

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

66939

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

Case Number: 2010-CP-23-08152

COURT OF APPEAL NUMBER: 2012-213505

Wells Fargo Bank, N.A..... Respondent

v.

Lynn D. Simpson.....Appellant

MOTION TO DISMISS APPEAL

Respondent, Wells Fargo Bank, N.A. ("Respondent" or "Wells Fargo"), respectfully moves this Court to dismiss the appeal of Appellant, Lynn D. Simpson ("Appellant" or "Simpson") pursuant to Rule 260 of the South Carolina Appellate Court Rules as well as due to the fact that the appeal is moot. More specifically, Wells Fargo's grounds are as follows:

I. Appellant has failed to comply with the mandatory requirements of the South Carolina Appellate Court Rules.

Appellant failed to comply with the rules governing the content of an initial brief and, therefore, Appellant's appeal is subject to dismissal pursuant to South Carolina Appellate Court Rule 260(a). South Carolina Appellate Court Rule 260(a), SCACR, provides, in part, "[w]henver it appears that an appellant . . . has failed to comply with the requirements of [South Carolina Appellate Court Rules], the clerk shall issue an order of dismissal" of the appeal. Rule

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SC Court of Appeals

260(a), SCACR. South Carolina Appellate Court Rule 208(b)(1)(C), SCACR, requires, that an appellant's initial brief contain a "Statement of the Case" setting forth "a concise history of the proceedings" that is non-argumentative and "bind[ing] on the appellant." Rule 208(b)(1)(C), SCACR. Appellant's Initial Brief, attached hereto as Exhibit "A", and incorporated herein by reference, fails to include a Statement of the Case section, as required by Rule 208(b)(1)(C), SCACR, and therefore, this appeal should be dismissed pursuant to Rule 260(a).

Although Appellant's Initial Brief contains a "Statement of Facts" section, which is permitted but not required under Rule 208(b)(1)(D), SCACR, this section is not a substitute for the required Statement of the Case. Moreover, Appellant's "Statement of Facts" section cannot even be considered a "Statement of the Case" section. First, contrary to the requirements set forth in Rule 208(b)(1)(c), SCACR, Appellant's "Statement of Facts" section of Appellant's Initial Brief is argumentative.¹ Second, the "Statement of Facts" section of Appellant's Initial Brief fails to include "as a minimum," the specific information required by Rule 208(b)(1)(C), SCACR, including, without limitation, "the date of the service of the notice of appeal." See App. Initial Br. pp. 1-3; Rule 208(b)(1)(C), SCACR. "The South Carolina Rules of Appellate Procedure are not mere technicalities" and failure to comply with these rules provides a basis for the Court of Appeals to dismiss Appellant's appeal. Henning v. Kay, 307 S.C. 436, 436, 415 S.E.2d 794, 794 (1992). Accordingly, for the foregoing reasons, Appellant's appeal should be dismissed.

II. Appellant's instant appeal is moot and no exception to the mootness doctrine applies.

¹For example, Appellant stated the following sentence in the Statement of Facts section of her brief, which is argumentative: "After submitting the payment on October 15, 2010, Appellant believed any foreclosure action pending against her was suspended...." (App. Initial Br. p. 1.) This sentence does not appear in any order of the trial court.

Appellant's appeal is moot, and therefore, should be dismissed with prejudice. "A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy *because an intervening event renders any grant of effectual relief impossible for the reviewing court.*" Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (emphasis added).

On December 3, 2010, The Honorable Charles B. Simmons, Jr., Master-in-Equity, entered a Judgment of Foreclosure and Sale (the "Foreclosure Order") against Appellant and ordered the property subject to this appeal be sold on January 4, 2011 at judicial sale (the "Property"). See Exhibit B, Foreclosure Order. On February 1, 2011, Appellant, through her counsel, filed Defendant Lynn D. Simpson's Notice of Motion and Motion for Relief from Master's Order and Judgment of Foreclosure and Sale and to Vacate Sale pursuant to Rule 60(b)(4), SCRCF, asserting that she was not properly served with the Complaint (the "First Motion for Relief"). See Exhibit C, First Motion for Relief. The Motion for Relief was granted, in part, since the Court ordered that the parties engage in loss mitigation efforts to try to resolve the case and voided the initial sale of the Property. However, Judge Simmons found that Appellant was properly served and upheld the entry of judgment pursuant to the Foreclosure Order. See Exhibit D, April 14, 2011 Order.

On May 2, 2011, Chief Justice Toal issued the South Carolina Supreme Court Administrative Order 2011-05-02-01 regarding foreclosure intervention (the "Administrative Order"). See Exhibit E, Administrative Order. Wells Fargo complied with the terms of the Administrative Order and, when it was apparent the parties could not resolve the Foreclosure

Action, Wells Fargo, through its attorney, filed a certification that it had completed the foreclosure intervention process with Appellant.² See Exhibit F, Attorney Certification.

Thereafter, on September 25, 2012, the Court held a hearing in order for Wells Fargo to update the sums due on the underlying loan obligations from Appellant, and, though properly notified of the date and time of this hearing, Appellant failed to attend the hearing. See Exhibit G, Supplemental Order Post Judgment. Moreover, no attorney appeared on her behalf. At the hearing, the Master-in-Equity ordered through request by Wells Fargo's counsel that the subject Property be sold at the November 5, 2012 judicial sale. Id.

On October 26, 2012, nearly two years after the filing of the Foreclosure Order, Appellant filed a second Motion for Relief from Order of Foreclosure and Sale in another attempt to obtain relief from the Foreclosure Order pursuant to South Carolina Rule of Civil Procedure 60(b)(5) (the "Second Motion for Relief"). See Exhibit H, Second Motion for Relief. On November 5, 2012, the Master in Equity denied Simpson's motion and, acting pursuant to the authority granted to him by statute, the South Carolina Rules of Civil Procedure, and consistent with the Foreclosure Order, the Master-in-Equity sold the Property to the successful bidder at the foreclosure sale held on November 5, 2012.³ See Exhibit I, November 5, 2012 Order. This "intervening event," specifically, the sale of the subject Property, which Appellant chose not to stay,⁴ renders the "the grant of effectual relief impossible." As such, this appeal is moot and

² Wells Fargo negotiated with Appellant for more than a year in an attempt to reach a modification agreement acceptable to both parties. On or about August 1, 2012, counsel for Wells Fargo filed a certification that requirements of the Administrative Order had been met.

³ Wells Fargo was the successful bidder for the subject Property at the foreclosure sale held on November 5, 2012, purchased the Property and currently holds title to the Property.

⁴ Appellant has not filed a motion to stay the foreclosure sale under South Carolina Rule of Civil Procedure 62(b), SCRCR, pending a determination of her Second Motion for Relief, nor one under South Carolina Appellate Court Rule 241(c) to impose a "supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal." SCACR 241(c). Accordingly, she had ample opportunity to preserve her remedy before, at the time of and during this appeal, however, she failed to do so.

should be dismissed with prejudice. Appellant could have ensured that her remedy was not extinguished by simply filing a motion to stay the sale pursuant to South Carolina Rule of Civil Procedure 62, SCRCP. However, she chose to sit on her rights and do nothing to preserve her interest in the Property.

There are three general exceptions to the doctrine of mootness in the civil context, namely: (1) if the issue raised is capable of repetition but evading review; (2) where it is of “imperative and manifest urgency” that the appellate court “establish a rule for future conduct in matters of important public interest;” and (3) where the Court’s decision will “affect future events, or have collateral consequences for the parties,” regardless of whether reversing the trial court’s decision will provide effective relief to the moving party. Holden v. Cribb, 349 S.C. 132, 561 S.E.2d 634, 637-638 (Ct. App. 2002). None of these exceptions apply here.

The first exception is inapplicable because foreclosure intervention is a mandated feature of certain residential foreclosure actions involving owner-occupied property and is a topic of special importance to the South Carolina Supreme Court, and therefore, any issue related to the foreclosure intervention process is certain to be reviewed. See Exhibit E, Administrative Order. Additionally, because foreclosure intervention is now required prior to proceeding with certain residential real estate foreclosure actions, this issue is incapable of arising in the future or affecting the future conduct of parties to similar residential foreclosure actions where the Administrative Order is applicable. Accordingly, the first exception is inapplicable to the instant action.

Likewise, the second exception is inapplicable since this is a private matter between Appellant and Wells Fargo, and therefore, the matter does not affect the public and is not a matter of urgency. Moreover, Appellant has not alleged that Wells Fargo’s conduct affects

parties outside of this private transaction. See Exhibit H, Second Motion for Relief; Exhibit I, November 5, 2012 Order. Accordingly, the second exception does not apply.

Finally, the third exception is inapplicable since the exercise by this Court of jurisdiction over this matter will not affect any future events between the parties or result in collateral consequences as the Property has been sold, no longer belongs to Appellant, and is no longer encumbered by a mortgage held by Wells Fargo. Further, Appellant has, at her option, the right to choose not to bank with Wells Fargo henceforth and Wells Fargo chose to forego any deficiency judgment against Appellant in this action. Therefore, the third exception does not apply.

Since Appellant's appeal is moot for lack of any effectual relief, and no exception to the mootness doctrine applies, Appellant's appeal should be denied and dismissed with prejudice.

CONCLUSION

For the reasons set forth herein, Wells Fargo respectfully requests that this Court dismiss Appellant's appeal with prejudice.

Respectfully submitted,

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Dated: January 17, 2013

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

Case Number: 2010-CP-23-08152

COURT OF APPEAL NUMBER: 2012-213505

Wells Fargo Bank, N.A..... Respondent

v.

Lynn D. Simpson.....Appellant

EXHIBIT A – Appellant’s Initial Brief

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master in Equity

Appellate Case No. 2012-213505

Wells Fargo Bank, N.A.,

Respondent,

v.

Lynn D. Simpson; Wells Fargo Bank, NA (Charlotte, NC); The Lofts at Mills Mill
Condominium Owners Association, Inc.,

Defendants,

Of whom Lynn D. Simpson is the

Appellant.

INITIAL BRIEF OF APPELLANT

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II. The Master-in-Equity erred in ruling Appellant failed to bring her motion for relief from order of foreclosure and sale within a reasonable time when Appellant's property was ordered to be sold by Supplemental Order Post Judgment dated September 25, 2012 and Appellant filed her motion on October 26, 2012.	
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TABLE OF AUTHORITIES

CASES

Rodriguez v. Gutierrez, 705 S.E.2d 94 (S.C.App. 2011)

Thompson v. Hammond, 299 S.C. 116, 382 S.E.2d. 900 (1989)

COURT RULES

Rule 60(b)(5) of the South Carolina Rules of Civil Procedure

OTHER AUTHORITIES

Supreme Court Administrative Order 2011-05-02-01

STATEMENT OF ISSUES ON APPEAL

- I. Whether the Master-in-Equity erred in denying Appellant's motion for relief from order of foreclosure and sale by ruling the stay imposed by the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011 does not toll the time for a Defendant to file a motion for relief from order of foreclosure and sale pursuant to Rule 60(b)(5) of the South Carolina Rules of Civil Procedure.

STATEMENT OF FACTS

On September 30, 2010 the Summons and Complaint in the above-referenced matter was filed in the Court of Common Pleas.

By letter dated October 5, 2010, Respondent informed Appellant that an initial payment of \$4,200.00 must be received by October 15, 2010. (Appellant's motion for relief from order of foreclosure and sale dated Oct. 26, 2012 at Exhibit F). The October 5, 2010 letter further stated that "[f]oreclosure activity will not be suspended until you have returned the initial required payment" (Id.). On October 15, 2010, Appellant submitted payment to Respondent in the amount of \$4,200.00 pursuant to the October 5, 2010 letter. (Id. at Exhibit G). After submitting the payment on October 15, 2010, Appellant believed any foreclosure action pending against her was suspended and did not retain an attorney. (Id. at ¶12).

On or about November 18, 2010, an Affidavit of Default and Non-Military Service was filed as to Appellant in the above-captioned matter and on November 30, 2010 a hearing was held in the above-captioned matter. Appellant was not present. The Master-in-Equity issued an Order of Judgment and Foreclosure and Sale on December 5, 2011.

On January 4, 2011, the subject property was sold and Respondent was the highest bidder. On February 1, 2011 Appellant filed a motion for relief from judgment and order of foreclosure and sale on alleging improper service. By Order dated April 14, 2011, the Master-in-Equity for Greenville County found service on Appellant was proper but set aside the sale of January 4, 2011 and declared the resulting deed void. (Order of the Honorable Charles B. Simmons, Jr dated April 14, 2011 at p. 2). The reason given for setting aside the sale and declaring the deed void was:

The Court is concerned relative to the behavior and actions of [Respondent] relative to Mrs. Simpson while its attorneys were proceeding, as directed by Wells Fargo, to foreclose. [...] In that Wells Fargo was directing its attorneys to take action totally inconsistent with what it was instructing Defendant Simpson to do, the Court simply cannot sanction such inconsistent behavior.

Id. at p. 1. The Court further instructed the parties to engage in loss mitigation efforts. (Id.).

On May 2, 2011, while the parties were exploring loss mitigation options, the South Carolina Supreme Court issued Administrative Order 2011-05-02-01 (hereinafter the "Administrative Order").

On August 1, 2012, Respondent, by and through its counsel of record, filed an Attorney Certification stating that Appellant did not qualify for any foreclosure intervention as contemplated by the Administrative Order and on September 25, 2012, a hearing was held and the Master-in-Equity issued a Supplemental Order Post Judgment dated September 25, 2012 ordering the property subject to the foreclosure suit be sold under the terms of the original Judgment of Foreclosure and Sale.

On October 26, 2012, Appellant filed a second Motion for Relief from Order of Foreclosure and Sale. By Order dated November 6, 2012, Appellant's motion was denied. In the order denying Appellant's second motion for relief from order of foreclosure and sale, the Honorable Charles B. Simmons, Jr., Master-in-Equity for Greenville County, found an unreasonable delay in Appellant bringing her motion before the Court. The Order states, "I find that the Defendant Simpson failed to bring the instant motion within a reasonable time." (Order of the Honorable Charles B. Simmons, Jr. dated November 6, 2012 at p.2) The Master-in-Equity further found:

Simpson's time to make a 60(b)(5) motion was not tolled by the Foreclosure Intervention process, and that the time during which the matter was stayed for Foreclosure Intervention should also be considered as part of Simpson's delay in seeking relief under Rule 60(b)(5).

(Id. at p.3).

This appeal follows.

ARGUMENT

This case presents a matter of first impression for this Court to decide; specifically, whether the stay imposed by the Administrative Order tolls the time for a Defendant to file a motion for relief from an order of foreclosure and sale until the Plaintiff certifies compliance with the Administrative Order.

I. STANDARD OF REVIEW

The standard of review of an order denying a motion for relief under Rule 60(b)(5) is abuse of discretion. See Thompson v. Hammond, 299 S.C. 116, 119, 382 S.E.2d 900, 902-03 (1989). "Such an abuse arises when the judge issuing the order was controlled by an error of law or when the order, based upon factual conclusions, is without evidentiary support." Id. at 119, 382 S.E.2d at 903

Appellant brought her motion for relief from order of foreclosure and sale pursuant to Rule 60(b)(5) of the South Carolina Rules of Civil Procedure ("SCRCP"), which provides that upon motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding when it is no longer equitable that the judgment should have prospective application. The rule states the motion shall be made within a reasonable time.

In determining whether to grant a motion under Rule 60(b), the trial judge should consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party. Rodriguez v. Gutierrez, 705 S.E.2d 94, 100 (S.C.App. 2011).¹

II. The Master-in-Equity erred in ruling Appellant failed to bring her motion for relief from order of foreclosure and sale within a reasonable time as the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011 stayed all proceedings in the matter from April 14, 2011 until August 1, 2012.

The Administrative Order requires the following:

In all mortgage foreclosure actions pending on May 9, 2011, before any merits hearing in the case, or if an order of foreclosure has been entered, before any foreclosure sale, the Mortgagee shall, through its attorney of record, file with the court and serve upon every Mortgagor a notice of the Mortgagor's right to foreclosure intervention. **All proceedings in the foreclosure action shall be stayed until completion of such foreclosure intervention.**

(Section B(1)Administrative Order) (emphasis added).

In the Order denying Appellant's motion for relief dated November 6, 2012, the Master-in-Equity found the definition of "proceedings" to be "[t]he regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment." (Nov. 6, 2012 Order at. p.3) (citing Black's Law Dictionary 1241 *Bryan A. Garner ed., 8th ed., Thomson West 2004). Clearly, a motion for relief from an order would be part of the regular and orderly progression of a lawsuit.

¹ In this matter, the Master-in-Equity denied Appellant's motion solely on the grounds on timeliness. The Master-in-Equity made no ruling as to the existence of a meritorious defense or as to prejudice to the other party.

