

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

OFFICE OF THE MASTER IN EQUITY

Mikell Scarborough, Judge

Appellate Case No. 2013-002065

Bank of America, N.A., Respondent,

v.

Frank Cook a/k/a/ Frank W. Cook, Judith H. Cook and Ian Blake, Defendants,

Of whom Frank Cook and Judith H. Cook are the Appellants.

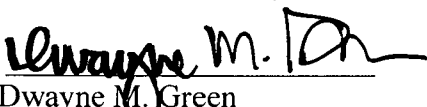
RECORD ON APPEAL

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May 8, 2014

RECEIVED

MAY 20 2014

SC Court of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs

Frank Cook a/k/a Frank W Cook, Judith H Cook, and Ian
Blake.

DEFENDANT(S)

IN THE COURT OF COMMON PLEAS

SUMMONS

(NON-JURY MORTGAGE FORECLOSURE)

C/2012

2012 CP 10 2651

DEFICIENCY WAIVED

2012 APR 20 PM 3:03
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

FI2-01801

TO THE DEFENDANTS ABOVE NAMED.

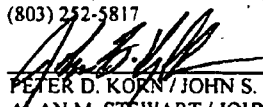
YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 1300 Pickens Street, P.O. Box 11264, Columbia, South Carolina, 29211-1264, within thirty (30) days after service hereof, except as to the United States of America, which shall have Sixty (60) days, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

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

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

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

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P.O. Box 11264
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(803) 252-5817


PETER D. KORN / JOHN S. KAY / DEAN HAYES
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MEREDITH L. PRICKETT / KEVIN T. HARDY
TERESA D. VAN VLAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

Columbia, South Carolina
April 20, 2012

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs.

Frank Cook a/k/a Frank W Cook, Judith H Cook,
and Ian Blake,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

COMPLAINT

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2012 CP 10 2651

DEFICIENCY WAIVED

2012 APR 20 PM 3:03
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

F12-01801

The Plaintiff, complaining of the Defendants above-named would respectfully show unto this Honorable Court:

1. That the Plaintiff is a corporation/limited liability company organized and existing under and by virtue of the laws of the United States of America; and that the Defendants Frank Cook a/k/a Frank W Cook, Judith H Cook, and Ian Blake, are upon information and belief, citizens and residents of the State of South Carolina.

2. Any Defendant described herein as a judgment creditor(s) has, by filing the judgment(s), designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of Section 15-35-840 of the S.C. Code of Laws (1976) as amended.

3. That the real property hereinafter described, which is the subject of this action, is situated and located in the County of Charleston, State of South Carolina.

4. That on or about May 15, 2008, for value received, Frank Cook, did execute and deliver to Bank of America, N.A., a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Frank Cook promised to pay to Bank of America, N.A. the sum of One Hundred Seventy-Five Thousand And 00/100 Dollars (\$175,000.00), together with interest thereon at the rate of Six And 625/1000 per cent (6.625%) per annum.

5. That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Frank Cook, did execute and deliver on May 15, 2008 unto Bank of America, N.A., a mortgage covering the following described property:

Legal description and property address:

All that certain lot, piece, parcel of land, situate, lying and being on the South side of Poplar Street in the City of Charleston, County of Charleston, State of South Carolina, known and designated as Lot 60 on a plat of 92 lots laid out for Carolina-Florida Realty, Company, which plat is recorded in the Charleston County RMC Office in Plat Book C, Page 128.

The said lot measuring and containing and butting and bounding to the North on Poplar Street, Thirty-five feet; to the East on Lot 62 One Hundred Two and Five-tenths feet; to the South on Lot 59 Thirty-four and Ninety-five Hundredths feet; and to the West on Lot 58 One Hundred Four and Twenty-six Hundredths feet; be all measurements a little more or less and all as shown on said plat.

This being the same property conveyed to Frank W Cook and Judith H Cook by deed of Yvonne Patricia Jamison dated September 4, 2007 and recorded September 5, 2007 in the Office of the Register of Deeds for Charleston County in Book R637 at Page 209.

13 Poplar Street, Charleston, South Carolina 29403
TMS# 463-12-03-136

6. Thereafter said mortgage was recorded in Book F660 at Page 114 on May 22, 2008 in the Office of the Register of Deeds of Charleston County.

7. The above referenced instrument constitutes a first lien priority mortgage.

8. That the Defendant, Ian Blake, is made a party by virtue of Contract of Sale from Frank Cook dated December 13, 2011 and recorded December 13, 2011 in the Office of the Register of Deeds in Book 0222 at Page 477.

9. According to the terms and conditions of the said note and mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, would be secured by the said mortgage as a part of the debt secured thereby.

10. That under the terms and conditions of said mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.

11. Further, under the terms and conditions of said mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

12. According to the terms of said mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default there under, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said mortgage.

13. The monthly payments due on said note and mortgage are in default since December 1, 2011, and the conditions of said note and mortgage have been broken and the Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of December 1, 2011 the sum of One Hundred Sixty-Seven Thousand Five Hundred Ninety-Two And 37/100 Dollars -

(\$167,592.37), together with interest at the rate of Six and 625/1000 per cent (6.625 %) per annum from November 1, 2011 and also for the costs and disbursements of this action, including attorney's fees.

FOR A SECOND CAUSE OF ACTION
(EQUITABLE LIEN):

14. Plaintiff realleges and incorporates the allegations of the preceding paragraphs as if fully contained herein.

15. That by deed dated September 4, 2007 and recorded September 5, 2007, in the Office of the Register of Deeds of Charleston County in Book R637 at Page 209, Yvonne Patricia Jamison conveyed the subject property unto Defendants Frank W Cook and Judith H Cook.

16. That Defendants Frank W Cook and Judith H Cook received the benefit of the proceeds of Plaintiff's loan described in Paragraph Four (4) herein.

17. That Defendant Judith H Cook did not execute the mortgage described in Paragraph Five (5) herein.

18. That the aforesaid loan created a debt, duty or obligation owing from Defendant Judith H Cook to Plaintiff.

19. That the obligation of Defendant Judith H Cook attaches to the above real property.

20. That the parties intended, expressly or impliedly, that the above described real property serve as security for the payment of obligation.

21. That the aforesaid establishes an equitable lien upon Defendant Judith H Cook's interest in the above described real property.

22. Plaintiff is entitled to an Order of the Court establishing its equitable lien upon Defendant Judith H Cook's interest in the subject property and foreclosing Plaintiff's equitable lien.

FOR A THIRD CAUSE OF ACTION
(UNJUST ENRICHMENT / RESTITUTION):

23. Plaintiff realleges and incorporates the allegations of the preceding paragraphs as of fully contained herein.

24. Plaintiff conferred a nongratuitous benefit upon Defendant Judith H Cook and this Defendant realized some value from the proceeds of Plaintiff's mortgage.

25. It would be inequitable for Defendant Judith H Cook to retain this benefit without paying the Plaintiff its value, and Plaintiff is entitled to judgment against Defendant Judith H Cook, for the benefit of the value so conferred.

26. That the Plaintiff specifically waives its rights to a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due to the Plaintiff, including costs and attorney fees.

27. That the servicer is participating in the Home Affordable Modification Program (HMP). The HMP modification process specified by the Guidelines or Supplemental Directive has been completed without

resulting in a modification because the borrower's financial status was not sufficient to support the modification process specified by the Guidelines or Supplemental Directive.

28. That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any.

29. The notice of consumer's right to cure, as contemplated under S.C. Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred.

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

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

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

(3) That the mortgaged premises be sold under the direction of this court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and sale.

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

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

(4) For an Order directing and empowering the Sheriff of Charleston County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

(5) For an Order granting the appointment of a receiver to secure and supervise the rental of the property sought to be foreclosed.

(6) For reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

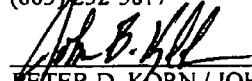
(7) For such other and further relief as may be just and proper.

(8) For an order satisfying any prior liens that may be of record, but have been paid in full.

(9) For an order establishing the Plaintiff's equitable lien against Defendant Judith H Cook interest in the subject property and foreclosing Plaintiff's equitable lien.

(10) For an order of judgment against Defendant Judith H Cook for the benefit of the value of his/her interest in the subject property.

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TERESA D. VAN FLAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

Columbia, South Carolina
April 20, 2012

4-20-12
4:41 P.M.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs

Frank Cook a/k/a Frank W Cook, Judith H Cook, and Ian
Blake.

DEFENDANT(S).

FI2-01801

IN THE COURT OF COMMON PLEAS

LIS PENDENS

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:

DEFICIENCY WAIVED

2012 CP 102651

2012 APR 20 PM 3:03
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this court upon Complaint of the above-named Plaintiff against the above-named Defendant for foreclosure of a certain mortgage of real estate given by Frank Cook to Bank of America, N.A. in the amount of One Hundred Seventy-Five Thousand And 00/100 (\$175,000 00) Dollars, dated May 15, 2008, and recorded May 22, 2008 in the Office of the Register of Deeds for Charleston County in Book F660 at Page 114

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

LEGAL DESCRIPTION AND PROPERTY ADDRESS:

All that certain lot, piece, parcel of land, situate, lying and being on the South side of Poplar Street in the City of Charleston, County of Charleston, State of South Carolina, known and designated as Lot 60 on a plat of 92 lots laid out for Carolina-Florida Realty, Company, which plat is recorded in the Charleston County RMC Office in Plat Book C, Page 128.

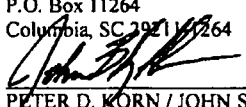
The said lot measuring and containing and butting and bounding to the North on Poplar Street, Thirty-five feet; to the East on Lot 62 One Hundred Two and Five-tenths feet; to the South on Lot 59 Thirty-four and Ninety-five Hundredths feet; and to the West on Lot 58 One Hundred Four and Twenty-six Hundredths feet, be all measurements a little more or less and all as shown on said plat.

This being the same property conveyed to Frank W Cook and Judith H Cook by deed of Yvonne Patricia Jamison dated September 4, 2007 and recorded September 5, 2007 in the Office of the Register of Deeds for Charleston County in Book R637 at Page 209

13 Poplar Street, Charleston, South Carolina 29403

TMS # 463-12-03-136

KORN LAW FIRM, P.A.
1300 Pickens Street.
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Columbia, SC 29211-1264


PETER D. KORN / JOHN S. KAY / DEAN HAYES
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MEREDITH L. PRICKETT / KEVIN T. HARDY
TERESA D. VAN FLAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

Columbia, South Carolina
April 20, 2012

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.

PLAINTIFF,

vs.

Frank Cook a/k/a Frank W Cook, et al,

DEFENDANT(S).

IN THE CIRCUIT COURT FOR THE _____
JUDICIAL CIRCUIT

(NON-JURY MORTGAGE FORECLOSURE)

CERTIFICATE OF EXEMPTION
FROM ADR

C/A NO: 2012 CP 102651

DEFICIENCY WAIVED

F12-01801

I certify that this action is exempt from ADR because:

- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus of prohibition;
- ☐ this action is appellate in nature;
- ☐ this is a post-conviction relief matter;
- ☐ this is a contempt of court proceeding;
- ☐ this is forfeiture proceeding brought by the State;
- ☒ this is a case involving a mortgage foreclosure;
- ☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.



Plaintiff/Attorney(s) for Plaintiff(s)

Defendant/Attorney(s) for Defendant(s)

PETER D. KORN / JOHN S. KAY / DEAN HAYES
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / SUZANNAH HAYES
MEREDITH L. PRICKETT / KELLER C. FOSTER
TERESA D. VAN VLAKE / ASHLEY ZARRETT

Date: 4/20/12

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

Frank Cook a/k/a Frank W. Cook, Judith
H. Cook, and Ian Blake

Defendant(s).

COURT OF COMMON PLEAS

Civil Action No. 2012-CP-10-2651

ANSWER OF DEFENDANTS

Frank Cook a/k/a Frank W. Cook and
Judith H. Cook

2012 MAY -9 AM 11:15
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Defendants Frank Cook a/k/a Frank W. Cook and Judith H. Cook, answer
Plaintiff's Complaint below. Defendants deny each allegation that is not specifically
admitted or qualified below:

GENERAL DENIAL

1. Defendants admit the allegation contained in Paragraph 1 of the
Complaint.
2. Defendants admit the allegation contained in Paragraph 2 of the
Complaint upon information and belief.
3. Defendants are without information to admit or deny the allegations
contained in Paragraph 3 of the Complaint and therefore deny same.
4. Defendants admit the allegation contained in Paragraph 4 of the
Complaint upon information and belief.
5. Defendants admit the allegation contained in Paragraph 5 of the
Complaint upon information and belief.

6. Defendants admit the allegation contained in Paragraph 6 of the Complaint upon information and belief.

7. Defendants admit the allegation contained in Paragraph 7 of the Complaint upon information and belief.

8. Paragraph 8 of the Complaint states a legal conclusion which these Defendants are required to neither admit nor deny.

9. Defendants admit the allegations in Paragraph 9 of the Complaint.

FOR A FIRST CAUSE OF ACTION
(Reformation)

10. Defendants reincorporate Paragraphs 1-9 of their Answer.

11. Defendants admit the allegations in Paragraph 11 of the Complaint.

12. Defendants admit the allegation contained in Paragraph 12 of the Complaint upon information and belief.

13. Defendants admit the allegation contained in Paragraph 13 of the Complaint upon information and belief.

14. Defendants are without information to admit or deny the allegations contained in Paragraph 14 and therefore deny same.

15. Defendants are without information to admit or deny the allegations contained in Paragraph 15 and therefore deny same.

FOR A SECOND CAUSE OF ACTION
(Foreclosure of Mortgage)

16. Defendants incorporate paragraphs 1-15 of the Answer above.

17. Defendants admit the allegation contained in Paragraph 17 of the Complaint upon information and belief.

18. Defendants deny the allegation in Paragraph 18 of the Complaint.
19. Defendants deny the allegation in Paragraph 19 of the Complaint.
20. Defendants deny the allegation in Paragraph 20 of the Complaint.
21. Defendants deny the allegation in Paragraph 21 of the Complaint.
22. Defendants deny the allegation in Paragraph 22 of the Complaint.
23. Defendants deny the allegation in Paragraph 23 of the Complaint.
24. Defendants admit the allegation contained in Paragraph 12 of the Complaint upon information and belief.
25. Defendants deny the allegation in Paragraph 25 of the Complaint.
26. Paragraph 26 of the Complaint states a legal conclusion which these Defendants are required to neither admit nor deny.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

(Statute of Limitations; Waiver; Estoppel; Laches)

Plaintiff's claims are barred by the relevant statutes of limitation and statutes of repose and by the doctrines of waiver, estoppel and/or laches.

SECOND DEFENSE

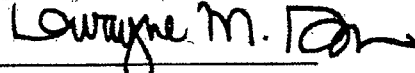
(Compliance with Contractual Obligations)

Defendant has paid and continues to pay all sums due to Plaintiff and has not breached his obligations with Plaintiff.

WHEREFORE, having fully answered Plaintiff's Complaint and asserting the above affirmative defenses, these defendants pray that the Complaint be dismissed with prejudice and that these Defendants be awarded the costs and reasonable attorney fees in association with this matter and other such relief as the Court may deem just and proper.

Respectfully submitted,

GREEN FORD & WALLACE



Dwayne M. Green, Esquire

Dwayne.Green@greenfordwallace.com

602 Rutledge Ave

Charleston, SC 29403

(843) 266-2626 telephone

(843) 266-2627 fax

Web: www.GreenFordWallace.com

May 8, 2012
Charleston, SC 29403

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

Frank Cook a/k/a Frank W. Cook, Judith
H. Cook, and Ian Blake

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-2651

CERTIFICATE OF SERVICE

BY

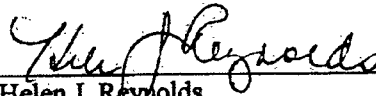
JULIE L. ARMSTRONG
CLERK OF COURT

2012 MAY -9 AM 11:15

FILED

I, Helen J. Reynolds, legal assistant at Green Ford & Wallace LLC, hereby certify that
I have this 9th day of May, 2012, served a copy of Defendant Frank Cook a/k/a Frank W.
Cook and Judith H. Cook's Answer in the above-captioned case by depositing same in the
U.S. Mail with sufficient postage prepaid, at the address as follows:

Mr. Samuel C. Waters, Esquire
ROGERS, TOWNSEND & THOMAS, P.C.
Post Office Box 100200
Columbia, SC 29202-3200


Helen J. Reynolds

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs.

Frank Cook a/k/a Frank W Cook, Judith H Cook, and
Ian Blake,

DEFENDANTS.

2012 JUN 18 PM 2:55

JULIE J. ARMSTRONG
CLERK OF COURT

BY 1

IN THE COURT OF COMMON PLEAS

MOTION AND
ORDER OF REFERENCE

(NON-JURY MORTGAGE
FORECLOSURE)

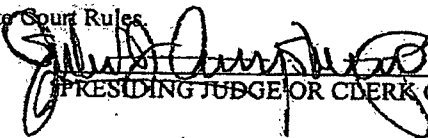
C/A NO: 2012-CP-10-2651

DEFICIENCY WAIVED

F12-01801

It appearing pursuant to Rule 53 – SCRCP, that the parties hereto (excluding those defendants in default as shown by the annexed Affidavit of Default) have agreed and stipulated that the issue in this action be referred to Mikell R. Scarborough, as Master in Equity for the above-entitled County, and that the Master in Equity shall have the authority to enter final judgment, with appeal, if any, directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules; now, on motion of the undersigned attorney for the Plaintiff, by and with the consent of the Attorneys for the answering defendants, if any,

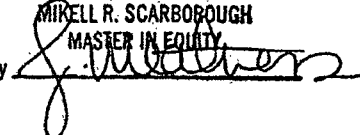
IT IS ORDERED that this case be referred to Mikell R. Scarborough, as Master in Equity to direct entry of final judgment in this action under Rule 53 (b), SCRCP. Any appeal from the final judgment entered by the Master in Equity shall be directly to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.


PRESIDING JUDGE OR CLERK OF COURT

Charleston, South Carolina
6/15, 2012

I SO MOVE:


PETER D. KORN / JOHN S. KAY / DEAN HAYES
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / SUZANNAH HAYES
MEREDITH L. PRICKETT / KEVIN T. HARDY
TERESA D. VAN FLAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

Date 6-18-2012 PAID
Amount \$125.00
MIKELL R. SCARBOROUGH
MASTER IN EQUITY
By 

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

Frank Cook a/k/a Frank W. Cook, Judith
H. Cook, and Ian Blake

Defendant(s).

COURT OF COMMON PLEAS

Civil Action No. 2012-CP-10-2651

AMENDED ANSWER OF DEFENDANTS

Frank Cook a/k/a Frank W. Cook and
Judith H. Cook
(Jury Trial Demanded)

2015 JUN 26 PM 2:14
CLERK OF COURT

FILED

Defendants Frank Cook and Judith H. Cook, hereby submit this amended answer to Plaintiff's Complaint below. Defendants deny each allegation that is not specifically admitted or qualified below:

GENERAL DENIAL

1. Defendants admit the allegation contained in Paragraph 1 of the Complaint.
2. Defendants admit the allegation contained in Paragraph 2 of the Complaint upon information and belief.
3. Defendants are without information to admit or deny the allegations contained in Paragraph 3 of the Complaint and therefore deny same.
4. Defendants admit the allegation contained in Paragraph 4 of the Complaint upon information and belief.
5. Defendants admit the allegation contained in Paragraph 5 of the Complaint upon information and belief.

