

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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MAR 23 2015

SC Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

S. Jackson Kimball, Special Circuit Judge

Case No. 2007-CP-46-04305

SunTrust Mortgage, Inc.,.....Respondent,

v.

Mark Ostendorff,.....Appellant.

RECORD ON APPEAL

Mark Ostendorff
135 Cedar Creek Circle
Central, SC 29630
(864) 640-3340
Appellant, Pro Se

Brian S. Tatum
Tatum Law Firm
PO Box 11250
Charlotte, NC 28220
(704)307-4350
Attorney for Respondent

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF York

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS FILED-RECEIVED CASE NO. 2007-CP-46-4305

SunTrust Mortgage, Inc.

2013 OCT -9 AM 9:26 Mark Ostendorff

PLAINTIFF(S)

DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

DEFENDANT(S)

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), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; 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:

Dated at York, South Carolina, this 9th day of October, 2013.


PRESIDING JUDGE

This judgment was entered on the 1st day of October 2013, and a copy mailed first class this 9 day of Oct, 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

Brian S. Tatum
PO Box 11250
Charlotte, NC 28220
ATTORNEY(S) FOR PLAINTIFF

Mark Ostendorff, pro se
137 King Street
Central, SC 29630
ATTORNEY(S) FOR DEFENDANT

CLERK OF COURT

STATE OF SOUTH CAROLINA

FILED-RECEIVED

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK
SunTrust Mortgage, Inc.,

2013 OCT -9 AM 9:26

CASE NO.: 2007-CP-46-4305

Plaintiff(s)

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

vs.

Mark Ostendorff,

**ORDER AND JUDGMENT OF
FORECLOSURE AND SALE
Deficiency Demanded**

Defendant(s).

Appearances: Brian S. Tatum, Plaintiff's Attorney
Rich Willits, VP at SunTrust Mortgage, Inc.
Mark Ostendorff, Defendant pro se

Pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), this matter was referred to me to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment in the cause. Any appeal from this Report of Judgment of Foreclosure and Sale shall be directly to the South Carolina Court of Appeals.

Hearing was held, attended by attorneys of record and testimony was taken, which is reported herewith. From the testimony and evidence I conclude as follows:

FINDINGS OF FACT

1. The Amended *Lis Pendens* was filed on November 30, 2007.
2. The Amended Summons and Complaint was filed on November 30, 2007.
3. Service was made upon the Defendants named in this Report as shown by the Affidavits of Service filed herein.
4. All Defendants were notified of the time, date, and place of hearing in this matter, as evidenced by the Affidavits of Service filed herein.

Handwritten initials/signature

5. For value received, Mark Ostendorff (hereinafter referred to as the "Mortgagor(s)") made, executed and delivered a Note, dated March 29, 2006, promising to pay to the order of SunTrust Mortgage, Inc. the sum of \$400,000.00, with interest at the rate of 6.74% per annum.

6. To better secure repayment of the Note the Mortgagor(s) made, executed, and delivered to SunTrust Mortgage, Inc. a Mortgage dated March 29, 2006, covering real property which is located in York County. The Mortgage was recorded on August 28, 2007 in the Office of the Register of Deeds/Clerk of Court for York County in Book 07985 at Page 00302.

7. The recorded Mortgage constitutes, and is, a First lien on the subject property.

8. The title holders of record of the subject property as of the filing of the *Lis Pendens* in this action were Mark Ostendorff, the original mortgagors.

9. The Note and Mortgage contain the following terms and conditions:

a. The Plaintiff shall be entitled to receive on the first day of each and every month installment payments which are amortized over the period of time which is set forth therein and in the event of a default in payment of any monthly installment the Plaintiff is entitled, after first giving thirty (30) days prior notice, to accelerate the entire indebtedness and to demand payment thereof without further notice.

b. The Plaintiff shall be entitled to receive late charges for any monthly installment payment which is overdue.

c. The Mortgagor(s) shall be required to provide insurance to protect against loss to the property and certain minimal escrow funds shall be established and maintained with the Plaintiff for the purpose of paying for such insurance.

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d. The Mortgagor(s) shall be required to pay for all costs of property taxes assessed by governmental authorities and certain minimal escrow funds shall be established and maintained with the Plaintiff for the purpose of paying such taxes.

e. The Mortgagor(s) shall, at the Plaintiff's option, be required to provide mortgage insurance to protect the Plaintiff's interest in securing repayment of the mortgage loan and certain minimal escrow funds shall be established and maintained with the Plaintiff for the purpose of paying for such insurance.

f. The Plaintiff is entitled to be reimbursed for all expenses which it shall incur in pursuing the remedies to which it is entitled in the event of a default by the Mortgagor(s), including reimbursement of its reasonable attorney's fees and costs of title evidence.

g. The Mortgage is NOT owned, securitized or guaranteed by Fannie Mae, Freddie Mac or by a servicer participating in the Home Affordable Modification Program (HMP), and is not subject to modification under the HMP for the following reason(s): The property is vacant.

10. Payment due on the Mortgage Note has not been made, the Plaintiff's prospects for repayment have been significantly impaired and the Plaintiff has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney of record herein for collection.

11. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a unique area of practice); the time involved in reviewing the various loan documents; performing the title search; preparing the pleadings; and preparing for, and attending, hearings; the professional standing of Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the

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Plaintiff, I find that the sum of \$13,420.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond a reasonable time. In such event the Plaintiff may apply to this Court for such additional expenses of collection and attorney's fees as may be reasonable under the circumstances.

12. The amount due and owing on the note and mortgage, with interest at a rate provided in the note, and other costs and expenses of collection, including attorney's fees, secured by the note and mortgage, is as follows:

Payoff good through 10/01/2013:

Principal	393,042.10
Interest	170,302.99
Taxes	17,390.72
BPO	975.00
Atty fees	13,420.00
Total	\$595,130.81

Reinstatement good thru 10/01/2013:

Interest	170,302.99
Taxes	17,390.72
BPO	975.00
Atty fees	13,420.00
Total	\$202,088.71

13. If the amount of interest which is set forth in paragraph 12 (b) above is not calculated through the date of this judgment, the Plaintiff is entitled to such additional interest as shall accrue on the principal indebtedness at the rate of 6.75% per annum from the date to which it is calculated in this judgment order up through the date of this judgment order and shall be

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added to the above stated "Total Indebtedness" to comprise the amount of judgment indebtedness determined and entered herein.

14. Interest after the date of Judgment shall accrue at the legal rate.

15. The Plaintiff reserves the right to a personal or deficiency judgment pursuant to S. C. Code Ann. Section 29-3-660 (1976).

16. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set herein, or some part thereof, but Plaintiff alleges that such interests or liens are junior or subordinate to the lien of the Plaintiff's Mortgage, or do not attach to the property which is the subject of this action, or have been paid in full and not satisfied of record. Said liens or interests are of record in the Register of Deeds or Clerk of Court and are described as follows:

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, I conclude the following:

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

2. There is due to the Plaintiff on its note and mortgage the sum of \$ 595,130.81, representing the Total Indebtedness which is due to the Plaintiff as set forth in paragraph 12 of the Findings of Fact, together with interest thereon at the rate provided in the Note to the date hereof as set forth in paragraph 13 of the Findings of Fact, which shall, and hereby does, constitute the total judgment debt due to the Plaintiff. Interest after the date of judgment shall accrue at the legal rate.

3. The Defendant(s) liable for the aforesaid mortgage debt shall, prior to the date and time of sale of the subject property, hereinafter described, pay to Plaintiff, or the Plaintiff's

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attorney, the amount of the Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. On default of payment by the Defendant(s) liable for the Mortgage debt prior to the date and time of the sale, the mortgaged premises, hereinafter described, shall be sold by the undersigned at public auction, at the York County Courthouse, in the City of York, County and State aforesaid, on some convenient sales day hereafter, on the following terms:

A. FOR CASH: The undersigned shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in the case of non-compliance within thirty (30) days the same to be forfeited and applied to the costs and then to the Plaintiff's debt.

B. Interest on the balance of the bid shall be paid to the date of compliance at the legal rate.

C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record and the following senior encumbrances and liens:

D. The purchaser to pay for the deed and the cost of recording the deed.

5. If the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay the undersigned only the amount of the costs and expenses, crediting the balance of the bid against the Plaintiff's indebtedness.

6. Plaintiff is entitled to a deficiency judgment as set forth herein in the event the proceeds of the sale are insufficient to satisfy the indebtedness.

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7. The undersigned shall, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and shall execute to the purchaser, or purchasers, a deed to the premises sold.

8. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale.

9. Upon such sale being made, should the successful bidder, or his assignee, fail to comply with the terms thereof within thirty (30) days after the date of sale, then the undersigned may re-advertise the premises for sale on the next, or some subsequent, sales day, at the risk of the highest bidder, and so from time to time thereafter until full compliance shall be secured.

10. If the Plaintiff, or a representative of the Plaintiff, shall not be present at the sale, this Court shall postpone the sale to the next available sale date.

11. The undersigned shall apply the proceeds of the sale as follows:

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

NEXT: To the payment of the Plaintiff, or the Plaintiff's attorney, of the amount of the Plaintiff's indebtedness or so much thereof as the purchase money will pay against the same;

NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRPC.

12. Each Defendant named herein, and all persons whomsoever claiming under such Defendant(s), shall be, and are, forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

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13. The deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the Defendant(s) who was/were the title holder of the mortgaged property at the time of the filing of the *Lis Pendens*, and the Grantee and the Register of Deeds and/or the Clerk of Court is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

14. The undersigned hereby retains jurisdiction to do all necessary acts incident to this foreclosure action, including, but not limited to, the issuance of a Writ of Assistance and the disposition of any surplus funds pursuant to Rule 71(c), SCRCF.

15. After the Order Confirming Sale and Disbursements has been issued and filed, the undersigned shall direct the Register of Deeds and/or the Clerk of Court to release of record the mortgage liens being foreclosed.

16. Pursuant to Rule 77 (d), SCRCF, the Clerk of Court shall serve a notice of entry of this judgment upon all parties who are not in default for failure to appear herein.

17. In the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of York County upon receipt of a Writ of Assistance or other order of ejectment is authorized and directed to eject and remove from the premises the occupant(s) of the property sold, together with any and all personal property located thereon, and to put the successful bidder, or his assigns, in full, quiet, and peaceable possession without delay, and to keep the successful bidder or his assigns in such peaceable possession.

18. In the event the successful bidder is other than the Defendant(s) herein and the occupants have voluntarily vacated the premises or have been ejected from the premises leaving furnishings, fixtures and items not subject to the Plaintiff's mortgage, the Plaintiff is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of the Plaintiff's

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mortgage, which personal property shall be deemed abandoned and shall be removed by the Plaintiff or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

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

All that certain piece, parcel or lot of land with the improvements thereon, if any, situate, lying and being in the County of York, State of South Carolina, being shown and delineated as Lot 86 on a plat of Oxford Subdivision, Phase V, drawn by Precision Surveying, Inc., dated April 23, 2001 and recorded in the Office of the R.M.C. for York County in Plat Book B-229, Page 6 reference being made to the same for a more complete and accurate description; all measurements being a little more or less.

Being the same property conveyed to Mark Douglas Ostendorff by Deed from Penton Group, Inc., dated September 27, 2001, recorded October 2, 2001 in Book 3890, Page 190, York County, South Carolina Records.

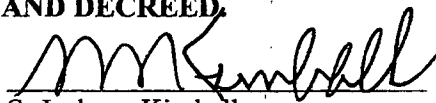
1207 Cabin Creek Court, Fort Mill, SC 29715

TAX MAP NUMBER: 776-00-00-107

AND IT IS SO ORDERED, ADJUDGED AND DECREED.

York, South Carolina

10/1, 2013.


S. Jackson Kimball
Master In Equity for York County

ATTORNEY FOR THE PLAINTIFF:
Brian S. Tatum
S.C. Bar No.: 73975
P.O. Box 11250
Charlotte, NC 28220
(704) 307-4197
0720934sc

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

JUDGMENT IN A CIVIL CASE

CASE NO: 2007CP4604305

IN THE COURT OF COMMON PLEAS

FILED-RECEIVED
2010 JUN 30 AM 8:45
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

Sun Trust Mortgage Inc vs. Mark Ostendorff

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:

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

The above entitled action is automatically stayed pending appeal.

Dated at York, South Carolina, this 25th day of June, 2010.

Court Reporter:

S. Jackson Kimball

S. JACKSON KIMBALL, SPECIAL CIRCUIT COURT JUDGE

This judgment was entered on the June 30, 2010 and a copy mailed first class this June 30, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

Jay G Anderson Morris Schneider & Prior LLC
1587 Northeast Expressway Atlanta, GA 30329
Brian Steed Tatum Johnson & Freedman, LLC
2101 Rexford Road, Suite 165W Charlotte, NC 28211
Tiffany H Wolf Johnson & Freeman Llc 1587
Northeast Expressway Atlanta, GA 30329

Mark Ostendorff PO Box 14846 Greenville,
SC 29610

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

SCRPC APP-24/FORM 4

David Hamilton - Clerk of Court

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2007CP4604305

Sun Trust Mortgage Inc vs. Mark Ostendorff

CHECK ONE:

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- 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:

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

Order For Summary Judgment

Dated at York, South Carolina, this 18th day of December, 2009.

