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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Michael R. Scarborough, Master in Equity

Appellate Case No. 2018-001184

RECEIVED  
APR 15 2019  
SC Court of Appeals

Navy Federal Credit Union,..... Plaintiff/Respondent,

v.

William T. Simmons, III; Laura Ferguson; and,..... Defendants,  
Ford Motor Credit Company, LLC

Of whom Laura Ferguson is the Appellant

RESPONDENT’S MOTION TO DISMISS

Respondent Navy Federal Credit Union, (“Respondent”), hereby submits its Motion to Dismiss pursuant to Rule 240 of the South Carolina Appellate Court Rules and shows this Honorable Court the following:

BACKGROUND AND PROCEDURAL HISTORY

The within matter concerns an action for foreclosure, declaratory judgment, equitable lien, reformation of mortgage, and unjust enrichment filed in Charleston County regarding property located at 11 Leichester Road, Charleston, SC 29407, further described in the Complaint, (“Property”). Respondent obtained a Master’s Order and Judgment of Foreclosure and Sale on October 12, 2016, (“Judgment”). A copy of the Judgment is attached hereto as **Exhibit A**. Pursuant to the Judgment, the Property was sold at public sale on December 13,

2016. Respondent was the successful bidder and this Court issued a deed conveying the Property to Plaintiff recorded February 17, 2017 in Book 0618 Page 060 in the Office of the Register of Deeds for Charleston County.

Thereafter, Appellant filed a Motion for Temporary Restraining Order on June 15, 2017, which was heard on July 6, 2017. The Court continued the matter to August 22, 2017 to have an evidentiary hearing to determine the validity of service of process on Appellant. As reflected in an Order issued August 23, 2017, the Court found that service of process on Appellant was proper and denied the Appellant's Motion. Appellant subsequently filed Motions for Relief from Judgment pursuant to Rule 60(b)(3) SCRPC, ("60(b)(3) Motion"), and Injunctive Relief on January 7, 2018. The Court issued an Order Denying the 60(b)(3) Motion and Motion for Injunctive Relief on April 4, 2018. Thereafter, Appellant filed a Motion for Reconsideration pursuant to Rule 59(e) SCRPC on April 13, 2018, which was denied by that Order of the Court entered May 30, 2018.

Appellant filed her Notice of Appeal on June 22, 2018. By letter dated July 6, 2018, Appellant, through her counsel, requested transcripts of the following:

1. Master's Order – Judgment of Foreclosure and Sale
2. Master's Order – Denies Motion and Allows the Decree to Stand
3. Master's Order – Denying Motions for Relief from Judgment Etc.
4. Master's Order – Defendant's Motion to Reconsider is Denied.

Appellant notified the Court of Appeals of this request by letter dated July 6, 2018. In response to the Court of Appeals' letter dated September 26, 2018, Appellant sent a letter dated October 9, 2018, which was filed on October 12, 2018, to Court Administration notifying that she requested a copy of the transcript on July 6, 2018, a deposit for the cost of the transcripts was paid on August 20, 2018, and a check for the remaining balance was to be sent out on October 4, 2018. The relevant transcripts have not been filed with the Court in this Appeal. Subsequent to said

letter, Appellant has filed numerous motions for extensions, defective briefs and designations of matter and, ultimately, a corrected Initial Brief and corrected Designation of Matter on March 4, 2019 that were accepted by the Court, as shown by that Order filed March 15, 2019.

### ARGUMENT

#### **I. The Appeal should be dismissed as Appellant has failed to comply with Rule 207 SCACR.**

This appeal should be dismissed because Appellant did not make satisfactory arrangements in writing with the court reporter for furnishing the transcript in accordance with Rule 207(a)(1) of the South Carolina Appellate Court Rules (SCACR). “Where a transcript of the proceeding must be prepared by the court reporter, appellant shall, within the time provided for ordering the transcript, make satisfactory arrangements (including agreement regarding payment for the transcript), in writing with the court reporter for furnishing the transcript. In appeals from the court of common pleas, masters-in-equity, special referees or the family court in domestic actions, the transcript must be ordered within ten (10) days after the date of service of the notice of appeal.” Rule 207(a)(1) SCACR. Appellant served the notice of appeal on June 22, 2018 but did not order the transcript until July 6, 2018, outside the 10-day period proscribed by Rule 207(a)(1).

“Appellant shall contemporaneously furnish all counsel of record the Office of Court Administration and the clerk of the appellate court with copies of all correspondence with the court reporter.” Rule 207(a)(1) SCACR. On August 20, 2018, Appellant sent a letter to the court reporter with a check representing the deposit for the transcripts. A copy of this August 20, 2018 letter is attached as **Exhibit B**. This letter was not filed with the Court of Appeals and Plaintiff did not receive notice of this letter being sent until September 17, 2018, when Appellant copied Respondent’s counsel with an email to the court reporter requesting confirmation of receipt of

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the deposit. The court reporter replied that she was “currently working on the transcripts” as shown by that email to Appellant’s counsel dated September 17, 2018. Copies of these September 17, 2018 emails are attached collectively as **Exhibit C**. Likewise, these emails were not filed with the Court of Appeals.