6. Defendants admit the allegation contained in Paragraph 6 of the Complaint upon information and belief.

7. Defendants admit the allegation contained in Paragraph 7 of the Complaint upon information and belief.

8. Paragraph 8 of the Complaint states a legal conclusion which these Defendants are required to neither admit nor deny.

9. Defendants admit the allegations in Paragraph 9 of the Complaint.

FOR A FIRST CAUSE OF ACTION
(Reformation)

10. Defendants reincorporate Paragraphs 1-9 of their Answer.

11. Defendants admit the allegations in Paragraph 11 of the Complaint.

12. Defendants admit the allegation contained in Paragraph 12 of the Complaint upon information and belief.

13. Defendants admit the allegation contained in Paragraph 13 of the Complaint upon information and belief.

14. Defendants are without information to admit or deny the allegations contained in Paragraph 14 and therefore deny same.

15. Defendants are without information to admit or deny the allegations contained in Paragraph 15 and therefore deny same.

FOR A SECOND CAUSE OF ACTION
(Foreclosure of Mortgage)

16. Defendants incorporate paragraphs 1-15 of the Answer above.

17. Defendants admit the allegation contained in Paragraph 17 of the Complaint upon information and belief.

18. Defendants deny the allegation in Paragraph 18 of the Complaint.
19. Defendants deny the allegation in Paragraph 19 of the Complaint.
20. Defendants deny the allegation in Paragraph 20 of the Complaint.
21. Defendants deny the allegation in Paragraph 21 of the Complaint.
22. Defendants deny the allegation in Paragraph 22 of the Complaint.
23. Defendants deny the allegation in Paragraph 23 of the Complaint.
24. Defendants admit the allegation contained in Paragraph 12 of the Complaint upon information and belief.
25. Defendants deny the allegation in Paragraph 25 of the Complaint.
26. Paragraph 26 of the Complaint states a legal conclusion which these Defendants are required to neither admit nor deny.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

(Statute of Limitations; Waiver; Estoppel; Laches)

Plaintiff's claims are barred by the relevant statutes of limitation and statutes of repose and by the doctrines of waiver, estoppel and/or laches.

27. Defendants incorporate herein by reference all the allegations and statements contained above and below.
28. Plaintiffs have unclean hands in this matter.
29. It is axiomatic that one who seeks equity must have acted equitably.
30. Plaintiffs' conduct caused injury to Defendant.
31. Defendant request that the Plaintiffs' request for equitable relief be denied.

SECOND DEFENSE

(Compliance with Contractual Obligations)

Defendant has paid and continues to pay all sums due to Plaintiff and has not breached his obligations with Plaintiff.

32. Defendants incorporate by reference all paragraphs above and below of their Answer.

33. Defendants state that the alleged breach was not a material breach of the agreement between the parties.

34. An action to foreclose is, at its core, an action for breach of contract.

35. An Action to foreclose was non-material, the Plaintiff and Bank of America N.A. have no cause of action to pursue this foreclosure.

36. Defendants incorporate the paragraphs above and below of their Answer and Counterclaim.

37. A Note and Mortgage are in essence a contract.

38. The Defendants made the payments to the mortgagee until this suit was filed.

39. The Plaintiff is effectively seeking to withdraw the benefit of the bargain from the Defendants in this action by wrongfully foreclosing on their property after they have paid thousands of dollars in fees for the loan origination and the closing and have been paying interest and principle to Bank of America, N.A.

40. The commencing of a foreclosure action without proper cause is a breach of contract.

41. If the Plaintiff had not breached the terms of the alleged not and mortgage, the Defendants would not have had to pay for an attorney and would not have had their credit impaired.

42. The Defendants request that this court award them actual damages, costs, and attorney fees.

43. Defendants incorporate herein by reference all the allegations and statements contained in paragraphs 1 through 43.

44. Plaintiff's complaint alleges a transfer from Bank of America, N.A. to the Plaintiff at some unspecified date.

45. The transfer must have occurred prior to the filing of the original complaint.

46. The Plaintiff is in violation of the Real Estate Settlement Procedure's provisions for notifying borrowers of the transfer of their loans.

47. The actions of the Plaintiff are representative of a pattern of noncompliance with RESPA.

48. Defendants request that this court grant an award of actual damages, costs, attorney's fees and statutory damages of \$1000.00.

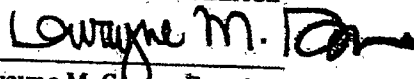
WHEREFORE, having fully answered Plaintiff's Complaint herein, the Defendants

- (1) Request that this matter be heard before a Jury;
- (2) Expressly deny that the Plaintiff is entitled to any relief requested;
- (3) Pray that the Plaintiff's Complaint be dismissed with prejudice;

- (4) Pray that the court Award defendant special damages and actual damages;
- (5) Pray that the Court Award Statutory Damages;
- (6) That Defendant's costs and attorneys' fees be taxed against the Plaintiff.
- (7) And for such other and further relief as this Court may deem Just and Proper;

Respectfully submitted,

GREEN FORD & WALLACE



Dwayne M. Green, Esquire

Dwayne.Green@greenfordwallace.com

602 Rutledge Ave

Charleston, SC 29403

(843) 266-2626 telephone

(843) 266-2627 fax

Web: www.GreenFordWallace.com

June 22, 2012
Charleston, SC 29403

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

CASE NO.: 2012-CP-2651

Bank of America, N.A.,

Plaintiff,

vs.

CERTIFICATE OF SERVICE

Frank Cook a/k/a Frank W. Cook, Judith
H. Cook, and Ian Blake

Defendant(s).

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2012 JUN 28 PM 2:14

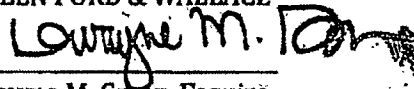
FILED

I, Dwayne M. Green, Green Ford & Wallace LLC, hereby certify that I have on this
22 day of June, 2012, served a copy of Defendants Frank Cook a/k/a Frank W. Cook and
Judith H. Cook's Amended Answer in the above-captioned case by depositing same in the
U.S. Mail with sufficient postage prepaid, at the addressed as follows:

Mr. Samuel C. Waters, Esquire
ROGERS, TOWNSEND & THOMAS, P.C.
Post Office Box 100200
Columbia, SC 29202-3200

Respectfully submitted,

GREEN FORD & WALLACE



Dwayne M. Green, Esquire

Dwayne.Green@greenfordwallace.com

602 Rutledge Ave

Charleston, SC 29403

(843) 266-2626 telephone

(843) 266-2627 fax

Web: www.GreenFordWallace.com

June 22, 2012
Charleston, SC 29403

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

Frank Cook a/k/a Frank W. Cook, Judith
H. Cook and Ian Blake;

Defendant(s).

COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action No. 2012-CP-10-2651

**MOTION TO RESCIND ENTRY OF
JUDGMENT**

2012 AUG 15 PM 12:37
JULIE J. KORN
CLERK
COURT
BY _____

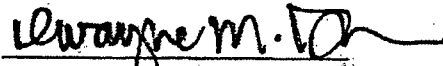
TO: PETER KORN and VANESSA VAN VLAKE, ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE that at a time not less than ten (10) days after service hereof, the Defendants Frank Cook and Judith Cook will move this Honorable Court for an Order Rescinding the Entry of Judgment and Order Referring this case to the Master entered June 18, 2012.

The grounds for this motion are that the Plaintiff falsely and erroneously filed a Certificate of Default and Non-Military Service on June 6, 2012, claiming that the Defendants had failed to file a timely answer in this matter. Defendants Frank Cook and Judith Cook and Dwayne Green did file an Answer in this matter on May 9, 2012 (attached), which answer was properly filed with the Charleston County Clerk of Court. Defendants inadvertently served their Answer upon counsel for another firm as evidenced by the attached Certificate of Service, however the Answer was clearly filed with the Clerk's office in a timely matter and is visible on the clerk's website as public record as of the Plaintiff's Motion for Default and Reference.

Defendants will move for an Order lifting the Entry of Judgment and awarding Defendants the costs and fees for filing this motion, as well as any other relief the court deems just and appropriate, in the event the Order of Reference and Motion for Default cannot be rescinded by consent.

GREEN FORD & WALLACE LLC



Dwayne M. Green (SC Bar #9559)

Dwayne.Green@GreenFordWallace.com

602 Rutledge Avenue

Charleston, SC 29403

(843) 266-2629 telephone

(877) 747-7420 fax

Web: www.GreenFordWallace.com

August 16, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

Frank Cook a/k/a Frank W. Cook, Judith
H. Cook, and Ian Blake

Defendant(s).

COURT OF COMMON PLEAS

Civil Action No. 2012-CP-10-2651

ANSWER OF DEFENDANTS

Frank Cook a/k/a Frank W. Cook and
Judith H. Cook

FILED
2012 MAY -9 AM 11:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY [Signature]

Defendants Frank Cook a/k/a Frank W. Cook and Judith H. Cook, answer
Plaintiff's Complaint below. Defendants deny each allegation that is not specifically
admitted or qualified below:

GENERAL DENIAL

1. Defendants admit the allegation contained in Paragraph 1 of the Complaint.
2. Defendants admit the allegation contained in Paragraph 2 of the Complaint upon information and belief.
3. Defendants are without information to admit or deny the allegations contained in Paragraph 3 of the Complaint and therefore deny same.
4. Defendants admit the allegation contained in Paragraph 4 of the Complaint upon information and belief.
5. Defendants admit the allegation contained in Paragraph 5 of the Complaint upon information and belief.

6. Defendants admit the allegation contained in Paragraph 6 of the Complaint upon information and belief.

7. Defendants admit the allegation contained in Paragraph 7 of the Complaint upon information and belief.

8. Paragraph 8 of the Complaint states a legal conclusion which these Defendants are required to neither admit nor deny.

9. Defendants admit the allegations in Paragraph 9 of the Complaint.

FOR A FIRST CAUSE OF ACTION
(Reformation)

10. Defendants reincorporate Paragraphs 1-9 of their Answer.

11. Defendants admit the allegations in Paragraph 11 of the Complaint.

12. Defendants admit the allegation contained in Paragraph 12 of the Complaint upon information and belief.

13. Defendants admit the allegation contained in Paragraph 13 of the Complaint upon information and belief.

14. Defendants are without information to admit or deny the allegations contained in Paragraph 14 and therefore deny same.

15. Defendants are without information to admit or deny the allegations contained in Paragraph 15 and therefore deny same.

FOR A SECOND CAUSE OF ACTION
(Foreclosure of Mortgage)

16. Defendants incorporate paragraphs 1-15 of the Answer above.

17. Defendants admit the allegation contained in Paragraph 17 of the Complaint upon information and belief.

18. Defendants deny the allegation in Paragraph 18 of the Complaint.
19. Defendants deny the allegation in Paragraph 19 of the Complaint.
20. Defendants deny the allegation in Paragraph 20 of the Complaint.
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25. Defendants deny the allegation in Paragraph 25 of the Complaint.
26. Paragraph 26 of the Complaint states a legal conclusion which these Defendants are required to neither admit nor deny.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

(Statute of Limitations; Waiver; Estoppel; Laches)

Plaintiff's claims are barred by the relevant statutes of limitation and statutes of repose and by the doctrines of waiver, estoppel and/or laches.

SECOND DEFENSE

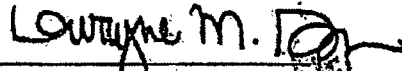
(Compliance with Contractual Obligations)

Defendant has paid and continues to pay all sums due to Plaintiff and has not breached his obligations with Plaintiff.

WHEREFORE, having fully answered Plaintiff's Complaint and asserting the above affirmative defenses, these defendants pray that the Complaint be dismissed with prejudice and that these Defendants be awarded the costs and reasonable attorney fees in association with this matter and other such relief as the Court may deem just and proper.

Respectfully submitted,

GREEN FORD & WALLACE



Dwayne M. Green, Esquire

Dwayne.Green@greenfordwallace.com

602 Rutledge Ave

Charleston, SC 29403

(843) 266-2626 telephone

(843) 266-2627 fax

Web: www.GreenFordWallace.com

May 8, 2012
Charleston, SC 29403

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

Frank Cook a/k/a Frank W. Cook, Judith
H. Cook, and Ian Blake

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-2651

CERTIFICATE OF SERVICE

2012 MAY -9 AM 11:15
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

I, Helen J. Reynolds, legal assistant at Green Ford & Wallace LLC, hereby certify that
I have this 9th day of May, 2012, served a copy of Defendant Frank Cook a/k/a Frank W.
Cook and Judith H. Cook's Answer in the above-captioned case by depositing same in the
U.S. Mail with sufficient postage prepaid, at the addressed as follows:

Mr. Samuel C. Waters, Esquire
ROGERS, TOWNSEND & THOMAS, P.C.
Post Office Box 100200
Columbia, SC 29202-3200


Helen J. Reynolds

KORN LAW FIRM, P. A.
POST OFFICE BOX 11264
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211
(803) 252-5817

June 5, 2012

Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Bank of America, N.A. vs Frank Cook a/k/a Frank W Cook, Judith H Cook, and Ian
Blake
Docket No. 2012-CP-10-2651
Our file No. F12-01801

Dear Master in Equity:

Enclosed please find the original and two copies of the proposed Order of Reference, Affidavit of Default and Affidavit of Non-Military Service for the above foreclosure action, along with our check in the amount of \$125.00. Please have the originals signed and filed and return a clocked copy to us in the enclosed envelope. We have also attached the \$25.00 fee for the Motion, made payable to the Clerk of Court.

This is a foreclosure case that should, pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure, be referred to a Master-In-Equity or Special referee. Pursuant to Rule 53(b), the Order of Reference may be signed by the Clerk of Court or a Circuit Court Judge.

Your assistance is very much appreciated.

Very truly yours,

Valerie Crowder
Legal Assistant

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs.

Frank Cook a/k/a Frank W Cook, Judith H Cook, and
Ian Blake,

DEFENDANTS.

F12-01801

IN THE COURT OF COMMON PLEAS

FILED

2012 JUN 18 PM 2:55

JULIE J. ARMSTRONG
CLERK OF COURT

BY

AFFIDAVIT OF DEFAULT

(NON-JURY MORTGAGE
FORECLOSURE)

C/A NO: 2012-CP-10-2651

DEFICIENCY WAIVED

PERSONALLY appeared before me, the undersigned attorney, who first being duly sworn, deposes and says:

That he is one of the attorneys for the Plaintiff above named; that the Summons and Complaint were served upon the Defendants Frank Cook a/k/a Frank W Cook, Judith H Cook, and Ian Blake, and that more than Thirty (30) days have expired, since such service during which time the Defendants Frank Cook a/k/a Frank W Cook, Judith H Cook, and Ian Blake, have failed to answer, appear or otherwise plead in this cause and, consequently, said Defendants are now in default.

KORN LAW FIRM, P.A.

P.O. Box 11264

1300 Pickens Street

Columbia, South Carolina 29211-1264

BY: Teresa D. VanVlaak

PETER D. KORN / JOHN S. KAY / DEAN HAYES

ALAN M. STEWART / JOHN B. KELCHNER

H. GUYTON MURRELL / SUZANNAH HAYES

MEREDITH L. PRICKETT / KEVIN T. HARDY

TERESA D. VAN VLAKE / ASHLEY ZARRETT

Attorneys for Plaintiff

SWORN to before me this

16 day of June, 2012.

Candy R. [Signature] (SEAL)

Notary Public for South Carolina

My Commission Expires: 6-18-19

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A., et al

☒ Plaintiff

Frank Cook, et al

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-10-2651

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

John S. Kay #7914; Alan M. Stewart #15576;
John B. Kelchner #13589; H. Guyton Murrell #64134;
Suzannah Hayes #66404; Meredith S. Lee #72593;
Ashley Zarrett #74854; Teresa D. Van Vlake #11118

Address:

Korn Law Firm, PA
PO Box 12369, Columbia, SC 29211-2369
Phone: 803.252.5817 x1207 Fax: 803.231.2105
e-mail: cindy.robins@kornlawfirm.com

- ☐ 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: Order of Reference

Estimated Time Needed: _____ 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.

Teresa D. Van Vlake
Signature of Attorney for ☒ Plaintiff

6/6/12
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

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

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

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

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

May 8, 2012

The Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29402

RE: Bank of America, N.A., vs. Frank Cook a/k/a Frank
W. Cook, Judith H. Cook and Ian Blake
C/A# 2011-CP-10-2651
GFW File Number: 351

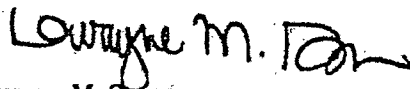
Dear Ms. Armstrong:

Enclosed please find an original and two copies of Defendant Frank W. Cook and Judith Cook's Answer in the above-referenced matter. If you would, please file the original and return the two file-stamped copies in the self-addressed envelope I have enclosed for your convenience.

By copy of this letter to Samuel C. Waters, attorney for the Plaintiff, I am advising him of this filing.

With kind regards, I remain

Yours very truly,
GREEN FORD & WALLACE LLC



Dwayne M. Green

Enclosures

cc: Mr. Samuel C. Waters, Esquire
Mr. and Mrs. Frank W. Cook

FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs.

Frank Cook a/k/a Frank W Cook, Judith H Cook, and
Ian Blake,

DEFENDANTS.

2012 JUN 18 PM 2:55

JULIE J. ARMSTRONG
CLERK OF COURT

BY 1

IN THE COURT OF COMMON PLEAS

MOTION AND
ORDER OF REFERENCE

(NON-JURY MORTGAGE
FORECLOSURE)

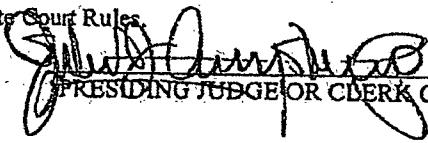
C/A NO: 2012-CP-10-2651

DEFICIENCY WAIVED

F12-01801

It appearing pursuant to Rule 53 – SCRCP, that the parties hereto (excluding those defendants in default as shown by the annexed Affidavit of Default) have agreed and stipulated that the issue in this action be referred to Mikell R. Scarborough, as Master in Equity for the above-entitled County, and that the Master in Equity shall have the authority to enter final judgment, with appeal, if any, directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules; now, on motion of the undersigned attorney for the Plaintiff, by and with the consent of the Attorneys for the answering defendants, if any,

IT IS ORDERED that this case be referred to Mikell R. Scarborough, as Master in Equity to direct entry of final judgment in this action under Rule 53 (b), SCRCP. Any appeal from the final judgment entered by the Master in Equity shall be directly to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.


PRESIDING JUDGE OR CLERK OF COURT

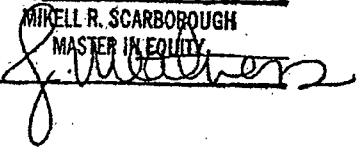
Charleston, South Carolina
10/15, 2012

ISO MOVE:


PETER D. KORN / JOHN S. KAY / DEAN HAYES
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / SUZANNAH HAYES
MEREDITH L. PRICKETT / KEVIN T. HARDY
TERESA D. VAN BLAKE / ASHLEY ZARRETT
Attorneys for Plaintiff

Date 6-8-2012
Amount \$125.00

PAID
MIKELL R. SCARBOROUGH
MASTER IN EQUITY

By 

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

Frank Cook a/k/a Frank W. Cook, Judith
H. Cook and Ian Blake;

Defendant(s).

COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action No. 2012-CP-10-2651

CERTIFICATE OF SERVICE

2012 AUG 16 PM 12:37
JULIE A. WALLACE
CLERK OF COURT
BY

I hereby certify that I have this day mailed a copy of the foregoing Motion to Rescind Entry of Judgment and Order of Reference to the following counsel of record for the Plaintiff this 16th day of August 2012 via first class mail with proper postage affixed.