Court Reporter: _____

s/S. Jackson Kimball

PRESIDING JUDGE - S. JACKSON KIMBALL

This judgment was entered on the 7th day of January, 2010, and a copy mailed first class this 7th day of January, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Brian Steed Tatum Johnson & Freedman, LLC
2101 Rexford Road, Suite 165W Charlotte, NC
28211

Mark Ostendorff PO Box 14846 Greenville,
SC 29610

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

SCRPC APP-24/FORM 4

David Hamilton - Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2007CP4604305

FILED-RECEIVED
2010 JAN 27 PM 2:29
DAVE HAMILTON
CLERK, P. & GS
YORK COUNTY, SC

ORDER FOR SUMMARY JUDGMENT

This matter came before me on December 10, 2009, upon Plaintiff's Motion for Summary Judgment as to Defendant's counterclaim. Present and representing the parties at the hearing were: Brian Tatum for Plaintiff; and, Mark Ostendorff appearing *pro se*. Based on the record before the Court, the applicable law, and the arguments presented, I find and conclude as follows.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999); Rule 56(c), S.C.R.C.P. In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct.App. 1997). In ruling on summary judgment, the Court should consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial. *See Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659 (Ct.App. 1994). "If the evidence favoring the nonmoving party is merely colorable . . . or is not significantly probative, . . . summary judgment may be granted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S., 242, 249-250 (1986).

Summary judgment is appropriate when facts exist on which reasonable minds cannot differ, and it is not appropriate where further inquiry into the facts is desirable to clarify the application of law. It is not, however, sufficient that the nonmoving party seeks to create an inference that is not reasonable, or an issue of fact that is not genuine, in order to avoid summary

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judgment. *Rothrock v. Copeland*, 305 S.C. 402, 409 S.E.2d 366 (1991). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. In that way, “[a] motion for summary judgment is akin to a motion for a directed verdict” because “[i]n each instance, one party must lose as a matter of law.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984); *see, also, Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

FINDINGS OF FACT

Taking into consideration the standard for viewing the evidence recited above, I find and conclude that there is no genuine issue of fact as to the facts hereinafter recited.

Plaintiff and Defendant entered into a construction loan agreement for Defendant to build a house. In furtherance of their agreement, Defendant executed a note and mortgage in favor of Plaintiff. Both parties admit that Plaintiff was to disburse money based on construction loan draw requests from Defendant as construction on the property progressed. However, Defendant went in to default by failing to make timely payments under the parties’ agreement. Ultimately, Plaintiff refused to honor Defendant’s construction draw requests based on Defendant’s default, and notified Defendant that it was accelerating the debt. It thereafter initiated this foreclosure action.

Defendant answered and counterclaimed, denying default and alleging breach of contract by Plaintiff. The fundamental act of breach asserted by Defendant and articulated at the motion hearing was the failure of Plaintiff to continue to disburse loan proceeds when requested. Defendant admitted at the hearing that he owed suppliers and subcontractors for work performed on the house, and estimated that it would take \$50,000 to complete the house. There was less than \$7,000 remaining in the construction loan when Plaintiff declared a default, plainly not enough to complete the house. Defendant’s explanations of how he would complete the house under these circumstances were not consistent with the facts, and essentially assumed that his creditors would be paid when the house was sold.

As to Plaintiff’s claim for foreclosure, I find, and Defendant did not refute, that as of September 2, 2009, Defendant is indebted to SunTrust for the total amount of \$455,115.83, consisting of principal in the amount of \$393,042.10, and interest in the amount of \$62,073.73. Interest continues to accrue on the Note at \$72.68 per day.

CONCLUSIONS OF LAW

Plaintiff has presented a prima facie case showing that Defendant defaulted under the Note

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and the Mortgage. Under the parties' agreement, Plaintiff was entitled to stop construction draws as a matter of law, and I conclude that it properly did so.

Under the standard for considering summary judgment, Defendant was required to come forward with factual evidence that supported his counterclaim that Plaintiff wrongfully withheld draws, causing Defendant damage. I conclude that he has not presented any such rebuttal evidence that would create an issue of fact on that sole basis for his counterclaim.

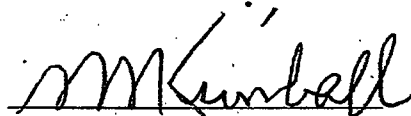
Thus, there is no genuine issue of fact concerning Plaintiff's assertion of Defendant's default under the note and mortgage. Nor is there any genuine issue of fact to sustain Defendant's claim that Plaintiff is liable to him due to its denying him construction draws. For this reason, Plaintiff is entitled to summary judgment on Defendant's counterclaim. Plaintiff is further entitled to proceed with foreclosure of its mortgage. The foreclosure will be based on the amounts established to be due as set forth in the findings of fact herein.

ORDER

Therefore, based on the findings and conclusions herein, it is ordered that Plaintiff's motion for summary judgment as to Defendant's counterclaim be granted, and Defendant's counterclaim is dismissed with prejudice. It is further ordered that Plaintiff's foreclosure action is no longer stayed pending disposition of Defendant's counterclaim, and Plaintiff may proceed with a hearing to complete its foreclosure action at the earliest practicable time.

AND IT IS SO ORDERED.

December 18, 2009


S. Jackson Kimball
Special Circuit Judge
York County

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2007-CP-46-4305

NOTICE OF SALE

Under and by virtue of an Order of the Court of Common Pleas for York County, South Carolina, heretofore granted in the above entitled cause, I the undersigned, as Master In Equity on November ^{4 AC}~~28~~, 2013 commencing at 11:00AM during the legal hours of sale, at the Equity Court in the City of York, South Carolina located at 1 North Congress Street, York, SC 29745, will sell at public outcry to the highest bidder the following described property:

All that certain piece, parcel or lot of land with the improvements thereon, if any, situate, lying and being in the County of York, Sate of South Carolina, being shown and delineated as Lot 86 on a plat of Oxford Subdivision, Phase V, drawn by Precision Surveying, Inc., dated April 23, 2001 and recorded in the Office of the R.M.C. for York County in Plat Book B-229, Page 6 reference being made to the same for a more complete and accurate description; all measurements being a little more or less.

Being the same property conveyed to Mark Douglas Ostendorff by Deed from Penton Group, Inc., dated September 27, 2001, recorded October 2, 2001 in Book 3890, Page 190, York County, South Carolina Records.

1207 Cabin Creek Court, Fort Mill, SC 29715

TAX MAP NUMBER: 776-00-00-107

Handwritten initials/signature

FILED-RECEIVED
2013 OCT -9 AM 9:28
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

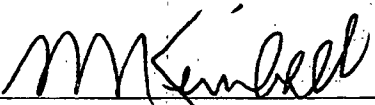
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TERMS OF SALE

FOR CASH. The undersigned will require a deposit of 5.0% of the amount of the bid (in cash or equivalent) to be applied on the purchase price only upon compliance with the bid. In the of case of noncompliance of the bid within 30 days the successful bidder's deposit shall be forfeited and applied to the Court's costs and to Plaintiff's debt and the property will be re-advertised for sale upon the same terms (at the risk of the former highest bidder). Personal or deficiency judgment having been demanded or reserved, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Section 15-39-720 (1976). The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the sale.

Interest at 6.75% the legal rate shall be paid through the day of compliance on the amount of the bid. The purchaser shall pay for preparation and recording of the deed and required transfer taxes by any governmental authority. If the Plaintiff or its representative is not present at the sale, the sale shall be postponed to the next available sale date. The sale shall be subject to taxes and assessments, existing easements and restrictions of record.

Oct 1
~~September 30~~, 2013


S. Jackson Kimball
Master In Equity for York County

ATTORNEY FOR THE PLAINTIFF:
Brian S. Tatum
S.C. Bar No.: 73975
P.O. Box 11250
Charlotte, NC 28220
(704) 307-4197
0720934sc



STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED - RECEIVED
2007 NOV 30 AM 11:06

SunTrust Mortgage, Inc.,

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.:

07-CP-16-4305

**COMPLAINT
NON-JURY FORECLOSURE
DEFICIENCY DEMANDED**

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

1. The Plaintiff is a corporation or other legal entity organized and existing under the laws of one of the states of the United States and claims an interest in the real estate which is described hereafter.
2. The Defendant(s) claim(s) an interest in the real estate which is the subject of this action.
3. The Defendant(s), Mark Ostendorff (hereinafter called the "Mortgagor(s)"), reside at 1207 Cabin Creek Court Fort Mill, SC 29715.
4. Concurrently with the filing of this Complaint the Plaintiff has filed with the Office of the Clerk of Court for York County a Lis Pendens giving notice of the pendency of this lawsuit.
5. On or about March 29, 2006, Mark Ostendorff made, executed and delivered unto SunTrust Mortgage, Inc. a certain Note ("Note") in the principal sum of \$400,000.00.
6. To secure payment of the Note according to the terms and conditions thereof, the Mortgagor(s) made, executed and delivered unto SunTrust Mortgage, Inc. a certain real estate Mortgage ("Mortgage") covering the following described property:

All that certain piece, parcel or lot of land with the improvements thereon, if any, situate, lying and being in the County of York, State of South Carolina, being shown and delineated as Lot 86 on a plat of Oxford Subdivision, Phase V, drawn by Precision Surveying, Inc., dated April 23, 2001 and recorded in the Office of the R.M.C. for York County in Plat Book B-229, Page 6 reference being made to the same for a more complete and accurate description; all measurements being a little more or less.

Being the same property conveyed to Mark Douglas Ostendorff by Deed from Penton Group, Inc., dated September 27, 2001, recorded October 2, 2001 in Book 3890, Page 190, York County, South Carolina Records.

1207 Cabin Creek Court, Fort Mill, SC 29715
TAX MAP NUMBER: 776-00-00-107

7. The Mortgage was signed, witnessed, probated and thereafter recorded in the office of the Register of Deeds/Clerk of Court for York County on April 28, 2006 in Mortgage Book 07985 at Page 302.

8. The title holders of record of the subject property as of the filing of the Lis Pendens in this action were the Mortgagors.

9. The Mortgage evidences and secures the repayment of money advanced by the Plaintiff to, or on behalf of, the Mortgagor(s) and constitutes a purchase money first lien on the mortgaged premises.

10. The Note and Mortgage provide for the following:

a. The Plaintiff shall be entitled to receive on the first day of each and every month installment payments which are amortized over a period of time which is set forth therein and in the event of a default in payment of any monthly installment the Plaintiff is entitled, after first giving thirty (30) days prior notice, to accelerate the entire indebtedness and to demand payment thereof without further notice.

b. The Plaintiff shall be entitled to receive late charges for any monthly installment payment which is overdue.

c. The Mortgagor(s) shall be required to provide insurance to protect against loss to the property and that certain minimal escrow funds shall be established and maintained with the Plaintiff for the purpose of paying for such insurance.

d. The Mortgagor(s) shall be required to pay for all costs of property taxes assessed by governmental authorities and that certain minimal escrow funds shall be established and maintained with the Plaintiff for the purpose of paying such taxes.

e. The Mortgagor(s) shall, at the Plaintiff's option, be required to provide mortgage insurance to protect the Plaintiff's interest in securing repayment of the mortgage loan and certain

minimal escrow funds shall be established and maintained with the Plaintiff for the purpose of paying for such insurance.

f. The Plaintiff is entitled to be reimbursed for all expenses which it shall incur in pursuing the remedies to which it is entitled in the event of a default by the Mortgagor(s), including reimbursement of its reasonable attorney's fees and costs of title evidence.

11. The Mortgagor(s) failed to make the payment on the Note and Mortgage which was due monthly for the July 1, 2007 and the Plaintiff's prospects for repayment have been significantly impaired.

12. All notices and rights to cure which are required by the terms of the Mortgage, or by State or Federal statute, have been given to the Mortgagor(s) prior to the commencement of this action and the said Mortgagor(s) have failed to cure their default.

13. As a result of the Mortgagor('s') default in payment the conditions of the Note and Mortgage have been broken and the Plaintiff elects to and does declare the entire unpaid principal balance of the mortgage indebtedness, together with all accrued and unpaid interest thereon and the other sums set forth hereafter, now due and payable.

14. There is now due and payable to the Plaintiff due on the Note and Mortgage as of October 14, 2007 the sum of \$405,107.95 encompassing unpaid principal, interest thereon at the rate of 6.750% per annum thereon, late fees, taxes, insurance premiums, other advancements, reasonable attorney's fees as well as the costs and disbursements of this action.

15. As a further result of the Mortgagor('s') default the Plaintiffs are informed and believe that they are entitled to an order foreclosing the Mortgagor('s') equity of redemption in the subject property in the usual manner, the appointment of a receiver to enter upon and take full possession and control of the subject property, to eject the Mortgagor(s) and any personal belongings from the subject property and to perform all acts necessary or appropriate for the operation and maintenance of the subject real estate, including making repairs, the execution or cancellation of leases, on such terms as are best to protect the security of the aforementioned mortgage loan.

16. Upon information and belief no Defendant is serving, or has served, in the military service of the United States of America as contemplated under the Servicemembers' Civil Relief Act.

17. The Plaintiff demands a personal and deficiency judgment against the Mortgagor(s).

WHEREFORE, the Plaintiff asks this Honorable Court to enquire into the matters alleged herein and:

- A. Determine the amount due Plaintiff under the Note and Mortgage including all principal, any advancements made thereon by the Plaintiff, interest which has accrued on the principal indebtedness through the date of judgment, reasonable attorney's fees, all costs of inspecting and securing the property incurred by the Plaintiff as a result of the Mortgagor('s) default, other amounts which are found to be due under the terms of the Note and Mortgage, together with the costs and disbursements of this action, together with interest at the legal rate on the judgment;
- B. Award the Plaintiff judgment against the Mortgagor(s) for the amount which this Court determines to be due and owing;
- C. Declare the amount found due and owing to be a first lien upon the subject property, subject only to unpaid real estate taxes, if any;
- D. Foreclose the Mortgagor('s) equity of redemption for the amount found to be due and owing;
- E. Appoint a receiver to enter upon and take full possession and control of the subject property, to collect the rents, issues, profits or other designated sums from the Mortgagor(s), and/or the grantee(s) of the Mortgagor(s), and/or tenant(s) occupying or exercising control over the subject premises, and/or to eject the Mortgagor, or others occupying the subject property, as well as personal belongings, from the subject property and to perform all acts necessary or appropriate for the operation and maintenance of the subject real estate, including making repairs, the execution or cancellation of leases, on such terms as are best to protect the security of the aforementioned mortgage loan;

F. Under the direction of this Court, sell the mortgaged premises at public sale, bar the Mortgagor('s) equity of redemption, and apply the proceeds of the sale as follows:

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

Second, to the payment and discharge of the amount found to be due to the Plaintiff; and

Third, to the distribution of any surplus pursuant to Rule 71, SCRPC.

