Detroit, MI 48205 (313) 255-9456	

Related People Searches

[Sandria Yavello](#)

[Saundra Yavello](#)

[Sondra Yavello](#)

[S Yavello](#)

What is a Social Network Summary?

This section lists current and historical records that share the same name and state as your search subject. The Social Network Summary can be helpful in providing a consolidated view of matching records for your subject's social network profiles across multiple publicly available sources. The name, address, URL and phone number data may provide useful information to help you locate an individual.

Disclaimer

Intellus has no control over, and is not responsible for, the content on any social network web site identified in this summary.

[See the searches that we tried](#)

What is an Email Lookup?

This section lists current and historical records that share the same email address. The Email Address Report can be helpful in providing a consolidated view of matching records for your subject's email address across multiple public and publicly available sources. The name, address and phone number data may provide useful information to help you locate an individual.

[See the searches that we tried](#)

No Records Found for Sandra MYavello

EXHIBIT 7

**RE: Marks v. Old South Mortgage Corporation et al. C/A
12-CP-15-00262**

July
Harriet Wallace (Harriet.Wallace@rtt-law.com) ✓
Wed 7/25/12 1:27 PM
Melissa Marks (mjmarks68@hotmail.com); pbucknerj@sccourts.org (pbucknerj@sccourts.org)
pbucknerlc@sccourts.org (pbucknerlc@sccourts.org); docs@kingknob.com (docs@kingknob.com);
Sheri McClendon (Sheri.McClendon@rtt-law.com)

Your Honor,

I do concede that it was conveyed to me that Nationstar was the servicer and owner of the note, which was corrected by Nationstar yesterday. However, I do not remember exactly what I said but there was no intentional misrepresentation and Nationstar is still the holder of the note as defined in the UCC, which still supports our motion to intervene.

ROGERS TOWNSEND
ATTORNEYS AT LAW

Harriet Wallace
Shareholder

Direct 803.744.1846
Fax 803.343.7017

Rogers Townsend & Thomas, PC Main 803.771.7900
20 Executive Center Dr. Visit
Columbia, SC 29210

From: Melissa Marks [mailto:mjmarks68@hotmail.com]
Sent: Wednesday, July 25, 2012 1:11 PM
To: Harriet Wallace; pbucknerj@sccourts.org
Cc: pbucknerlc@sccourts.org; docs@kingknob.com; Sheri McClendon
Subject: RE: Marks v. Old South Mortgage Corporation et al. C/A # 12-CP-15-00262

Your Honor,

I simply want to bring to your attention that the following language is in Ms. Wallace's original proposed order that she sent to you:

"Nationstar then filed its Motion to Intervene claiming it is the current owner and holder

EXHIBIT 8

Limiting Abuse and Opportunism by Mortgage Servicers

Kurt Eggert

Chapman University School of Law

Abstract

This article discusses the opportunistic and abusive behavior of some servicers of residential mortgages toward the borrowers whose loans they service. Such abuse includes claiming that borrowers are in default and attempting to foreclose even when payments are current, charging borrowers unwarranted late fees and other kinds of fees, force-placing insurance even when borrowers already have a policy, and mishandling escrow funds.

The causes of such practices and the market forces that can rein them in are discussed. A case study of one mortgage servicer describes its unfair treatment of borrowers and the reforms imposed by federal regulators and other market participants. Both regulatory agencies and ratings agencies appear to have increased their scrutiny of servicers' behavior, and states have passed new legislation to limit abuse. The article concludes with a discussion of proposals for further reform should these steps prove inadequate.

Keywords: Mortgage servicers; Securitization; Subprime and predatory lending

Introduction

Since a growing number of residential loans are packaged and sold on Wall Street, securitization—defined by Shenker and Colletta (1991) as the process of creating liquid, tradable securities by selling interests in a pool of less liquid assets such as residential mortgages—has become an integral part of our mortgage banking system. As securitization increases, so too does the need to protect borrowers whose loans are securitized from opportunism by the commercial participants in the securitization process. This article focuses on

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

MELISSA JEAN MARKS, *Pro Se*,)

Plaintiff,)

vs.)

OLD SOUTH MORTGAGE)

CORPORATION; and)

NATIONSTAR MORTGAGE, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-15-00262

CERTIFICATE OF SERVICE

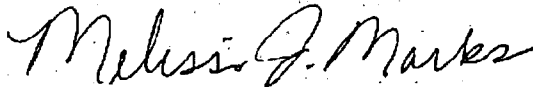
I certify that, on this date, I served a copy of Plaintiff's Memorandum in Support of Plaintiff's Motion to Dismiss Nationstar Mortgage, LLC, filed on August 22, 2013, by mailing it to him/her, at his/her last known address, by depositing them in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Attorney for the Defendant Old South Mortgage Corporation at:

John F. Knobloch, Esq.
King & Knobloch, P.C.
808 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

Attorney for Defendant Nationstar Mortgage, LLC at:

Harriet Pollitt Wallace, Esq.
Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210



Melissa Jean Marks, Plaintiff pro se
209 Presidential Court
Round O, SC 29474
(843) 599-3156
mjmarks68@hotmail.com

Round O, South Carolina
August 22, 2013

2013 AUG 22 AM 9:33

COLLETON COUNTY
COMMON PLEAS

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

MELISSA JEAN MARKS, PRO SE,

Plaintiff,

vs.

OLD SOUTH MORTGAGE CORP., ET AL.

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-15-00262

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney Pro Se: Melissa Jean Marks, Bar No. N/A Address: 209 Presidential Court, Round O, SC 29474 Phone: 843-599-3156 Fax _____ E-mail: mjmarks68@hotmail.com Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion for Reconsideration of Orders Entered on October 9, 2013 Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☐ Written motion attached. ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☒ Plaintiff / ☐ Defendant <u>Melissa J. Marks</u> Date submitted: <u>10/18/13</u>			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☒ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2013 OCT 18 AM 9:21

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

MELISSA JEAN MARKS, *Pro Se*,)
)
Plaintiff,)
)
vs.)
)
OLD SOUTH MORTGAGE)
CORPORATION, and)
NATIONSTAR MORTGAGE, LLC,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-15-00262

PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR
RECONSIDERATION OF THE
ORDERS ENTERED ON
OCTOBER 9, 2013

2013 OCT 18 AM 9:21

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

TO: THE HONORABLE MAITÉ MURPHY, PARTIES AND COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the undersigned pro se Plaintiff at such time and place as the Court may set will move before the Court for reconsideration of the Order Denying Plaintiff's Motion to Dismiss Defendant as Intervening Party and of the Order Granting Defendant's Motion for Summary Judgment, both of which were entered on the record of this case on October 9, 2013, pursuant to Rules 52 and 59 of the *South Carolina Rules of Civil Procedure*. The referenced Orders are attached hereto as **Exhibit 1** and incorporated herein by reference.

Unfortunately, Your Honor, your Orders entered on October 9, 2013, were missing important, distinguishing material facts and information that was available and evidenced in Plaintiff's pleadings on record, and this resulted in rulings that contradict applicable law and the record, including contradictions of facts and applicable law on the Orders themselves. Therefore, Plaintiff is submitting the applicable law and facts herein in the hope that justice may be done before Plaintiff must necessarily bring these Orders before the Court of Appeals for review.

U.S. Legal published an article online summarizing the "Law of the Case Doctrine," and

cited to three exceptions that may arise as follows: "[1] if the decision is clearly erroneous and enforcement would cause manifest injustice; [2] if intervening controlling authority makes reconsideration appropriate; or [3] if substantially different evidence was adduced at a later date." The article cited to *Sowder v. United States*, 251 Fed. Appx. 444 (9th Cir. Wash. 2007) as to the exceptions above, and the first exception applies in Plaintiff's case. Plaintiff believes the decisions Your Honor made are clearly erroneous and enforcement would manifest injustice because they prejudice Plaintiff's right to a trial on the merits of her case without just cause.

Your Honor, Plaintiff respectfully requests that you personally and carefully review her Motion to Dismiss Nationstar Mortgage, LLC and Exhibits 1-15, filed on June 26, 2013, her Memorandum in Support of Plaintiff's Motion to Dismiss Nationstar Mortgage, LLC and Exhibits 1-8, filed on August 22, 2013, her Opposition to Defendant Nationstar Mortgage, LLC's Motion for Judgment on the Pleadings, or in the Alternative, Motion for Summary Judgment, filed on April 16, 2013, all of which she had emailed to your law clerk for your convenience after the hearing and are incorporated by reference as if fully restated herein, and the Transcript of Record of the Hearing before you on September 4, 2013. The Transcript of Record is attached hereto as **Exhibit 2** and incorporated herein by reference.

Plaintiff's Declaratory Judgment Complaint and Petition for Injunctive Relief and Exhibits 1-43 and both of the Defendants' Answers are incorporated herein by reference as if fully restated herein. Both of the Defendants' Answers evidence that the Defendants deny most of the allegations of Plaintiff's 40-page Complaint; therefore, there are genuine issues of material fact and of law to resolve in this litigation, and it is not necessary to go through each and every allegation on the record because that is what would occur at the trial. This fact, combined with the facts that the doctrines of *res judicata* and *judicial estoppel* are inapplicable to this action as

Plaintiff will explain and show herein, means that the Court erred by granting Nationstar's motion for summary judgment. It is well established at common law that our state favors allowing plaintiffs to litigate and receive rulings based upon the merits of their claims and not based solely upon defendants' procedural maneuvering to avoid liability for their actions.

Plaintiff Has Standing as a Matter of Law and the Law of the Case

Your Honor erred by ignoring the cases and statutes Plaintiff cited in her pleadings and exhibits on record clearly establishing Plaintiff has standing as a matter of law because she is a Chapter 13 debtor in possession of the property of the estate, and since the Court has all of that on record, it is not necessary to belabor and reargue all that herein.

To supplement and clarify, Plaintiff is not claiming to have the same statutory authority to avoid a lien personally by her own personal proclamation and decree in the bankruptcy court as if she had the same avoiding powers as a Chapter 13 trustee, but rather, she is seeking this Court's order to remove the lien. The bankruptcy court acknowledged before the parties that either the bankruptcy court or the state court could remove the lien and that the bankruptcy court is happy for the Plaintiff to do it wherever she wants to do it. The bankruptcy court Hearing Transcript is attached hereto as **Exhibit 3** and incorporated herein by reference. The Court erred when it ignored and set aside the clarification the bankruptcy court provided on the issue.

To supplement and clarify further, in the case of *Brockington v. Jones*, 2007 U.S. Dist. LEXIS 96248, 7-9 (D.S.C. Nov. 28, 2007), which this Court cited in support of its erroneous declaration that Plaintiff lacks standing to bring this action, the plaintiff and debtor in that case, Clara Lewis Brockington, had filed a Chapter 7, not a Chapter 13, and for that reason, as well as for other reasons, that case is inapplicable to the fact pattern before this Court in this action.

Nevertheless, even in the context of a Chapter 7 as opposed to a Chapter 13, the court

noted in *Brockington* that, "Plaintiff has presented no evidence that the present claim was exempt from the estate or abandoned by the trustee." If Ms. Brockington had presented evidence showing the claim to be exempt or abandoned by the trustee, the court most likely would have ruled in her favor.

In this action, Plaintiff has submitted sufficient evidence to the Court showing this claim is both exempt and abandoned by the trustee as a matter of law because he did not object within 30 days of receiving notice, which the Court has continued to ignore for reasons unknown.

In addition, with respect to the Law of the Case, the Court in effect acknowledged Plaintiff's standing to bring, prosecute, and settle this action by ordering her to complete mediation within 30 days after the Court had denied Plaintiff's motion for reconsideration and by allowing Plaintiff's case to proceed disregarding that Nationstar had moved for dismissal during the hearing on Plaintiff's motion to defer ADR. The Order denying Plaintiff's motion for reconsideration was signed on April 5, 2013, and the Order denying Plaintiff's motion to defer ADR was signed subsequently on April 8, 2013. The foregoing Orders are attached hereto as **Exhibit 4** and incorporated herein by reference.

If the Court was truly convinced that Plaintiff did not have standing, it stands to reason the Court would have dismissed Plaintiff's case and would not have ordered her to complete mediation. During the hearing on Nationstar's motion to intervene, the Court had already considered Nationstar's inference that Plaintiff may not have standing to bring the action, and the Court was not persuaded that it was an issue because it was a Chapter 13, there was no pre-petition arrearage, and the home and mortgage were not part of the bankruptcy in the beginning.

Unfortunately, Judge Buckner was ignoring, abusing and acting prejudicially toward Plaintiff without just cause, so Plaintiff had no choice but to move for his recusal, which he

granted. Therefore, the Court is free to review Plaintiff's subsequent pleadings and evidence in this action *de novo*. As Plaintiff pointed out, this is the first time she has moved to dismiss Nationstar from this action. Simply restating certain facts to the Court during hearings on other unrelated motions does not mean that the Court considered those facts. In fact, the Court will often ignore certain facts that the Court does not believe are relevant or have any bearing on the particular motion at hand, and that is what occurred at each hearing.

Nationstar Lacks Standing and Should Be Dismissed With Prejudice

It did not escape Plaintiff's attention that Your Honor signed the Order Granting Defendant's Motion for Summary Judgment on September 12, 2013, which was a few days before signing the Order Denying Plaintiff's Motion to Dismiss Defendant as Intervening Party on September 18, 2013. Therefore, Plaintiff reasonably questions whether Your Honor gave fair consideration to her motion to dismiss and therefore asks Your Honor to reconsider.

It stands to reason that if Nationstar lacks standing and should be dismissed from this action with prejudice, Plaintiff's pleadings seeking Nationstar's dismissal should have been reviewed and decided first, not second as an afterthought. It also stands to reason that if Nationstar did not have standing to bring a motion for summary judgment, this also means all of the prior court rulings in favor of Nationstar were granted in error because Nationstar did not have standing to intervene and to oppose any of Plaintiff's motions in this action and therefore those orders should be ignored and set aside.

Your Honor erred by refusing to acknowledge Nationstar's apparent lack of standing to defend this action, despite the overwhelming facts, evidence and law Plaintiff produced to this Court establishing Nationstar's lack of standing, that Nationstar would not be harmed if the Court granted a judgment in favor of Plaintiff, and therefore, Nationstar should be dismissed

with prejudice. In fact, Your Honor in effect admitted in the Orders that Nationstar lacks standing to defend this action.

First, Your Honor found that Fannic Mac is the investor and Nationstar is the servicer, so the Court in essence acknowledged that Nationstar is not the party who owns the mortgage, and since Nationstar does not own the mortgage, Nationstar did not purchase the mortgage and therefore Nationstar has no interest in equity in this specific mortgage to defend. Second, in your Order, Your Honor stated, "Here, by virtue of its possession of the original note, if the loan were in default, Nationstar would be the proper party to enforce the note." [Emphasis added.]

Your Honor acknowledged in your Order and is aware Plaintiff has not defaulted and is current on her payments, which means Nationstar is not the proper party to enforce the note today and was not the property party to enforce the note on or before the dates Plaintiff filed her actions in the bankruptcy court and in this state court. Your Honor erred by granting Nationstar standing and declaring Nationstar the proper party based upon what could be in the future but what is not a fact of today and what might not ever be a fact of tomorrow because it is contingent upon a default on an alleged loan, which may never occur during the life of the alleged loan.

In addition, generally, in actions on a contract, the only reason a court might be persuaded to overlook fraud, illegality or defects in the contract is where there is a showing that the defendant has an interest in equity. Nationstar is a third party non-holder in possession of the note who was not involved in the origination of the mortgage, which is the subject matter of this action, and Nationstar by its own admission does not own the mortgage, so Nationstar does not have an interest in equity and has no independent knowledge regarding what took place during the origination. Therefore, Nationstar has failed to state a claim upon which relief can be granted and must be dismissed from this action with prejudice for that reason, as well as for other good

grounds and just cause as meticulously explained and evidenced in Plaintiff's pleadings, which the Court would know if the Court had read them.

In *Deutsche Bank National Trust Co. v. Heinrich*, decided by the Charleston County Court of Common Pleas entered on July 31, 2013, the Court dismissed the Plaintiff's foreclosure complaint based upon the Court's finding that the Plaintiff did not own the mortgage on the date the complaint was filed and therefore lacked standing to file the action. The Court found that, "However, *Carpenter v. Longan*, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872), quoted by Plaintiff's counsel in this oral argument and brief, clearly supports the notion that the Plaintiff must clearly own the Note and the Mortgage to foreclose on the property." A copy of this Order is attached hereto as Exhibit 5 and incorporated herein by reference.

Interestingly, Nationstar's counsel in this action, Rogers Townsend & Thomas, PC in Columbia, was also counsel for Deutsche Bank in the foregoing foreclosure action, and therefore, should be aware of that U.S. Supreme Court case and that ruling, yet subsequently appeared here in this action and argued the opposite.

Now that the courts across the country are aware of the servicer frauds and abuses occurring, the body of case law on the issue of whether a servicer has standing to bring a foreclosure action is beginning to shift back toward the requirement that the plaintiff bringing the foreclosure action must be the party who owns the mortgage on the date the action is filed and that a servicer lacks standing to bring the action. In fact, that position actually is more in line with the Uniform Commercial Code, Chapter 3, which states in pertinent part as follows.

S.C. Code § 36-3-203, Transfer of instrument; rights acquired by transfer, states in pertinent part [emphasis added]:

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any

right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument. [...]

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. **The transferee obtains no rights under this chapter and has only the rights of a partial assignee.**

OFFICIAL COMMENTS:

[...] "Because the transferee's rights are derivative of the transferor's rights, those rights must be proved. Because the transferee is not a holder, there is no presumption under section 3-308 that the transferee, by producing the instrument, is entitled to payment. The instrument, by its terms, is not payable to the transferee and the transferee must account for possession of the unindorsed instrument by proving the transaction through which the transferee acquired it.

[...] There is one exception to this rule stated in the concluding clause of subsection (b). **A person who is party to fraud or illegality affecting the instrument is not permitted to wash the instrument clean by passing it into the hands of a holder in due course and then repurchasing it.**" [...]

Subsection (d) restates former Section 3-202(3). **The cause of action on an instrument cannot be split. Any indorsement which purports to convey to any party less than the entire amount of the instrument is not effective for negotiation.**" [...]

Plaintiff argued and showed the Court in her pleadings that, as a matter of law, Nationstar cannot obtain the rights of the holder in due course by virtue of possession pursuant to S.C. Code § 36-3-203(b) and (d). Nationstar disclosed to the Court under oath that Fannie Mae is the owner of the note and mortgage, and since an owner has been identified after Nationstar had knowingly and intentionally misrepresented a material fact before this Court by falsely claiming that Nationstar was the owner and real party in interest in order to be granted permission to intervene, Nationstar cannot obtain and does not have any rights pursuant to the UCC, Chapter 3.

In addition, if Nationstar is the servicer, and Plaintiff disputes that as a genuine issue of material fact because Nationstar produced no contractual evidence validating that it is the

servicer and for other reasons as Plaintiff explained in her pleadings, Nationstar might be a partial assignee at best, which Nationstar has not proven either by submitting contractual evidence validating the same.

In any event, a partial assignee cannot obtain the rights of the holder in due course by virtue of possession pursuant to the UCC, Chapter 3, as a matter of law, and Your Honor erred by declaring that Nationstar is the servicer and is the proper party without reviewing any contractual evidence validating Nationstar's claims. Plaintiff brought to the Court's attention in her pleadings that Nationstar refused to produce any contractual evidence validating its claims in response to her discovery requests, and it is on record that Nationstar submitted no contractual evidence to the Court validating its claims attached to its subsequent pleadings filed in this Court.

It would not be enough to produce a general servicing contract that is applicable to a number of mortgages that are not specifically identified in the contract, but rather, Nationstar would need to produce contractual evidence validating its claims as to this specific mortgage. It stands to reason that Nationstar probably would have done so in response to Plaintiff's discovery requests if it could have done so, which is why it is fair and reasonable for the Court to assume Nationstar has no such contractual evidence validating its claims as to this mortgage specifically.

As the moving party for summary judgment, and as a matter of law, the burden is on Nationstar to prove its claims and to prove that no genuine issue of material fact or law exists on the issues of whether and what specific servicing rights Fannie Mae may have granted Nationstar as to this mortgage and this action specifically and on what dates such rights were granted, and Nationstar has clearly failed to do so, which the Court ignored for some unknown reason.

Nationstar is not an indispensable party to the action pursuant to Rule 19, SCRCP, and

permissive joinder pursuant to Rule 20, SCRPC, is not appropriate under the circumstances due to the prejudicial impact upon Plaintiff's legal rights it has caused and will continue to cause by forcing her to litigate with an improper party who has no legally recognized interests or rights in the mortgage and note that is subject to this action.

For example, in the Order Denying Motion for Joinder of Gerald F. Grenier in this action, entered on May 9, 2013, Judge Mullen ruled, "The Court finds that the grounds asserted by Grenier do not provide him with a legally protected interest in the subject property which would entitle him to joinder under Rule 19(a)(2) or Rule 20 of the *South Carolina Rules of Civil Procedure*."

The foregoing Order states further, "The stated grounds of Grenier's motion is that he has resided at the property which is the subject of this action since 2007, has invested 'time, labor and money improving' the property, and stands to inherit the property pursuant to Marks' Last Will and Testament." This Order is attached hereto as **Exhibit 6** and incorporated herein by reference.

Although Mr. Grenier has an interest in equity in the home in which he resides, the Court considered the fact that he would only inherit the home in the event of Plaintiff's death, and since his interest was contingent upon a future event, it was not considered a legally protected interest that justified granting permissive joinder over Nationstar's opposition.

Similarly, Nationstar's alleged right to enforce the note is contingent upon a future event, a default on the mortgage, and therefore, should not be deemed a legally protected interest that justifies granting Nationstar permissive joinder in consideration of Plaintiff's objection.

Plaintiff's Causes of Action are Not Barred by the Doctrine of *Judicial Estoppel*

In *Brockington v. Jones*, 2007 U.S. Dist. LEXIS 96248, 7-9 (D.S.C. Nov. 28, 2007), the

court held as follows:

"The Fourth Circuit has adopted a four prong test to determine whether *judicial estoppel* should be applied in a particular case. The doctrine applies where '1) the party to be estopped [is] advancing an assertion that is inconsistent with a position taken during previous litigation; 2) the position [is] one of fact instead of law; 3) the prior position [was] accepted by the court in the first proceeding; and 4) the party to be estopped [has] acted intentionally, not inadvertently.' *Folio v. City of Clarksburg*, 134 F.3d 1211, 1217 (4th Cir. 1998); *Calafiore v. Werner Enterprises, Inc.*, 418 F. Supp. 2d 795, 796 (D.Md.2006)."

In Plaintiff's Complaint at paragraph 108, she alleged as follows: "Defendant Old South never disclosed or explained to Plaintiff at any time before, during, or after the closing that MERS, Fannie Mae, and/or unidentified private investors were the intended owners of the mortgage and lien holders against her home *as of the date of the closing*." [Emphasis added.]

Attached as Exhibit 12 to her motion to dismiss Plaintiff submitted the Request for Admissions she served upon the Defendant Old South Mortgage Corporation, which are deemed admitted because to my knowledge Old South did not timely respond or object. Therefore, Old South admitted that "Old South never disclosed to Plaintiff that it was the intention of Old South and Flagstar Bank to assign or transfer her mortgage and note to Fannie Mae within approximately 30 days of the date she signed the closing documents on October 5, 2007."

Plaintiff is unaware of receiving any written notice on, before or after the closing of the foregoing hidden intentions of Old South and Flagstar Bank; therefore, she does not believe any such written notice or explanation exists. What a lender may or may not do in the future is not actual notice of what is actually occurring at the precise moment in time the documents are being signed at the closing and is not unambiguous disclosure of hidden parties to the extent they exist.

In addition, attached as Exhibit 12 to Plaintiff's motion to dismiss, Fannie Mae published a public claim that it acquired the loan on "10-01-2007" which was four days before Plaintiff signed the mortgage and while her loan application was being processed, which proves neither

Old South nor Flagstar was the lender who financed the purchase of Plaintiff's home and that they had in fact made up fake paperwork to obfuscate or conceal from Plaintiff what was really going on behind the scenes because it was unlawful what they were doing, as explained and evidenced in Plaintiff's pleadings of record in this Court.

Unfortunately, Your Honor, opposing counsel bamboozled you and prevented you from seeing the forest for the trees in this analysis of whether *judicial estoppel* applies. Instead of getting hung up about what Plaintiff's closing attorney allegedly knew but had not disclosed to Plaintiff regarding Old South's and Flagstar's actual roles in the transaction, what should have been apparent to Your Honor is that what opposing counsel cannot overcome is the fact that the first time Plaintiff personally discovered Fannie Mae's involvement in the mortgage was several weeks after her Chapter 13 plan was confirmed.

In addition, it was not until April 26, 2013, that Plaintiff personally discovered Fannie Mae's admission in the public domain that Fannie Mae had acquired the loan before Plaintiff signed the mortgage, which confirms Plaintiff's allegation in her complaint that Fannie Mae had originated the loan in violation of its government charter hiding behind pretender lenders. This shows that the mortgage contract is wholly void and of no legal effect as a matter of law pursuant to the doctrine of *ultra vires* and the South Carolina Statute of Frauds, S.C. Code § 32-3-10, as Plaintiff had cited and explained in her pleadings on record.

Therefore, Plaintiff did not have prior knowledge of sufficient facts and applicable law that she had any valid or reasonable basis to object to Nationstar's proof of claim as a secured creditor prior to the confirmation of her amended Chapter 13 bankruptcy plan or that she had any viable causes of action arising from the mortgage whatsoever. There is absolutely no reasonable basis for Nationstar's allegation or inference that the Plaintiff intended to conceal anything from

the bankruptcy court prior to the plan's confirmation. Plaintiff communicates with and follows the instructions of her bankruptcy attorneys and therefore makes reasonable efforts to comply with her obligations under bankruptcy law to the best of her knowledge and belief.

The bankruptcy court Form 10 Proof of Claim form defines creditor as, "A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing." When a corporation submits a proof of claim, it must identify the name of the actual creditor owed a debt, otherwise, its proof of claim is considered misleading. Especially considering the fact there is a separate block on the form to identify the third party debt collector in the event the actual creditor had hired a servicer or debt collection agency to collect the payments on its behalf.

Nationstar knowingly and intentionally misrepresented to the bankruptcy court that it was the actual secured creditor, and since mortgage companies are not required and do not routinely record assignments at the county register of deeds, the homeowner has little option but to accept the company's claim on good faith, unless something changes or documentation surfaces after the plan confirmation to alert the homeowner something is not right, which is what happened in Plaintiff's case as explained and evidenced in her pleadings on record.

Since the Plaintiff had acted inadvertently and in error due to her lack of knowledge regarding certain facts and applicable law, and since Nationstar had knowingly and intentionally misrepresented its position to the bankruptcy court in its proof of claim, and since Nationstar was not the actual secured creditor to whom Plaintiff owed a debt on or before the date her Chapter 13 was filed on April 20, 2011, the doctrine of *judicial estoppel* does not apply and does not bar any of Plaintiff's causes of action in this state court action.

Plaintiff's Causes of Action are Not Barred by the Doctrine of *Res Judicata*

In *In Re Nix*, CA 10-01103-IIB, 2012 WL 27667 (Bankr. D.S.C. Jan. 5, 2012), which is cited in Your Honor's Order granting Nationstar's motion for summary judgment, the opinion states as follows in pertinent part:

"In order for *res judicata* to apply, three conditions must be satisfied: 1) the prior judgment was final and on the merits, and rendered by a court of competent jurisdiction in accordance with the requirements of due process; 2) the parties are identical, or in privity, in the two actions; and 3) the claims in the second matter are based upon the same cause of action involved in the earlier proceeding.

First Union Commercial Corp. v. Nelson, Mullins, Riley and Scarborough (In re Varat Enters., Inc.), 81 F.3d 1310, 1315 (4th Cir. 1996) (citations omitted)."

As to the bankruptcy court's finding *In Re Nix* that "this catch-all reservation of rights clause [in the bankruptcy plan] does not allow Plaintiff to avoid the post-confirmation preclusive effects of *res judicata* and § 1327(a) on her debtor/creditor relationship with HFC," but also cautions in the footnote as follows: "This determination is based on a fact-specific *res judicata* analysis and the Court reserves comment on the effect of a general reservation such as this on any other party or parties that are not mutually bound by a confirmed plan."

Nationstar is not the secured creditor, and since neither Fannie Mae nor Old South Mortgage Corporation were identified as the secured creditor in Plaintiff's amended plan, and since Fannie Mae and Old South Mortgage Corporation are time barred from submitting a proof of claim against Plaintiff in the bankruptcy court, the doctrine of *res judicata* does not apply.

In fact, since the amended plan is not a final order, since objections to claims can be filed and considered by the court after the plan's confirmation, and since the plan can be amended during the four-year term of the plan, it is not a final order adjudicating all matters or issues that may arise between the parties during the term of the plan, so the bankruptcy court erred by

disregarding the language, intentions and purposes of the plan itself, which clearly do not satisfy the three conditions for *res judicata* as cited above.

No reasonable person would sign a Chapter 13 plan if a creditor is allowed to defraud everybody by filing a false claim against the debtor and that's automatically and always going to be considered *judicial estoppel* and *res judicata* upon a debtor who acted in good faith and that is automatically and always going to deprive the debtor of the right to actually litigate and seek remedies against the creditor upon discovery of the fraud or misrepresentation after the plan's confirmation. Such a proposition is preposterous and unconstitutional and is therefore not true.

It is important for Your Honor to consider that the bankruptcy court is a trial court, and that the bankruptcy court renders judgments like these on a case-by-case basis. The distinguishing facts of *In Re Nix* are as follows. Household Finance Corporation ("HFC") was the lender identified on the note and mortgage Ms. Nix signed on May 6, 2005, HFC was apparently the actual secured creditor on or before the date Ms. Nix filed for bankruptcy, and Ms. Nix had agreed to repay the arrearage HFC claimed she owed as part of her Chapter 13 plan.

In Plaintiff's case, Nationstar was not the original lender identified on the note and mortgage, Nationstar was not the secured creditor and was not in possession of the note on the date Plaintiff filed her bankruptcy case, and since there was no arrearage, for all intents and practical purposes, Nationstar is considered exempt from Plaintiff's Chapter 13 plan that is being administered by the trustee for the benefit of her unsecured creditors.