Peter Korn, Esquire
Vanessa Van Vlakte, Esquire
Korn Law Firm, P.A.
Post Office Box 11264
Columbia, SC 2921

GREEN FORD & WALLACE LLC



Dwayne M. Green (SC Bar #9559)
Dwayne.Green@GreenFordWallace.com
602 Rutledge Avenue
Charleston, SC 29403
(843) 266-2629 telephone
(877) 747-7420 fax
Web: www.GreenFordWallace.com

August 16, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs.

Frank Cook a/k/a Frank W. Cook, Judith H.
Cook and Ian Blake,

DEFENDANT(S).

F12-01801

IN THE COURT OF COMMON PLEAS

C/A NO: 2012-CP-10-2651

**ORDER DENYING DEFENDANT'S
MOTION TO RESCIND**

2012 OCT 11 PM 4:07
JULIE J. ARISTON
CLERK OF COURT
BY

FILED

This is an action for foreclosure as to certain realty located in Charleston County. The summons and complaint were filed on April 20, 2012. The Defendants Frank Cook and Judith Cook were served with the pleadings on April 26, 2012. An affidavit of default as to Defendants Frank Cook and Judith Cook and an Order of Reference were filed on June 18, 2012.

The Defendants Frank Cook and Judith Cook filed a motion to rescind the order of reference. A hearing on the motion was held on September 18, 2012. Attorney Dwayne Green appeared on behalf of Defendants Frank Cook and Judith Cook. Attorney H. Guyton Murrell appeared on behalf of the Plaintiff.

The basis for the motion is that Defendants Frank Cook and Judith Cook timely filed an answer on May 9, 2012 but the answer was served on the wrong law firm in error. The Defendants Frank Cook and Judith Cook filed an amended answer and counterclaim on June 28, 2012. The court finds that the Defendants Frank Cook and Judith Cook were properly served with the pleadings on April 26, 2012 at 164 Pilgrim Point Drive, Lexington, South Carolina. The court finds that the Defendants Frank Cook and Judith Cook timely filed an answer on May 9, 2012 and the Defendants Frank Cook and Judith Cook are not in default. Therefore, the court grants the motion as to lifting the entry of default as to Defendants Frank Cook and Judith Cook.

The Defendants Frank Cook and Judith Cook have also made motion to rescind the order of reference. The court has reviewed the pleadings filed by of Defendants Frank Cook and Judith Cook. The court finds that the amended answer and counterclaim

filed June 28, 2012 was not timely filed as required by Rule 15 SCRPC. The court finds that the responsive pleading filed by Defendants Frank Cook and Judith Cook does not raise legal questions and the underlying foreclosure is an action in equity. The allegations of the answer relate to payment application and the equity court is the appropriate forum for the issue. The court finds that the motion to rescind the order of reference is denied. The court further finds that this matter is proper for this court's contested calendar and a status conference is scheduled for December 10, 2012 at 1:30 a.m., at which time any pre-trial motions will be heard and the court shall issue a scheduling order if the matter is not disposed of by motion.

THEREFORE, IT IS HEREBY ORDERED that the entry of default as to of Defendants Frank Cook and Judith Cook is hereby lifted,

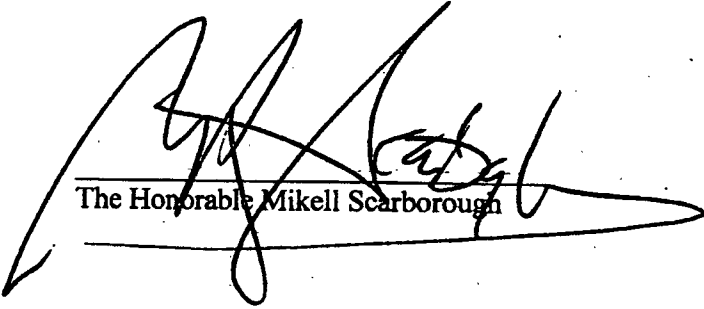
IT IS FURTHER ORDERED that the motion to rescind the order of reference is hereby denied,

IT IS FURTHER ORDERED that a status conference is scheduled for December 10, 2012 at 10:30 a.m.

IT IS SO ORDERED.

Charleston, South Carolina

6/9, 2012


The Honorable Mikell Scarborough

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

Frank Cook a/k/a Frank W. Cook,
Judith H. Cook, and Ian Blake,

Defendant.

NINTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
C/A No.: 2012-CP-10-2651

CERTIFICATE OF SERVICE

I, Dustin A. Brasington, an employee of the Korn Law Firm, P.A., attorney for Plaintiff in the above-captioned action, certify that a copy of the Order Denying Defendant's Motion to Rescind was served on Defendant by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Dwayne M. Green, Esq.
Green, Ford & Wallace, LLC
Post Office Box 20009
Charleston, SC 29413

Ian Blake
13 Poplar Street
Charleston, SC 29403

this 2 day of October, 2012.

Columbia, South Carolina
F12-01801


Dustin A. Brasington
Litigation Paralegal

FILED
2012 OCT 17 PM 4:08
JULIE J. ARMS, CLERK OF COURT

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals for the State of South Carolina

APPEAL FROM THE MASTER IN EQUITY
CHARLESTON COUNTY
NINTH JUDICIAL CIRCUIT

Mikell Scarborough, Judge

Case No. 2012-CP-10-2651

Frank Cook & Judith Cook,

Appellants,

v.

Bank of America, N.A.,

Respondent.

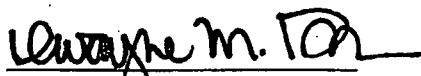
NOTICE OF APPEAL

Frank & Judith Cook, appeal the decision of the Honorable Mikell Scarborough dated October 9, 2012 and filed on October 11, 2012. Dwayne M. Green, attorney for the Appellant, received a copy of this order by mail on October 14, 2012. The basis for this motion is that Rule 53(b) provides for an Order of Reference when the parties consent or there is a default, neither of which has occurred in the present case.

Respectfully submitted,

October 31, 2012

GREEN FORD & WALLACE LLC



Dwayne M. Green (S.C. Bar # 9559)

602 Rutledge Ave.

Charleston, SC 29403

T. 843.266.2629

F. 843.266.2627

E. Dwayne.Green@GreenFordWallace.com

Attorney for Appellant

Counsel of Record:

Teresa D. Van Blake, Esquire

H. Guyton Murrell, Esquire

Korn Law Firm, P.A.

Attorneys for Bank of America, N.A.

Notice of Appeal

Bank of America, N.A., vs. Frank W. Cook, Judith H. Cook and Ian Blake

2012-CP-10-2651

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals for the State of South Carolina

APPEAL FROM THE MASTER IN EQUITY
CHARLESTON COUNTY
NINTH JUDICIAL CIRCUIT

Mikell Scarborough, Judge

Case No. 2012-CP-10-2651

Frank Cook & Judith Cook,

Appellants,

v.

Bank of America, N.A.,

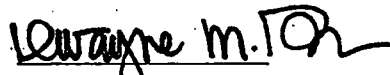
Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on all attorneys of record, by depositing a copy of it in the United States Mail, postage prepaid, on October 31, 2012, addressed to the attorneys of record, H. Guyton Murrell and Teresa D. Van Blake. I also have served Julie J. Armstrong, Charleston County Clerk of Court in the same manner at Charleston County Courthouse, 100 Broad Street, Charleston, SC 29403.

GREEN FORD & WALLACE LLC

October 31, 2012


Dwayne M. Green
602 Rutledge Ave.
Charleston, SC 29403
T. 843.266.2626
F. 843.266.2627
Attorney for Appellant

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs.

Frank Cook a/k/a Frank W. Cook, Judith H.
Cook and Ian Blake,

DEFENDANT(S).

F12-01801

IN THE COURT OF COMMON PLEAS

C/A NO: 2012-CP-10-2651

ORDER DENYING DEFENDANT'S
MOTION TO RESCIND

This is an action for foreclosure as to certain realty located in Charleston County. The summons and complaint were filed on April 20, 2012. The Defendants Frank Cook and Judith Cook were served with the pleadings on April 26, 2012. An affidavit of default as to Defendants Frank Cook and Judith Cook and an Order of Reference were filed on June 18, 2012.

The Defendants Frank Cook and Judith Cook filed a motion to rescind the order of reference. A hearing on the motion was held on September 18, 2012. Attorney Dwayne Green appeared on behalf of Defendants Frank Cook and Judith Cook. Attorney H. Guyton Murrell appeared on behalf of the Plaintiff.

The basis for the motion is that Defendants Frank Cook and Judith Cook timely filed an answer on May 9, 2012 but the answer was served on the wrong law firm in error. The Defendants Frank Cook and Judith Cook filed an amended answer and counterclaim on June 28, 2012. The court finds that the Defendants Frank Cook and Judith Cook were properly served with the pleadings on April 26, 2012 at 164 Pilgrim Point Drive, Lexington, South Carolina. The court finds that the Defendants Frank Cook and Judith Cook timely filed an answer on May 9, 2012 and the Defendants Frank Cook and Judith Cook are not in default. Therefore, the court grants the motion as to lifting the entry of default as to Defendants Frank Cook and Judith Cook.

The Defendants Frank Cook and Judith Cook have also made motion to rescind the order of reference. The court has reviewed the pleadings filed by of Defendants Frank Cook and Judith Cook. The court finds that the amended answer and counterclaim

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2012 OCT 11 PM 4:07
JULIE J. ARISTON
CLERK OF COURT

filed June 28, 2012 was not timely filed as required by Rule 15 SCRPC. The court finds that the responsive pleading filed by Defendants Frank Cook and Judith Cook does not raise legal questions and the underlying foreclosure is an action in equity. The allegations of the answer relate to payment application and the equity court is the appropriate forum for the issue. The court finds that the motion to rescind the order of reference is denied. The court further finds that this matter is proper for this court's contested calendar and a status conference is scheduled for December 10, 2012 at 1:30 a.m., at which time any pre-trial motions will be heard and the court shall issue a scheduling order if the matter is not disposed of by motion.

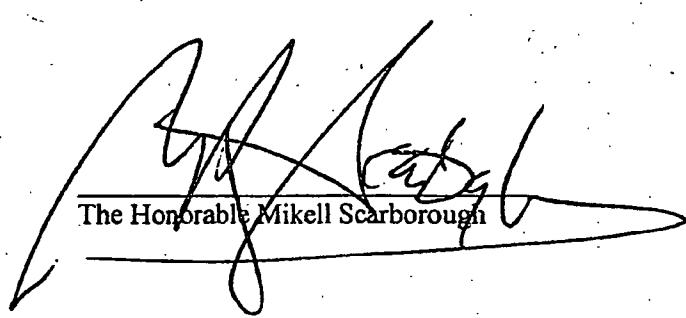
THEREFORE, IT IS HEREBY ORDERED that the entry of default as to of Defendants Frank Cook and Judith Cook is hereby lifted,

IT IS FURTHER ORDERED that the motion to rescind the order of reference is hereby denied,

IT IS FURTHER ORDERED that a status conference is scheduled for December 10, 2012 at 10:30 a.m.

IT IS SO ORDERED.

Charleston, South Carolina
_____, 2012


The Honorable Mikell Scarborough

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs.

Frank Cook a/k/a Frank W. Cook,
Judith H. Cook, and Ian Blake,

Defendants.

F12-01801

IN THE COURT OF COMMON PLEAS

C/A NO: 2012-CP-10-2651

**REPLY TO ANSWER OF DEFENDANTS
FRANK COOK A/K/A FRANK W. COOK
AND JUDITH H. COOK**

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2012 NOV -8 AM 11:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Plaintiff would reply to the Answer of Defendants Frank Cook a/k/a Frank Cook and Judith H. Cook as follows:

For a First Reply

1. That the allegations of the Complaint, to the extent such allegations are not inconsistent with the allegations contained herein, are realleged as if repeated verbatim herein.
2. That any allegation of the Answer not expressly admitted or qualified is denied and strict proof demanded thereof.
3. That the allegations contained in Paragraph one (1) through seventeen (17) of Defendants' Answer does not require a response from Plaintiff. To the extent a response is required, any allegations that are not consistent with Plaintiff's Complaint are denied.
4. That the allegations contained in Paragraph eighteen (18) through twenty-three (23) of Defendants' Answer are denied and strict proof thereof is demanded.
5. That the allegations contained in Paragraph twenty-four (24) and twenty-six (26) of Defendants' Answer does not require a response from Plaintiff. To the extent a response is required, any allegations that are not consistent with Plaintiff's Complaint are denied.

6. That the allegations contained in Paragraph twenty-five (25) of Defendants' Answer are denied and strict proof thereof is demanded.

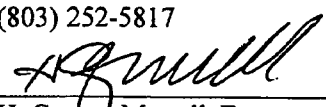
For a Second Reply

7. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.
8. That the allegations contained in the First and Second Defenses of Defendants' Answer are denied and strict proof thereof is demanded. Plaintiff will show that the parties entered into an unambiguous agreement for which Defendants Frank Cook a/k/a Frank W. Cook and Judith H. Cook agreed to repay the funds advanced to it by Plaintiff. Plaintiff further asserts that Defendants Frank Cook a/k/a Frank W. Cook and Judith H. Cook cannot use the doctrines alleged in their Answer or common law to modify or amend the written contract with Plaintiff.
9. That the allegations contained in Defendants' Answer, to the extent that they are not consistent with Plaintiff's Complaint, are barred by the Statute of Frauds.

WHEREFORE, having fully replied to the Answer Defendants Frank Cook a/k/a Frank W. Cook and Judith H. Cook, Plaintiff prays as follows:

1. That Plaintiff be granted the relief requested in the Complaint;
2. That the Answer of Defendants Frank Cook a/k/a Frank W. Cook and Judith H. Cook be dismissed pursuant to the defenses raised in this Reply;
3. For such other and further relief as the court deems just and proper.

Korn Law Firm, P.A.
P.O. Box 12369
Columbia, SC 29211-2369
(803) 252-5817



H. Guyton Murrell, Esq.
Attorney for Plaintiff

October 30, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs.

Frank Cook a/k/a Frank W. Cook, Judith H. Cook, and Ian Blake,

DEFENDANTS(S).

F12-01801

IN THE COURT OF COMMON PLEAS

C/A NO: 2012-CP-10-2651

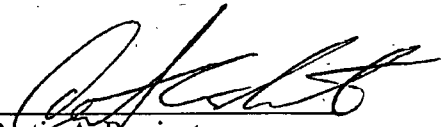
(NON-JURY FORECLOSURE ACTION)

CERTIFICATE OF MAILING

FILED
2012 NOV - 8 AM 11:23
JULIE J. BRASINGTON
CLERK OF COURT
BY

The undersigned hereby certifies that on October 31, 2012, he served one copy of Plaintiff's Reply to Answer of Defendants Frank Cook a/k/a Frank W. Cook and Judith H. Cook upon the following by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

Dwayne M. Green, Esq.
Green, Ford & Wallace, LLC
Post Office Box 20009
Charleston, SC 29413


Dustin A. Brasington
Litigation Paralegal

SWORN to before me this
30 day of October, 2012


Notary Public for South Carolina
My Commission expires 11/04/2018

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

Frank Cook a/k/a Frank W. Cook, Judith
H. Cook, and Ian Blake,

Defendant.

NINTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
C/A No.: 2012-CP-10-2651

NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT

2012 NOV 14 PM 2:41
JULIE J. ARMSTRONG
CLERK OF COURT

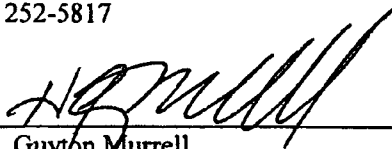
FILED

**TO: DWAYNE M. GREEN, ESQ., ATTORNEY FOR DEFENDANTS FRANK COOK
A/K/A FRANK W. COOK AND JUDITH H. COOK:**

YOU WILL PLEASE TAKE NOTICE that the attorney for the Plaintiff will, on the Ninth (10th) day after service hereof, or as soon thereafter as counsel may be heard, move before the above-referenced court for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting the Plaintiff Summary Judgment in this matter.

This Motion is made on the grounds that there is no genuine issue as to any material fact and that the Plaintiff is entitled to judgment as a matter of law. This Motion is based on the pleadings in this case, affidavits, and the applicable case law.

Korn Law Firm, P.A.
P.O. Box 11264
Columbia, SC 29211-1264
(803) 252-5817

BY: 

H. Guyton Murrell
Attorney for the Plaintiff

Dated: November 13, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

v.

Frank Cook a/k/a Frank W. Cook, Judith H. Cook,
and Ian Blake,

Defendant.

NINTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
C/A No.: 2012-CP-10-2651

CERTIFICATE OF SERVICE

BY

JULIE JEARMSTRONG
CLERK OF COURT

2012 NOV 14 PM 2:42

FILED

I, Dustin A. Brasington, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT** was served on Defendant by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Dwayne M. Green, Esq.
Green, Ford & Wallace, LLC
Post Office Box 20009
Charleston, SC 29413

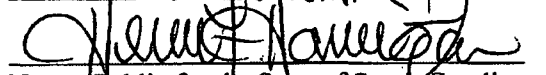
Ian Blake
13 Poplar Street
Charleston, SC 29403

this 13 day of November, 2012.

KORN LAW FIRM, P.A.


Dustin A. Brasington
Litigation Paralegal

Sworn to and subscribed before me this
13th day of November, 2012.


Notary Public for the State of South Carolina
My Commission expires: 09/31/2019

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Bank of America, N.A.,

Plaintiff,

vs.

Frank Cook a/k/a Frank W. Cook, Judith
H. Cook, and Ian Blake,

Defendant.

NINTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
C/A No.: 2012-CP-10-2651

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT**

FILED
2012 NOV 14 PM 2:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I. INTRODUCTION AND FACTS

This is an action for foreclosure as to real property located in Charleston County. Plaintiff holds a first mortgage from Frank Cook a/k/a Frank W. Cook in the original amount of One Hundred Seventy Five Thousand and 00/100 Dollars (\$175,000.00). The mortgage was recorded in book F660 at page 114 on May 22, 2008 in Charleston County, South Carolina.

On April 20, 2012 the Plaintiff filed a Summons and Complaint against the Defendants Frank Cook a/k/a Frank W. Cook and Judith H. Cook to foreclose on the above described mortgage. The Defendants Frank Cook a/k/a Frank W. Cook and Judith H. Cook filed an Answer on May 9, 2012. Defendants Frank Cook a/k/a Frank W. Cook and Judith H. Cook subsequently served a copy of their Answer on the law firm of Rogers, Townsend and Thomas which has no involvement in this matter. Plaintiff was unaware of the responsive pleading and an affidavit off default was filed on June 18, 2012.

The Defendant Frank Cook subsequently filed an Amended Answer on June 28, 2012 which requested a jury trial. Neither responsive pleading alleged any counterclaims. The Amended Answer was also served on the incorrect law firm.

The Defendant Frank Cook filed a Motion to Rescind Entry of Judgment on August 16, 2012 seeking that the order of reference be vacated. The motion did not cite any specific court rule or statute in support of the relief requested.

A hearing on Defendant's motion was held on September 18, 2012. By order filed November 11, 2012, the court ruled that the Defendants Frank and Judith Cook were not in default pursuant to

the Answer filed May 9, 2012. The court also found that the Amended Answer filed June 28, 2012 was not timely filed as required by Rule 15, SCRCp. The court further found that the pleadings did not raise any legal issues and the motion to rescind the order of reference was denied.

II. DISCUSSION

In order to recover under a breach of contract cause of action, the Plaintiff must establish three essential elements by the greater weight of the evidence:

- (1) that the parties entered into a binding contract;
- (2) that Defendants breached or unjustifiably failed to perform this contract; and
- (3) that the Plaintiff has suffered damage as a direct and proximate result of the breach.