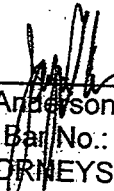
G. Award the Plaintiff a personal judgment against the Mortgagor(s) for any deficiency which remains owing to the Plaintiff after applying the proceeds from the sale of the mortgaged premises.

H. Issue an order directing the Sheriff of York County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary.

I. Order such other and further relief as may be just and proper.

Date: 11-27-07

Morris, Schneider, Prior, Johnson & Freedman, LLC



Jay Anderson
S.C. Bar No.: 014295
ATTORNEYS FOR THE PLAINTIFF

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Atlanta, GA 30329
(770) 234-9181, ext. 1121 (Telephone)
(770) 234-9192 (Facsimile)
JGAnderson@msplaw.com (Email)
0720934SC

STATE OF SOUTH CAROLINA
COUNTY OF YORK

SUNTRUST MORTGAGE, INC.

PLAINTIFF(S)

VS.

MARK OSTENDORFF

DEFENDANT(S)

IN THE COURT
OF
COMMON PLEAS

CASE NO:

07-CP46-4305

ANSWER TO
COMPLAINT

THE DEFENDANT, OSTENDORFF ANSWERS PLAINTIFF(S) COMPLAINT:

OSTENDORFF DENIES ALL ITEMS OF COMPLAINT UNLESS
STATED BELOW:

1, 4, 5, 6, 7, 8, 9, 10 a THRU 10e, 12, 14 - NOT OF INFORMATION
TO ADMIT OR DENY.

10f, 13, 15, 17 - DENIES DUE TO PLAINTIFF(S) BREACH OF
CONTRACT

2, 3, 16 - ADMITS

11 - ADMITS AND CAUSE WAS PLAINTIFF(S)'S BREACH OF
CONTRACT.

JURY TRIAL DEMANDED AS A BREACH OF
CONTRACT.

(13)

1/2

23

AS A DEFENSE, PLAINTIFF(S)'S BREACH
OF CONTRACT, OSTENDORFF WAS PREVENTED FROM
COMPLETION OF SAID PROPERTY AND REALIZATION
OF GAIN FROM EQUITY IN SAID PROPERTY

COUNTERCLAIM IS ON SEPARATE PAPER

JANUARY 3, 2008



MARK D. OSTENDORFF
PO Box 772
FORT MILL, SC 29716
(803) 367-7425
PRO SE

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

SUNTRUST MORTGAGE, INC.

PLAINTIFF(S)

VS.

MARK OSTENDORFF

DEFENDANT(S)

IN THE COURT
OF
COMMON PLEAS

CASE NO:

07-CP46-4305

COUNTERCLAIM

DEFENDANT, OSTENDORFF, COUNTERCLAIMS

PLAINTIFF AS FOLLOWS:

1. JURY TRIAL FOR COUNTERCLAIM DEMANDED
2. FOR SUM OF \$ 1,125,000⁰⁰ (ONE MILLION, ONE-HUNDRED TWENTY-FIVE THOUSAND DOLLARS) FOR LOSS OF EQUITY ON SAID PROPERTY AND PREVENTION OF GAINS ON FUTURE PROPERTIES.
3. PLAINTIFF DID NOT PROVIDE FUNDING TO COMPLETE IMPROVEMENTS ON SAID PROPERTY AS ORIGINALLY AGREED TO.
4. PLAINTIFF SYSTEMATICALLY DENIED FUNDING TO OSTENDORFF ALTHOUGH OSTENDORFF REPEATEDLY REQUESTED FUNDING.

(15)


5. OSTENDORFF WAS READY, WILLING, AND ABLE TO COMPLETE IMPROVEMENTS BUT WAS PREVENTED DUE TO PLAINTIFF'S BREACH OF CONTRACT TO PROVIDE FUNDING AS ORIGINALLY AGREED TO.

6. TOTAL BALANCE REMAINING WAS ADEQUATE TO COMPLETE IMPROVEMENTS BUT PLAINTIFF REFUSED TO DISBURSE FUNDING TO COMPLETE WORK.

7. STOPPAGE OF FUNDING WAS DONE WITHOUT WARNING TO OSTENDORFF.

OSTENDORFF ASKS FOR SAID SUM PLUS ATTORNEY'S FEES, COURT COSTS, PUNITIVE DAMAGES AND ANY OTHER AS COURT SEES FIT.

JANUARY 3, 2009


MARK D OSTENDORFF
PO BOX 772
FORT MILL, SC 29716
(803) 367-7425
Paw SE

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COPY OF TRANSCRIPT

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF YORK CASE NO.: 07-CP-46-4305

SUNTRUST MORTGAGE, INC.,

Plaintiff,

vs.

MARK OSTENDORFF,

Defendant.

HEARING, held on Tuesday, October 1, 2013,
taken at the York County Courthouse, 1 North Congress
Street, York, South Carolina, 29745, commencing at 9:31
a.m., before Robbie E. Moskau, a Certified Court Reporter
and Notary Public in and for the state of South Carolina.

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HEARING

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2 **APPEARANCES:**

3
4 REPRESENTING THE PLAINTIFF

5 BRIAN S. TATUM, ESQ.

6 TATUM LAW FIRM, PLLC

7 5970 FAIRVIEW ROAD, SUITE 712

8 P.O. BOX 11250

9 CHARLOTTE, NORTH CAROLINA 28220

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DESCRIPTION

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Exhibit-8

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4
HEARING

HEARING

3
OCTOBER 1, 2013

4 THE COURT: This is Case Number
5 2007-CP-46-4305, Sun Trust Mortgage, Inc.
6 versus Mark Ostendorff. Representing the
7 Plaintiff is Mr. Brian Tatum.

8 The hearing is scheduled for 9:30.
9 It is now 9:31 by the courtroom clock, which
10 is purposely kept a couple of minutes behind.
11 And neither Mr. Ostendorff nor anyone on his
12 behalf has appeared, and, to my knowledge, we
13 have received no communication from Mr.
14 Ostendorff. I know that Plaintiff has sent
15 a Notice of Hearing indicating that the
16 hearing was today, October 1st, at 9:30 here
17 in this office. Mr. Ostendorff has been
18 here several times before. So we will
19 proceed without him. Go ahead.

20 MR. TATUM: Is it okay if my
21 witness stays here, Your Honor?

22 THE COURT: Sure.

23 MR. TATUM: I'd like to call as my
24 first witness, Mr. Willits. Is that how you
25 pronounce your last name? 30



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MR. WILLITS: It is, yes.

MR. TATUM: Okay.

THE COURT: Give me your full name, please, sir.

MR. WILLITS: Rich Willits.

THE COURT: Your full name?

MR. WILLITS: Richard A. Willits --
W-I-L-L-I-T-S.

THE COURT: All right, sir. Raise your right hand, please.

Thereupon,

RICHARD A. WILLITS,

having been first duly sworn, was examined and testified as follows:

THE COURT: Mr. Tatum?

MR. TATUM: May I just sit, Your Honor, as we go through this?

THE COURT: Sir?

MR. TATUM: May I just sit?

THE COURT: Yeah, that's all right.

MR. TATUM: I've already pre-labeled my exhibits here.

THE COURT: You want to go ahead and hand those up? Have you done a proposed

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HEARING

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order?

MR. TATUM: Yes, Your Honor.

THE COURT: Go ahead and hand the whole package up to me, and I will look at that.

MR. TATUM: Well, let me just separate it here. I was expecting Mr. Ostendorff to show up; wasn't expecting this --

THE COURT: While you do that, let me just be sure Maryann hasn't heard anything from him.

(Whereupon, off the record; resuming as follows.)

EXAMINATION

BY-MR. TATUM:

Q. Mr. Willits, could you state what you do?

A. I work for Sun Trust Mortgage. My current role is national CP training and development manager. I deal with our sales operations, staff, all of our construction-related products.

Q. And how long have you been with Sun

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Trust?

A. I've been with Sun Trust just at 16 years.

Q. How long have you been in the banking industry?

A. Sixteen years.

Q. Sixteen years? And have you had any special training to do what you do?

A. Prior to working for Sun Trust, I had a construction background. I worked for several builders, when I lived in Pennsylvania. So -- And then I also have a degree -- a business degree. So, obviously, during my time with Sun Trust Bank, I was on the financial side, then I moved over to the mortgage side to run our construction department for the southeast.

Q. And you actually helped design some of the form documents that Sun Trust used, correct?

A. I do, yes. I've actually rewritten many of our guidelines, many of our legal documents, our disclosures, and actually do that on a very regular basis.

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Q. Including the State of South Carolina.

A. Including the State of South Carolina, yes.

Q. What I'd like to do now is -- If you could just glance at Exhibits -- Plaintiff's Exhibits-1 through 6 that have already been pre-marked for identification.

A. Okay.

MR. TATUM: And I'm just going to ask the witness, Your Honor, several authentication, foundation questions through this.

THE COURT: Go ahead.

Q. Were all these documents you made part of a regularly conducted business activity of Sun Trust Mortgage?

A. Yes, they were.

Q. And were they made at or near a time by a person with knowledge of the event?

A. Yes.

Q. And is the regular practice of Sun Trust Mortgage to make such documents labeled

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as Plaintiff's Exhibits-1 through 6?

A. It is.

Q. And you have access to these documents?

A. I do.

Q. Can you briefly state how the documents are stored at Sun Trust?

A. Sure. Once a loan closes, our loans are typically imaged into our imaging system. Any of our documents that we need to secure that would be things of that nature, are sent to our collateral vault for safekeeping, typically. And then, after a certain period of time, the nonessential documents, you know, are destroyed, because we have the imaged copies to use.

Q. And you actually went into the imaging system prior to attending the hearing this morning?

A. I did, yes.

Q. And documents five and six appear to be computer-generated records. Can you briefly describe to the Court the computer system used by Sun Trust?

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HEARING

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2 A. Sure. This is -- Plaintiff's 5 and
3 6 are screenshots of our commercial loan
4 system. And I say "commercial loan," because
5 that is where our construction and permanent
6 mortgage loans or housed during the
7 construction phase of the mortgage. So
8 they're housed, during construction, on that
9 commercial system. Once the house is
10 complete and it's ready to convert to the
11 permanent phase, it then is zeroed out from
12 that system and moved over to our mortgage
13 system.

14 Q. And I briefly want to go through and
15 address each one of these documents.

16 A. Okay.

17 Q. Can you tell me what Exhibit
18 Number-1 is?

19 A. Yes. That is the adjustable rate
20 note with the attached launch to the
21 construction note.

22 Q. Is Sun Trust Mortgage the current
23 owner and holder of this note?

24 A. We are.

25 Q. Was this loan ever secured?



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A. It was not.

Q. And the reason why it was never secured is because?

A. Is because the house was never completed and never converted to the permanent phase of the mortgage.

Q. And, according to the note, when are the payments due?

A. The payments are due on the first of every month, beginning -- I believe this would've been one year -- On the permanent mortgage, it would've been beginning May of 2007, had the house been complete.

Q. And Plaintiff's Exhibit Number 2, can you tell us what this document is?

A. Yes. This is the mortgage for this particular loan.

Q. And does the mortgage contain an acceleration clause? I believe it's Paragraph 22.

A. It does, yes.

Q. And does it also have a Waiver of Appraisal Rights, Paragraph 25?

A. It does, yes.



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HEARING

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Q. Plaintiff's Exhibit Number-3, can you tell us what this document is?

A. Yes. This is the construction of the loan agreement that the -- that we do on each and every construction loan.

Q. And Paragraph 13 is labeled "Disbursements." Can you tell us the -- describe the disbursement process to the Court?

A. Certainly. During the construction phase of our construction of permanent mortgage loans, we -- you know, we'll do disbursements based on percentage of completion of the property. So, in essence, you know, we would send out an independent third-party inspector to look at the property to give us a report, you know, both written and photographic, typically. And, once we have that back, we would go ahead and you know, adjust the completion percentage based on that report; then that would generate moneys that are available to be disbursed to the builder of each building and home.

Q. If you look at this disbursement

1
2 clause in Paragraph 13, does the bank have
3 pure discretion whether or not to make a
4 disbursement?

5 A. We do.

6 Q. Plaintiff's Exhibit Number-4, can you
7 tell us what it is?

8 A. Yes. This is a construction of
9 permanent loan procedures document that is
10 given to the borrower.

11 Q. And, I believe, Page 2 of that
12 document describes the process that you just
13 mentioned to the Court; correct?

14 A. It does. It's -- At the time of
15 the page, second page, it is titled
16 "Inspection and Disbursement Procedure"
17 Correct.

18 Q. Okay, Plaintiff's Exhibit Number-5,
19 can you tell us what this is?

20 A. Yes. This actually has two things
21 on here, but it is a -- in essence, (it's a
22 payment history of the loan with a screenshot
23 attached, as well.

24 Q. And when was the last payment made?

25 A. The last payment was made -- It

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shows 8/1/2007, which I believe that that was for the July payment.

Q. And the current principal balance is \$393,042.10?

A. That is correct.

Q. Plaintiff's Exhibit Number-6, can you tell us what this is?

A. Yes. This is a screenshot from our commercial loan system, which I described earlier, showing -- this shows basically the payoff amount as of 10/1/2013.

Q. And it shows interest earned of \$170,302.99. Would that be the amount that you would have to pay to reinstate the loan?

A. Yes.

Q. Plus, you'd also have to pay fees and costs, correct?

A. Yes.

Q. And, at the bottom, it's got a payoff amount, correct?

A. It does, yes.

Q. That does not include attorney's fees and costs, as well, correct?

A. That is correct. It's the current

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principal balance, plus interest and any late fees.