Likewise, the fact pattern *In Re Full*, 09-05650-jw, Doc. 65, P. 16 (Bankr. D.S.C. 2012) is very similar to the fact pattern *In Re Nix* in that Wells Fargo was apparently the original lender identified on the note and mortgage the Full's signed on June 14, 2005, Wells Fargo apparently was the actual secured creditor at the time the Full's filed their Chapter 13 petition on July 31,

2009, and the Full's had agreed to repay an arrearage ^{during mjm} in their Chapter 13 plan. In 2012, the Full's had applied for loan modifications through Wells Fargo, and subsequent to their receiving letters informing them their applications had been denied, Wells Fargo purportedly sold the loan to Freddie Mac on July 15, 2012.

Unfortunately, the Full's were unable to continue making their mortgage payments and could not afford to repay the arrearage, and although Judge Waites granted Wells Fargo relief from the automatic stay so it could foreclose on their home, the Court cautioned Wells Fargo as follows: *"However, in order to provide maximum protection to the Debtors, if the Court subsequently determines that Wells Fargo is not the proper recipient of the payments made by the Debtors, the Court hereby retains jurisdiction and authority to require Wells Fargo to disgorge the amounts received and return such funds to the proper party, and order sanctions or other remedies against Wells Fargo and its counsel as appropriate or necessary."*

The foregoing warning demonstrates that *judicial estoppel* and *res judicata*, which normally go hand in hand, do not automatically and always apply to all claims and causes of action of the debtor against a creditor, and the bankruptcy court does look at the facts and evidence of each matter to determine whether those doctrines may or may not be justly applied.

Unfortunately, Your Honor failed to consider that Plaintiff's fact pattern is quite different from the other bankruptcy cases upon which opposing counsel has relied and based her conclusions of law and to see that the doctrine of *res judicata* does not apply and is not a bar to any of Plaintiff's causes of action in this state court action.

Plaintiff's Allegations of Fraud Do Not Constitute a Separate "Fraud Claim" Per Se

Plaintiff is *pro se* and does not have much personal experience writing pleadings or litigating cases herself, rather, her several years of paralegal work experience is primarily in the

areas of legal research, claims investigation, analysis and writing legal memoranda for attorneys for their use in house. Since Plaintiff is pro se and inexperienced in writing pleadings herself, the Court is required under common law to grant Plaintiff some leeway in the interpretation and applications of the allegations and causes of action stated in Plaintiff's pleadings so that justice may be done. Therefore, Plaintiff requests that Your Honor reconsider.

Plaintiff did not include a separate fraud claim for the purpose of seeking an award of monetary damages in her prayer for relief. Plaintiff's intentions for writing her three causes of action was to summarize for the Court her primary causes of action, i.e. her primary reasons, for filing the declaratory judgment complaint and for seeking the relief prayed for therein.

Pursuant to Title 15, Chapter 53, of the S.C. Code, Plaintiff is entitled as a matter of law to petition and receive a declaratory judgment from this Court without having to prove that she has been injured and without having to prove that further relief is or could be claimed.

S.C. Code Ann. § 15-53-20 states, "Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree."

S.C. Code Ann. § 15-53-30 states, "Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder."

S.C. Code Ann. § 15-53-120 states, "Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted forthwith."

S.C. Code Ann. § 15-53-130 states, "This chapter is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. *It is to be liberally construed and administered.*" [Emphasis added.]

Nationstar's allegation in its motion that Plaintiff has not been injured is false and not supported by the record. Theft of money or property based upon false pretenses is damages. Plaintiff has been injured, and in her complaint she explained those injuries, which include but are not limited to servicer frauds and abuses and a clouded property title, and she explained she is concerned about sustaining greater injuries in the future up to and including an unlawful foreclosure, loss of her home, and loss of her over \$30,000 investment based upon false claims and invalid documents brought by a predatory servicer who has no interest in equity in her home.

Bifurcation of Issues

To the extent Your Honor still believes, notwithstanding the foregoing, that any particular part of Plaintiff's causes of action or any particular part of her prayer for relief is barred from this Court's consideration, Plaintiff respectfully requests a bifurcation of that part or parts so that the remainder may survive and her declaratory judgment action may proceed and be adjudicated based upon the merits of the remainder.

Plaintiff reserves the right to amend or supplement this motion prior to hearing.

WHEREFORE, Plaintiff respectfully requests Your Honor to reconsider and grant Plaintiff's Motion to Dismiss Nationstar Mortgage, LLC solely from this action with prejudice and to deny Defendant Nationstar Mortgage, LLC's Motion for Judgment on the Pleadings, or in the Alternative, Motion for Summary Judgment as moot.

Respectfully submitted,



Melissa Jean Marks
Plaintiff pro se
209 Presidential Court
Round O, SC 29474
(843) 599-3156
mjmarks68@hotmail.com

Round O, South Carolina
October 18, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

MELISSA JEAN MARKS, *Pro Se*,)

Plaintiff,)

vs.)

OLD SOUTH MORTGAGE)
CORPORATION; and)
NATIONSTAR MORTGAGE, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-15-00262

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of Plaintiff's Motion and Order Information Form and Coversheet, Plaintiff's Notice of Motion and Motion for Reconsideration of the Orders Entered on October 9, 2013, by mailing it to him/her, at his/her last known address, by depositing them in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

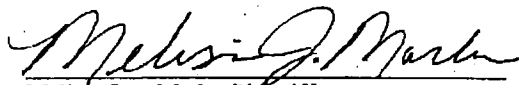
The Honorable Maité Murphy
P.O. Box 802
5200 E. Jim Bilton Blvd.
St. George, SC 29477

Attorney for the Defendant Old South Mortgage Corporation at:

John F. Knobeloch, Esq.
King & Knobeloch, P.C.
808 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

Attorney for Defendant Nationstar Mortgage, LLC at:

Harriet Pollitt Wallace, Esq.
Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210



Melissa Jean Marks, Plaintiff pro se
209 Presidential Court
Round O, SC 29474
(843) 599-3156
mjmarks68@hotmail.com

Round O, South Carolina
October 18, 2013

PATRICIA P. GRANT
COLLETON COUNTY
COMMON PLEAS
2013 OCT 18 AM 9:28

EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL
) CIRCUIT

Melissa Jean Marks,

Plaintiff,

vs.

Old South Mortgage Corporation,
John Does 1-100, Nationstar
Mortgage, LLC

Defendant.

CIVIL CASE NO.: 2012-CP-15-262

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

2013 OCT -9 PM 1:19

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

This matter came before the Court on Defendant Nationstar Mortgage, LLC's ("Nationstar") Motion for Summary Judgment in favor of Nationstar as to all claims raised by Plaintiff Melissa Jean Marks ("Plaintiff") in her "Declaratory Judgment Complaint and Petition for Injunction," pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Having reviewed the memoranda and pleadings submitted by the parties and having heard oral arguments, taking the evidence in the light most favorable to the non-moving party, the Court finds that no genuine issues of material fact exist, and this Court hereby GRANTS Nationstar's Motion for Summary Judgment for the reasons set forth below.

FACTUAL BACKGROUND

On October 5, 2007, Plaintiff executed and delivered to Old South Mortgage Corp. a promissory note in the amount of \$ 76,000.00 dollars (the "Note") and a mortgage on property known generally as 209 Presidential Ct., Round O, South Carolina 29474-4374 (the "Mortgage") to secure the re-payment of the Note. (Compl., Apr. 6, 2012, ¶16). Plaintiff was represented by counsel at the closing, which occurred on October 5, 2007. (Compl., ¶8; Ex. 4, Compl.,

Engagement Letter). Flagstar wired the loan proceeds to Plaintiff's counsel, which was used to purchase the property. (Compl., ¶84; Ex. 4, Compl., Wire Transfer). At the closing, Plaintiff signed several documents disclosing Old South's right and intention to transfer the loan and servicing rights. (Ex. 4, Compl. Mortgage, ¶20; Note, ¶11 (the Note was endorsed in to Flagstar at the closing). The documents signed at closing were provided to Plaintiff by her closing attorney on or about October 8, 2007. (Ex. 4, Compl., Ltr to Marks from Tuttn, Oct. 7, 2013). Subsequently, Flagstar transferred the servicing rights to Nationstar. (Compl. ¶28; Ex. 12, Compl.) On or about April 20, 2011, Plaintiff filed a Chapter 13 bankruptcy petition. Plaintiff named Nationstar as the secured creditor of the loan in her Chapter 13 bankruptcy petition and schedules. (*In re Marks*, 11-02619-jw, Bankruptcy Petition, Co. 1, pp. 16-30, attached to Nationstar's Motion for Summary Judgment.) The confirmed Chapter 13 Plan orders Plaintiff will continue to make mortgage payments to Nationstar. (Chapter 13 Plan, Doc. 9, p. 3, attached to Nationstar's Motion for Summary Judgment). Nationstar is the current loan servicer and Fannie Mae is the investor of the loan. Nationstar has not filed a foreclosure action against Plaintiff. Plaintiff is current on her post-petition payments to Nationstar.

PROCEDURAL BACKGROUND

On or about April 6, 2012, Plaintiff filed this state court action naming only Old South Mortgage Corporation and John Does 1-100 and Fictitious Corporations 1-100. Nationstar was not named as a party. After learning about the state court action, on or about May 9, 2012, Nationstar filed a motion to modify the bankruptcy stay in order to intervene in the state court action. On or about May 14, 2012, after notice that Nationstar was seeking to intervene, but prior to the hearing in the bankruptcy court on Nationstar's motion to modify the bankruptcy stay and intervene, Plaintiff filed a Motion for Summary Judgment in the state court action.

The Bankruptcy Court issued an Order Modifying Stay, which stated:

It is not disputed by either the Debtor [Plaintiff] or the Movant [Nationstar] that Debtor is current on her post-petition payments to movant, and in fact, Debtor was current on the loan payments when the bankruptcy was filed. However, Movant would be prejudiced if Debtor were granted the relief she is seeking in the State Court Action unless Movant is allowed to intervene and assert its rights to the mortgage and underlying obligation in such action.

Order Modifying Stay at 2, In Re Marks, No. 11-02619-jw (Bankr. D.S.C. May 25, 2012), Doc. No. 24.

Following the Order issued by the Bankruptcy Court, Nationstar sought to intervene in the state court action. After a hearing, Nationstar's Motion to Intervene was granted. The Order granting Nationstar's Motion to Intervene found as follows:

I find that Nationstar may intervene as a matter of right because both prongs of Rule 24(a) are satisfied. Section 15-53-80 grants Nationstar an unconditional right to intervene because Plaintiff seeks declaratory judgment that could affect Nationstar's claim under the Note and Mortgage, which satisfies Rule 23(a)(1). Nationstar claims an interest in the action that is not being protected by any other named party as contemplated in Rule 23(a)(2), because Old South is a dissolved corporation and is not claiming any interest in the Note and Mortgage, and none of the other defendants have been served.

Despite Plaintiff's argument that allowing Nationstar to intervene would cause delay and expense as Old South consents to the relief Nationstar is seeking, and because John Does 1-100 and Fictitious Corporations 1-100 were not served with process, I find that no named party will be prejudiced by Nationstar's intervention in this case.

(Order Granting Nationstar Mortgage, LLC's Mot. To Intervene, Den. Mot. To Substitute Parties, & Granting Pl.'s Mot. To Continue Hr'g on Mot. for Summ. J. 2-3, Aug. 2, 2012).

Thereafter, Plaintiff filed a Motion to Compel Discovery and then filed a motion to Amend Complaint to add Fannie Mae as a defendant. Plaintiff's Motion to Amend was denied, after a hearing, because the court determined it would be futile to add Fannie Mae as a party for the following reasons: (1) Plaintiff lacked standing as a result of her Chapter 13 Bankruptcy filing; and (2) Nationstar is the proper party to enforce the note and mortgage, because it is the

holder of the original note, endorsed in blank. (Order Den. Pl.'s Mot. for Leave to Amend Compl. & Granting Pl.'s Mot. to Withdraw Mot. for Summ. J. 3-5, Feb. 27, 2013).

Based on the Order Denying Plaintiff's Motion to Amend, the Court also denied the Motion to Compel on the grounds it was moot. Plaintiff subsequently filed a Motion to Reconsider these two orders, which was denied. (Order Den. Pl.'s Mot. for Recons. of Leave to Amend Compl. and of Order Den. Pl.'s Mot. to Compel Answers to Interrogs. & Reqs. for Produc., Apr. 12, 2013). Other motions filed by Plaintiff include a Motion to Defer ADR, which was denied, and a Motion to Stay the Action in order to seek guidance from the Bankruptcy Court, which was denied.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRPC; Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). When determining whether any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Id. "The trial court should grant summary judgment against a party who fails to make a showing sufficient to establish the existence of an essential element of the party's case." Fender & Latham, 316 S.C. 48, 50, 446 S.E.2d 448. (Ct. App. 1995). A party opposing a motion for summary judgment may not rest on the mere allegations of his pleadings, but must set forth or point to specific facts showing that there is a genuine issue of material fact. Rule 56(c), SCRPC; accord Strickland v. Madden, 323 S.C. 63, 448 S.E.2d 581 (Ct. App. 1994). The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

DISCUSSION

I. PLAINTIFF'S CLAIMS ARE BARRED BY *RES JUDICATA*

Nationstar is entitled to summary judgment because Plaintiff's claims are barred by the doctrine of *res judicata*. In Re Nix, CA 10-01103-HB, 2012 WL 27667 (Bankr. D.S.C. Jan. 5, 2012) (holding that debtor's claims based on pre-confirmation activity were barred by the doctrine of *res judicata* based on confirmed Chapter 13 plan). The petitions filed in Plaintiff's Chapter 13 bankruptcy and the confirmed plan state that Nationstar is the secured creditor entitled to receive payment on the mortgage note. The confirmation of Plaintiff's bankruptcy plan serves as *res judicata* to the claims brought in this lawsuit.

"The *res judicata* effect of a confirmed Chapter 13 plan on the debtor and creditors is set forth in 11 U.S.C. § 1327." Id. at 20. The "rights of creditors and responsibilities of the debtor are defined" in the confirmed plan. Id. Therefore, parties are precluded from raising issues which could have been raised prior to the plan confirmation. Id., see also Abraham v. Bank of America, N.A. (In Re Abraham), Adversary No. 10-80118-jw, 2010 WL 5437253 (Bankr. D.S.C. Sept. 20, 2010) (holding that debtor was judicially estopped from asserting contrary position in state court litigation based on his failure to list any causes of actions against defendant in bankruptcy schedules).

Plaintiff proclaims that she was unaware of her claims until after plan confirmation, and subsequently amended her schedules to disclose the existence of the state court action. This argument is of no consequence. "Judicial estoppel will be imposed when the debtor has knowledge of enough facts to know that a potential cause of actions exists during the pendency of the bankruptcy, but fails to amend his schedules or disclosure statements to identify the cause of action as a contingent asset. In re Family Dollar FLSA Litigation, 2011 U.S. Dist. 119281 at

17 (W.D. N.C. 2011). In In re Family, the debtor's failure to disclose a state court action to the bankruptcy court was deemed intentional because the debtor had reason to know of the existence of the claims when she filed bankruptcy, and had motive for concealment of the claim from the bankruptcy because disclosure would have resulted in a less favorable payment plan). It does not matter whether or not the debtor is aware that she has a duty to disclose her claims. Id. at 19.

Here, the petitions filed in Plaintiff's Chapter 13 bankruptcy and the confirmed plan state that Nationstar is the secured creditor entitled to receive payment on the mortgage note. Therefore, the confirmation of Plaintiff's bankruptcy plan serves as *res judicata* to the claims brought in this lawsuit.

II. UNCONSCIONABILITY BARRED BY *RES JUDICATA*

Plaintiff's Complaint alleges a cause of action for unconscionability. This cause of action is barred by the doctrine of *res judicata*. In Re Nix, CA 10-01103-HB, 2012 WL 27667 (Bankr. D.S.C. Jan. 5, 2012) (holding debtor's unconscionability cause of action was barred by doctrine of *res judicata* since it existed prior to the confirmation of the bankruptcy plan).

III. FRAUD CLAIMS BARRED FOR FAILURE TO ESTABLISH DAMAGES

Nationstar is entitled to summary judgment on Plaintiff's fraud cause of action because Plaintiff has not alleged sufficient facts to show she was injured. At the closing on October 5, 2007, Plaintiff signed several documents disclosing Old South's right and intention to transfer the loan and servicing rights. (Ex. 4, Compl. Mortgage, ¶20; Note, ¶1 (the Note was endorsed in to Flagstar at the closing). Plaintiff admits she was represented by counsel at the closing who was aware that Flagstar disbursed the loan proceeds enabling Plaintiff to purchase the Property. See Compl. ¶ 8. The documents signed at closing were provided to Plaintiff by her closing attorney on or about October 8, 2007. (Ex. 4, Compl., Ltr to Marks from Tuten, Oct. 7, 2013).

Plaintiff received the loan to purchase the Property, and has not alleged facts sufficient to show injury. First, Plaintiff cannot show an injury with regard to her claim that Old South did not actually fund the loan, since her loan was funded enabling her to purchase the Property. Second, Plaintiff received the benefit of the loan. Plaintiff was represented by counsel at the closing and her attorney was aware at the closing that the loan was being funded by Flagstar and not Old South. Finally, Plaintiff is current in her payments and assured the Bankruptcy Court that she would continue to remain current. Pl.'s Motion for Temp. Stay of Proceeding, Ex. A, page 8, lines 4 – 9.

IV. NOTE AND MORTGAGE ARE ENFORCEABLE AS A MATTER OF LAW

It is well-established that the mortgage follows the note and that assignment of the mortgage is not required. Union Nat'l Bank v. Cook, 110 S.C. 99, 96 S.E. 484 (1918); Midfirst Bank, SSB v. C. W. Haynes, 893 F. Supp. 1304 (D.S.C. 1994). In July 2012, the South Carolina Supreme Court again held that an "assignment of a mortgage does not need to be recorded, and failure to do so has no effect on the rights of the assignee." BAC Home Loan Servicing, L.P. v. Kinder, 398 S.C. 619, 623, 731 S.E.2d 547, 549 (2012).

South Carolina's version of Article 3 of the Uniform Commercial Code governs the enforceability of negotiable instruments including promissory notes secured by mortgages on real estate. Swindler v. Swindler, 335 S.C. 245, 584 S.E.2d 438 (Ct. App. 2007). S.C. Code Ann. Section 36-3-301 provides there are three categories of persons entitled to enforce a negotiable instrument: (1) the holder of the instrument; (2) a nonholder in possession of the instrument who has rights of the holder; and (3) a party who once had possession of a now lost instrument. S.C. Code Ann. § 36-3-301. Most importantly, a party may be entitled to enforce an instrument even though it "is not the owner of the instrument." Id.

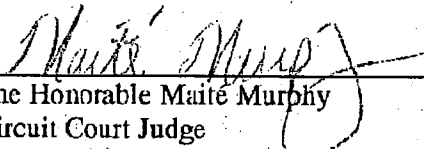
Here, by virtue of its possession of the original note, if the loan were in default, Nationstar would be the proper party to enforce the note.

ORDER

Accordingly, and based upon the discussion above, there are no issues of material fact that have been brought to the attention of this Court, and

THIS COURT NOW GRANTS NATIONSTAR'S MOTION FOR SUMMARY JUDGMENT on all of Plaintiff's causes of action.

AND IT IS SO ORDERED.


The Honorable Maite Murphy
Circuit Court Judge

September 12, 2013

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL
) CIRCUIT

Melissa Jean Marks,

Plaintiff,

vs.

Old South Mortgage Corporation,
John Does 1-100, Nationstar
Mortgage, LLC

Defendant.

CIVIL CASE NO.: 2012-CP-15-262

**ORDER DENYING PLAINTIFF'S
MOTION TO DISMISS DEFENDANT
AS INTERVENING PARTY**

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2013 OCT -9 PM 1:19

This matter came before the Court on Plaintiff Melissa Jean Marks' ("Plaintiff") Motion to Dismiss Defendant Nationstar Mortgage, LLC ("Nationstar") with prejudice, for misjoinder pursuant to Rule 21 of the South Carolina Rules of Procedure. The Court finds the relief sought by Plaintiff is barred because it has already been raised and ruled on in this action, and therefore the Plaintiff's Motion to Dismiss is respectfully DENIED.

FACTUAL AND PROCEDURAL BACKGROUND

On or about April 6, 2012, Plaintiff filed this state court action naming only Old South Mortgage Corporation and John Does 1-100 and Fictitious Corporations 1-100. Nationstar was not named as a party. After learning about the state court action, on or about May 9, 2012, Nationstar filed a motion to modify the bankruptcy stay in order to intervene in the state court action. On or about May 14, 2012, after notice that Nationstar was seeking to intervene, but prior to the hearing in the bankruptcy court on Nationstar's motion to modify the bankruptcy stay and intervene, Plaintiff filed a Motion for Summary Judgment in the state court action.

The Bankruptcy Court issued an Order Modifying Stay, which stated:

It is not disputed by either the Debtor [Plaintiff] or the Movant [Nationstar] that Debtor is current on her post-petition payments to movant, and in fact, Debtor was current on the loan payments when the bankruptcy was filed. However, Movant would be prejudiced if Debtor were granted the relief she is seeking in the State Court Action unless Movant is allowed to intervene and assert its rights to the mortgage and underlying obligation in such action.

Order Modifying Stay at 2, In Re Marks, No. 11-02619-jw (Bankr. D.S.C. May 25, 2012), Doc. No. 24.

Following the Order issued by the Bankruptcy Court, Nationstar sought to intervene in the state court action. After a hearing, Nationstar's Motion to Intervene was granted. The Order granting Nationstar's Motion to Intervene found as follows:

I find that Nationstar may intervene as a matter of right because both prongs of Rule 24(a) are satisfied. Section 15-53-80 grants Nationstar an unconditional right to intervene because Plaintiff seeks declaratory judgment that could affect Nationstar's claim under the Note and Mortgage, which satisfies Rule 23(a)(1). Nationstar claims an interest in the action that is not being protected by any other named party as contemplated in Rule 23(a)(2), because Old South is a dissolved corporation and is not claiming any interest in the Note and Mortgage, and none of the other defendants have been served.

Despite Plaintiff's argument that allowing Nationstar to intervene would cause delay and expense as Old South consents to the relief Nationstar is seeking, and because John Does 1-100 and Fictitious Corporations 1-100 were not served with process, I find that no named party will be prejudiced by Nationstar's intervention in this case.

(Order Granting Nationstar Mortgage, LLC's Mot. To Intervene, Den. Mot. To Substitute Parties, & Granting Pl.'s Mot. To Continue Hr'g on Mot. for Summ. J. 2-3, Aug. 2, 2012).

Thereafter, Plaintiff filed a Motion to Compel Discovery and then filed a motion to Amend Complaint to add Fannie Mae as a defendant. Plaintiff's Motion to Amend was denied, after a hearing, because the court determined it would be futile to add Fannie Mae as a party for the following reasons: (1) Plaintiff lacked standing as a result of her Chapter 13 Bankruptcy filing; and (2) Nationstar is the proper party to enforce the note and mortgage, because it is the holder of the original note, endorsed in blank. (Order Den. Pl.'s Mot. for Leave to Amend

Compl. & Granting Pl.'s Mot. to Withdraw Mot. for Summ. J. 3-5, Feb. 27, 2013). Plaintiff then filed a Motion to Reconsider, which was denied. (Order Den. Pl.'s Mot. for Recons. of Leave to Amend Compl. and of Order Den. Pl.'s Mot. to Compel Answers to Interrogs. & Reqs. for Produc., Apr. 12, 2013).

DISCUSSION

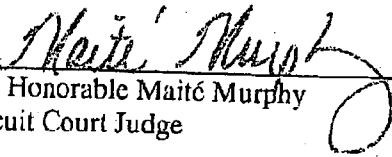
After hearing arguments of both parties and a careful review of the record, the Court finds that Plaintiff's Motion to Dismiss Nationstar should be denied because Nationstar properly intervened in this action and is a necessary party pursuant to Rules 19(1) and 20(a) of the South Carolina Rules of Civil Procedure. The orders of this Court and the Bankruptcy Court finding that Plaintiff has standing to defend this action represent the law of the case and should not be disturbed. Because Nationstar is the holder of the note and entitled to enforce the obligations thereunder, Nationstar has both standing to defend this action and has a right to remain in this action and defend its positions as it is "so situated that the disposition of the subject of the action in [its] absence may . . . as a practical matter impede [its] ability to protect that interest." Rule 19(a), SCRPC. Misjoinder is an appropriate remedy based upon the law of this case; Nationstar is a proper party to this action and should not be dismissed.

ORDER

Accordingly, and based upon the foregoing, it is

ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Dismiss Defendant in the
above-captioned case is denied.

AND IT IS SO ORDERED.


The Honorable Maité Murphy
Circuit Court Judge

September 18, 2013

EXHIBIT 2

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Melissa Jean Marks,	)	CASE NO. 2012-CP-10-00262
	)	
PLAINTIFF,	)	
	)	
VS.	)	TRANSCRIPT OF RECORD
	)	
Old South Mortgage	)	
Corporation, et al.,	)	
	)	
DEFENDANT.	)	

September 4, 2013

Charleston, South Carolina

B E F O R E:

The Honorable Maite Murphy

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

Melissa Jean Marks, Pro Se
the Plaintiff

Harriet Politt Wallace, Esquire
for the Defendant

Phyllis Norton, CVR, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74
(843) 958-5083 PNorton@sccourts.org

I N D E X

MOTIONS

-- 3

EXHIBITS - None Proffered

CERTIFICATION OF TRANSCRIPT

-- 26

Look for an original signature in blue ink on the certification sheet to verify that the court reporter has certified the transcript you are viewing.

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 THE COURT: It looks like the next case is 2012-0262,
2 Melissa Jean Marks versus Old South Mortgage Corporation.

3 (Documents presented to the court by defense counsel.)

4 THE COURT: And are you Ms. Marks?

5 MS. MARKS: Yes, ma'am.

6 THE COURT: All right. And you are appearing pro se?

7 MS. MARKS: Yes, ma'am.

8 THE COURT: All right.

9 MS. WALLACE: I am Harriet Wallace on behalf of
10 Nationstar.

11 THE COURT: Okay. And whose motion is this; it is Ms.
12 Marks' motion?

13 MS. MARKS: Yes, ma'am.

14 THE COURT: All right. Are you ready to proceed?

15 MS. MARKS: Yes, ma'am.

16 THE COURT: All right. I am happy to hear from you,
17 Ms. Marks.

18 MS. MARKS: Your Honor, unfortunately I have a nervous
19 disorder which is why I am a paralegal and not an attorney.
20 And I could not afford an attorney so I am here doing the
21 best that I can. I will be reading from notes so that I
22 stay on track, just to let you know why I am doing that.

23 THE COURT: Yes, ma'am.

24 MS. MARKS: And first I will briefly explain the
25 background so the court can put my motion to dismiss

1 Nationstar in context. And then I will briefly explain why
2 Nationstar should be dismissed with prejudice.

3 Substantial details and supporting exhibits and
4 citations of law are there in my pleading, Your Honor. But
5 I will provide just the highlights here with respect to
6 those waiting to be heard today.

7 I filed my declaratory judgment complaint on April 6,
8 2012, against the originator of the subject mortgage and
9 note, Old South Mortgage Corp., who is the only lien holder
10 of record recognized by the register of deeds because in
11 late 2011, early 2012, I discovered the following:

12 The mortgage was not obtained and recorded lawfully.
13 Old South had lied and falsely claimed to be the lender in
14 the mortgage and note. But it was not. And it has admitted
15 it was not, here. There are no recorded assignments at the
16 register of deeds.

17 Although Old South has been dissolved since December
18 2008 and cannot maintain assets in its name, as a matter of
19 law I found no evidence of any lawful transfers of the
20 mortgage and I had not received actual notice of who owns it
21 since the origination. Nationstar does not own the mortgage
22 but had fraudulently claimed ownership of it and has been
23 collecting my payments under false pretenses since 2009.

24 I have a clouded title because -- I found that multiple
25 companies could claim ownership of the mortgage and attempt

1 to foreclose based on false claims and invalid documents.
2 So the mortgage cannot be satisfied by anybody, even if I
3 paid in full. So this requires a court order to fix this
4 situation.

5 Therefore, to defend and protect my interests I filed
6 this action seeking a declaration that the mortgage and note
7 are invalid and order to the Registrar of Deeds to remove
8 the invalid lien and permanent injunctions to prevent
9 subsequent recordings and unlawful foreclosure.

10 Now moving on to how Nationstar had entered the fray:
11 In April 2011 I filed a Chapter 13 bankruptcy to resolve my
12 unsecured debts within my ability to repay. And since there
13 was no arrearage on the mortgage for all intensive purposes
14 the mortgage and my home are considered exempt from the plan
15 being administered by the trustee.

16 Nationstar receives nothing from the trustee. I pay
17 Nationstar directly. And Nationstar is only subject to the
18 stay.

19 Nationstar stopped sending me monthly billing
20 statements and payment receipts and terminated my online
21 account access. And when I called complaining about that
22 and had my bankruptcy lawyer send them a letter about that
23 they still refused to reinstate them.

24 I complained to the state's Department of Consumer
25 Affairs and the state's inquiries on my behalf to

1 Nationstar. And in reply to the state Nationstar explained
2 that they don't provide contractual statements to those
3 involved in bankruptcy unless the debt is reaffirmed and
4 that I had not reaffirmed the debt in the bankruptcy court.

5 Since Nationstar wanted me to reaffirm the debt in the
6 bankruptcy court I saw this as a red flag, Your Honor, that
7 something was wrong which prompted me to investigate and
8 discover my injuries that I complained of here in this
9 action.

10 Nationstar's response revealed to me it does not
11 believe there is any binding contract between us, so I
12 realized it probably doesn't own the mortgage. And I was
13 proven right about that here by their own admissions.

14 I discovered that Nationstar had filed a fraudulent
15 proof of claim in the bankruptcy court. It falsely
16 identified itself as the creditor, which everyone interprets
17 as the owner of the mortgage, and had also attached an
18 invalid or forged copy of the note that does not match the
19 alleged original note as explained and shown in my
20 pleadings, Your Honor.

21 Nationstar admitted in discovery that the copy of the
22 note attached to its proof of claim came from its own
23 imaging systems and that Nationstar did have the original
24 note in its position to copy and attach to the proof of
25 claim at the time. So that could not have been an honest

1 mistake.

2 Nationstar's frauds upon me and the court prevented the
3 court and all interested parties from discovering that
4 Fannie Mae has claimed to own the mortgage since its
5 origination.

6 I had no idea at the time that Fannie Mae had ever been
7 involved in the mortgage. No one disclosed that to me at
8 the closing. And no one had sent me a letter about it
9 afterwards.