Subsequent to the October 9, 2018 letter to Court Administration, there is no record to reflect that Appellant paid the balance of the transcript costs or made any further attempts to obtain the transcripts. No correspondence has been filed with the Court reflecting that the court reporter requested an extension of time to provide the transcripts. In Appellant’s Designation of Matter, she references the inclusion of transcripts from each hearing held in case number 2015-CP-10-08710, although they had not been filed.

Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. Rule 260(a) SCACR. “The failure to comply with the procedural requirements for an appeal divests a court of appellate jurisdiction.” *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004). The Appellant’s Initial Brief contains representations of what transpired at the August 22, 2017 evidentiary hearing and incorporates witness testimony offered at that hearing. Respondent cannot appropriately respond to the Appellant’s Initial Brief without the transcripts of this August 22, 2017 hearing, the trial, and hearings related to Appellant’s post-trial motions being included in the Record on Appeal. Because Appellant did not comply with the South Carolina Appellate Court Rules by failing to make satisfactory arrangements in writing with the court reporter for furnishing the transcript, the Court of Appeals does not have jurisdiction to hear this matter and this Appeal should be dismissed.

**II. The Appeal should be dismissed as Appellant has failed to comply with Rule 265 SCACR.**

Appellant is deceased, having died on October 12, 2018. Copies of Appellant's death certificate and an application/petition for appointment of Jennifer Ferguson as personal representative of the estate of Laura Ferguson (2019-ES-10-00468) are attached hereto as **Exhibits D and E**, respectively. Subsequent to that date, counsel for Appellant continued to file numerous documents, including several revised initial briefs and designations of matter, without moving to have an heir or personal representative substituted as Appellant. "If a party to an appeal dies or becomes incompetent, the appellate court may, upon motion or on its own initiative, order substitution of the proper parties." Rule 265(b) SCACR. Counsel for Appellant has made no Motion for Appeal and only sent a letter dated March 18, 2019 requesting that the Court change the caption to reflect that "Jennifer Ferguson is now taking over for her mother's appeal". A copy of this March 18, 2019 letter which includes a Certificate of Appointment of Jennifer Ferguson as Personal Representative of the Estate of Laura E. Ferguson (2019-ES-10-00468) is attached hereto as **Exhibit F**. This letter does not state in which capacity, individually or as Personal Representative of the Estate of Laura Ferguson, he wishes that Jennifer Ferguson be substituted.

"Only a party aggrieved by an order, judgment, sentence, or decision may appeal." Rule 201(b) SCACR. "An aggrieved party is one who is injured in a legal sense; one who has suffered an injury to person or property." *Cisson v. McWhorter*, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (S.C., 1970). At the time of filing of all briefs in the within matter, Laura Ferguson was deceased and no party had been substituted as Appellant. Therefore, there was no person in any capacity actually appealing the case. As a result, the corrective initial brief and designation of matter are inherently defective as no party with standing filed those documents. Appellant's

counsel's belated attempt to substitute Jennifer Ferguson as the Appellant is insufficient to retroactively validate any filings issued on Appellant's behalf subsequent to her death.

### **III. The Appeal should be dismissed based on the doctrine of mootness.**

As a result of Appellant's death, the appeal is now moot. "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." *Sloan v. Greenville Cnty*, 356 S.C. at 552, 590 S.E.2d 338 (Ct. App. 2003), citing *Pee Dee Elec. Coop., Inc. v. Carolina Power Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing Court to grant effectual relief." *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 195 S.E.2d 713 (1973). "Accordingly, cases or issues which have become moot or academic in nature are not a proper subject of review." *Sloan* 356 S.C. at 552, (S.C. App., 2003), citing *Wallace v. City of York*, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981).

Appellant initially owned the Property as joint tenants with survivorship with Levi Ferguson, Jr., as shown by the Judgment. See Judgment, ¶ 14. Appellant and Levi Ferguson, Jr., conveyed the Property to Defendant William T. Simmons, III, ("Simmons"), while reserving a life estate interest unto themselves, by virtue of that Deed dated June 29, 2006 and recorded June 30, 2006 in Book K589 at Page 521 in the Charleston County Register of Deeds Office, ("Deed"). Judgment, ¶ 14, Deed. A copy of the Deed is attached hereto as **Exhibit G**. A life estate, or life interest, is defined as a "claim or interest in real or personal property, not amounting to ownership, and limited by a term of life, either than of the person in whom the right is vested or that of another." *Black's Law Dictionary*, 637 (6<sup>th</sup> ed. 1991). Upon

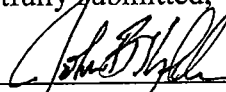
Appellant's passing, any interest she had ceased to exist and would not have passed to her estate or any potential heirs. Had Respondent not filed its foreclosure action, Simmons would now be the owner of the Property.

This Court encountered a similar fact pattern in *Byerly, III, v. South Carolina National Bank Corporation*, 311 S.C. 127, 427 S.E. 2d 715. In *Byerly*, the Respondent Byerly, who had a life estate interest in property that was the subject of the action, died during the pendency of the appeal. This Court found that Byerly's death terminated her estate. *Byerly*, 311 S.C. 127, 427 S.E. 2d 715. The remaindermen were added as parties after the commencement of the appeal and the Court found that, as Byerly no longer had an interest in the Property, "no legal controversy is presented by the appeal." *Byerly*, 427 S.E. 2d 716. As in *Byerly*, Appellant no longer has any interest in the Property. Even if Jennifer Ferguson, individually or in her capacity as personal representative of the estate of Laura Ferguson, were permitted to be substituted as Appellant in this matter, she would have no interest in the Property and, therefore, no standing to pursue this appeal. As there is no longer a justiciable controversy to be presented, this appeal should be dismissed.