Q. I'm going to briefly discuss some of those other fees and costs, looking at your note there.

MR. TATUM: May I approach the witness?

THE COURT: Yes, sir.

Q. Sun Trust has paid a lot of the ad valorem property tax over the last few years, correct?

A. The current taxes that Sun Trust has paid on this property is \$17,390.72.

Q. Also, Sun Trust ordered a BPO, correct; Broker's Price Opinion?

A. At least one, yes.

Q. The latest Broker's Price Opinion, did it show that the property was occupied by Mr. Ostendorf?

A. It did not.

Q. It showed the property was vacant.

A. It showed vacant. Correct.

MR. TATUM: No further questions,

Your Honor.

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THE COURT: All right. I'm just curious. Do you have there in front of you the percentage completion of the house? Mr. Ostendorff has been here several times talking about that. I'm just curious.

THE WITNESS: I do not have --

THE COURT: It doesn't matter.

THE WITNESS: The Broker's Price Opinion gave a huge range based on completion.

THE COURT: All right. I don't have any questions. Thank you.

THE WITNESS: But they didn't view the interior.

THE COURT: You may step down. Thank you.

MR. TATUM: Lastly, Your Honor, I have Plaintiff's Exhibits-7 and 8. These are actually my exhibits. And, I think, under the rule, 3.7 Rules of Professional Conduct, I can briefly testify as to the amount of attorney's fees.

THE COURT: Well, you've submitted an Affidavit, and that's marked as Exhibit-7.

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And I don't think -- there being no objection, I don't -- I'm not going to require you to testify. We'll rely on the Affidavit.

MR. TATUM: And Exhibit-8 is just the breach letter. To give you a little bit of background, Morris, Schneider & Prior became Moore, Snyder, Prior Johnson & Freedman, which became Johnson Freedman. And actually, they've merged again, just RCO. And I've been of counsel with them since 2009. I've assisted them on --

THE COURT: It's been going on a long time.

MR. TATUM: Since -- I think this is one of the first cases I worked on for --

THE COURT: Career. Okay.

MR. TATUM: We have no further questions. If I may approach, I've got the Proposed Order and Notice of Sale. I've put the first Monday of November, --

THE COURT: That'll work, yes.

MR. TATUM: -- at 11:00. I think

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that's what we were told.

THE COURT: Are you --

MR. TATUM: We can change that.

THE COURT: -- still seeking to get a deficiency?

MR. TATUM: Yes, Your Honor.

THE COURT: Yes, I see your --

MR. TATUM: And I put the total amount in the Order, which has the latest attorney's fees through today's date, and the taxes and the payoff amount in the exhibit.

THE COURT: Let me review the Order. Let's see what we've got. First of all, let me say that Plaintiff has offered, for the record as exhibits, numbers -- Exhibits Numbers-1 through 8. Those are received without objection.

(Whereupon, Exhibits-1through8, marked for identification.)

MR. TATUM: Additionally, Your Honor, if I may approach.

THE COURT: Okay.

MR. TATUM: This Exhibit Number-2 here, the actual mortgage, that was also

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certified by the Register of Deeds.

THE COURT: I thought I had that.

MR. TATUM: You do, but this one's
the certified --

THE COURT: Okay.

MR. TATUM: -- from the Register of
Deeds.

THE COURT: All right. Over the
course of these last six years, has Mr.
Ostendorff ever filed bankruptcy? I do not
recall.

MR. TATUM: He has not. We've
periodically checked.

THE COURT: Okay. The sale date in
November, you -- this says November the 28th.
It should say November the 4th.

MR. TATUM: The 4th, yeah.

THE COURT: Is that what you want
to do?

MR. TATUM: Yeah, that's -- November
4th, can you make that correction, Your
Honor?

THE COURT: Yes, sir.

MR. TATUM: At 11:00 o'clock, Your

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Honor?

THE COURT: Yes. If you will, please, would you complete -- I don't see it here. You don't have a Form 4 with you?

MR. TATUM: I'm sorry, Your Honor?

THE COURT: A Form 4?

MR. TATUM: I'm sorry, I don't have a Form 4 with me.

THE COURT: Okay. If you will e-mail one of those, please, to Debbie Shehan. Have you dealt with her, in this case?

MR. TATUM: I don't think so.

THE COURT: Her e-mail is "Debbie" -- D-E-B-B-I-E -- "shehan" -- S-H-E-H-A-N -- "@yorkcountygov.com." And that, based on the record and the exhibits and the testimony, I find that the Plaintiff is entitled to a judgment in the total amount of \$595,130.81. That includes the attorney fee, which I find to be reasonable under the circumstances, given the length and breadth of this litigation, in the amount of \$13,420, and the Plaintiff's entitled to proceed with the



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HEARING

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sale. And, unless you have anything else,
that will conclude the record.

MR. TATUM: Thank Your Honor.
That's it.

THE COURT: That'll do it. All
right. Here's the Notice of Sale for you.
I'll take care of filing the rest of it.
If you'll e-mail a Form 4 to Debbie. And
Mr. Ostendorff has still not appeared.

MR. TATUM: That's very unusual.

THE COURT: Sir?

MR. TATUM: I said that's very
unusual.

THE COURT: Oh, yeah, it is unusual.

(Whereupon, the hearing concluded at
9:55 a.m.)

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CERTIFICATE

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4 I, Robbie E. Moskau, do hereby
5 certify that I reported the foregoing
6 proceedings at the time and place herein
7 designated and that the foregoing transcript
8 is a true, accurate and correct transcript of
9 the aforesaid proceedings.

10 I further certify that I am not a
11 relative, employee, attorney or counsel of
12 any of the parties, nor relative or employee
13 of such attorney or counsel, nor in anyway
14 interested in event of said cause.

15
16 *Robbie Moskau*

17
18 Robbie Moskau

19
20
21 DATED: December 11, 2013
22
23
24
25



I N D E X

WITNESS

DIRECT

CROSS

RE-DIRECT

RE-CROSS

(NO TESTIMONY TAKEN)

E X H I B I T S

EXHIBIT NO.	DESCRIPTION	ID	EV
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(NO EXHIBITS)

1 THE COURT - ALL RIGHT. WHAT I HAVE IS SUN TRUST
2 MORTGAGE AGAINST MARK OSTENDORFF. THIS WILL BE THE
3 PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

4 MR. TATUM - YES, YOUR HONOR.

5 THE COURT - PROCEED.

6 MR. TATUM - GOOD MORNING, YOUR HONOR. BRIAN
7 TATUM HERE ON BEHALF OF SUN TRUST MORTGAGE INCORPORATED.
8 LET ME GIVE YOU A BRIEF OVERVIEW OF THIS CASE.

9 THE COURT - I DON'T NEED MUCH. THIS IS ABOUT
10 THE THIRD TIME WE'VE HEARD IT.

11 MR. TATUM - OKAY.

12 THE COURT - GO AHEAD.

13 MR. TATUM - WELL, WE ARE HERE TODAY ON OUR
14 MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO MR.
15 OSTENDORFF'S COUNTERCLAIM. AND I GOT A COPY OF THE
16 COUNTERCLAIM AND THE AFFIDAVITS HERE IF YOU NEED COPIES OF
17 THESE SO YOU DON'T HAVE TO THUMB THROUGH THE COURT'S FILE
18 TO FIND EVERYTHING. I KNOW MR. OSTENDORFF JUST SERVED
19 SOME DOCUMENTS THIS WEEK, AND THEY MAY NOT BE IN THE
20 COURT'S FILE YET.

21 THE COURT - WELL, HE FAXED A LOT OF STUFF. OF
22 COURSE, I DON'T KNOW WHAT I DON'T HAVE.

23 MR. TATUM - MAY I APPROACH THE BENCH? I JUST --

24 -

25 THE COURT - YES, SIR.

1 MR. TATUM - THIS MAY BE EASIER TO FOLLOW.

2 (DOCUMENTS PROVIDED TO MR. OSTENDORFF AND HANDED
3 UP TO THE COURT)

4 MR. OSTENDORFF - YES, I ---

5 THE COURT - WHAT I'M LOOKING FOR IS I THOUGHT I
6 HAD A COPY OF THE COUNTERCLAIM HANDY, BUT THIS WOULD BE
7 GOOD.

8 MR. TATUM - I GOT --- THE COUNTERCLAIM IS
9 EXHIBIT A.

10 THE COURT - ALL RIGHT.

11 MR. TATUM - YOUR HONOR --- I'LL GIVE YOU TIME TO
12 FLIP TO EXHIBIT A.

13 THE COURT - GO AHEAD.

14 MR. TATUM - IF YOU LOOK AT EXHIBIT A, THIS IS
15 DEFENDANT'S COUNTERCLAIM, AND YOU LOOK AT ALL THE
16 PARAGRAPHS EXCEPT THE FIRST TWO. THE FIRST TWO ARE JUST -
17 -- APPEAR TO BE SOME SORT OF JURY TRIAL DEMAND AND ---

18 THE COURT - MR. TATUM, I --- YOU KNOW, I WAS A
19 LITTLE FLIPPANT I GUESS ABOUT --- ABOUT THE FACT THING.
20 MY RECOLLECTION IS THAT --- AND FROM READING ALL THIS
21 AGAIN, THE ISSUE HERE IS THIS WAS A HOUSE THAT HE WAS ---
22 MR. OSTEN --- IS IT OSTENDORFF OR OSTENDORFF?

23 MR. OSTENDORFF - OSTENDORFF, BUT ---

24 THE COURT - OSTENDORFF ---

25 MR. OSTENDORFF - --- AUSTIN, TEXAS. EITHER WAY.

1 THAT'S CLOSE ENOUGH.

2 THE COURT - THAT MR. OSTENDORFF WAS BUILDING,
3 AND FOR WHICH HE HAD A FOUR HUNDRED THOUSAND DOLLAR LOAN,
4 A CONSTRUCTION LOAN WITH THE BANK THAT WAS FUNDED UP TO
5 ABOUT SOMEWHERE BETWEEN THREE HUNDRED AND EIGHTY-FIVE AND
6 THREE HUNDRED AND NINETY THOUSAND DOLLARS, PAID OUT THAT
7 IS, DISBURSED, AND THE BANK WOULDN'T DISBURSE ANYMORE AND
8 OF COURSE BROUGHT THE FORECLOSURE AND THAT PRECIPITATED
9 THE COUNTERCLAIM.

10 MR. TATUM - AND THE COUNTERCLAIM --- THE BASIS -
11 -- THE WHOLE BASIS OF THE COUNTERCLAIM IS THAT SUN TRUST
12 WRONGFULLY REFUSED TO DISBURSE PURSUANT TO CONSTRUCTION
13 DRAW REQUEST.

14 THE COURT - ALL RIGHT, LET ME --- LET ME REVIEW
15 THAT AGAIN THEN. OKAY. (PAUSE) GO AHEAD.

16 MR. TATUM - YOUR HONOR, IF YOU'D LOOK AT AFFIDAV
17 --- THE AFFIDAVIT OF SUSAN WALKER, WHICH SHOULD BE UNDER
18 TAB NUMBER 2 OF THE DOCUMENTS I JUST HANDED YOU, IN
19 PARAGRAPH 14 OF THAT AFFIDAVIT IT SHOWS THE CONSTRUCTION
20 DRAW DISBURSEMENTS THAT WERE MADE --- I MEAN NOT
21 CONSTRUCTION DRAW DISBURSEMENTS, THE PAYMENTS THAT WERE
22 MADE PURSUANT TO THE FIRST YEAR DURING THE CONSTRUCTION
23 PERIOD, AND AS YOU CAN SEE, IF YOU LOOK AT THE DATES DUE
24 ALL THE WAY FROM THE BEGINNING, THE FIRST PAYMENT WAS DUE
25 MAY THE 1ST. IT LOOKS LIKE MR. OSTENDORFF PAID IT A DAY

1 LATE, AND THEN HE STARTS GETTING A LITTLE BIT FURTHER
2 BEHIND. THE JUNE 1ST PAYMENT WAS MADE JUNE 16TH. THE
3 JULY 1ST PAYMENT WAS MADE JULY THE 21ST. SO HE STARTED
4 OFF HAVING SOME DIFFICULTY MAKING HIS PAYMENTS FROM THE
5 BEGINNING OF THIS LOAN. AND IF YOU LOOK DOWN NEAR THE
6 BOTTOM YOU'LL SEE THAT ON THE DATES PAID, IT LOOKS LIKE
7 AROUND FEBRUARY AND APRIL AND MAY IT LOOKS LIKE THERE WAS
8 NO PAYMENTS MADE AT ALL. AND IF YOU LOOK AT MR.
9 OSTENDORFF'S FIRST AFFIDAVIT, ---

10 THE COURT - I MAY HAVE SOME TROUBLE IDENTIFYING
11 WHICH IS THE FIRST AFFIDAVIT SINCE I'VE GOT A BUNCH OF
12 THEM.

13 MR. TATUM - WHICH IS THE --- NUMBER 3, THE TAB
14 DOCUMENTS I GAVE YOU.

15 THE COURT - OH, OKAY. WELL, I'LL JUST FOLLOW
16 YOUR TAB. OKAY. GO AHEAD.

17 MR. TATUM - NO, PARAGRAPH 14, I'M SORRY.

18 THE COURT - PARAGRAPH --- YOU TALKING ABOUT MS.
19 --- THE BANK OFFICER'S AFFIDAVIT?

20 MR. TATUM - NO, I'M SORRY, PARAGRAPH ---

21 THE COURT - THAT'S SUSAN WALKER. PARAGRAPH 14?

22 MR. TATUM - PARAGRAPH 4, YES, I WAS REFERRING TO
23 THE WRONG AFFIDAVIT. IF YOU LOOK AT PARAGRAPH 4 OF MR.
24 OSTENDORFF'S FIRST AFFIDAVIT, HE ADMITTED THAT HE WAS
25 HAVING CASH FLOW PROBLEMS.