As Rule 60(b), SCRPC provides a mechanism by which a party can seek relief from a final order or judgment, a motion for relief from an order would be part of the regular and orderly progression of a lawsuit, as would a motion to dismiss (Rule 12, SCRPC), a motion for summary judgment (Rule 56, SCRPC), or a motion for default judgment (Rule 55, SCRPC). The mere fact the motion comes after a judgment or order is rendered does not make the motion any less a part of the "orderly progression of a lawsuit".

Despite adopting the definition above, the Master-in-Equity later stated "the stay imposed in a foreclosure case in which judgment has been entered before May 9, 2011, appears to mean simply a postponement of the foreclosure sale". (Id.) This ruling contradicts the plain language of the Administrative Order which states "[a]ll proceedings in the foreclosure action shall be stayed until completion of such foreclosure intervention." (Section B(1), Administrative Order).

In fact, the Supreme Court of South Carolina addressed the mere postponement of the foreclosure sale in the preceding sentence, which provides:

In all mortgage foreclosure actions pending on May 9, 2011, before any merits hearing in the case, or if an order of foreclosure has been entered, **before any foreclosure sale**, the Mortgagee shall, through its attorney of record, file with the court and serve upon every Mortgagor a notice of the Mortgagor's right to foreclosure intervention.

(Section (B)(1), Administrative Order). (emphasis added).

If the Administrative Order was merely meant to impose a postponement of the foreclosure sale, there would be no need for any language other than the first sentence of Section B(1) of the Administrative Order, but the Administrative Order goes further and imposes a stay in all proceedings in the action.

In the instant matter, the parties were ordered to participate in foreclosure intervention pursuant to the Master-in-Equity's order denying Appellant's motion for relief from order of foreclosure and sale dated April 14, 2011. The case was still pending on May 9, 2011, and is therefore subject to the Administrative Order.

On August 1, 2012, Respondent's counsel filed a certification of compliance with the Administrative Order. Pursuant to the Administrative Order, all proceedings in the foreclosure action were stayed from May 9, 2011 until August 1, 2012, preventing Appellant from bringing her motion for relief from order of foreclosure and sale. Appellant filed the motion for relief from order of foreclosure and sale on October 26, 2012, two (2) months and twenty-six (26) days after the stay imposed by the Administrative Order was lifted.

Mrs. Simpson promptly sought relief from the order of foreclosure and sale once the stay imposed by the Administrative Order was lifted. And as a practical matter, if Mrs. Simpson's request for foreclosure intervention had been granted, there would have been no need for a motion for relief from order of foreclosure and sale.

III. The Master-in-Equity erred in ruling Appellant failed to bring her motion for relief from order of foreclosure and sale within a reasonable time when Appellant's property was ordered to be sold by Supplemental Order Post Judgment dated September 25, 2012 and Appellant filed her motion on October 26, 2012.

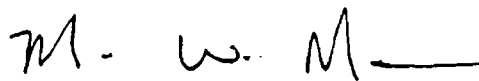
While the original order of foreclosure and sale was issued in December of 2011, the sale was set aside and the parties were ordered to participate in foreclosure intervention. The property was not ordered to be sold again until September 25, 2012, when the Supplemental Order Post Judgment ordered the property be sold "under the terms of the original judgment and sale."

The Appellant did not know her property was going to be sold at public auction until after the September 25, 2012 order was issued. She filed a motion for relief approximately one (1) month later. The Master-in-Equity erred in ruling any delay in Appellant bring her motion was unreasonable.

CONCLUSION

Mrs. Simpson promptly filed her motion for relief from order of foreclosure and sale after the stay imposed by the Administrative Order was lifted. Any delay in bring her motion was due to the stay and the denial of her first motion for relief from order of foreclosure and sale. The Master-in-Equity issuing the order was controlled by an error of law concerning the stay imposed by the Administrative Order. Further, The Master-in-Equity's order, based upon the facts presented, is without evidentiary support as the facts indicate Appellant promptly filed a motion for relief once the property that is the subject of the underlying foreclosure was ordered to be sold on September 25, 2012. The Master-in-Equity's ruling that Appellant's motion was not brought within a reasonable time was an abuse of discretion and the order of foreclosure and sale should be vacated. Mrs. Simpson should be granted relief from default and this matter returned to the Circuit Court for a full trial on the merits.

Respectfully Submitted,



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December 19, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master in Equity

Appellate Case No. 2012-213505

Wells Fargo Bank, N.A.,

Respondent,

v.

Lynn D. Simpson; Wells Fargo Bank, NA (Charlotte, NC); The Lofts at Mills Mill
Condominium Owners Association, Inc.,

Defendants,

Of whom Lynn D. Simpson is the

Appellant.

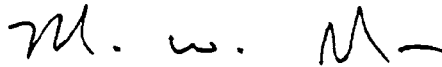
**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

The Appellant proposes the following be included in the Record on Appeal:

1. Summons and Complaint;
2. Affidavit of Default and Non-Military Service as to Lynn D. Simpson;
3. Order of Judgment and Foreclosure and Sale;
4. Motion for Relief from Master's Order and Judgment of Foreclosure and Sale and to Vacate Sale dated February 1, 2011;
5. Order denying Motion for Relief from Master's Order and Judgment of Foreclosure and Sale and to Vacate Sale dated April 14, 2011;

6. Attorney Certification of Compliance with Supreme Court Administrative Order 2011-05-02-01;
7. Supplemental Order Post Judgment;
8. Motion for Relief from Order of Foreclosure and Sale dated October 26, 2012;
and
9. Order Denying Defendant's Motion for Relief from Order of Foreclosure and Sale dated November 6, 2012.

I certify that this designation contains no matter which is irrelevant to this appeal.



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Respondent,

v.

Lynn D. Simpson; Wells Fargo Bank, NA (Charlotte, NC); The Lofts at Mills Mill
Condominium Owners Association, Inc.,

Defendants,

Of whom Lynn D. Simpson is the

Appellant.

PROOF OF SERVICE

I hereby certify that, on this 26th day of October, 2012 a copy of *Appellant's Lynn D. Simpson Initial Brief and Designation of Matter to be Included in Record on Appeal* was served upon the below stated parties via United States Postal Service, priority delivery, with sufficient first class postage affixed thereto and addressed as follows:

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The Loft at Mills Mill Condominium Owners Association, Inc.
827 S Pleasantburg Drive
Greenville, SC 29607

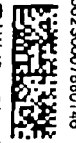
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\$0.850
US POSTAGE
FIRST-CLASS
FROM 29601
DEC 19 2012
stamps.com



06250007380146



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
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The Honorable Charles B. Simmons, Jr., Master-in-Equity

Case Number: 2010-CP-23-08152

COURT OF APPEAL NUMBER: 2012-213505

Wells Fargo Bank, N.A..... Respondent

v.

Lynn D. Simpson.....Appellant

EXHIBIT B – December 3, 2010 Foreclosure Order

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Wells Fargo Bank, NA,

Plaintiff,

v.

Lynn D. Simpson; Wells Fargo Bank, NA
(Charlotte, NC); The Lofts at Mills Mill
Condominium Owners Association, Inc.;

Defendant(s).

(011784-16048)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-23-8152

JUDGMENT OF FORECLOSURE AND SALE

Deficiency Judgment Demanded

Against Lynn D. Simpson

Subject to Home Affordable Modification
Program, but will not be modified

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSHER
2010 DEC -3 A 11:51

Samuel C. Waters, Esquire
Attorney for the Plaintiff

A hearing was held November 30, 2010 at 09:15 AM. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on September 30, 2010.
2. The Summons and Complaint were filed on September 30, 2010.
3. Service was made upon all Defendant(s) as shown by the proof(s) of service filed herein.
4. The Defendant(s) Lynn D. Simpson, Wells Fargo Bank, NA (Charlotte, NC) and The Lofts at Mills Mill Condominium Owners Association, Inc. are in default as shown by affidavit or order filed herein.
5. The Defendant(s) Lynn D. Simpson, Wells Fargo Bank, NA (Charlotte, NC) and The Lofts at Mills Mill Condominium Owners Association, Inc. are in default and that the Defendant(s) Lynn D. Simpson is not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit or order filed herein.
6. No Defendant raised any issues related to Plaintiff's standing to prosecute this action.
7. Pursuant to the South Carolina Supreme Court Administrative Order dated

May 22, 2009, the Plaintiff set forth its belief in its Complaint or by Affidavit, which is already of record in this case, that the mortgage loan which is the subject of this foreclosure action is not eligible for modification pursuant to the terms of the Home Affordable Modification Program (HMP). Pursuant to the South Carolina Supreme Court Administrative Order dated May 22, 2009, Plaintiff's attorney has not received a counter affidavit from any Defendant(s).

8. All Pro Se Defendant(s) and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.

9. Lynn D. Simpson for value received, made, executed and delivered a Note dated September 21, 2005 promising thereby to pay to Plaintiff or its predecessor the sum of \$247,500.00 with interest at 5.25% per annum. Other terms and conditions are stated in the Note, of record herein.

10. To better secure the payment of the Note described above, Lynn D. Simpson made, executed, and delivered to Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Wachovia Mortgage Corporation its successors and assigns (MIN# 100013700057705145) a certain real estate Mortgage in writing, dated September 21, 2005 covering real property in Greenville County, which is the same as that described in the Complaint. This Mortgage was filed on September 22, 2005, and is of record in the Office of RMC/ROD in Book 4438 at Page 1989. This mortgage was assigned to the Plaintiff herein by assignment dated September 29, 2010 and recorded October 15, 2010 in Book 5096 at Page 1349.

11. This Mortgage constitutes a Purchase Money First priority lien on the subject property, subject only to ad valorem taxes or other liens given priority by statute.

12. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

13. The titleholder(s) of record in and to the subject property as of the filing of the Lis Pendens in this action is Lynn D. Simpson, who is the original mortgagor(s).

14. Any notice required by the terms of the Mortgage or by state or federal statutes was given to the applicable Defendant(s) prior to the commencement of this action.

15. Payment due on the Note was not made as provided for therein, and Plaintiff, as the holder or nominee for the holder thereof, elected to require immediate payment of the entire amount due thereon and placed the Note and Mortgage in the hands of the attorney herein for remedy by foreclosure.

16. The sum of \$5,500.00 is a reasonable fee to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to

representation of Plaintiff during the several months course of these proceedings. The services of counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel and their experience in handling foreclosure matters. The fee awarded herein is also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time. Plaintiff has advanced \$735.00 to its counsel as partial payment of the attorney fee and this amount appears in Plaintiff's advances.

17. According to Plaintiff's accounting, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Note, with interest at the rate provided in the Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney fee, all secured by the Note and Mortgage, is as follows:

(a)	Principal due May 1, 2010	\$229,822.87
(b)	Interest from April 1, 2010 through November 30, 2010 at 5.25% per annum	\$7,248.77
(c)	Allowable Advances (Escrow advances, corporate charges, paid attorney fees, paid costs and expenses from the foreclosure action, and/or other charges)	\$-1,941.67
(d)	Outstanding Costs of collection prior to hearing (service, filing, etc.)	\$32.50
(e)	Allowable Late Charges	\$341.70
(f)	Attorney Fee (awarded herein, but unpaid)	\$4,765.00
	TOTAL debt secured by Note and Mortgage, including interest to date shown	\$240,269.17

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 5.25% per annum (pursuant to the terms of the Note and Purchase Money First Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the Purchase Money First Mortgage through the date to which such interest is computed.

18. Plaintiff is seeking the usual foreclosure of the Purchase Money First mortgage and has expressly demanded the right to a personal or deficiency judgment pursuant to S.C. Code Ann. §29-3-660 demanded against Lynn D. Simpson. The Plaintiff may waive any of its rights,

including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

19. The following Defendant(s) may claim a subordinate lien upon or subordinate legal interest in the subject property and in the event there is a surplus from the sale of the subject property, these Defendant(s) may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendant(s) and such liens or legal interests are as follows:

a. Wells Fargo Bank, NA (Charlotte, NC), by virtue of a mortgage given by Lynn D. Simpson to Wachovia Bank, National Association in the amount of \$30,000.00, dated August 29, 2008, and recorded September 4, 2008 in Book 4992 at Page 1814. Wells Fargo Bank, NA (Charlotte, NC) is successor by merger to Wachovia Bank, National Association

b. The Lofts at Mills Mill Condominium Owners Association, Inc. by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions and any amendments thereto.

IT IS THEREFORE ORDERED:

20. Plaintiff has fully complied with The South Carolina Supreme Court Administrative Order dated May 22, 2009, and the foreclosure action may proceed.

21. There is due on the Note and Purchase Money First Mortgage set forth in the Complaint the sum of \$240,269.17, as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

22. Plaintiff shall have judgment demanded against Lynn D. Simpson. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

23. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and together with such interest shall constitute the total judgment debt due Plaintiff.

24. The amount of the judgment shall be subject to increase to permit Plaintiff to recover additional costs, commissions, and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorneys' services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

25. The Defendant(s) liable for the aforesaid judgment debt of the Note and

Mortgage including interest at the rate of 5.25% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

26. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold at public auction at the Greenville County Courthouse, in the City of Greenville, and State of South Carolina on a sales day determined by the below signed Master in Equity or Special Referee, on the following terms:

a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 20 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

b. Interest on the balance of the bid after the deposit is applied shall be paid through the day of compliance at the note rate of 5.25%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions, and any other senior encumbrances.

d. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.

e. Purchaser to pay for deed preparation, costs of recording the deed and the satisfaction of mortgage, and transfer taxes on the deed.

f. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity or Special Referee.

27. Personal or deficiency judgment having been demanded, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Sec. 15-39-720 (1976).

28. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, of the South Carolina Rules of Civil Procedure, prior to sale.

29. The Master in Equity will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms

thereof within 20 days after date of sale, then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

30. If Plaintiff is the successful bidder at the said sale for a sum not exceeding the amount of costs and expenses of the sale, plus the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

31. The Master in Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this sale and to any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including a reasonable attorney fee) or so much thereof as the purchase money will pay on the same; After crediting the proceeds of sale, net of any commission on sale, an Order for Deficiency Judgment shall be entered without further notice or hearing.

NEXT: Any surplus should be held pending further Order of this court.

32. In the event the successful purchaser is someone other than the Defendant(s) in possession of the subject property and a Writ of Assistance is presented to the Court after said Deed is properly recorded in the ROD Office for Greenville County, the Sheriff of Greenville County is ordered and directed to eject and remove from the property the occupant(s) of the property sold, together with all personal property located thereon, and put the successful purchaser or his assigns in full, quiet, and peaceable possession of said property within a reasonable time, and to place said successful purchaser or his assigns in such peaceable possession. All valid tenant rights shall be protected pursuant to the Protecting Tenants at Foreclosure Act of 2009.

33. In the event the successful purchaser is other than the Defendant(s) in possession of the subject property and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said property, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

34. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), is forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property so sold, or any part thereof.

35. In accordance with Rule 77(d), of the South Carolina Rules of Civil

Procedure, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear in this action.

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

37. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

38. The following is a description of the property herein ordered to be sold:
All that certain condominium Unit known and designated as Unit #301 of The Lofts at Mills Mill Horizontal Property Regime (the "Regime"), as set forth, established, described and defined in that certain Declaration (Master Deed) of The Lofts at Mills Mill Horizontal Property Regime dated July 13, 2004, and recorded in the Office of the Register of Deeds for Greenville County in Deed Book 2098 at Page 1 (the "Declaration"), and as depicted on that certain plat entitled "Finished Floor As-Built Plat for Mills Mill Associates, LLC" prepared by Precision Land Surveying, Inc., dated July 7, 2004, and recorded in the Office of the Register of Deeds for Greenville County in Plat Book 48-S at Page 5 (the "Plat"). Reference is craved to the Declaration and the Plat for a more complete description of the above Unit and of the Regime.

Together an undivided right, title and interest in and to the Common Elements, including the Limited Common Elements (if any) appurtenant to the Unit, all as set forth, established, described, and defined in the Declaration.

This being the same property conveyed to Lynn D. Simpson by deed of Mills Mill Associates, LLC, dated September 21, 2005 and recorded September 22, 2005 in Book 2167 at Page 92.

Property Address: 400 Mills Avenue, Unit 301
Greenville, SC 29605

TMS# 0106010300100

s/Charles B. Simmons, Jr.
Charles B. Simmons, Jr.
Master in Equity

11/30, 2010
Greenville, South Carolina

A Certified Copy
Paul B. Winkler
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 12/03/10

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

Case Number: 2010-CP-23-08152

COURT OF APPEAL NUMBER: 2012-213505

Wells Fargo Bank, N.A..... Respondent

v.