Based on the foregoing, the Appellant failed to perfect and prosecute her appeal and no justiciable controversy exists. Accordingly, her appeal should be dismissed.

Dated: April 15, 2019

Respectfully submitted,



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John B. Kelchner, S.C. Bar #13589

HUTCHENS LAW FIRM

P.O. Box 8237 (29202)

240 Stoneridge Dr., Suite 400

Columbia, SC 29210

803-726-2700

[John.kelchner@hutchenslawfirm.com](mailto:John.kelchner@hutchenslawfirm.com)

Attorney for Plaintiff-Respondent Navy Federal  
Credit Union

EXHIBIT A

Judgment of Foreclosure and Sale

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Navy Federal Credit Union,

Plaintiff,

v.

William T. Simmons, III; Laura Ferguson; Ford  
Motor Credit Company, LLC,

Defendant(s).

(511071.00130 CSG)

Charles S. Gwynne Jr., Esquire  
Attorney for the Plaintiff

Kelley Y. Woody, Esquire  
Attorney for William T. Simmons, III,  
An active Servicemember

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2015-CP-10-04860

**JUDGMENT OF FORECLOSURE AND  
SALE**

Deficiency Judgment Demanded Against  
Defendant William T. Simmons, III Only

2016 OCT 12 PM 3:22  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the above-entitled matter was referred to the undersigned. A hearing was held on September 27, 2016 at 10:00 A.M. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows:

**FINDINGS OF FACT:**

1. The Lis Pendens was filed on September 2, 2015.
2. The Summons and Complaint were filed on September 2, 2015.
3. Service was made upon all Defendant(s) as shown by proof(s) of service filed herein.
4. The Defendants Laura Ferguson and Ford Motor Credit Company, LLC are in default.
5. According to Plaintiff's business records, search(es) of the Department of Defense, any other obtained information or based on the information available to the Plaintiff the Defendant William T. Simmons is currently on and has been on active military service since May 24, 1996, as shown by affidavit, certificate or order filed or will be filed herein. The subject mortgage loan originated on February 12, 2007. Pursuant to the Servicemembers Civil Relief

Act, 50 U.S.C. § 501 et. seq. ("the Act"), Defendant William T. Simmons may be entitled to certain protections or benefits under the Act.

6. The Defendant Laura Ferguson is not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit, certificate or order filed or will be filed herein.

7. Based on the testimony and evidence presented at the hearing, the Court finds the Plaintiff has standing to prosecute this action.

8. Pursuant to the South Carolina Supreme Court Administrative Order 2009-05-22-01 dated May 22, 2009, the Plaintiff set forth its belief in its Complaint or by Affidavit, which is already of record in this case, that the mortgage loan which is the subject of this foreclosure action is not eligible for modification pursuant to the terms of the Home Affordable Modification Program (HMP). Pursuant to the South Carolina Supreme Court Administrative Order dated May 22, 2009, Plaintiff's attorney has not received a counter affidavit from any Defendant(s).

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

10. On or about May 12, 2016, Defendant William T. Simmons, III, filed an Answer through his appointed attorney, Kelley Y. Woody, Esquire.

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

12. William T. Simmons, III, for value received, made, executed and delivered a Fixed Rate Note ("Note") dated February 12, 2007 promising thereby to pay to Plaintiff or its predecessor the sum of \$250,000.00 with interest at 7.750% per annum. Other terms and conditions are stated in the Note, of record herein.

13. To better secure the payment of the Note described above, William T. Simmons, III, made, executed, and delivered to Navy Federal Credit Union a certain real estate Mortgage in writing, dated covering real property in Charleston County, which is the same as that described in the Complaint. This Mortgage was signed on February 12, 2007 and recorded on February 27, 2007, and is of record in the Office of RMC/ROD in Book T616 at Page 333.

**FOR A FIRST CAUSE OF ACTION**  
**(Declaratory Judgment that Equitable Mortgage Exists in Favor of Plaintiff)**

14. Levi Ferguson, Jr. and Laura Ferguson became the owners of the subject property by deed of Joseph Stasiukaitis Contractor, Inc. a/k/a Joseph Stasiataitis Contractor, Inc., dated May 22, 1979 and recorded May 25, 1979 in Book G119 at Page 84. Subsequently, Levi Ferguson, Jr. and Laura Ferguson conveyed the subject property to William T. Simmons, III, reserving a life estate interest unto themselves, by deed dated June 29, 2006 and recorded June 30, 2006 in Book K589 at Page 521.

15. Plaintiff has alleged that upon information and belief, Levi Ferguson, Jr. died on or about February 1, 2012 thereby leaving Laura Ferguson as the sole remaining life tenant, with a remainder interest to William T. Simmons, III.

16. By durable power of attorney dated June 29, 2006 and recorded on June 30, 2006 in Book O589 at Page 540, Laura Ferguson appointed William T. Simmons, III to serve as her attorney-in-fact, with the specific power to mortgage real property owned by the principal.