1 THE COURT - YES.

2 MR. TATUM - WELL, WHAT HAPPENED WAS AT SOME
3 POINT MR. OSTENDORFF STARTED USING CONSTRUCTION DRAWS TO
4 PAY HIS MORTGAGE PAYMENTS. AND IF YOU LOOK AT ---

5 THE COURT - HE SAYS THAT WAS WITH THE KNOWLEDGE
6 AND CONSENT OF THE BANK SOMEWHERE.

7 MR. TATUM - WELL, IF YOU LOOK AT THE FIRST
8 AFFIDAVIT, WHICH IS UNDER TAB NUMBER 3, PARAGRAPH 10, ---

9 THE COURT - ALL RIGHT.

10 MR. TATUM - --- AND YOU ALSO LOOK AT THIS SECOND
11 AFFIDAVIT WHICH IS TAB NUMBER 4 IN PARAGRAPH 20, IT
12 APPEARS THAT SOME PAYMENTS WERE MADE BUT HE ADMITS IN
13 PARAGRAPH 20 OF THE SECOND AFFIDAVIT THAT THE PERSON WHO
14 ALLOWED HIM TO DO THAT AT SUN TRUST WHEN THE SUPERVISOR
15 FOUND OUT ABOUT IT GOT --- HE GOT IN TROUBLE FOR IT AND
16 WAS TOLD NOT TO DO IT AGAIN. AND IF YOU THINK ABOUT IT,
17 YOUR HONOR, IT DOESN'T REALLY MAKE SENSE TO DO THAT
18 BECAUSE TYPICALLY WHEN YOU HAVE A CONSTRUCTION LOAN, YOU
19 HAVE THE LOAN ON ONE HAND AND YOU HAVE THE COLLATERAL ON
20 THE OTHER HAND. AS YOU MAKE A CONSTRUCTION DRAW PAYMENT,
21 THAT MONEY IS PUT BACK INTO THE COLLATERAL SO THE
22 COLLATERAL IS INCREASING IN VALUE AT THE SAME TIME THE
23 DEBT IS INCREASING, BUT IF YOU'RE USING THE MONEY, THE
24 CONSTRUCTION DRAWS, TO PAY DOWN YOUR PAST-DUE MORTGAGE
25 PAYMENTS, THE VALUE OF THE LOAN, THE AMOUNT OF THE LOAN

1 AMOUNT'S GOING UP, BUT THE VALUE OF THE COLLATERAL IS
2 STAYING THE SAME, SO THE BANK IS GETTING --- PUTTING
3 ITSELF IN AN EVEN WORSE POSITION THAN IT WOULD BE
4 OTHERWISE. SO OF COURSE AT SOME POINT SUN TRUST SAID, YOU
5 KNOW, ONCE THEY REALIZED WHAT WAS GOING ON, SUN TRUST ---
6 YOU LOOK AT THE AFFIDAVIT OF SUSAN WALKER UNDER TAB NUMBER
7 2, PARAGRAPH 17, SUN TRUST MERELY REQUIRED THAT HE BRING
8 ALL HIS PAYMENTS CURRENT BEFORE THEY MADE ANYMORE
9 CONSTRUCTION DRAW REQUEST, AND THAT'S PRETTY MUCH THE CRUX
10 OF WHY THE CONSTRUCTION DRAW PAYMENTS WERE NOT MADE. HE
11 JUST GOT BEHIND ON HIS PAYMENTS AND SUN TRUST DID NOT WANT
12 HIM TO USE CONSTRUCTION DRAW PAYMENTS TO PAY DOWN HIS
13 MORTGAGE. THEY WANTED THE CONSTRUCTION DRAW PAYMENTS TO
14 BE USED FOR THE COLLATERAL.

15 THE COURT - ALL RIGHT, LOOK AT HER --- PARAGRAPH
16 19 OF HER AFFIDAVIT.

17 MR. TATUM - YES.

18 THE COURT - I WAS TRYING TO --- IN ONE OF THE
19 AFFIDAVITS OF MR. OSTENDORFF --- I CAN'T REMEMBER WHICH
20 ONE --- HE TALKS ABOUT WHAT IT WOULD COST TO FINISH THE
21 PROPERTY, BEING IN THE OVER A HUNDRED THOUSAND DOLLARS.
22 I CAN'T REMEMBER THE NUMBER, BUT THE --- IN MS. WALKER'S
23 AFFIDAVIT SHE SAYS THAT THE PRINCIPAL AMOUNT DUE WAS THREE
24 HUNDRED AND NINETY THREE THOUSAND FORTY-TWO DOLLARS AND
25 TEN CENTS AND THE LOAN WAS ONLY FOUR HUNDRED THOUSAND

1 DOLLARS. WAS THERE ANY MODIFICATION OF THE LOAN?

2 MR. TATUM - NOT --- NOT THAT I'M AWARE OF, YOUR
3 HONOR.

4 THE COURT - OKAY.

5 MR. TATUM - ACTUALLY THEY DENIED TO DO SOME SORT
6 OF WORK-OUT AND THAT'S ANOTHER POINT THAT I HAVE HERE THAT
7 I WAS GOING TO MAKE. IF YOU LOOK AT THE --- SOME OF THE
8 OTHER ALLEGATIONS THAT MR. OSTENDORFF MADE THAT'S NOT
9 NECESSARILY IN HIS COUNTERCLAIM BUT HE'S MADE SOME
10 ALLEGATIONS IN SOME OF THE AFFIDAVITS THAT HE SUBMITTED, -
11 --

12 THE COURT - RIGHT.

13 MR. TATUM - --- FIRST HE SAYS THAT HE LOST ---
14 THAT SUN TRUST WAS GOING TO PROFIT FROM THE FORECLOSURE IN
15 THIS MATTER, AND HE SAYS THAT IN HIS FIRST AFFIDAVIT,
16 WHICH IS UNDER TAB NUMBER 3 IN PARAGRAPH 13, THAT SUN
17 TRUST STANDS TO MAKE TWO HUNDRED THOUSAND DOLLARS IF THEY
18 FORECLOSE ON THIS PROPERTY. HOWEVER, IF YOU LOOK AT HIS
19 SECOND AFFIDAVIT UNDER TAB NUMBER 4 --- I'LL GIVE YOU A
20 MOMENT.

21 THE COURT - ALL RIGHT.

22 MR. TATUM - THAT'S WHY I TRIED TO TAB IT, MAKE
23 IT A LITTLE BIT EASIER.

24 THE COURT - YES.

25 MR. TATUM - THERE IS A LETTER THAT HE

1 INCORPORATED INTO HIS AFFIDAVIT THAT HE SENT TO SUN TRUST.
2 I BELIEVE IT'S DATED JANUARY THE 24TH, 2008. IN PAGE 2 --
3 -

4 THE COURT - HOLD ON ONE SECOND. JANUARY THE
5 24TH? I SEE A ---

6 MR. TATUM - OF JANUARY ---

7 THE COURT - --- DATED --- NO, THAT'S FROM SUN
8 TRUST.

9 MR. TATUM - IT'S A HANDWRITTEN LETTER. IT'S
10 NEAR THE BACK OF THE EXHIBITS. PROBABLY SHOULD'VE BATE
11 STAMPED THESE TO MAKE IT A LITTLE BIT EASIER TO FOLLOW.

12 THE COURT - YOU TALKING ABOUT TAB 4. RIGHT?

13 MR. TATUM - IT'S TAB 4. IT'S A LETTER THAT MR.
14 OSTENDORFF SENT TO SUN TRUST, A HANDWRITTEN LETTER. IT'S
15 NEAR --- NEAR THE BACK OF THE --- HIS EXHIBITS THAT HE
16 INCORPORATED INTO HIS AFFIDAVIT.

17 THE COURT - I'M SORRY, I DON'T SEE THAT. NOW,
18 I HAVE SEEN THE LETTER --- A LETTER, THOUGH. HOLD ON A
19 MINUTE. MAYBE IT'S IN THIS MATERIAL. (PAUSE)

20 MR. TATUM - YOU CAN LOOK AT MY COPY.

21 THE COURT - I PROBABLY NEED TO.

22 MR. TATUM - MAYBE IT DIDN'T ---

23 MR. OSTENDORFF - I WAS THINKING I MIGHT HAVE A
24 COUPLE EXTRA IN HERE SOMEWHERE.

25 MR. TATUM - I MIGHT HAVE AN EXTRA ONE IN THE

1 FILE SOMEWHERE.

2 THE COURT - I'VE READ THIS LETTER. I JUST CAN'T
3 FIND IT RIGHT NOW. GO AHEAD.

4 MR. TATUM - IF YOU LOOK AT THAT LETTER, I
5 BELIEVE IT'S ON PAGE 2, HE SENT A LETTER TO SUN TRUST
6 STATING THAT THEY WOULD LOSE A LOT OF MONEY IF THEY
7 FORECLOSED ON THE PROPERTY. ALSO, IN MR. OSTENDORFF'S
8 AFFIDAVITS HE SAID THAT HE WAS NOT ABLE TO COMPLETE THE
9 CONSTRUCTION, AND BECAUSE HE WAS NOT ABLE TO COMPLETE THE
10 CONSTRUCTION HE WAS NOT ABLE TO REFINANCE THE PROPERTY,
11 BUT IF YOU LOOK AT THAT VERY SAME LETTER ON THE --- I
12 BELIEVE IT'S THE THIRD PAGE NEAR THE BOTTOM --- HE SAYS
13 THAT HE DOESN'T NEED ANYMORE CONSTRUCTION DRAWS TO
14 COMPLETE THE PROJECT. ALSO, MR. OSTENDORFF ALLEGES THAT
15 SUN TRUST, YOU KNOW, WRONGFULLY REFUSED TO WORK OUT SOME
16 SORT OF PLAN WITH HIM, BUT IF YOU LOOK AT THAT SAME LETTER
17 AT THE VERY FIRST PAGE, HE'S THREATENING TO FILE
18 BANKRUPTCY. OF COURSE WHEN YOU SEND A LETTER TO THE BANK
19 SAYING IF YOU DON'T DO WHAT I TELL YOU TO DO I'M GOING TO
20 FILE A CHAPTER 7 OR A CHAPTER 13 BANKRUPTCY, OF COURSE
21 THAT'S GOING TO LIMIT YOUR OPTIONS AS FAR AS THE BANK'S
22 CONCERNED. THEREFORE, YOUR HONOR, WE FEEL THAT THERE IS
23 NO ISSUE OF MATERIAL FACT WITH RESPECT TO MR. OSTENDORFF'S
24 COUNTERCLAIM, AND WE'D ASK THAT THE COURT GO AHEAD AND
25 ENTER SUMMARY JUDGMENT IN OUR FAVOR. THANK YOU, YOUR

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1 HONOR.

2 THE COURT - ALL RIGHT. ALL RIGHT, MR.

3 OSTENDORFF?

4 MR. OSTENDORFF - YES, SIR.

5 THE COURT - LET ME ASK YOU FIRST ---

6 MR. OSTENDORFF - YES, SIR.

7 THE COURT - --- IN READING THIS MATERIAL
8 YESTERDAY, SOMEWHERE IN IT YOU --- YOU STATED HOW MUCH IT
9 WOULD COST TO COMPLETE THE HOUSE.

10 MR. OSTENDORFF - YES, SIR.

11 THE COURT - WHERE IS THAT?

12 MR. OSTENDORFF - IT'S --- IT'LL BE IN MY ---
13 IT'S PROBABLY --- IT'LL HAVE TO BE IN ONE OF THOSE
14 AFFIDAVITS. LET ME TAKE A QUICK LOOK. IT GAVE OPINION OF
15 WHAT I THOUGHT THEY COULD ACTUALLY FINISH THE HOUSE.
16 BASICALLY, ANYBODY WHO WATCHED FLIP THIS HOUSE KNOWS HOW
17 TO GET ON THE TELEPHONE AND CALL PEOPLE AND GET STUFF
18 DONE, AND IT GIVES THEM A WINDFALL, AND THAT'S --- MUST BE
19 IN MY FIRST AFFIDAVITS. LOOK ON --- ON MY --- PAGE 4 OF
20 MY FIRST AFFIDAVIT WHICH JUST SAYS AFFIDAVIT --- I DIDN'T
21 PLAN ON DOING TWO. BUT I'M THINKING IT WAS --- I ROUGHLY
22 SAID FIFTY THOUSAND DOLLARS, YOUR HONOR, IF IT'S ---
23 ANYBODY COULD. I COULD PROBABLY DO IT FOR TWENTY, BUT
24 ANYBODY WHO KNOWS HOW TO PICK UP A TELEPHONE AND
25 UNDERSTANDS A LITTLE ABOUT CONSTRUCTION COULD DO IT, BUT

1 THERE'S --- THERE'S A LOT OF EQUITY IN THAT HOUSE, YOUR
2 HONOR. POTENTIAL EQUITY. LET ME PUT THAT IN PERSPECTIVE.
3 VERY LARGE HOUSE. IT'S IN FORT MILL.

4 THE COURT - POINT ME TO WHERE YOU SAID WHAT IT
5 WOULD TAKE TO FINISH THE WORK.

6 MR. OSTENDORFF - WELL, MAYBE --- GO BACK --- IT
7 COULD'VE BEEN IN MY OPPOSITION. LET ME RUN THROUGH MY
8 OPPOSITION. DO YOU REMEMBER WHEN YOU READ IT? JUST
9 RECENTLY OR ---

10 THE COURT - YESTERDAY. DIDN'T HAVE IT UNTIL
11 YESTERDAY.

12 MR. OSTENDORFF - YESTERDAY. THAT WOULD ---
13 OKAY. (PAUSE) YES, I --- IT'S --- I KNOW THAT I DID PUT
14 SOMETHING IN SOMEWHERE THAT IT WAS FIFTY THOUSAND.