Lynn D. Simpson.....Appellant

EXHIBIT C – February 1, 2011 First Motion for Relief

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	Civil Action No.: 2010-CP-23-8152
Wells Fargo Bank, N.A.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Lynn D. Simpson, Wells Fargo	)	
Bank, N.A., The Loft at Mills Mills	)	
Condominium Owners' Association,	)	
Inc.,	)	
	)	
Defendants.	)	
	)	

**DEFENDANT LYNN D. SIMPSON'S NOTICE OF MOTION AND
MOTION FOR RELIEF FROM MASTER'S ORDER AND JUDGEMENT OF
FORECLOSURE AND SALE AND TO VACATE SALE**

PLEASE TAKE NOTICE that the Defendant Lynn D. Simpson (hereinafter "Simpson"), by and through undersigned counsel, will move before a Presiding Judge for the Court of Common Pleas for the Thirteenth Judicial Circuit at a date and time as to be scheduled by the Clerk of Court for Greenville County for Relief from a Master's Order and Judgment of Foreclosure and Sale entered in the above-captioned action on December 3, 2010, pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"). In support of said Motion, Defendant state as follows:

1. Upon information and belief, Plaintiff is a federally chartered bank and conducts business in South Carolina.
2. Simpson is a citizen and resident of the County of Greenville, State of South Carolina.

3. On or about September 30, 2010, a Complaint was filed in this matter in the Court of Common Pleas for Greenville County.

4. On or about October 5, 2010, an affidavit of non-service was filed in this matter indicating Plaintiff was unable to serve Defendant Simpson at the address of 620 Halton Road, Apt. 820, Greenville, SC 29607. The affidavit of non-service is attached as Exhibit "A".

5. On or about October 7, 2010 an affidavit of service with regards to Simpson was filed in the matter. According to the affidavit, the Lis Pendens, Civil Action Coversheet, Certificate of Exemptions from ADR; Summons and Notices; Complaint; and Notice required by the Fair Debt Collection Practices Act were served on Defendant Simpson. The affidavit states Defendant Simpson was served personally at 400 Mills Avenue, Unit 301, Greenville, South Carolina, 29605 describes Defendant Simpson as a white female, approximately 55-65 years of age, 5'4" – 5'6" in height weighing 140-160 pounds with gray hair. The affidavit of service is attached as Exhibit "B".

6. Simpson did not receive Lis Pendens, Civil Action Coversheet, Certificate of Exemptions from ADR; Summons and Notices; Complaint; and/or Notice required by the Fair Debt Collection Practices Act. See Exhibit "C", Affidavit of Lynn D. Simpson.

7. Rule 4(d)(1), SCRPC states that an individual is served by "delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing there, or by delivering a copy to an agent authorized by appointment or by law to receive service of process."¹

8. Pursuant to Rule 4(d)(1), SCRCF, Simpson was never served with the Summons and Complaint in this matter.

9. Rule 3(a)(1), SCRCF, states a civil action is commenced when the summons and complaint are filed with the clerk of court if the summons and complaint are served within the statute of limitations in any manner prescribed by law.

10. As the pleadings in the above-captioned matter were never served on Simpson, the above-captioned civil action was never commenced and this Court lacked jurisdiction as to Simpson.

11. Pursuant to Rule 60(b)(4), SCRCF, this Court may relieve a party or his legal representative from a final judgment, order, or proceeding if the judgment is void.

12. Since the above-captioned civil action was never commenced and this Court lacked jurisdiction as to Simpson, the Master's Order and Judgment of Foreclosure and Sale rendered against Simpson is void.

WHEREFORE, Defendant Lynn D. Simpson, pursuant to SCRCF Rule 60(b)(4), respectfully request that this Honorable Court grant relief from the Judgment in this matter and vacate the Master's Order and Judgment of Foreclosure and Sale and vacate the judicial sale of the property that is the subject of the above-referenced foreclosure action .

[SIGNATURE BLOCK ON FOLLOWING PAGE]

¹S.C. Code Ann. § 15-9-710 provides for service by publication, which has not been alleged in this matter.

ROBERT E. IANUARIO, P.C.



Robert E. Ianuario, M.B.A., J.D.

419 Vardy Street

Greenville, South Carolina 29601

T: 864-255-9988

F: 864-235-9988

robert@ianuariolaw.com

Attorney for Defendant Lynn D. Simpson

Exhibit A

IN THE
IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA FOR GREENVILLE COUNTY

Wells Fargo Bank, N.A.

Plaintiff/Petitioner

vs.
Lynn D. Simpson; et al

Defendant/Respondent

Docket Number:
10-CP-23-8152AFFIDAVIT OF NON SERVICE OF:
Lis Pendens (Deficiency Judgement Waived); Civil Action
Coversheet; Certificate of Exemption from ADR;
Summons and Notices; Complaint; Notice required by the
Fair Debt Collection Practices Act

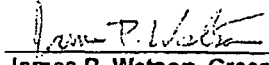
The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

Affiant states s(he) attempted to serve **Lynn D. Simpson** at the address of: **620 Halton RD Apt. 8201, Greenville, Greenville County, SC 29607** and was unable to effect service for the following reasons:

10/4/2010 7:31 PM: Checked and found occupied by a male occupant who stated that the defendant was unknown at this apartment.

Is the Subject Property a Mobile Home? ☒ NO ☐ YES
Is a Mobile Home VIN # visible? ☐ NO ☐ YES VIN #: _____

DATED this 5th day of October, 2010.


James P. Watson, Greenville, SC

SUBSCRIBED AND SWORN to before me this 5th day of October, 2010


NOTARY PUBLIC in and for the State of South Carolina
My Commission Expires: 04/11/19

FOR: Rogers Townsend & Thomas, PC ORIGINAL PROOF OF
REF: 011784-16048-2 SERVICE

Tracking #: 8689947 CAE FIL



ENTERED COMPUTER

Exhibit B

IN THE
IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA FOR GREENVILLE COUNTY

Wells Fargo Bank, N.A.

Plaintiff/Petitioner

vs.
Lynn D. Simpson; et al

Defendant/Respondent

Docket Number:
10-CP-23-8152

AFFIDAVIT OF SERVICE OF:

Lis Pendens (Deficiency Judgement Waived); Civil Action
Coversheet; Certificate of Exemption from ADR;
Summons and Notices; Complaint; Notice required by the
Fair Debt Collection Practices Act

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named below, and is competent to be a witness therein.

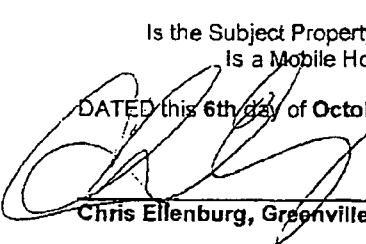
On the 6th day of October, 2010, at 12:30 PM, at the address of 400 MILLS Avenue UNIT 301, GREENVILLE, Greenville County, SC 29605; this affiant served the above described documents upon Lynn D. Simpson, by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with Lynn D. Simpson, NAMED DEFENDANT, A white female approx. 55-65 years of age 5'4"-5'6" in height weighing 140-160 lbs with gray hair.

No Information was provided or discovered that indicates that the subjects served are members of the U.S. military.

Is the Subject Property a Mobile Home? ☒ NO ☐ YES

Is a Mobile Home VIN # visible? ☐ NO ☐ YES VIN #: _____

DATED this 6th day of October, 2010.


Chris Ellenburg, Greenville, SC

SUBSCRIBED AND SWORN to before me this 6th day of October, 2010



NOTARY PUBLIC in and for the State of South Carolina

My Commission Expires: 9/11/19



FOR: Rogers Townsend & Thomas, PC ORIGINAL PROOF OF
REF: 011784-16048-2 SERVICE

Tracking #: 8689947 CAE FIL



Exhibit C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
Wells Fargo Bank, N.A.,	)	Civil Action No.: 2010-CP-23-8152
Plaintiff,	)	
vs.	)	
Lynn D. Simpson, Wells Fargo	)	
Bank, N.A., The Loft at Mills Mills	)	
Condominium Owners' Association,	)	
Inc.,	)	
Defendants.	)	

AFFIDAVIT OF LYNN D. SIMPSON

Personally appeared before me Lynn D. Simpson, who, being duly sworn, deposes and says:

1. She is over the age of 18 years.
2. Her residence is, and was at the time of filing of the above-captioned matter, 400 Mills Avenue, Unit 301, Greenville, South Carolina, 29605.
3. No other individuals reside at 400 Mills Avenue, Unit 301, Greenville, South Carolina, 29605.
4. She did not receive a copy of the Lis Pendens, Civil Action Coversheet, Certificate of Exemptions from ADR; Summons and Notices; Complaint; and/or Notice required by the Fair Debt Collection Practices Act in the above-captioned matter.

Lynn D. Simpson
Lynn D. Simpson

SWORN TO before me this 1st
day of February, 2011.

Michelle Cochran
Notary Public for South Carolina
My commission expires: 11/20/13

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2010-CP-23-8152

Wells Fargo Bank, N.A.,)
Plaintiff,)

vs.)

Lynn D. Simpson, Wells Fargo)
Bank, N.A., The Loft at Mills Mills)
Condominium Owners' Association,)
Inc.,)
Defendants.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of February, 2011, a copy of Defendant Lynn D. Simpson's Notice of Motion and Motion for Relief from Master's Order and Judgment of Foreclosure and Sale and to Vacate Sale were served upon the following individuals via United States Postal Service with sufficient first class postage affixed thereto and addressed as follows:

Samuel C. Waters, Esquire
Rogers Townsend & Thomas, PC
Post Office Box 100200
Columbia South Carolina 29202
Attorney for Plaintiff

ROBERT E. IANUARIO, P.C.


Michelle Cochran

Robert E. Ianuario, P.C.
419 Vardy Street
Greenville, South Carolina 29601
T: 864-255-9988
F: 864-235-9988
Attorney for Defendant Lynn D. Simpson

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

WELLS FARGO BANK, N.A.,

Plaintiff,

v.

LYNN D. SIMPSON, WELLS FARGO BANK, N.A. (CHARLOTTE, NC),
And THE LOFT AT MILLS MILL CONDOMINIUM OWNERS
ASSOCIATION, INC.

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER: 2010-CP-23-8152

MOTION COVERSHEET

check box above indicating submitting party

Plaintiff's Attorney:

Samuel C. Waters, Esquire
Rogers Townsend & Thomas, PC
Post Office Box 100200
Columbia South Carolina 29202

telephone: 803-227-2044
fax:
e-mail:

Defendant Lynn D. Simpson's Attorney

Robert E. Ianuario, P.C.
419 Vardy Street
Greenville, South Carolina 29601

telephone: 864-255-9988
fax: 864-235-9988
e-mail: robert@ianuariolaw.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:

Motion for Relief from Master's Order and Judgment of Foreclosure and Sale and to Vacate Sale

Estimated Time Needed:

15 min

Court Reporter Needed:

☐ YES ☐ NO

SECTION II: Motion/Order Type

- ☐ Written Motion attached
☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☒ Defendants

Date Submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$ 25.00 - Motion Fee
- ☐ EXEMPT:
(check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
 - ☐ Domestic Abuse or Abuse and Neglect
 - ☐ Indigent Status ☐ State Agency v. Indigent Party
 - ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
 - ☐ Motion for Stay in Bankruptcy
 - ☐ Motion for Publication ☐ Motion for Execution (Rule 69, 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: Heather Gail Burns
 - ☐ Other:

JUDGE'S SECTION

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

JUDGE _____

CODE: _____ DATE: _____

CLERK'S VERIFICATION

Collected by: _____
(print name)

DATE FILED: _____

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

SCCA/223(1/2003)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

Case Number: 2010-CP-23-08152

COURT OF APPEAL NUMBER: 2012-213505

Wells Fargo Bank, N.A..... Respondent

v.

Lynn D. Simpson.....Appellant

EXHIBIT D – April 14, 2011 Order

154-16048

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
2010-CP-23-8152

Wells Fargo Bank, N.A.,
Plaintiff,

vs.

Lynn D. Simpson, Wells Fargo Bank,
NA (Charlotte, NC); The Lofts at Mills
Mill Condominium Owners
Association, Inc.,

Defendants.

ORDER

ENTERED COMPUTER

2011 MAR 29 PM 4:26

This matter is before the Court pursuant to Defendant Simpson's motion to grant relief from the judgment and vacate the judicial sale of the property involved herein. Her motion was filed February 1, 2011 and alleges that she was never served with the Summons and Complaint.

The matter came to be heard on March 29, 2011. At that time, Plaintiff presented testimony of Mr. Chris Ellenburg, a process server with 12 years of experience. Mr. Ellenburg testified as to the undertakings and efforts to personally serve the Summons and Complaint on Defendant Lynn Simpson. He testified that he personally served her on October 6, 2010 and that she, in fact, signed for the documents at her personal residence, a closed gated condominium project in Greenville. Mr. Ellenburg further testified that he recognized Defendant Simpson in the courtroom as the individual he had served with the Summons and Complaint.

Lynn Simpson testified that she had never been served with the Summons and Complaint, denied that the signature produced by Mr. Ellenburg was her signature, and denied receiving any

Copy made	RS
Attorney	Powell
on	4 19 11

 #1
Page 47

type of notice of foreclosure hearing. However, Ms. Simpson did testify that she had received a letter from Plaintiff's law firm on or about December 16, 2010 advising her that the property would be set for sale on January 4, 2011. As a result of this letter, Ms. Simpson testified she attempted to contact Plaintiff's attorneys and kept dealing directly with Plaintiff on a loan modification. The property was sold on January 4, 2011 and Plaintiff was the high bidder at the sale.

As relates to the issue relative to service of the Summons and Complaint, I find that the preponderance of the evidence establishes that the Summons and Complaint were properly served upon Lynn D. Simpson. The process server identified her, stated the efforts he had to undertake to gain access to the gated condominium community in which she resides, and identified her in court as the person he had served.

Notwithstanding the above, this is a court of equity. While I am finding that service was proper, the Court is concerned relative to the behavior and actions of Plaintiff relative to Ms. Simpson while its attorneys were proceeding, as directed by Wells Fargo, to foreclosure. Without question, Plaintiff's law firm has acted reasonable in all efforts and steps in representing their client. At the same time, it is also clear to the Court that, during this time, Ms. Simpson was in active negotiations with Wells Fargo, as evidenced by the multiple copies of letters she presented to the Court. Ms. Simpson also attempted communication with Rogers Townsend & Thomas. Of primary significance to the Court is a letter from Wells Fargo to Defendant Simpson dated 12/16/10 which states, "During this 30-day period a foreclosure sale on your home will not be scheduled if permitted by state law."

In that Wells Fargo was directing its attorneys to take action totally inconsistent with what it was instructing Defendant Simpson to do, the Court simply cannot sanction such

inconsistent behavior. In its letter of 12/16/10, Wells Fargo plainly stated that, upon contact by Ms. Simpson, the property would not be sold for at least 30 days. It is likewise clear to the Court that Ms. Simpson contacted Wells Fargo as directed during this timeframe since Wells Fargo generated another letter dated 01/04/11, which coincidentally was the date the property was actually sold at the foreclosure sale, stating that Wells Fargo had reviewed the requested information provided by Simpson and that Wells Fargo was unable to provide any relief "because your property is condemned." Interestingly, there has never been any hint nor evidence that Ms. Simpson's condominium has ever been condemned. In fact, it is undisputed that such is not the case; Ms. Simpson still resides in this condominium.

In light of the above, and while finding that service was proper, the Court is setting aside the sale of January 4, 2011 and requiring Plaintiff to request an update hearing so as to update debt figures and seek a future foreclosure sales date. The foreclosure deed that was previously executed by the Court to Plaintiff and recorded in the Greenville County ROD Office at Book DE 2383 at page 5270-5272 and the Release of Lien filed in the ROD Office at Book MO5109 at page 5909 are declared void and the same shall be noted by the ROD Office on its records. Further, no costs or fees relative to the January 4, 2011 sale or this present motion shall be assessed against Defendant Simpson.

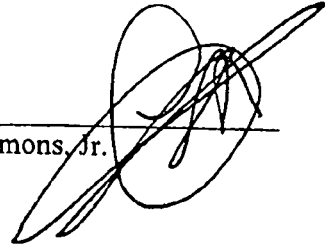
NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Defendant Simpson's motion under Rule 60(b) SCRCP, relative to lack of service is denied;

2. That the foreclosure sale of January 4, 2011 is hereby set aside and the resulting deed declared void.

AND IT IS SO ORDERED.

Charles B. Simmons, Jr.
Judge



April 14 2011

Greenville, South Carolina

A Certified Copy
Paul B. Wilkerson
Clerk of Court C.P. & G.S.
Greenville County, SC
Date 4-19-11

A Certified Copy
Paul B. Wilkerson
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated _____

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

Case Number: 2010-CP-23-08152

COURT OF APPEAL NUMBER: 2012-213505

Wells Fargo Bank, N.A..... Respondent

v.