10 I didn't sue Nationstar because it doesn't own the
11 mortgage. So it doesn't have standing to defend. But
12 Nationstar intervened anyway. And that brings us to how
13 they intervened.

14 Apparently Old South informed Nationstar that I had
15 filed this action. So on May 9th, 2012, Nationstar filed a
16 notice with the state court and a motion for clarification
17 with the bankruptcy court seeking to intervene and falsely
18 claiming to be the current holder of the note, which people
19 interpret as the owner of the note, Your Honor. Nationstar
20 didn't have the note on that date according to their own
21 admissions.

22 The state court informed me they wouldn't let this case
23 proceed until Nationstar had a chance to appear and at least
24 be heard. So I had no practical option, Your Honor, but to
25 consent to the modification of stay at the hearing in the

1 bankruptcy court on May 17th, 2012.

2 Nationstar had falsely claimed to be the holder of the
3 note at that hearing before the bankruptcy court. And it
4 did not have the note on that date either, Your Honor.

5 Nationstar filed more pleadings here falsely claiming
6 it was the legal holder of the note and that I had
7 incorrectly referred to them as the servicer of the
8 obligation. And the court scheduled a hearing on
9 Nationstar's motion to intervene on July 18th, 2012.

10 Prior to the July hearing Nationstar claims it sent an
11 e-mail to Fannie Mae's bankruptcy department on May 29,
12 2012, informing them of this action. Then Nationstar
13 requested and received the alleged original note from Fannie
14 Mae custodian, Bank of New York Mellon, on May 31, 2012, and
15 forwarded the note to its counsel.

16 Therefore Nationstar knew it did not own the mortgage
17 and was not the legal holder of the note prior to the
18 hearing in July.

19 I don't know what Nationstar allegedly told Fannie Mae
20 because they would not produce the e-mail to me in
21 discovery.

22 In June 2012 I filed and served in opposition and
23 included a copy of the MERS database printout showing that
24 Fannie Mac claims to own this mortgage and a copy of my
25 Equifax credit report showing Flagstar Bank had reported to

1 the credit bureau that Fannie Mae owned the mortgage since
2 origination in October 2007.

3 The mortgage industry created MERS, Your Honor, to
4 track these mortgage in a database for them. So they know
5 to check the MERS database. And they would assume it is
6 correct since they hired MERS to do this for them.

7 Nevertheless, Ms. Wallace, Nationstar's attorney, came
8 here to court in July and ignored what I said and I show her
9 in my pleadings, and proceeded to lie to the judge at the
10 hearing on Nationstar's motion to intervene.

11 Ms. Wallace indicated at the hearing that Nationstar
12 was not merely servicing, that she had personally verified
13 Nationstar purchased the note from Flagstar Bank, that the
14 endorsement in blank was to Nationstar. And she did not
15 mention Fannie Mae in a chain of title whatsoever, Your
16 Honor.

17 THE COURT: Well, Ms. Marks, let me interrupt you for
18 just one second and let's just get to the issues that are
19 before the court today. I can look at the court record and
20 look at the history and look at the previous orders. So in
21 the interest of time just tell me your motion and the basis
22 for relief on your motion.

23 MS. MARKS: The basis -- explaining to Your Honor the
24 reason is because they came to court and they lied falsely
25 claiming they are the owner. The order said that that was

1 the basis of them being allowed to intervene was their claim
2 of ownership. And now they are here trying to change their
3 position to something else. But they did not supply the
4 court or me with any proof whatsoever that they have any
5 rights whatsoever to this mortgage.

6 THE COURT: So are you living in the home?

7 MS. MARKS: Yes, I am.

8 THE COURT: Okay. Are you still making payments on the
9 home?

10 MS. MARKS: Yes, ma'am. I've never defaulted. Of
11 course you can't just quit paying the mortgage, Your
12 Honor, ---

13 THE COURT: Right.

14 MS. MARKS: --- because they will try to foreclose.

15 THE COURT: Well, that's -- hold on a second. Let's
16 kind of walk through the steps here. Are you still going
17 through bankruptcy or has that been -- is that process over?

18 MS. MARKS: The bankruptcy plan has been confirmed.
19 And I am paying on it. And like I explained, Nationstar is
20 not really subject to except for the stay because I pay them
21 directly.

22 THE COURT: Right. And so your motion at this point
23 basically your motion for judgment on your original
24 pleadings; is that correct?

25 MS. MARKS: No, ma'am. I am filing a motion to dismiss

1 Nationstar with prejudice because they were misjoined as a
2 party because they came here and lied to the courts that
3 they owned the mortgage. Now they have admitted that Fannie
4 Mae owns the mortgage. But they are not the proper party to
5 enforce because there has been no default.

6 Normally what happens when a -- when there is a default
7 Fannie Mae would transfer interest to the servicer at that
8 time to foreclose. Well, in this instance there has been no
9 default. This -- I am the plaintiff. This is not a
10 foreclosure proceeding. Therefore, the rights would not
11 have been transferred.

12 Fannie Mae they claimed in October Fannie Mae finally
13 admitted that they own it. There has been no transfer of
14 this interest from Fannie Mae to Nationstar. And you can't
15 according to the UCC, Chapter 3, you cannot have -- split
16 the note. Basically one party would be able to make the
17 claim and you can't have multiple parties claiming on the
18 same note.

19 And also, if there is any fraud or illegality affecting
20 the note, like in this case like I explained to the court,
21 they have been falsely claiming ownership of this mortgage
22 before the court.

23 The UCC, Chapter 3, is clear that the party cannot
24 assume the rights of the owner, the holder of due course
25 under Chapter 3, when there has been fraud and illegality

1 affecting the note.

2 And I explained all of that in my pleadings. And I
3 also explained to the court that under the Doctrine of Ultra
4 Vires that basically Fannie Mae can't originate loans. And
5 that's what they did in this case. It was a violation of
6 their charter.

7 And so basically that is another fraud and illegality
8 affecting the note was that they -- they cannot by law
9 ignore and set aside existing laws and they can't ignore
10 their charter and they can't hire pretender lenders to
11 create false paperwork to lend to borrowers directly in the
12 primary market. And I have all of those exhibits showing
13 you, you know, and the citations to law.

14 So I was -- you know, I explained to the court that
15 they cannot have the right to the holder in due course
16 because of their fraud, any illegality affecting the note,
17 and because you can't split the cause of action.

18 Fannie Mae owns it, so Fannie Mae would have the right;
19 not Nationstar who does not own the mortgage and the
20 mortgage has not been transferred to them.

21 THE COURT: All right. Thank you, Ms. Marks.

22 MS. MARKS: Thank you, Your Honor.

23 THE COURT: Counsel.

24 MS. WALLACE: May it please the court order, Your
25 Honor. I am not going to address every single point that

1 Ms. Marks made. But the motion was brought under Rule 21
2 which is a motion to dismiss -- her motion to dismiss is
3 based on Rule 21 which addresses joinder and nonjoinder of
4 parties.

5 This issue and these set of facts has been raised and
6 presented to the court numerous times before today. They
7 have been ruled on not just in the motion to intervene but
8 subsequently in other motions as well.

9 In fact, in the order denying plaintiff's motion for
10 leave to amend the complaint to add Fannie Mae as a party
11 and granting plaintiff's motion to withdraw motion for
12 summary judgment the court specifically states that
13 Nationstar is proper party to -- you know, has standing to
14 enforce the note and it is the proper party, not just based
15 on whether or not it is the owner of the note.

16 Because, you know, there are many different -- you
17 can enforce a note in many different ways. You can be the
18 owner of the note. You can also be a holder. You can be a
19 non-holder with -- with the rights of a holder.

20 And we were in possession of the original note endorsed
21 in blank at the motion to intervene which made us the holder
22 of the note. And we provided that at the hearing on the
23 motion to intervene. And the motion on her -- at the
24 hearing on her motion to amend to add Fannie Mae the court
25 also held that under UCC 3301 Nationstar was -- had the

1 right to enforce the note even if it wasn't the owner based
2 on being the holder of the instrument, nonholder of
3 possession, etcetera, and denied her motion to allow Fannie
4 Mae to be named as a party.

5 Under Rule 40L a party cannot keep bringing motions and
6 arguing facts which have already been heard and ruled on.
7 In fact, the transcript attached to Mark's memorandum shows
8 where Judge Buckner clearly told Ms. Marks that he wasn't
9 going to hear these issues again.

10 And that's what we have here today, Your Honor. It is
11 a motion to dismiss Nationstar after the bankruptcy court
12 modified the stay in order to have Nationstar appear to
13 enforce its rights and not have the mortgage declared
14 invalid. And then the motion to intervene to allow
15 Nationstar to assert its rights on the mortgage and note was
16 granted. And then her motion to amend to add Fannie Mae as
17 a party also states that Nationstar has the right to enforce
18 the note and mortgage in question.

19 So I think we -- all these facts -- I know you haven't
20 been the judge in all these other hearings, but all the
21 facts have been heard and are in the record. And there are
22 orders supporting those.

23 Your Honor, just to point out, the roster there are two
24 other motions on the roster. And those are my motions.
25 When you were asking her about motion on judgment on the

1 pleadings it sounded like you thought that was her motion.
2 But really I have a motion, for summary judgment and in the
3 alternative motion for an order on the pleadings.

4 THE COURT: Okay.

5 MS. WALLACE: And so I just wanted to make sure that
6 was clear.

7 THE COURT: Right. So it looks like there's actually
8 three motions on the roster. And Ms. Marks, yours was the
9 first motion. And then they have two motions it looks like.

10 MS. WALLACE: And the other two motions are kind of
11 combined into one.

12 THE COURT: Okay.

13 MS. WALLACE: Discovery has been completed. They
14 confer respondent to a good amount of discovery served by
15 Ms. Marks. Also the pleadings have a lot of exhibits
16 attached to them including what appears to be all of the
17 closing documents. A lot of the pleadings have copies of a
18 lot of the bankruptcy transcripts.

19 And as I discussed before, judges who have heard issues
20 in this case before, there are a lot of orders already
21 finding really the main issue in this case. So we are
22 really just here to kind of seek an order for summary
23 judgment kind of dismissing the case in all and being able
24 to dispose of the case.

25 Ms. Marks -- Ms. Marks as she mentioned before, her

1 order is -- or her cause of action is essentially to have
2 the mortgage which secures Nationstar's note declared
3 invalid and satisfied of record.

4 Ms. Marks is current on her monthly principle and
5 interest and escrow payments. And there is no foreclosure
6 action pending.

7 Nationstar is the servicer of this loan. And as Your
8 Honor probably knows, a servicer has the right to enforce a
9 note. And specifically the in re Full case in which Judge
10 Waites -- which Judge Waites issued who is also the judge in
11 Ms. Marks' Chapter 13 case specifically states that a loan
12 servicer is the proper party to enforce the debt of the
13 mortgage.

14 In fact, proof -- proof of claims often are filed by
15 the loan servicer especially when there has been no default.
16 Excuse me (cough).

17 In addition, the order granting -- or I'm sorry, the
18 order denying Ms. Mark's motion to amend to add Fannie Mae
19 specifically states that Ms. Marks doesn't have standing to
20 bring this argument before the court because she is in
21 Chapter 13 bankruptcy so if she were to have a mortgage
22 declared invalid she would have an unsecured or -- I'm
23 sorry, unencumbered asset which would be an asset of the
24 bankruptcy estate.

25 Ms. Marks is going to argue that that doesn't apply to

1 Chapter 13 cases. However, Wright versus Guess which is
2 2010 U.S. Dist. LEXIS 5532 specifically applies that as
3 Chapter 13 bankruptcy and finds that, you know, failure to
4 disclose an asset could have increased -- had they disclosed
5 the asset it would have increased the amount of assets in
6 the bankruptcy estate resulting in a less favorable Chapter
7 13 plan. And that's one reason.

8 Also in bankruptcy court when you file schedules and
9 petitions and you have a confirmed plan all of that
10 constitutes res judicata as to the issue of who the secure
11 creditor is.

12 In this case Ms. Marks filed her schedules with the
13 bankruptcy court, filed her proposed plan which was
14 confirmed by the court. And it named Nationstar as the
15 secured creditor. In South Carolina the mortgage follows
16 the note. And therefore Nationstar can enforce the
17 mortgage.

18 Many of the issues in this case are identical to the in
19 re Full case. And I do have a copy of that if you would
20 like to see it.

21 THE COURT: Sure. Do you have an extra copy for Ms.
22 Marks?

23 MS. WALLACE: Yes, ma'am.

24 THE COURT: Thank you. In re Full was decided by Judge
25 Wait in 2012. And it dealt with debtors in Chapter 13

1 bankruptcy who were current in their mortgage payment at the
2 time that they filed bankruptcy.

3 Later on in the bankruptcy after they filed their
4 schedules naming Wells Fargo as the secure creditor and
5 after filing a plan which was confirmed naming Wells Fargo
6 as a secured creditor the Full's then decided to challenge
7 the standing of Wells Fargo on the basis that it was a
8 Freddie Mac loan, which is similar to this case in which
9 this is a Fannie Mae loan and Nationstar is its loan
10 servicer.

11 Judge Waites specifically stated that the schedules in
12 the confirmed plan and the financial statements barred the
13 debtors from changing their position at that point.

14 He also said that a plan that is confirmed in a
15 bankruptcy also creates a new contract between the creditors
16 and the debtor. So even had there been an issue prior to
17 that, had Wells Fargo not been the proper creditor, it was
18 from the confirmed plan forward.

19 Judge Waites I think said that -- said that -- that is
20 when he says in the end the debtors borrowed a sum of money
21 from a third-party finance collateral and have yet to pay
22 that back in full.

23 The plan debtor's Chapter 13 income statement, debtor's
24 Schedule D, all recognize that obligation and identified in
25 that case Wells Fargo as the proper mortgage creditor.

1 In addition, even if Freddie Mac were the investor
2 Wells Fargo was the servicer and presented the original
3 endorsement at the hearing and therefore Wells Fargo was
4 entitled to enforce the note.

5 That and with the law of the case that has already said
6 that Ms. Marks doesn't have standing and that Nationstar is
7 the proper party to enforce the note we are requesting
8 summary judgment in favor of Nationstar or in the
9 alternative motion for judgment on the pleadings because
10 most of this information can be found in the pleadings.

11 We -- Nationstar has incurred a considerable amount of
12 attorney's fees. However due to the bankruptcy we would
13 like to reserve requesting attorney's fees until we get
14 permission from the bankruptcy court to do that so that we
15 don't violate -- unintentionally violate the automatic stay.
16 Thank you, Your Honor.

17 THE COURT: Thank you. Ms. Marks, anything further in
18 response to her motions?

19 MS. MARKS: Yes, Your Honor. I have read through some
20 of these cases that Ms. Wallace has cited. And basically
21 this case here, the Full case, this has to do with applying
22 for relief of stay so they can come to the state court and
23 said that they can, you know, or have their proceeding.

24 This doesn't mean that they won their case and they can
25 just walk into the state court and say yea we get to

1 foreclose and we get your house. There is still litigation
2 that has to take place.

3 And basically I am not litigating this action in
4 bankruptcy court. And she keeps bringing up bankruptcy
5 court and bankruptcy law. But this is a state court, Your
6 Honor. And state law should be as far as the elements have
7 they satisfied the elements under the state common law of
8 res judicata or estoppel.

9 And I argued in my motions that no, they have not. The
10 parties aren't the same. You know, these issues have not
11 been actually litigated. The only thing we did is we went
12 to a hearing before Judge Waites and we told him what was
13 going on and he said basically I'm happy for you to remove
14 the lien where ever you want, either the state or the
15 bankruptcy court could do it.

16 They all acknowledge -- I mean the trustees counsel was
17 right there. They acknowledged everything. They signed the
18 orders. They agreed to it. They were part of the whole
19 process the whole time.

20 And I showed the law is very clear that a Chapter 13
21 debtor in possession is considered a ^{analogous} novelist to the Chapter
22 11 debtor in possession and that I can come to state court
23 and in my own name prosecute actions on my own behalf as
24 well as on behalf of the state. That is in re Lee. That
25 case is cited in there. And it cites two other circuit

1 opinions. And it also cites to the statute in bankruptcy
2 law that shows that I have standing.

3 Well, none of this was argued before Judge Buckner
4 because unfortunately, Your Honor, Judge Buckner had forgot
5 I think that he had told them they could only enter on a
6 limited basis, that I had disputed the transfer.

7 And he said I don't think just because you, Nationstar,
8 alleged you were there. Because she questions the transfer
9 of this interest. And I think that's a matter that should
10 be subject to an evidentiary hearing and not done in a
11 motion for intervention.

12 So basically he said all right you can come in, you can
13 answer, but you don't have authority to be substituted for
14 any parties, you don't have ---

15 THE COURT: Ms. Marks. Ms. Marks. I just need to hear
16 your argument why her motion for summary judgment should not
17 be granted or motion on the pleadings.

18 MS. MARKS: Well, I didn't know ---

19 THE COURT: I can look at ---

20 MS. MARKS: --- that we were done with my motion to
21 dismiss, Your Honor.

22 THE COURT: We were. We have kind of -- you have
23 argued your portion. She argued her portion. Then we moved
24 on to the second motions based on -- we have got three
25 pending, okay.

1 And part of it is -- I have got the court record. I
2 will have the opportunity to review your motions, to review
3 the prior record. But I can read that. We don't need to go
4 through and tell me what Judge Buckner ordered or didn't
5 order because I can read that.

6 What I need to hear from you is your argument why
7 judgment on the pleadings should not be granted or judgment
8 for summary judgment. And ---

9 MS. MARKS: Because, Your Honor -- I apologize. I
10 didn't understand. I thought we were still on my motion.

11 THE COURT: No, we have moved on. I heard your
12 argument. I heard her argument. And she started with her
13 argument. So now we are on to both of those motions.
14 Because they kind of overlap each other, the summary
15 judgment and the motion on the pleadings. So I just need to
16 hear your argument on that issue.

17 MS. MARKS: They have not done any discovery, Your
18 Honor. They claim that the SOL applies and they claim that
19 I am bound by what my attorney knew.

20 Well, my attorney has not been interviewed here. They
21 haven't subpoenaed her. They don't know what she knew or
22 when she knew it. And they are just making assumptions.
23 And I don't believe that -- because they have things in
24 their motion there that I obviously object to.

25 THE COURT: Okay. In your -- in your objections did

1 you -- I know you filed some documents with the court.

2 MS. MARKS: Yes, I have.

3 THE COURT: And so -- all right. So and I understand
4 you are appearing pro se. However, you are still held to
5 the same standard as an attorney. So you are -- you know,
6 with the same rules of civil procedure apply to you just as
7 they would an attorney.

8 So pursuant to Rule 56 on summary judgment why would
9 they not be entitled to summary judgment; just tell me that.

10 MS. MARKS: They are not entitled to summary judgment
11 because they admitted after the fact that they don't own the
12 mortgage, they don't have standing to be here.

13 I only argued before the judge -- I never argued a
14 motion to dismiss before the judge before. And also I would
15 like to know whether they have the note today. If they are
16 saying that the only reason that they have the right to do
17 all of this ---

18 THE COURT: That matter is not before me. Okay. Just
19 the issues that are before me are the ones on the docket.
20 We can't go outside of that. That is not before me here
21 today, okay.

22 So if you -- do you think you have filed all of the
23 documentation necessary with the court that you feel and
24 pursuant to these motions, and I will have certainly an
25 opportunity to read everything and look at the court record

1 and issue a decision.

2 But I can't hear matters that are outside of the scope
3 of today's motions, okay.

4 MS. MARKS: Yes, Your Honor.

5 THE COURT: All right. Thank you, Ms. Marks. Is there
6 anything further that you would like to add on -- just on
7 these motions, nothing else?

8 GENTLEMAN APPEARING WITH MS. MARKS: Can I (motioning)?

9 THE COURT: Sure.

10 (Ms. Marks confers with gentleman.)

11 MS. MARKS: Just to clarify and just to be -- you know,
12 to stay on the safe side, to clarify in my plan they are --
13 they are not part of the bankruptcy. They are not being
14 paid through the trustee.

15 And the -- I am sorry. (I have a nervous disorder. May
16 he speak for a moment, Your Honor, because I am having a
17 hard time?

18 THE COURT: Hold -- take your time. And let me just
19 ask you this. I understand what you are saying about the
20 bankruptcy. I don't control the bankruptcy. Obviously that
21 is a whole separate issue. If you have addressed those
22 arguments in your pleadings it will be in there.

23 Do you feel -- you are telling me you have done that.
24 So once you have done that I will -- what I am letting you
25 know is I will have the opportunity to review that and issue

1 a ruling based upon that.

2 So if you are nervous, that's fine. I am happy for you
3 to take your time and do what you have to do. But if you
4 are appearing pro se on your own behalf if there is anything
5 further pursuant just to these motions and to what the law
6 allows you for the rules of civil procedure is there
7 anything further; if not I can rule based on what is in the
8 court record and having considered your arguments that you
9 have already put forth, okay.

10 MS. MARKS: Thank you, Your Honor. That ---

11 THE COURT: Thank you, ---

12 MS. MARKS: --- would be fine.

13 THE COURT: --- Ms. Marks.

14 THE COURT: What we will do -- of course I will read
15 the pleadings and then we will issue an order probably via
16 e-mail or through the clerk's office. Thank you.

17 MS. MARKS: Thank you, Your Honor.

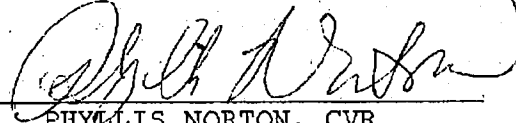
18 (Whereupon the hearing concluded.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Family Court for Charleston County, South Carolina, on September 4, 2013.

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



PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: October 7, 2013

Certified Transcript Provided For: Marks.
Certification Reference # 100713 DE16

EXHIBIT 3

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

IN RE:) Case No. 11-02619-JW
) Chapter 13
MELISSA J. MARKS)
a/k/a MELISSA JEAN TANNER,)
) 145 King Street
Debtor.) Charleston, South Carolina 29401
)
) May 17, 2012
) 1:56 P.M.

TRANSCRIPT OF MOTION FOR CLARIFICATION (DOCKET 20)
BEFORE HONORABLE JOHN E. WAITES
UNITED STATES CHIEF BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: Meredith Law Firm, LLC
By: ELIZABETH JENKINS, ESQ.
4000 Faber Place Dr.
North Charleston, South Carolina 29405

For the Chapter 13 Trustee: Law Firm of Motley Rice
By: BETH RENNO, ESQ.
28 Bridgeside Blvd.
Mount Pleasant, South Carolina 29464

For Nationstar Mortgage: Rogers, Townsend & Thomas, PC
By: HARRIET POLLITT WALLACE, ESQ.
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Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

1 THE COURT: Melissa Marks is a motion for
2 clarification filed by Harriet Wallace.

3 MS. WALLACE: Yes, Your Honor. I'm Harriet Wallace
4 for Rogers, Townsend & Thomas.

5 I represent Nationstar Mortgage. And Ms. Marks has a
6 pending Chapter 13 bankruptcy action before this Court.

7 THE COURT: Right.

8 MS. WALLACE: And we were listed as a creditor, and
9 she's paying, and we were named in the plan, which was
10 confirmed, and she's been making her payments.

11 However, about -- last month on April 6th, 2012, the
12 debtor filed an action in State Court, not naming Nationstar,
13 but naming Old South Mortgage Corporation, John Does 1 through
14 100 and Fictitious Corporations 1 through 100, and Old South
15 Mortgage was the original lender in this action.

16 And essentially what she's trying to do is have the
17 mortgage declared invalid and unenforceable and asking for the
18 Court to order the register of deeds satisfy the mortgage and
19 grant permanent injunctions prohibiting any entities from
20 filing assignments of mortgages or from foreclosing under that
21 mortgage.

22 And since Nationstar is the holder of that note, and
23 the mortgage secures that note, Nationstar feels like we need
24 to intervene in that action to protect our interest and make
25 sure that the mortgage isn't satisfied. And we just wanted

1 clarification to make sure that we're not doing anything in
2 violation of the stay. We're not trying to foreclose the
3 mortgage.

4 THE COURT: Right.

5 MS. WALLACE: We're just trying to make sure --

6 THE COURT: You're just defensive more than
7 offensive.

8 MS. WALLACE: Yes, sir.

9 THE COURT: Okay. And, Ms. Jenkins, you represent
10 Ms. Marks?

11 MS. JENKINS: Yes, Your Honor. Elizabeth Jenkins on
12 behalf of the debtor, Ms. Marks.

13 Your Honor, we represent Ms. Marks in the bankruptcy
14 only; we do not represent her -- her action in State Court is
15 pro se.

16 We certainly don't have any issue with the procedural
17 request of defending any interest they may or may not have in
18 the property.

19 My client does object to any lifting or modification
20 of the stay. But we believe that at this point, they're just
21 seeking to respond, which we don't believe is a violation.

22 THE COURT: And you consulted with Ms. Marks, and she
23 had an opportunity to be here today?

24 MS. JENKINS: Yes, she is here.

25 THE COURT: Okay.

1 MS. MARKS: Yes, Your Honor.

2 THE COURT: All right. Well, you can come forward if
3 you want to. Is Ms. Jenkins representing you in this matter?
4 I mean I'm not sure that it's not a lifting of the stay for --
5 to allow that defensive action. And to the degree that -- I
6 mean it might be the cautious thing to do is to express it in
7 that fashion. To the degree it is affected by the automatic
8 stay, you're allowed to do that because if you're going to sue
9 them, they have a right to defend themselves. And that's just
10 in the bankruptcy case in a confirmed plan that's allowing you
11 to make payments and cure debts. It's not going to be able to
12 protect you from them responding, and you understand that.

13 MS. MARKS: Yes, Your Honor.

14 THE COURT: So, the idea is I'm just not sure that --
15 I mean I guess just put it down as clarification, and maybe as
16 a matter of crystal clear law, you all know that it doesn't
17 require, it just -- right -- but I -- before we parse words, I
18 don't think -- I think it's better to put in your order that I
19 grant you the right to appear and defend, to whatever extent
20 it's necessary. That to the extent it's a lifting of the stay
21 for that purpose, that it is a lifting of the stay.

22 MS. WALLACE: Yes, sir.

23 THE COURT: Now to the extent that it's not allowing
24 you to foreclose or whatever of your, you know, matters covered
25 under the plan, it seem to me, you know, you're still bound to

1 the plan.

2 MS. WALLACE: Yes, sir, and I had put that in my
3 motion. It was kind of unusual, and I wasn't sure exactly how
4 to phrase that.

5 THE COURT: Well --

6 MS. WALLACE: Because I wanted to make it clear that
7 we're not trying to --

8 THE COURT: Right.

9 MS. WALLACE: -- foreclose.

10 THE COURT: I think that's fair. I think everybody
11 agrees with that. Everybody understands that.

12 MS. RENNO: Yes, Your Honor. The trustee agrees.

13 THE COURT: Okay. So, will you -- I mean you might
14 -- do you have an order that suits you or do you want to draft
15 one up that --

16 MS. WALLACE: I can draft one up; I did not bring
17 one --

18 THE COURT: Okay.

19 MS. WALLACE: -- Your Honor, but --

20 THE COURT: Well, I -- I mean --

21 MS. WALLACE: -- I could draft one up and e-mail it
22 or --

23 THE COURT: All right. If you'll submit it to
24 chambers.

25 Ms. Jenkins, do you want to see it?

1 MS. JENKINS: I would like to see it, Your Honor.

2 THE COURT: All right. Well, do it in a quick
3 fashion, and pretty much --

4 MS. WALLACE: Yes, Your Honor.

5 THE COURT: -- when you send it to me, send it to Ms.
6 Jenkins. And then if you have a problem, quickly tell us.

7 MS. JENKINS: Yes, Your Honor.

8 THE COURT: As opposed to -- and the trustee, as
9 well.

10 MS. WALLACE: Yes, sir.

11 THE COURT: So anybody can tell us if there's a --
12 because if I don't hear anything in fairly quick order, I'll
13 sign it only because I worry about the timing and don't want to
14 hold the State Court up and hold up your proceeding and --

15 MS. JENKINS: Thank you, Your Honor.

16 THE COURT: -- that sort of thing.

17 MS. WALLACE: Yes, sir, and you should have that
18 tomorrow, Your Honor.

19 THE COURT: Okay. Well, I'm thinking --

20 MS. WALLACE: I don't think it will take long.

21 THE COURT: No, I wasn't worried about you, I was
22 just trying to think where I am tomorrow, and I think I might
23 be on the road with some of these other folks, but we'll get --

24 MS. WALLACE: I didn't mean you had to sign it
25 tomorrow.

1 THE COURT: We'll get it signed.

2 (Laughter)

3 THE COURT: We'll get it signed for you. Well, I
4 didn't want you to rush if I wasn't there. But, okay -- well,
5 that's fair, it seems to me the right thing to do. So, if
6 you'll prepare that order then I'll enter it. Okay?

7 MS. WALLACE: Okay.

8 THE COURT: Thanks for coming, Ms. Jenkins.

9 MS. WALLACE: And, Your Honor, just for
10 clarification, that was lifting of the stay for purposes of
11 appearing --

12 THE COURT: I think you put --

13 MS. WALLACE: -- and defending in the State Court
14 action.

15 THE COURT: And Ms. Jenkins and you can talk about it
16 for a minute, but I don't want there to be any question that
17 there's a limitation on what you can do to defend yourself in
18 State Court. And I'm actually thinking that this has come up
19 before -- it doesn't come up very often -- but I do think to
20 some degree, you know, it may be asserting rights against the
21 debtors in defense or affirmative rights, affirmative defenses,
22 I don't know. It might involve -- so, I'm giving you, by
23 agreement really, this limited lifting of the stay.

24 MS. JENKINS: Yes, sir.

25 THE COURT: You can put in there that, you know,

1 you're still bound by the plan, and it's not intended to give
2 you the right to foreclose. You're current on your plan
3 payments, aren't you?

4 MS. MARKS: Yes, Your Honor. And I would like to let
5 you know that I will remain current --

6 THE COURT: Good.

7 MS. MARKS: -- in all my payments, and I would not do
8 that unless I had an amended plan or any kind change that's
9 authorized by this Court.

10 THE COURT: Okay.

11 MS. MARKS: So, I -- my intention is to bring this
12 matter before the State Court because this is a lien issue and
13 the State Court obviously would have jurisdiction on whether or
14 not we've satisfied under state law and county law and
15 procedure whether the lien is valid. So --

16 THE COURT: Well, I'm not looking to do the work.

17 MS. MARKS: Right.

18 THE COURT: I think either -- either party could
19 remove it --

20 MS. MARKS: Right.

21 THE COURT: -- in the pending case, but I'm not
22 looking to do it. I'm happy for you to do it wherever you want
23 to do it.