15 THE COURT - IT DOESN'T MATTER. GO AHEAD.

16 MR. OSTENDORFF - OKAY. YES, SIR, I'M SORRY. I
17 THINK JUST TO GET TO THE QUICK GIST OF THE GENUINE ISSUE
18 OF MATERIAL FACT, I'VE LOST A LOT OF EQUITY IN THAT HOUSE.
19 I MEAN I ---

20 THE COURT - THAT'S NOT --- THAT'S NOT AN ISSUE
21 OF MATERIAL FACT ---

22 MR. OSTENDORFF - YES, SIR.

23 THE COURT - --- IN THE FORECLOSURE.

24 MR. OSTENDORFF - OKAY.

25 THE COURT - AND WHERE IS IT --- LET --- WELL,

1 BEAR WITH ME. HOLD ON. LET ME SAY IT THIS WAY. WHETHER
2 OR NOT YOU --- THE AMOUNT OF MONEY --- ANY AMOUNT OF MONEY
3 YOU MAY HAVE LOST BY NOT BEING ABLE TO COMPLETE THE ---
4 COMPLETE THE HOUSE IS NOT --- HAS NOTHING TO DO WITH THE
5 MOTION THAT THE PLAINTIFF IS MAKING TODAY. THEIR MOTION
6 IS DIRECTED TO THE BASIS OF LIABILITY THAT YOU ASSERT
7 UNDER THE COUNTERCLAIM. IN OTHER WORDS, ASSUME FOR THE
8 MOMENT THE DAMAGES MAY BE ANYTHING.

9 MR. OSTENDORFF - YES, SIR, I UNDERSTAND.

10 THE COURT - THEY'RE SAYING THAT YOU HAVE NOT ---
11 THAT YOUR COUNTERCLAIM IS INSUFFICIENT BECAUSE IT DOESN'T
12 STATE A BASIS FOR HOLDING THEM LIABLE TO YOU.

13 MR. OSTENDORFF - I'M SORRY, I DON'T HAVE MY
14 COUNTERCLAIM WITH ME, BUT ---

15 THE COURT - HERE YOU GO.

16 MR. OSTENDORFF - I THINK --- OKAY. I BELIEVE I
17 WOULD PUT IT THAT THEY HELD BACK MY CONSTRUCTION DRAWS.
18 THAT'S WHY I COULDN'T COMPLETE THE CONTRACT, COULDN'T
19 COMPLETE THE HOUSE. AND I WAS --- I WAS CURRENT ON MY
20 PAYMENTS. THEY CUT MY MONEY OFF IN DECEMBER.

21 THE COURT - NO, SIR. I'M LOOKING AT A --- HAVE
22 YOU FILED AN AFFIDAVIT ABOUT YOUR --- ABOUT YOUR PAYMENTS?

23 MR. OSTENDORFF - I THINK THAT IN THE AFFIDAVIT
24 WE TALK --- TALKED ABOUT ---

25 THE COURT - BECAUSE THE AFFIDAVIT OF --- THAT

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1 THE BANK HAS FILED CLEARLY SHOWS THAT YOU WERE DELINQUENT.

2 MR. OSTENDORFF - CAN WE GO TO HER AFFIDAVIT ---

3 THE COURT - WE ARE.

4 MR. OSTENDORFF - OKAY. THERE --- IF YOU'LL SEE
5 ON --- THIS ONE RIGHT HERE ON THE 3/16 STATEMENT, YOUR
6 HONOR. WHOOPS, I'M SORRY. LET ME BACK UP. NOT 3/16.

7 THE COURT - MR. OSTENDORFF, ---

8 MR. OSTENDORFF - YES, SIR.

9 THE COURT - --- DID YOU --- DO YOU HAVE --- ARE
10 YOU TRYING TO SHOW ME SOMETHING THAT IS PART OF AN
11 AFFIDAVIT?

12 MR. OSTENDORFF - SUSAN WALKER'S AFFIDAVIT. THIS
13 SHOWS THAT I WAS CURRENT.

14 THE COURT - ALL RIGHT, I'VE GOT HER AFFIDAVIT IN
15 FRONT OF ME.

16 MR. OSTENDORFF - YES, SIR. AND THAT'S WHAT I
17 WANT TO YOU SHOW. THE --- THEY CUT MY MONEY OFF IN
18 DECEMBER.

19 THE COURT - TELL ME WHAT IS INCORRECT ABOUT THE
20 STATE --- ABOUT --- IN HER --- LOOK AT PARAGRAPH 14 OF HER
21 AFFIDAVIT.

22 MR. OSTENDORFF - YES, SIR.

23 THE COURT - IS THERE ANY ERROR IN THAT
24 ITEMIZATION OF PAYMENTS SHOWING THE PAYMENTS YOU MADE AND
25 THE DATES THAT YOU MADE THEM?

1 MR. OSTENDORFF - I'M NOT GOING TO ARGUE THOSE --

2 -

3 COURT REPORTER - I DIDN'T UNDERSTAND WHAT HE
4 SAID.

5 MR. OSTENDORFF - I SAID NO, SIR, I WON'T ARGUE
6 THAT --- THAT AFFIDAVIT.

7 THE COURT - WELL, THEN YOU WERE IN DEFAULT.

8 MR. OSTENDORFF - WELL, MY REASON FOR DEFAULT WAS
9 THEY CUT MY MONEY OFF FOR CONSTRUCTION.

10 THE COURT - WELL, MR. OSTENDORFF, YOU SAID, YOU
11 TELLING ME IT'LL TAKE FIFTY THOUSAND DOLLARS TO COMPLETE
12 THE HOUSE. RIGHT?

13 MR. OSTENDORFF - (INDICATING YES)

14 THE COURT - IN THE COUNTERCLAIM, MY COUNTER ---
15 COPY WHICH I WANT YOU TO GIVE BACK TO ME ---

16 MR. OSTENDORFF - OH, SORRY.

17 THE COURT - --- YOU SAY THAT YOU COULD COMPLETE
18 IT FOR WHAT WAS LEFT IN THE LOAN.

19 MR. OSTENDORFF - YES, SIR, I COULD.

20 THE COURT - AT THE TIME --- LISTEN TO ME.

21 MR. OSTENDORFF - YES, SIR.

22 THE COURT - AT THE TIME YOU DEFAULTED, THERE WAS
23 ONLY A FEW THOUSAND DOLLARS LEFT IN THE LOAN.

24 MR. OSTENDORFF - SIR, I NEEDED FOUR THOUSAND
25 DOLLARS CASH. AND I WORKED MY --- ALL MY CONSTRUCTION AND

1 ALL SCHEDULE BASED ON CASH. I HAD ACCOUNTS WITH
2 EVERYBODY. IF I HAD ACCOUNTS WITH THE ELECTRICAL, THE
3 PAINT, I COULD'VE FINISHED THAT HOUSE, AND I HAD LOANS
4 WAITING ON ME.

5 THE COURT - WELL, TELL ME HOW THEY ARE --- HOW
6 THEY ARE REQUIRED UNDER THE LOAN --- UNDER THE NOTE AND
7 MORTGAGE TO ADVANCE YOU MONEY WHEN YOU ARE IN DEFAULT?

8 MR. OSTENDORFF - I'M NOT DEFAULT, YOUR HONOR.
9 I'M ---

10 THE COURT - YOU ARE IN DEFAULT ACCORDING TO THIS
11 AFFIDAVIT, AND YOU HADN'T SUBMITTED ANYTHING TO THE
12 CONTRARY AND YOU TOLD ME IT WAS CORRECT.

13 MR. OSTENDORFF - I SAID THAT SCHEDULE OF THE
14 PAYMENTS.

15 THE COURT - WELL, THAT SHOWS THAT YOU'RE IN
16 DEFAULT. YOU WERE CLEARLY IN DEFAULT.

17 MR. OSTENDORFF - WELL, CAN --- I'LL ASK THE
18 COURT. CAN THEY DENY ME ANY --- AS CONSTRUCTION DRAW AT
19 ANY TIME JUST BECAUSE THEY FEEL LIKE IT? DON'T THEY HAVE
20 AN OBLIGATION TO FUND THE CONSTRUCTION?

21 THE COURT - ONE OF THE FEW PRIVILEGES I HAVE
22 SITTING UP HERE IS THAT I DON'T HAVE TO ANSWER QUESTIONS.

23 MR. OSTENDORFF - OKAY. OH, OKAY, THAT'S
24 RHETORICAL. I MEAN ---

25 THE COURT - YOU CAN ARGUE ALL YOU WANT TO.

1 MR. OSTENDORFF - YES, SIR. BUT UM THE DEFAULT
2 FOR ME WHEN THEY SAY HAPPENED IN JULY OF 2007. THEY CUT
3 MY MONEY OFF IN DECEMBER OF 2006. THEY PREVENTED ME FROM
4 FINISHING THE HOUSE. AND IF YOU LOOK ON SUSAN WALKER'S
5 AFFIDAVIT ON THAT DECEMBER STATEMENT, THE --- THOSE UH ---

6 THE COURT - YOU WERE IN DEFAULT AS EARLY AS JUNE
7 OF 2006, ACCORDING TO THE STATEMENT THAT YOU SAY IS
8 CORRECT.

9 MR. OSTENDORFF - OKAY, THAT SCHEDULE WHAT SUSAN
10 WALKER'S GOT?

11 THE COURT - PARAGRAPH 14.

12 MR. OSTENDORFF - OKAY, UH --- NOW, WHEN --- DEF
13 --- IS --- I GUESS IF I'M GOING TO PAY THE LOAN THAT DAY
14 IT'S DUE, MAYBE, I DON'T KNOW. IF --- MAYBE I AM IN
15 DEFAULT. MAY HAVE BEEN IN DEFAULT ALL ALONG, THEN WHY'D
16 THEY CONTINUE TO LET ME WORK ON THE HOUSE.

17 THE COURT - I DON'T KNOW THE ANSWER --- I DON'T
18 ---

19 MR. OSTENDORFF - I DON'T KNOW. I DON'T ---

20 THE COURT - I'M NOT OBLIGED TO ANSWER THAT
21 QUESTION.

22 MR. OSTENDORFF - I'M NOT SAYING ---

23 COURT REPORTER - I'M SORRY, YOU'RE TALKING AT
24 THE SAME TIME. I CAN'T GET A CLEAR RECORD.

25 MR. OSTENDORFF - I'M SORRY.

1 THE COURT - GO AHEAD, MR. OSTENDORFF.

2 MR. OSTENDORFF - I'M NOT IN DEFAULT. I MADE
3 THOSE PAYMENTS. AND THEY --- AND THEY ACCEPTED THOSE
4 PAYMENTS, AND THEY CONTINUED TO FUND THE CONSTRUCTION, BUT
5 FOR NO REASON THEY CUT ME OFF IN DECEMBER FOR ABSOLUTELY
6 NO REASON. AND THEY --- THEY WERE MAKING --- I WAS MAKING
7 TREMENDOUS AMOUNT OF IMPROVEMENTS ON THE HOUSE AND TO
8 RECAP SOMETHING FOR INSTANCE, THAT HOUSE WAS EXISTING ---

9 THE COURT - WHEN IS THE LAST --- WHEN IS THE
10 LAST DISBURSEMENT THEY MADE TO YOU?

11 MR. OSTENDORFF - DECEMBER OF 2006.

12 THE COURT - OKAY, SO YOUR TESTI --- YOUR
13 POSITION IS THAT THAT'S THE LAST DISBURSEMENT THEY MADE TO
14 YOU?

15 MR. OSTENDORFF - YES, SIR. AND I HAD ---

16 THE COURT - THEN --- AND THE PRINCIPAL DUE THEN
17 ON OR ABOUT THAT DATE WAS IN EXCESS OF THREE HUNDRED AND
18 NINETY THOUSAND DOLLARS OUT OF A FOUR HUNDRED THOUSAND
19 DOLLAR LOAN.

20 MR. OSTENDORFF - YES, SIR.

21 THE COURT - AND YOU'RE TELLING ME IT'D TAKE
22 FIFTY THOUSAND DOLLARS TO FINISH THE HOUSE.

23 MR. OSTENDORFF - IT WOULD TAKE THEM. ANYBODY
24 ELSE. NOT ME. BUT, YOUR HONOR --- I KNOW --- WHAT I'M
25 TRYING TO SAY IS THAT THEY WERE --- THEY HAD THE

1 OPPORTUNITY TO MAKE A WINDFALL AND THAT'S WHAT THEIR
2 MOTIVE WAS. AND THEN I'M ENTITLED --- THEY'RE NOT
3 ENTITLED TO MAKE A WINDFALL BY HANGING ME OUT ON A
4 CONSTRUCTION LOAN BY DENYING ME ANY --- YOU KNOW, A DRAW
5 WITH NO REASON.