See Tom J. Ervin, Ervin's South Carolina Request to Charge - Civil § 22-13, at 181 (1994). 17A Am. Jur. 2d *Contracts* § 716. The Plaintiff offers evidence to meet its burden of proof for each of the aforementioned elements by documentation, affidavit, and the Defendants' admissions. Pursuant to Rule 56(e) of the SCRCp, once a party meets its initial burden of proof, "[the opposing party] may not rely on mere allegations contained in [their] pleadings to withstand a Motion for Summary Judgment but must set forth specific facts showing there is a genuine issue for trial." Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999).

On May 15, 2008, Defendants Frank Cook a/k/a Frank W. Cook executed a Note and Mortgage to Bank of America, N.A. agreeing to repay the amount of One Hundred Seventy Five Thousand and 00/100 Dollars (\$175,000.00) plus interest, copies of the Note and Mortgage are attached hereto and incorporated herein as **Exhibits A and B** respectively.

Plaintiff asserts that Defendants are in default of the agreement by virtue of failure to make the monthly payments on the account as they became due. Plaintiff submits its payment history to evidence said default, a copy of which is attached hereto and incorporated herein as **Exhibit C**. Additionally, Plaintiff served the Defendant with Interrogatories and Requests for Production on September 7, 2012, a copy of which is attached hereto and incorporated herein as **Exhibit D**. These requests sought information from Defendants in support of their defenses. More specifically, Plaintiff requested proof of payments made on the subject account in an effort to have Defendants show that the subject account is not in default. Defendants have failed to respond to Plaintiff's discovery requests. Additionally, Defendants have admitted to entering into the binding agreement and to breaching said agreement (see Defendants' Answer). Further, Plaintiff has produced ample

documentary evidence in support of its claims (see **Exhibits A, B and C**). As such, by the preponderance of evidence, Plaintiff has substantiated its claims in this matter and Defendants are relying on mere allegations as defense. As such there are no material issues of fact and Summary Judgment is appropriate.

Plaintiff will further show that its claim is well within the applicable statute of limitations. Pursuant to S.C. Code § 15-3-520(a), Plaintiff's cause of action is subject to a twenty (20) year statute of limitations. Plaintiff's Complaint in this matter was filed on April 20, 2012 and Defendant Frank Cook a/k/a Frank W. Cook entered into the subject agreement on May 15, 2008. Additionally, pursuant to S.C. Code § 15-3-20(a), the applicable statute of limitations does not begin to accrue until the occurrence of the cause of action, in this case the breach of contract by Defendants. As reflected on Plaintiff's Notice of Intent to Accelerate, a copy of which is attached hereto and incorporated herein as **Exhibit F**, the subject breach did not occur prior to December 1, 2011, placing Plaintiff well within the applicable statute of limitations. Defendants allege that Plaintiff violated the Real Estate Settlement Procedures Act (RESPA) for failing to notify of any transfers of the subject account. Plaintiff will show that it is the original lender in this matter (see **Exhibit A**) and the account has not transferred from Plaintiff's possession since its conception. As reflected on the letter attached hereto and incorporated herein as **Exhibit G**, the account was merely serviced by Plaintiff's subsidiary, BAC Home Loans Servicing, LP, but subsequently returned to Plaintiff for servicing with the merger of BAC Home Loans Servicing, LP into Bank of America, N.A. Additionally, Defendant Frank Cook a/k/a Frank W. Cook, being the only borrower and note-holder to the subject account, was notified of this change (see **Exhibit G**) and Plaintiff remained in compliance with the provisions of RESPA at all times.

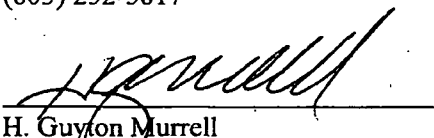
Counsel for the Plaintiff now files this Motion for Summary Judgment alleging that no material issues of fact remain and that summary judgment is appropriate. When no issue of material fact exists, the appropriate action is summary judgment. Midland Mut. Life Ins. Co. v. Harrell, 331 S.C. 394, 397-98 (S.C. App. 1998).

III. CONCLUSION

The evidence provided by the Plaintiff in this case has clearly shown that the Defendants Frank Cook a/k/a Frank W. Cook and Judith H. Cook entered into the agreement with the Plaintiff; that the Defendants defaulted under the terms of said agreement; and that the Plaintiff has been

damaged as a result of the Defendants' breach of the agreement. Defendants have failed to produce any evidence to show that the account is not in default. When taken as a whole, no material issue of fact remains to be decided. Thus, when no issue of material fact exists, the appropriate action is Summary Judgment. Spencer v. Miller, 259 S.C. 453, 192 S.E.2d 863 (1972). Accordingly, the Plaintiff prays that the Court award it summary judgment as to its cause of action and the relief requested in its Complaint.

Korn Law Firm, P.A.
P.O. Box 12369
Columbia, SC 29211-2369
(803) 252-5817



H. Guyton Murrell
Attorney for the Plaintiff

Dated: November 8, 2012
Columbia, South Carolina

LOAN NUMBER: [REDACTED] 1977

NOTE

05/15/08

CHARLESTON

SC

[Date]

[City]

[State]

13 POPLAR STREET, CHARLESTON, SC 29403

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 175,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is BANK OF AMERICA, N.A.

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 6.825 %.

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 JULY 01, 2008

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 JUNE 01, 2038 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 BANK OF AMERICA, N.A., P.O. BOX 535318, ATLANTA, GEORGIA 30353-5318 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. \$ 1,120.55 .

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 THIS NOTE.

I MAY MAKE A FULL PREPAYMENT OR PARTIAL PREPAYMENT WITHOUT PAYING ANY PREPAYMENT CHARGE. AFTER PAYING ANY LATE FEES OR OUTSTANDING FEES THAT I OWE, 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 THIS NOTE. IF I MAKE A PARTIAL PREPAYMENT, THERE WILL BE NO CHANGES IN THE DUE DATES OR IN THE AMOUNT OF MY MONTHLY PAYMENT UNLESS THE NOTE HOLDER AGREES IN WRITING TO THOSE CHANGES.

MULTISTATE FIXED RATE NOTE - Single Family

Page 1 of 3

BS5N (0101)

VMP MORTGAGE FORMS - (800)621-7281

BSSR 05/12/08 3:13 PM [REDACTED] 1977


EXHIBIT A PAGE 1 OF 3

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 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 5.0 % 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:

BSSN (0101)

BSSR 05/12/08 3:13 PM 1877

Page 2 of 3

EXHIBIT A PAGE 2 OF 3

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.

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

PAY TO THE ORDER OF
WITHOUT RECOURSE

Bank of America, N.A.

BY Christina M. Schmitt
CHRISTINA M. SCHMITT
ASSISTANT VICE PRESIDENT

Frank Cook
FRANK COOK

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Sign Original Only)

Return To: LOAN # [REDACTED] 1977
FL9-700-01-01
JACKSONVILLE POST CLOSING
BANK OF AMERICA
9000 SOUTHSIDE BLVD.
BLDG 700, FILE RECEIPT DEPT.
JACKSONVILLE, FL 32256

BAF 660PG114

Prepared By: RITA MASSEY
BANK OF AMERICA, N.A.
900 W. TRADE STREET
GATEWAY VILLAGE, 3RD FLOOR
CHARLOTTE, NC 28255-0001

[Space Above This Line For Recording Data]

MORTGAGE

LOAN # [REDACTED] 1977

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 MAY 15, 2008 together with all Riders to this document.

(B) "Borrower" is FRANK COOK

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is BANK OF AMERICA, N.A.

Lender is a NATIONAL BANKING ASSOCIATION
organized and existing under the laws of THE UNITED STATES OF AMERICA

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3041 1/01

VMP® -BISC (0409)

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VMP Mortgage Solutions, Inc. (800)521-7291



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Lender's address is 900 W. TRADE STREET, GATEWAY VILLAGE, 3RD FLOOR,
CHARLOTTE, NC 28255-0001

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated MAY 15, 2008

The Note states that Borrower owes Lender ONE HUNDRED SEVENTY FIVE THOUSAND AND
00/100

(U.S. \$ 175,000.00) plus interest. Borrower has promised to pay this debt in regular
Periodic Payments and to pay the debt in full not later than JUNE 01, 2038

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

(F) "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.

(G) "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 | ☒ 1-4 Family Rider |
| ☐ VA Rider | ☐ Biweekly Payment Rider | ☐ Other(s) [specify] |

(H) "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.

(I) "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.

(J) "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.

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

(L) "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.

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

(N) "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.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 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.

(P) "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 Lender and Lender's successors and assigns, the following described property located in the COUNTY of CHARLESTON

(Type of Recording Jurisdiction)

(Name of Recording Jurisdiction)

"LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF."

Parcel ID Number: 180

13 POPLAR STREET

CHARLESTON

("Property Address"):

which currently has the address of

(Street)

(City), South Carolina 29403

(Zip Code)

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, 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 COVENANTS that Borrower is lawfully seised 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

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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 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 9. 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.

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

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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.

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. 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 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 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

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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.

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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.

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

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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 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 Section 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:

W. J. Lindsey
J. Lindsey

Frank Cook (Seal)
 FRANK COOK -Borrower

____ (Seal)
 -Borrower

____ (Seal)
 -Borrower

____ (Seal)
 -Borrower

____ (Seal)
 -Borrower

____ (Seal)
 -Borrower

____ (Seal)
 -Borrower

____ (Seal)
 -Borrower

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STATE OF SOUTH CAROLINA,
I,
FRANK COOK

County ss:
do hereby certify that

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 15th day of May 2008

J. Lindsey
Notary Public for South Carolina

My Commission Expires: 4-17-2018

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LOAN # [REDACTED] 1977

1-4 FAMILY RIDER (Assignment of Rents)

THIS 1-4 FAMILY RIDER is made this 15TH day of MAY, 2008 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to BANK OF AMERICA, N.A.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at 13 POPLAR STREET, CHARLESTON, SC 29403

(Property Address)

1-4 FAMILY COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT. In addition to the Property described in Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

MULTISTATE 1-4 FAMILY RIDER

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BS57R (0411)

VMP Mortgage Solutions, Inc. (800)521-7291

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B. USE OF PROPERTY; COMPLIANCE WITH LAW. Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification; unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

C. SUBORDINATE LIENS. Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

D. RENT LOSS INSURANCE. Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

E. "BORROWER'S RIGHT TO REINSTATE" DELETED. Section 19 is deleted.

F. BORROWER'S OCCUPANCY. Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

G. ASSIGNMENT OF LEASES. Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until: (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument, and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of

taking control of and managing the Property and collecting the Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

I. CROSS-DEFAULT PROVISION. Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this 1-4 Family Rider.

Frank Cook (Seal)
FRANK COOK -Borrower
____ (Seal)
____ -Borrower
____ (Seal)
____ -Borrower
____ (Seal)
____ -Borrower
____ (Seal)
____ -Borrower
____ (Seal)
____ -Borrower
____ (Seal)
____ -Borrower

BS57R (0411)

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EXHIBIT B PAGE 19 OF 21

EXHIBIT 'A'

ALL that certain lot, piece or parcel of land, situate, lying and being on the South side of Poplar Street in the City of Charleston, County of Charleston, State of South Carolina, known and designated as Lot 60 on a plat of 92 lots laid out for Carolina-Florida Realty, Company, which plat is recorded in the Charleston County RMC Office in Plat Book C, page 128.

The said lot measuring and containing and butting and bounding to the North on Poplar Street, Thirty-five Feet; to the East on Lot 62 one hundred two and five-tenths feet; to the South on Lot 59 thirty-four and ninety-five hundredths feet; and to the West on Lot 58 one Hundred four and twenty-six hundredths feet; be all of the said dimensions a little more or less and all as shown on said plat.

Being the same property conveyed to Frank W. Cook and Judith H. Cook by Deed from Yvonne Patricia Jamison dated September 4, 2007 and recorded in the Charleston County RMC Office on September 5, 2007 in Book R637 at Page 209.

TMS# 463-12-03-136

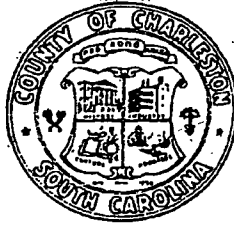
Property Address: 13 Poplar Street, Charleston, SC 29403

Grantee's Address: P.O. Box 1557, Lexington, SC 29071

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RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

DeJong Law Firm, LLC
1100 Queensborough Blvd.
Suite 101
Mt. Pleasant SC 29464

Number of Pages:

21

FILED

May 22, 2008

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Charlie Lybrand, Register
Charleston County, SC

DESCRIPTION

AMOUNT

	\$ 26.00
Postage	

TOTAL

\$ 26.00

DRAWER:

a-boz

DO NOT STAMP BELOW THIS LINE

Bank of America



Account Number: 2742
 Statement Period: 01/1986 - 08/2012
 Date Prepared: 08/24/2012

Property Address:
 13 POPLAR ST
 CHARLESTON, SC 29403

Page 3

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
Beginning Balance				175,000.00		.00				.00
05/21/2008	REGULAR PAYMENT	539.92	06/2008	.00	539.92	.00	.00	.00	.00	.00
				175,000.00		.00			.00	.00
05/21/2008	MISC. POSTING	2,064.00	06/2008	.00	.00	2,064.00	.00	.00	.00	.00
				175,000.00		2,064.00			.00	.00
07/10/2008	REGULAR PAYMENT	1,353.58	07/2008	154.40	966.15	233.03	.00	.00	.00	.00
				174,845.60		2,297.03			.00	.00
08/12/2008	REGULAR PAYMENT	1,353.58	08/2008	155.26	965.29	233.03	.00	.00	.00	.00
				174,690.34		2,530.06			.00	.00
08/21/2008	HAZARD INS PMT	-1,424.00	08/2008	.00	.00	-1,424.00	.00	.00	.00	.00
				174,690.34		1,106.06			.00	.00
09/11/2008	FLOOD INS PMT	-1,177.00	08/2008	.00	.00	-1,177.00	.00	.00	.00	.00
				174,690.34		-70.94			.00	.00
09/12/2008	REGULAR PAYMENT	1,353.58	09/2008	156.11	964.44	233.03	.00	.00	.00	.00
				174,534.23		162.09			.00	.00
10/16/2008	REGULAR PAYMENT	1,353.58	10/2008	156.98	963.57	233.03	.00	.00	.00	.00
				174,377.25		395.12			.00	.00
11/13/2008	REGULAR PAYMENT	1,353.58	11/2008	157.84	962.71	233.03	.00	.00	.00	.00
				174,219.41		628.15			.00	.00
11/21/2008	COUNTY TAX PMT	-2,196.03	11/2008	.00	.00	-2,196.03	.00	.00	.00	.00
				174,219.41		-1,567.88			.00	.00
12/12/2008	REGULAR PAYMENT	1,353.58	12/2008	158.71	961.84	233.03	.00	.00	.00	.00
				174,060.70		-1,334.85			.00	.00
01/13/2009	REGULAR PAYMENT	1,353.58	01/2009	159.59	960.96	233.03	.00	.00	.00	.00
				173,901.11		-1,101.82			.00	.00
02/13/2009	REGULAR PAYMENT	1,353.58	02/2009	160.47	960.08	233.03	.00	.00	.00	.00
				173,740.64		-868.79			.00	.00
02/13/2009	MISC. POSTING	6.42	02/2009	6.42	.00	.00	.00	.00	.00	.00
				173,734.22		-868.79			.00	.00
03/16/2009	REGULAR PAYMENT	1,353.58	03/2009	161.39	959.16	233.03	.00	.00	.00	.00
				173,572.83		-635.76			.00	.00

Bank of America CREDIT CARD 8/24/2012 7:55:32 AM PAGE 3/009 888-294-5658

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EXHIBIT C PAGE 1 OF 2

Bank of America



Home Loans

Page 4

Account Number: 2742
 Statement Period: 01/1986 - 08/2012
 Date Prepared: 08/24/2012

Property Address:
 13 POPLAR ST
 CHARLESTON, SC 29403

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
03/16/2009	MISC. POSTING	6.42	03/2009	6.42 173,586.41	.00	.00 -635.76	.00	.00	.00 .00	.00 .00
04/16/2009	REGULAR PAYMENT	1,739.85	04/2009	162.32 173,404.09	958.23	619.30 -16.46	.00	.00	.00 .00	.00 .00
04/16/2009	MISC. POSTING	.15	04/2009	.15 173,403.94	.00	.00 -16.46	.00	.00	.00 .00	.00 .00
05/15/2009	REGULAR PAYMENT	1,739.85	05/2009	163.22 173,240.72	957.33	619.30 602.84	.00	.00	.00 .00	.00 .00
05/15/2009	MISC. POSTING	.15	05/2009	.15 173,240.57	.00	.00 602.84	.00	.00	.00 .00	.00 .00
06/15/2009	REGULAR PAYMENT	1,739.85	06/2009	164.12 173,076.45	956.43	619.30 1,222.14	.00	.00	.00 .00	.00 .00
06/15/2009	MISC. POSTING	.15	06/2009	.15 173,076.30	.00	.00 1,222.14	.00	.00	.00 .00	.00 .00
07/15/2009	REGULAR PAYMENT	1,739.85	07/2009	165.02 172,911.28	955.53	619.30 1,841.44	.00	.00	.00 .00	.00 .00
07/15/2009	MISC. POSTING	.15	07/2009	.15 172,911.13	.00	.00 1,841.44	.00	.00	.00 .00	.00 .00
08/14/2009	REGULAR PAYMENT	1,739.85	08/2009	165.94 172,745.19	954.61	619.30 2,460.74	.00	.00	.00 .00	.00 .00
08/14/2009	MISC. POSTING	.15	08/2009	.15 172,745.04	.00	.00 2,460.74	.00	.00	.00 .00	.00 .00
08/20/2009	HAZARD INS PMT	-1,488.00	08/2009	.00 172,745.04	.00	-1,488.00 972.74	.00	.00	.00 .00	.00 .00
09/10/2009	FLOOD INS PMT	-1,239.00	08/2009	.00 172,745.04	.00	-1,239.00 -266.26	.00	.00	.00 .00	.00 .00
09/15/2009	REGULAR PAYMENT	1,739.85	09/2009	166.85 172,578.19	953.70	619.30 353.04	.00	.00	.00 .00	.00 .00

Bank of America RDN49b

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EXHIBIT C PAGE 2 OF 2

Bank of America



Page 5

Account Number: 2742
 Statement Period: 01/1986 - 08/2012
 Date Prepared: 08/24/2012

Property Address:
 13 POPLAR ST
 CHARLESTON, SC 29403

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
09/15/2009	MISC. POSTING	.15	09/2009	.15	.00	.00	.00	.00	.00	.00
				172,578.04		353.04			.00	.00
10/15/2009	REGULAR PAYMENT	1,739.85	10/2009	167.78	952.77	619.30	.00	.00	.00	.00
				172,410.26		972.34			.00	.00
10/15/2009	MISC. POSTING	.15	10/2009	.15	.00	.00	.00	.00	.00	.00
				172,410.11		972.34			.00	.00
11/12/2009	COUNTY TAX PMT	-3,007.13	10/2009	.00	.00	-3,007.13	.00	.00	.00	.00
				172,410.11		-2,034.79			.00	.00
11/19/2009	REGULAR PAYMENT	1,739.85	11/2009	168.70	951.85	619.30	.00	.00	.00	.00
				172,241.41		-1,415.49			.00	.00
11/19/2009	MISC. POSTING	.15	11/2009	.15	.00	.00	.00	.00	.00	.00
				172,241.26		-1,415.49			.00	.00
12/14/2009	REGULAR PAYMENT	1,739.85	12/2009	169.63	950.92	619.30	.00	.00	.00	.00
				172,071.63		-796.19			.00	.00
12/14/2009	MISC. POSTING	386.27	12/2009	386.27	.00	.00	.00	.00	.00	.00
				171,685.36		-796.19			.00	.00
12/18/2009	MISC. POSTING	-386.27	12/2009	-386.27	.00	.00	.00	.00	.00	.00
				172,071.63		-796.19			.00	.00
12/18/2009	MISC. POSTING	386.27	12/2009	.00	.00	386.27	.00	.00	.00	.00
				172,071.63		-409.92			.00	.00
01/08/2010	MISC. ESCROW DISB	-386.27	12/2009	.00	.00	-386.27	.00	.00	.00	.00
				172,071.63		-796.19			.00	.00
01/15/2010	REGULAR PAYMENT	1,739.85	01/2010	170.57	949.98	619.30	.00	.00	.00	.00
				171,901.06		-176.89			.00	.00
01/15/2010	MISC. POSTING	60.15	01/2010	60.15	.00	.00	.00	.00	.00	.00
				171,840.91		-176.89			.00	.00
02/12/2010	REGULAR PAYMENT	1,739.85	02/2010	171.69	948.86	619.30	.00	.00	.00	.00
				171,669.22		442.41			.00	.00