24 MS. MARKS: Okay.

25 THE COURT: But I think it is fair for them to be

1 able to respond and defend themselves --

2 MS. MARKS: Yeah.

3 THE COURT: -- and -- so, that's fine. Do the best
4 you can drafting it up, and we'll -- and Ms. Jenkins will --
5 and Ms. Renno can check it for us.

6 MS. WALLACE: Thank you, Your Honor.

7 THE COURT: Okay. Thanks for being here. Good luck
8 to you all.

9 MS. JENKINS: Thank you.

10 (Whereupon, at 2:03 P.M., the hearing was adjourned.)

11

12 CERTIFICATE OF TRANSCRIBER

13

14 I, KAREN HARTMANN, a certified Electronic Court
15 Transcriber, certify that the foregoing is a correct transcript
16 from the electronic sound recording of the proceedings in the
17 above-entitled matter.

18

19

20 /s/ Karen Hartmann AAERT CET**D0475 Date: February 25, 2013

21 TRANSCRIPTS PLUS, INC.

22

23

24

25

EXHIBIT 4

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2012-CP-15-00262

CIVIL ACTION NO.: 2012-CP-15-00262

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

ORDER DENYING PLAINTIFF'S

OF ORDER DENYING PLAINTIFF'S
MOTION FOR LEAVE TO AMEND
COMPLAINT AND OF ORDER
DENYING PLAINTIFF'S MOTION TO
COMPEL ANSWERS TO
INTERROGATORIES AND REQUESTS
FOR PRODUCTION TO DEFENDANT
NATIONSTAR MORTGAGE, LLC

FOR PRODUCTION TO DEFENDANT
NATIONSTAR MORTGAGE, L

EST
INDIAN
PATRICIA C. ORR
COLLEGE COUNTY
GRIFFIN PLEAS
GR-9 PHIL
Motion 30

#1
PmB

Plaintiff has now moved this Court to reconsider those Orders. For reasons stated below, Plaintiff's Motion to Reconsider is respectfully DENIED.

In this Court's Order Denying Plaintiff's Motion for Leave to Amend Complaint, the undersigned ruled that Plaintiff's proposed amendment is futile because only the bankruptcy trustee has standing to pursue this claim. Order Denying Plaintiff's Motion for Leave to Amend, pg. 3. In her Motion to Reconsider, Plaintiff notes that her bankruptcy trustee (the "trustee"), the Defendant Nationstar, and Judge Waites raised no objection to Plaintiff's legal standing to personally bring her action in circuit court during the Bankruptcy Court's hearing on Defendant Nationstar's Motion for Clarification. Plaintiff's Motion to Reconsider, pgs. 2-4. Plaintiff reasons that if Plaintiff is to be precluded from bringing this action in Circuit Court, then Judge

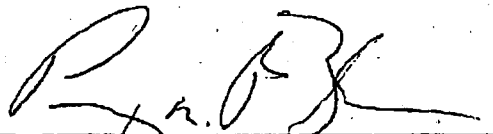
Waites would have "advised Plaintiff of that, admonished her [Plaintiff] for filing the action, and ordered her to dismiss the state court case." Id. at 4.

Despite the fact that Plaintiff believes she has permission of the bankruptcy court and her trustee to litigate her Circuit Court action, the law states that Plaintiff's Circuit Court Complaint must be considered in light of her bankruptcy filing. Order Denying Plaintiff's Motion for Leave to Amend at 3. A cause of action constitutes an asset of the bankruptcy estate regardless to whether it is disclosed by the debtor in bankruptcy petitions. *Brockington v. Jones*, 2007 U.S. Dist. LEXIS 96248, 7-9 (D.S.C. Nov. 28, 2007). Case law is clear that if a cause of action is part of the bankruptcy estate, then the trustee alone has standing to bring that claim. *Nat'l Am. Ins. Co. v. Ruppert Landscaping Co.*, 187 F.3d 439, 441 (4th Cir. 1999). Plaintiff's complaint is that the note and mortgage are unenforceable; therefore, it is part of the bankruptcy estate. Accordingly, only the trustee in the bankruptcy action has standing to pursue this claim.¹

While it is unfortunate that Plaintiff was led to believe that she could pursue this action in circuit court pro se, the Court DENIES Plaintiff's Motion for Reconsideration as to this Court's Order Denying Plaintiff's Motion for Leave to Amend Complaint for the reasons stated above and in its original Order. Plaintiff's Motion to Reconsider the Order Denying Plaintiff's Motion to Compel Answers to Interrogatories and Requests for Production remains MOOT.

IT IS SO ORDERED.

Walterboro, SC
April 5, 2013


The Honorable Perry M. Buckner

¹ Plaintiff further asserts that this Court's understanding and viewpoint of Plaintiff's case was tainted by Defendant's counsel's "mischaracterizations of her [Defendant's counsel's] action in proposed orders that she asked the Court to sign." Plaintiff's Motion to Reconsider, pgs. 6-7. This Court disagrees; though Plaintiff may have inferred from the hearing on Defendant's Motion to Intervene that this Court would not entertain challenges to Plaintiff's standing, the law remains that only the bankruptcy trustee has legal standing to pursue this claim.

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Melissa Jean Marks,

Plaintiff,

vs.

Old South Mortgage Corporation, John Does 1-100, Fictitious Corporations 1-100, Nationstar Mortgage, LLC

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL CASE NO. 2012-CP-15-262

**ORDER DENYING PLAINTIFF'S MOTION
TO DEFER ALTERNATIVE DISPUTE
RESOLUTION CONFERENCE AND
APPOINTING MEDIATOR**

(HPW 501904-00001)

#1
PMB
This matter came before the Court for a hearing on March 12, 2013, for consideration of Plaintiff's Motion to Defer Alternative Dispute Resolution Conference. Melissa Jean Marks appeared on her own behalf. Harriet Pollitt Wallace, Esquire appeared on behalf of the Defendant Nationstar Mortgage, LLC. Based on the record and arguments made at the hearing, the Court denies Plaintiff's Motion to Defer Alternative Dispute Resolution Conference. The Court further orders that mediation be completed within thirty (30) days of this Order and appoints Elbert O. Duff as mediator in this case. *PMB*

The purpose of the Alternative Dispute Resolution Rules is to "secure the just, speedy, inexpensive and collaborative resolution in every action in which they apply." Rule 1, SCADR. This action was filed on April 6, 2012; therefore, under the Alternative Dispute Resolution rules, ADR should have been completed no later than January 30, 2013.

The Administrative Judge has discretion to defer an ADR conference or exempt a case from ADR, only for good cause shown, such "where a party is unable to participate due to incarceration or mental or physical condition." Rule 5(e), SCADR. The Court of Appeals has found that the fact that

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2013 APR -9 PM 12:03

a party was in default and unable to be located constituted "good cause" to exempt a case from ADR. *Roesler v. Roesler*, 396 S.C. 100, 719 S.E.2d 275 (Ct. App. 2011). Rule 5(b) of the Alternative Dispute Resolution Rules states that the ADR conference will not be used as a reason to delay discovery and other proceedings in the case.

Plaintiff's motion is not based on the fact that any party to this action is *unable* to participate, but instead is based on her perception of the procedural posture of the case, including the fact that Plaintiff's motions to amend the complaint and to compel discovery had not been heard, and the Court's adverse rulings against Plaintiff. The only motions pending on the date of the ADR deadline were Plaintiff's Motion to Amend and Motion to Compel, which have since been denied, and are therefore moot as grounds to delay ADR any further. Since the purpose of ADR rules are to assist parties in resolving litigation before expenses accrue to the point that settlement is impossible, to defer ADR until all conceivable motions are filed and heard would defeat the purpose of the ADR rules.

CONCLUSION

Based on the foregoing reasons, Plaintiff's motion to defer Alternative Dispute Resolution is **DENIED**. The parties are ordered to participate in mediation within thirty (30) days of this Order. The Court also appoints ~~E.W. Bennett, Jr.~~ ^{P. BELMONT O. OFFICE} as the mediator in this case, unless he has a conflict.

IT IS SO ORDERED.


Perry M. Buckner
Judge, Fourteenth Judicial Circuit

April 8, 2013
Walterboro, South Carolina

EXHIBIT 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Deutsche Bank National Trust Company, as
Trustee of the IndyMac INDX Mortgage Trust
2007-FLX3, Mortgage Pass-Through
Certificates, Series 2007-FLX3 under the
Pooling and Servicing Agreement dated April 1,
2007

Plaintiff,

vs.

Scott J. Heinrich; Dinah K. Heinrich; OneWest
Bank, FSB; County of Charleston,

Defendants.

(514773-00572 JJH)

IN THE COURT OF COMMON PLEAS
OF THE NINTH JUDICIAL CIRCUIT

DOCKET NO.: 2011-CP-10-1060

Grantham
ORDER ~~DISMISSING~~ DEFENDANTS SCOTT
J. HEINRICH AND DINAH K.
HEINRICH'S MOTION TO DISMISS

FILED
2013 JUL 31 AM 9:17
JULIE J. ARSTRONG
CLERK OF COURT

JH
This case came before me on May 13, 2013 on Defendants' pre-Answer Motion to Dismiss this case pursuant to Rules 12(b)(6) and 12(b)(7), SCRCP. Defendants, Scott J. Heinrich and Dinah K. Heinrich ("Defendants"), were represented by William H. Sloan of the Sloan Law Firm, PA in Summerville, and Plaintiff was represented by John J. Hearn of Rogers Townsend & Thomas, PC in Columbia.

I. Rule 12(b)(6), SCRCP

Defendants claim that the Complaint should be dismissed pursuant to Rule 12(b)(6), SCRCP, because Plaintiff "lacks the necessary standing to file this action prior to acquiring and recording an Assignment of Mortgage" and fails to mention how they are the owner of the Note and Mortgage in this case under our fact-based pleading scheme. Plaintiff admits that the assignment of mortgage into Plaintiff was recorded February 23, 2011, about two weeks after this action was filed. Plaintiff claims to have no obligation to record the assignment into itself prior to filing this action.

Plaintiff has possession of the original Note, which is indorsed in blank at the time of the hearing before me on May 13, 2013. Plaintiff claims that the note is a negotiable instrument under the South Carolina Uniform Commercial Code, S.C. Code §36-3 et seq. which would entitle them certainly to sue on the note in this action. However, Plaintiff is seeking to foreclose on the mortgage that is attached to the real property as opposed to simply suing on the promissory note.

The idea that the Mortgage follows the Note is one which has been repeatedly confirmed by our courts: "South Carolina recognizes the 'familiar and uncontroverted proposition' that 'the assignment of a note secured by a mortgage carries with it an assignment of mortgage. However, *Carpenter v. Longan*, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872), quoted by Plaintiff's counsel in this oral argument and brief, clearly supports the notion that the Plaintiff must clearly own the Note and the Mortgage to foreclose on the property. Plaintiff failed to show that it owned ~~on~~ the Mortgage at the time the Complaint was filed. ^{IN 9c} In its Complaint, Plaintiff merely contends in §3 of its Complaint that it is a holder and has the right to enforce. Further, the mortgage of this case shows Mortgage Electronic Registration Systems, Inc. (MERS) to be the mortgagee. This was confirmed by Plaintiff's counsel in oral argument. MERS is never mentioned on the Note, ^{9c} and therefore, ~~the Note and Mortgage of this case have been separated permanently.~~ ^{9c}

Our state court of appeals made a recent decision in *BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 731 S.E.2d 547 (Ct. App. 2012.) "[T]he assignment of a mortgage does not need to be recorded, and failure to do so has no effect on the rights of the assignee." *Id.* at 623. However, I distinguish the facts of *Kinder* from this case as the Assignment of Mortgage in

Kinder was after the foreclosure was already complete and the issue at dispute in that case was the surplus funds going to the Assignee. *Filing is not the issue but*

ownership of the note. JCR
It is clear that to have standing in this foreclosure case, Plaintiff must not only be the holder of the original Note, but also the Mortgage as well. Plaintiff's Complaint in this case fails to meet this criteria. Plaintiff lacks the standing to initiate and prosecute the foreclosure, and dismissal pursuant to Rule 17(a) and Rule 12(b) (6) SCRPC is appropriate.

II. Failure to Join Necessary Parties under Rule 12(b)(7), SCRPC

Rule 12(b)(7) provides that one defense to an action is the failure to join a party under Rule 19 of the South Carolina Rules of Civil Procedure. Rule 19 provides that:

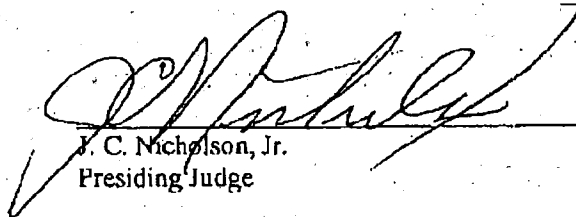
JCR
A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be afforded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

Defendants claim that Mortgage Electronic Registration Systems, Inc. ("MERS") and IndyMac Bank, FSB ("IndyMac") are necessary parties to this action, and that the court must join them as parties to protect the Defendants from "double or triple liability" on the Note and Mortgage at issue. Again, Defendants misapprehend the applicable law by advancing this argument. Under South Carolina law, Defendants would not be subject to duplicative payment obligations because Plaintiff's foreclosure judgment will discharge Defendants' liability to other claimants. See S.C. Code Ann §36-3-603(1) (2003) (explaining the circumstances under which cancellation or satisfaction filed by the holder of a negotiable instrument will discharge liability for other claims on same instrument.)

There is no reason that the absence of MERS or IndyMac would prevent this court from issuing a foreclosure judgment establishing Plaintiff's sole authority to enforce the Note and Mortgage at issue here. Further, even if it is determined that these were necessary parties. Rule 12(b)(7) does not call for dismissal of the action, and instead only requires that the parties be joined. On a Rule 12(b)(7) motion, "the proper course for the trial court is to determine the necessity of adding a new party under Rule 19 to insure a full adjudication of the controversy." *Bancohio National Bank v. Neville*, 310 S.C. 323, 328, 426 S.E.2d 773, 776 (1993). As such, Defendants' motion to dismiss pursuant to Rule 12(b)(7) is denied. However, In find this issue moot as I have dismissed this case pursuant to Defendants' Heinrich's Motion to Dismiss under Rule 12(b)(6), SCRCP.

And it is so ordered that this case be dismissed without prejudice.

IT IS SO ORDERED!


J. C. Nicholson, Jr.
Presiding Judge

July 30, 2013
~~May~~

EXHIBIT 6

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

Melissa Jean Marks,

Plaintiff,

vs.

Old South Mortgage Corporation, John Does
1-100, Fictitious Corporations 1-100,
Nationstar Mortgage, LLC

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL CASE NO. 2012-CP-15-262

ORDER DENYING MOTION FOR
JOINDER OF GERALD F. GRENIER

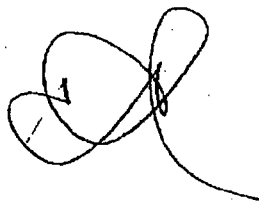
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PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

This matter came before the Court for a hearing on April 2, 2013, for consideration of the Motion for Joinder of Gerald F. Grenier. Gerald F. Grenier and Melissa Jean Marks each appeared *pro se*. Harriet Pollitt Wallace, Esquire appeared on behalf of the Defendant Nationstar Mortgage, LLC. Based on the record and arguments made at the hearing, the Court denies the Motion for Joinder of Gerald F. Grenier.

Gerald F. Grenier ("Grenier") seeks to be joined in the underlying action brought by Melissa Jean Marks ("Marks") pursuant to Rules 19 and Rule 20 for the stated purpose of "protecting his rights and interest in the pending action" because he does not believe "his personal interests are being adequately protected by the Plaintiff." (Grenier's Mot. at 1.) The stated grounds of Grenier's motion is that he has resided at the property which is the subject of this action since 2007, has invested "time, labor and money improving" the property, and stands to inherit the property pursuant to Marks' Last Will and Testament.

A person who is subject to service of process and whose joinder will not deprive the court of subject matter jurisdiction over the pending lawsuit shall be joined as a party if:



(1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

Rule 19, SCRPC.

In the alternative, a plaintiff may join in an action permissively where he asserts a "right to relief jointly, severally, or in the alternative in respect of . . . the same transaction, occurrence or series of transactions or occurrences" Rule 20, SCRPC. There must be common questions of law or fact to all plaintiffs in order for a person to join as a permissive plaintiff. *Id.*

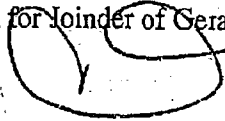
The Court finds that the grounds asserted by Grenier do not provide him with a legally protected interest in the subject property which would entitle him to joinder under Rule 19(a)(2) or Rule 20 of the *South Carolina Rules of Civil Procedure*.

For the foregoing reasons, the Court denies Grenier's Motion to Intervene and for Joinder.

CONCLUSION

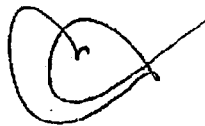
Based on the foregoing reasons, the Motion for Joinder of Gerald F. Grenier is DENIED.

IT IS SO ORDERED.



Carmen T. Mullen
Judge, Fourteenth Judicial Circuit

5-7, 2013
Walterboro, South Carolina



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Case No. 2012-CP-15-00262

RECEIVED

NOV 25 2013

SC Court of Appeals

Melissa Jean Marks, *Pro Se*,

Appellant,

v.

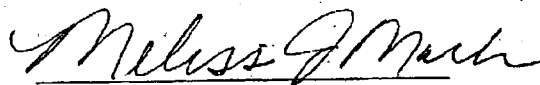
Nationstar Mortgage, LLC,

Respondent.

NOTICE OF APPEAL

Melissa Jean Marks appeals the Orders of the Honorable Maité Murphy Granting Defendant's Motion for Summary Judgment and Denying Plaintiff's Motion to Dismiss Defendant As Intervening Party, entered on October 9, 2013, and denying Plaintiff's Motion for Reconsideration pursuant to Rules 52 and 59, SCRCP, entered on November 6, 2013. Appellant received written notice of entry of the Order denying her Motion for Reconsideration on November 6, 2013.

Respectfully submitted,



Melissa Jean Marks
Plaintiff *Pro Se*
209 Presidential Court
Round O, SC 29474
(843) 599-3156
mjmarks68@hotmail.com

This 21st day of November, 2013

CONTINUED ON NEXT PAGE

Other Counsel of Record:

Harriet Pollitt Wallace, Esq.
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Columbia, SC 29210
Attorney for Respondent

John F. Knobeloch, Esq.
King & Knobeloch, P.C.
808 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
Attorney for Old South Mortgage Corporation

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

MELISSA JEAN MARKS, *Pro Se*,
Plaintiff,

vs.

OLD SOUTH MORTGAGE
CORPORATION; and
NATIONSTAR MORTGAGE, LLC,
Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-15-00262

CERTIFICATE OF SERVICE

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NOV 25 2013

SC Court of Appeals

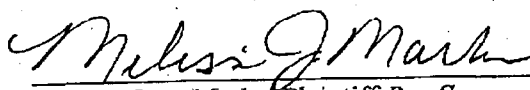
I certify that, on this date, I served a copy of Plaintiff's Motion and Order Information Form and Coversheet and Notice of Appeal by mailing it to him/her, at his/her last known address, via United States Certified Mail, Return Receipt Requested, to:

Attorney for Defendant/Respondent Nationstar Mortgage, LLC at:

Harriet Pollitt Wallace, Esq.
Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Attorney for the Defendant Old South Mortgage Corporation at:

John F. Knobloch, Esq.
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Melissa Jean Marks, Plaintiff *Pro Se*
209 Presidential Court
Round O, SC 29474
(843) 599-3156
mjmarks68@hotmail.com

Round O, South Carolina
November 21, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Case No. 2012-CP-15-00262

Melissa Jean Marks, *Pro Se*,

Appellant,

v.

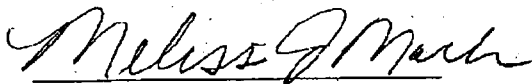
Nationstar Mortgage, LLC,

Respondent.

NOTICE OF APPEAL

Melissa Jean Marks appeals the Orders of the Honorable Maité Murphy Granting Defendant's Motion for Summary Judgment and Denying Plaintiff's Motion to Dismiss Defendant As Intervening Party, entered on October 9, 2013, and denying Plaintiff's Motion for Reconsideration pursuant to Rules 52 and 59, SCRCP, entered on November 6, 2013. Appellant received written notice of entry of the Order denying her Motion for Reconsideration on November 6, 2013.

Respectfully submitted,



Melissa Jean Marks
Plaintiff *Pro Se*
209 Presidential Court
Round O, SC 29474
(843) 599-3156
mjmarks68@hotmail.com

This 21st day of November, 2013

CONTINUED ON NEXT PAGE

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2013 NOV 21 AM 8:59

Other Counsel of Record:

Harriet Pollitt Wallace, Esq.
Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210
Attorney for Respondent

John F. Knobeloch, Esq.
King & Knobeloch, P.C.
808 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
Attorney for Old South Mortgage Corporation

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

MELISSA JEAN MARKS, *Pro Se*,
Plaintiff,

vs.

OLD SOUTH MORTGAGE
CORPORATION; and
NATIONSTAR MORTGAGE, LLC,
Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-15-00262

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of Plaintiff's Motion and Order Information Form and Coversheet and Notice of Appeal by mailing it to him/her, at his/her last known address, via United States Certified Mail, Return Receipt Requested, to:

Attorney for Defendant/Respondent Nationstar Mortgage, J.I.C at:

Harriet Pollitt Wallace, Esq.
Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Attorney for the Defendant Old South Mortgage Corporation at:

John F. Knobloch, Esq.
King & Knobloch, P.C.
808 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

2013 NOV 21 AM 8:59

PATRICIA G. GRANT
COLLETON COUNTY
COMMON PLEAS



Melissa Jean Marks, Plaintiff *Pro Se*
209 Presidential Court
Round O, SC 29474
(843) 599-3156
mjmarks68@hotmail.com

Round O, South Carolina
November 21, 2013

ATTACHMENT A

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2012CP1500262

Melissa Jean Marks vs. Old South Mortgage Corporation

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☒ Statement of Judgment by the Court:

This matter came before this Court by way of Plaintiff's Motion For Reconsideration brought forth pursuant to Rule 59 of the SCRPC. Because the Plaintiff's motion does not raise any novel issues for the Court's consideration, the Plaintiff's Motion to Reconsider is respectfully DENIED.

Dated at Walterboro, South Carolina, this 6 day of November 2013.

Court Reporter:

Maite Murphy
PRESIDING JUDGE - Maite Murphy

This judgment was entered on the 6th day of November 2013, and a copy mailed first class this 6th day of November 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Melissa Jean Marks

Harriet Pollitt Wallace 401 North Main Street Suite
100 Greenville, SC 29601
John Fulton Knobloch 808 Johnnie Dodds Blvd.

Mt. Pleasant, SC 29464

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Patricia C. Grant

Patricia C Grant - Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL
) CIRCUIT

Melissa Jean Marks,

Plaintiff,

vs.

Old South Mortgage Corporation,
John Does 1-100, Nationstar
Mortgage, LLC

Defendant.

) CIVIL CASE NO.: 2012-CP-15-262

) **ORDER GRANTING DEFENDANT'S**
) **MOTION FOR SUMMARY**
) **JUDGMENT**

2013 OCT -9 PM 1:19

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

This matter came before the Court on Defendant Nationstar Mortgage, LLC's ("Nationstar") Motion for Summary Judgment in favor of Nationstar as to all claims raised by Plaintiff Melissa Jean Marks ("Plaintiff") in her "Declaratory Judgment Complaint and Petition for Injunction," pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Having reviewed the memoranda and pleadings submitted by the parties and having heard oral arguments, taking the evidence in the light most favorable to the non-moving party, the Court finds that no genuine issues of material fact exist, and this Court hereby GRANTS Nationstar's Motion for Summary Judgment for the reasons set forth below.

FACTUAL BACKGROUND

On October 5, 2007, Plaintiff executed and delivered to Old South Mortgage Corp. a promissory note in the amount of \$ 76,000.00 dollars (the "Note") and a mortgage on property known generally as 209 Presidential Ct., Round O, South Carolina 29474-4374 (the "Mortgage") to secure the re-payment of the Note. (Compl., Apr. 6, 2012, ¶6). Plaintiff was represented by counsel at the closing, which occurred on October 5, 2007. (Compl., ¶8; Ex. 4, Compl.,

Engagement Letter). Flagstar wired the loan proceeds to Plaintiff's counsel, which was used to purchase the property. (Compl., ¶84; Ex. 4, Compl., Wire Transfer). At the closing, Plaintiff signed several documents disclosing Old South's right and intention to transfer the loan and servicing rights. (Ex. 4, Compl. Mortgage, ¶20; Note, ¶1 (the Note was endorsed in to Flagstar at the closing)). The documents signed at closing were provided to Plaintiff by her closing attorney on or about October 8, 2007. (Ex. 4, Compl., Ltr to Marks from Tuten, Oct. 7, 2013). Subsequently, Flagstar transferred the servicing rights to Nationstar. (Compl. ¶28; Ex. 12, Compl.) On or about April 20, 2011, Plaintiff filed a Chapter 13 bankruptcy petition. Plaintiff named Nationstar as the secured creditor of the loan in her Chapter 13 bankruptcy petition and schedules. (*In re Marks*, 11-02619-jw, Bankruptcy Petition, Co. 1, pp. 16-30, attached to Nationstar's Motion for Summary Judgment.) The confirmed Chapter 13 Plan orders Plaintiff will continue to make mortgage payments to Nationstar. (Chapter 13 Plan, Doc. 9, p. 3, attached to Nationstar's Motion for Summary Judgment). Nationstar is the current loan servicer and Fannie Mae is the investor of the loan. Nationstar has not filed a foreclosure action against Plaintiff. Plaintiff is current on her post-petition payments to Nationstar.

PROCEDURAL BACKGROUND

On or about April 6, 2012, Plaintiff filed this state court action naming only Old South Mortgage Corporation and John Does 1-100 and Fictitious Corporations 1-100. Nationstar was not named as a party. After learning about the state court action, on or about May 9, 2012, Nationstar filed a motion to modify the bankruptcy stay in order to intervene in the state court action. On or about May 14, 2012, after notice that Nationstar was seeking to intervene, but prior to the hearing in the bankruptcy court on Nationstar's motion to modify the bankruptcy stay and intervene, Plaintiff filed a Motion for Summary Judgment in the state court action.

The Bankruptcy Court issued an Order Modifying Stay, which stated:

It is not disputed by either the Debtor [Plaintiff] or the Movant [Nationstar] that Debtor is current on her post-petition payments to movant, and in fact, Debtor was current on the loan payments when the bankruptcy was filed. However, Movant would be prejudiced if Debtor were granted the relief she is seeking in the State Court Action unless Movant is allowed to intervene and assert its rights to the mortgage and underlying obligation in such action.

Order Modifying Stay at 2, In Re Marks, No. 11-02619-jw (Bankr. D.S.C. May 25, 2012), Doc. No. 24.

Following the Order issued by the Bankruptcy Court, Nationstar sought to intervene in the state court action. After a hearing, Nationstar's Motion to Intervene was granted. The Order granting Nationstar's Motion to Intervene found as follows:

I find that Nationstar may intervene as a matter of right because both prongs of Rule 24(a) are satisfied. Section 15-53-80 grants Nationstar an unconditional right to intervene because Plaintiff seeks declaratory judgment that could affect Nationstar's claim under the Note and Mortgage, which satisfies Rule 23(a)(1). Nationstar claims an interest in the action that is not being protected by any other named party as contemplated in Rule 23(a)(2), because Old South is a dissolved corporation and is not claiming any interest in the Note and Mortgage, and none of the other defendants have been served.

Despite Plaintiff's argument that allowing Nationstar to intervene would cause delay and expense as Old South consents to the relief Nationstar is seeking, and because John Does 1-100 and Fictitious Corporations 1-100 were not served with process, I find that no named party will be prejudiced by Nationstar's intervention in this case.

(Order Granting Nationstar Mortgage, LLC's Mot. To Intervene, Den. Mot. To Substitute Parties, & Granting Pl.'s Mot. To Continue Hr'g on Mot. for Summ. J. 2-3, Aug. 2, 2012).

Thereafter, Plaintiff filed a Motion to Compel Discovery and then filed a motion to Amend Complaint to add Fannie Mae as a defendant. Plaintiff's Motion to Amend was denied, after a hearing, because the court determined it would be futile to add Fannie Mae as a party for the following reasons: (1) Plaintiff lacked standing as a result of her Chapter 13 Bankruptcy filing; and (2) Nationstar is the proper party to enforce the note and mortgage, because it is the

holder of the original note, endorsed in blank. (Order Den. Pl.'s Mot. for Leave to Amend Compl. & Granting Pl.'s Mot. to Withdraw Mot. for Summ. J. 3-5, Feb. 27, 2013).

Based on the Order Denying Plaintiff's Motion to Amend, the Court also denied the Motion to Compel on the grounds it was moot. Plaintiff subsequently filed a Motion to Reconsider these two orders, which was denied. (Order Den. Pl.'s Mot. for Recons. of Leave to Amend Compl. and of Order Den. Pl.'s Mot. to Compel Answers to Interrogs. & Reqs. for Produc., Apr. 12, 2013). Other motions filed by Plaintiff include a Motion to Defer ADR, which was denied; and a Motion to Stay the Action in order to seek guidance from the Bankruptcy Court, which was denied.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCP; Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). When determining whether any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Id. "The trial court should grant summary judgment against a party who fails to make a showing sufficient to establish the existence of an essential element of the party's case." Fender & Latham, 316 S.C. 48, 50, 446 S.E.2d 448 (Ct. App. 1995). A party opposing a motion for summary judgment may not rest on the mere allegations of his pleadings, but must set forth or point to specific facts showing that there is a genuine issue of material fact. Rule 56(c), SCRCP; accord Strickland v. Madden, 323 S.C. 63, 448 S.E.2d 581 (Ct. App. 1994). The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

DISCUSSION

I. PLAINTIFF'S CLAIMS ARE BARRED BY *RES JUDICATA*

Nationstar is entitled to summary judgment because Plaintiff's claims are barred by the doctrine of *res judicata*. In Re Nix, CA 10-01103-HB, 2012 WL 27667 (Bankr. D.S.C. Jan. 5, 2012) (holding that debtor's claims based on pre-confirmation activity were barred by the doctrine of *res judicata* based on confirmed Chapter 13 plan). The petitions filed in Plaintiff's Chapter 13 bankruptcy and the confirmed plan state that Nationstar is the secured creditor entitled to receive payment on the mortgage note. The confirmation of Plaintiff's bankruptcy plan serves as *res judicata* to the claims brought in this lawsuit.