17. By durable power of attorney dated June 29, 2006 and recorded on June 30, 2006 in Book O589 at Page 547, Levi Ferguson, Jr appointed William T. Simmons, III to serve as his attorney-in-fact, with the specific power to mortgage real property owned by the principal.

18. The above referenced durable power of attorneys were revoked after the execution of the subject mortgage by revocation dated January 11, 2012 at recorded on January 12, 2012 in Book 0227 at Page 517.

19. Plaintiff alleges that upon belief, Levi Ferguson, Jr. and Laura Ferguson intended but neglected to sign the Mortgage. Upon further belief, at the time said Mortgage was actually executed, the owners of the real estate, William T. Simmons, III, Levi Ferguson, Jr. and Laura Ferguson, intended that the subject Mortgage also encumber the interest of Levi Ferguson, Jr. and Laura Ferguson.

20. Plaintiff's Mortgage enabled Defendants, William T. Simmons, III, Levi Ferguson, Jr. and Laura Ferguson, to enjoy the use of the proceeds of Plaintiff's \$250,000 mortgage loan.

21. Plaintiff alleges that the relationship between William T. Simmons, III, Levi Ferguson, Jr. and Laura Ferguson and Plaintiff is such that a reasonable person would

expect Plaintiff's or Plaintiff's predecessor-in-interest, to require that its loan be secured by a mortgage upon William T. Simmons, III, Levi Ferguson, Jr. and Laura Ferguson's interest in the real property, and that a reasonable person would expect William T. Simmons, III, Levi Ferguson, Jr. and Laura Ferguson to mortgage their interest in the real property in exchange for receiving the mortgage loan.

22. Plaintiff alleges that because William T. Simmons, III, Levi Ferguson, Jr. and Laura Ferguson and Plaintiff or Plaintiff's predecessor-in-interest, in furtherance of their relationship as Borrower and Lender, respectively, intended to create a first mortgage lien upon the subject property to secure the debt evidenced by the Note, Plaintiff is informed and believes that, pursuant to S.C. Code Ann. § 15-53-20, et seq., it is entitled to a declaratory judgment that the Mortgage is valid as an equitable mortgage and should be treated as a first position lien on the realty described herein since February 12, 2007 and encumber to the interests of William T. Simmons, III and Laura Ferguson.

**FOR A SECOND CAUSE OF ACTION**  
**(Equitable Lien Encumbering the Life Estate of Laura Ferguson)**

23. Levi Ferguson Jr. and Laura Ferguson executed and delivered unto Bank of America, N.A. a certain real estate mortgage in the amount \$70,000, which covered the subject property.

24. The Mortgage given by Levi Ferguson Jr., and Laura Ferguson to Bank of America, N.A. was signed, witnessed and probated on February 10, 2006; thereafter, the Mortgage was recorded in the RMC/ROD for Charleston County on February 23, 2006 in Mortgage Book U573 at Page 106.

25. On February 12, 2007, William T. Simmons borrowed \$250,000.00 from Navy Federal Credit Union, the repayment of which was secured by a Mortgage to Navy Federal Credit Union on the subject property. This Mortgage was recorded in the Office of the RMC/ROD for Charleston County on February 27, 2007, in Mortgage Book T616 at Page 333.

26. This Mortgage was intended to be a first mortgage on the subject property.

27. As part of the subject loan transaction involving Navy Federal Credit Union, \$63,996.88 of the loan proceeds were dispersed to Bank of America, N.A. to pay off the loan given by Levi Ferguson, Jr. and Laura Ferguson to Bank of America.

28. Plaintiff was not a volunteer, but had a direct interest in the discharge of Bank of America's lien.

29. Navy Federal Credit Union was secondarily liable for the discharge of Bank of America's lien because it agreed, as part of the loan transaction, to pay off the remaining balance of the mortgage given by Levi Ferguson, Jr. and Laura Ferguson to Bank of America, N.A. Navy Federal Credit Union did not refinance debt originally owed to it; rather, it paid off debt owed to Bank of America, N.A.

30. But for Plaintiff's Mortgage, Laura Ferguson's life estate would still be encumbered by the Bank of America Mortgage.

31. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for June 1, 2011. There is currently a principal balance of \$224,260.38 due and owing on the mortgage.

32. By virtue of the mortgage recorded in Mortgage Book T616 at Page 333, the subject property secured the payment of the debt.

33. Upon belief, Laura Ferguson was aware that a portion of the loan proceeds from the Plaintiff's mortgage, which is secured by the subject property, were used to pay off the mortgage given by her and Levi Ferguson, Jr. to Bank of America, N.A. Therefore, she implicitly intended that the subject property become collateral for the payment of the loan balance owed to Plaintiff.

34. But for Plaintiff's Mortgage, Laura Ferguson's life estate would still be encumbered by the Bank of America Mortgage.

35. Plaintiff is informed and believes that it is entitled to an order finding that an equitable lien, in the amount of Plaintiff's mortgage, attaches to Laura's life estate as a valid first lien.