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Bank of America



Home Loans

Page 6

Account Number: 2742
 Statement Period: 01/1986 - 08/2012
 Date Prepared: 08/24/2012

Property Address:
 13 POPLAR ST
 CHARLESTON, SC 29403

Transaction Date	Description	Total Payment	PMT/Mo.	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
02/12/2010	MISC. POSTING	10.15	02/2010	10.15 171,859.07	.00	.00 442.41	.00	.00	.00 .00	.00 .00
03/15/2010	REGULAR PAYMENT	1,720.49	03/2010	172.83 171,486.24	947.72	599.94 1,042.35	.00	.00	.00 .00	.00 .00
03/15/2010	MISC. POSTING	29.51	03/2010	29.51 171,456.73	.00	.00 1,042.35	.00	.00	.00 .00	.00 .00
04/15/2010	REGULAR PAYMENT	1,720.49	04/2010	173.89 171,282.84	946.66	599.94 1,642.29	.00	.00	.00 .00	.00 .00
04/15/2010	MISC. POSTING	29.51	04/2010	29.51 171,253.33	.00	.00 1,642.29	.00	.00	.00 .00	.00 .00
05/14/2010	REGULAR PAYMENT	1,720.49	05/2010	175.01 171,078.32	945.54	599.94 2,242.23	.00	.00	.00 .00	.00 .00
05/14/2010	MISC. POSTING	29.51	05/2010	29.51 171,048.81	.00	.00 2,242.23	.00	.00	.00 .00	.00 .00
06/15/2010	REGULAR PAYMENT	1,689.96	06/2010	176.15 170,872.66	944.40	569.41 2,811.64	.00	.00	.00 .00	.00 .00
06/15/2010	MISC. POSTING	10.04	06/2010	10.04 170,862.62	.00	.00 2,811.64	.00	.00	.00 .00	.00 .00
07/15/2010	REGULAR PAYMENT	1,689.96	07/2010	177.22 170,685.40	943.33	569.41 3,381.05	.00	.00	.00 .00	.00 .00
07/15/2010	MISC. POSTING	10.04	07/2010	10.04 170,675.36	.00	.00 3,381.05	.00	.00	.00 .00	.00 .00
08/13/2010	REGULAR PAYMENT	1,689.96	08/2010	178.26 170,497.10	942.29	569.41 3,950.46	.00	.00	.00 .00	.00 .00
08/13/2010	MISC. POSTING	10.04	08/2010	10.04 170,487.06	.00	.00 3,950.46	.00	.00	.00 .00	.00 .00
08/19/2010	HAZARD INS PMT	-1,493.00	08/2010	.00 170,487.06	.00	-1,493.00 2,457.46	.00	.00	.00 .00	.00 .00

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EXHIBIT C PAGE 4 OF 2

Bank of America



Page 7

Account Number: 2742
 Statement Period: 01/1986 - 08/2012
 Date Prepared: 08/24/2012

Property Address:
 13 POPLAR ST
 CHARLESTON, SC 29403

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
09/09/2010	FLOOD INS PMT	-1,244.00	08/2010	.00	.00	-1,244.00	.00	.00	.00	.00
				170,487.08		1,213.46			.00	.00
09/15/2010	REGULAR PAYMENT	1,689.96	09/2010	179.30	941.25	569.41	.00	.00	.00	.00
				170,307.78		1,782.87			.00	.00
09/15/2010	MISC. POSTING	10.04	09/2010	10.04	.00	.00	.00	.00	.00	.00
				170,287.72		1,782.87			.00	.00
10/15/2010	REGULAR PAYMENT	1,689.96	10/2010	180.34	940.21	569.41	.00	.00	.00	.00
				170,117.38		2,352.28			.00	.00
10/15/2010	MISC. POSTING	10.04	10/2010	10.04	.00	.00	.00	.00	.00	.00
				170,107.34		2,352.28			.00	.00
11/15/2010	REGULAR PAYMENT	1,689.96	11/2010	181.39	939.16	569.41	.00	.00	.00	.00
				169,925.95		2,921.69			.00	.00
11/15/2010	MISC. POSTING	10.04	11/2010	10.04	.00	.00	.00	.00	.00	.00
				169,915.91		2,921.69			.00	.00
12/15/2010	REGULAR PAYMENT	1,689.96	12/2010	182.44	938.11	569.41	.00	.00	.00	.00
				169,733.47		3,491.10			.00	.00
12/15/2010	MISC. POSTING	10.04	12/2010	10.04	.00	.00	.00	.00	.00	.00
				169,723.43		3,491.10			.00	.00
12/21/2010	COUNTY TAX PMT	-2,343.76	12/2010	.00	.00	-2,343.76	.00	.00	.00	.00
				169,723.43		1,147.34			.00	.00
01/14/2011	REGULAR PAYMENT	1,689.96	01/2011	183.51	937.04	569.41	.00	.00	.00	.00
				169,539.92		1,716.75			.00	.00
01/14/2011	MISC. POSTING	10.04	01/2011	10.04	.00	.00	.00	.00	.00	.00
				169,529.88		1,716.75			.00	.00
02/15/2011	REGULAR PAYMENT	1,689.96	02/2011	184.58	935.97	569.41	.00	.00	.00	.00
				169,345.30		2,286.16			.00	.00
02/15/2011	MISC. POSTING	10.04	02/2011	10.04	.00	.00	.00	.00	.00	.00
				169,335.26		2,286.16			.00	.00

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Bank of America



Home Loans

Page 8

Account Number: 2742
 Statement Period: 01/1986 - 08/2012
 Date Prepared: 08/24/2012

Property Address:
 13 POPLAR ST
 CHARLESTON, SC 29403

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
03/15/2011	REGULAR PAYMENT	1,689.96	03/2011	185.65 168,148.61	934.90	569.41 2,855.57	.00	.00	.00	.00
03/15/2011	MISC. POSTING	10.04	03/2011	10.04 168,138.57	.00	.00 2,855.57	.00	.00	.00	.00
04/15/2011	REGULAR PAYMENT	1,689.96	04/2011	186.73 168,952.84	933.82	569.41 3,424.98	.00	.00	.00	.00
04/15/2011	MISC. POSTING	10.04	04/2011	10.04 168,942.80	.00	.00 3,424.98	.00	.00	.00	.00
05/06/2011	OVERAGE REFUND	-1,034.02	04/2011	.00 168,942.80	.00	-1,034.02 2,390.96	.00	.00	.00	.00
05/13/2011	REGULAR PAYMENT	1,689.96	05/2011	187.82 168,754.98	932.73	569.41 2,960.37	.00	.00	.00	.00
05/13/2011	MISC. POSTING	10.04	05/2011	10.04 168,744.94	.00	.00 2,960.37	.00	.00	.00	.00
06/15/2011	REGULAR PAYMENT	1,543.95	06/2011	188.91 168,556.03	931.64	423.40 3,383.77	.00	.00	.00	.00
06/15/2011	MISC. POSTING	1.05	06/2011	1.05 168,554.98	.00	.00 3,383.77	.00	.00	.00	.00
07/15/2011	REGULAR PAYMENT	1,543.95	07/2011	189.98 168,365.00	930.57	423.40 3,807.17	.00	.00	.00	.00
07/15/2011	MISC. POSTING	1.05	07/2011	1.05 168,363.95	.00	.00 3,807.17	.00	.00	.00	.00
08/15/2011	REGULAR PAYMENT	1,543.95	08/2011	191.04 168,172.91	929.51	423.40 4,230.57	.00	.00	.00	.00
08/15/2011	MISC. POSTING	1.05	08/2011	1.05 168,171.86	.00	.00 4,230.57	.00	.00	.00	.00
08/19/2011	HAZARD INS PMT	-1,512.00	08/2011	.00 168,171.86	.00	-1,512.00 2,718.57	.00	.00	.00	.00

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Bank of America



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Account Number: 2742
 Statement Period: 01/1986 - 08/2012
 Date Prepared: 08/24/2012

Property Address:
 13 POPLAR ST
 CHARLESTON, SC 29403

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
08/30/2011	HAZARD INS PMT	-1,754.00	08/2011	.00	.00	-1,754.00	.00	.00	.00	.00
				168,171.88		964.57			.00	.00
09/29/2011	REGULAR PAYMENT	1,545.00	09/2011	192.10	928.45	423.40	.00	.00	1.05	.00
				167,979.78		1,387.97			-54.98	.00
10/14/2011	REGULAR PAYMENT	1,545.00	10/2011	193.16	927.39	423.40	.00	.00	1.05	.00
				167,786.60		1,611.37			-53.93	.00
11/15/2011	REGULAR PAYMENT	1,545.00	11/2011	194.23	926.32	423.40	.00	.00	1.05	.00
				167,592.37		2,234.77			-52.88	.00
12/09/2011	COUNTY TAX PMT	-2,353.08	11/2011	.00	.00	-2,353.08	.00	.00	.00	.00
				167,592.37		-118.31			-52.88	.00
04/13/2012	COUNTY TAX CREDIT	1,457.60	11/2011	.00	.00	1,457.60	.00	.00	.00	.00
				167,592.37		1,339.29			-52.88	.00

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EXHIBIT PAGE 7 OF 7

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

v.

Frank Cook a/k/a Frank W. Cook, Judith H. Cook, and
Ian Blake,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-10-2651

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES**

**TO: DWAYNE M. GREEN, ESQ., ATTORNEY FOR DEFENDANTS FRANK COOK A/K/A
FRANK W. COOK AND JUDITH H. COOK:**

YOU WILL PLEASE TAKE NOTICE, that, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure (SCRCP), you are required to answer in writing and under oath each of the following interrogatories and serve your responses on the undersigned attorney at the Korn Law Firm, P.A., P.O. Box 12369, Columbia, South Carolina 29211-2369 within 30 days after service hereof. In addition, these interrogatories shall be deemed to be continuing so as to require you to reasonably supplement or amend your answers thereto in accordance with Rule 26(e) of the South Carolina Rules of Civil Procedure.

INTERROGATORIES

1. Give the names and addresses of persons known to the party 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.
2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.
3. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.
4. For each person known to the party 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 witnesses.

EXHIBIT D PAGE 1 OF 6

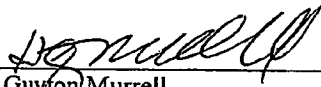
5. Set forth an itemized list of all payments alleged to have been made on the subject mortgage account, specifying the date any such alleged payment was submitted, the amount of the payment, the method of payment such as check or money order, and any relevant identification such as check or money order number.

6. Please list all hazard insurance policies providing coverage on the subject real property. For each such policy, specify the name of the company, the issuing agent, the date the policy was issued, the amount of policy coverage, the effective dates of coverage, and the policy number.

7. Please list all previous or pending civil actions in which the Defendant(s) has been a party, specifying the state and county where each such case was filed, the case number, the current status of any pending litigation and the date of judgment and judgment roll number of any previous litigation.

8. Please list all previous or pending criminal actions in which the Defendant(s) has been a party, specifying the state and county where each such case was filed, the case number, the current status of any pending litigation and the date of judgment and judgment roll number of any previous litigation.

KORN LAW FIRM, P.A.


H. Guyton Murrell
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 252-5817
Facsimile: (803) 231-2060
ATTORNEYS FOR PLAINTIFF

September 7, 2012
Columbia, South Carolina
F12-01801

EXHIBIT D PAGE 2 OF 6

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

v.

Frank Cook a/k/a Frank W. Cook, Judith H. Cook, and
Ian Blake,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-10-2651

CERTIFICATE OF SERVICE

I, Dustin A. Brasington, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that **PLAINTIFF'S FIRST SET OF INTERROGATORIES** was served on counsel for the Defendants by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Dwayne M. Green, Esquire
Green, Ford & Wallace, LLC
Post Office Box 20009
Charleston, SC 29413

this 7 day of September, 2012.

KORN LAW FIRM, P.A.



Dustin A. Brasington
Litigation Paralegal

Columbia, South Carolina

EXHIBIT D PAGE 3 OF 6

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

v.

Frank Cook a/k/a Frank W. Cook, Judith H. Cook, and
Ian Blake,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-10-2651

**PLAINTIFF'S FIRST SET OF REQUESTS
FOR PRODUCTION**

**TO: DWAYNE M. GREEN, ESQ., ATTORNEY FOR DEFENDANTS FRANK COOK
A/K/A FRANK W. COOK AND JUDITH H. COOK:**

YOU WILL PLEASE TAKE NOTICE, that, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, you are hereby requested to produce copies of the documents listed below for inspection and copying at the Korn Law Firm, P.A., P.O. Box 12369, Columbia, South Carolina 29211-2369 on or before 30 days from the date of this request. These requests shall be deemed to be continuing so as to require supplemental production pursuant to Rule 26(e) of the South Carolina Rules of Civil Procedure.

The term "document" when used herein means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody or control, regardless of where located; including, without limiting the generality of the foregoing, plats, sketches, punch cards, print out sheets, movie film, slides, photographs, records, microfilm, notes, letters, memoranda, ledgers, worksheets, books, magazines, notebooks, diaries, calendars, appointment book registers, charts, cables, papers, agreements, contracts, purchase orders, acknowledgments, invoices, authorizations, budgets, analysis, projections, transcripts, minutes of meetings of any kind, correspondence, telegrams, drafts, data processing discs or tapes, or computer-produced interpretations thereof, instructions, announcements, schedules and price lists. In all cases where originals and/or non-identical copies are not available, "document" also means identical copies of original documents and copies of non-original documents.

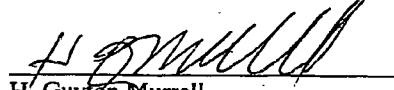
EXHIBIT D PAGE 4 OF 6

DOCUMENTS REQUESTED

The following documents are requested:

1. All documents which Defendants propose to introduce at the trial of this case.
2. All documents referred to or related to your answers to Plaintiff's interrogatories.
3. All letters, reports, or other writings in your possession from any expert involved in this case in any way.
4. All statements of any witness or other person claiming to have knowledge of any issue in this case.
5. All documents that you mailed, sent, or gave to Plaintiff or Plaintiff's assignors concerning the property at issue in this case.
6. All documents that you received from Plaintiff or Plaintiff's assignors concerning the property at issue in this case.
7. All documents in your possession that relate to any claim or defense in the case.
8. Copies of all receipts, cancelled checks or any other documentation whatsoever for all payments alleged to have been made by the Defendant(s) on the subject mortgage account, including a front and back copy of any cancelled checks, money orders, certified funds or any other method of payment.

KORN LAW FIRM, P.A.



H. Guyton Murrell
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 252-5817
Facsimile: (803) 231-2060
ATTORNEYS FOR PLAINTIFF

September 7, 2012
Columbia, South Carolina
F12-01801

EXHIBIT D PAGE 5 OF 6

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

v.

Frank Cook a/k/a Frank W. Cook, Judith H. Cook, and
Ian Blake,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-10-2651

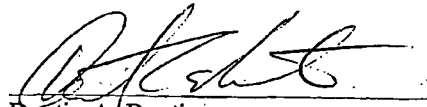
CERTIFICATE OF SERVICE

I, Dustin A. Brasington, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that **PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION** was served on counsel for the Defendants by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Dwayne M. Green, Esquire
Green, Ford & Wallace, LLC
Post Office Box 20009
Charleston, SC 29413

this 7 day of September, 2012.

KORN LAW FIRM, P.A.



Dustin A. Brasington
Litigation Paralegal

Columbia, South Carolina

EXHIBIT D PAGE 6 OF 6

Frank Cook
Po Box 1557
Lexington, SC 29071-1557

Account No.: 2742
Property Address:
13 Poplar St
Charleston, SC 29403

NOTICE OF INTENT TO ACCELERATE

Dear Frank Cook:

Bank of America, N.A. (hereinafter "Bank of America, N.A.") services the home loan described above on behalf of the holder of the promissory note (the "Noteholder"). The loan is in serious default because the required payments have not been made. The total amount now required to reinstate the loan as of the date of this notice is as follows:

<u>Monthly Charges:</u>	12/01/2011	\$3,087.90
<u>Late Charges:</u>	12/01/2011	\$56.03
<u>Other Charges:</u>	Total Late Charges:	\$52.88
	Uncollected Costs:	\$0.00
	Partial Payment Balance:	(\$0.00)
	TOTAL DUE:	\$3,196.81

You have the right to cure the default. To cure the default, on or before February 16, 2012, Bank of America, N.A. must receive the amount of \$3,196.81 plus any additional regular monthly payment or payments, late charges, fees and charges which become due on or before February 16, 2012.

The default will not be considered cured unless Bank of America, N.A. receives "good funds" in the amount of \$3,196.81 on or before February 16, 2012. If any check (or other payment) is returned to us for insufficient funds or for any other reason, "good funds" will not have been received and the default will not have been cured. No extension of time to cure will be granted due to a returned payment. Bank of America, N.A. reserves the right to accept or reject a partial payment of the total amount due without waiving any of its rights herein or otherwise. For example, if less than the full amount that is due is sent to us, we can keep the payment and apply it to the debt but still proceed to foreclosure since the default would not have been cured.

If the default is not cured on or before February 16, 2012, the mortgage payments will be accelerated with the full amount remaining accelerated and becoming due and payable in full, and foreclosure proceedings will be initiated at that time. As such, the failure to cure the default may result in the foreclosure and sale of your property. If your property is foreclosed upon, the Noteholder may pursue a deficiency judgment against you to collect the balance of your loan, if permitted by law.

You may, if required by law or your loan documents, have the right to cure the default after the acceleration of the mortgage payments and prior to the foreclosure sale of your property if all amounts past due are paid within the time permitted by law. However, Bank of America, N.A. and the Noteholder shall be entitled to collect all fees and costs incurred by Bank of America, N.A. and the Noteholder in pursuing any of their remedies, including but not limited to reasonable attorney's fees, to the full extent permitted by law. Further, you may have the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration and foreclosure.

Your loan is in default. Pursuant to your loan documents, Bank of America, N.A. may, enter upon and conduct an inspection of your property. The purposes of such an inspection are to (i) observe the physical condition of your property, (ii) verify that the property is occupied and/or (iii) determine the identity of the occupant. If you do not cure the default prior to the inspection, other actions to protect the mortgagee's interest in the property (including, but not limited to, winterization, securing the property, and valuation services) may be taken. The costs of the above-described inspections and property preservation efforts will be charged to your account as provided in your security instrument and as permitted by law.

If you are unable to cure the default on or before February 16, 2012, Bank of America, N.A. wants you to be aware of various options that may be available to you through Bank of America, N.A. to prevent a foreclosure sale of your property. For example:

This communication is from Bank of America, N.A., the servicer of your home loan.

Please write your account number on all checks and correspondence.
We may charge you a fee (of up to \$40.00) for any payment returned or rejected by your financial institution, subject to applicable law.