"The *res judicata* effect of a confirmed Chapter 13 plan on the debtor and creditors is set forth in 11 U.S.C. § 1327." Id. at 20. The "rights of creditors and responsibilities of the debtor are defined" in the confirmed plan. Id. Therefore, parties are precluded from raising issues which could have been raised prior to the plan confirmation. Id., see also Abraham v. Bank of America, N.A. (In Re Abraham), Adversary No. 10-80118-jw, 2010 WL 5437253 (Bankr. D.S.C. Sept. 20, 2010) (holding that debtor was judicially estopped from asserting contrary position in state court litigation based on his failure to list any causes of actions against defendant in bankruptcy schedules).

Plaintiff proclaims that she was unaware of her claims until after plan confirmation, and subsequently amended her schedules to disclose the existence of the state court action. This argument is of no consequence. "Judicial estoppel will be imposed when the debtor has knowledge of enough facts to know that a potential cause of actions exists during the pendency of the bankruptcy, but fails to amend his schedules or disclosure statements to identify the cause of action as a contingent asset. In re Family Dollar FLSA Litigation, 2011 U.S. Dist. 119281 at

17 (W.D. N.C. 2011). In In re Family, the debtor's failure to disclose a state court action to the bankruptcy court was deemed intentional because the debtor had reason to know of the existence of the claims when she filed bankruptcy, and had motive for concealment of the claim from the bankruptcy because disclosure would have resulted in a less favorable payment plan). It does not matter whether or not the debtor is aware that she has a duty to disclose her claims. Id. at 19.

Here, the petitions filed in Plaintiff's Chapter 13 bankruptcy and the confirmed plan state that Nationstar is the secured creditor entitled to receive payment on the mortgage note. Therefore, the confirmation of Plaintiff's bankruptcy plan serves as *res judicata* to the claims brought in this lawsuit.

II. UNCONSCIONABILITY BARRED BY *RES JUDICATA*

Plaintiff's Complaint alleges a cause of action for unconscionability. This cause of action is barred by the doctrine of *res judicata*. In Re Nix, CA 10-01103-HB, 2012 WL 27667 (Bankr. D.S.C. Jan. 5, 2012) (holding debtor's unconscionability cause of action was barred by doctrine of *res judicata* since it existed prior to the confirmation of the bankruptcy plan).

III. FRAUD CLAIMS BARRED FOR FAILURE TO ESTABLISH DAMAGES

Nationstar is entitled to summary judgment on Plaintiff's fraud cause of action because Plaintiff has not alleged sufficient facts to show she was injured. At the closing on October 5, 2007, Plaintiff signed several documents disclosing Old South's right and intention to transfer the loan and servicing rights. (Ex. 4, Compl. Mortgage, ¶20; Note, ¶11 (the Note was endorsed in to Flagstar at the closing). Plaintiff admits she was represented by counsel at the closing who was aware that Flagstar disbursed the loan proceeds enabling Plaintiff to purchase the Property. See Compl. ¶ 8. The documents signed at closing were provided to Plaintiff by her closing attorney on or about October 8, 2007. (Ex. 4, Compl., Ltr to Marks from Tuten, Oct. 7, 2013).

Plaintiff received the loan to purchase the Property, and has not alleged facts sufficient to show injury. First, Plaintiff cannot show an injury with regard to her claim that Old South did not actually fund the loan, since her loan was funded enabling her to purchase the Property. Second, Plaintiff received the benefit of the loan. Plaintiff was represented by counsel at the closing and her attorney was aware at the closing that the loan was being funded by Flagstar and not Old South. Finally, Plaintiff is current in her payments and assured the Bankruptcy Court that she would continue to remain current. Pl.'s Motion for Temp. Stay of Proceeding, Ex. A, page 8, lines 4 – 9.

IV. NOTE AND MORTGAGE ARE ENFORCEABLE AS A MATTER OF LAW

It is well-established that the mortgage follows the note and that assignment of the mortgage is not required. Union Nat'l Bank v. Cook, 110 S.C. 99, 96 S.E. 484 (1918); Midfirst Bank, SSB v. C. W. Haynes, 893 F. Supp. 1304 (D.S.C. 1994). In July 2012, the South Carolina Supreme Court again held that an "assignment of a mortgage does not need to be recorded, and failure to do so has no effect on the rights of the assignee." BAC Home Loan Servicing, L.P. v. Kinder, 398 S.C. 619, 623, 731 S.E.2d 547, 549 (2012).

South Carolina's version of Article 3 of the Uniform Commercial Code governs the enforceability of negotiable instruments including promissory notes secured by mortgages on real estate. Swindler v. Swindler, 335 S.C. 245, 584 S.E.2d 438 (Ct. App. 2007). S.C. Code Ann. Section 36-3-301 provides there are three categories of persons entitled to enforce a negotiable instrument: (1) the holder of the instrument; (2) a nonholder in possession of the instrument who has rights of the holder; and (3) a party who once had possession of a now lost instrument. S.C. Code Ann. § 36-3-301. Most importantly, a party may be entitled to enforce an instrument even though it "is not the owner of the instrument." Id.

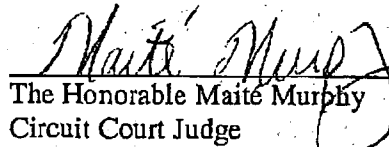
Here, by virtue of its possession of the original note, if the loan were in default, Nationstar would be the proper party to enforce the note.

ORDER

Accordingly, and based upon the discussion above, there are no issues of material fact that have been brought to the attention of this Court, and

THIS COURT NOW GRANTS NATIONSTAR'S MOTION FOR SUMMARY JUDGMENT on all of Plaintiff's causes of action.

AND IT IS SO ORDERED.


The Honorable Maite Murphy
Circuit Court Judge

September 12, 2013

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL
) CIRCUIT

Melissa Jean Marks,

Plaintiff,

vs.

Old South Mortgage Corporation,
John Does 1-100, Nationstar
Mortgage, LLC

Defendant.

CIVIL CASE NO.: 2012-CP-15-262

**ORDER DENYING PLAINTIFF'S
MOTION TO DISMISS DEFENDANT
AS INTERVENING PARTY**

2013 OCT -9 PM 1:19
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

This matter came before the Court on Plaintiff Melissa Jean Marks' ("Plaintiff") Motion to Dismiss Defendant Nationstar Mortgage, LLC ("Nationstar") with prejudice, for misjoinder pursuant to Rule 21 of the South Carolina Rules of Procedure. The Court finds the relief sought by Plaintiff is barred because it has already been raised and ruled on in this action, and therefore the Plaintiff's Motion to Dismiss is respectfully DENIED.

FACTUAL AND PROCEDURAL BACKGROUND

On or about April 6, 2012, Plaintiff filed this state court action naming only Old South Mortgage Corporation and John Does 1-100 and Fictitious Corporations 1-100. Nationstar was not named as a party. After learning about the state court action, on or about May 9, 2012, Nationstar filed a motion to modify the bankruptcy stay in order to intervene in the state court action. On or about May 14, 2012, after notice that Nationstar was seeking to intervene, but prior to the hearing in the bankruptcy court on Nationstar's motion to modify the bankruptcy stay and intervene, Plaintiff filed a Motion for Summary Judgment in the state court action.

The Bankruptcy Court issued an Order Modifying Stay, which stated:

It is not disputed by either the Debtor [Plaintiff] or the Movant [Nationstar] that Debtor is current on her post-petition payments to movant, and in fact, Debtor was current on the loan payments when the bankruptcy was filed. However, Movant would be prejudiced if Debtor were granted the relief she is seeking in the State Court Action unless Movant is allowed to intervene and assert its rights to the mortgage and underlying obligation in such action.

Order Modifying Stay at 2, In Re Marks, No. 11-02619-jw (Bankr. D.S.C. May 25, 2012), Doc. No. 24.

Following the Order issued by the Bankruptcy Court, Nationstar sought to intervene in the state court action. After a hearing, Nationstar's Motion to Intervene was granted. The Order granting Nationstar's Motion to Intervene found as follows:

I find that Nationstar may intervene as a matter of right because both prongs of Rule 24(a) are satisfied. Section 15-53-80 grants Nationstar an unconditional right to intervene because Plaintiff seeks declaratory judgment that could affect Nationstar's claim under the Note and Mortgage, which satisfies Rule 23(a)(1). Nationstar claims an interest in the action that is not being protected by any other named party as contemplated in Rule 23(a)(2), because Old South is a dissolved corporation and is not claiming any interest in the Note and Mortgage, and none of the other defendants have been served.

Despite Plaintiff's argument that allowing Nationstar to intervene would cause delay and expense as Old South consents to the relief Nationstar is seeking, and because John Does 1-100 and Fictitious Corporations 1-100 were not served with process, I find that no named party will be prejudiced by Nationstar's intervention in this case.

(Order Granting Nationstar Mortgage, LLC's Mot. To Intervene, Den. Mot. To Substitute Parties, & Granting Pl.'s Mot. To Continue Hr'g on Mot. for Summ. J. 2-3, Aug. 2, 2012).

Thereafter, Plaintiff filed a Motion to Compel Discovery and then filed a motion to Amend Complaint to add Fannie Mae as a defendant. Plaintiff's Motion to Amend was denied, after a hearing, because the court determined it would be futile to add Fannie Mae as a party for the following reasons: (1) Plaintiff lacked standing as a result of her Chapter 13 Bankruptcy filing; and (2) Nationstar is the proper party to enforce the note and mortgage, because it is the holder of the original note, endorsed in blank. (Order Den. Pl.'s Mot. for Leave to Amend

Compl. & Granting Pl.'s Mot. to Withdraw Mot. for Summ. J. 3-5, Feb. 27, 2013). Plaintiff then filed a Motion to Reconsider, which was denied. (Order Den. Pl.'s Mot. for Recons. of Leave to Amend Compl. and of Order Den. Pl.'s Mot. to Compel Answers to Interrogs. & Reqs. for Produc., Apr. 12, 2013).

DISCUSSION

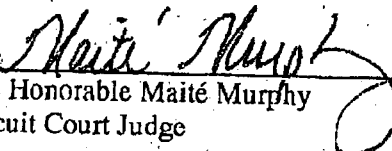
After hearing arguments of both parties and a careful review of the record, the Court finds that Plaintiff's Motion to Dismiss Nationstar should be denied because Nationstar properly intervened in this action and is a necessary party pursuant to Rules 19(1) and 20(a) of the South Carolina Rules of Civil Procedure. The orders of this Court and the Bankruptcy Court finding that Plaintiff has standing to defend this action represent the law of the case and should not be disturbed. Because Nationstar is the holder of the note and entitled to enforce the obligations thereunder, Nationstar has both standing to defend this action and has a right to remain in this action and defend its positions as it is "so situated that the disposition of the subject of the action in [its] absence may . . . as a practical matter impede [its] ability to protect that interest." Rule 19(a), SCRPC. Misjoinder is an appropriate remedy based upon the law of this case; Nationstar is a proper party to this action and should not be dismissed.

ORDER

Accordingly, and based upon the foregoing, it is

ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Dismiss Defendant in the above-captioned case is denied.

AND IT IS SO ORDERED.


The Honorable Maité Murphy
Circuit Court Judge

September 18, 2013

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON) CASE NO.: 2012-CP-12-262

MELISSA MARKS,

PLAINTIFF,

v.

TRANSCRIPT OF RECORD

OLD SOUTH MORTGAGE,
NATIONSTAR, JOHN DOE, 1 - 100,
AND FICTITIOUS CORPORATIONS
1 - 100,

DEFENDANTS.

WEDNESDAY, JULY 18th, 2012
WALTERBORO, SOUTH CAROLINA
BEFORE THE HONORABLE PERRY M. BUCKNER, III, JUDGE.

APPEARANCES:

MS. MELISSA J. MARKS, PRO SE
209 PRESIDENTIAL COURT
ROUND O, SC 29474

MS. HARRIET POLLITT WALLACE, ESQUIRE
ROGERS, TOWNSEND & THOMAS
SYNERGY BUSINESS PARK
220 EXECUTIVE CENTER DRIVE
COLUMBIA, SC 29210
ATTORNEY FOR NATIONSTAR

MR. JOHN KNOBELOCH, ESQUIRE
808 JOHNNIE DODDS BLVD.
MT. PLEASANT, SC 29464
ATTORNEY FOR OLD SOUTH MORTGAGE

Rebecca H. Hill
Official Court Reporter

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NATIONSTAR'S MOTION TO INTERVENE	3
CERTIFICATE OF REPORTER	22

1 THE COURT: All right. I'm hearing, first,
2 Nationstar's motion to intervene. This is 2012 at 262,
3 Becky. It is entitled Melissa Marks v. Old South Mortgage
4 Corporation, John Doe, 1-100, and fictitious corporations, 1
5 - 100, defendants.

6 I'd ask that the parties who are present identify
7 themselves, beginning with the plaintiff.

8 MS. MARKS: I am Melissa G. Marks, plaintiff, pro se.

9 THE COURT: Thank you. Counsel for the defendant, Old
10 South Mortgage.

11 MR. KNOBELOCH: John Knobeloch, appearing for Old
12 South.

13 MS. WALLACE: Harriett Wallace, appearing for
14 Nationstar Mortgage.

15 THE COURT: Very well. We agreed to hear your motion,
16 first, on behalf of Nationstar, to intervene. Happy to hear
17 from you. You asked for 15 minutes. Your time begins now.

18 MS. WALLACE: Thank you, Your Honor. Nationstar
19 Mortgage is seeking to intervene under Rule 24(a), which
20 states that, "Upon timely application anyone shall be
21 permitted to intervene in an action, subsection 1, when a
22 statute confers individual right to intervene, or, two, when
23 the applicant claims an interest relating to the property or
24 transaction which is the subject of the action and he is so
25 situated that the disposition of the action may oppress the

1 matter impair or impede his ability to protect that
2 interest."

3 The statute that we are relying on for Rule 24(a) is
4 section 15-58-80 of the South Carolina Declaratory Judgment
5 Act. This action is -- Ms. Marks seeks in this action a
6 declaratory judgment seeking an order that denotes a
7 mortgage and that they be canceled with the Register of
8 Deeds office.

9 THE COURT: What relationship, counsel, does your
10 client have to the plaintiff in this matter, by virtue of
11 this mortgage?

12 MS. WALLACE: We are the holder of the note and,
13 actually, I have the original note.

14 THE COURT: And how did you become the holder of the
15 note?

16 MS. WALLACE: It was transferred to us from Flagstar.

17 THE COURT: So you purchased it from Flagstar?

18 MS. WALLACE: I don't have -- I would assume we did
19 because I know that we had -- we're not part of Flagstar. I
20 don't have all of that ---

21 THE COURT: Your client is not as set forth in the
22 Memorandum, merely servicing this account.

23 MS. WALLACE: That is correct, Your Honor. We are not
24 merely servicing ---

25 THE COURT: You're the actual holder of this paper and

1 you believe the plaintiff is indebted to you for the amount
2 on the paper?

3 MS. WALLACE: That is correct, Your Honor.

4 THE COURT: All right.

5 MS. WALLACE: And 15-58-80, that statute states that
6 when declaratory relief is sought, all persons shall be made
7 parties who have had or claimed any interest, which would be
8 effective by the declaration. The fact that Nationstar ---

9 THE COURT: Now, the mortgage that was filed in
10 connection with this property in Colleton County does not
11 reflect you as being the mortgage holder; do you agree?

12 MS. WALLACE: That is correct.

13 THE COURT: It reflects another entity, Mr. Knobloch's
14 client; is that correct?

15 MS. WALLACE: That is correct, Your Honor.

16 THE COURT: All right. Now, since you tell me it was
17 not transferred to you by Mr. Knobloch's client, explain to
18 me the history of this paper insofar as this mortgage is
19 concerned so that I will understand how you came to be the
20 person who claims to be the owner of this indebtedness.

21 MS. WALLACE: The original note, Your Honor, is
22 endorsed specifically to Flagstar Bank, without recourse,
23 and then Flagstar Bank endorsed it and now Nationstar ---

24 THE COURT: Old South to Flagstar, Flagstar to you?

25 MS. WALLACE: Yes, Your Honor.

1 THE COURT: All right.

2 MS. WALLACE: And the mortgage in South Carolina
3 follows the note. So there has not been an assignment of
4 mortgage filed, but we're not seeking foreclosure; actually,
5 the loan is current right now. It's been current as far as
6 I know; she's not ever been in default in the payment of the
7 loan. She is in Chapter 13 bankruptcy.

8 THE COURT: But she got relief from the bankruptcy
9 court because this was her residence, according to what she
10 puts in her Memorandum.

11 MS. WALLACE: Well, we filed a motion ---

12 THE COURT: To bring the action that she brought. She
13 brought the action against Old South ---

14 MS. WALLACE: Prior. She didn't get permission from
15 the bankruptcy court to bring the action against Old South;
16 I don't have any recollection of that. We filed an action -
17 --

18 THE COURT: What I meant was that the residential
19 property, which is the subject matter of this mortgage was
20 not part of the bankruptcy in the beginning.

21 MS. WALLACE: No, there was no precondition arrearage,
22 but it is being planned upstate that payments are to
23 continue to be made to Nationstar for this mortgage. So to
24 that extent, we filed a proof of claim and we are under the
25 jurisdiction of the bankruptcy court, and I needed to get

1 their permission to even appear to make sure that it is
2 clear that we are not trying to ---

3 THE COURT: Which you did.

4 MS. WALLACE: Exactly. Yes, Your Honor. And so that's
5 what brings us here, because we do have an interest in the
6 note, which I think is clear based on both the bankruptcy
7 action and the fact that I'm holding the original note,
8 which I did show to Ms. Marks during the break. And since
9 the mortgage follows the note, it's Nationstar's position
10 that we have an interest, and unless we are allowed to
11 intervene in this action, our rights will not be protected
12 by Old South, because Old South, number one, they're
13 dissolved, and number two, they have transferred any rights
14 that they have to these documents and would have really no
15 reason to, you know, to ---

16 THE COURT: Well, there's a difference between
17 intervention and dismissal. You ask for both reliefs; I
18 haven't heard from Mr. Knobloch yet, but you asked that you
19 be allowed to intervene and dismiss other parties. I'm not
20 sure that you have standing to raise that. However, that's
21 what you put in your motion.

22 MS. WALLACE: Yes, sir.

23 THE COURT: But this is a motion to intervene,
24 pursuant to Rule 24, is it not?

25 MS. WALLACE: Yes, sir. Under Rule 25, it deals with

1 substitution of parties when the subject of the matter has
2 been transferred.

3 THE COURT: And I think it deals with death and
4 incompetency and a transfer of interest; does it not?

5 MS. WALLACE: Yes, sir, under 25(c).

6 THE COURT: Yes.

7 MS. WALLACE: And that is what I was relying on. Old
8 South has been noticed of our intervention, and I don't
9 think they desire to be in this action any further. You
10 know, obviously, that would be a ruling for the Court, but
11 we would not object if they were dismissed from the action.

12 THE COURT: Very well.

13 MS. WALLACE: Thank you, Your Honor.

14 THE COURT: Mr. Knobeloch, before I hear from the
15 plaintiff on the motion to intervene, because I'm taking
16 them in the order in which the parties agreed upon, do you
17 wish to be heard?

18 MR. KNOBELOCH: Two sentences.

19 THE COURT: Yes, sir.

20 MR. KNOBELOCH: Basically, we join in the relief
21 requested by Nationstar for the reasons stated: Nationstar
22 is named over 40 times in the complaint. Nationstar holds
23 the original note in their possession. And we have reason
24 to believe they are a necessary party.

25 THE COURT: You actually have the note in your file,

1 counsel?

2 MS. WALLACE: Yes, sir. I have it right here, Your
3 Honor, if you would like to see it.

4 THE COURT: You want to hand it up to me?

5 MS. WALLACE: May I approach?

6 THE COURT: Just hand it to my bailiff. He'll bring
7 it right on up here.

8 MS. WALLACE: And the last endorsement is on the back
9 of the note.

10 THE COURT: Ms. Marks, would you like to see what the
11 Court has reviewed?

12 MS. MARKS: I have.

13 THE COURT: You've already looked at the note?

14 MS. MARKS: Yes, I've looked at it.

15 THE COURT: Mr. Knobeloch, would you like to see it?

16 MR. KNOBELOCH: We've reviewed it.

17 THE COURT: Very well. Ms. Marks, I'll be happy to
18 hear from you.

19 MS. MARKS: Thank you, Your Honor. First of all, I
20 have been making payments and investing in maintenance, and
21 so forth, so over \$30,000 ---

22 THE COURT: All right, now. Hold on a second.
23 There's no -- according to -- this is a motion to intervene.

24 MS. MARKS: Right.

25 THE COURT: So we're going to stay on track. We're

1 not going to try the case today. This is purely the motion
2 to intervene and they concede that you're current in
3 payment.

4 MS. MARKS: Okay. On October 12th, 2009, Nationstar
5 sent me a letter that said that the transfer of the mortgage
6 had not been recorded, but to see who the ownership was I
7 could check on the MERS Database. So I checked on the MERS
8 Database and the MERS Database says that the investor is
9 Fannie Mae and the servicer is Nationstar, which implies
10 that they're the investor.

11 They're the ones that have money, you know, equitable
12 interest, allegedly. And also when I pulled up my credit
13 report, my credit report says that as of October 2007, which
14 was the date we signed this mortgage, is that it's a Fannie
15 Mae account and that continues into Nationstar's reporting
16 that it's a Fannie Mae account.

17 So Nationstar is holding itself out that like it is
18 actually the owner of the note, but everything that I'm
19 finding suggests that Fannie Mae was the lender and ---

20 THE COURT: There has been no transfer recorded of the
21 mortgage.

22 MS. MARKS: Right.

23 THE COURT: And notes are not normally recorded, as
24 you know.

25 MS. MARKS: That's correct, yes. /

1 THE COURT: However, she holds the note and she holds
2 the -- the reason I asked you to look at it, she holds an
3 assignment of the note. And the mortgage secures the note,
4 so let's talk about intervention first, Ms. Marks. I
5 understand you've reached the conclusion that you did not
6 believe that they were the holder of the note from your
7 checking; I understand that. You thought they were just the
8 servicer of the note.

9 MS. MARKS: Right. And if you look at the UCC, section
10 36-3-302(c), part 2 where it says, "Except to the extent to
11 transfer, predecessor and interest has right to the holder
12 in due course. A person does not acquire rights of a holder
13 in due course of an instrument taken by purchase as part of
14 a bulk transaction not in ordinary course of business of a
15 transfer."

16 And I submitted as an exhibit to my complaint, an
17 article, dated August 21, 2009, which was right before my
18 account was transferred from Flagstar to Nationstar, and the
19 account -- this article explains that Fannie Mae has asked
20 Flagstar Bank to sell its mortgage servicing rights on
21 delinquent loans owned or guaranteed by the GFC, according
22 to Bloomberg. Fannie Mae wants late or defaulted loans at
23 Flagstar to be serviced and handled by the specialist," the
24 news agency said, quoting people briefed on the matter.
25 "Flagstar would retain its MSR on loans that are current."

1 So -- and then Flagstar ---

2 THE COURT: You did not sue Flagstar, though.

3 MS. MARKS: No, because ---

4 THE COURT: You just sued Old South Mortgage
5 Corporation.

6 MS. MARKS: That's right. Because, really, the crux of
7 what I'm getting at is that here, you know, Flagstar was
8 just the servicer. They didn't lend me the money, and Old
9 South had admitted that in their answer. Flagstar was not
10 the lender either. Flagstar at all times, and according to
11 everything that's out there that I've produced to this
12 Court, Flagstar was just a servicer. So how can a servicer
13 that has no interest in equity have the ability to transfer
14 what it doesn't have?

15 And that's been my argument why these documents are all
16 sham. I mean, basically, we started at the top with this
17 sham. Old South wasn't the lender, didn't have equitable
18 interest in my property. And then we start with the sham
19 that they stamped it "Pay to the order of Flagstar." Well,
20 Flagstar didn't lend either. And now, they want to continue
21 the sham by, "Okay, here's a blank endorsement by Nationstar
22 saying, "Okay, well, now, it's yours." And they slip all
23 this under the table and they don't record anything at the
24 county.

25 And it's true that in South Carolina, you do not have

1 to record assignments. However, according to, you know, the
2 law, in order to be valid, it must be recorded. Otherwise,
3 how can the Court decide the parties' interest?

4 We come in this Court and ---

5 THE COURT: Okay. Now, hold on a second, Ms. Marks.
6 You're trying this case and we're dealing with intervention.

7 MS. MARKS: Well, the intervention, they want to
8 intervene ---

9 THE COURT: Well, tell me your position on
10 intervention.

11 MS. MARKS: My position is ---

12 THE COURT: --- instead of trying to ---

13 MS. MARKS: --- on intervention ---

14 THE COURT: --- tell me ---

15 MS. MARKS: --- is that they don't have ---

16 THE COURT: Hold on. Only one of us can talk at a
17 time. I don't interrupt you and you're not going to
18 interrupt me.

19 MS. MARKS: Yes, sir.

20 THE COURT: We understand each other?

21 MS. MARKS: Yes, Your Honor.

22 THE COURT: So don't talk over me, because she can't
23 take that down. And that's being discourteous to everybody.

24 MS. MARKS: Yes, Your Honor.

25 THE COURT: Now, when I'm speaking, you stop. When

1 you're speaking, I'll listen. We understand each other?

2 MS. MARKS: Yes, Your Honor.

3 THE COURT: All right. Proceed. Now what is your
4 position on intervention?

5 MS. MARKS: My position is that they lack legal
6 standing because there is no real proof that there was a ---

7 THE COURT: How would you be prejudiced if I made
8 Nationstar a party to this matter? I understand you don't
9 agree with the dismissal of Old South. I understand that
10 you don't agree with the dismissal of -- although I'm not
11 sure you can get a judgment against John Doe's 1 through 100
12 and fictitious corporations 1 through 100 when you can't
13 serve them. And you didn't ask this Court for permission to
14 do so otherwise, such as by publication. So alleging what
15 interest, if any, these people might have. So I'm not sure
16 you can get relief there, but that's not before me today.

17 What is before me today is just the motion of
18 Nationstar Mortgage to intervene. How would you, Ms. Marks,
19 be legally prejudiced if this Court granted intervention?

20 MS. MARKS: Delay of proceedings.

21 THE COURT: How would it delay it?

22 MS. MARKS: In the even they were to file more ---

23 THE COURT: See, this is a 2012 case, so I don't see
24 this being unnecessarily delayed in any way. You would need
25 an answer from them if I allowed them to do it, and you

1 would know their position, and they would be subject to your
2 discovery requests. You can file interrogatories, serve it
3 on them. You can serve them with requests to admit, if they
4 are a party. You can also serve a request to produce on
5 them; do you understand that?

6 MS. MARKS: Yes, Your Honor, I do.

7 THE COURT: All right. I realize you're not a member
8 of the Bar, are you, Ms. Marks?

9 MS. MARKS: No, Your Honor, I am not.

10 THE COURT: All right. So again, my question to you
11 on this motion, because we've used up now our time, and I
12 want to make sure I've heard you, is what is your position
13 on why you would, other than delay, why you would be legally
14 prejudiced if the Court made Nationstar Mortgage a party to
15 this action?

16 MS. MARKS: If the inclination of the Court is to
17 potentially make them a party, but if the inclination of the
18 Court is not to ----

19 THE COURT: I'm not asking you what my inclination is.
20 I'm asking you to tell me how you would be legally
21 prejudiced?

22 MS. MARKS: I would only be caused more expense and
23 more ---

24 THE COURT: What expense would you be caused if they
25 become a party? They want to be a party. You don't even

1 have to serve them. So what expense are you talking about?

2 MS. MARKS: It costs time and money, and I'm full-time
3 employed.

4 THE COURT: What do you do?

5 MS. MARKS: And plus ---

6 THE COURT: Where are you employed?

7 MS. MARKS: I'm employed at Motley Rice, LLC.

8 THE COURT: All right.

9 MS. MARKS: They were -- I'm sorry.

10 THE COURT: Anything else, Ms. Marks?

11 MS. MARKS: Well, basically, the whole point is they
12 were not a party to the origination of the loan. This is
13 more sounding in contract. And you know, that was ---

14 THE COURT: And that's a matter that can be taken up at
15 a hearing, but right now, I'm trying to make sure we've got
16 all the proper parties before the Court; you understand
17 that?

18 MS. MARKS: Yes, Your Honor.

19 THE COURT: Thank you very much. Anything in reply?

20 MS. WALLACE: No, Your Honor.

21 THE COURT: I disagree with you, counsel, about
22 automatically whether or not Rule 24 or 25, I think your
23 motion purely is to intervene. Listen carefully, because
24 you're going to draw this Order and you're going to send a
25 copy to Ms. Marks.

1 Now, Ms. Marks, I'm granting the motion, because I
2 definitely think I need to have all necessary parties before
3 the Court, and I don't think it necessary -- you brought the
4 action and I want to get as much information as possible
5 from everybody. I'm not dismissing anybody from this action.
6 Now, I question very much whether or not Ms. Marks can get
7 any judgment against these fictitious corporations or John
8 Doe's, because she hasn't served anybody, so they haven't
9 been put on notice and they haven't had any opportunity to
10 be heard. And you don't just name them in a complaint and
11 say I'm asking for relief from unknown people. You have to
12 do more than that, and that may require that you do seek
13 legal advice about your lawsuit, but that's not before me
14 today.

15 Now, let me make sure, Ms. Wallace that you understand
16 my ruling. I'm granting Nationstar Mortgage's motion to
17 intervene. You've got 30 days from today -- first of all,
18 I'm going to let them be a defendant to the action you've
19 already brought. You follow me? So all of the allegations
20 you've alleged against Old South and the John Doe's, apply
21 now to Nationstar; you understand?

22 MS. MARKS: Yes, Your Honor.

23 THE COURT: All right. You have 30 days from today to
24 answer her complaint. I decline to dismiss any other
25 parties on your motion to intervene, which I don't think is

1 proper anyway. I don't think just because you alleged you
2 were there because she questions the transfer of this
3 interest, and I think that's a matter that should be subject
4 to an evidentiary hearing, and not done on a motion for
5 intervention.