**FOR A THIRD CAUSE OF ACTION**  
**(Reformation of Mortgage)**

36. Plaintiff has alleged that upon information and belief, the legal

description as shown on said Mortgage is incorrect in its identification of lot reference, which is described as Lot 32 and should have been Lot 23. Upon review of the recorded documents related to the subject property, Plaintiff is informed and believes that the legal description should read as follows:

All that certain lot, piece, or parcel of land with the buildings and improvements thereon, situate, lying and being in the City of Charleston, State of South Carolina, and being known and designated as Lot 23, Block E, Parkshore Subdivision, Section III, located on South Carolina Highway #7, City of Charleston, County of Charleston, South Carolina, by Sigma Engineers, Inc., dated November 9, 1976, and recorded in the RMC Office for Charleston County on December 2, 1976, in Plat Book AG, Page 147, said lot having such size, shape, dimensions, buttings and boudings as will more fully appear by reference of said plat.

This being the same property conveyed to Levi Ferguson, Jr. and Laura Ferguson by deed of Joseph Stasiukaitis Contractor, Inc. a/k/a Joseph Stasiataitis Contractor, Inc., dated May 22, 1979 and recorded May 25, 1979 in Book G119 at Page 84. Subsequently, Levi Ferguson, Jr. and Laura Ferguson conveyed the subject property to William T. Simmons, III, reserving a life estate interest unto themselves, by deed dated June 29, 2006 and recorded June 30, 2006 in Book K589 at Page 521. Subsequently, Levi Ferguson, Jr. died on or about February 1, 2012, thereby leaving Laura Ferguson as the sole remaining life tenant, with a remainder interest to William T. Simmons, III.

37. Plaintiff is informed and believes it is entitled to reformation of its Mortgage so as to correct the lot reference in the legal description on the Mortgage to read as described above.

**FOR A FOURTH CAUSE OF ACTION**  
**(Unjust Enrichment as to Defendant Laura Ferguson)**

38. Plaintiff has alleged that upon information and belief, it conferred a benefit to Laura Ferguson when a portion of its loan proceeds were dispersed to Bank of America, N.A. to pay off the mortgage given by the Fergusons to Bank of America, N.A.

39. Defendant Laura Ferguson realized this benefit because the mortgage given by Laura Ferguson and Levi Ferguson, Jr. to Bank of America, N.A. was subsequently satisfied by satisfaction filed on May 10, 2007 in Book J625 at Page 22.

40. Plaintiff has alleged that upon information and belief, Plaintiff conferred an additional benefit upon Defendant Laura Ferguson because the remainder of the loan proceeds was used to improve the subject property, and Defendant Laura Ferguson resides

therein. Defendant realized the benefits through the enjoyment of said improvements.

41. The retention of the benefit by defendant under the circumstances would make it unjust for Defendant Laura Ferguson to retain those benefits without paying its value.

42. Plaintiff is informed and believes that it is entitled to an order finding that Defendant Laura Ferguson has been unjustly enriched at the expense of the Plaintiff.

**FOR A FIFTH CAUSE OF ACTION**  
**(Foreclosure of Mortgage)**

43. This mortgage constitutes a first Priority lien on the subject property, subject to ad valorem taxes or other liens/taxes given priority by statute.

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

45. Plaintiff established that the Note is in default for failure to make the June 1, 2011 and all subsequent payments.

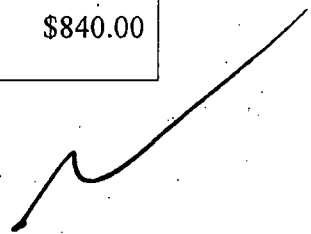
46. Payment due on the Note was not made as provided for therein, and Plaintiff, as the holder or nominee for the holder thereof, elected to require immediate payment of the entire amount due thereon and placed the Note and Mortgage in the hands of the attorney herein for remedy for collection by foreclosure.

47. The sum of \$16,466.76 is a reasonable fee and cost to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. The services of counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel and their experience in handling foreclosure matters. The fee awarded herein is also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Services anticipated to be performed

until final adjudication contemplate completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

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

Principal		\$224,260.38
Interest from 05/01/11 to 09/27/16 at 7.750% = \$84,643.12 Per Diem Amount: \$37.49		\$84,643.12
Escrow		
Taxes		
08/13/13	\$1,495.65	
12/10/13	\$1,335.16	
12/04/14	\$1,325.04	
12/17/15	\$1,295.63	
Total:	\$5,451.48	
Hazard Insurance		
08/16/11	\$1,419.00	
08/16/12	\$2,340.00	
09/18/12	\$2,340.00	
08/16/13	\$1,865.00	\$60,161.48
08/27/14	\$1,924.00	
08/27/15	\$1,962.00	
06/16/16	\$1,962.00	
Total:	\$13,812.00	
Flood Insurance		
03/20/12	\$6,834.00	
09/18/12	\$6,834.00	
03/19/13	\$6,834.00	
04/01/14	\$6,834.00	
03/31/15	\$6,834.00	
05/17/16	\$6,728.00	
Total:	\$40,898.00	
Corporate Advances		\$840.00
Property Inspections		



\$840	
Attorney's Fees incurred (paid, billed but unpaid or unbilled)	\$12,017.50
Anticipated attorney fees awarded herein	\$1,950.00
Expenses (Case filing fee; Service of process; Reference fee; Motions / Filing Fees; Title Search; GAL / Soldiers/Sailor's Fee; and Publication Costs)	\$2,499.26
<b>TOTAL PRINCIPAL, INTEREST AND EXPENSES:</b>	<b>\$386,371.74</b>

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 7.750% per annum (pursuant to the terms of the Note and First Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the first Mortgage through the date to which such interest is computed.