Lynn D. Simpson.....Appellant

**EXHIBIT E – May 2, 2011 South Carolina Supreme Court
Administrative Order 2011-05-02-01**

Court News

2011-05-02-01

The Supreme Court of South Carolina

Re: Mortgage Foreclosure Actions

ADMINISTRATIVE ORDER

On May 22, 2009, I issued an Administrative Order (Order No. 2009-05-22-01) applicable to mortgage foreclosure actions subject to the Home Affordable Modification Program ("HMP") instituted by the United States Treasury Department ("Treasury"). The program applied to residential loans owned, securitized or guaranteed by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac).

Subsequently, Treasury issued, by directive, additional guidance to servicers for adoption and implementation of the HMP for residential mortgage loans that are not owned, securitized or guaranteed by Fannie Mae or Freddie Mac. However, the HMP is only applicable to such loans if the lender or servicer has agreed to participate in the HMP. Not all lenders or servicers have so agreed.

Since imposition of my prior order, the number of foreclosure actions filed in this State have continued to increase. The trial courts having jurisdiction over such actions have reported to this Court difficulty in making final disposition of these actions as a result of failed or delayed loss mitigation efforts between lender-servicers and mortgagor-debtors. As a result, the number of unresolved foreclosure actions has increased, with a resulting burden on the resources of the Court before which the action is pending.

The courts have reported that these failures are the result of a breakdown of loss mitigation efforts that all parties find to be in their best interests, if possible. The trial courts report that such breakdowns are largely the result of difficulty in communication between lender-servicers and debtors, and the fact that foreclosure actions are proceeding to conclusion without regard to ongoing loss mitigation efforts by the parties.

I further take judicial notice of the actions of courts in other jurisdictions describing a similar breakdown in the efforts of parties to foreclosure actions to reach a resolution of defaults in payment of mortgage loans.

Therefore, based on the foregoing, and in order to insure that eligible homeowners and lender-servicers have been afforded the benefits of loan modification or other loss mitigation where possible, and to insure that the procedures for handling issues relating to such efforts are handled uniformly throughout the State, so that mortgage foreclosure actions are not unnecessarily dismissed, delayed or inappropriately concluded while loan modification or other loss mitigation efforts are being pursued, it is ordered as follows:

A. Definitions:

For the purposes of this administrative order, the following definitions shall apply:

- (1) "Mortgagor" shall include every owner, mortgagor, and debtor under the note and mortgage at issue.
- (2) "Mortgagee" shall include the owner and holder of the note and mortgage, any party acting on behalf of the owner and holder of the note and mortgage for the purpose of receiving payments, dealing with the mortgagor, or administering the loan evidenced by the note and mortgage, and any party seeking foreclosure of the subject mortgage, or otherwise acting as the agent of the owner and holder of the note in connection with the loan or the foreclosure of the note and mortgage, except for the mortgagee's attorney.
- (3) "Owner-Occupied dwelling" is defined as mortgaged real property that is the principal residence of any mortgagor.
- (4) "Court" shall include any judicial officer having jurisdiction over the foreclosure action, including any Circuit Court Judge, Master-In-Equity or Special Referee.
- (5) "Foreclosure intervention" shall include any policy, process or procedure employed by a Mortgagee for the purpose of seeking a resolution of a foreclosure action by loan modification or other means of loss mitigation.

B. Procedure in Foreclosure Actions:

The terms and conditions of this order shall apply to all mortgage foreclosure proceedings concerning Owner-Occupied dwellings in this State.

(1) Actions pending on May 9, 2011.

In all mortgage foreclosure actions pending on May 9, 2011, before any merits hearing in the case, or if an order of foreclosure has been entered, before any foreclosure sale, the Mortgagee shall, through its attorney of record, file with the court and serve upon every Mortgagor a notice of the Mortgagor's right to foreclosure intervention. All proceedings in the foreclosure action shall be stayed until completion of such foreclosure intervention.

No foreclosure hearing or foreclosure sale may be held in the foreclosure action until the Mortgagee's attorney certifies the following:

- (a) that the Mortgagor has been served with a notice of the Mortgagor's right to foreclosure intervention for the purpose of seeking a resolution of the foreclosure action by loan modification or other means of loss mitigation;
- (b) that the Mortgagee, or its designated agent, has received and examined all documents and records required to be submitted by the Mortgagor to evaluate eligibility for foreclosure intervention;
- (c) that the Mortgagor has been afforded a full and fair opportunity to submit any other information or data pertaining to the Mortgagor's loan or personal circumstances for consideration by the Mortgagee;
- (d) that after completion of the foreclosure intervention process, the Mortgagor does not qualify

for loan modification or other means of loss mitigation, in accordance with any standards, rules or guidelines applicable to the mortgage loan, and the parties have been unable to reach any other agreement concerning the foreclosure process; and,

(e) that notice of the denial of loan modification or other means of loss mitigation has been served on the Mortgagor by mailing such notice to all known addresses of the Mortgagor; provided, that such notice shall also state that the Mortgagor has 30 days from the date of mailing of notice of denial of relief to file and serve an answer or other response to the Mortgagee's summons and complaint.

If within thirty days after having been served with notice of the Mortgagor's rights, the Mortgagor has failed, refused, or voluntarily elected not to participate in any foreclosure intervention process, the Mortgagee, through its attorney, shall certify that fact to the Court, and the foreclosure action may proceed.

(2) Actions filed after May 9, 2011.

In all mortgage foreclosure actions filed after May 9, 2011, the Mortgagee's attorney shall serve on the Mortgagor, along with the summons and complaint, a notice of the Mortgagor's right to foreclosure intervention.

No foreclosure hearing may be held in the foreclosure action until the Mortgagee's attorney certifies that the Mortgagee has complied with the requirements of paragraphs B (1) (a) through (e) above.

If within thirty days after having been served with notice of the Mortgagor's rights, the Mortgagor has failed, refused, or voluntarily elected not to participate in any foreclosure intervention process, the Mortgagee, through its attorney, shall certify that fact to the Court, and the foreclosure action may proceed.

C. General Conditions.

Throughout the foreclosure intervention process and the foreclosure action, the Mortgagee shall communicate with and otherwise deal with the Mortgagor through the Mortgagee's attorney, and the Mortgagor shall have the right to deal with the Mortgagee through the Mortgagee's attorney. This includes, without limitation, submission of all required information, negotiations, and consummation of any loan modification or other loss mitigation agreement. If the Mortgagor is represented by an attorney, then the Mortgagee shall communicate with and otherwise deal with the Mortgagor through the Mortgagor's attorney.

No document, statement or evidence of any kind shared, released or exchanged exclusively for purposes of foreclosure intervention pursuant to this order shall be admissible as evidence in any subsequent proceeding. The provisions of Rule 8 of the Court Annexed Alternative Dispute Resolution Rules ("ADR Rules") shall apply to all such documents, statements or evidence, as well as to all discussions, disclosures and negotiations occurring in any foreclosure intervention process.

A Mortgagee's attorney, by proceeding with a foreclosure, represents to the Court that the Mortgagee has fully complied with all provisions of this Order.

In the event that the Mortgagor and Mortgagee agree on any loan modification or other loss mitigation plan ("Agreement"), such Agreement shall be reduced to writing, executed by the Mortgagor and Mortgagee, and served on all parties in the case. Any pending case shall be

stayed, and no hearing or foreclosure sale held for 90 days following the entry of any Agreement, unless the Mortgagor shall not comply with the terms of the Agreement.

Upon any failure by Mortgagor to comply with the terms of the Agreement before the expiration of 90 days from the date of the Agreement, the Mortgagee, through its attorney, shall file and serve on all parties a "Notice of Breach of Agreement". Upon filing and service of such notice, the foreclosure action may proceed in the ordinary course.

If the Mortgagor shall be in compliance with the terms of the Agreement after 90 days, the Mortgagee's attorney shall promptly file a notice of dismissal of the action without prejudice, and the case will be dismissed. Such notice of dismissal shall be served on all parties to the action.

The Court having jurisdiction over the foreclosure action shall hear and determine any dispute concerning any party's compliance with this order, including without limitation, the failure of any party to act in good faith in complying with the terms of this order. In the event the Court determines that any party to the foreclosure action, or their acting agent, has failed to comply with the terms of this order, or has not attempted to reach an agreement for foreclosure intervention in good faith, the Court may, in its discretion, impose such sanctions as it determines to be reasonable and just under the circumstances, including without limitation, the assessment of reasonable attorneys' fees and costs against the culpable party.

The Court having jurisdiction over the action shall have the authority, and may in its discretion, order the parties to submit to mediation. In such event, the mediation shall proceed in accordance with the ADR Rules.

This order remains in effect unless amended or rescinded by the Chief Justice.

IT IS SO ORDERED.

s/Jean H. Toal

Jean H. Toal

Chief Justice of South Carolina

Columbia, South Carolina
May 2, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

Case Number: 2010-CP-23-08152

COURT OF APPEAL NUMBER: 2012-213505

Wells Fargo Bank, N.A..... Respondent

v.

Lynn D. Simpson..... Appellant

EXHIBIT F – Attorney Certification

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Wells Fargo Bank, NA,

Plaintiff,

v.

Lynn D. Simpson; Wells Fargo Bank, NA
(Charlotte, NC); The Lofts at Mills Mill
Condominium Owners Association, Inc.;

Defendant(s).

(011784-16048)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-23-8152

ATTORNEY CERTIFICATION
Deficiency Judgment Waived
(Mortgagor Denied)

2012 AUG - 1 A 10: 07

CLERK OF COURT
GREENVILLE CO. S.C.
CASE 9 WICKENSHER

Pursuant to Supreme Court Administrative Order 2011-05-02-01 ("the Order"), and upon information and belief, the undersigned attorney hereby certifies the following:

- 1) That the Mortgagor, as defined by the Order, has been served with notice of right to foreclosure intervention;
- 2) That Plaintiff or its designated agents have received and examined all records and documents (if any) submitted by the Mortgagor to evaluate the loan for foreclosure intervention;
- 3) That the Mortgagor has been given a full and fair opportunity to submit any additional information pertaining to the subject loan to Plaintiff or its agents for consideration;
- 4) That after a complete review of all available information, Plaintiff has determined, as of July 25, 2012 that the Mortgagor does not qualify for any foreclosure intervention options as contemplated by the Order;

Seamed

11-17-2012

- 5) That on July 31, 2012, a Notice of Foreclosure Intervention Denial was served on the Mortgagor(s) as required by the Order and Plaintiff has not entered into any other settlement agreements with the Mortgagor(s) as of the date stated in Plaintiff's Notice of Foreclosure Intervention Denial.



Rogers Townsend & Thomas, PC

ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)

Reginald P. Corley (SC Bar #69453)

Ellie C. Floyd (SC Bar #68635)

Eve Moredock Stacey (SC Bar #5300)

Robert P. Davis (SC Bar #74030)

Vance L. Brabham, III (SC Bar #71250)

Andrew W. Montgomery (SC Bar #79893)

Cheryl H. Fisher (SC Bar #15213)

Jennifer W. Rubin (SC Bar #16727)

Michael P. Morris (SC Bar #73560)

Mary R. Powers (SC Bar #16534)

William S. Koehler (SC Bar #74935)

Jaclynn B. Geings (SC Bar #77501)

Andrew A. Powell (SC Bar #100210)

220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Wells Fargo Bank, NA,

Plaintiff,

v.

Lynn D. Simpson; Wells Fargo Bank, NA
(Charlotte, NC); The Lofts at Mills Mill
Condominium Owners Association, Inc.;

Defendant(s).

FILED: CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
DOCKET NO. 10-CP-23-8152

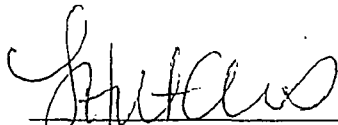
2012 AUG -1 A 10:07

CERTIFICATE OF MAILING
Deficiency Judgment Waived

(011784-16048)

Pursuant to the South Carolina Supreme Court Administrative Order 2011-05-02-01 the undersigned, says that he/she mailed a copy of the Attorney Certification in the above-referenced foreclosure action upon the parties listed below by placing a copy of the Attorney Certification in the United States Mail, postage paid, to be mailed to the parties set forth below at the following addresses this 31 day of July, 2012:

Robert E. Ianuario, M.B.A., J.D.
419 Vardy street
Greenville, SC 29601
Attorney for Lynn D. Simpson


Lauran Hutchins

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

Case Number: 2010-CP-23-08152

COURT OF APPEAL NUMBER: 2012-213505

Wells Fargo Bank, N.A..... Respondent

v.

Lynn D. Simpson.....Appellant

**EXHIBIT G – September 25, 2012 Supplemental
Order Post Judgment**

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Wells Fargo Bank, NA,

Plaintiff,

v.

Lynn D. Simpson; Wells Fargo Bank, NA
(Charlotte, NC); The Lofts at Mills Mill
Condominium Owners Association, Inc.;

Defendant(s).

(011784-16048)

Samuel C. Waters
Attorney for the Plaintiff

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-23-8152

SUPPLEMENTAL ORDER POST JUDGMENT

Deficiency Judgment Waived

FILED IN COURT
CLERK OF COURT
JUL 10 2011
B

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the above-entitled matter was referred to me with finality to enter a final judgment in the case. On December 3, 2010, a Judgment of Foreclosure and Sale was issued. Prior to the scheduled sales date, the case was delayed. The Plaintiff wishes to proceed with the foreclosure and sale and the purpose of this order is to supplement the previous Judgment of Foreclosure and Sale to reflect the current amount due.

The Plaintiff was previously awarded a reasonable attorney fee of \$5,500.00. This award was based upon the completion of this matter within a reasonable time and did not include exceptional circumstances delaying conclusion beyond the normal time. Plaintiff has advanced \$1,460.00 to its counsel as partial payment of the attorney fee.

Pursuant to the South Carolina Supreme Court Administrative Order dated May 22, 2009, the Plaintiff set forth its belief in its Complaint or by Affidavit, which is already of record in this case, that the mortgage loan which is the subject of this foreclosure action is not eligible for modification pursuant to the terms of the Home Affordable Modification Program (HMP). Pursuant to the South Carolina Supreme Court Administrative Order dated May 22, 2009, Plaintiff's attorney has not received a counter affidavit from any Defendant(s).

Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011.

THEREFORE, upon motion of the Plaintiff's counsel and for good cause indicated;
IT IS HEREBY ORDERED that the previous judgment debt be amended as follows:

1. The amount due and owing on the note from the previous judgment was as follows:
- (a) Principal due..... \$229,822.87
 - (b) Interest from April 1, 2010 through
November 30, 2010 at 5% per annum..... \$7,248.77
 - (c) Allowable Advances (Escrow Advances, Corporate Charges, including paid attorney's
fee, costs, and Other Charges)..... \$-1,941.67
 - (d) Late Charges..... \$341.70
 - (e) Costs of collection prior to
hearing (service, filing, etc.)..... \$32.50
 - (g) Attorney's Fees (awarded but unpaid)..... \$4,765.00
- PREVIOUS TOTAL DEBT..... \$240,269.17

2. Amended judgment debt is as follows:
- (a) Principal now due..... \$229,098.82
 - (b) Interest from June 1, 2010 through
August 2, 2012 at variable rates \$17,201.24
Interest from August 2, 2012 through
September 25, 2012 at 3% per annum \$1,016.82
 - (c) Allowable Advances (Escrow Advances, Corporate Charges including attorney's
fees, costs, and other charges previously paid) \$1,784.64
 - (d) Additional Costs of collection since previous
hearing..... \$92.50
 - (e) Attorney's Fee (awarded but unpaid) \$4,040.00
- NEW TOTAL DEBT now secured by Note and Mortgage
including interest to date shown..... \$253,234.02

The new total debt shall accrue interest hereafter at the rate of 3% per annum.

3. The mortgaged property shall be sold under the terms of the original Judgment of Foreclosure and Sale.

AND IT IS SO ORDERED.