BLQNSNV 12866 12/23/2010

Payment Instructions:

- Make your check payable to Bank of America, N.A.
- Don't send cash
- Please include coupon with your payment

Account Number: 2742-3

Frank Cook
13 Poplar St
Charleston, SC 29403

Balance Due for charges listed above: \$3,196.81 as of January 17, 2012.

EXHIBIT PAGE 1 OF 5
Additional Principal

BLQNSNV

alternative, however, is limited to certain loan types.

- **Sale of Your Property:** Or, if you are willing to sell your home in order to avoid foreclosure, it is possible that the sale of your home can be approved through Bank of America, N.A. even if your home is worth less than what is owed on it.
- **Deed-in-Lieu:** Or, if your property is free from other liens or encumbrances, and if the default is due to a serious financial hardship which is beyond your control, you may be eligible to deed your property directly to the Noteholder and avoid the foreclosure sale.

If you are interested in discussing any of these foreclosure alternatives with Bank of America, N.A., you must contact us immediately. If you request assistance, Bank of America, N.A. will need to evaluate whether that assistance will be extended to you. In the meantime, Bank of America, N.A. will pursue all of its rights and remedies under the loan documents and as permitted by law, unless it agrees otherwise in writing. Failure to bring your loan current or to enter into a written agreement by February 16, 2012 as outlined above will result in the acceleration of your debt.

If your loan is currently being evaluated for a loan modification, forbearance or other loan assistance solution, this notice will not cancel or delay that evaluation process. However, it is important that you promptly respond to all requests made in connection with your evaluation for a loan assistance solution, including all requests for you to contact us and any documentation required. If you do not comply with these requests in a timely manner, it may cause your loan to enter the foreclosure process as indicated in this notice. If your loan is not eligible for a loan assistance program, please note this letter will continue to serve as notice of our right to initiate foreclosure.

Additionally, the U.S. Department of Housing and Urban Development (HUD) funds free or very low cost housing counseling across the nation. Housing counselors can help you understand the law and your options. They can also help you to organize your finances and represent you in negotiations with your lender if you need this assistance. You may find a HUD-approved housing counselor near you by calling 1-800-569-4287. For the hearing impaired, HUD Counseling Agency (TDD) numbers are available at 1-800-877-8339.

Time is of the essence. Should you have any questions concerning this notice, please contact Loan Counseling Center immediately at 1-800-669-6654. Our office hours are between Monday-Friday 7a.m. - 7p.m. Local Time.

Sincerely,

Loan Counseling Center

This communication is from Bank of America, N.A., the servicer of your home loan.

E-mail use: Providing your e-mail address below will allow us to send you information on your account.

Account Number: 2742

Frank Cook E-mail address:

EXHIBIT F PAGE 2 OF 2
How we post your payments: All accepted payments of principal and interest will be applied to the longest outstanding installment due, unless otherwise expressly prohibited or limited by law. If you submit an amount in addition to your scheduled monthly amount, we will apply your payments as follows: (i) to outstanding monthly payments of

Call the number on the enclosed notice to learn more.
When you call, please have your income and expense information available
so we can discuss which option(s) could work for you.

Options to consider if your goal is to stay in your home

Program	Description
Home Affordable Modification Program (HAMP)	A federal government program that allows you to repay the loan on newly agreed upon terms, which may include lowering the interest rate, placing past due amounts at the end of the loan, and/or extending the term of the loan. You may be eligible for this program if you meet the following requirements: • The home is your primary residence and you currently live in it. • The amount you owe on the first mortgage is equal to or less than \$729,750 for a single-family home, \$934,200 for a 2 unit property, \$1,129,250 for a 3 unit property or \$1,403,400 for a 4 unit property • You have experienced a hardship that has impacted your income. For example, a significant increase in your mortgage payment OR reduction in your income OR other hardship. • Your mortgage was obtained before Jan. 1, 2009. • Your payment on your first mortgage (including principal, interest, taxes, insurance and homeowner's association dues, if applicable) is more than 31% of your current gross income. To calculate this, divide your first mortgage payment by your gross income (income before taxes).
Loan Reinstatement	If you can bring your loan payments up to date, we will accept the funds needed to bring the loan up to date until the day of your foreclosure sale.
Repayment Plan	A temporary agreement which allows for the repayment of the unpaid, past due amount along with regular mortgage payments. This may include principal, interest, fees, and/or costs assessed to your loan.
Temporary Forbearance Agreement	An agreement whereby we agree not to proceed with foreclosure and/or collection of payments for a period of time, to allow you to re-establish your ability to make the required payments.
Loan Modification (non-HAMP)	Repay the loan on newly agreed upon terms, which may include lowering the interest rate, placing amounts past due at the end of the loan, and/or extending the term of the loan.
Partial Claim (FHA loans Only)	If you have a Federal Housing Administration (FHA) loan and your payments are past due but you are now able to make your regular monthly mortgage payment, this program is designed to bring your loan up to date by creating a second mortgage/lien on your property for the amount that is past due.

Options to consider if you cannot or do not wish to stay in your home

Program	Description
Home Affordable Foreclosure Alternatives Program (HAFA)	Designed to help borrowers who are eligible for the Home Affordable Modification Program (HAMP) but were unsuccessful in securing a permanent modification through the program. HAFA provides the option of a short sale and, if unsuccessful, a deed in lieu of foreclosure. A short sale is a transaction in which you sell your property for less than the total amount owed on the loan (subject to agreement by your servicer/lender/investor), resulting in the release of our lien on your home and avoidance of foreclosure. A deed in lieu of foreclosure is a transaction in which you agree to voluntarily transfer ownership of your property to us in order to avoid foreclosure.
Short Sale/ Preforeclosure Sale (non-HAFA)	Offered to borrowers who are not eligible for HAMP or other home retention alternatives. With a short sale, you sell your property for less than the total amount owed on the loan (subject to agreement by your servicer/lender/investor), resulting in the release of our lien on your home and avoidance of foreclosure.

EXHIBIT F PAGE 3 OF 5

Quando llame, tenga la información de sus ingresos y gastos disponibles para que podamos discutir cual opción(es) pueden funcionar para usted.

Opciones a considerar si su objetivo es permanecer en su casa

Programa	Descripción
Home Affordable Modification Program (HAMP)	Un programa del gobierno federal que le permite pagar el préstamo bajo los nuevos términos acordados, que pueden incluir la reducción de la tasa de interés, agregando la cantidad adeudada al final del préstamo, y / o extender el plazo del préstamo. Usted puede ser elegible para este programa si cumple con los siguientes requisitos: • La casa es su residencia principal y actualmente vive en ella. • La cantidad adeudada en la primera hipoteca debe ser igual o menos que \$729,750 dólares para una vivienda unifamiliar, \$934,200 dólares para una propiedad de 2 unidades, \$1,129,250 dólares para una propiedad de 3 unidades o \$1,403,400 para una propiedad de 4 unidades • Ha experimentado una dificultad que ha afectado sus ingresos. Por ejemplo, un aumento significativo en su pago hipotecario O reducción de sus ingresos U otras dificultades. • Obtuvo su hipoteca antes del 01 de enero 2009. • Su pago de la primera hipoteca (incluyendo principal, interés, impuestos, seguro y cuotas de asociación de propietarios, si se aplica) debe ser más del 31% de sus ingresos brutos actuales. Para calcular esto, divida su pago hipotecario por sus ingresos brutos (ingresos antes de impuestos).
Restablecimiento del Préstamo	Si usted puede traer sus pagos del préstamo hipotecario al día, se le aceptarán los fondos necesarios para que el préstamo este al día hasta la fecha de la venta judicial.
Plan de Pago	Un acuerdo temporal que permite el pago de la cantidad adeudada, cantidad del pago atrasado junto con los pagos regulares de la hipoteca. Esto puede incluir principal, interés, honorarios y/o costos aplicados a su préstamo.
Acuerdo Temporal de Tolerancia	Un acuerdo por el cual nos comprometemos a no proceder con la ejecución hipotecaria y/o colección de pagos por un período de tiempo, para permitirle que restablezca su habilidad de hacer los pagos requeridos.
Modificación de Préstamo (no por medio de HAMP)	Pagar el préstamo bajo los nuevos términos acordados, que puede incluir la reducción de la tasa de interés, agregando la cantidad adeudada al final del préstamo, y/o extender el plazo del préstamo.
Reclamo Parcial (solamente préstamos de la FHA)	Si usted tiene un préstamo de la Administración Federal de Vivienda (FHA) y sus pagos están vencidos, pero ahora puede hacer sus pagos regulares mensuales de la hipoteca, este programa está diseñado para que su préstamo este al día mediante la creación de una segunda hipoteca / gravamen sobre su propiedad por la cantidad adeudada.

Opciones a considerar si no puede o no desea quedarse en su casa

Programa	Descripción
Home Affordable Foreclosure Alternatives Program (HAFA)	Diseñado para ayudar a los prestatarios que son elegibles para el Programa de Home Affordable Modification (HAMP), pero no tuvieron éxito en obtener una modificación permanente a través del programa. HAFA ofrece la posibilidad de una venta corta y, si no tiene éxito, una entrega de escritura para evitar juicio hipotecario. Una venta corta es una transacción en la que usted vende su propiedad por menos de la cantidad adeudada en el préstamo (sujeto a previo acuerdo de su administrador / prestamista / inversionista), resultando en la liberación de nuestro derecho de retención sobre su propiedad y evitar la ejecución hipotecaria. Una entrega de escritura para evitar juicio hipotecario es una transacción en la que usted está de acuerdo de transferir voluntariamente las escrituras de su propiedad a nosotros con el fin de evitar la ejecución hipotecaria.
Venta Corta/ Venta antes de Ejecución Hipotecaria (no por medio de HAFA)	Se ofrece a los prestatarios que no son elegibles para HAMP u otras alternativas de retención de hogar. Con una venta corta, usted vende su propiedad por menos de la cantidad total adeudada en el préstamo (sujeto a un acuerdo por su administrador / prestamista / inversionista), resultando en la liberación de nuestro derecho de retención sobre su propiedad y evitando la ejecución hipotecaria.
Entrega de...	Se ofrece a los prestatarios que no son elegibles para HAMP u otras alternativas de retención de...

EXHIBIT 5 PAGE 4 OF 5

Send Payments to:
P.O. Box 15222
Wilmington, DE 19886-5222

Send Correspondence to:
PO Box 5170, MS SV314B
Simi Valley, CA 93065

20120117-7



Frank Cook
Po Box 1557
Lexington, SC 29071-1557

EXHIBIT F PAGE 5 OF 5



P. O. Box 941633
Simi Valley, CA 93094-1633

Doc ID: BANACOM1

FRANK COOK
164 PILGRIM POINT DR
LEXINGTON SC 29072-8175

Account No.: [REDACTED] 2742

IMPORTANT MESSAGE ABOUT YOUR LOAN

We want to let you know that effective July 1, 2011, the servicing of home loans by our subsidiary- BAC Home Loans Servicing, LP, will transfer to our parent company- Bank of America, N.A. Based upon our records as of April 17, 2011, your home loan account noted above is affected by this servicing transfer.

WHAT THIS MEANS FOR YOU

- If you pay by check on or after July 1, 2011, please make checks payable to "Bank of America, N.A."
- Effective July 1, 2011, your monthly statements will show "Bank of America, N.A." as your loan servicer.
- We will notify property insurance carriers of this servicing transfer; however, we recommend you review the next policy renewal notice you receive after July 1, 2011, to verify that the "Mortgagee" for your policy has been updated to reflect "Bank of America, N.A." If your policy has not been updated, please contact your insurance carrier to ensure the update is made.
- Your account number will remain the same.
- The terms and conditions for your loan will not change.
- If you make automated/ACH payments or you make payments through Bank of America's or another financial institution's online banking service, continue to make payments as you do today. No actions are required on your part to accommodate this transfer.
- The customer service toll-free numbers, fax numbers and mailing addresses will remain the same.
- Online Banking access to your account will remain the same.
- Your privacy elections will not change.

For customers discussing, applying for, or involved in any Loan Modification, Repayment Plan, Short Sale, Deed in Lieu of Foreclosure, or Foreclosure

This servicing transfer will not impact any current discussions, applications, approved arrangements or proceedings in these areas. However, if you are currently in a repayment plan, trial modification or permanent modification, check payments made on or after July 1, 2011, should be payable to "Bank of America, N.A."

PLEASE SEE REVERSE SIDE

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EXHIBIT C PAGE 1 OF 4

BANACOM1 13045 02/8/2011

Legal Notice(s)*

As a result of this servicing transfer, we have enclosed the legal notice(s) listed just below. No action is required on your part in response to the notice(s), but we recommend you retain the notice(s) for your records:

- Real Estate Settlement Procedures Act (RESPA) Servicing Transfer Notice

THANK YOU

We appreciate the opportunity to serve your home loan needs. If you have any questions or need assistance regarding this servicing transfer, please call us at 1.877.488.7812 between 8 a.m. and 9 p.m. Eastern, Monday through Friday.

Please Note: This letter is being sent to the address and borrower(s) listed above. If there are other borrowers on this account who receive mail at a different address than above, please share this information with them. If you have other home loan accounts affected by this servicing transfer, you will receive a separate communication for each account.

* If an attorney represents you in connection with your Bank of America home loan, please provide your attorney a copy of this letter and any enclosed legal notice(s).

EXHIBIT 6 PAGE 2 OF 4

NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS

You are hereby notified that the servicing of your mortgage loan and the right to collect payments in connection with your loan will be/was transferred from BAC Home Loans Servicing, LP to Bank of America, N.A., effective July 1, 2011.

The 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. However, in this case, all necessary information is combined in this one notice.

YOUR SERVICER PRIOR TO JULY 1, 2011:

Your servicer prior to July 1, 2011: BAC Home Loans Servicing, LP. If you have any questions relating to the transfer of servicing from this servicer, please call Bank of America Customer Service toll-free at 1.877.488.7812 between 8 a.m. and 9 p.m. Eastern, Monday through Friday. Your call may be monitored or recorded to ensure quality service.

YOUR SERVICER ON AND AFTER JULY 1, 2011:

Your new servicer on and after July 1, 2011: Bank of America, N.A. The business address for Bank of America, N.A. for purposes of your mortgage loan is: 450 American Street, Simi Valley, CA 93065-6285. Below is the information on how to contact and make payments to Bank of America, N.A.

Toll-free Number

The toll-free telephone number of Bank of America, N.A. is 1.877.488.7812. If you have any questions relating to the transfer of servicing to your new servicer, please call Bank of America Customer Service at 1.877.488.7812 between 8 a.m. and 9 p.m. Eastern, Monday through Friday. Please have your account number ready whenever you call. Your call may be monitored or recorded to ensure quality service.

Address for Correspondence (other than payments)

The address to send written correspondence to Bank of America, N.A. (other than payments) is:

Bank of America, N.A.
Customer Service Correspondence
CA6-919-01-41
P.O. Box 5170
Simi Valley, CA 93062-5170

Please include your loan number on all written correspondence you send to Bank of America, N.A.

Address for Mailed Payments

This transfer does not change the mailing address to send your payments. Please continue to send your payments to Bank of America, N.A. at the mailing address indicated on your monthly statements and/or coupons. Please write your loan number on all checks, cashier checks and other payments sent to Bank of America, N.A.

INFORMATION CONCERNING YOUR PAYMENTS AND OPTIONAL INSURANCE:

The date that BAC Home Loans Servicing, LP no longer accepts payments from you is June 30, 2011. The date that Bank of America, N.A. begins accepting payments from you is July 1, 2011. Send all payments due on or after that date to Bank of America, N.A.

Optional insurance, such as life and disability insurance coverage, will continue without interruption. If, for some reason, your current coverage cannot be continued by Bank of America, N.A., you will be given separate notice and offered other alternatives without interruption in your coverage.

ADDITIONAL RIGHTS UNDER THE REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA)

We want to make you aware of certain rights you have under RESPA. A summary is provided on the back of this notice.

SEE REVERSE SIDE FOR IMPORTANT CONSUMER INFORMATION

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EXHIBIT 6 PAGE 3 OF 4

ABOUT YOUR RIGHTS UNDER RESPA

You should 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 acknowledgement 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 Bank of America, N.A.'s servicing of your loan, it must be sent to the following address:

Bank of America, N.A.
Customer Service Correspondence
CA6-919-01-41
P.O. Box 5170
Simi Valley, CA 93062-5170

No 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.

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 the Section. You should seek legal advice if you believe your rights have been violated.

SEE REVERSE SIDE FOR IMPORTANT CONSUMER INFORMATION

12-2651

The South Carolina Court of Appeals

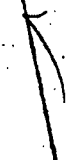
Bank of America, N.A., Respondent,

v.

Frank Cook a/k/a Frank W. Cook, Judith H. Cook and
Ian Blake, Defendants,

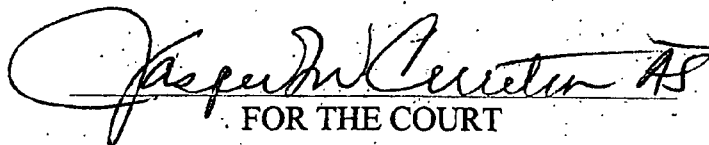
of whom Frank Frank Cook a/k/a Frank W. Cook and
Judith H. Cook are Appellants.

Appellate Case No. 2012-213304

FILED
2013 FEB 21 PM 2:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

ORDER

Respondent's motion to dismiss is granted. *See C & S Real Estate Servs., Inc. v. Massengale*, 290 S.C. 299, 300, 350 S.E.2d 191, 192 (1986), *modified by Johnson v. S.C. Nat'l Bank*, 292 S.C. 51, 354 S.E.2d 895 (1987) ("An order denying a party a jury trial is not immediately appealable unless it deprives him of a mode of trial to which he is entitled as a matter of right.").


FOR THE COURT

Columbia, South Carolina

cc:
Dwayne Marvin Green
Henry Guyton Murrell
Teresa DeToma Van Vlakte

FILED

 1/29/13



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1880
FAX: (803) 734-1839
www.sccourts.org

February 20, 2013

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: Bank of America v. Frank Cook
Lower Court Case No. 2012CP1002651
Appellate Case No. 2012-213304

FILED
2013 FEB 21 PM 2:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Dwayne Marvin Green
Henry Guyton Murrell
Teresa DeToma Van Vlakte

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs.

Frank Cook a/k/a Frank W. Cook, Judith H.
Cook, and Ian Blake,

DEFENDANTS.

F12-01801

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-10-2651

**NOTICE OF MOTION AND MOTION
TO STRIKE THE AMENDED ANSWER OF
DEFENDANTS FRANK COOK A/K/A FRANK
W. COOK AND JUDITH H. COOK**

2013 JUL -1 PM 3:31
JULIE J. ARMSBONG
CLERK OF COURT

FILED

**TO: DWAYNE M. GREEN, ATTORNEY FOR DEFENDANTS FRANK COOK A/K/A
FRANK W. COOK AND JUDITH H. COOK:**

YOU WILL PLEASE TAKE NOTICE that, the Plaintiff, by and through its undersigned attorney, pursuant to Rule 37 of the South Carolina Rules of Civil Procedure, will move before The Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, at the pre-trial hearing scheduled on July 22, 2013, or soon thereafter as counsel may be heard, for an order striking the Amended Answer of Defendants Frank Cook a/k/a Frank W. Cook and Judith H. Cook.