49. Plaintiff is seeking the usual foreclosure of the First mortgage and has in the Complaint (or subsequently thereto in writing) expressly demanded the right to a personal or deficiency judgment against Defendant William T. Simmons, III only.

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

- a. Laura Ferguson by virtue of any interest she may claim in subject property.
- b. Ford Motor Credit Company, LLC, by virtue of a judgment against Laura Ferguson in the amount of \$5,639.67. Said judgment is dated February 23, 2013 and was recorded on February 22, 2013 as part of Case No. 2010-CP-10-08182.

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**IT IS THEREFORE ORDERED:**

51. Plaintiff has fully complied with The South Carolina Supreme Court Administrative Orders 2009-05-22-01 dated May 22, 2009 and 2011-05-02-01 dated May 2, 2011, and the foreclosure action may proceed.

52. Pursuant to S.C. Code Ann. § 15-53-20, et seq., it is entitled to a

declaratory judgment that the Mortgage is valid as an equitable mortgage and should be treated as a first position lien on the realty described herein since February 12, 2007.

53. Plaintiff is entitled to an order finding that an equitable lien, in the amount of Plaintiff's total judgment debt, attaches to Laura Ferguson's life estate as a valid first lien.

54. Plaintiff is entitled to a declaratory judgment that the subject Mortgage is a valid equitable mortgage and is treated as a first position lien on the subject property encumbering the interests of both William T. Simmons and III and Laura Ferguson.

55. Plaintiff is entitled to reformation of its Mortgage so as to correct the lot reference in the legal description on the Mortgage to read as described in Paragraph 36 above.

56. Plaintiff is entitled to an order finding that Defendant Laura Ferguson has been unjustly enriched at the expense of the Plaintiff and Plaintiff's mortgage attaches to Laura Ferguson's life estate as a valid first lien.

57. There is due on the Note and purchase money first Mortgage set forth in the Complaint the sum of \$386,371.74, as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

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

59. The Defendant(s) liable for the aforesaid judgment debt of the Note and Mortgage including interest at the rate of 7.750% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

60. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold by the below signed Master in Equity or other court-appointed or designated agent or auctioneer at public auction by the Clerk of Court at the Charleston County Courthouse, in the City of Charleston, and State of South Carolina on a sales day determined by the below signed Master in Equity, on the following terms:

a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. The deposit will be applied to the purchase price when total

compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 30 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

b. Interest on the balance of the bid after the deposit is applied shall be paid through the day of compliance at the note rate of 7.750%.

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

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

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

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

61. A personal or deficiency judgment having been demanded against William T. Simmons, III, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Sec. 15-39-720 (1976).

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

63. The Master in Equity will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms thereof within 30 days after date of sale, then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be

secured.

64. In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the same terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

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

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

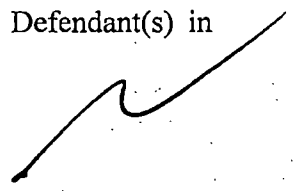
FIRST: To the payment of the permitted costs, charges, and expenses of this action, including any Guardian ad Litem fee, Servicemember Civil Relief Act attorney fee, or any other attorney's awarded under this or any other Order of this Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and the Plaintiff's attorney shall receive and disburse such funds only in absolute compliance with Plaintiff's principal, interest allowable advances, and related calculations of this Court, including the Court's award for attorney fees, court permitted charges and taxable costs pursuant to Rules 54 and 71 of the South Carolina Rules of Civil Procedure and the terms of the Note and Mortgage; After crediting the proceeds of sale, net of any commission on sale, an Order for Deficiency Judgment shall be entered without further notice or hearing.

NEXT: Any surplus should be held pending further Order of this court as provided for in the South Carolina Rules of Civil Procedure, particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

67. In the event the successful bidder is someone other than the Defendant(s) in possession of the subject property, the Sheriff of Charleston County is ordered and directed to eject and remove from the property the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceable possession of said property without delay, and to keep said successful bidder or his assigns in such peaceable possession.

68. In the event the successful bidder is other than the Defendant(s) in



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

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

70. In accordance with Rule 77(d), of the South Carolina Rules of Civil Procedure, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear in this action.

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

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

73. The following is a description of the property herein ordered to be sold:

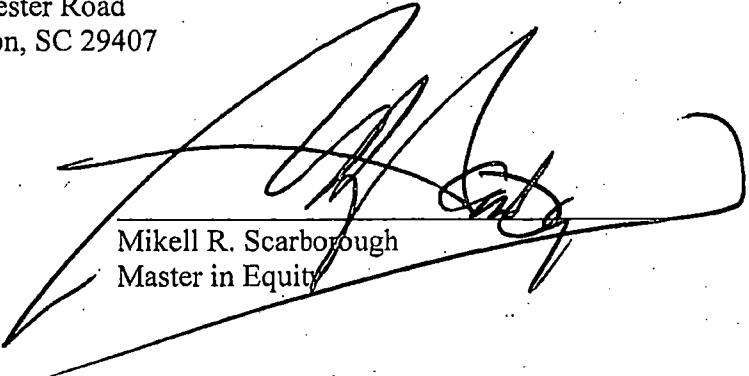
All that certain lot, piece, or parcel of land with the buildings and improvements thereon, situate, lying and being in the City of Charleston, State of South Carolina, and being known and designated as Lot 23, Block E, Parkshore Subdivision, Section III, located on South Carolina Highway #7, City of Charleston, County of Charleston, South Carolina, by Sigma Engineers, Inc., dated November 9, 1976, and recorded in the RMC Office for Charleston County on December 2, 1976, in Plat Book AG, Page 147, said lot having such size, shape, dimensions, buttings and boudings as will more fully appear by reference of said plat.