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

Greenville, South Carolina

9/25, 2012

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 10-CP-23-8152

Wells Fargo Bank, NA

Lynn D. Simpson; Wells Fargo Bank, NA
(Charlotte, NC); The Lofts at Mills Mill
Condominium Owners Association, Inc.;

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Samuel C. Waters (SC Bar #5958), Cheryl H. Fisher (SC Bar #15213), Reginald P. Corley (SC Bar #69453), Jennifer W. Rubin (SC Bar #16727), Ellie C. Floyd (SC Bar # 68635), Michael P. Morris (SC Bar #73560), Eve Moredock Stacey (SC Bar # 5300), Mary R. Powers (SC Bar# 16534), Robert P. Davis (SC Bar# 74030), William S. Koehler (SC Bar# 74935), Vance L. Brabham, III (SC Bar #71250), Andrew W. Montgomery (SC Bar #79893), Andrew A. Powell (SC Bar #100210)

Attorneys for the Plaintiff
Rogers Townsend & Thomas, PC
220 Executive Center Drive, Suite 109
Post Office Box 100200
Columbia, SC 29202
(803) 744-4444
(803) 343-7013 - Fax
info@rtt-law.com

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

RECEIVED

DISPOSITION TYPE (CHECK ONE)

SEP 28 2012

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

As required by statute, a foreclosure sale has been or will be scheduled, which will officially end the case.

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)
--	--	--

N/A		
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
 All that certain condominium Unit known and designated as Unit #301 of The Lofts at Mills Mill Horizontal Property Regime (the "Regime"), as set forth, established, described and defined in that certain Declaration (Master Deed) of The Lofts at Mills Mill Horizontal Property Regime dated July 13, 2004, and recorded in the Office of the Register of Deeds for Greenville County in Deed Book 2098 at Page 1 (the "Declaration"), and as depicted on that certain plat entitled "Finished Floor As-Built Plat for Mills Mill Associates, LLC" prepared by Precision Land Surveying, Inc., dated July 7, 2004, and recorded in the Office of the Register of Deeds for Greenville County in Plat Book 48-S at Page 5 (the "Plat"). Reference is craved to the Declaration and the Plat for a more complete description of the above Unit and of the Regime.
 Together an undivided right, title and interest in and to the Common Elements, including the Limited Common Elements (if any) appurtenant to the Unit; all as set forth, established, described, and defined in the Declaration.
 This being the same property conveyed to Lynn D. Simpson by deed of Mills Mill Associates, LLC, dated September 21, 2005 and recorded September 22, 2005 in Book 2167 at Page 92.
 0106010300100
 400 Mills Avenue, Unit 301
 Greenville, SC, 29605

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/Master in Equity ~~Special Referee~~

3023
Judge Code

9/25/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the 28th day of Sep, 2012 and a copy mailed first class or X placed in the appropriate attorney's box on this 28th day of Sep, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Samuel C. Waters (SC Bar #5958)

Rogers Townsend & Thomas, PC X

P.O. Box 100200

Columbia, SC 29202-3400

ATTORNEY(S) FOR THE PLAINTIFF(S)

011784-16048

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Robert E. Ianuario, M.B.A., J.D.
 419 Vardy street
 Greenville, SC 29601

Wells Fargo Bank, NA (Charlotte, NC)
 1703 Laurel St
 Columbia, SC 29201

The Lofts at Mills Mill Condominium Owners
 Association, Inc.
 872 S Pleasantburg Dr
 Greenville, SC 29607

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
MOTION INFORMATION FORM
AND COVER SHEET
CASE NO. 10-CP-23-8152

Wells Fargo Bank, NA ☒ Plaintiff

v.

Lynn D. Simpson; Wells Fargo Bank, NA (Charlotte, NC); The Lofts at Mills Mill Condominium Owners Association, Inc.;
☐ Defendant.

Check box above indicating submitting party

name, S.C. Bar no. and address of plaintiff's attorney

Samuel C. Waters (SC Bar #5958); Cheryl H. Fisher (SC Bar #15213); Reginald P. Corley (SC Bar #69453); Jennifer W. Rubin (SC Bar #16727); Ellie C. Floyd (SC Bar #68635); Michael P. Morris (SC Bar #73560); Eve Moredock Stacey (SC Bar #5300); Mary R. Powers (SC Bar #16534); Robert P. Davis (SC Bar #74030); William S. Kochler (SC Bar #74935); Vance L. Brabham, III (SC Bar #71250); Jaclynn B. Goings (SC Bar #77501); Andrew W. Montgomery (SC Bar #79893); Andrew A. Powell (SC Bar #100210)

220 Executive Center Drive, Suite 109, Columbia, SC 29210

telephone: 803-744-4444

fax: 803-343-7013

name, S.C. Bar no. and address of Defendant's attorney

telephone:

fax:

email:

other:

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

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

☐ PROPOSED ORDER/CONSENT ORDER (Complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: YES/NO

SECTION II: Motion Type

☐ Written motion attached

☒ Form Motion —

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

Jaclynn B. Goings
Signature of Attorney for Plaintiff/Defendant

September 18, 2012
Date submitted

SECTION III: Motion Fee

☒ PAID — AMOUNT: \$25.00

☐ EXEMPT:

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, 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

CODE: _____ Date: _____

JUDGE

CLERK'S VERIFICATION

Collected by: LB

(print name)

☒ MOTION FEE COLLECTED: 25.00

☐ CONTESTED — AMOUNT DUE: _____

SCCA/233 (12/2009) 011784-16048

Date Filed:

CK 291861

RTT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

Case Number: 2010-CP-23-08152

COURT OF APPEAL NUMBER: 2012-213505

Wells Fargo Bank, N.A..... Respondent

v.

Lynn D. Simpson.....Appellant

EXHIBIT H –October 26, 2012 Second Motion for Relief

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL CIRCUIT

WELLS FARGO BANK, N.A.,) CIVIL ACTION NO.: 2010-CP-23-8152

Plaintiff,)

vs.)

LYNN D. SIMPSON; WELLS FARGO)
BANK, NA (Charlotte, NC); THE LOFTS)
AT MILLS MILL CONDOMINIUM)
OWNERS ASSOCIATION, INC.,)

Defendants.)

FILED OCT 26 PM 4:23
CLERK OF COURT
GREENVILLE CO SC
JAN. 1, 2011

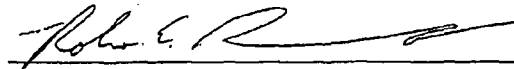
NOTICE OF SUBSTITUTION OF COUNSEL FOR DEFENDANT LYNN D. SIMPSON

Pursuant to Rule 11(b) of the South Carolina Rules of Civil Procedure, Defendant, Lynn D. Simpson, hereby substitutes The Law Office of Marcus W. Meetze, LLC for Robert E. Ianuario, P.C. as attorney of record in the above-captioned action.

Accordingly, the undersigned request that Robert E. Ianuario, P.C. be removed from the court docket as counsel of record for Defendant Lynn D. Simpson and that The Law Firm of Marcus W. Meetze, LLC be substituted as Defendant Lynn D. Simpson's counsel of record.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

ROBERT E. IANUARIO, P.C.



Robert E. Ianuario, M.B.A., J.D.
419 Vardy Street
Greenville, South Carolina 29601
T: 864-255-9988
F: 864-235-9988
robert@ianuariolaw.com

Greenville, SC
October 26, 2012

LAW OFFICE OF MARCUS W. MEETZE, LLC



Marcus W. Meetze
wes@meetzelaw.com
712 East Washington Street
Greenville, South Carolina 29601
864-271-3555
864-242-4885 Facsimile

Greenville, SC
October 26, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

WELLS FARGO BANK, N.A.,)

Plaintiff,)

vs.)

LYNN D. SIMPSON; WELLS FARGO)
BANK, NA (Charlotte, NC) THE LOFTS AT)
MILLS MILL CONDOMINIUM OWNERS)
ASSOCIATION, INC.)

Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-23-8152

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

2012 OCT 26 PM 4:23
LED-CLEAR OF COURT
GREENVILLE CO S.C.
MAIL ROOM

Plaintiff's Attorney: Andrew A. Powell, Bar No. 100210 Address: Post Office Box 100200 Columbia, SC 29210 Phone: 803-744-4444 Fax 803-343-7013 E-mail: info@rtt-law.com Other: _____		Defendant's Attorney: Marcus W. Meetze, Bar No. 77210 Address: 712 E. Washington St. Greenville, SC 29604 Phone: 864-271-3555 Fax 864-242-4885 E-mail: wes@meetzelaw.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion for Relief from Order of Foreclosure and Sale Estimated Time Needed: 15 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.			
m. w. m. — Signature of Attorney for ☐ Plaintiff / ☒ Defendant		10/26/12 Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	

7 4

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL CIRCUIT

WELLS FARGO BANK, N.A.,) CIVIL ACTION NO.: 2010-CP-23-815
Plaintiff,)
vs.)
LYNN D. SIMPSON; WELLS FARGO)
BANK, NA (Charlotte, NC); THE LOFTS)
AT MILLS MILL CONDOMINIUM)
OWNERS ASSOCIATION, INC.,)
Defendants.)

2012 OCT 26 PM 4:23
CLERK OF COURT
GREENVILLE COUNTY
SOUTH CAROLINA

**DEFENDANT LYNN D. SIMPSON'S MOTION FOR RELIEF
FROM ORDER OF FORECLOSURE AND SALE**

PLEASE TAKE NOTICE that the Defendant Lynn D. Simpson (hereinafter "Defendant"), by and through undersigned counsel, will move before the Honorable Charles B. Simmons, Jr., Master-in-Equity for Greenville County, at a date and time as to be scheduled by the Clerk of Court for Greenville County for relief from the Master's Order and Judgment of Foreclosure and Sale entered in the above-captioned matter on December 3, 2010, pursuant to Rule 60(b)(5). In support of said motion, Defendant states as follows:

FACTUAL BACKGROUND

1. On or about September 21, 2005, Defendant executed and delivered to Wachovia Mortgage Corporation a Note (the "Note"), in the amount of \$247,500.00 together with interest

at a variable rate with the initial rate being 5.25% and the principal and interest due on October 1, 2035.

2. Pursuant to the terms of the Note, the interest rate would adjust on the first day of October, 2010 and may change every 12th month thereafter.

3. With the knowledge the interest rate of the Note would soon change, Defendant contacted Plaintiff in early 2010 in an effort to refinance the subject property.

4. Defendant engaged in the loan modification process with Plaintiff, submitting the required documentation and awaited Plaintiff's decision.

5. Despite making payments in the amount of \$1,690.63 on February 1, 2010, \$1,637.29 on March 3, 2012, \$1,690.63 on March 29, 2010, and \$1,637.29 on May 27, 2010, Defendant received a statement on May 25, 2010 alleging overdue payments in the amount of \$1,622.29. The bank statements showing the payments to Plaintiff are attached as Exhibit "A" and incorporated herein by reference. The May 25, 2010 mortgage statement is attached as Exhibit "B" and incorporated herein by reference.

6. Pursuant to a telephone conversation with a representative of Plaintiff, and in an effort to cure any alleged default, Defendant submitted payment in the amount of \$2,797.29 on September 1, 2010. The bank statement reflecting the payment of \$2,797.29 is attached as Exhibit "C" and incorporated herein by reference.

7. On September 27, 2010 Plaintiff sent a check in the amount of \$2,797.20 to Defendant. The check stated "FOR MISAPPLICATION REVERSAL". The check is attached as Exhibit "D" and incorporated herein by reference.

8. On September 30, 2010 the Summons and Complaint in the above-referenced matter was filed in the Court of Common Pleas.¹

9. By letter dated October 1, 2010, Plaintiff instructed Defendant to gather all financial information related to monthly income and expenses, and to contact Plaintiff at a number provided. The October 1, 2010 letter is attached as Exhibit "E" and incorporated herein by reference.

10. By letter dated October 5, 2010, Plaintiff informed Defendant that an initial payment of \$4,200.00 must be received by October 15, 2010. The October 5, 2010 letter further stated that "[f]oreclosure activity will not be suspended until you have returned the initial required payment". The October 5, 2010 letter is attached as Exhibit "F" and incorporated herein by reference.

11. On October 15, 2010, Defendant submitted payment to Plaintiff in the amount of \$4,200.00 pursuant to the October 5, 2010 letter. The bank statement reflecting the payment of \$4,200.00 is attached as Exhibit "G" and incorporated herein by reference.

12. After submitting the payment on October 15, 2010, Defendant believed any foreclosure action pending against her was suspended and did not retain an attorney.

13. On or about November 18, 2010, an Affidavit of Default and Non-Military Service was filed as to Defendant in the above-captioned matter.

14. On or about November 30, 2010 a hearing was held in the above-captioned matter. Defendant was not present.

¹ While Defendant denies being served with the Summons and Complaint in the above-captioned matter, by Order dated April 14, 2011 this Honorable Court found service to be proper.

15. By Order dated December 3, 2010, this Honorable Court issued an Order of Judgment and Foreclosure and Sale.

16. On or about December 16, 2010, Defendant received a letter from Plaintiff stating the property would be set for sale on January 4, 2011. On the same date, Defendant received a letter from Plaintiff stating "[d]uring this 30-day period a foreclosure sale on your home will not be scheduled if permitted by law. Defendant attempted to contact Plaintiff attorneys and continued working with Plaintiff on a loan modification. *See* Order dated April 15, 2011 in the above-captioned matter.

17. On January 3, 2011, Defendant contacted Plaintiff's counsel via electronic mail seeking information regarding the December 16, 2010 letter from Plaintiff's counsel. This began a chain of email exchanges between Plaintiff's counsel and Defendant. The electronic mail communications are attached as Exhibit "H" and incorporated herein by reference.

17. On January 4, 2011, the subject property was sold and Plaintiff was the highest bidder.

18. On the same date, Plaintiff sent Defendant a letter stating that Plaintiff had reviewed the requested information provided by Defendant and was unable to provide any relief "because your property is condemned". The January 4, 2011 letter is attached as Exhibit "I" and incorporated herein by reference.

19. By letter dated January 19, 2011, Plaintiff received a Notice to Vacate Property. The Notice is attached as Exhibit "J" and incorporated herein by reference.

20. Shortly after receipt of the January 19, 2011 Notice to Vacate, Defendant obtained the services of Robert E. Ianuario, P.C., who filed a Motion for Relief on behalf of Defendant based upon the affidavit of Defendant stating she had never been served with the pleadings in the above-referenced matter.

21. By letter dated February 18, 2011, Plaintiff stated it had received Defendant's inquiry regarding her loan and that the issues raised in her correspondence were under review and appropriate action would be taken once its research was complete. No response was ever received from Plaintiff. The February 18, 2011 letter is attached as Exhibit "K" and incorporated herein by reference.

22. By Order dated April 14, 2011, this Honorable Court found service on Defendant was proper but set aside the sale of January 4, 2011 and declared the resulting deed void.

23. The Subject Property has been set for public auction again on November 5, 2012.

LEGAL ARGUMENT

24. Rule 60(b)(5) of the South Carolina Rules of Civil Procedure provides that upon motion and such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding if it is no longer equitable that the judgment should have prospective application.

25. Based upon the inequitable conduct of Plaintiff as noted in this Honorable Court's order of April 14, 2011, Defendant was denied the opportunity to submit a proper defense to the above-captioned matter.

26. The representations of Plaintiff were the direct and proximate cause of Defendant failing to answer the Complaint in the above-referenced matter as Defendant believed the \$4,200.00 made to and accepted by Plaintiff would postpone any foreclosure proceedings. Plaintiff should not be allowed to deny Defendant the opportunity to assert affirmative defenses (most notably payment) and the numerous counterclaims Defendant has against Plaintiff by misleading Defendant as to the status of the above-captioned matter.

27. Plaintiff was the cause of any alleged default in the Note that is the subject of the above-captioned matter by rejecting and misapplying payments.

28. Defendant should be allowed the opportunity to appear and defend the allegations of the Complaint and Plaintiff should not be rewarded for its conduct with regards to the loan that is the subject of the Complaint. Not only did Plaintiff actively procure the alleged default in the terms of the Note, Plaintiff's representations that the foreclosure action would be suspended upon the payment of \$4,200. By October 15, 2010 caused Defendant to be declared in default of the above-captioned matter.

WHEREFORE, Defendant respectfully requests this Court inquire into the matters set forth herein and issue an Order pursuant to Rule 60(b)(5) of the South Carolina Rules of Civil procedure:

- a. Granting Defendant relief from the judgment in this matter and ordering a new trial so that Defendant may assert affirmative defenses and counterclaims; and
- b. Cancelling the sale of the Subject Property set for November 5, 2012; and
- c. Awarding Defendant the costs and disbursements associated with this motion; and

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

LAW OFFICE OF MARCUS W. MEETZE, LLC

M. W. Meetze

Marcus W. Meetze

wes@meetzelaw.com

712 East Washington Street

Greenville, South Carolina 29601

864-271-3555

864-242-4885 Facsimile

Greenville, SC

October 26, 2012

EXHIBIT A



Consolidated Statement

Wells Fargo Home Mortgage Payment

5/13/2010 thru 6/10/2010

Crown Classic Account Interest

Other Withdrawals and Service Fees *continued*

Date	Amount	Description
5/24	[REDACTED]	AUT [REDACTED]
5/25	[REDACTED]	[REDACTED]
5/25	[REDACTED]	[REDACTED]
5/25	[REDACTED]	[REDACTED]
5/25	[REDACTED]	[REDACTED]
5/26	[REDACTED]	[REDACTED]
5/26	[REDACTED]	[REDACTED]
5/26	[REDACTED]	[REDACTED]
5/26	[REDACTED]	[REDACTED]
5/26	[REDACTED]	[REDACTED]
5/27	1,637.29	AUTOMATED DEBIT WF HOME MTG AUTO PAY CO. ID. W952318940 100527 TEL MISC 0005770514
5/28	[REDACTED]	[REDACTED]
5/28	[REDACTED]	[REDACTED]
6/01	[REDACTED]	[REDACTED]
6/01	[REDACTED]	[REDACTED]
6/03	[REDACTED]	[REDACTED]
6/04	[REDACTED]	[REDACTED]
6/07	[REDACTED]	[REDACTED]
6/07	[REDACTED]	[REDACTED]
6/07	[REDACTED]	[REDACTED]
6/07	[REDACTED]	[REDACTED]

Other Withdrawals and Service Fees continued on next page.