6 MS. WALLACE: Yes, Your Honor.

7 THE COURT: You understand my ruling, Ms. Marks?

8 MS. MARKS: Yes, Your Honor.

9 THE COURT: You understand my ruling, Ms. Wallace?

10 MS. WALLACE: Yes, Your Honor.

11 THE COURT: You understand my ruling, Mr. Knobeloch?

12 You're going to be right here at the tea party with me.

13 MR. KNOBELOCH: Yes, Your Honor.

14 THE COURT: All right, now, you will prepare that
15 Order, Ms. Wallace. You will send it to Ms. Marks and Mr.
16 Knobeloch. You're going to send it to me within seven days
17 of today. Send it to me at P.O. Drawer 470, Walterboro,
18 29488. You will copy all parties of record on your
19 transmittal to the Court.

20 Now, if she drafts an Order inconsistent with what I've
21 put on the record, Becky is making a record of it; then you
22 have to immediately notify in writing and copy them why you
23 think it's inconsistent. Ms. Marks, you do not get the
24 chance to argue this motion again, and I want to make sure
25 you understand that. Only if her Order is inconsistent with

1 the court reporter's record.

2 MS. MARKS: Yes, Your Honor.

3 THE COURT: If not, I will assume after I receive the
4 Order that it accurately portrays the ruling I've placed on
5 the record this day. I will expect your Order within seven
6 days of today at that address. You can e-mail it to me.--
7 do you have an e-mail address, Ms. Marks?

8 MS. MARKS: I do, Your Honor.

9 THE COURT: All right. You get her e-mail address.
10 Make sure you have it, Lori, do you have Ms. Marks' e-mail
11 address?

12 CLERK: Yes, Your Honor, I do.

13 THE COURT: All right. You can e-mail it to me at
14 pbuckncrj@sccourts.org and give my law clerk a working copy,
15 because she's making notes as I'm speaking, as well as the
16 court reporter making a verbatim transcript. That would be
17 pbucknerlc@sccourts.org. Include a self-addressed, stamped
18 envelope and I'll expect you to file an answer to her
19 complaint within 30 days of today. Now, I don't want a
20 motion to dismiss; I want an answer.

21 MS. MARKS: Yes, Your Honor.

22 THE COURT: Now, Ms. Marks, your next motion is a
23 motion for summary judgment. Because I've just added a
24 party, I'm going to give you the chance to see her answer,
25 because I don't think it's fair for you to argue a motion

1 for summary judgment when I've just added a party, because
2 you might want to include in your motion for summary
3 judgment, once you get her answer, and I'm requiring her to
4 answer within 30 days; do you understand that?

5 MS. MARKS: Yes, Your Honor.

6 THE COURT: Would you like to continue your motion for
7 summary judgment so that you might amend it if you so desire
8 after 30 days have expired?

9 MS. MARKS: Yes, Your Honor.

10 THE COURT: Very well. Then I will continue it for you
11 today. We will hear it at a future date. Ms. Wallace, I
12 will expect your Order within seven days. Any questions
13 about the proposed order procedure from counsel for the
14 moving party?

15 MS. WALLACE: Yes, Your Honor. The only question I had
16 was whether ---

17 THE COURT: Lift your head up, Ms. Wallace. Don't put
18 your head down talking into your file. What is it?

19 MS. WALLACE: The only question I have is whether or
20 not I needed to e-mail Ms. Marks prior to sending it to you
21 or copy her when I send it to you?

22 THE COURT: You prepare the Order. You send her a
23 copy. It's her job to notify me if she thinks your Order is
24 inconsistent with my ruling on the record. My law clerk is
25 taking notes. I'm making a note. And the court reporter is

1 making a verbatim record. If your Order is inconsistent
2 with my ruling, either Mr. Knobloch or Ms. Marks has to
3 copy you back, either by e-mail or by written form, however
4 you transmit it, and send it to me and say "This is why I
5 think it's inconsistent." I will then decide once I hear
6 that and I'll even check the court reporter's record and I
7 will check my law clerk's notes and I will check my notes.
8 Then, I will make the decision; do you understand?

9 MS. WALLACE: Yes, Your Honor.

10 THE COURT: Good. Any questions about the proposed
11 Order procedure from you, Ms. Marks?

12 MS. MARKS: No, Your Honor.

13 THE COURT: Any question about the proposed Order
14 procedure from you, Mr. Knobloch?

15 MR. KNOBELOCH: No, Your Honor.

16 THE COURT: Now, Ms. Marks, because I have just added a
17 party, and I want you to put that in there, Ms. Marks has
18 leave to amend her motion for summary judgment after she
19 receives your answer to include you, since you are now a
20 party to this action, in her motion, that is Nationstar
21 Mortgage; do you understand, Ms. Wallace?

22 MS. WALLACE: Yes, Your Honor.

23 THE COURT: Very well. I think that now covers
24 everything in regards to that and I will hear the motion for
25 summary judgment at a future date.

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Court of Common Pleas Non-Jury for Colleton County, South Carolina, on the 18th day July of 2012.

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

August 1, 2012


Rebecca H. Hill,
Official Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON) CASE NO.: 2012-CP-12-00262

MELISSA MARKS,)

PLAINTIFF,)

v.)

TRANSCRIPT OF RECORD

OLD SOUTH MORTGAGE,)
NATIONSTAR, JOHN DOE, 1 - 100,)
AND FICTITIOUS CORPORATIONS)
1 - 100,)

DEFENDANTS.)

JANUARY 28th, 2013
COLLETON COUNTY COURTHOUSE, SOUTH CAROLINA
BEFORE THE HONORABLE PERRY M. BUCKNER, III, JUDGE.

APPEARANCES:

MS. MELISSA J. MARKS
209 PRESIDENTIAL COURT
ROUND O, SC 29474
PRO SE PLAINTIFF

MS. HARRIET POLLITT WALLACE, ESQUIRE
ROGERS, TOWNSEND & THOMAS
SYNERGY BUSINESS PARK
220 EXECUTIVE CENTER DRIVE
COLUMBIA, SC 29210
ATTORNEY FOR NATIONSTAR

Rebecca H. Hill
Official Court Reporter

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1 THE COURT: This is 2012 at 262. Present before me
2 this morning is Melissa Jean Marks, who is pro se, and who
3 is the plaintiff in this matter. This is a motion which had
4 dual titles. The plaintiff withdraws the plaintiff's motion
5 for summary judgment and motion for leave to amend the
6 complaint. It was filed on October 15th, 2012. Ms. Marks
7 was present; also present was Ms. Wallace, who is here on
8 behalf of Nationstar.

9 All right, Ms. Marks, this is your motion. I've read
10 it, and as I read it, I remembered the situation that
11 occurred earlier in Court concerning this. It's, first of
12 all, your motion only to amend, which both of you know is
13 clearly governed by the rules. I'll be happy to hear from
14 you. You asked for 15 minutes. I've read your motion.
15 Your 15 minutes begin now. If you'd like to come to the
16 rostrum where the microphone is on, you can use that and
17 bring your file.

18 MS. MARKS: Your Honor, this is a declaratory judgment
19 action against the originator of the mortgage and note, Old
20 South Mortgage Corporation. I'm seeking a declaration that
21 the mortgage and note are invalid and unenforceable because
22 they falsely identify Old South as the lender and Old South
23 admitted that they didn't lend; and I'm also requesting
24 relief that is in the complaint.

25 But I move before the Court for an Order granting my

1 motion to amend and I seek the Court's ruling on whether
2 Fannie Mae is the necessary party who must be joined as a
3 matter of law. Pursuant to Rule 19, on whether permissive
4 joinder of Fannie Mae should be granted pursuant to Rule 20.

5 In consideration of my motion, the developments in my
6 case, and the facts and circumstances at present, I
7 respectfully request time to read this aloud so that I'll
8 try to be on point and precise.

9 In May through July of 2012, Nationstar intervened in
10 this action falsely claiming it was the founder of the
11 mortgage, slandering my property title and note, claiming
12 that as the owner and real party of interest, Nationstar is
13 a necessary party.

14 In August, I think the Court's Order was entered
15 granting Nationstar permission to intervene, based on
16 Nationstar's claim that it was the owner of the mortgage and
17 real party of interest, as it clearly states in the Order.
18 And in its discovery responses, Nationstar responded under
19 oath on October 4th that Fannie Mae owns the note and
20 mortgage.

21 On October 15th, without any undue delay, I filed my
22 motion for leave to amend to join Fannie Mae as a defendant
23 so that I may serve Fannie Mae with a summons, along with my
24 original complaint and ---

25 THE COURT: I understand that completely, Ms. Marks.

1 You don't need to read me that history, because I remember
2 we were here on October the 4th, weren't we, Ms. Marks?

3 MS. MARKS: Yes.

4 THE COURT: And you were present in the courtroom,
5 along with attorneys for the defendants, at which time, you
6 learned, according to your motion, which I have now read for
7 the first time, that Fannie Mae was actually a party in
8 interest and the holder of this note; is that right?

9 MS. MARKS: No, I don't recall Fannie Mae ever being
10 mentioned in that transcript.

11 THE COURT: Well, your motion says, and I apologize if
12 I misconstrued what I thought you just said to me.

13 MS. MARKS: And I have attached the exact quotes from
14 the transcript.

15 THE COURT: I understand that and I'm not trying to --
16 Ms. Marks, nobody is trying to misrepresent your words. I'm
17 just asking a question. If it's not correct, you can tell
18 me. You don't have to read a transcript to respond. Okay?
19 You say in your motion that on October 4th, Nationstar,
20 which is a Fannie Mae loan servicer, stated in response to
21 your interrogatories that Fannie Mae was the owner of the
22 note and mortgage.

23 MS. MARKS: That was, yes, subsequent to the July
24 hearing and subsequent to them getting the Order.

25 THE COURT: Is the date significant?

1 MS. MARKS: Yes, it's significant because in order to
2 get permission to intervene in this Court, they falsely
3 claimed that they were the owner. They did not come before
4 this Court and say, "We're here for Fannie Mae. Here's the
5 documents that show proof that we're here as the servicer.
6 That we actually have a contract," which that's my motion to
7 compel, which we will talk about that later. They have
8 refused to show me any proof that they're even the servicer
9 of this contract.

10 So they came in claiming to own it so they could avoid,
11 I think, so they could avoid all those questions. "Where's
12 your contract? Show me where you are the servicer, then."

13 THE COURT: But what you want to do is you want to
14 amend your complaint for the sole purpose of substituting
15 the Federal National Mortgage Association, which is doing
16 business as Fannie Mae, as a defendant, in place of the fact
17 that you had as defendants when I had you before me earlier,
18 John Doe's 1 - 100, or whatever, and fictitious corporations
19 1 - 100; isn't that the essence of this motion?

20 MS. MARKS: Yes, I want to replace them now that I have
21 a statement under oath and answer to interrogatories that
22 Fannie Mae is the holder.

23 THE COURT: I'm going to get to that, but we're on the
24 motion to amend right now.

25 MS. MARKS: Yes.

1 THE COURT: Isn't that what you're asking me to do?

2 MS. MARKS: Yes, in the motion to amend, that is the
3 extent of what I would like to do.

4 THE COURT: All right. Is there anything else you
5 would like to tell me in support? I think it's governed --
6 although you do mention the rules involving joinder, we're
7 actually talking about an amended pleading, even though it
8 is a different party, and I think that is Rule 15; do you
9 agree?

10 MS. MARKS: Yes.

11 THE COURT: All right. And Rule 15 says, if my
12 language and memory is correct, that "after 30 days, you
13 have to get Court approval to amend." So it has to be by
14 leave of Court or by written consent, which apparently you
15 don't have, or I wouldn't have an attorney sitting over
16 there at opposing counsel table, and that "leave shall be
17 freely given when justice so requires and does not prejudice
18 any other party." Would you agree that that's the rule by
19 which I'm bound for purposes of this motion?

20 MS. MARKS: Yes -- yes, Your Honor.

21 THE COURT: All right. Anything else you want to tell
22 me?

23 MS. MARKS: Well, I did have some things since they are
24 going to oppose. I did have ---

25 THE COURT: And you will get the chance in reply.

1 MS. MARKS: Okay.

2 THE COURT: If you need it. Anything else you want to
3 tell me now? I think I understand your motion.

4 MS. MARKS: Okay.

5 THE COURT: Thank you very much. Take a seat for me.
6 All right, Ms. Wallace, your time begins now. And so you'll
7 know, Ms. Marks, because my law clerk is keeping up with the
8 time, you still have another eight minutes in reply. Okay?

9 MS. MARKS: Thank you, Your Honor.

10 THE COURT: Yes, ma'am. Happy to hear from you. You
11 want to come to my podium or do you think you can speak up
12 loudly enough right there?

13 MS. WALLACE: I will speak up loud. I'm Harriet
14 Wallace. I'm here on behalf of Nationstar. We have filed a
15 return to the motion to amend. I know that you were unable
16 to locate the actual motion, so I wanted to make sure that
17 you knew we did file a return.

18 THE COURT: Why do you oppose her motion to amend?

19 MS. WALLACE: We oppose the motion to amend because it
20 has been brought in bad faith and it -- the motion to amend
21 is futile. It was brought in bad faith in order to cause
22 undue delay. The motion is futile because this case has
23 underlying bankruptcy, it's a Chapter 13 case, in which it
24 was judicially determined that Nationstar was the proper
25 party to enforce the note and mortgage in the schedule and

1 in the confirmed plan.

2 Because of that, Nationstar is a proper party and
3 Fannie Mae has no reason -- there's no reason to bring
4 Fannie Mae into this action, because they serve the servicer
5 and can represent the interest. Also ---

6 THE COURT: Are you saying I'm bound because they were
7 the servicer?

8 MS. WALLACE: You're bound because of the bankruptcy
9 Order, which judicially determines that Nationstar is the
10 proper party to enforce the note and the mortgage.

11 THE COURT: And where is this Order; in your Return?

12 MS. WALLACE: Yes, sir. It is in my Return. It is
13 the schedule filed by Ms. Marks constitutes judicial
14 estoppel, as well as the confirmed plan.

15 THE COURT: And who signed the Order and what date?

16 MS. WALLACE: John Waites signed the Order. There's a
17 Document 12 in the bankruptcy action ---

18 THE COURT: Well, let me ask you this, does the Order
19 by its terms, which you haven't quoted it to me yet,
20 specifically say anything concerning this action, which is
21 obviously separate from any bankruptcy action, a state
22 action brought, does the Order say that somehow -- does it
23 address this issue or do you think it's implicit in the
24 Order because they were the servicer for Fannie Mae that I'm
25 bound by that Order?

1 MS. WALLACE: It's been well-established in case law
2 that if the confirmed plan and the schedule filed in a
3 bankruptcy action constitute res judicata, in re: Fullam,
4 which decided 2012 Bankruptcy, Lexis 4704; in re: Neal,
5 which is 459 B.R. 612. I brought ---

6 THE COURT: Now, you're citing me cases that I haven't
7 had a chance to read. What do those cases hold?

8 MS. WALLACE: They hold that a confirmed plan and this
9 is all in bankruptcy, constitute res judicata in determining
10 who has the proper standing to enforce the note and the
11 mortgage.

12 THE COURT: Very well. So you think the matter is res
13 judicata because of the bankruptcy judge's Order?

14 MS. WALLACE: Yes, among other things.

15 THE COURT: And therefore, you think that's the reason
16 you can oppose the motion to amend?

17 MS. WALLACE: Because it would make the motion to amend
18 futile. In fact, the bankruptcy court didn't even know that
19 the state court action had been brought until the first
20 motion for summary judgment had been filed, which is why we
21 had to get the stay modified in order to intervene.

22 THE COURT: What is the status of the bankruptcy action
23 now?

24 MS. WALLACE: She's paying on the note and the
25 mortgage.

1 THE COURT: I see. And doing it through the bankruptcy
2 court?

3 MS. WALLACE: Yes, sir.

4 THE COURT: I see. Anything else you want to tell me?

5 MS. WALLACE: Yes. And she also wouldn't have standing
6 to bring the action against Fannie Mae, because only the
7 trustee has standing to bring an action concerning property
8 of the estate, including any cause of action of the bankrupt
9 debtor that arise before the bankruptcy is filed or during
10 the bankruptcy. I do have the case, Brockington v. Jones,
11 that I can hand up to Your Honor.

12 THE COURT: All right. Give me the site. And have you
13 given Ms. Marks a copy?

14 MS. WALLACE: I was about to give her a copy.

15 THE COURT: Give her a copy.

16 MS. WALLACE: The site is 2007 U.S. District Lexis
17 96248, and it's Brockington v. Jones. This case involved
18 very similar circumstances. It wasn't a motion to amend,
19 but it was a pro se litigant who had filed a bankruptcy
20 without disclosing a cause of action that it had. When
21 barred from bringing the action on the basis that the
22 trustee owned all of the causes of action of the bankrupt
23 debtor.

24 THE COURT: Was this a ---

25 MS. WALLACE: And also that the claim be barred by

1 judicial estoppel because of no representations in the
2 bankruptcy court.

3 THE COURT: I see. I realize it wasn't a motion to
4 amend in the Brockington case. Does it matter whether this
5 was a Chapter 7 or a Chapter 11?

6 MS. WALLACE: Well, it depends to the extent that not
7 all chapters have confirmed plans. The 13 is a
8 reorganization chapter in which the debtor is allowed to
9 make up past payments, through payments, and keep their ---

10 THE COURT: If there were a reorganization pursuant to
11 that chapter, do the cases that you cite me still stand for
12 the proposition, regardless of what type of bankruptcy
13 action is filed? That it's still res judicata and the
14 trustee in bankruptcy is the only person who can bring the
15 action on behalf of the note?

16 MS. WALLACE: The other cases didn't mention the
17 standing issue because they were bankruptcy actions, so it
18 was our motion for relief from stay is typically when the
19 issue would be raised and that would be with Judge Waites,
20 and he has said numerous times that a confirmed plan is not
21 only res judicata, it's also a brand new contract between
22 the debtor and whoever they claim is the secured party, and
23 the debtor can't then go back then and change their mind as
24 to who are the proper parties to receive payment, because it
25 is a judicial Order.

1 THE COURT: Thank you very much. All right, Ms. Marks,
2 I'll be happy to hear from you in reply. What I'm being
3 told is obviously the bankruptcy Order makes this res
4 judicata and you do not have standing to bring this action
5 and that it would have to be done by the trustee. I'll be
6 happy to hear from you now in reply to that argument.

7 MS. MARKS: First of all, my Chapter 13 plan document
8 states in Section Five that I have not waived any rights
9 that does not adversely affect any of my rights and that any
10 causes of action are owned by me, or anyone else in the
11 bankruptcy. It's a voluntary plan and there was no
12 arrearage on the mortgage, and so the mortgage was exempted
13 from the plan. The trustee is not making payments to
14 Nationstar. I'm not making my payments to the trustee and
15 the trustee is not making payments to Nationstar.

16 THE COURT: So you don't think that, number one, this
17 is a standing issue because of the language in your plan ---

18 MS. MARKS: Right.

19 THE COURT: --- and you don't think ---

20 MS. MARKS: And I got advice from my attorney that I
21 can bring this.

22 THE COURT: I'm bound by the advice you received from
23 your attorney?

24 MS. MARKS: No, Your Honor.

25 THE COURT: I don't think so, Ms. Marks, but I

1 understand that. You don't think it's a waiver.

2 MS. MARKS: May I go through the notes that I prepared
3 so that you can ---

4 THE COURT: If you think it will be necessary for me to
5 hear them?

6 MS. MARKS: Yes, Your Honor.

7 THE COURT: You have five minutes. Proceed.

8 MS. MARKS: The validity of Nationstar's claim of
9 ownership before the bankruptcy has not been investigated or
10 litigated before the bankruptcy court, so the doctrines of
11 estoppel and res judicata do not apply in this case. I
12 didn't litigate it there. I didn't subject it to the Court.

13 I only reported to the bankruptcy court that I had been
14 making payments to Nationstar. It was Nationstar and its
15 attorney at the time who filed a Bankruptcy Form 10 proof of
16 claim alleging that it was the creditor, which is
17 interpreted as the owner of the debt, and supplied with its
18 proof of claim, a copy of the mortgage and note. I didn't
19 personally see that until weeks after my Chapter 13 was
20 confirmed.

21 In addition, the copy of the note attached to the proof
22 of claim did not include a copy of the alleged endorsement
23 blank from Flagstar Bank. The copy was obviously forged or
24 invalid, because a true and correct copy of original note
25 would not have a typographical error in the address below

1 the bar code at the bottom of page three. The copy says 229
2 Presidential Court, but the alleged original says 209
3 Presidential Court in the same spot. I called and reported
4 this to the FBI and it is under investigation and will
5 eventually be dealt with in the bankruptcy court.

6 When Nationstar admitted to me in this action that
7 Fannie Mae is the owner and that the original note was not
8 in Nationstar's possession when it filed the proof of claim,
9 Nationstar, in effect, also admitted that proof of claim is
10 a fraud, because Nationstar falsely identified itself as a
11 creditor, instead of Fannie Mae, and Nationstar must have
12 known it was not the owner because it didn't have the note
13 at the time.

14 I cannot be justly bound by Nationstar's fraud upon me
15 in the bankruptcy court and the bankruptcy court filings do
16 not permit Nationstar to steal a mortgage and note payments
17 from Fannie Mae or any other party who claims to own them
18 and be entitled to them. In its opposition, Nationstar
19 claims that the bankruptcy filings are a new contractual
20 agreement between me and Nationstar, which is false and this
21 is why.

22 Nationstar acknowledged in writing that it does not
23 have any new agreement. Weeks after my bankruptcy claim was
24 confirmed, when Nationstar wrote letters to the Department
25 of Consumer Affairs in November and December of 2011, in

1 response to my complaint saying Nationstar does not provide
2 contractual statements or online access to customers that
3 are involved in bankruptcy, unless the debt was reaffirmed.
4 And since the debt was not reaffirmed through the bankruptcy
5 court, Nationstar has refused my monthly billing statements;
6 they refused to reinstate them.

7 My monthly billing statements, payments received, and
8 online account access. And that was the red flag which
9 prompted me to personally investigate and led to my
10 discovering all of the fraud involved with the mortgage
11 since day one of the origination.

12 And then I filed this action seeking justice and
13 relief, and those letters are attached to my complaint as
14 exhibits. I do have them here today if you would like to
15 review them. Nationstar knows that I can close my Chapter
16 13 or amend my plan at any time, because it is voluntary.
17 The mortgage was exempt, as I explained; the payments are
18 not going through the trustee.

19 Nationstar was only subject to the automatic stay,
20 which it violated by filing a notice in this court on May
21 9th, prior to obtaining a modification of stay from the
22 bankruptcy court. Nationstar also filed a motion for
23 clarification regarding the stay with the bankruptcy court
24 on May 9th, and in both notices Nationstar falsely claimed
25 that it was the current holder of the note.

1 Ms. Wallace, on behalf of her client, claimed that
2 Nationstar was the current holder, but she could not have
3 seen the note to verify that prior to these May 9th filings
4 because the note was in possession of Fannie Mae's
5 custodian, Bank of New York, Mellon, at the time.

6 According to Nationstar, they did not obtain the note
7 in question until May 31st.

8 THE COURT: Ms. Marks, I'm more than willing to listen
9 to you, but this is a motion to amend.

10 MS. MARKS: I know, but I'm explaining ---

11 THE COURT: Just a moment. One of us is going to talk
12 at a time. When I ask a question, you stop talking. Do we
13 understand each other?

14 MS. MARKS: Yes, Your Honor.

15 THE COURT: Very well. Now, the entire history of this
16 case does not need to be recited in order for me to
17 determine the issue for a motion to amend. I appreciate the
18 fact that you are prepared. I appreciate the fact that you
19 want to read to me. However, you can do that to me in a
20 proposed Order, just as well as you can orally, when I don't
21 have people in the courtroom waiting. You've used all of
22 your allotted time, so let's close it out now. Okay? You
23 asked for 15 minutes and you've been given 15 minutes. Is
24 there anything else in reply that you would like to tell me?

25 MS. MARKS: I didn't bring anything in bad faith

1 because I had complied with Rule 19(c) pleading reasons for
2 nonjoinder. I attached everything to the court, explained
3 to everybody that might have a claimed interest. I
4 explained why they weren't joined, so there was no bad faith
5 here and there's no undue delay, because as soon as they
6 admitted that they believed Fannie Mae claims to own the
7 mortgage, I immediately reported that to the court and
8 sought to amend my complaint.

9 I do not believe that those cases have anything to
10 do -- because this is a State Court action and it's pursuant
11 to State law and it was not adjudicated. My claims were not
12 reviewed and adjudicated, so I do not believe that we have
13 any res judicata, or estoppel here, because I did not have
14 an opportunity to go before the bankruptcy court. I did not
15 do that. I chose to bring my claim here and subject this
16 matter to this forum. Thank you, Your Honor.

17 THE COURT: Thank you very much. I understand this
18 matter completely. You may be seated. I'm going to ask
19 that both sides on the motion to amend submit a proposed
20 Order to me. Please listen carefully and write down these
21 instructions so that you will know what to do. Please
22 submit your Orders to me at P. O. Drawer 470, Walterboro,
23 29488. Please copy opposing counsel or opposing party on
24 any transmittal of your Order to the Court. I'll expect
25 your Orders within seven days of today. To comply with

1 time, you may e-mail your proposed Orders. If you do,
2 please send my law clerk a working copy. You will e-mail
3 him at pbucknerlc@sccourts.org. My e-mail address is
4 pbucknerj@sccourts.org.

5 Even if you e-mail me, you'll be required to mail me a
6 self-addressed, stamped envelope with sufficient postage
7 affixed thereto for the return of your proposed Order for
8 filing in service with the Clerk. So regardless of whether
9 you choose e-mail to comply with the seven days, you will
10 still need to send me an envelope. Anything that you e-mail
11 to the Court, or my law clerk, you must copy opposing party,
12 or all parties of record.

13 I will expect those Orders on the motion to amend
14 within seven days of today. Any questions about the
15 proposed order procedure from you, Ms. Marks, the moving
16 party?

17 MS. MARKS: No, Your Honor.

18 THE COURT: Any questions about the proposed order
19 procedure, Ms. Wallace, the opposing party?

20 MS. WALLACE: No, Your Honor.

21 THE COURT: Very well.

22 (BRIEF PAUSE IN THE COURTROOM AS THE NEXT MOTION IS
23 REVIEWED BY THE COURT.)

24 THE COURT: That brings us now to number 18 on the
25 motions roster, which is the motion to compel. I have that

1 motion, unlike your motion to amend, which we've not found,
2 Ms. Marks, because the file is so thick. I have it in front
3 of me and I have reviewed your motion to compel. Happy to
4 hear from you at this time on your motion to compel, and by
5 the way, for the record, Becky, this motion to compel was
6 filed on November 13th, 2012. It is Ms. Marks's motion, the
7 plaintiff's motion. Happy to hear from you, Ms. Marks.

8 MS. MARKS: I am here to move the Court for an Order
9 compelling Nationstar to completely answer my discovery
10 requests and for an Order of sanctions against Nationstar in
11 the amount of three-o-eight-seventy-four, which is a
12 conservative estimate of my costs incurred in bringing this
13 motion; and upon request, I can show how I calculated that
14 number to the Court.

15 THE COURT: Did you file an affidavit with your motion
16 concerning this?

17 MS. MARKS: I did not file an affidavit, Your Honor.

18 THE COURT: Go ahead.

19 MS. MARKS: My discovery requests are well-related and
20 relevant to proving true the allegations in my complaint.
21 For example, paragraph 55 states, "Nationstar may not have
22 legal standing to collect mortgage payments from me or
23 foreclose on my home." Paragraph 60 states, "Plaintiff's
24 substantial risk of being subjected to an unlawful
25 foreclosure based on the servicer's fraudulent

1 misrepresentation and forged documents is not mere
2 speculation, but it is a reality, based on the facts and
3 wealth of evidence that plaintiff discovered and read in the
4 public domain."

5 And paragraph 165 states, "The mortgage and note are
6 unconscionable, because no single bank or mortgage company
7 has assumed any appreciable risk of loss that would justify
8 allowing a company that is neither the lender nor the lawful
9 lien holder against plaintiff's home, Nationstar, to
10 potentially collect a financial windfall from plaintiff over
11 the next 25 years or foreclose on behalf of invisible
12 entities."

13 Basically, the Court warned Nationstar at the hearing
14 on the motion to intervene that I would be able to get
15 discovery, and now Nationstar is complaining to the Court
16 about the expense of it, although it would not be that
17 expensive to simply answer my interrogatories, which it has
18 refused to do.

19 And therefore, I move the Court for an Order compelling
20 Nationstar to completely answer my interrogatories number
21 six, seven, nine, ten, eleven, thirteen, and twenty-five,
22 and my request for production of documents number one, four,
23 five and six; and you will find those attached to my motion
24 as exhibit one.

25 THE COURT: I see them.

1 MS. MARKS: And to make this simpler, Your Honor, I
2 would give you a very, very brief description and
3 clarification of the information that I would like for you
4 to compel. Would you like for me to go one issue at a time,
5 or would you like for me to just read and go back?

6 THE COURT: I have no idea. It's your time. You use
7 it effectively as you desire.

8 MS. MARKS: Okay. To admit that the alleged stamped
9 endorsement and blank from Flagstar Bank on note is the only
10 evidence that Nationstar has in its possession that the note
11 was transferred and that no other unrecorded assignments of
12 mortgage exists to its knowledge. This will address the
13 issue of the collateral file that I raise in my request for
14 production number one.

15 To produce credible documents showing either my name,
16 my address, and/or my account number wherein Fannie Mae has
17 granted Nationstar written permission to service my account
18 specifically, and any and all documents that evidence,
19 describe, and explain Nationstar's alleged servicing rights,
20 duties, and responsibilities and compensation that are
21 applicable to my account specifically.

22 Since Nationstar initially stated it was not merely
23 servicing the account and that I had incorrectly referred to
24 it as the servicer, I wish to see proof about its alleged
25 servicing rights of my account specifically.

1 To produce a copy of the e-mail Nationstar allegedly
2 sent to the bankruptcy.administration@fanniemae.com on May
3 29th, 2012, that is under interrogatory number twelve,
4 request for production five and six. To either admit that
5 Nationstar did not pay any consideration to obtain my
6 account or to disclose the exact dollar amount in
7 consideration it paid, and to whom the consideration was
8 paid, the date it was paid, and the credible documents
9 showing the truthfulness and accuracy of its response.