This being the same property conveyed to Levi Ferguson, Jr. and Laura Ferguson by deed of Joseph Stasiukaitis Contractor, Inc. a/k/a Joseph Stasiataitis Contractor, Inc., dated May 22, 1979 and recorded May 25, 1979 in Book G119 at Page 84. Subsequently, Levi Ferguson, Jr. and Laura Ferguson conveyed the subject property to William T. Simmons, III, reserving a life estate interest unto themselves, by deed dated June 29, 2006 and recorded June 30, 2006 in Book K589 at Page 521. Subsequently, Levi Ferguson, Jr. died on or about February 1, 2012, thereby leaving Laura Ferguson as the sole remaining life tenant, with a remainder interest to William T. Simmons, III.

Property Address: 11 Leichester Road  
Charleston, SC 29407

TMS# 415-10-00-049

9/30, 2016  
Charleston, South Carolina



Mikell R. Scarborough  
Master in Equity

EXHIBIT B

August 20, 2018 letter

Appellant's counsel to court reporter

**ROBERT L. GAILLIARD**  
ATTORNEY AT LAW, LLC

1072 KING STREET, SUITE E  
CHARLESTON, SC 29403

PHONE: (843) 577-5250

FAX: (843) 577-9933

EMAIL: RLGAILLIARDLAW@AOL.COM

August 20, 2018

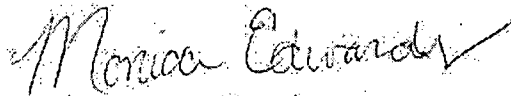
Christine A. Smith  
Court Reporter for the Honorable Mikell R. Scarborough, Master in Equity  
100 Broad Street, Suite 266  
Charleston, SC 29401

Re: Deposit Transcript Ferguson Appeal

Dear Ms. Smith:

Enclosed please find a check for six-hundred and fourteen dollars and twenty-five cents (\$614.25) for the above-entitled matter.

Sincerely,



Monica Edwards  
Paralegal for Attorney Robert L. Gailliard

1080

ROBERT L. GALLIARD SOLE MEMBER  
ROBERT L. GALLIARD ATTORNEY AT LAW LLC  
1072 KING STREET  
STE E  
CHARLESTON, SC 29403

DATE Aug. 20. 2018 87-863/640

PAY TO THE ORDER OF

Christine A. Smith

\$ 64.25

SIX HUNDRED FOURTEEN AND

25  
100 DOLLARS

**Pinnacle**

FOR

deposit - transcript  
Ferguson Appeal

Robert L. Galliard

⑆00001080⑆

⑆064008637⑆

⑆2200010680⑆

To: Robert L. Gailliard <[rlgailliardlaw@aol.com](mailto:rlgailliardlaw@aol.com)>  
Sent: Tue, Jul 31, 2018 11:20 am  
Subject: RE: Letter and Invoice, Navy Federal v. Simmons

FILE COPY

Sorry for any confusion, but the 50 percent deposit is 614.25. The total is attached on the invoice which was attached. The total is: \$1,228.50 for the four transcripts I gave dates on.

Christine

---

Christine A. Smith  
Court Reporter for the Honorable Mikell R. Scarborough, Master in Equity  
100 Broad Street, Suite 266  
Charleston, SC 29401  
Tel: (843) 958-5071  
Fax: (843) 958-5077  
[casmith@charlestoncounty.org](mailto:casmith@charlestoncounty.org)

**From:** Robert L. Gailliard <[rlgailliardlaw@aol.com](mailto:rlgailliardlaw@aol.com)>  
**Sent:** Tuesday, July 31, 2018 11:05 AM  
**To:** Christine A. Smith <[CASmith@charlestoncounty.org](mailto:CASmith@charlestoncounty.org)>  
**Subject:** Re: Letter and Invoice, Navy Federal v. Simmons

Good Morning,

Attorney Gailliard is on vacation and will return to the office Monday August 6, 2018. When he returns from vacation he will make a

deposit of \$307.13 and also double check those dates that you email to him.

Robert L. Gaillard

1072 King Street, Suite E

Charleston, South Carolina 29403

Telephone: (843) 577-5250

Fax: (843) 577-9933

Email: [rlgaillardlaw@aol.com](mailto:rlgaillardlaw@aol.com)

FILE COPY

**DISCLAIMER:** The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged mater. Any review, forwarding, transmission, dissemination, or other use of, or taking any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this electronic mail transmission in error, please notify the sender at (843) 577-5250 and delete it.

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

om: Christine A. Smith <[CA\\_Smith@charlestoncounty.org](mailto:CA_Smith@charlestoncounty.org)>  
To: [rlgaillardlaw@aol.com](mailto:rlgaillardlaw@aol.com)  
Sent: Fri, Jul 27, 2018 2:33 pm  
Subject: Letter and Invoice, Navy Federal v. Simmons

Please see attached letter/invoice in above-reference case.