Wells Fargo Home Mortgage Payment

3/12/2010 thru 4/13/2010

Other Withdrawals and Service Fees *continued*

[illegible]

Other Withdrawals and Service Fees continued on next page.



Wells Fargo Home Mortgage Payment

2/11/2010 thru 3/11/2010

Crown Classic Account Interest

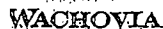
Other Withdrawals and Service Fees - continued

[illegible]

Other Withdrawals and Service Fees continued on next page.



HLSCA071 007400 071043507044 NNNN NNNN NNNN NNNNNNN000003



Wells Fargo Home Mortgage payment

1/13/2010 thru 2/10/2010

Other Withdrawals and Service Fees - continued

[illegible]

**Other Withdrawals and Service Fees continued on next page.*

[illegible]

EXHIBIT B



Return Mail Operating
PO Box 14411
Des Moines, IA 50311

Monthly Mortgage Statement

Statement Date 05/25/10
Loan Number

Customer Service

Online
yourwellsfargomortgage.com

Fax
(866) 278-1179

Telephone
(877) 213-7083

Correspondence
PO Box 10335
Des Moines IA 50308

Hours of Operation
Mon - Fri, 8 AM - 10 PM
Sat, 8 AM - 2 PM

Payments
PO Box 660455
Dallas TX 75266

TTY Deaf/Hard of Hearing
(800) 934-9998



1 AT 2994/010994/002994 036 01 ACNHYH 708
LINCOLN E SIMPSON
LYNN D SIMPSON
400 MILLS AVE UNIT 301
GREENVILLE SC 29605-4185

Important Messages

Summary

Payment (Principal and/or Interest, Escrow)	\$1,620.15
Optional Product(s)	\$0.00
Current Monthly Payment 06/01/10	\$1,620.15
Overdue Payments 05/01/10	\$1,622.29
Unpaid Late Charge(s)	\$136.68
Other Charges	\$15.00
TOTAL PAYMENT DUE 06/01/10	\$3,394.12

Property Address
400 MILLS AVENUE 301
GREENVILLE SC 29605
Unpaid Principal Balance \$229,822.87
(Contact Customer Service for your payoff balance)
Interest Rate 5.250%
Interest Paid Year-to-Date \$4,037.58
Taxes Paid Year-to-Date \$0.00
Escrow Balance \$581.71

Activity Since Your Last Statement

Date	Description	Total	Principal	Interest	Escrow	Late Charge	Other
05/25	PAYMENT	\$1,637.29	\$359.66	\$1,007.05	\$255.58	WF EASYPAY	\$15.00
05/19	MTG INS PMT	\$136.13			\$136.13	PMI MORTGAGE INS CO	

Wells Fargo Easy Pay payment has been applied.

010994/002994 ACNHYH 2004 ETM1C002 1



Please detach and return with your payment

Loan Number
Current Monthly Payment Due \$1,620.15
Total Payment Due 06/01/10 \$3,394.12
After 06/16/10 Add Late Fee \$68.34
Total Amount Due After 06/16/10 \$3,462.46

Monthly Payment A \$

Additional Principal B \$

Late Charges C \$

Other Charges D \$

Additional Escrow E \$

Check here and see
reverse for address
correction

LINCOLN E SIMPSON
LYNN D SIMPSON
2994/010994/002994 036 01 ACNHYH 708

Please specify
additional funds.
Any additional
funds not
specified will be
applied first to
any outstanding
charges.



WELLS FARGO HOME MORTGAGE
PO BOX 660455
DALLAS TX 75266-0455

Total Amount Enclosed F \$
(Please do not send cash)

EXHIBIT C

EXHIBIT D

Sent Back to Bank

WELLS FARGO HOME MORTGAGE

One Home Campus
Des Moines, IA 50328-0001

OR MISAPPLICATION REVERSAL

AY TO
E ORDER
OF

LINCOLN E SIMPSON
LYNN D SIMPSON
400 MILLS AVE UNIT 301
GREENVILLE SC 29605-4185

WELLS FARGO BANK NA
WELLS FARGO BANK NA
REMITTANCE CLRG/708
S30 0005770514
0005770514
1-888-234-6271

CHECK NO.	17-0001	MO/DAY/YR
7009392648	0910	09/27/2010

AMOUNT
*****\$2,797.29

Thousand Seven Hundred Ninety Seven and 29/100 Dollars

Robert J. [Signature]
AUTHORIZED SIGNATURE

[REDACTED]

31110

*pd as agreed
mt on mch
returned -*

*This pmt had been made
over the phone and accepted by
a mtr representative - and then
not accepted as payment on our
mtr loan*

*mtr, payment
\$ 2797.29
processed 8/31/10
mtr acct # 8756
for payment
with acct # 910710
1 mtr acct
pmt not accepted
on mtr loan*

*was returned
Sept 29*

EXHIBIT E

WELLS FARGO HOME MORTGAGE
 RETURN MAIL OPERATIONS
 PO BOX 10368
 DES MOINES IA 50306-0368



10/01/10



1MB 00972/003957/002330 0014 2 ACNMJ0LM189 708

LINCOLN E SIMPSON
 LYNN D SIMPSON
 400 MILLS AVE UNIT 301
 GREENVILLE, SC 29606-4185

Account Information

Online: yourwellsfargomortgage.com
 Fax: (866) 278-1179
 Telephone: (800) 416-1472
 Correspondence: PO Box 10335
 Des Moines, IA 50306
 Hours of Operation: Mon - Fri, 8 AM - 8 PM CT
 Loan Number: [REDACTED]
 Property Address: 400 Mills Avenue 301
 Greenville SC 29605

RE: Mortgage options available

Dear Lincoln E Simpson & Lynn D Simpson:

Thank you for taking the time to speak with us today. We at Wells Fargo Home Mortgage realize that this may be a difficult time for you, and we appreciate the opportunity to assist you.

We value you as a customer and have several options that may help you keep your home. However, in order for us to get started, we need additional financial information to determine what option is best suited for your situation.

Please gather all financial information related to your monthly income and expenses, and contact our office at the number provided above.

While we offer a complete line of solutions for continuing homeownership, we also recommend you seek guidance on all other debts from a community-based Consumer Credit Counseling Agency. To take advantage of this service, call (866) 857-3092 for additional information.

We're happy to have you as our customer and look forward to helping you with your financial needs. If you have any questions, please contact us at the number listed in the account information section of this letter.

Sincerely,

Wells Fargo Home Mortgage

10/01/10



Page 89

Together we'll go far





KNOWING YOUR OPTIONS

Important Notice to Occupants

Property Address: 400 Mills Avenue Unit 301 Greenville, SC 29605

Date of Notice: 01/17/2011

This property is now owned by Fannie Mae. If you are living in this property, you have several options. Fannie Mae has engaged a real estate agent to manage this property, and as an occupant of this property, to make you aware of some options that may be available. Please review the information within this notice thoroughly and contact the agent listed below immediately to advise of your intentions. If you have questions regarding your rights, you should seek the advice of an attorney – find attorneys in your area at www.findlegalhelp.org.

Option 1: Rent This Property

If you are renting this property, you might have the right to continue living in the property under your existing lease or tenancy. Many tenancies are protected by the *Protecting Tenants at Foreclosure Act of 2009* or other applicable law.

Fannie Mae also offers the following lease options to eligible occupants in eligible properties:

- 12-month term lease with relocation assistance at the end of the lease (no security deposit or credit check required)
- Month-to-month (no security deposit or credit check required)

Option 2: Relocate With Assistance

Renters and former borrowers might be eligible for financial relocation assistance to help cover expenses associated with moving. To qualify, you must:

- Sign an agreement with Fannie Mae to move out of the property
- Leave the property in broom-swept condition before you can receive payment

Next Steps – Contact Information

Call the agent listed below within 10 days to let us know if you wish to pursue either of the options described above or if you wish to purchase the property. If we do not hear from you within ten (10) days from the date of this notice, we will assume that you are not seeking any of these options, although failure to notify Fannie Mae within ten (10) days will not result in a waiver of any of your rights.

- If you communicate your desire to continue renting, a Property Manager will contact you within a few days to evaluate your lease options.
- Rent payments due should no longer be sent to the previous owner and should instead be paid to the Property Manager or the agent listed below.

Fannie Mae Assigned Real Estate Agent – Contact Information

Agent Name:	Amal Yeargin
Company Name:	Amal Yeargin Realty, Inc
Company Address:	335 Prado Way, Greenville SC 29607
Office Phone:	(864) 467-0680
Cell Phone:	
E-mail:	ayr@pipeline.com

If no agent contact information is provided here, or if you have any concerns regarding the broker or property manager assigned to manage your property, please call Fannie Mae at 1-800-732-6643



EXHIBIT F

WELLS FARGO HOME MORTGAGE
RETURN MAIL OPERATIONS
PO BOX 10368
DES MOINES IA 50306-0968



10/05/10



1MB 03899/003899/007178 0011 2 ACNMMKRLM117 708

LINCOLN E SIMPSON
LYNN D SIMPSON
400 MILLS AVE UNIT 301
GREENVILLE, SC 29605-4185

Account Information

Online: yourwellsfargomortgage.com
Fax: (866) 278-1179
Telephone: (800) 416-1472
Correspondence: PO Box 10335
Des Moines, IA 50306
Hours of Operation: Mon - Fri, 8 AM - 11 PM
Sat, 9 AM - 3 PM ET
Loan Number:
Property Address: 400 Mills Avenue 301
Greenville SC 29605

SUBJECT: Loan modification review in progress

Dear Lincoln E Simpson & Lynn D Simpson:

At Wells Fargo Home Mortgage, our goal is to ensure that you have every opportunity to retain your home. Based on our telephone conversation and the financial information you provided, we are considering a program that may assist you in bringing your loan current. This program, known as a loan modification, would provide you with the opportunity for a fresh start by adjusting the current terms of your loan. Please be advised this letter is not a guarantee or approval of the loan modification.

An initial payment of \$4200.00 must be received by 2010-10-15. *My representative on the phone*

~~If these funds are or have been collected during your conversation with one of our representatives, please disregard the above mentioned due date.~~

What's next?

We will complete an analysis of your situation and seek any necessary approvals. Based on your financial ability, the terms of your loan modification may change. We may add any remaining past due interest or escrow payments (taxes and insurance) to your outstanding loan balance and/or may extend the terms of your loan. If the loan modification is approved, you will receive additional information that explains the terms of the agreement.

Please be aware that until you are approved for a loan modification, your loan will remain in default status, including any foreclosure action that may be in process. ~~Foreclosure activity will not be suspended until you have returned the required initial payment.~~ You are responsible to pay any fees associated with this action that continue to accrue until your loan modification is approved.

The initial payment amount quoted above must be received in our office no later than the date requested. Once again, if the amount mentioned was collected during your conversation with the Wells Fargo representative please disregard. Please mail to:

Wells Fargo Home Mortgage
1200 W. 7th Street



100510LM11700010

Together we'll go far



04/11/10

LM117700

003899/007178/ACNMMKRLM117-ET-441-C001

Account Information

Loan Number: 0005770514

Property Address: 400 Mills Avenue 301
Greenville SC 29605Suite 2L-200
Los Angeles, CA 90017

We know your time is valuable. For your convenience, you may access our online Mortgage Payment Workout tool to track the progress of our review. Reduce the number of calls you have to make by simply logging into wellsfargo.com/assist. You will be asked to provide:

- The last four digits of your Social Security Number
- Your loan number (printed at the top of this letter)
- The zip code of your property
- Your home phone number
- Your current monthly mortgage payment amount

1622 29

If during the review process, additional information is needed, we will be contacting you to discuss. If you have questions or need further assistance, please contact us at the number listed in the account information section of this letter. We appreciate your prompt attention to this matter.

Sincerely,

Loss Mitigation**Wells Fargo Home Mortgage**

This communication is an attempt to collect a debt and any information obtained will be used for that purpose. However, if you have received a discharge of this debt in bankruptcy or are currently in a bankruptcy case, this notice is not intended as an attempt to collect a debt, and we have a security interest in the property and will only exercise our rights as against the property.

With respect to those loans secured by property located in the State of California, the state Rosenthal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.



EXHIBIT G



~~[REDACTED]~~

VICIN'S FARMERS MARKET
4030.00 10/15/10
not applied to increase.
10/14/2010 thru 11/10/2010

Interest

Number of days this statement period	28
Annual percentage yield earned	0.03%
Interest earned this statement period	\$0.01
Interest paid this statement period	\$0.01
Interest paid this year	\$0.28

<u>Number</u>	<u>Amount</u>	<u>Date</u>	<u>Number</u>	<u>Amount</u>	<u>Date</u>	<u>Number</u>	<u>Amount</u>	<u>Date</u>
4319	110.00	11/05	4349*	487.50	11/09	4356*	106.00	11/09
4346*	180.00	10/29	4351*	45.00	11/05	<u>Total</u>	<u>\$928.50</u>	

* Indicates a break in check number sequence

Date	Amount	Description
10/14		[REDACTED] 10/14
10/14	287.00	[REDACTED] 10/14 TEL
10/15		[REDACTED] 10/15
10/15	4,220.00	AUTOMATED DEBIT MORTGAGE PAYMENT EFT CO. ID. R952318940 101015 TEL MISC 0005770514
10/18		[REDACTED] 10/18
10/18		[REDACTED] 10/18
10/20		[REDACTED] 10/20
10/20		[REDACTED] 10/20
10/20		[REDACTED] 10/20
10/20		[REDACTED] 10/20
10/20	3,050.00	[REDACTED] 10/20
10/29		[REDACTED] 10/29
1/03		[REDACTED] 1/03

pd but
not applied
to nro?

NR0506319 005/81 313044135044 NNNN NNIN NNNNNNNNNNNNNNNNN

Other Withdrawals and Service Fees continued on next page.

EXHIBIT H

From: chloe2042 <[REDACTED]>
To: payoffreins <[REDACTED]>
Cc: toucalit.benton <[REDACTED]>
Sent: Wed, Jan 26, 2011 4:15 am
Subject: Fwd: Lincoln E. Simpson & Lynn D. Simpson ~ Wells Fargo Mortgage ~ case #10-CP-23-8152

*Rogers, Townsend & Thomas, PC
File No. 011784-16084*

Attn: Samuel C. Waters

Based on this email and attachments, I am asking that you work with your client, Wells Fargo Home Mortgage, to immediately reinstate this mortgage ~ so that there can be a resolution to this matter.

Regards,

Lynn Simpson

-----Original Message-----

From: chloe2042 <[REDACTED]>
To: toucalit.benton <[REDACTED]>
Sent: Wed, Jan 26, 2011 3:05 am
Subject: Lincoln E. Simpson & Lynn D. Simpson ~ Wells Fargo Mortgage ~ PMI Certificate #35739688

re: Wells Fargo Home Mortgage [REDACTED]

Toucalit Benton ~

Wells Fargo has been negligent and less than honest in their practices and communication with me regarding the Home Loan Modification, as you can see by the attachments that I have included with this email. The letter dated December 16, 2010 stating that 'there would be no foreclosure scheduled on the property for 30 days from that date as permitted by state law' ~ this was absolutely permitted by state law, but Wells Fargo was responsible for the decision with their lawyers. No matter how any times I called the lawyers or Wells Fargo questioning this, I was just referred back to the other and never given any answers ~ I was only led to believe with letters from Wells Fargo that they were working with me and I felt confident that I could believe and that they would be held responsible for what was sent to me in writing.