10 I'm attempting here to determine whether Nationstar has
11 any interest in equity in my property, because I do not
12 believe it does. To admit or deny -- that was pursuant to
13 interrogatory six, request for production six.

14 To admit or deny that Flagstar transferred mortgage
15 servicing rights to Nationstar as part of a bulk transfer,
16 along with a number of other mortgages, during the time
17 period of August 2009 to October 2009; see interrogatory
18 number seven.

19 To explain to whom mortgage payments toward principle
20 and interest have been disbursed from 2009 to the present
21 and to produce the accounting records showing the
22 truthfulness and accuracy of its explanation. If I see the
23 money trail, I will find out what is really going on and
24 then I will report that to the Court. Interrogatory number
25 nine, request for production number six.

1 To explain to me in detail exactly how Nationstar
2 supposedly being compensated by Fannie Mae or any other
3 party to service my account specifically and to produce
4 records showing the truthfulness and accuracy of its
5 explanation. Again, here I am attempting to determine
6 whether Nationstar has any interest in equity. That's
7 interrogatory number ten and eleven, and request for
8 production number six.

9 To answer interrogatory thirteen which states, "Do you
10 have express written permission of Fannie Mae and other
11 entities or persons that may claim to have an interest in
12 the subject mortgage and note to appear and defend their
13 interest on their behalf in this particular action? If so,
14 list the documents in which such permission was granted,
15 including the dates of such document, and to produce those
16 documents listed in interrogatory thirteen and any other
17 documents that evidence the truthfulness and accuracy of its
18 response." And that's request for production number five
19 and six.

20 To disclose the name of the employee at Nationstar who
21 produced the copy of the note that Nationstar filed,
22 attached to its proof of claim, Form 10, in my Chapter 13;
23 and that's interrogatory number twenty-five.

24 Since Nationstar has refused to admit that it is not a
25 true and correct copy of the original note that is attached

1 to the Form 10, I would like to depose the person at
2 Nationstar who produced this note and ask them questions by
3 written questions to determine, "Where did you get this?
4 How was it generated?" The answer that it came from
5 Nationstar's imaging systems; well, since it has that typo
6 in it and it is incomplete it did not have the endorsement
7 and blank Flagstar, I want to know more about how did you
8 come up with this, and my premise is that if Nationstar was
9 willing to submit a false proof of claim, invalid documents
10 in support of its proof of claim, then it would also be
11 willing to come to this Court and produce false documents to
12 try and foreclose on my home, which is an argument that I've
13 made in my complaint.

14 I think that's pretty much the extent of what I would
15 like the Court to compel Nationstar to produce. Thank you,
16 Your Honor.

17 THE COURT: Thank you. Ms. Wallace?

18 MS. WALLACE: Ms. Marks said a lot. I'm not sure if
19 I'm going to be able to touch on everything that she said.
20 As far as we're opposing the motion to compel because we
21 produced over 400 documents to Ms. Marks and we timely
22 responded to every interrogatory, every request for
23 production, and we did object to some of those
24 interrogatories on the basis of relevancy. And that goes
25 back to what Ms. Marks was saying before that this case is

1 about proving whether or not Nationstar has interest in the
2 property under the mortgage.

3 THE COURT: Did you file your responses?

4 MS. WALLACE: Yes, sir -- well, we ---

5 THE COURT: I'm talking about in regards to the motion
6 to compel. Did you file your answers to interrogatories
7 with the clerk, as well as your response to her requests for
8 production?

9 MS. WALLACE: I ---

10 THE COURT: Then, I'm going to require you to provide
11 them to the Court.

12 MS. WALLACE: All 400 pages?

13 THE COURT: Every page.

14 MS. WALLACE: Okay.

15 THE COURT: How else will I be able to make a
16 determination, Ms. Wallace? When it becomes the subject
17 matter of a motion and you want to argue about the
18 sufficiency of it, you say 400 pages is enough; she says
19 that it's inadequate. How else would I be able to make that
20 determination without looking at it myself?

21 MS. WALLACE: I believe that since she is the moving
22 party and filed her motion to compel ---

23 THE COURT: Well, I have to see how you've already
24 responded in order to make that determination.

25 MS. WALLACE: I thought that she had already ---

1 THE COURT: She gave me her interrogatories; she gave
2 me her requests to produce. She didn't give me your
3 responses.

4 MS. WALLACE: Okay, Your Honor. Well, I thought she
5 had.

6 THE COURT: At least I don't think so; that's what I
7 have in front of me. Now, if it's already in the box, I
8 won't require you to do it. (TO MS. MARKS) Did you provide
9 that to them?

10 MS. MARKS: I provided only my questions; I did not
11 provide their answer.

12 THE COURT: That's what I thought. Go ahead, Ms.
13 Wallace.

14 MS. WALLACE: I apologize, Your Honor, for that
15 oversight. But the interrogatories that she is objecting
16 to, we mainly objected because they're not relevant to the
17 case under Rule 26, and the rule explains -- and it goes
18 back to what we were talking about before in the motion to
19 amend. Most of these issues are issues that need to be
20 raised in the bankruptcy court and she is trying to change
21 the party with whom has an interest in her note and
22 mortgage. The bankruptcy judge, Judge Waites, needs to make
23 that determination, because there is an ongoing bankruptcy
24 in a confirmed plan in the petition.

25 THE COURT: Now, let me ask you about that, because it

1 affects both, and I'm not trying to reargue the motion to
2 amend, but we're now dealing with the motion to compel. Ms.
3 Marks replies to you that she has a Chapter 13
4 reorganization plan with the bankruptcy court that she can
5 drop or amend at any time.

6 MS. WALLACE: It doesn't matter, Your Honor.

7 THE COURT: You don't think that affects the outcome of
8 either one of these motions?

9 MS. WALLACE: No, sir. Their plaintiff paid for all of
10 that, and earlier she mentioned, too, that she was current
11 in her mortgage, and so it wasn't treated under the plan as
12 a true petition, in re: Cole v. Farm Fresh Poultry, same
13 thing. The Coles were current in their mortgage, then they
14 defaulted, and that's when they wanted to raise standing
15 issues of the note and mortgage, and that's typically where
16 it comes out; and Judge Waites has been clear. There is
17 also a case that I've cited in my Return; I don't remember
18 what it was, but it talks about State Courts also holding
19 the Order of the bankruptcy court to the same standard, res
20 judicata.

21 THE COURT: I understand that argument. I just wanted
22 to ask the question about Chapter 13. Go ahead.

23 MS. WALLACE: That's okay, Your Honor. But that gets
24 us back to the relevancy of many of these interrogatories,
25 such as how much Nationstar is getting paid to be the

1 servicer or how much -- how much they're getting paid,
2 copies of whatever agreements they have with Fannie Mae.
3 Most of that stuff can be found online anyway, but it's not
4 really relevant to the case of whether or not Nationstar can
5 enforce the note and mortgage because of an Order by Fannie
6 Mae; they can enforce the note and mortgage.

7 As far as the requests for production, she doesn't tell
8 me what it is that she is trying to get me to produce, other
9 than what I've already produced. She doesn't say -- she
10 vaguely says that she -- that I -- that I didn't produce, I
11 think, the origination file or something.

12 THE COURT: Tell me which one you are referring to, so
13 I can look at it.

14 MS. WALLACE: Request number One.

15 THE COURT: Request to produce, number one?

16 MS. WALLACE: Yes, sir. I don't know what she is
17 looking for.

18 THE COURT: I think she refers to it as the collateral
19 file; is that correct?

20 MS. WALLACE: Yes, sir. And we've produced the
21 collateral file. She doesn't say specifically what
22 documents are not in there or should be in there that
23 weren't in there. So I don't know what she's looking for
24 other than to resend her everything that we've already sent
25 her.

1 THE COURT: Did you state that you've sent the entire
2 collateral file in your response to the request for
3 production?

4 MS. WALLACE: Yes. I said, "See Bates numbers blah,
5 blah, blah through blah, blah, blah."

6 THE COURT: I'm talking about did you -- you're telling
7 me in a motion to compel today, Ms. Wallace, that that is
8 everything you have in your client's possession. Did you
9 tell her that when you responded or is this the first time
10 we are hearing that?

11 MS. WALLACE: Well, it says, "Produce copies of any and
12 all documents that indicate or evidence the truthfulness of
13 the accuracy of your responses to interrogatories and
14 answers in the complaint or your answers to the allegations
15 in the complaint," and I said, "See documents, bates-stamped,
16 one through four hundred and eight."

17 THE COURT: Well, I'm going to need to take a look at
18 that, so you're going to have to provide that. I'm looking
19 at Request Number One, which you say is vague, and it says,
20 "Produce paper copies of the contents of the entire
21 collateral file, including copies of any original documents,
22 instruments, notes, mortgages, assignments or agreements,
23 evidencing, securing, or related to the loan and subject
24 mortgage and note credit agreement guarantees title and
25 casualty insurance policy." I think that request is fairly

1 clear. The question is, you say, it's vague. You quoted me
2 to that as an example of her vagueness, and I'm asking you
3 whether or not you advised her in the responses as to the
4 fact that you have given her what you understand is your
5 client's entire collateral file; you understand my question?

6 MS. WALLACE: I think I understand it now, Your Honor.

7 THE COURT: Not telling me what Bates numbers you have
8 given someone; you understand that?

9 MS. WALLACE: I wouldn't have objected -- yes, Your
10 Honor. I understand what you're saying now and I
11 misunderstood the question originally. I did not say that
12 we gave everything that my client provided to me, but I
13 would have taken exception otherwise, so I felt like it was
14 implied, and I apologize.

15 THE COURT: Well, very often, Ms. Wallace, what you
16 think is implied, isn't communicated to opposing counsel;
17 it's the reason we're sitting here in motions' Court today.

18 MS. WALLACE: I understand. I don't believe that
19 that's the only reason for this motion, but I do understand
20 the Court's point, and I can revise the request for
21 production and state this is all that we have that's
22 responsive to this request; if that's better, and I'll be
23 happy to do that.

24 THE COURT: I'd rather you do that prior to somebody
25 having to file a motion to compel, so it's clear.

1 MS. WALLACE: Well, I didn't realize that it wasn't
2 clear. She just said that we hadn't produced everything,
3 but she didn't say why we hadn't produced everything.

4 THE COURT: Well, Ms. Wallace, I think it's implied,
5 also, that no one knows what's in your file but you and your
6 client, and unless you identify that, opposing counsel, nor
7 this Court, will ever be able to determine whether you've
8 produced everything you have. Maybe you claim privilege on
9 something, maybe you don't; but unless you communicate that
10 fact, no one will know, and that is the reason I'm
11 requesting that you provide me with what you've done,
12 because I intend to review it now that we've take up this
13 amount of court time. Now, you think it's irrelevant, you
14 think it's vague, is there anything else in response to the
15 motion to compel?

16 MS. WALLACE: Well, the motion to compel -- I don't
17 know, Your Honor. I mean, it is irrelevant, the burden and
18 the costs. In her motion, she goes into the fact that we
19 filed a motion of pre-position C with the bankruptcy court
20 making allegations that we were somehow trying to threaten
21 her by filing that. That is something that is required
22 under bankruptcy rules, 3002-1. It's not something that I
23 can or cannot do. You have to file it within 180 days of
24 fees being incurred, and at that time, which I believe was
25 in November, fees were already up to \$17,000.

1 When this goes back to the bankruptcy court, the next
2 bankruptcy court is not going to modify the terms of the
3 note and mortgage, and so costs incurred defending an action
4 in which they're trying to have a lien removed from the
5 property, which will affect her security interest, is going
6 to be charged back to the loan.

7 We have to let the bankruptcy court know that so that
8 they're not deprived when litigation is over and if there
9 are those fees. And so the costs would continue with these
10 motions and continue with the case in trying to add more
11 parties and depositions. It outweighs the benefit of this
12 case, which she put in her bankruptcy schedule as a dollar
13 is all the value of this case. So \$25,000 versus \$1.00, it
14 seems that this is an undue burden, and not only is
15 prejudicial to my client, but actually prejudicial to the
16 plaintiff as well, because you could go back the other way.
17 That's all, Your Honor.

18 THE COURT: Thank you very much. Ms. Marks, you have
19 two minutes, and I'll enforce the time.

20 MS. MARKS: I had given a detailed letter what they
21 chart to Ms. Wallace on October 15th that specifically
22 outlines the deficiencies in the request that I had made of
23 her to voluntarily address those deficiencies; she did not do
24 so.

25 I sent an e-mail to her on November 7th, and it was on

1 November 7th that she filed that notice and because it's
2 like \$20,000, and now she's saying it's up to \$25,000 in a
3 subsequent filing that she made with this Court, I take --
4 and then, plus, they came in falsely claiming that they were
5 owner to intervene, so how am I liable to them when they
6 don't even own this mortgage? And so that's why I
7 interpreted as a threat to back off of discovery, because
8 how are they even legally entitled to this when they came in
9 here falsely claiming ownership to intervene?

10 It was up to the Court to decide necessary parties in
11 this action, and otherwise, the Court -- and if my claims
12 are valid, the Court will look at that and judge upon it.
13 If my claims are not valid, they have nothing to fear here,
14 because this is a declaratory judgment action and I'm not
15 suing for damages, other than I just want my title cleared
16 because I believe it's an invalid lien. Thank you, Your
17 Honor.

18 THE COURT: Thank you. All right, now, Ms. Wallace,
19 I'm not trying to make you carry around heavy files and I
20 don't want you -- but you're trying to tell me in response
21 to this motion that 400 pages has been produced. I love it
22 when lawyers think that the number of pages somehow gives
23 the Court the ability to determine the adequacy of a
24 response. I've never based the number of pages on adequacy
25 in my life, because you can give four hundred worthless

1 pages or it may be that it is an undue burden. I understand
2 that. I can't tell from just looking at an interrogatory
3 and not seeing a response what I'm really being asked.

4 Therefore, I'm going to ask both sides on the motion to
5 compel to submit proposed orders to me. Submit them to me
6 within seven days of today. Submit them to me at P.O. Drawer
7 470, Walterboro, 29488. Copy opposing counsel or the
8 opposing party. Just as I told you with the motion to
9 amend, you can comply with the time deadline by sending me
10 by e-mail your proposed Order within the seven days. Please
11 see that my law clerk gets a working copy. Camden's e-mail
12 address is pbucknerlc@sccourts.org. My e-mail address is
13 pbucknerj at sccourts.org.

14 Any e-mail you transmit to the Court, you must copy the
15 opposing party. You will also be required to mail me a
16 self-addressed, stamped envelope with sufficient postage
17 affixed thereto for the return of your Order. Please do not
18 send me a one-hundred page Order and send me an envelope
19 with one stamp on it. I'll expect you to weigh the amount
20 of your response and put sufficient postage on it. I do not
21 accept the excuse from any lawyer that their paralegal did
22 it or that their secretary did it, or any pro se party. If
23 you're going to be in the Court, I have to pay for my own
24 postage and I expect you to comply with the terms of the
25 proposed Order.

1 Any questions about the proposed Order procedure from
2 the moving party?

3 MS. MARKS: No, Your Honor.

4 THE COURT: Any questions about the proposed Order
5 procedure from the opposing party?

6 MS. WALLACE: No, Your Honor.

7 THE COURT: Now, Ms. Wallace, I realize you've been
8 patient. You've got some information, you're going to have
9 to send me for this motion to compel, because there is no
10 way I can judge the adequacy or the relevancy, not to
11 mention the undue burden argument without seeing what you've
12 done, which is not reflected in the Clerk of Court's file,
13 nor has it been provided to this Court. So I'll look
14 forward to getting that with your proposed Order. Please
15 see that that is delivered to my office; you understand?

16 MS. WALLACE: Yes, sir. I have it in the car.

17 THE COURT: Great. If you want to make a copy and give
18 it to my law clerk, because I'm going to continue working.

19 MS. WALLACE: Actually, Your Honor, I do have a
20 question.

21 THE COURT: Yes, ma'am.

22 MS. WALLACE: The discovery responses are going to
23 contain private information, known information, that
24 typically is not filed in the public records.

25 THE COURT: And what are you required to do if you are

1 going to claim privilege?

2 MS. WALLACE: We'll redact it, but it's not my
3 privilege, it's hers. It's her loan number and her loan
4 information.

5 THE COURT: Well, I'm not asking for more argument on
6 this.

7 MS. WALLACE: No, sir, I'm just asking for more
8 clarification, because I didn't redact them because I was
9 giving them to the borrower.

10 THE COURT: And?

11 MS. WALLACE: And I guess you want me to go through and
12 redact them or do you want me to give them to you in camera?

13 THE COURT: Well, anything that you're going to give me
14 as far as this is concerned, I don't know whether there is
15 an issue about what you've omitted that you determine ought
16 to be omitted, but you think it's information that she
17 already has; is that correct?

18 MS. WALLACE: No, I've never said I omitted anything.

19 THE COURT: I see. Well, you said you redacted it.

20 MS. WALLACE: No. I'm asking if when you want to see
21 the documents ---

22 THE COURT: I want to see the documents.

23 MS. WALLACE: With the social security number and
24 everything on them?

25 THE COURT: Well, I'm not interested in a social

1 security number, Ms. Wallace, so if you want to redact that,
2 that's fine, but that's going to be up to you. I'm
3 interested in the quality of your responses for purposes of
4 the motion to compel.

5 MS. WALLACE: And that's why I was just asking if you
6 wanted to see it in camera so you could see the whole
7 documents or if you wanted me to go through and have them
8 redacted was the question. That's what I was trying to ask.

9 THE COURT: Well, since Ms. Marks is the person who
10 made the motion, I'm assuming so that I don't know the
11 quality of that, so give me the entire document and I'll
12 review it. I'm not about to transmit it to any third party,
13 I can assure you of that, but I'm going to look at the
14 adequacy of your responses. You understand that?

15 MS. WALLACE: Yes, Your Honor.

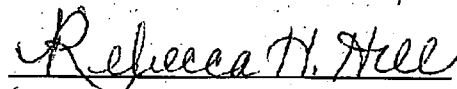
16 THE COURT: Thank you very much.
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25

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF COLLETON)

I, REBECCA H. HILL, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had in the
hearing of the captioned case, in the Court of Common Pleas
Non-Jury for Colleton County, South Carolina, on the 28th day
January of 2013.

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

February 10, 2013



Rebecca H. Hill,
Official Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Melissa Jean Marks,	)	CASE NO. 2012-CP-10-00262
	)	
PLAINTIFF,	)	
	)	
VS.	)	TRANSCRIPT OF RECORD
	)	
Old South Mortgage	)	
Corporation, et al.,	)	
	)	
DEFENDANT.	)	

September 4, 2013

Charleston, South Carolina

B E F O R E:

The Honorable Maite Murphy

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

Melissa Jean Marks, Pro Se
the Plaintiff

Harriet Politt Wallace, Esquire
for the Defendant

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I N D E X

MOTIONS

-- 3

EXHIBITS - None Proffered

CERTIFICATION OF TRANSCRIPT

-- 26

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Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 THE COURT: It looks like the next case is 2012-0262,
2 Melissa Jean Marks versus Old South Mortgage Corporation.

3 (Documents presented to the court by defense counsel.)

4 THE COURT: And are you Ms. Marks?

5 MS. MARKS: Yes, ma'am.

6 THE COURT: All right. And you are appearing pro se?

7 MS. MARKS: Yes, ma'am.

8 THE COURT: All right.

9 MS. WALLACE: I am Harriet Wallace on behalf of
10 Nationstar.

11 THE COURT: Okay. And whose motion is this; it is Ms.
12 Marks' motion?

13 MS. MARKS: Yes, ma'am.

14 THE COURT: All right. Are you ready to proceed?

15 MS. MARKS: Yes, ma'am.

16 THE COURT: All right. I am happy to hear from you,
17 Ms. Marks.

18 MS. MARKS: Your Honor, unfortunately I have a nervous
19 disorder which is why I am a paralegal and not an attorney.
20 And I could not afford an attorney so I am here doing the
21 best that I can. I will be reading from notes so that I
22 stay on track, just to let you know why I am doing that.

23 THE COURT: Yes, ma'am.

24 MS. MARKS: And first I will briefly explain the
25 background so the court can put my motion to dismiss

1 Nationstar in context. And then I will briefly explain why
2 Nationstar should be dismissed with prejudice.

3 Substantial details and supporting exhibits and
4 citations of law are there in my pleading, Your Honor. But
5 I will provide just the highlights here with respect to
6 those waiting to be heard today.

7 I filed my declaratory judgment complaint on April 6,
8 2012, against the originator of the subject mortgage and
9 note, Old South Mortgage Corp., who is the only lien holder
10 of record recognized by the register of deeds because in
11 late 2011, early 2012, I discovered the following:

12 The mortgage was not obtained and recorded lawfully.
13 Old South had lied and falsely claimed to be the lender in
14 the mortgage and note. But it was not. And it has admitted
15 it was not, here. There are no recorded assignments at the
16 register of deeds.

17 Although Old South has been dissolved since December
18 2008 and cannot maintain assets in its name, as a matter of
19 law I found no evidence of any lawful transfers of the
20 mortgage and I had not received actual notice of who owns it
21 since the origination. Nationstar does not own the mortgage
22 but had fraudulently claimed ownership of it and has been
23 collecting my payments under false pretenses since 2009.

24 I have a clouded title because -- I found that multiple
25 companies could claim ownership of the mortgage and attempt

1 to foreclose based on false claims and invalid documents.
2 So the mortgage cannot be satisfied by anybody, even if I
3 paid in full. So this requires a court order to fix this
4 situation.

5 Therefore, to defend and protect my interests I filed
6 this action seeking a declaration that the mortgage and note
7 are invalid and order to the Registrar of Deeds to remove
8 the invalid lien and permanent injunctions to prevent
9 subsequent recordings and unlawful foreclosure.

10 Now moving on to how Nationstar had entered the fray:
11 In April 2011 I filed a Chapter 13 bankruptcy to resolve my
12 unsecured debts within my ability to repay. And since there
13 was no arrearage on the mortgage for all intensive purposes
14 the mortgage and my home are considered exempt from the plan
15 being administered by the trustee.

16 Nationstar receives nothing from the trustee. I pay
17 Nationstar directly. And Nationstar is only subject to the
18 stay.

19 Nationstar stopped sending me monthly billing
20 statements and payment receipts and terminated my online
21 account access. And when I called complaining about that
22 and had my bankruptcy lawyer send them a letter about that
23 they still refused to reinstate them.

24 I complained to the state's Department of Consumer
25 Affairs and the state's inquiries on my behalf to

1 Nationstar. And in reply to the state Nationstar explained
2 that they don't provide contractual statements to those
3 involved in bankruptcy unless the debt is reaffirmed and
4 that I had not reaffirmed the debt in the bankruptcy court.

5 Since Nationstar wanted me to reaffirm the debt in the
6 bankruptcy court I saw this as a red flag, Your Honor, that
7 something was wrong which prompted me to investigate and
8 discover my injuries that I complained of here in this
9 action.

10 Nationstar's response revealed to me it does not
11 believe there is any binding contract between us, so I
12 realized it probably doesn't own the mortgage. And I was
13 proven right about that here by their own admissions.

14 I discovered that Nationstar had filed a fraudulent
15 proof of claim in the bankruptcy court. It falsely
16 identified itself as the creditor, which everyone interprets
17 as the owner of the mortgage, and had also attached an
18 invalid or forged copy of the note that does not match the
19 alleged original note as explained and shown in my
20 pleadings, Your Honor.

21 Nationstar admitted in discovery that the copy of the
22 note attached to its proof of claim came from its own
23 imaging systems and that Nationstar did have the original
24 note in its position to copy and attach to the proof of
25 claim at the time. So that could not have been an honest

1 mistake.

2 Nationstar's frauds upon me and the court prevented the
3 court and all interested parties from discovering that
4 Fannie Mae has claimed to own the mortgage since its
5 origination.

6 I had no idea at the time that Fannie Mae had ever been
7 involved in the mortgage. No one disclosed that to me at
8 the closing. And no one had sent me a letter about it
9 afterwards.

10 I didn't sue Nationstar because it doesn't own the
11 mortgage. So it doesn't have standing to defend. But
12 Nationstar intervened anyway. And that brings us to how
13 they intervened.

14 Apparently Old South informed Nationstar that I had
15 filed this action. So on May 9th, 2012, Nationstar filed a
16 notice with the state court and a motion for clarification
17 with the bankruptcy court seeking to intervene and falsely
18 claiming to be the current holder of the note, which people
19 interpret as the owner of the note, Your Honor. Nationstar
20 didn't have the note on that date according to their own
21 admissions.

22 The state court informed me they wouldn't let this case
23 proceed until Nationstar had a chance to appear and at least
24 be heard. So I had no practical option, Your Honor, but to
25 consent to the modification of stay at the hearing in the

1 bankruptcy court on May 17th, 2012.

2 Nationstar had falsely claimed to be the holder of the
3 note at that hearing before the bankruptcy court. And it
4 did not have the note on that date either, Your Honor.

5 Nationstar filed more pleadings here falsely claiming
6 it was the legal holder of the note and that I had
7 incorrectly referred to them as the servicer of the
8 obligation. And the court scheduled a hearing on
9 Nationstar's motion to intervene on July 18th, 2012.

10 Prior to the July hearing Nationstar claims it sent an
11 e-mail to Fannie Mae's bankruptcy department on May 29,
12 2012, informing them of this action. Then Nationstar
13 requested and received the alleged original note from Fannie
14 Mae custodian, Bank of New York Mellon, on May 31, 2012, and
15 forwarded the note to its counsel.

16 Therefore Nationstar knew it did not own the mortgage
17 and was not the legal holder of the note prior to the
18 hearing in July.

19 I don't know what Nationstar allegedly told Fannie Mae
20 because they would not produce the e-mail to me in
21 discovery.

22 In June 2012 I filed and served in opposition and
23 included a copy of the MERS database printout showing that
24 Fannie Mae claims to own this mortgage and a copy of my
25 Equifax credit report showing Flagstar Bank had reported to

1 the credit bureau that Fannie Mae owned the mortgage since
2 origination in October 2007.

3 The mortgage industry created MERS, Your Honor, to
4 track these mortgage in a database for them. So they know
5 to check the MERS database. And they would assume it is
6 correct since they hired MERS to do this for them.

7 Nevertheless, Ms. Wallace, Nationstar's attorney, came
8 here to court in July and ignored what I said and I show her
9 in my pleadings, and proceeded to lie to the judge at the
10 hearing on Nationstar's motion to intervene.

11 Ms. Wallace indicated at the hearing that Nationstar
12 was not merely servicing, that she had personally verified
13 Nationstar purchased the note from Flagstar Bank, that the
14 endorsement in blank was to Nationstar. And she did not
15 mention Fannie Mae in a chain of title whatsoever, Your
16 Honor.

17 THE COURT: Well, Ms. Marks, let me interrupt you for
18 just one second and let's just get to the issues that are
19 before the court today. I can look at the court record and
20 look at the history and look at the previous orders. So in
21 the interest of time just tell me your motion and the basis
22 for relief on your motion.

23 MS. MARKS: The basis -- explaining to Your Honor the
24 reason is because they came to court and they lied falsely
25 claiming they are the owner. The order said that that was

1 the basis of them being allowed to intervene was their claim
2 of ownership. And now they are here trying to change their
3 position to something else. But they did not supply the
4 court or me with any proof whatsoever that they have any
5 rights whatsoever to this mortgage.

6 THE COURT: So are you living in the home?

7 MS. MARKS: Yes, I am.

8 THE COURT: Okay. Are you still making payments on the
9 home?

10 MS. MARKS: Yes, ma'am. I've never defaulted. Of
11 course you can't just quit paying the mortgage, Your
12 Honor, ---

13 THE COURT: Right.

14 MS. MARKS: --- because they will try to foreclose.

15 THE COURT: Well, that's -- hold on a second. Let's
16 kind of walk through the steps here. Are you still going
17 through bankruptcy or has that been -- is that process over?

18 MS. MARKS: The bankruptcy plan has been confirmed.
19 And I am paying on it. And like I explained, Nationstar is
20 not really subject to except for the stay because I pay them
21 directly.

22 THE COURT: Right. And so your motion at this point
23 basically your motion for judgment on your original
24 pleadings; is that correct?

25 MS. MARKS: No, ma'am. I am filing a motion to dismiss

1 Nationstar with prejudice because they were misjoined as a
2 party because they came here and lied to the courts that
3 they owned the mortgage. Now they have admitted that Fannie
4 Mae owns the mortgage. But they are not the proper party to
5 enforce because there has been no default.

6 Normally what happens when a -- when there is a default
7 Fannie Mae would transfer interest to the servicer at that
8 time to foreclose. Well, in this instance there has been no
9 default. This -- I am the plaintiff. This is not a
10 foreclosure proceeding. Therefore, the rights would not
11 have been transferred.

12 Fannie Mae they claimed in October Fannie Mae finally
13 admitted that they own it. There has been no transfer of
14 this interest from Fannie Mae to Nationstar. And you can't
15 according to the UCC, Chapter 3, you cannot have -- split
16 the note. Basically one party would be able to make the
17 claim and you can't have multiple parties claiming on the
18 same note.

19 And also, if there is any fraud or illegality affecting
20 the note, like in this case like I explained to the court,
21 they have been falsely claiming ownership of this mortgage
22 before the court.

23 The UCC, Chapter 3, is clear that the party cannot
24 assume the rights of the owner, the holder of due course
25 under Chapter 3, when there has been fraud and illegality

1 affecting the note.

2 And I explained all of that in my pleadings. And I
3 also explained to the court that under the Doctrine of Ultra
4 Vires that basically Fannie Mae can't originate loans. And
5 that's what they did in this case. It was a violation of
6 their charter.

7 And so basically that is another fraud and illegality
8 affecting the note was that they -- they cannot by law
9 ignore and set aside existing laws and they can't ignore
10 their charter and they can't hire pretender lenders to
11 create false paperwork to lend to borrowers directly in the
12 primary market. And I have all of those exhibits showing
13 you, you know, and the citations to law.

14 So I was -- you know, I explained to the court that
15 they cannot have the right to the holder in due course
16 because of their fraud, any illegality affecting the note,
17 and because you can't split the cause of action.

18 Fannie Mae owns it, so Fannie Mae would have the right;
19 not Nationstar who does not own the mortgage and the
20 mortgage has not been transferred to them.

21 THE COURT: All right. Thank you, Ms. Marks.

22 MS. MARKS: Thank you, Your Honor.

23 THE COURT: Counsel.

24 MS. WALLACE: May it please the court order, Your
25 Honor. I am not going to address every single point that

1 Ms. Marks made. But the motion was brought under Rule 21
2 which is a motion to dismiss -- her motion to dismiss is
3 based on Rule 21 which addresses joinder and nonjoinder of
4 parties.