6 THE COURT - WELL, LET'S JUST ASSUME THEY HAD
7 ADVANCED YOU ALL THE MONEY.

8 MR. OSTENDORFF - YES, SIR.

9 THE COURT - WHAT WOULD YOU DO?

10 MR. OSTENDORFF - WE WOULDN'T BE HERE. I'D HAD -
11 -- I HAD --- NUMEROUS BANKS WANTED TO DO A REFINANCE. IF
12 THEY HAD GIVEN ME THE MONEY, WE'D ALREADY HAD IT
13 REFINANCED WITH THEM. THE WHOLE IDEA WHEN I'D WENT WITH
14 MIKE WATTS, I WAS GOING TO DO A CASH-OUT REFINANCE. I HAD
15 A WHOLE BUNCH OF OTHER DEBT ON THE SIDE THAT THEY KNEW
16 ABOUT AT THE TIME THEY MADE ME THE LOAN. AND A LOT OF
17 TIMES PEOPLE WILL TAKE A MORTGAGE TO PAY OFF SHORT-TERM
18 DEBT. I HAD LOTS OF SHORT-TERM DEBT. AND THAT WAS WHAT
19 I WAS GOING TO DO --- THAT --- THE EQUITY IN THERE, GOOD
20 GOSH. LOOK AT THE AMOUNT OF EQUI --- I HAD A --- I HAD A
21 SIX HUNDRED AND FIFTY THOUSAND DOLLAR LOAN WAITING ME
22 (SIC) FROM STERLING BANK IN NEW YORK. I HAD TWO HUNDRED
23 AND FIFTY THOUSAND DOLLARS I'M GOING TO PUT IN MY POCKET.
24 THE HOUSE --- I COULD SELL THE HOUSE RIGHT AFTER I GOT
25 FINISHED, TAX FREE, YOUR HONOR. I --- TWO HUNDRED AND

1 FIFTY THOUSAND DOLLARS CASH, NO TAX. I COULD'VE SOLD THAT
2 HOUSE, START ON ANOTHER ONE. TWO YEARS I CAN DO THE SAME
3 THING. IT AIN'T THAT HARD, BUT YOU GOT TO HAVE FINANCE,
4 AND THEY HUNG ME OUT IN DECEMBER AND I'D STILL MADE THOSE
5 PAYMENTS, THOSE INTEREST PAYMENTS. AND ALL I NEEDED WAS
6 FOUR THOUSAND DOLLARS CASH AT THAT TIME. I DIDN'T HAVE
7 ACCOUNTS FOR ELECTRICAL, WIRING, SWITCHES AND PAINT, BUT
8 I HAD ACCOUNTS FOR EVERYTHING. ALL I NEEDED WAS THAT
9 SMALL AMOUNT OF MONEY AND THEY STILL DIDN'T DO IT.

10 THE COURT - HOW MUCH DID YOU OWE ON THOSE
11 ACCOUNTS THAT WASN'T PAID?

12 MR. OSTENDORFF - I DON'T KNOW. GO BACK --- I
13 DON'T REALLY KNOW ---

14 THE COURT - SO YOU WERE TAKING DRAWS AND NOT
15 PAYING THE ACCOUNTS?

16 MR. OSTENDORFF - I WAS BEHIND, BUT I WAS KEEPING
17 EVERYBODY HAPPY, AND THEY UNDERSTAND. THEY UNDERSTAND.

18 THE COURT - WASN'T THE PURPOSE OF THE
19 DISBURSEMENTS TO ENABLE YOU TO PAY THE ACCOUNTS, AND
20 DIDN'T YOU HAVE AN OBLIGATION TO DO THAT?

21 MR. OSTENDORFF - YES, SIR. I WAS KEEPING ---
22 EVERYBODY WAS --- EVERYBODY WAS FINE; EVERYBODY
23 UNDERSTOOD. WE WERE GETTING EVERYONE --- PAID AND IT WAS
24 IN ORDERLY TIME AND THERE WOULD BEEN NO PROBLEM,
25 ABSOLUTELY NO PROBLEM. I HAD A LOT --- I HAD A LOT OF

1 OTHER DEBT AND THEY --- SUN TRUST KNEW AT THE TIME.
2 THEY'RE VERY FAMILIAR WITH THE HOUSE.

3 THE COURT - ALL RIGHT.

4 MR. OSTENDORFF - YES, SIR. AND WE WOULD NOT BE
5 HERE --- IF ALL THEY HAD TO DO WAS GIVE ME THAT DRAW ---
6 JUST ONE OR TWO MORE DRAWS, EASY LITTLE DRAWS WITHIN THE
7 FOUR HUNDRED THOUSAND DOLLAR GUIDELINE. AND, YOUR HONOR,
8 WE CAN GO BACK TO --- IF THEY SAY THERE'S NOT ENOUGH
9 MONEY, WHATEVER, TO PAY SOMETHING, THEN THEY SHOULD ---

10 THE COURT - APPARENTLY YOU WEREN'T PAYING THE
11 BILLS WITH THE MONEY THEY GAVE YOU.

12 MR. OSTENDORFF - OH, I PAYING (SIC) BILLS.

13 THE COURT - NOT IF YOU OWED PEOPLE FOR THE ---
14 FOR THE --- WHAT WAS IN THE HOUSE.

15 MR. OSTENDORFF - I OWE SUM, BUT ---

16 THE COURT - ALL RIGHT.

17 MR. OSTENDORFF - BUT I --- THERE --- THE THING
18 IS, I HAD --- I OWED A LOT OF OTHER DEBT THAT WENT ---
19 THAT WAS IN THE HOUSE ORIGINALLY THAT I USED, LIKE CITY
20 AND COUPLE OF --- THAT WAS IN THE HOUSE THAT WAS BROUGHT -
21 -- THAT'S WHY THE HOUSE WAS AT THE VALUE THAT IT WAS. AND
22 I'M JUST SAYING I'M ENTITLED TO SOMETHING IN THIS; AND
23 THERE AGAIN, THE TRIERS OF FACT AS TO MUCH, HOW MUCH, BUT
24 THEY --- THEY BREACHED IN DECEMBER ---

25 THE COURT - ALL RIGHT, YOU'VE SAID THAT ALREADY.

1 ANYTHING NEW?

2 (WHEREUPON MR. OSTENDORFF IS MUMBLING)

3 COURT REPORTER - I CAN'T UNDERSTAND WHAT YOU'RE
4 SAYING.

5 MR. OSTENDORFF - OH, I'M JUST MUMBLING, I'M
6 SORRY. NOTHING THAT I COULD GO ON FOR A GOOD BIT FOR WHAT
7 HE WAS TALKING ABOUT. LOT OF IT I DON'T THINK IS --- IS
8 IMMATERIAL.

9 THE COURT - ALL RIGHT, THANK YOU.

10 MR. OSTENDORFF - OH, AND WELL, YES, I DO WANT TO
11 --- I GOT NO DISCOVERY OF WHY THEY CUT MY MONEY OFF. I
12 GOT NO DISCOVERY EXCEPT FOR SUSAN ---

13 THE COURT - THAT'S NOT WHAT WE'RE HERE ABOUT.

14 MR. OSTENDORFF - OKAY.

15 THE COURT - ANYTHING ELSE ABOUT WHAT WE'RE HERE
16 ABOUT?

17 MR. OSTENDORFF - I THOUGHT WE'RE HERE JUST
18 WHETHER THEY WERE ---

19 THE COURT - WHAT WE'RE HERE ABOUT IS WHETHER
20 YOUR CLAIM THAT THEIR FAILURE TO ADVANCE YOU ANYMORE
21 MONEY, OF WHETHER THEY'RE LIABLE FOR THAT AS A MATTER OF
22 LAW.

23 MR. OSTENDORFF - YES, SIR, I THINK --- I THINK
24 THEY ARE.

25 THE COURT - OKAY. ANYTHING ELSE?

1 MR. OSTENDORFF - I THINK THAT'D BE IT.

2 THE COURT - ALL RIGHT, ANYTHING IN REPLY
3 BRIEFLY?

4 MR. TATUM - YOUR HONOR, AS FAR AS THE
5 DISCOVERY'S CONCERNED, WE'D JUST GOTTEN THAT ABOUT TWO
6 WEEKS ---

7 THE COURT - I'M NOT INTERESTED IN THE DISCOVERY.

8 MR. TATUM - --- TWO WEEKS AGO, SO THE TIME FOR
9 RESPONDING HASN'T CAME YET.

10 THE COURT - ALL RIGHT. ALL RIGHT, I'VE BEEN
11 THROUGH THIS FILE. I THINK THIS IS THE THIRD MATTER WE'VE
12 HEARD. THIS IS AT LEAST THE SECOND. AND I FIND THERE'S
13 NO GENUINE ISSUE OF FACT THAT WOULD ENTITLE MR. OSTENDORFF
14 TO GO FORWARD WITH HIS COUNTERCLAIM, AS BY HIS OWN
15 ADMISSION THE SCHEDULE OF PAYMENTS AND --- IS CORRECT AS
16 SET FORTH IN THE AFFIDAVIT OF MS. WALKER. HE, THEREFORE,
17 WAS IN DEFAULT AND UNDER THE TERMS OF THE LOAN DOCUMENTS
18 THE BANK HAD A RIGHT TO DENY HIM ANY FURTHER DRAWS, AND
19 FURTHERMORE, IT LOOKS LIKE, BASED ON EVERYTHING I'VE
20 HEARD, THAT THE LOAN WAS ALMOST EXHAUSTED ANYWAY, AND BY
21 HIS OWN ADMISSION IT WOULD TAKE MORE THAN SEVEN THOUSAND
22 DOLLARS TO FINISH THE HOUSE. SO I GRANT YOUR MOTION. IF
23 YOU WILL E-MAIL ME AN ORDER, PLEASE.

24 MR. TATUM - CAN I GET THE E-MAIL ADDRESS, YOUR
25 HONOR?

73

1 THE COURT - RIGHT HERE ON THIS CARD.

2 MR. TATUM - OKAY.

3 (END OF TRANSCRIPT)

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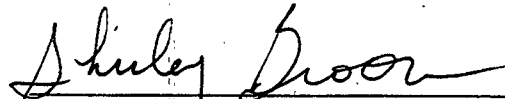
25

CERTIFICATE

I, SHIRLEY G. BROOM, THE UNDERSIGNED COURT REPORTER, HEREBY CERTIFY THAT THE FOREGOING 27 PAGES CONSTITUTE A TRUE RECORD OF PROCEEDINGS TAKEN IN THE CASE OF SUN TRUST MORTGAGE INCORPORATED VS. MARK OSTENDORFF, AS TAKEN BY ME AT THE TIME AND PLACE STATED.

I DO FURTHER CERTIFY THAT THE PERSONS WERE PRESENT AS STATED, THAT I AM NOT OF COUNSEL FOR, RELATED TO, OR IN THE EMPLOYEE OF ANY OF THE PARTIES TO THIS ACTION AND THAT I HAVE NO INTEREST WHATSOEVER IN THE OUTCOME OF THIS CASE.

THIS THE 4th DAY OF March, 2010.


SHIRLEY G. BROOM
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

s. Jackson Kimball, Special Circuit Judge

Case No. 2007-CP-46-04305

SunTrust Mortgage, Inc.,Respondent,

v.

Mark OstendorffAppellant.

AFFIDAVIT OF MARK OSTENDORFF

I, Mark Ostendorff, submit this affidavit to the Court per Rule 224(c)(3).

I, Mark Ostendorff, have personally prepared this affidavit and swear as to its accuracy and truthfulness to the best of my personal knowledge. I am over eighteen years old and I am competent to testify to the matters therein.

I never received the Notice of Hearing from Brian Steed, SunTrust's attorney, for the final foreclosure hearing.

76

I never received the Notice of Sale .

I never received a copy of the Order And Judgment Of Foreclosure And Sale.

I never received a copy of Form 4 , Judgment In A Civil Case.

The first time I ever knew of the above 4 items was at the end of October, via the Master-In- Equity's website listing the sale date of my home for the following Monday of November 4, 2013.

2

I promptly filed a Chap 7 petition and it was received by the bankruptcy court on Friday November 1, 2013.

I also promptly filed a Notice of Appeal on SunTrust's attorney on Friday November 1, 2013.

3

I mailed and faxed the York County Clerk of Court office notice of the bankruptcy and the appeal just in time to stop the sale of the house.

I received my copy of the Notice of Sale, the Order and Judgment, Form 4 ,and Notice of Hearing long after the hearing took place. I received it via e-mail after 2 requests to the York County Clerk of Court.

4

None of the 4 documents was ever received through the US Postal Service.

I have never failed in getting mail delivered to me in any of the following addresses:

PO Box 14886, Greenville ,SC

37 Arbutus Trail, Greenville, SC

137 King Street, Central, SC

135 Cedar Creek Circle, Central, SC

I still receive mail at my current address of 135 Cedar Creek Circle, Central ,SC that have the above addresses on them. The USPS redirects the above addresses to me.

2

77

Page 1 of the Order And Judgment of Foreclosure And Sale show "Appearances: Brian S.Tatum

Rich Willits

Mark Ostendorff

This is incorrect. I, Mark Ostendorff was not at the hearing.

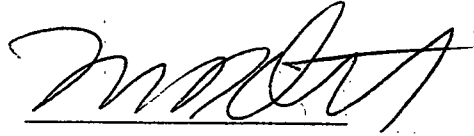
Page 1 of the Order And Judgment of Foreclosure and Sale , item 4 under Findings of Fact states that all Defendants were notified of hearing date as evidenced by an Affidavit of Service.

I have not seen any affidavit as to serving , only SunTrust's attorney's Notice of Hearing.

↑
Found on 1/29/15
to
Email
from
SunTrust
AFFIDAVIT
TO
FACT

↑ AFFIDAVIT
FACT

AFFIANT:



Mark Ostendorff

137 King Street
COLUMBIA, SC 29630
DRAFT
August 19, 2013

Sworn to and subscribed before me
This 15th day of January 2014

Rachel White

NOTARY PUBLIC

RACHEL WHITE
Notary Public - State of South Carolina
My Commission Expires February 15, 2021

Search []

Home Mark

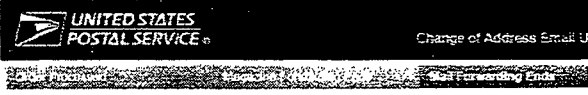
Compose Delete Move Spam More Collapse All

- Inbox (9999+)
- Drafts (20)
- Sent
- Spam (2582)
- Trash
- Folders
- Recent
- Sponsored

End of mail forwarding service notification - USPS Chan...

U.S. Postal Service
To: Me

To ensure you receive your USPS mail forwarding service, please check your Addressed to USPS in your address book now. If you're having trouble viewing this email, you can view it on your smartphone.