Even though I had a letter from PMI stating to call for assistance should I have a problem with Wells Fargo, I was told that PMI did not have an account listed with them. Therefore, any help that I would have received with PMI was not given to me. I am asking

for you to help me in any way to get this mortgage reinstated. I am also working with a lawyer to investigate the practices of Wells Fargo Home Mortgage, their lawyers, and anyone involved in this home mortgage process, and I am doing everything I can to have a right and just resolution. I will also be filing complaints with the appropriate government agencies. This is obviously a long and involved process, and I would hope that there could be some pressure on Wells Fargo to work with me.

Regards,

Lynn Simpson
864-616-6120

-----Original Message-----

From: chloe2042 <[REDACTED]>
To: jjeffers <[REDACTED]>
Sent: Fri, Jan 21, 2011 6:08 am
Subject: Fwd: Lynn Simpson ~ foreclosure on property ~ 400 Mills Avenue #301, Greenville, South Carolina 29605

Also in this attachmient ~ page 1 of the letter dated December 16, 2010.
Thank you so much ~ Lynn Simpson
phone # 864-616-6120

-----Original Message-----

From: chloe2042 <[REDACTED]>
To: jjeffers <[REDACTED]>
Sent: Thu, Jan 20, 2011 4:27 pm
Subject: Lynn Simpson ~ foreclosure on property ~ 400 Mills Avenue #301, Greenville, South Carolina 29605

Judge Charles B. Simmons Jr.

A copy of the letter sent from Wells Fargo Home Mortgage saying that they were working on other options for mortgage payments. It also says that there would be no foreclose scheduled for 30 days from the date of the letter 'as permitted by state law' ~ my problem was that neither the attorney's office nor Wells Fargo Home Mortgage could give me that information. The letter also states to call for further options with Wells Fargo within the 30 days. The date of the letter waas December 16, 2010. I also received a similar letter dated January 4, 2011 stating that there would be no forecloseure scheduled for 30 days from the date on the letter. I am also forwarding an email that I sent to the lawyers office today explaining the situation with the Wells Fargo Loan modification program. I have yet to get anything regarding a foreclosure from either the attorney or Wells Fargo. Please take into consideration the information that I am sending and respond with any advice that you have for me.

Regards,

Lynn Simpson

From: chloe2042 [REDACTED]
To: jjeffers [REDACTED]
Sent: Sun, Jan 23, 2011 5:41 am
Subject: Lynn D. Simpson ~ foreclosure 400 Mills Ave. #301 ~ Jan. 4th letter from Wells Fargo ~ stating
unable to do loan modification because property is CONDEMNED

Judge Charles B. Simmons, Jr.
re: Wells Fargo home mortgage #0005770514
foreclosure ~ 400 Mills Avenue #301, Greenville, South Carolina 29605
Lynn D. Simpson
phone # 864-616-6120

*Judy ~ This is the letter dated January 4th, 2011 received from Wells Fargo
stating*

*that the Home Mortgage Modification Loan was not able to be completed because
property is ~ CONDEMNED ~ yet this is the date of the foreclosure sale. It also
states that they will continue to work on other options. I contacted Wells Fargo
and was transferred to many different departments ~ there were no answers and
someone was supposed to get back to me ~ I have not received any phone calls
or letters from Wells Fargo ~ I also have not received anything regarding the
foreclosure from them.*

Thank you so much for your help with this ~

*Regards,
Lynn Simpson*

To: Rene Bell

Cc: wells Fargo [REDACTED]

Cc: toucalit.denton [REDACTED]

Cc: jon.leibowitz [REDACTED]

Subject: Re: Wells Fargo Home Mtg. 0005770514

Sent: Jan 20, 2011 11:39 AM

Since this has been the only form of communication that I have had any real form of communication from your law firm, I am asking you to please respond to me. Wells Fargo has told me that your office would be the source to give me an answer regarding the laws in the state of South Carolina as it pertains to the statement of 'no foreclosure being scheduled for 30 days from the date of the letter, December 16th while they were working on other options'. - I also received another letter from Wells Fargo on January 4th stating they were still looking into other options and no foreclosure would be scheduled for 30 days from that date - yet that was the very day your office proceeded with the foreclosure....this is unbelievable. Also, the very person that was supposed to put in for an extension of the foreclosure date when I talked to her two weeks before the date was scheduled never put in for that extension - I was informed of this when she did not respond to my phone calls and messages....at first I thought this was possibly because of the holidays....but finally after calling her and having someone else answer, I was told that she no longer worked there. The last conversation that I had with Wells Fargo was that your office could work with me regarding reversing the foreclosure and options for payments on my mortgage. Please respond to me as soon as possible - it would be best to come to some kind of a solution for all parties involved. I have said all along that I intend to stay in the property - it is my primary residence, and I have been asking for payment option from Wells Fargo for months.....they would not accept any payments on my mortgage during the loan modification process, which then became very far behind in monthly payments, even though I was willing to make those monthly payments, and that I had done all that was required of me by Wells Fargo. Even though I received letters from Wells Fargo to call for options available to me as soon as possible - when I called there were no options given, and I was told that I just had to wait for them to contact me. I never received any letter or contact regarding such options. An investigation into the practices of your office, as well as Wells Fargo Home Mortgage will be started, and I intend to do everything I can do to file the complaints with appropriate agencies to prove that the loan modification process and resulting foreclosure on this property were handled inappropriately and with negligence. Everything I have done to make a resolution to my home mortgage possible has been documented - as well as faxes sent and letters received from Wells Fargo Home Mortgage. I am asking that we work together with Wells Fargo to come to some kind of resolution. Please respond to me today - Lynn Simpson

-----Original Message-----

From: Rene Bell

To: [REDACTED]

Subject: Re: Wells Fargo Home Mtg.

Sent: Jan 13, 2011 8:31 AM

I am awaiting their response.

>>>

From: [REDACTED]

To: "Rene Bell" [REDACTED]

Date: 1/12/2011 12:33 PM

Subject: Re: Wells Fargo Home Mtg.

-----Original Message-----

To: Rene Bell
Subject: Re: Wells Fargo Home Mtg.
Sent: Jan 18, 2011 12:17 PM

there seems to have been plenty of time for them to have responded to you - please do all you can to get me an answer - thank you.

-----Original Message-----

From: Rene Bell
To: [REDACTED]
Subject: Re: Wells Fargo Home Mtg.
Sent: Jan 18, 2011 10:54 AM

They have acknowledged receipt, but have not responded as of yet.

>>>

From: [REDACTED]
To: "Rene Bell" <[REDACTED]>
Date: 1/18/2011 10:52 AM
Subject: Re: Wells Fargo Home Mtg.

I would appreciate hearing from you as soon as possible. I received a letter from Wells Fargo dated January 4th stating that they were continuing to work on other options for the loan....yet according to the attorney this is not the case. I need information please - Lynn Simpson
Sent from my Verizon Wireless BlackBerry

-----Original Message-----

From: "Rene Bell" <[REDACTED]>
Date: Thu, 13 Jan 2011 08:31:15
To: <[REDACTED]>
Subject: Re: Wells Fargo Home Mtg.

I am awaiting their response.

>>>

From: [REDACTED]
To: "Rene Bell" <[REDACTED]>
Date: 1/12/2011 12:33 PM
Subject: Re: Wells Fargo Home Mtg.

I have not heard anything further. As I mentioned Wells Fargo had sent me a letter on December 16th stating that they were not able to do a loan modification, but they would inform me separately of other options. There was to be no foreclosure date set during a 30 day period from the date of the letter if permitted by state law. I was told by the office of Rogers Townsend & Thomas that it was permitted in the state of South Carolina - yet that did not happen. I had Wells

Fargo fax a copy of this letter that was sent to me, and I never heard anything further. The person working with me was not responding to my phone calls, and it was not until January 4th that I was told she no longer worked there. Wells Fargo has told me to contact you regarding options for payment, and that you should be able to work with me on this. I have made phone calls to your office and have also sent these emails and have not had any further response. Please contact me as soon as possible....email is so far the only communication at all that I have received. I feel that I was misled by Wells Fargo in them telling me that they had everything they needed from me and would work with me on options for payments - Lynn Simpson
Sent from my Verizon Wireless BlackBerry

-----Original Message-----

From: "Rene Bell" <[REDACTED]>
Date: Tue, 11 Jan 2011 10:58:02
To: <[REDACTED]>
Subject: Re: Wells Fargo Home Mtg.

I will be glad to have our attorney review your email and get back with our client regarding it.

Our office represents the Plaintiff in this action and cannot offer you any legal advise.

>>>

From: <[REDACTED]>
To: "Rene Bell" <[REDACTED]>
Date: 1/11/2011 10:41 AM
Subject: Re: Wells Fargo Home Mtg.

I don't understand and was told by the attorneys office that the law applied to South Carolina. The letter also stated that I had 30 days from the date of the letter to contact you and that Wells Fargo was still working on options for me and would be in contact with me. The person working with me at the attorneys office is no longer there, and she was supposed to have put in an extension for me at their office. So far, what I have been told or letters I have been sent by Wells Fargo has not happened - what recourse do I have with this.
Sent from my Verizon Wireless BlackBerry

-----Original Message-----

From: "Rene Bell" <[REDACTED]>
Date: Tue, 11 Jan 2011 10:16:30
To: <[REDACTED]>
Subject: Wells Fargo Home Mtg.

Please be advised that WF has advised our office that the sale was not to be canceled.

From: Lynn Simpson <[REDACTED]>
To: <[REDACTED]>
Date: 1/3/2011 10:17 PM
Subject: re: Wells Fargo Home Mtg.

EXHIBIT I

WELLS FARGO HOME MORTGAGE
RETURN MAIL OPERATIONS
PO BOX 10368
DES MOINES IA 50306-0368



01/04/11

1MB 03637/003637/008555 0010 2 ACNQJSLM706 708

LINCOLN E SIMPSON
LYNN D SIMPSON
400 MILLS AVE UNIT 301
GREENVILLE, SC 29605-4185

Account Information

Online: yourwellsfargomortgage.com
Fax: (866) 278-1179
Telephone: (800) 416-1472
Correspondence: PO Box 10335
Des Moines, IA 50306
Hours of Operation: Mon - Fri, 8 AM - 11 PM
Sat, 9 AM - 3 PM-CT
Loan Number: [REDACTED]
Property Address: 400 Mills Avenue 301
Greenville SC 29605

Subject: Home Affordable Modification Program

Dear Lincoln E Simpson & Lynn D Simpson:

We're writing to provide you with the results of our efforts to find a solution that might help with the mortgage payment challenges you're facing.

Decision on the Federal Government's Home Affordable Modification Program

Unfortunately, after carefully reviewing the information you've provided, we are unable to adjust the terms of your mortgage through the Home Affordable Modification Program because your property is condemned.

We will review your loan for alternative loss mitigation options and notify you separately of the results of that review. You may contact us at the number listed in the account information section if you wish to discuss any of these solutions.

Additional assistance is available

If monthly expenses other than your mortgage payment are creating part of your financial strain, we encourage you to contact a HUD-approved, non-profit, community based Credit Counseling agency who can work with you, at no charge, to lower your monthly payments. You can find a local agency by calling (800) 569-4287 or call the HOPE Hotline Number at (888) 995-HOPE. A counselor will work closely with you, take your financial circumstances into consideration, create a budget plan that may work for you and provide assistance in understanding the Borrower Notice by asking for Making Home Affordable HELP.

Be sure you avoid anyone who asks for a fee for counseling or a loan modification, or asks you to sign over the deed to your home, or to make your mortgage payments to anyone other than Wells Fargo Home Mortgage.



WFM304P
1M089701
003637/003637/008555 ACNQJSLM706 708



010411LM70600001

Together we'll go far



Account Information

Loan Number: [REDACTED]

Property Address: 400 Mills Avenue 301
Greenville SC 29605

If you have any questions about the decision we've made on your mortgage request, please call a Wells Fargo Home Mortgage representative today at the number listed in the account information section. We'd also like to hear from you if any of your circumstances have changed, or if you can provide us with additional information for consideration.

Sincerely,

Ben Windust

Ben Windust
Senior Vice President
Wells Fargo Home Mortgage

This communication is an attempt to collect a debt and any information obtained will be used for that purpose. However, if you have received a discharge of this debt in bankruptcy or are currently in a bankruptcy case, this notice is not intended as an attempt to collect a debt and, this company has a security interest in the property and will only exercise its rights as against the property.

With respect to those loans in the state of California, the state Rosenthal Fair Debt Collection Practices Act and the Federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is Office of the Comptroller of the Currency, Customer Assistance Group, 1301 McKinney Street, Suite 3450, Houston, TX 77010-9050.

If you reside in the state of New York and if you believe the loss mitigation request has been wrongly denied, you may file a complaint with the New York State Banking Department at 1-877-BANK-NYS or www.banking.state.ny.us.

Wells Fargo Home Mortgage is a division of Wells Fargo Bank, N.A. ©2009 Wells Fargo Bank, N.A. All rights reserved.



010411LM70600001

LH706 704

004317/00538 ACHD/S SI-ET-MI-C001

EXHIBIT J

ROGERS TOWNSEND & THOMAS, PC

ATTORNEYS AND COUNSELORS AT LAW

Samuel C. Waters

tel 803-227-7700

mail PO Box 100200

web www.rtt-law.com

Columbia, South Carolina 29202

714580-00698

NOTICE TO VACATE PROPERTY

TO: All occupants residing at: 400 Mills Avenue, Unit 301, Greenville, SC 29605

NOTICE IS HEREBY GIVEN THAT Federal National Mortgage Association, or its predecessor in interest, purchased the property located at 400 Mills Avenue, Unit 301, Greenville, SC 29605 (the "Premises") at the foreclosure sale held on January 4, 2011 by the Master in Equity for Greenville County.

NOTICE IS FURTHER GIVEN THAT

Within TEN (10) of the date of this Notice, if you are any person who is not a bona fide tenant or subtenant, you are required to vacate and surrender possession of the Premises or the portion in which you reside, to Federal National Mortgage Association, through Amal Yeargin, its agent, who can be reached at 864-467-0660 from 9:00 a.m. to 5:00 p.m. on all business days, unless you provide evidence that you are a bona fide tenant pursuant to Section 702(a)(2)(A) of the federal "Protecting Tenants at Foreclosure Act of 2009" ("PTFA") or are protected by Section 703 of the PTFA. Please see the Addendum of this Notice for instructions on how to deliver this evidence.

If within the applicable period as set forth above, EITHER if you fail to surrender possession OR if you fail to provide evidence you are a bona fide tenant pursuant to Section 702(a)(2)(A) of the PTFA or are protected by Section 703 of the PTFA, Federal National Mortgage Association, will commence eviction proceedings against you to recover possession of the Premises.

If you can provide evidence that you are a bona fide tenant, your continued use of the property is contingent upon your making timely rental payments to the new owner or its agent until you actually vacate the property. Your former landlord is no longer entitled to collection of the rental payments. You will be contacted shortly with instructions detailing where to forward your payments. Return of your security deposit is not the obligation of Federal National Mortgage Association.

Fannie Mae previously delivered its "Knowing Your Options" Document to you. Fannie Mae has either not received a response from you or has not received information that you are entitled to additional protections under the Protecting Tenants at Foreclosure Act of 2009. If you did not receive Fannie Mae's "Knowing Your Options" Document or your

believe you are entitled to additional protections under state or federal law, please contact this office immediately.

Dated January 19, 2011

Rogers Townsend & Thomas, PC
By: Samuel C. Waters

EXHIBIT K



Return Mail Operations
P.O. Box 103
Des Moines, IA 50306-0368

February 18, 2011

002977 1 MB 0.382 2877/002177/007758 013 01 AC044K WC116 708

Lincoln E Simpson
Lynn D Simpson
400 Mills Ave Unit 301
Greenville SC 29605-4185



Dear Lincoln E Simpson & Lynn D Simpson :

RE: Loan Number [REDACTED] Client 708

I have received your inquiry regarding your loan. Addressing the concerns of our homeowners is vital to our success as a mortgage servicing company. Thank you for your feedback.

Currently, the issues raised in your correspondence are under review and appropriate action will be taken once our research has been completed. Your patience is appreciated. You can expect a response as soon as the necessary loan information has been received.

Our goal is to provide you with superior, personalized service in a timely manner. If you have any questions during our time of research, please call me toll-free at (877) 501-0871, extension 44465, Monday through Friday, 8 AM to 5 PM, Central Time.