5 This issue and these set of facts has been raised and
6 presented to the court numerous times before today. They
7 have been ruled on not just in the motion to intervene but
8 subsequently in other motions as well.

9 In fact, in the order denying plaintiff's motion for
10 leave to amend the complaint to add Fannie Mae as a party
11 and granting plaintiff's motion to withdraw motion for
12 summary judgment the court specifically states that
13 Nationstar is proper party to -- you know, has standing to
14 enforce the note and it is the proper party, not just based
15 on whether or not it is the owner of the note.

16 Because, you know, there are many different -- you
17 can enforce a note in many different ways. You can be the
18 owner of the note. You can also be a holder. You can be a
19 non-holder with -- with the rights of a holder.

20 And we were in possession of the original note endorsed
21 in blank at the motion to intervene which made us the holder
22 of the note. And we provided that at the hearing on the
23 motion to intervene. And the motion on her -- at the
24 hearing on her motion to amend to add Fannie Mae the court
25 also held that under UCC 3301 Nationstar was -- had the

1 right to enforce the note even if it wasn't the owner based
2 on being the holder of the instrument, nonholder of
3 possession, etcetera, and denied her motion to allow Fannie
4 Mae to be named as a party.

5 Under Rule 40L a party cannot keep bringing motions and
6 arguing facts which have already been heard and ruled on.
7 In fact, the transcript attached to Mark's memorandum shows
8 where Judge Buckner clearly told Ms. Marks that he wasn't
9 going to hear these issues again.

10 And that's what we have here today, Your Honor. It is
11 a motion to dismiss Nationstar after the bankruptcy court
12 modified the stay in order to have Nationstar appear to
13 enforce its rights and not have the mortgage declared
14 invalid. And then the motion to intervene to allow
15 Nationstar to assert its rights on the mortgage and note was
16 granted. And then her motion to amend to add Fannie Mae as
17 a party also states that Nationstar has the right to enforce
18 the note and mortgage in question.

19 So I think we -- all these facts -- I know you haven't
20 been the judge in all these other hearings, but all the
21 facts have been heard and are in the record. And there are
22 orders supporting those.

23 Your Honor, just to point out, the roster there are two
24 other motions on the roster. And those are my motions.
25 When you were asking her about motion on judgment on the

1 pleadings it sounded like you thought that was her motion.
2 But really I have a motion for summary judgment and in the
3 alternative motion for an order on the pleadings.

4 THE COURT: Okay.

5 MS. WALLACE: And so I just wanted to make sure that
6 was clear.

7 THE COURT: Right. So it looks like there's actually
8 three motions on the roster. And Ms. Marks, yours was the
9 first motion. And then they have two motions it looks like.

10 MS. WALLACE: And the other two motions are kind of
11 combined into one.

12 THE COURT: Okay.

13 MS. WALLACE: Discovery has been completed. They
14 confer respondent to a good amount of discovery served by
15 Ms. Marks. Also the pleadings have a lot of exhibits
16 attached to them including what appears to be all of the
17 closing documents. A lot of the pleadings have copies of a
18 lot of the bankruptcy transcripts.

19 And as I discussed before, judges who have heard issues
20 in this case before, there are a lot of orders already
21 finding really the main issue in this case. So we are
22 really just here to kind of seek an order for summary
23 judgment kind of dismissing the case in all and being able
24 to dispose of the case.

25 Ms. Marks -- Ms. Marks as she mentioned before, her

1 order is -- or her cause of action is essentially to have
2 the mortgage which secures Nationstar's note declared
3 invalid and satisfied of record.

4 Ms. Marks is current on her monthly principle and
5 interest and escrow payments. And there is no foreclosure
6 action pending.

7 Nationstar is the servicer of this loan. And as Your
8 Honor probably knows, a servicer has the right to enforce a
9 note. And specifically the in re Full case in which Judge
10 Waites -- which Judge Waites issued who is also the judge in
11 Ms. Marks' Chapter 13 case specifically states that a loan
12 servicer is the proper party to enforce the debt of the
13 mortgage.

14 In fact, proof -- proof of claims often are filed by
15 the loan servicer especially when there has been no default.
16 Excuse me (cough).

17 In addition, the order granting -- or I'm sorry, the
18 order denying Ms. Mark's motion to amend to add Fannie Mae
19 specifically states that Ms. Marks doesn't have standing to
20 bring this argument before the court because she is in
21 Chapter 13 bankruptcy so if she were to have a mortgage
22 declared invalid she would have an unsecured or -- I'm
23 sorry, unencumbered asset which would be an asset of the
24 bankruptcy estate.

25 Ms. Marks is going to argue that that doesn't apply to

1 Chapter 13 cases. However, Wright versus Guess which is
2 2010 U.S. Dist. LEXIS 5532 specifically applies that as
3 Chapter 13 bankruptcy and finds that, you know, failure to
4 disclose an asset could have increased -- had they disclosed
5 the asset it would have increased the amount of assets in
6 the bankruptcy estate resulting in a less favorable Chapter
7 13 plan. And that's one reason.

8 Also in bankruptcy court when you file schedules and
9 petitions and you have a confirmed plan all of that
10 constitutes res judicata as to the issue of who the secure
11 creditor is.

12 In this case Ms. Marks filed her schedules with the
13 bankruptcy court, filed her proposed plan which was
14 confirmed by the court. And it named Nationstar as the
15 secured creditor. In South Carolina the mortgage follows
16 the note. And therefore Nationstar can enforce the
17 mortgage.

18 Many of the issues in this case are identical to the in
19 re Full case. And I do have a copy of that if you would
20 like to see it.

21 THE COURT: Sure. Do you have an extra copy for Ms.
22 Marks?

23 MS. WALLACE: Yes, ma'am.

24 THE COURT: Thank you. In re Full was decided by Judge
25 Wait in 2012. And it dealt with debtors in Chapter 13

1 bankruptcy who were current in their mortgage payment at the
2 time that they filed bankruptcy.

3 Later on in the bankruptcy after they filed their
4 schedules naming Wells Fargo as the secure creditor and
5 after filing a plan which was confirmed naming Wells Fargo
6 as a secured creditor the Full's then decided to challenge
7 the standing of Wells Fargo on the basis that it was a
8 Freddie Mac loan, which is similar to this case in which
9 this is a Fannie Mae loan and Nationstar is its loan
10 servicer.

11 Judge Waites specifically stated that the schedules in
12 the confirmed plan and the financial statements barred the
13 debtors from changing their position at that point.

14 He also said that a plan that is confirmed in a
15 bankruptcy also creates a new contract between the creditors
16 and the debtor. So even had there been an issue prior to
17 that, had Wells Fargo not been the proper creditor, it was
18 from the confirmed plan forward.

19 Judge Waites I think said that -- said that -- that is
20 when he says in the end the debtors borrowed a sum of money
21 from a third-party finance collateral and have yet to pay
22 that back in full.

23 The plan debtor's Chapter 13 income statement, debtor's
24 Schedule D, all recognize that obligation and identified in
25 that case Wells Fargo as the proper mortgage creditor.

1 In addition, even if Freddie Mac were the investor
2 Wells Fargo was the servicer and presented the original
3 endorsement at the hearing and therefore Wells Fargo was
4 entitled to enforce the note.

5 That and with the law of the case that has already said
6 that Ms. Marks doesn't have standing and that Nationstar is
7 the proper party to enforce the note we are requesting
8 summary judgment in favor of Nationstar or in the
9 alternative motion for judgment on the pleadings because
10 most of this information can be found in the pleadings.

11 We -- Nationstar has incurred a considerable amount of
12 attorney's fees. However due to the bankruptcy we would
13 like to reserve requesting attorney's fees until we get
14 permission from the bankruptcy court to do that so that we
15 don't violate -- unintentionally violate the automatic stay.
16 Thank you, Your Honor.

17 THE COURT: Thank you. Ms. Marks, anything further in
18 response to her motions?

19 MS. MARKS: Yes, Your Honor. I have read through some
20 of these cases that Ms. Wallace has cited. And basically
21 this case here, the Full case, this has to do with applying
22 for relief of stay so they can come to the state court and
23 said that they can, you know, or have their proceeding.

24 This doesn't mean that they won their case and they can
25 just walk into the state court and say yea we get to

1 foreclose and we get your house. There is still litigation
2 that has to take place.

3 And basically I am not litigating this action in
4 bankruptcy court. And she keeps bringing up bankruptcy
5 court and bankruptcy law. But this is a state court, Your
6 Honor. And state law should be as far as the elements have
7 they satisfied the elements under the state common law of
8 res judicata or estoppel.

9 And I argued in my motions that no, they have not. The
10 parties aren't the same. You know, these issues have not
11 been actually litigated. The only thing we did is we went
12 to a hearing before Judge Waites and we told him what was
13 going on and he said basically I'm happy for you to remove
14 the lien where ever you want, either the state or the
15 bankruptcy court could do it.

16 They all acknowledge -- I mean the trustees counsel was
17 right there. They acknowledged everything. They signed the
18 orders. They agreed to it. They were part of the whole
19 process the whole time.

20 And I showed the law is very clear that a Chapter 13
21 debtor in possession is considered a ^{analogous} novelist to the Chapter
22 11 debtor in possession and that I can come to state court
23 and in my own name prosecute actions on my own behalf as
24 well as on behalf of the state. That is in re Lee. That
25 case is cited in there. And it cites two other circuit

1 opinions. And it also cites to the statute in bankruptcy
2 law that shows that I have standing.

3 Well, none of this was argued before Judge Buckner
4 because unfortunately, Your Honor, Judge Buckner had forgot
5 I think that he had told them they could only enter on a
6 limited basis, that I had disputed the transfer.

7 And he said I don't think just because you, Nationstar,
8 alleged you were there. Because she questions the transfer
9 of this interest. And I think that's a matter that should
10 be subject to an evidentiary hearing and not done in a
11 motion for intervention.

12 So basically he said all right you can come in, you can
13 answer, but you don't have authority to be substituted for
14 any parties, you don't have ---

15 THE COURT: Ms. Marks. Ms. Marks. I just need to hear
16 your argument why her motion for summary judgment should not
17 be granted or motion on the pleadings.

18 MS. MARKS: Well, I didn't know ---

19 THE COURT: I can look at ---

20 MS. MARKS: --- that we were done with my motion to
21 dismiss, Your Honor.

22 THE COURT: We were. We have kind of -- you have
23 argued your portion. She argued her portion. Then we moved
24 on to the second motions based on -- we have got three
25 pending, okay.

1 And part of it is -- I have got the court record. I
2 will have the opportunity to review your motions, to review
3 the prior record. But I can read that. We don't need to go
4 through and tell me what Judge Buckner ordered or didn't
5 order because I can read that.

6 What I need to hear from you is your argument why
7 judgment on the pleadings should not be granted or judgment
8 for summary judgment. And ---

9 MS. MARKS: Because, Your Honor -- I apologize. I
10 didn't understand. I thought we were still on my motion.

11 THE COURT: No, we have moved on. I heard your
12 argument. I heard her argument. And she started with her
13 argument. So now we are on to both of those motions.
14 Because they kind of overlap each other, the summary
15 judgment and the motion on the pleadings. So I just need to
16 hear your argument on that issue.

17 MS. MARKS: They have not done any discovery, Your
18 Honor. They claim that the SOL applies and they claim that
19 I am bound by what my attorney knew.

20 Well, my attorney has not been interviewed here. They
21 haven't subpoenaed her. They don't know what she knew or
22 when she knew it. And they are just making assumptions.
23 And I don't believe that -- because they have things in
24 their motion there that I obviously object to.

25 THE COURT: Okay. In your -- in your objections did

1 you -- I know you filed some documents with the court.

2 MS. MARKS: Yes, I have.

3 THE COURT: And so -- all right. So and I understand
4 you are appearing pro se. However, you are still held to
5 the same standard as an attorney. So you are -- you know,
6 with the same rules of civil procedure apply to you just as
7 they would an attorney.

8 So pursuant to Rule 56 on summary judgment why would
9 they not be entitled to summary judgment; just tell me that.

10 MS. MARKS: They are not entitled to summary judgment
11 because they admitted after the fact that they don't own the
12 mortgage, they don't have standing to be here.

13 I only argued before the judge -- I never argued a
14 motion to dismiss before the judge before. And also I would
15 like to know whether they have the note today. If they are
16 saying that the only reason that they have the right to do
17 all of this ---

18 THE COURT: That matter is not before me. Okay. Just
19 the issues that are before me are the ones on the docket.
20 We can't go outside of that. That is not before me here
21 today, okay.

22 So if you -- do you think you have filed all of the
23 documentation necessary with the court that you feel and
24 pursuant to these motions, and I will have certainly an
25 opportunity to read everything and look at the court record

1 and issue a decision.

2 But I can't hear matters that are outside of the scope
3 of today's motions, okay.

4 MS. MARKS: Yes, Your Honor.

5 THE COURT: All right. Thank you, Ms. Marks. Is there
6 anything further that you would like to add on -- just on
7 these motions, nothing else?

8 GENTLEMAN APPEARING WITH MS. MARKS: Can I (motioning)?

9 THE COURT: Sure.

10 (Ms. Marks confers with gentleman.)

11 MS. MARKS: Just to clarify and just to be -- you know,
12 to stay on the safe side, to clarify in my plan they are --
13 they are not part of the bankruptcy. They are not being
14 paid through the trustee.

15 And the -- I am sorry. I have a nervous disorder. May
16 he speak for a moment, Your Honor, because I am having a
17 hard time?

18 THE COURT: Hold -- take your time. And let me just
19 ask you this. I understand what you are saying about the
20 bankruptcy. I don't control the bankruptcy. Obviously that
21 is a whole separate issue. If you have addressed those
22 arguments in your pleadings it will be in there.

23 Do you feel -- you are telling me you have done that.
24 So once you have done that I will -- what I am letting you
25 know is I will have the opportunity to review that and issue

1 a ruling based upon that.

2 So if you are nervous, that's fine. I am happy for you
3 to take your time and do what you have to do. But if you
4 are appearing pro se on your own behalf if there is anything
5 further pursuant just to these motions and to what the law
6 allows you for the rules of civil procedure is there
7 anything further; if not I can rule based on what is in the
8 court record and having considered your arguments that you
9 have already put forth, okay.

10 MS. MARKS: Thank you, Your Honor. That ---

11 THE COURT: Thank you, ---

12 MS. MARKS: --- would be fine.

13 THE COURT: --- Ms. Marks.

14 THE COURT: What we will do -- of course I will read
15 the pleadings and then we will issue an order probably via
16 e-mail or through the clerk's office. Thank you.

17 MS. MARKS: Thank you, Your Honor.

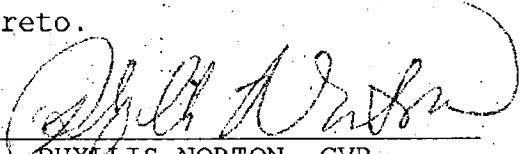
18 (Whereupon the hearing concluded.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Family Court for Charleston County, South Carolina, on September 4, 2013.

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



PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: October 7, 2013

Certified Transcript Provided For: Marks
Certification Reference # 100713 0216

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

MELISSA JEAN MARKS,

Plaintiff,

Vs.

OLD SOUTH MORTGAGE
CORPORATION, JOHN DOES 1-100, AND
FICTITIOUS CORPORATIONS 1-100,

Defendants.

AND

Nationstar Mortgage, LLC,

Intervenor/Defendant.

(IPW 501904-00001)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL CASE NO. 2012-CP-15-262

**NATIONSTAR MORTGAGE, LLC'S
ANSWER TO PLAINTIFF'S
INTERROGATORIES TO DEFENDANT
NATIONSTAR MORTGAGE, LLC**

1. Give the names and addresses of persons known to you or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

A. A representative of Nationstar is expected to testify concerning the payment history, the loan account, loan documents and business records pertaining to the loan which is the subject of this action. No written or recorded statements have been taken from this witness. Nationstar has not yet identified the representative which will be called in this case. Once it does, Nationstar will update this Interrogatory.

B. Melissa Jean Marks is the Plaintiff in this matter. She is expected to testify regarding the facts and circumstances that are the subject matter of this case. Plaintiff is not aware of any written or recorded statements of this party.

2. List the names and addresses of any expert witnesses whom you propose

to use as a witness at trial of the case.

ANSWER: Nationstar has not retained an expert witness at this time, but reserves the right to name one in the future. In that event, Nationstar will update its answer to this interrogatory.

3. For each person known to you or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

ANSWER: See Answer to Interrogatory 1 above.

4. State the name, address, and corporate title(s) or affiliation of each of your agents, officers, directors, shareholders, employees, contractors, or affiliates that have provided or will provide the required information and documents to respond to Plaintiff's pleadings, discovery requests, and at trial.

ANSWER: Monica Nguyen, Bankruptcy Manager. Address: Nationstar Mortgage LLC, 350 Highland Drive, Lewisville, TX 75067

5. Explain how you obtained the note, a copy of which is attached as **Exhibit A** for your reference, and the original of which was presented to the Colleton County Court of Common Pleas for in camera inspection during the hearing on your Motion to Intervene on July 18, 2012, and include in the response from whom the note was obtained, from where the note was obtained, and the date the note was obtained.

ANSWER: Nationstar requested the original note from Fannie Mae's custodian, Bank of NY Mellon, and Nationstar received the original note from Bank of NY Mellon on May 31, 2012. Thereafter, Nationstar forwarded the original note to its counsel, Rogers Townsend &

Thomas, PC.

6. Explain how you obtained the servicing rights to Plaintiff's home loan account #0596566959 and the subject mortgage and note, and include in the response the name of the entity or person that assigned or transferred the servicing rights to you, the date of the assignment or transfer, and the amount you paid to obtain the servicing rights, if any.

ANSWER: Nationstar objects to this Interrogatory on the grounds that the information requested is not discoverable under Rule 26, SCRPC because the information requested is not relevant to the subject matter and allegations in the Complaint and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, Fannie Mae, as the owner of the loan, transferred the servicing rights of the loan to Nationstar on or about October 1, 2009.

7. Did Flagstar Bank transfer Plaintiff's home loan account and the subject mortgage and note to you for servicing as part of a bulk transfer along with a number of other home loan accounts, mortgages and/or notes during the time period August 2009 through October 2009?

ANSWER: Nationstar objects to this Interrogatory on the grounds that the information requested is not discoverable under Rule 26, SCRPC because the information requested is not relevant to the subject matter and allegations in the Complaint and is not reasonably calculated to lead to the discovery of admissible evidence.

8. Do you own the subject mortgage and note? If so, state the amount you paid for the purchase. If not, state the name, address and agent for service of process of the current owner of the subject mortgage and note.

ANSWER: Fannie Mae is the owner of the note and mortgage. Fannie Mae's address and agent for service of process is of public record.

9. Do you disburse or have you disbursed to another entity or person a percentage of

Plaintiff's mortgage payments toward principal and interest? If so, state the name(s) of each entity or person to whom the disbursements are/were made, the percentage of the payments that entity or person receives/received, and how often the disbursements are/were made to each entity or person.

ANSWER: Nationstar objects to this Interrogatory on the grounds that the information requested is not discoverable under Rule 26, SCRPC because the information requested is not relevant to the subject matter and allegations in the Complaint and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, South Carolina's version of Article 3 of the Uniform Commercial Code and the contractual terms of the Note and loan documents signed by Plaintiff controls how the amount of the monthly payments are determined, who is entitled to enforce the terms of the note and mortgage, and who is entitled to receive loan payments.

10. Explain in detail the methods and amounts that you have been and are being paid to service Plaintiff's home loan account # 0596566959 and the subject mortgage and note, and include in the response details such as whether you retain a percentage of Plaintiff's mortgage payments toward principal and interest, and if so, the percentage you retain, or whether you receive periodic lump sum payments from the owner or other entity or person, and if so, whether such lump sum payments are for servicing a group of home loan accounts which includes Plaintiff's account, and if so, the name of the group, and whether the lump sum payments would be reduced if Plaintiff paid off her mortgage today, and if so, the amount of reduction.

ANSWER: Nationstar objects to this Interrogatory on the grounds that the information requested is not discoverable under Rule 26, SCRPC because the information requested is not relevant to the subject matter and allegations in the Complaint and is not reasonably calculated to

lead to the discovery of admissible evidence. Subject to this objection, see Answer to Interrogatory #9.

11. State the name(s) of the entity or person who currently pays you or authorizes you some form of compensation in payment for servicing Plaintiff's home loan account # 0596566959 and the subject mortgage and note, and if applicable, the names of each entity or person who has done so in the past.

ANSWER: Nationstar objects to this Interrogatory on the grounds that the information requested is not discoverable under Rule 26, SCRPC because the information requested is not relevant to the subject matter and allegations in the Complaint and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, see Answer to Interrogatory #9.

12. Did you notify Fannie Mae and/or any other entity or person that may claim to have an interest in the subject mortgage and note regarding the contents of Plaintiff's Complaint and/or forward a copy of Plaintiff's Complaint? If so, list the document(s) in which this information was disclosed or forwarded, including the name(s) of the recipient(s) and date(s) of such document(s).

ANSWER: Yes. Notification was sent to BankruptcyAdministration@fanniemae.com on May 29, 2012.

13. Do you have the express written permission of Fannie Mae and other entities or persons that may claim to have an interest in the subject mortgage and note to appear and defend their interests on their behalf in this particular action? If so, list the document(s) in which such permission was granted, including the date(s) of such document(s).

ANSWER: Nationstar objects to this Interrogatory on the grounds that the Interrogatory

is vague, the information requested is not discoverable under Rule 26, SCRCP because the information requested is not relevant to the subject matter and allegations in the Complaint and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, Nationstar, as the loan servicer, qualifies as a "person entitled to enforce" the Note pursuant to S.C. Code Ann. § 36-3-301." *In re Full*, 09-05650-jw, Doc. 65, p.16 (Bankr. D.S.C. 2012) (citing *In re Neals*, 459 B.R. 612, 617-19 (Bankr. D.S.C. 2011)).

14. Explain why you misrepresented to the federal bankruptcy court in your Form 10 claim form, a copy of which is attached as **Exhibit B** for your reference, that you are the "Creditor (the person or other entity to whom the debtor owes money or property)" instead of disclosing the name of the entity or person who owns the subject mortgage and note in that block of the form.

ANSWER: Nationstar objects to the form of this Interrogatory on the grounds that it implies Nationstar made a misrepresentation to the Court, which is untrue. See *In re Full*, 09-05650-jw, Doc. 65, p.16 (Bankr. D.S.C. 2012) (citing *In re Neals*, 459 B.R. 612, 617-19 (Bankr. D.S.C. 2011)). Furthermore, Plaintiff admitted in her bankruptcy petition and Chapter 13 plan that Nationstar was the proper party to enforce the terms of the Note and collect payments, and Plaintiff's attempt to take a contrary position on this issue is barred.

15. Explain why you did not disclose to the federal bankruptcy court in the Motion for Clarification you filed in Plaintiff's Chapter 13 case on May 9, 2012, and at the hearing before the court regarding same on May 17, 2012, that you are not the owner of the subject mortgage and note, the name of the owner, and under what capacity and authority you are authorized to act on behalf of the owner.

ANSWER: Nationstar, as the loan servicer, qualifies as a "person entitled to enforce" the

Note pursuant to S.C. Code Ann. § 36-3-301.” *In re Full*, 09-05650-jw, Doc. 65, p.16 (Bankr. D.S.C. 2012) (citing *In re Neals*, 459 B.R. 612, 617-19 (Bankr. D.S.C. 2011)). Furthermore, Plaintiff admitted in her bankruptcy petition and Chapter 13 plan that Nationstar was the proper party to enforce the terms of the Note and collect payments, and Plaintiff’s attempt to take a contrary position on this issue is barred.

16. Explain why you in effect misrepresented to the federal bankruptcy court in the Form 10 claim form, the Motion for Clarification, and at the hearing before the court regarding same that you are the only interested party in the subject mortgage and note.

ANSWER: Nationstar objects to the form of this Interrogatory on the grounds that it implies Nationstar made a misrepresentation to the Court, which is untrue. *See In re Full*, 09-05650-jw, Doc. 65, p.16 (Bankr. D.S.C. 2012) (citing *In re Neals*, 459 B.R. 612, 617-19 (Bankr. D.S.C. 2011)). Furthermore, Plaintiff admitted in her bankruptcy petition and Chapter 13 plan that Nationstar was the proper party to enforce the terms of the Note and collect payments, and Plaintiff’s attempt to take a contrary position on this issue is barred.

17. Explain why you did not disclose to the Colleton County Court of Common Pleas at the hearing before the court on your Motion to Intervene on July 18, 2012, or in any of your notices and pleadings filed in the court prior to the hearing date, that you are not the owner of the subject mortgage and note, the name of the owner, and under what capacity and authority you are authorized to act on behalf of the owner.

ANSWER: Nationstar objects to the form of this Interrogatory on the grounds that it implies Nationstar made a misrepresentation to the Court, which is untrue. Furthermore, Nationstar, as the loan servicer, qualifies as a “person entitled to enforce” the Note pursuant to S.C. Code Ann. § 36-3-301.” *See In re Full*, 09-05650-jw, Doc. 65, p.16 (Bankr. D.S.C. 2012)

(citing *In re Neals*, 459 B.R. 612, 617-19 (Bankr. D.S.C. 2011)). In addition, Nationstar is the holder of the Note in that it is possession of the original note, endorsed in blank, and has authority to enforce the Note. Finally, Plaintiff admitted in her bankruptcy petition and Chapter 13 plan that Nationstar was the proper party to enforce the terms of the Note and collect payments and any attempt by Plaintiff to take a contrary position on this issue is barred.

18. Explain why you in effect misrepresented to the Colleton County Court of Common Pleas that you are the only interested party in the subject mortgage and note on July 18, 2012, and in all communications or documents submitted to the court prior to that date.

ANSWER: Nationstar objects to the form of this Interrogatory on the grounds that it implies Nationstar made a misrepresentation to the Court, which is untrue. Furthermore, Nationstar, as the loan servicer, qualifies as a "person entitled to enforce" the Note pursuant to S.C. Code Ann. § 36-3-301." See *In re Full*, 09-05650-jw, Doc. 65, p.16 (Bankr. D.S.C. 2012) (citing *In re Neals*, 459 B.R. 612, 617-19 (Bankr. D.S.C. 2011)). In addition, Nationstar is the holder of the Note in that it is possession of the original note, endorsed in blank, and has authority to enforce the Note. Furthermore, Plaintiff admitted in her bankruptcy petition and Chapter 13 plan that Nationstar was the proper party to enforce the terms of the Note and collect payments, and Plaintiff's attempt to take a contrary position on this issue is barred.

19. Explain why you, by and through your counsel, reported to Judge Buckner and the parties via email subsequent to the hearing on your Motion to Intervene on July 18, 2012, that you are not the owner of the subject mortgage and note and that you wished to strike the word "owner" from your proposed Order granting your Motion to Intervene in this action.

ANSWER: Any failure to disclose Fannie Mae as the owner of the Note was inadvertent and brought to the Court's attention as soon as the error was discovered and prior to any order

being signed by the Court. Nationstar, as the loan servicer, qualifies as a "person entitled to enforce" the Note pursuant to S.C. Code Ann. § 36-3-301." See *In re Full*, 09-05650-jw, Doc. 65, p.16 (Bankr. D.S.C. 2012) (citing *In re Neals*, 459 B.R. 612, 617-19 (Bankr. D.S.C. 2011)). In addition, Nationstar is the holder of the Note in that it is possession of the original note, endorsed in blank, and has authority to enforce the Note. Finally, Plaintiff admitted in her bankruptcy petition and Chapter 13 plan that Nationstar was the proper party to enforce the terms of the Note and collect payments.

20. Explain why the bar code at the bottom of Page 3 of 3 of the copy of the note in **Exhibit A** is different than the bar code at the bottom of Page 3 of 3 of the copy of the note in **Exhibit B**, and include in the response an explanation why the bar code on Page 3 of 3 of the note in **Exhibit B** bears the wrong address of "229 Presidential Ct" and why the bar code on Page 3 of 3 of the note in **Exhibit A** bears the correct address of "209 Presidential Ct". To aid you in your response, enlarged copies of these bar codes are attached as **Exhibit C**.

ANSWER: All copies of the notes on this file the bar code are all the same.

21. Explain why the copy of the note you attached to your bankruptcy Form 10 claim form does not include a copy of Flagstar Bank's purported endorsement in blank. (**Exhibit B**)

ANSWER: The endorsement is on the back of the original Note, and only the front of the Note was copied. Furthermore, Plaintiff admitted in her bankruptcy petition and Chapter 13 plan that Nationstar was the proper party to enforce the terms of the Note and collect payments, and Plaintiff's attempt to take a contrary position on this issue is barred.

22. Explain why none of the endorsements on the copy of the note you submitted to the Colleton County Court of Common Pleas are dated and notarized to validate the dates on which the note was endorsed and to validate that the person or persons that signed the

endorsements were in fact the persons that had lawful authority to do so. (Exhibit A)

ANSWER: See Answer to Interrogatory #21.

23. Explain why Flagstar Bank's purported endorsement in blank on the note does not contain a blank line or blank space between "PAY TO THE ORDER OF" and "WITHOUT RECOURSE FLAGSTAR BANK, FSB" in the endorsement. (Exhibit A)

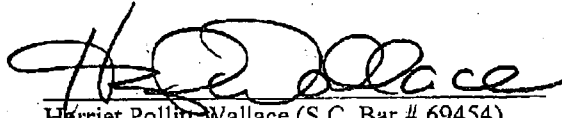
ANSWER: Nationstar objects to this Interrogatory on the grounds it implies a legal requirement which does not exist.

24. Explain on what legal basis you believe you can lawfully collect on the note while the note has a purported endorsement in blank from Flagstar Bank that has not been signed or stamped by the payee/assignee and therefore does not identify the current owner of the note and does not show that the assignment or transfer of the note has been perfected. (Exhibit A)

ANSWER: Nationstar objects to this Interrogatory on the grounds it implies a legal requirement which does not exist.

25. Explain how you obtained the copy of the note that is attached to the Form 10 claim form that you submitted to the federal bankruptcy court in Plaintiff's Chapter 13 case, and include in the response from whom the copy of the note was obtained, from where the copy was obtained, and the date the copy was obtained. (Exhibit B)

ANSWER: The copy of the note was obtained from Nationstar's imaging systems.



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October 4, 2012

ATTORNEY FOR NATIONSTAR MORTGAGE, LLC

This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only an enforcement of the lien against the property.