This motion is based on the attached affidavit, the laws of South Carolina applicable to this action, the developed case law encompassing those laws, and is based on the following:

Defendants filed an Answer on May 9, 2012. Defendants subsequently filed an Amended Answer on June 28, 2012. The Amended Answer requested a jury trial but did not include any counterclaims that would entitle them to a jury trial. Furthermore, the Defendants filed the Amended Answer without first seeking leave from the Court to amend as required by S.C. R. Civ. P. 15(a). Pursuant to S.C. R. Civ. P. 15(a): "A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served... [o]therwise a party may amend his pleading only by leave of court or by written consent of the adverse party." Rule 15(a), SCRCR. The Amended Answer is improper and should be stricken as it was filed 50 days after the filing of the first Answer and without first seeking leave from the Court to amend.

The Amended Answer filed by Defendants Frank Cook a/k/a Frank W. Cook and Judith

H. Cook on or about June 28, 2012 fails to set forth any factual basis of Defendants' denials and defenses. Therefore, on or about September 7, 2013 the Plaintiff served upon the Defendants' counsel the Plaintiff's First Set of Interrogatories and the Plaintiff's First Set of Requests for Production. On October 16, 2012, Plaintiff served Defendants' counsel with a ten day notice, notifying him that the responses to the requests remained outstanding. At a hearing held on May the Defendants' attorney stated he would respond to Plaintiff's First Set of Interrogatories and the Plaintiff's First Set of Requests for Production by no later than June 3, 2013. On May 31, 2013, Defendants served Plaintiff with answers to Plaintiff's First Set of Interrogatories. The discovery response referenced attached documents not included with the answers. No response was provided by the Defendants to the Plaintiff's Requests for Production. On June 7, 2013, Plaintiff served Defendants' counsel with a second ten day notice, requesting the outstanding responses to Plaintiff's Requests for Production and the missing attachments from the Defendants' answers to Plaintiff's First Set of Interrogatories. Copies of Plaintiff's First Set of Interrogatories and Plaintiff's First Set of Requests for Production are attached as **Exhibits "A" and "B."** A copy of Plaintiff's ten day notice dated October 16, 2012 is attached as **Exhibit "C."** A copy of Defendants' answers to Plaintiff's First Set of Interrogatories is attached as **Exhibit "D."** A copy of Plaintiff's ten day notice dated June 7, 2013 is attached as **Exhibit "E."**

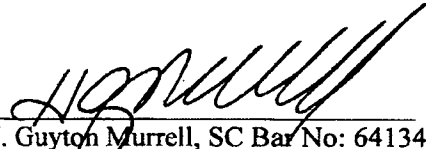
The Defendants have failed to respond to the Plaintiff's Requests for Production and to include the referenced documents from Defendants' answers to Plaintiff's First Set of Interrogatories. Such failure is without justification. Counsel for Plaintiff is informed and believes that the Defendants' failure to respond is willful and is a means to delay this matter further. The Defendants' action in refusing to respond to discovery severely compromises the Plaintiff's ability to prosecute this action against the Defendants. Counsel for Plaintiff is further informed and believes that it should be awarded the fees and costs associated with bringing this motion.

WHEREFORE, the Plaintiff moves before this Court for an Order granting the following relief:

- (a) Striking the Amended Answer of Defendants Frank Cook a/k/a Frank W. Cook and Judith H. Cook; and
- (c) For other relief as this Court may determine to be just and proper.

[SIGNATURE PAGE TO FOLLOW]

KORN LAW FIRM, P.A.



H. Guyton Murrell, SC Bar No: 64134
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 231-2022
Facsimile: (803) 231-2060
Guyton.Murrell@Kornlawfirm.com
ATTORNEY FOR PLAINTIFF

June 26, 2013
Columbia, South Carolina

KORN LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS AT LAW
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29201

MAILING ADDRESS
POST OFFICE BOX 12369
COLUMBIA, SOUTH CAROLINA 29211-2369
(803) 252-5817
FACSIMILE (803) 231-2060

September 7, 2012

Dwayne M. Green, Esq.
Green, Ford & Wallace, LLC
Post Office Box 20009
Charleston, SC 29413

RE: Bank of America, N.A. v. Frank Cook, et al.
C/A No.: 2012-CP-10-2651
Our File No.: F12-01801

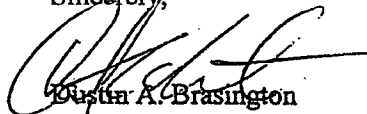
Dear Mr. Green:

Please find enclosed and served upon you Plaintiff's First Set of Interrogatories, First Set of Requests for Production, and Certifications of Service in the above matter.

Please do not hesitate to contact me should you have any questions.

With kindest regards, I am

Sincerely,


Justin A. Brasington
Litigation Paralegal

Enc. (as stated)

EXHIBIT A PAGE 1 OF 4

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

v.

Frank Cook a/k/a Frank W. Cook, Judith H. Cook, and
Ian Blake,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-10-2651

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES**

**TO: DWAYNE M. GREEN, ESQ., ATTORNEY FOR DEFENDANTS FRANK COOK A/K/A
FRANK W. COOK AND JUDITH H. COOK:**

YOU WILL PLEASE TAKE NOTICE, that, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure (SCRCP), you are required to answer in writing and under oath each of the following interrogatories and serve your responses on the undersigned attorney at the Korn Law Firm, P.A., P.O. Box 12369, Columbia, South Carolina 29211-2369 within 30 days after service hereof. In addition, these interrogatories shall be deemed to be continuing so as to require you to reasonably supplement or amend your answers thereto in accordance with Rule 26(e) of the South Carolina Rules of Civil Procedure.

INTERROGATORIES

1. Give the names and addresses of persons known to the party 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.
2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.
3. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.
4. For each person known to the party 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 witnesses.

EXHIBIT A PAGE 2 OF 4

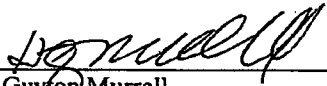
5. Set forth an itemized list of all payments alleged to have been made on the subject mortgage account, specifying the date any such alleged payment was submitted, the amount of the payment, the method of payment such as check or money order, and any relevant identification such as check or money order number.

6. Please list all hazard insurance policies providing coverage on the subject real property. For each such policy, specify the name of the company, the issuing agent, the date the policy was issued, the amount of policy coverage, the effective dates of coverage, and the policy number.

7. Please list all previous or pending civil actions in which the Defendant(s) has been a party, specifying the state and county where each such case was filed, the case number, the current status of any pending litigation and the date of judgment and judgment roll number of any previous litigation.

8. Please list all previous or pending criminal actions in which the Defendant(s) has been a party, specifying the state and county where each such case was filed, the case number, the current status of any pending litigation and the date of judgment and judgment roll number of any previous litigation.

KORN LAW FIRM, P.A.


H. Guyton Murrell
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 252-5817
Facsimile: (803) 231-2060
ATTORNEYS FOR PLAINTIFF

September 7, 2012
Columbia, South Carolina
F12-01801

EXHIBIT A PAGE 3 OF 4

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

v.

Frank Cook a/k/a Frank W. Cook, Judith H. Cook, and
Ian Blake,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-10-2651

CERTIFICATE OF SERVICE

I, Dustin A. Brasington, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that **PLAINTIFF'S FIRST SET OF INTERROGATORIES** was served on counsel for the Defendants by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Dwayne M. Green, Esquire
Green, Ford & Wallace, LLC
Post Office Box 20009
Charleston, SC 29413

this 7 day of September, 2012.

KORN LAW FIRM, P.A.



Dustin A. Brasington
Litigation Paralegal

Columbia, South Carolina

EXHIBIT A PAGE 4 OF 4

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

v.

Frank Cook a/k/a Frank W. Cook, Judith H. Cook, and
Ian Blake,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-10-2651

**PLAINTIFF'S FIRST SET OF REQUESTS
FOR PRODUCTION**

**TO: DWAYNE M. GREEN, ESQ., ATTORNEY FOR DEFENDANTS FRANK COOK
A/K/A FRANK W. COOK AND JUDITH H. COOK:**

YOU WILL PLEASE TAKE NOTICE, that, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, you are hereby requested to produce copies of the documents listed below for inspection and copying at the Korn Law Firm, P.A., P.O. Box 12369, Columbia, South Carolina 29211-2369 on or before 30 days from the date of this request. These requests shall be deemed to be continuing so as to require supplemental production pursuant to Rule 26(e) of the South Carolina Rules of Civil Procedure.

The term "document" when used herein means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody or control, regardless of where located; including, without limiting the generality of the foregoing, plats, sketches, punch cards, print out sheets, movie film, slides, photographs, records, microfilm, notes, letters, memoranda, ledgers, worksheets, books, magazines, notebooks, diaries, calendars, appointment book registers, charts, cables, papers, agreements, contracts, purchase orders, acknowledgments, invoices, authorizations, budgets, analysis, projections, transcripts, minutes of meetings of any kind, correspondence, telegrams, drafts, data processing discs or tapes, or computer-produced interpretations thereof, instructions, announcements, schedules and price lists. In all cases where originals and/or non-identical copies are not available, "document" also means identical copies of original documents and copies of non-original documents.

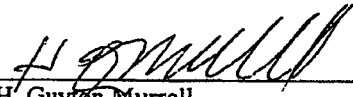
EXHIBIT B PAGE 1 OF 3

DOCUMENTS REQUESTED

The following documents are requested:

1. All documents which Defendants propose to introduce at the trial of this case.
2. All documents referred to or related to your answers to Plaintiff's interrogatories.
3. All letters, reports, or other writings in your possession from any expert involved in this case in any way.
4. All statements of any witness or other person claiming to have knowledge of any issue in this case.
5. All documents that you mailed, sent, or gave to Plaintiff or Plaintiff's assignors concerning the property at issue in this case.
6. All documents that you received from Plaintiff or Plaintiff's assignors concerning the property at issue in this case.
7. All documents in your possession that relate to any claim or defense in the case.
8. Copies of all receipts, cancelled checks or any other documentation whatsoever for all payments alleged to have been made by the Defendant(s) on the subject mortgage account, including a front and back copy of any cancelled checks, money orders, certified funds or any other method of payment.

KORN LAW FIRM, P.A.


H. Guyton Murrell
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 252-5817
Facsimile: (803) 231-2060
ATTORNEYS FOR PLAINTIFF

September 7, 2012
Columbia, South Carolina
F12-01801

EXHIBIT B PAGE 2 OF 3

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

v.

Frank Cook a/k/a Frank W. Cook, Judith H. Cook, and
Ian Blake,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-10-2651

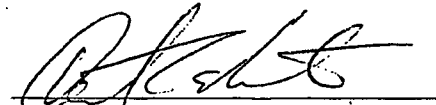
CERTIFICATE OF SERVICE

I, Dustin A. Brasington, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that **PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION** was served on counsel for the Defendants by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Dwayne M. Green, Esquire
Green, Ford & Wallace, LLC
Post Office Box 20009
Charleston, SC 29413

this 2 day of September, 2012.

KORN LAW FIRM, P.A.



Dustin A. Brasington
Litigation Paralegal

Columbia, South Carolina

EXHIBIT B PAGE 3 OF 3

KORN LAW FIRM, P.A.
ATTORNEYS AND COUNSELORS AT LAW
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29201

Peter D. Korn
John S. Kay
Dean A. Hayes
Alan M. Stewart*
H. Guyton Murrell

**Also Admitted in North Carolina*

MAILING ADDRESS
POST OFFICE BOX 12369
COLUMBIA, SOUTH CAROLINA 29211-2369
(803) 252-5817
FACSIMILE (803) 231-2060

John B. Kelchner
Suzannah Hayes
Meredith S. Lee
Ashley Zarratt
Wylie W. Clarkson
Christopher S. Truluck

October 16, 2012

Dwayne M. Green, Esq.
Green, Ford & Wallace, LLC
Post Office Box 20009
Charleston, SC 29413

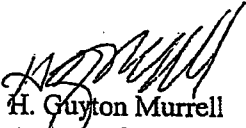
Re: Bank of America, N.A. v. Frank Cook, et al.
C/A No.: 2012-CP-10-2651
Our File No.: F12-01801

Dear Mr. Green:

A review of this file indicates that you were served with Plaintiff's First Set of Interrogatories, Plaintiff's Request for Production, and Certificates of Mailing on September 7, 2012. To date, responses remain outstanding.

Accordingly, please provide me with responses within ten (10) days.

Sincerely,


H. Guyton Murrell
Attorney for Plaintiff

HGM/dab

THIS LETTER IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

EXHIBIT C PAGE 1 OF 1

602 Rutledge Avenue
Charleston, SC • 29403 or
P.O. Box 20009
Charleston, SC • 29413
tel: 843-266-2626
fax: 843-266-2627

HAMPTONGREEN LLC
ATTORNEYS AT LAW

Dwayne M. Green
ATTORNEY AT LAW
dwayne@hamptongreenllc.com

May 31, 2013

H. Guyton Murrell, Esquire
Korn Law Firm
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369

RE: *Bank of America, N.A. vs. Frank Cook a/k/a Frank W.
Cook, Judith Cook and Ian Blake
Case No. 12-CP-10-2651
Hampton Green File #*

Dear Guyton:

Enclosed please find Defendants Frank and Judith Cook's Answers to Plaintiff's First Set of Interrogatories in the above-referenced matter. My client is gathering the documents necessary for responses to your Request for Production and I should have those to you next week. This is within the two week time frame that I told Judge Scarborough we would have the discovery responses to you.

Please let me know if you have any questions or need anything further in the meanwhile.

With kind regards, I remain

Yours very truly,
HAMPTON GREEN, LLC



Dwayne M. Green

DMG/lg
Enclosure
cc: Frank and Judith Cook

EXHIBIT 0 PAGE 1 OF 4

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-10-2651

Bank of America, N.A.,)
Plaintiff,)

-versus-

Frank Cook a/k/a Frank W. Cook,)
Judith H. Cook, and Ian Blake,)
Defendants)

**ANSWERS TO PLAINTIFF'S FIRST SET
OF INTERROGATORIES**

TO: H. GUYTON MURRELL, ATTORNEY FOR PLAINTIFF

The Defendants, Frank Cook and Judith H. Cook, answer the Interrogatories of the Plaintiff as follows:

1. Give the names and addresses of persons known to the party 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) Frank Cook
P.O. Box 1557
Lexington, SC 29071

b) Judith Cook
P.O. Box 1557
Lexington, SC 29071

c) Ian Blake
13 Poplar Street
Charleston SC 29403

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

EXHIBIT D PAGE 8 OF 4

6. Please list all hazard insurance policies providing coverage on the subject real property. For each such policy, specify the name of the company, the issuing agent, the date the policy was issued, the amount of policy coverage, the effective dates of coverage and the policy number.

ANSWER: Please see list of insurance policies attached.

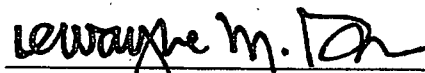
7. Please list all previous or pending civil actions in which the Defendant(s) has/have been a party, specifying the state and county where each such case was filed, the case number, the current status of any pending litigation and the date of judgment and judgment roll number of any previous litigation.

ANSWER: a) Wells Fargo Bank vs. Frank Cook—2012-CP-10-2120;
b) Bank of America vs. Frank Cook, et al—2012-CP-10-3515;
c) Bank of America vs. Frank Cook—2012-CP-10-2516;
d) Bank of America NA vs. Frank Cook—2012-CP-10-2651;

8. Please list all previous or pending criminal actions in which the Defendant(s) has/have been a party, specifying the state and county where each such case was filed. The case number, the current status of any pending litigation and the date of judgment and judgment roll number of any previous litigation.

ANSWER: None.

HAMPTON GREEN, LLC



Dwayne M. Green
602 Rutledge Avenue
Charleston, SC 29403
(843) 266-2626 telephone
(843) 266-2227 facsimile
Dwayne@hamptongreenllc.com

Charleston, South Carolina
29 day of May, 2013

EXHIBIT 10 PAGE 3 OF 4

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-10-2651

Bank of America, N.A.,)
Plaintiff,)

-versus-

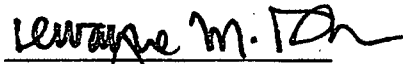
Frank Cook a/k/a Frank W. Cook,)
Judith H. Cook, and Ian Blake,)
Defendants)

CERTIFICATE OF SERVICE

I, Dwayne M. Green, hereby certify that I have on this 31st day of May, 2012, served a copy of Answers to Plaintiff's First Set of Interrogatories on behalf of the Defendants Frank Cook a/k/a Frank W. Cook and Judith H. Cook in the above-captioned case by depositing same in the U.S. Mail with sufficient postage prepaid, at the addressed as follows:

H. Guyton Murrell, Esquire
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369

HAMPTON GREEN, LLC



Dwayne M. Green, Esquire
dwayne@hamptongreenllc.com
602 Rutledge Ave
Charleston, SC 29403
(843) 266-2626 telephone
(843) 266-2627 facsimile

EXHIBIT D PAGE 4 OF 4

KORN LAW FIRM, P.A.

ATTORNEYS AND COUNSELORS AT LAW
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29201

Peter D. Korn
John S. Kay
Dean A. Hayes
Alan M. Stewart*
H. Guyton Murrell

**Also Admitted in North Carolina*

MAILING ADDRESS
POST OFFICE BOX 12369
COLUMBIA, SOUTH CAROLINA 29211-2369
(803) 252-5817
FACSIMILE (803) 231-2060

John B. Kelchner
Suzannah Hayes
Ashley Zarratt
Wylie W. Clarkson
Christopher S. Truluck
Kevin Hardy

June 7, 2013

Dwayne M. Green, Esq.
Hampton Green, LLC
Post Office Box 20009
Charleston, SC 29413

Re: Bank of America, N.A. v. Frank Cook, et al.
C/A No.: 2012-CP-10-2651
Our File No.: F12-01801

Dear Mr. Green:

We have received your responses to our First Set of Interrogatories. Your responses reference several documents as being attached however there were no attachments included. Additionally, your responses to our First Set of Requests for Production remain outstanding and the two (2) week period for you to respond as ordered by Judge Scarborough has now passed. Accordingly, please provide me with full and adequate responses within ten (10) days.

Sincerely,


H. Guyton Murrell
Attorney for Plaintiff

HGM/dab

Cc: Charleston County Master-in-Equity
100 Broad Street, Suite 266
Charleston, SC 29401

THIS LETTER IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

EXHIBIT E PAGE 1 OF 1

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs.

Frank Cook a/k/a Frank W. Cook, Judith H.
Cook, and Ian Blake,

DEFENDANTS.

F12-01801

IN THE COURT OF COMMON PLEAS

C/A No.: 2012-CP-10-2651

CERTIFICATE OF SERVICE

BY
JULIE J. ARMSTRONG
CLERK OF COURT

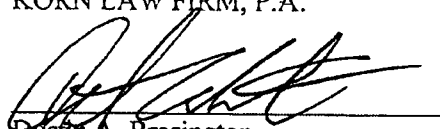
2013 JUL -1 PM 2:31

FILED

I, Dustin A. Brasington, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO STRIKE ANSWER OF DEFENDANTS FRANK COOK A/K/A FRANK W. COOK AND JUDITH H. COOK AND AFFIDAVIT OF PLAINTIFF'S COUNSEL** were served on counsel for Defendants by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Dwayne M. Green, Esquire
Hampton Green, LLC
Post Office Box 20009
Charleston, South Carolina 29413
ATTORNEY FOR DEFENDANTS FRANK W. COOK AND
JUDITH H. COOK

KORN LAW FIRM, P.A.


Dustin A. Brasington
Paralegal to H. Guyton Murrell

this 28 day June, 2013.

Columbia, South Carolina
N:\PD\F12-01801

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-10-2651

Bank of America

Cook

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

Plaintiff's motion for summary judgment pursuant to Rule 56(a) is granted. Formal order to follow.

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Circuit Court Judge

Judge Code

Date

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bank of America, N.A.,

PLAINTIFF,

vs.