Dear Mark,

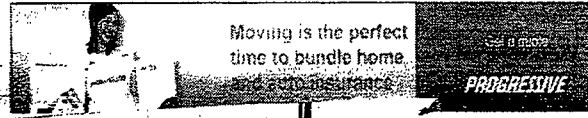
You are approaching the end of your mail forwarding period.

The U.S. Postal Service mail forwarding service is valid for one year from your move date. Your mail stop forwarding date is August 9, 2014.

Failure to change your address may cause your mail to be returned to sender. To continue receiving your mail in a timely fashion, you should change your address directly with everyone who sends you mail.

Moving again? Please visit <http://www.usps.gov> to file a new Change of Address form.

To help you settle into your new home, here is a helpful offer.



Order Status

Mail Stop Forwarding August 9, 2014

Attached to Address

VALID ONE YEAR FROM AUGUST 9, 2013 TO AUGUST 9, 2014

Pay the Full Balance

- 1 Payment \$707.55
- OR
- 6 Monthly Payments of \$117.92

CALL NOW Need other payment options

August 14, 2013

Portfolio Recovery Associates, Inc. We're giving debt collection a good name



TE137* 296 NDC 1141813C70008/21/13 ACS<<

TENDORFF MARK
5 CEDAR CREEK CIR
CENTRAL SC 29630-9467

29630946735 *1980-10544-19-32

PRESORTED FIRST-CLASS U.S. POSTAGE PAID KRB

BDA BANK STATEMENT

296 NFE 1141813I00009/22/13 ACS<<

OSTENDORFF MARK
135 CEDAR CREEK CIR
CENTRAL SC 29630-9467

BC: 29630946735 *1980-03599-22-33

04-4305

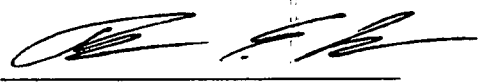
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing **NOTICE OF HEARING** was served upon the following by mailing same by United States First Class Mail in a properly addressed envelope with adequate postage affixed thereon to insure delivery, addressed as follows:

Mark Ostendorff
137 King Street
Central, SC 29630

*Hand
M
F*

This 19th day of August, 2013.



BRIAN S. TATUM
Attorney for Plaintiff

TATUM LAW FIRM, PLLC
PO Box 11250
Charlotte, North Carolina 28220
Phone: (704) 307-4350
Efax: (704) 754-4140
Email: BSTatum@tatumlegal.com

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2013 AUG 21 8AM 9:47
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

80

Compose

- Inbox (9999+)
- Drafts (25)
- Sent
- Spam (2156)
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5 Tips for Avoiding Small-Business Legal Potholes

Search results Delete Move Spam More

- Motion "MOFREE-Motion/Motion to Lift Stay" fr People
- Brian Steed Tatum** Your Honor, Per your request, Jul 23, 2013
- me** Brian, Let me do a little more research, the lifin Jul 25, 2013
- Kimball, Jack** Jul 25, 2013

\$4.00 off coupon
on truMedic TENS Pain Relief Products
Offer ends on or before 1/31/15

Gentlemen:

Attached is an order in this case, which I have signed and am sending to the Clerk to be filed. The Clerk will send each of you a filed copy. To expedite receiving a filed copy, you should contact the Clerk's office.

Thank you.

Jack Kimball

Show message history

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Send
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81

FILED - RECEIVED

2009 DEC 15 PM 12:14

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 SunTrust Mortgage, Inc.,
 Plaintiff(s)
 vs.
 Mark Ostendorff
 Defendant (s) .

IN THE COURT OF COMMON PLEAS

CASE NO. : 07-CP-46-4305

MOTION
TO
COMPEL

COMES NOW Defendant , Ostendorff , hereby moves this court to compel Plaintiff, Suntrust, to produce discovery pursuant to Rule 37 (a)2 and 9 (d).

WHEREFORE , Ostendorff moves this court to compel Suntrust to :

- (a) produce documents as requested under Defendants Request for Production of Documents dated 4/15/09.
- (b) answer Defendants First Interrogatories to Plaintiff Suntrust

Plaintiff has stone walled and provided absolutely no discovery whatsoever. The first two attorneys promised cooperation but did not. The third and present attorney has claimed attorney -client privilege and trade secrets.

There are no trade secrets for a document and a house that are in the public domain . (the note is at the courthouse , the house can be seen from the public roads) Information that is the public domain cannot ,as a matter of law , constitute a trade secret.(Restatement (Second) of Torts 757 cmt. B (1939) , applied in Smith v. Bic Corp., 809 F. 2d 194 , 200 (3d Cir. 1989)).

The attorney-client privilege protects only the confidential communication itself, not the disclosure of underlying facts by those who communicated with the attorney. It is the process rather than the factual content that is protected.

December 9, 2009



Mark Ostendorff
Defendant, Pro Se
PO Box 14846
GREENVILLE SC 29610
(864) 360-1834

2

83

FILED - RECEIVED

STATE OF SOUTH CAROLINA DEC 15 PM 12: 11

COUNTY OF YORK

SunTrust Mortgage, Inc.

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS

CASE NO.: 07-CP-46-4305

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s).

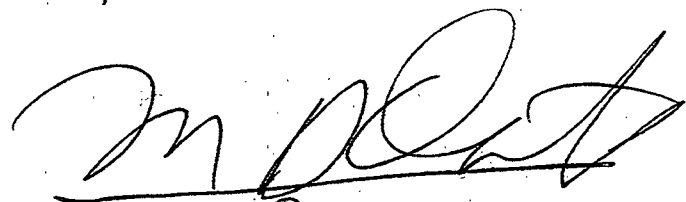
CERTIFICATE
OF
MAILING

I CERTIFY THAT DEFENDANT PLACED
MOTION TO COMPEL IN THE UNITED
STATES MAIL, POSTAGE PAID, TO PLAINTIFF,
ATTORNEY ADDRESSED TO:

BRIAN STEED TARUM
TARUM LAW FIRM
2101 REXFORD ROAD, STE 165W
CHARLOTTE, NC 28211

on December 9, 2009

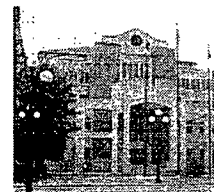
December 9, 2009



MARK OSTENDORFF
DEFENDANT, PRO SE
PO Box 14846
GREENMILE, SC 29610
(864) 360-1834



York County Sixteenth Judicial Circuit Public Index



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Switch View

Sun Trust Mortgage Inc VS Mark Ostendorff

Case Number:	2007CP4604305	Court Agency:	York County Master In Equity	Filed Date:	10/01/2013
Case Type:	Common Pleas	Case Sub Type:	Foreclosure 420	File Type:	Non-Jury
Status:	Judgment	Assigned Judge:	Kimball, S. Jackson III		
Disposition:	Ended by Non Jury	Disposition Date:	10/01/2013	Disposition Judge:	Kimball, S. Jackson III
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:	FEBRUARY 2, 2015 SALES		

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Sun Trust Mortgage Inc	Notice Of Appeal & Proof Of Service	Filing		01/27/2015-08:33		
Sun Trust Mortgage Inc	Notice of Sale	Filing		01/12/2015-11:43		
Sun Trust Mortgage Inc	Order to Restore Case	Order		12/22/2014-10:22		
Sun Trust Mortgage Inc	Motion Fee/Ntc Of Mtn & Mtn For Order To Restore Case	Motion		12/15/2014-16:24		
Ostendorff, Mark	Letter Of Notice Of Intent To Appeal To US Supreme Court	Filing		09/24/2014-15:10		
Sun Trust Mortgage Inc	Remittitur From Court Of Appeals	Filing		09/03/2014-09:13		
	Remittitur From Court Of Appeals	Filing		09/03/2014-09:13		
	Order From Supreme Court	Filing		08/25/2014-11:57		
Sun Trust Mortgage Inc	Notice/Bankruptcy	Filing		08/12/2014-12:43		
Ostendorff, Mark	Notice/Bankruptcy	Filing		08/12/2014-12:43		
	Order From Supreme Court	Order		06/13/2014-14:21		

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Sun Trust Mortgage Inc	Notice of Attorney Change of Law Firm & Cert of Service	Filing		12/04/2013-13:45	
Ostendorff, Mark	Letter Requesting Transcript	Filing		11/18/2013-08:21	
Ostendorff, Mark	Letter/Notice of Appeal/Proof of Service	Filing		11/13/2013-14:50	
Ostendorff, Mark	Notice/Bankruptcy	Filing		11/13/2013-10:21	
Sun Trust Mortgage Inc	Form 4 Order to Stay Def Filed Petition in Bankruptcy Court	Order		11/06/2013-12:23	
Ostendorff, Mark	Letter From Mark Ostendorff	Filing		11/05/2013-12:10	
Ostendorff, Mark	Affidavit Of Mark Ostendorff	Filing		11/05/2013-12:10	
Ostendorff, Mark	Judgment/Foreclosure	Judgment		10/09/2013-09:29	
Sun Trust Mortgage Inc	Judgment/Foreclosure	Judgment		10/09/2013-09:29	
Sun Trust Mortgage Inc	Notice of Sale	Filing		10/09/2013-09:28	
Sun Trust Mortgage Inc	Notice of Hearing & Certificate of Service	Filing		08/21/2013-09:47	10/01/2013-10:17
Sun Trust Mortgage Inc	Order To Lift Stay	Order		08/02/2013-16:02	10/01/2013-16:03
Ostendorff, Mark	Derendants Opposition To Plaintiffs Motion To Lift Stay	Filing		07/17/2013-08:44	10/01/2013-08:45
Wolf, Tiffany H.	Roster/Notice of Motions Roster Publication Sent	Action		06/14/2013-10:44	10/01/2013-10:44
Tatum, Brian Steed	Roster/Notice of Motions Roster Publication Sent	Action		06/14/2013-10:44	10/01/2013-10:44
Ostendorff, Mark	Roster/Notice of Motions Roster Publication Sent	Action		06/14/2013-10:44	10/01/2013-10:44
Tatum, Brian Steed	Roster/Notice of Motions Roster Publication Sent	Action		05/20/2013-10:07	10/01/2013-10:07
Ostendorff, Mark	Roster/Notice of Motions Roster Publication Sent	Action		05/20/2013-10:07	10/01/2013-10:07
Wolf, Tiffany H.	Roster/Notice of Motions Roster Publication Sent	Action		05/20/2013-10:07	10/01/2013-10:07
Sun Trust Mortgage Inc	Motion/Motion to Lift Stay	Motion		04/23/2013-15:19	07/18/2013-15:20
Sun Trust Mortgage Inc	Certification of Mortgagor Non Compliance & Cert Service	Filing		12/06/2012-09:47	10/01/2013-11:02

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Sun Trust Mortgage Inc	Notice of Foreclosure Intervention & Certificate of Service	Filing		09/24/2012-11:09	10/01/2013-11:11
Sun Trust Mortgage Inc	Form 4 Order Staying Action Pending Appeal	Order		06/30/2010-08:45	10/01/2013-08:47
Ostendorff, Mark	Motion Fee & Motion To Amend Answer & Counterclaim	Motion		04/22/2010-08:25	10/01/2013-08:26
Ostendorff, Mark	Motion Fee & Motion For Stay On Foreclosure Hearing	Motion		04/20/2010-10:27	05/10/2013-10:30
Sun Trust Mortgage Inc	Notice of Hearing & Certificate of Mailing	Filing		04/05/2010-11:31	10/01/2013-14:34
Sun Trust Mortgage Inc	Notice of Hearing & Certificate of Service	Filing		04/01/2010-10:25	10/01/2013-16:32
Sun Trust Mortgage Inc	Affdvt/ Non Eligibility Home Afford Mod Prog & Cert Serv/Mail	Filing		03/15/2010-12:20	10/01/2013-13:09
Sun Trust Mortgage Inc	Letter New Atty Information	Filing		02/19/2010-09:27	10/01/2013-10:44
Sun Trust Mortgage Inc	CP Non-Jury Trial Docket	Event		01/21/2010-10:30	01/14/2010-17:00
Sun Trust Mortgage Inc	Notice of Appeal and Proof of Service	Filing		01/19/2010-09:32	10/01/2013-17:07
Ostendorff, Mark	Notice of Immediate Appeal	Filing		01/12/2010-12:34	10/01/2013-15:53
Ostendorff, Mark	Certificate Of Mailing (Notice of Immediate Appeal)	Filing		01/11/2010-10:21	10/01/2013-10:05
Sun Trust Mortgage Inc	Notice of Appeal to Court of Appeals	Filing		01/08/2010-16:55	10/01/2013-14:36
Ostendorff, Mark	Notice of Hearing and Certificate of Mailing	Filing		01/08/2010-09:24	10/01/2013-15:38
Sun Trust Mortgage Inc	Order (Granting Pltffs Motion for Summ Jdg as to Defs C/clm)	Order		01/07/2010-14:29	10/01/2013-14:30
Ostendorff, Mark	Motion Fee & Motion To Compel	Motion		12/15/2009-12:13	10/01/2013-12:16
Ostendorff, Mark	Affidavit Of Mark Ostendorff	Filing		12/15/2009-12:13	10/01/2013-12:17
Sun Trust Mortgage Inc	CP Motion Hearing	Event		12/10/2009-11:00	12/15/2009-17:00
Sun Trust Mortgage Inc	Notice of Hearing/Certificate of Service	Action		12/01/2009-23:59	10/01/2013-16:13
Sun Trust Mortgage Inc	Affidavit of Brian S. Tatum	Filing		11/04/2009-11:29	10/01/2013-11:35
Sun Trust Mortgage Inc	Affidavit Of Susan Walker	Filing		11/04/2009-11:27	10/01/2013-11:34
Sun Trust Mortgage Inc	Brief In Support Of Motion For Summary Judgment	Filing		11/04/2009-11:26	10/01/2013-11:33
Sun Trust Mortgage Inc	Motion Filing Fee & Motion For Summary Judgment	Motion		11/04/2009-11:25	10/01/2013-11:31

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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed and not any other material.

January 30, 2015



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