Sincerely,

Jerilynn Frerichs
Written Customer Contact

as of August 4, 2011 -
there has been no communication
from Wells Fargo Home Mortgage.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
WELLS FARGO BANK, N.A.,	)	CIVIL ACTION NO.: 2010-CP-23-8152
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LYNN D. SIMPSON; WELLS FARGO	)	
BANK, NA (Charlotte, NC); THE LOFTS	)	
AT MILLS MILL CONDOMINIUM	)	
OWNERS ASSOCIATION, INC.,	)	
	)	
Defendants.	)	

FILED
CLERK OF COURT
GREENVILLE, SC
2012 OCT 26 PM 4:23

CERTIFICATE OF SERVICE

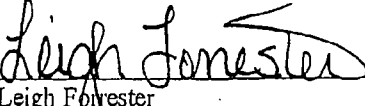
I hereby certify that, on this 26th day of October, 2012 a copy of *Notice of Substitution of Counsel for Defendant Lynn D. Simpson and Defendant Lynn D. Simpson's Motion for Relief From Order of Foreclosure and Sale* was served upon the below stated parties via United States Postal Service with sufficient first class postage affixed thereto and addressed as follows:

Rogers Townsend & Thomas, PC.
Attn: Benjamin J. Powell
Post Office Box 100200
Columbia, SC 29201

Wells Fargo, NA (Charlotte, NC)
1703 Laurel Street
Columbia, South Carolina 29201

The Loft at Mills Mill Condominium Owners Association, Inc.
827 S Pleasantburg Drive
Greenville, SC 29607

LAW OFFICE OF MARCUS W. MEETZE, LLC


Leigh Forrester

Paralegal to: Marcus W. Meetze
712 E. Washington Street
Greenville, South Carolina 29601
T: 864-271-3555
F: 864-242-4885

October 26, 2012

Page 1 of 2

Robin Bader

From: Robert Davis
Sent: Wednesday, October 31, 2012 11:08 AM
To: Robin Bader
Subject: FW: Wells Fargo v. Lynn D. Simpson (2010-23-8152)
Attachments: image001.jpg; image002.jpg; Clocked Motion.102612.pdf.pdf
Categories: FAX/EMAIL

Robin, please process as urgent. Sale is this coming Monday. Thanks.



Robert Davis
Associate

Direct 803.744.5219
Fax 803.343.7013

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Main 803.771.7900
Visit rft-law.com

From: Marcus W. Meetze [<mailto:wes@meetzelaw.com>]
Sent: Wednesday, October 31, 2012 11:00 AM
To: Robert Davis; 'Kimbrell, Karen'
Cc: robert@lanuariolaw.com
Subject: RE: Wells Fargo v. Lynn D. Simpson (2010-23-8152)

A copy of the motion and Notice of Substitution of Counsel was served on Plaintiff on Fri. as indicated in the attached Certificate of Service. I have included an electronic copy to this message.

My firm has been substituted as counsel for Mr. Ianuario and he is no longer associated with this matter. I will let Mr. Ianuario confirm by email.

With kind regards,

Wes Meetze
Law Office of Marcus W. Meetze, LLC

712 E. Washington St.
Greenville, South Carolina 29601
Phone: (864) 271-3555
Fax: (864) 242-4885
Email: wes@meetzelaw.com

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CIRCULAR 230 DISCLOSURE: To comply with Treasury Department regulations, we inform you that, unless otherwise expressly indicated, any tax advice contained in this communication (including any attachments or enclosures) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed under the Internal Revenue Code or any other applicable tax law, or (ii) promoting, marketing or recommending to another party any entity, investment, plan, transaction, arrangement, or other tax related matter.

From: Robert Davis [<mailto:ROBERT.DAVIS@rtt-law.com>]
Sent: Wednesday, October 31, 2012 10:11 AM
To: Kimbrell, Karen; Marcus W. Meetze (wes@meetzelaw.com)
Cc: robert@lanuariolaw.com
Subject: RE: Wells Fargo v. Lynn D. Simpson (2010-23-8152)

Hi Karen,

I checked my file and I do not see that we have received a copy of a motion from Mr. Meetze. If he is able to scan and email a copy of the motion to me, I would appreciate it. Also, from reviewing my file, I see that attorney Robert Ianuario is counsel of record for Ms. Simpson, so I have copied him on this email.

I am available anytime today or tomorrow.

Best wishes,

Rob



Robert Davis
Associate

Direct 803.744.5219
Fax 803.343.7013

Rogers Townsend & Thomas, PC
220 Executive Center Dr.
Columbia, SC 29210

Main 803.771.7900
Visit rtt-law.com

From: Kimbrell, Karen [<mailto:kkimbrell@greenvillecounty.org>]
Sent: Wednesday, October 31, 2012 8:57 AM
To: Robert Davis
Subject: FW: Wells Fargo v. Lynn D. Simpson (2010-23-8152)
Importance: High

Robert,

Sorry to forward this to you, but Mr. Powell's email was kicked back to me.

Do you know who could handle this conference call ASAP?

Thank you very much for your assistance in this!!

Karen K. Kimbrell
Administrative Docketing Clerk
Judge Charles B. Simmons, Jr.
Master-In-Equity for Greenville County
Direct Dial 864-467-8258 / Fax 467-8401

From: Kimbrell, Karen
Sent: Wednesday, October 31, 2012 8:45 AM
To: 'bpowell@rtt-law.com'; 'Marcus W. Meetze'
Subject: Wells Fargo v. Lynn D. Simpson (2010-23-8152)
Importance: High

Good morning,

Judge Simmons is in receipt of Mr. Meetze's Motion for Relief in the above case.

As it is set for sale on Monday, the Judge would like to have a conference call in the matter today or Friday.

He is available for a call this morning at 11:00, 4:00 this afternoon or 1:00 tomorrow.

Please check your respective calendars ASAP so we can get this set.

Thank you.

Karen K. Kimbrell
Administrative Docketing Clerk
Judge Charles B. Simmons, Jr.
Master-In-Equity for Greenville County
Direct Dial 864-467-8258 / Fax 467-8401

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NOTICES

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

IRS CIRCULAR 230 DISCLOSURE: *To ensure compliance with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties that may be imposed by the IRS or to promote, market or recommend to any party any tax-related matter addressed herein. In addition, if any such tax advice is used or referred to by other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, then (i) the advice should be construed as written in connection with the promotion or marketing by others of the transaction(s) or matter(s) addresses in this communication and (ii) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.*

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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

Case Number: 2010-CP-23-08152

COURT OF APPEAL NUMBER: 2012-213505

Wells Fargo Bank, N.A..... Respondent

v.

Lynn D. Simpson..... Appellant

EXHIBIT I –November 5, 2012 Order

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Wells Fargo Bank, NA,

Plaintiff,

v.
Lynn D. Simpson; Wells Fargo Bank, NA
(Charlotte, NC); The Lofts at Mills Mill
Condominium Owners Association, Inc.;

Defendant(s).

(011784-16048)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-23-8152

ORDER DENYING DEFENDANT'S MOTION
FOR RELIEF FROM ORDER OF
FORECLOSURE AND SALE.

Pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure* ("SCRCP"), this matter was referred to me with finality to enter judgment in the case. On December 3, 2010, a Judgment of Foreclosure and Sale was issued. The subject property was then sold by the court on January 4, 2011. Subsequently, on motion of the Defendant Simpson asserting defects in Plaintiff's service of process, I found in my Order of April 14, 2011, that service was proper and that the Judgment should not be vacated, but that, in an abundance of seeking to allow Ms. Simpson yet another opportunity to resolve the issues with Plaintiff, the judicial sale should be set aside. The Court then instructed Plaintiff to communicate with Defendant Simpson about available loss mitigation options.

On August 1, 2012, some 15 months after the Order of April 14, 2011, Plaintiff's counsel certified Plaintiff's compliance with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011, regarding Foreclosure Intervention (the "FI Administrative Order"), and a further hearing was noticed and held on September 25, 2012. At that hearing, despite being given notice, neither Simpson nor her counsel appeared. As a result, the court entered its Supplemental Order Post Judgment on or about September 28, 2012, and scheduled a new foreclosure sale of the subject property for November 5, 2012.

On or about October 26, 2012, the Defendant Simpson, through counsel, filed the present Motion for Relief from Order of Foreclosure and Sale. On October 31, 2012, my office contacted counsel for the parties and requested the parties be available for a conference call. On October 31, 2012, at 4:00 PM, the court conducted a telephone hearing on the motion. Participating in the telephone hearing were: Marcus

W. Meetze, attorney for the Defendant Simpson; and Robert P. Davis, one of the attorneys for Plaintiff. No Court Reporter was present.

SCRCP Rule 60(b)(5), provides that relief from a judgment may be had, *inter alia*, when "it is no longer equitable that the judgment should have prospective application." This is the stated basis of Simpson's present motion. Rule 60 goes on to require that "[t]he motion shall be made within a reasonable time"

I have reviewed and considered the motion, the exhibits attached thereto, the record in this case, the law, the equities, and the arguments of counsel for both the Defendant Simpson and Plaintiff. Based on my review, I find that the Defendant Simpson failed to bring the instant motion within a reasonable time. In reaching this conclusion, I note the fact that all of the information shown by the exhibits attached to Simpson's present motion appears to have been in her possession and known to her since at least February of 2011.

In response to the Court's inquiry into the delay in filing the instant motion, Defendant Simpson offered the following reasons: (a) the Court had previously denied her Motion for Relief from Order and although it set aside the sale, she was never allowed to present the numerous affirmative defenses and counterclaims she alleges, based on the entry of the Order of Default, and (b) for several months Defendant Simpson was in active negotiations with Plaintiff and Plaintiff's counsel regarding loss mitigation efforts and submitted all requested documents in a timely fashion (c) the FI Administrative Order provides that foreclosure actions concerning Owner-Occupied dwellings are stayed during the Foreclosure Intervention process as those terms are defined in that order, preventing Defendant from raising the issues in the instant motion, but that once the Denial of Foreclosure Intervention was issued, she timely filed the instant motion.

In response to the Court's inquiry as to why Defendant failed to attend or participate in the September 25, 2012, hearing, Defendant alleged she and her former counsel failed to receive Notice. In addition, Defendant alleged she was unaware of the previous Order setting aside the sale and noted that the records of Greenville County currently reflect that the property that is the subject of the above-captioned matter is currently titled in the name of Plaintiff. I find these arguments without merit. As established by a review of the record, notice of the September 25, 2012 hearing was mailed to counsel for Ms. Simpson, as well as a copy of the Order resulting from that hearing.

Plaintiff argued that the basis for Defendant Simpson's motion appears to be her allegation that Plaintiff engaged in misconduct and that this alleged misconduct prevented Simpson from presenting her defenses to the foreclosure claim. Plaintiff explained that Simpson's allegations, the truth of which Plaintiff denies, appear to more appropriately viewed within the definition of "fraud, misrepresentation, or other misconduct of an adverse party" which can form a basis for relief from a judgment under SCRCP



Rule 60(b)(3). Rule 60, however, provides that a motion for relief under Rule 60(b)(3) may not be made "more than one year after the judgment . . . was entered" Plaintiff argued that these allegations do not support the granting of relief under Rule 60(b)(5), and that even considered under the meaning of Rule 60(b)(3) relief may not be granted because the one year time limit had expired long before Simpson brought the present motion.

With respect to Simpson's argument concerning the effect of the stay imposed by the FI Administrative Order, I find that the stay contemplated by that order applies primarily to "proceedings" in pending foreclosure litigation. One definition of "proceedings" is "[t]he regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment" *Black's Law Dictionary* 1241 (Bryan A. Garner ed., 8th ed., Thomson West 2004). I find this definition of "proceedings" to be what the Supreme Court intended in its FI Administrative Order. Had the Supreme Court intended that the FI Administrative Order provide additional time or opportunities for a defendant to seek relief from a final judgment, then the Supreme Court would have said so. I find no such language in the FI Administrative Order. In fact, the FI Administrative Order appears to me to provide merely that in the case of an action in which an "order of foreclosure has been entered [on or before May 9, 2011], before any foreclosure sale" that the Mortgagee shall comply with the requirement of the FI Administrative Order. Thus, the stay imposed in a foreclosure case in which judgment had been entered before May 9, 2011, appears to mean simply a postponement of the foreclosure sale to allow the parties one final opportunity to "insure that eligible homeowners and lender-servicers have been afforded the benefits of loan modification or other loss mitigation where possible." The FI Administrative Order does not appear to contemplate that the finality of judgments entered prior to May 9, 2011, would be affected by its terms. I therefore find that Simpson's time to make a motion under Rule 60(b)(3) ran from December 3, 2010 through December 5, 2011 (December 3, 2011, being a Saturday), and that relief under Rule 60(b)(3) was therefore unavailable to her after December 5, 2011. This one year time limit having expired, the court is not required to analyze the application of Rule 60(b)(3) to the alleged facts Simpson has asserted, and I therefore make no findings in that regard.

My analysis of the FI Administrative Order with regard to the time to make a motion under Rule 60(b)(3) also informs my analysis of the "reasonable time" standard which applies to Rule 60(b)(5). I find that Simpson's time to make a 60(b)(5) motion was not tolled by the Foreclosure Intervention process, and that the time during which the matter was stayed for Foreclosure Intervention should also be considered as part of Simpson's delay in seeking relief under Rule 60(b)(5). One of the ancient maxims of equity reminds us that "Equity aids the vigilant, not those who slumber on their rights." Simpson's own conduct, in delaying until this late date to seek relief, as well as her failure to attend the September 25, 2012, update hearing, support the conclusion that it would be inequitable to award her the relief that she

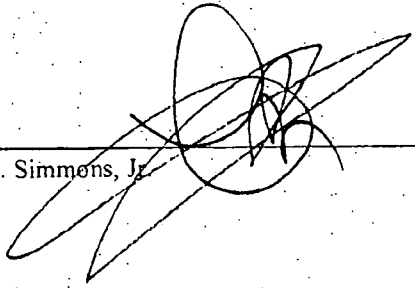


seeks. Taking into consideration all the facts of this case, I conclude that Ms. Simpson's delay amounts to an unreasonable amount of time to wait to seek relief, and I decline to grant her the relief which she now seeks.

Additionally, I am denying Defendant's request, pursuant to Rule 62(b) of the South Carolina Rules of Civil Procedure, to delay the execution of the judgment in the above-captioned matter. Under the unique facts of this case, it is simply too late in the process to yet again delay the sale.

For the above reasons, the Defendant Simpson's Motion for Relief from Order of Foreclosure and Sale is DENIED.

AND IT IS SO ORDERED.



Charles B. Simmons, Jr.

Greenville, South Carolina.

11 5, 2012

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP2308152

Wells Fargo Bank Na vs. Lynn D Simpson

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

NOTICE

This is a notice to you that an **Order Denying Def's Mtn for Relief fm Order of Frelsr & Sale** in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to lbobo@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 6th day of November, 2012.

Court Reporter:

PRESIDING JUDGE -

Benjamin James Powell 1426 North 3Rd Street
Suite 200 Harrisburg, PA 17102

Robert Eugene Ianuario 419 Vardry St. Greenville,
SC 29601
Marcus Wesley Meetz 712 E. Washington St.
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
Clerk of Court

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master in Equity

Case Number: 2010-CP-23-08152

COURT OF APPEAL NUMBER: 2012-213505

LYNN D. SIMPSON, APPELLANTS

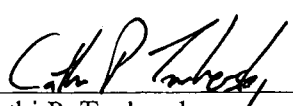
vs.

WELLS FARGO BANK, N.A., RESPONDENT

PROOF OF SERVICE

I certify that I have served the ^{mailing} Motion to Dismiss Appeal ^{United States mail} on Marcus W. Meetze, Esquire, attorneys for the Appellant, by ~~hand delivering~~ a copy of it via ~~courier~~ addressed attorney Meetze at Law Office of Marcus W. Meetze, LLC, 712 E. Washington Street, Greenville, SC 29601 and upon Wells Fargo's attorney of record, Benjamin James Powell, Esquire, Rogers Townsend & Thomas, PC, P. O. Box 100200, Columbia, South Carolina 29202 via United States mail.

This 17th day of January, 2013


Cathi P. Tankersley
Paralegal to S. Sterling Laney, III and
Jana Baker

*Signed with permission by
Todd Mathis*

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January 17, 2013

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeal
P. O. Box 11629
Columbia, SC 29211

Re: *Lynn D. Simpson v Wells Fargo Bank, N.A.*
Court of Appeals Number: 2012-213505

Dear Madame Clerk:

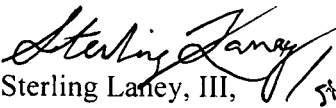
Enclosed for filing, please find an original and six (6) copies of Wells Fargo's Motion to Dismiss Appeal for the above-referenced matter. Please file and return a clocked-in copy to us via our courier.

By copy of this letter we are serving all counsel of record with a copy of the same.

If you have any questions or need anything further regarding this matter, please do not hesitate to contact my office.

With kind regards, I remain

Very truly yours,


S. Sterling Laney, III,

signed with permission by MTC

/cpt

Enclosure (as stated)

cc: Marcus W. Meetze, Esq. (w/encl) - via ~~Hand Delivery~~ *US Mail*
Benjamin J. Powell, Esq. (w/encl.) - via US Mail