Frank Cook a/k/a Frank W. Cook, Judith H.
Cook and Ian Blake,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 2012-CP-10-2651

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

FILED
2013 AUG -2 PM 2:36
CLERK OF COURT
J. ARISTARONG

F12-01801

This is an action for foreclosure as to certain realty located in Charleston County. The summons and complaint were filed on April 20, 2012. The Defendants Frank Cook and Judith Cook filed an answer on May 9, 2012. The Defendants Frank Cook and Judith Cook filed a motion to rescind the order of reference on August 16, 2012. By order filed October 11, 2012, the motion to rescind the order of reference was denied. Plaintiff filed a reply dated October 30, 2012 and filed on November 8, 2012.

The Defendants Frank Cook and Judith Cook filed an appeal of the October 11, 2012 order. By order filed January 29, 2013, the appeal was dismissed on motion of Respondent (Plaintiff herein).

Plaintiff filed a motion for summary judgment on November 14, 2012 with supporting affidavits and memorandum of law. A hearing on the motion was held on May 24, 2013. Defendants' counsel argued that summary judgment should not be granted without the Defendants Frank Cook and Judith Cook being afforded an opportunity to conduct discovery. Defendants' counsel further stated that his clients would respond to the Plaintiff's outstanding discovery within two (2) weeks. Pursuant to a scheduling order filed May 28, 2013, the summary judgment motion was held open and to be heard within any other outstanding motions at a status conference on July 22, 2013. The scheduling order further provided that all discovery should be completed no later than July 19, 2013.

At the hearing held July 22, 2013, H. Guyton Murrell appeared as attorney for the Plaintiff and Dwayne Green appeared as attorney for Defendants Frank Cook and Judith

Cook. The court heard arguments from both parties on the Plaintiff's motion for summary judgment.

The motion for summary judgment is based partly on the failure of defendants to cooperate with discovery. Plaintiff's counsel served Interrogatories and Request for Production of Documents on September 7, 2012. By letter dated October 16, 2012, Plaintiff's counsel requested that the overdue responses to the discovery request be provided within ten (10) days. The Defendants Frank Cook and Judith Cook responded the Plaintiff's Interrogatories on May 31, 2013. The response did not provide a list of alleged payments as requested and referenced documents that were not provided with the discovery response. The cover letter to the response stated that the response to the Plaintiff's Request for Production would be provided the following week. By letter dated June 7, 2013, Plaintiff's counsel again requested that the overdue response to the discovery request be provided within ten (10) days. At the hearing held on July 22, 2013, attorney for Defendants Frank Cook and Judith Cook provided a response to the request for production of documents. The response consisted of the note, mortgage and payment history that were exhibits to Plaintiff's motion for summary judgment. The Defendants' response did not provide any documentation for alleged payments. The Defendants Frank Cook and Judith Cook did not serve any discovery request on Plaintiff's counsel.

The Plaintiff filed and served on all parties a motion for summary judgment with supporting affidavit and memorandum of law. The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall, 359 S.C. at 376, 597 S.E.2d at 183. The court finds that Plaintiff has established its right to summary judgment in this matter. The supporting affidavit filed by Plaintiff included a payment history and debt statement and established that the subject account is in arrears. The Defendants Frank Cook and Judith Cook did not file any counter or opposing affidavit or provide any documentation to dispute the allegations of the complaint and motion despite being served with discovery requesting such documents. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). Rather, the nonmoving party must come



forward with specific facts showing there is a genuine issue for trial. Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004); Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999); Rule 56(c), SCRCP. In this case, the Defendants Frank Cook and Judith Cook did not provide any counter or opposing affidavits. Furthermore, Defendants Frank Cook and Judith Cook failed to cooperate with proper discovery requests that sought information and documentation to support the allegations of their responsive pleading.

The court finds that Plaintiff has met the burden of proof as set forth in applicable caselaw and Rule 56(e), SCRCP and the Motion for Summary Judgment is granted.

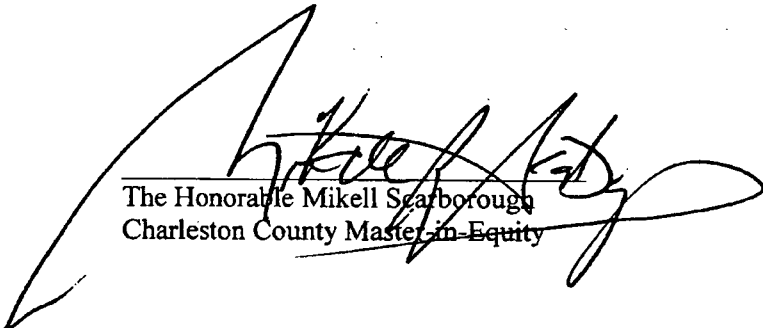
THEREFORE, IT IS HEREBY ORDERED that the Plaintiff's Motion for Summary Judgment is hereby granted,

IT IS FURTHER ORDERED that the case shall be scheduled for a hearing to update the judgment figures provided in affidavit of debt.

IT IS SO ORDERED.

Charleston, South Carolina

7/31, 2013


The Honorable Mikell Scarborough
Charleston County Master in Equity

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

FOR THE NINTH JUDICIAL CIRCUIT

BANK OF AMERICA,

Plaintiffs,

VS.

FRANK AND JUDITH COOK, ET AL,

Defendants.

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CASE NO.:2010-CP-10-294

Hearing before the

Honorable Mikell R. Scarborough, reported by Bernadette A.

Cali, CSR and Notary Public, at 2:00 p.m. on September 18,

2012 at 100 Broad Street, Charleston, South Carolina.

A P P E A R A N C E S

For the Plaintiff: Guyton Murrell, Esq.
Korn Law Firm
PO Box 11264
Columbia, S.C. 29211

For the Defendant: Dwayne M. Green, Esq.
Green Ford & Wallace, LLC
602 Rutledge Avenue
Charleston, S.C. 29403

Bernadette A. Cali, CSR
Notary Public

1 THE COURT: Next up we've got the case of Bank of
2 America versus Frank and Judith Cook, 2012-CP-10-2651.
3 I've got Mr. Guyton Murrell here for the Plaintiff,
4 Bank of America, and Mr. Dwayne Green for the
5 Defendants. Mr. Green, I believe this is your motion.

6 MR. GREEN: It is, Your Honor. Good morning, and
7 good to see everyone. May it please the Court.

8 This is an action that Bank of America has brought
9 against my clients, Frank and Judith Cook. It's a
10 foreclosure action.

11 The action was filed in April of 2012, April 20.
12 There was an Affidavit of Service 5/9 but it was served
13 on April 30, 2012.

14 We have a copy of the Answer. I filed an answer
15 and filed it with the Clerk of Court and that Answer
16 was filed May 9, 2012. That was ten days before it was
17 due. I have a copy of that Answer which is attached to
18 the motion, if Your Honor has it. I've shown it to the
19 other side.

20 (Hands up document.)

21 MR. GREEN: Here's the file.

22 THE COURT: Okay.

23 MR. GREEN: Frank and Judith Cook have two actions
24 going on. Apparently when the Answer was filed with
25 Ms. Armstrong here the Plaintiff did not get a copy of

1 the Answer. But it was filed and it was of record, it
2 was on the website.

3 What the Plaintiff did was move for default and
4 reference to the Master. It was referred to the Master
5 6/18 and then Affidavit of Default was put in on
6 June 18.

7 So just to keep the timeline going, there was
8 Summons and Complaint, there was a timely filed Answer
9 that the Plaintiffs attorney did not get. Another
10 attorney for another foreclosure matter got that. And
11 it was put in default and referred to the Master.

12 We also, after that, amended the Answer demanding
13 a jury trial. Copy of the Amended Answer is right here
14 (Hands up document.)

15 MR. GREEN: That was filed on June 28. The
16 current motion is to rescind the entry of judgment.

17 The basis for the motion is that there was a
18 timely answer filed with the Clerk of Court. We do not
19 believe that based on the filing of the Answer that the
20 Defendant is in default, if there was a filed answer;
21 that we have sent a copy of the Amended Answer and the
22 original Answer to the Plaintiff. I believe -- or the
23 Plaintiffs attorney.

24 I believe they still want to have it referred, but
25 our position is that the Order which placed the

1 Defendants in default and referred it was issued in
2 error, because they should not have been in default if
3 they were already -- had already had a filed answer.

4 So all we're asking the Court today is to rescind
5 the default judgment and the order of reference. There
6 is now an Amended Answer demanding a jury trial. So we
7 would just ask that the motion be rescinded and, again,
8 we have a copy of both the Answer -- the timely Answer
9 and the Amended Answer, which we believe gives us good
10 basis for this relief.

11 The Affidavit of Non-military Service and the
12 Affidavit, again, of Default we believe is in error
13 because there was an answer on file.

14 THE COURT: Mr. Green, best you can tell there are
15 maybe multiple actions pending and this may have been
16 confused with another action? Is that that what you're
17 thinking.

18 MR. GREEN: As Your Honor knows there are two
19 firms that do a whole lot of foreclosure. If you look
20 at the Affidavit of Service to the original answer it
21 may have been sent to Samuel Waters, and Samuel Waters
22 does have an action pending against Frank and Judith.
23 We believe there may have been a crisscrossing of
24 those. So that purely was a clerical error on our
25 behalf, but I guess our contention is if the Answer was

1 filed with the Clerk of Court, public record, Julie
2 Armstrong had a copy of it here, it was on the website,
3 then any order of default issued after a filed answer
4 should be invalid, because there was a timely filed
5 answer.

6 THE COURT: Answer was filed with the Clerk, not
7 properly served on the right party?

8 MR. GREEN: Correct.

9 THE COURT: We got Korn Law Firm being confused
10 with RTT.

11 MR. GREEN: Exactly right.

12 THE COURT: Very good. Mr. Murrell, let me hear
13 from you.

14 MR. MURRELL: Good morning, Your Honor. Guyton
15 Murrell appearing on behalf of Plaintiff. This is a
16 court equity so I'll get right to the heart of the
17 matter.

18 This was a case where apparently their Defendant
19 sent it to the wrong law firm. That's the heart of the
20 issue. We didn't have it. We didn't submit a
21 fraudulent affidavit. We weren't properly served with
22 it.

23 However, this is a court of equity, so let's look
24 at the issues. This is a non-owner occupied
25 foreclosure action. The Defendants in their Answer did

1 not plead anything that would entitle them to a jury
2 trial. They filed an Amended Answer. There is no
3 counterclaim in the jury trial. There is no summons to
4 the pleading and there is nothing in even their Amended
5 Answer that would entitle them to a jury trial.

6 I've offered to submit an amended affidavit of
7 default. However, based upon the case law, based upon
8 the rules and based upon the pleadings as they are, we
9 should still be entitled to an order of reference.

10 Again, we went through the proper procedures just
11 we were not properly served with the Answer.

12 THE COURT: All right. So you don't contest they
13 should not be held in default under that fact
14 situation?

15 MR. MURRELL: I do contest they properly served
16 it. To not be held in default you have to file it and
17 serve it, which they did not serve it.

18 THE COURT: Has a hearing already been held in
19 this case?

20 MR. MURRELL: No, Your Honor. We were not going
21 to have a hearing while we still had this pending
22 motion.

23 THE COURT: I'm looking at a proposed order.
24 That's why I asked the question.

25 MR. MURRELL: I think it may have got initially

1 scheduled, then it came to my department and as a
2 matter of policy I'm not going to have a motion of that
3 kind pending and push a final hearing on it.

4 THE COURT: There is a notice for a hearing back
5 August 15, and I don't know what happened, but the
6 motion to rescind the entry of judgment -- of course,
7 there is no entry of judgment at this point in time
8 other than the order of reference but --

9 MR. MURRELL: I assume that's why the motion was
10 filed the next day or pretty soon thereafter. At least
11 the letter we got was August 16. That's when we heard
12 of it.

13 THE COURT: All right. I'm with you.

14 The dates of the Affidavit of Service, that's not
15 in question? The filing of the Answer was timely.

16 MR. MURRELL: According to the court website the
17 filing was timely, but it was not properly served.

18 THE COURT: All right. It was properly served.

19 MR. MURRELL: Was not properly served. It was not
20 sent to our office.

21 THE COURT: I'm talking about the Complaint.

22 MR. MURRELL: Yes, the Complaint absolutely was.
23 From the Complaint you can tell there is a tenant in
24 the property. We served them at that other property in
25 Lexington, so this is not a non-owner occupied property

1 that we've waived the deficiency on.

2 Strangely enough their responsive pleading did not
3 respond to the allegation that it was not subject to
4 HAMP. Just kind of stopped at allegation 24 or 25 in
5 both of the pleadings, so I assume it's covered by
6 their general denial.

7 (pause)

8 THE COURT: Mr. Green, what is it that you're
9 seeking in your counterclaim?

10 MR. GREEN: I had spoken to my clients, Your
11 Honor. It seems as though there may have been
12 misapplication of some payments. They had timely paid,
13 and they believe that -- I know they were working with
14 the bank at the time. I think that's number one, they
15 felt like they complied, to a certain extent, and that
16 she should not have been held in their -- held in --
17 well, they shouldn't have moved forward as it has.

18 THE COURT: Based on my reading of it they contend
19 they've made all the payments that are due. Is that
20 their position?

21 MR. GREEN: I think as of the filing. And I have
22 to get verification. Told Plaintiffs attorney I would
23 send him canceled checks for what they did send.

24 MR. MURRELL: Your Honor, although it's not due I
25 did serve discovery on September 7 shortly after I got

1 his Answer, so in a brief conversation I said to Mr.
2 Green if this is a misapplication issue please get me
3 some documentation to that. I did double check the
4 referral, my pleadings, and although I've not been
5 served with any discovery, the breach letter I got and
6 everything certainly seems to be in order.

7 THE COURT: I have the benefit of having a
8 proposed order here, which I've not signed, I think
9 because your motion to rescind was timely.

10 They are alleging it's in default from December 11
11 of 2011. And a fellow named Ian Blake was named as a
12 party because he evidently has a contract of sale dated
13 December 13.

14 MR. MURRELL: I don't think he's submitted any
15 responsive pleadings, so regardless of the Affidavit of
16 Default would be effective as to him.

17 THE COURT: As to Mr. Blake. All right.

18 Here's what I've discovered. This will be my
19 ruling. I'll make this on the record. Mr. Murrell
20 I'll ask that you will follow this up with an order and
21 run that by Mr. Green. Mr. Green you can, of course,
22 present your own order if you would like.

23 I'm going to find that the Cooks were both served
24 at whatever the residence -- wherever they are residing
25 in Lexington County. Pilgrim Church Road and the date

1 of the service was -- anyway, in any event, the Answer
2 was timely. Okay? Therefore, the Defendants are not
3 in default. So I will grant the relief holding the
4 Defendants in default.

5 That having been said, as the Court reads the
6 Answer and Amended Answer -- the Answer was filed May
7 9, Amended Answer is filed June 28. I don't know that
8 that's a timely amended answer under our rules. But,
9 in any event, I find that they do not raise legal
10 questions but, in fact, a foreclosure action is an
11 action in equity and that's what's being sought here.

12 It appears to the Court that the relief or the
13 contention here has to do with the application of
14 payments, and if that is the fact of the case then this
15 would be a matter which would be ripe for litigation
16 over the question of what payments were made and how
17 they were applied and consequently it would be proper
18 for this Court's contested calendar.

19 So what I'm going to do -- I'm not going to refer
20 it back to the Circuit Court. I'm going to keep it in
21 the Master's court for now. I will place it on my
22 contested calendar, and then what I normally do is have
23 a status conference and set a scheduling order, which
24 I'm happy and prepared to do now if you-all would like
25 me to sketch that out so you can get -- sounds like

1 you-all are doing some discovery. That leads, in my
2 courtroom, to a pretrial hearing which would take up
3 any dispositive motions that need to be filed. I try
4 to do those in relatively short order; six months
5 typically.

6 I note on this particular case, Mr. Green, that
7 they have, in fact, waived a deficiency judgment, so
8 that's of some benefit to your client there especially
9 with it being non-owner occupied. I'm assuming it was
10 because they were not served at the address. If you
11 would like I can sketch out a scheduling order for
12 you-all.

13 MR. MURRELL: What I was going to suggest, since
14 the discovery is due within a couple of weeks and quite
15 honestly that's going to decide whether or not the case
16 is going to be a big contested or a small contested
17 case, although I haven't been served with discovery
18 I'll certainly go ahead and give him a copy of the Note
19 the Mortgage the breach letter and the payment history
20 which I know I do have in my file, because I want to
21 identify whether or not it's a genuine dispute as
22 quickly as possible.

23 THE COURT: All right. I will set you-all up with
24 a status conference.

25 (Discussion off the record.)

1 THE COURT: Let me set you-all up with a status
2 conference and any motions that need to be taken up at
3 that time, I'll revisit your issue as to where the case
4 should be. You-all can do a little bit of discovery in
5 the meanwhile and see what happens from there. We'll
6 find out at that time what we've got. Okay?
7 December 10 at 10:30.

8 MR. MURRELL: Very good, Your Honor.

9 THE COURT: All right. Thank you-all for coming.
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2 STATE OF SOUTH CAROLINA)

3 COUNTY OF CHARLESTON)

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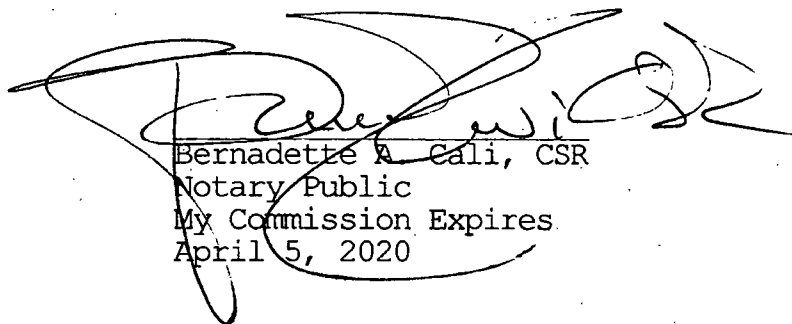
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I, Bernadette A. Cali, Notary Public, do
hereby certify that the within hearing was taken and
transcribed by me; and that the foregoing pages are
a true and accurate transcript of the within proceedings. I
further certify that the persons were present as stated.

I further certify that I am not of counsel
or kin to any of the parties to this action, nor am I
interested in the result of the said action.

IN WITNESS WHEREOF, I have hereunto
subscribed my name, this November 15, 2012.



Bernadette A. Cali, CSR
Notary Public
My Commission Expires
April 5, 2020

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

OFFICE OF THE MASTER IN EQUITY

Mikell Scarborough, Judge

Appellate Case No. 2013-002065

Bank of America, N.A., Respondent,

v.

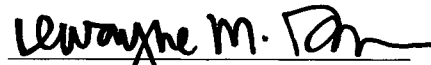
Frank Cook a/k/a/ Frank W. Cook, Judith H. Cook and Ian Blake, Defendants,

Of whom Frank Cook and Judith H. Cook are the Appellants.

CERTIFICATE OF APPELLANT'S COUNSEL

The undersigned certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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Attorney for Appellants

RECEIVED

May 8, 2014

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE MASTER IN EQUITY
CHARLESTON COUNTY
NINTH JUDICIAL CIRCUIT

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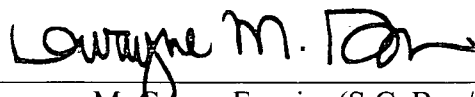
Of whom Frank Cook and Judith H. Cook are the Appellants.

PROOF OF SERVICE

I certify that I have served the Record on Appeal by depositing a copy of it in the United States Mail, postage prepaid, on May 20, 2014, to H. Guyton Murrell, and Theresa Van Vlakte, Korn Law Firm, 1300 Pickens Street, Charleston, SC 29211-2369.

May 20, 2014

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