Thank you,  
Christine

---

Christine A. Smith  
Court Reporter for the Honorable Mikell R. Scarborough, Master in Equity  
100 Broad Street, Suite 266  
Charleston, SC 29401  
Tel: (843) 958-5071  
Fax: (843) 958-5077  
[casmith@charlestoncounty.org](mailto:casmith@charlestoncounty.org)

From: Christine A. Smith <CASmith@charlestoncounty.org>  
To: Robert L. Gailliard <rlgailliardlaw@aol.com>  
Subject: RE: Letter and Invoice, Navy Federal v. Simmons  
Date: Wed, Aug 1, 2018 12:22 pm

FILE COPY

Thank you.

From: Robert L. Gailliard <rlgailliardlaw@aol.com>  
Sent: Wednesday, August 01, 2018 11:02 AM  
To: Christine A. Smith <CASmith@charlestoncounty.org>  
Subject: Re: Letter and Invoice, Navy Federal v. Simmons

Good Morning,

Attorney Gailliard will be in touch when he returns from vacation about payment of the deposit.

Robert L. Gailliard

1072 King Street, Suite E

Charleston, South Carolina 29403

Telephone: (843) 577-5250

Fax: (843) 577-9933

Email: [rlgailliardlaw@aol.com](mailto:rlgailliardlaw@aol.com)

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

From: Christine A. Smith <CASmith@charlestoncounty.org>

## EXHIBIT C

Email correspondence between Appellant's  
counsel and court reporter

**From:** Robert L. Gailliard  
**To:** John B. Kelchner; kwoody@sc.rr.com  
**Subject:** Fwd: Navy Federal Credit Union v. William T. Simmons III Transcripts  
**Date:** Thursday, October 04, 2018 1:05:40 AM

---

**\*\*\*CAUTION: This is an external Email from "Robert L. Gailliard" <rlgailliardlaw@aol.com> . Do not click links or open attachments unless you recognize the sender and know the content is safe.\*\*\***

Transcript Correspondence

Robert L. Gailliard  
1072 King Street, Suite E  
Charleston, South Carolina 29403  
Telephone: (843) 577-5250  
Fax: (843) 577-9933  
Email: rlgailliardlaw@aol.com

**DISCLAIMER:** The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged mater. Any review, forwarding, transmission, dissemination, or other use of, or taking any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this electronic mail transmission in error, please notify the sender at (843) 577-5250 and delete it.

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

From: Christine A. Smith <CASmith@charlestoncounty.org>  
To: Robert L. Gailliard <rlgailliardlaw@aol.com>  
Sent: Mon, Sep 17, 2018 2:05 pm  
Subject: RE: Navy Federal Credit Union v. William T. Simmons III Transcripts

Thank you, Mr. Gailliard. I have received the check for the deposit and am currently working on the transcripts. I received it in late August. I can get the date for you if needed. I know you first requested the transcript in early July, but I didn't receive the deposit until late August.

Thank you,  
Christine

---

Christine A. Smith  
Court Reporter for the Honorable Mikell R. Scarborough, Master in Equity  
100 Broad Street, Suite 266  
Charleston, SC 29401  
Tel: (843) 958-5071  
Fax: (843) 958-5077  
casmith@charlestoncounty.org

---

**From:** Robert L. Gailliard <rlgailliardlaw@aol.com>  
**Sent:** Monday, September 17, 2018 1:57 PM  
**To:** Christine A. Smith <CASmith@charlestoncounty.org>  
**Cc:** john.kelchner@hutchenslawfirm.com  
**Subject:** Navy Federal Credit Union v. William T. Simmons III Transcripts

**CAUTION: This email originated outside of Charleston County. Do not click links or open attachments from unknown senders or suspicious emails. If you are not sure, please contact IT helpdesk.**

Dear Ms Smith:

This email is to confirm receipt of the 50% deposit for the transcript(s) in the above-entitled matter. As per Appeals Court Rule 207(a)(2) the court reporter has (60) days to deliver the transcript(s) after date of request. Rule 207(a)(3) allows for 3 extensions on delivery of the transcript(s) upon *request of the Court Reporter*. I am aware from prior correspondence you had some family issues to attend to which is understandable.

Attached please find correspondence to be forwarded to the parties as per Rule 207(a)(7). Is there anything more needed on our end for receipt of the the transcripts? If not we will be required to notify the necessary parties according to Rule 207(a)(5) for failure to receive transcripts. If by any means time needs to be extended Rule 263(b) will allow for the Appellate Court, any judge, or justice to do so. With the South Carolina State-Wide mandatory evacuations due to Hurricane Florence there should be no issue with additional time for receipt of transcript(s).

Sincerely,

Julius J. Gailliard  
Law Clerk for Attorney Robert L. Gailliard

EXHIBIT D

Appellant's Death Certificate

DEATH CERTIFICATION

DECEDENT'S NAME: LAURA E. FERGUSON  
AKA's: NA  
ARMED FORCES: NO

SOCIAL SECURITY NUMBER: [REDACTED]  
AGE: 91 YEARS

NAME AND ADDRESS OF PLACE OF DEATH: ROPER HOSPICE COTTAGE, MOUNT PLEASANT, SC 29464  
PLACE OF DISPOSITION: PINE HILL CHURCH CEMETERY  
DISPOSITION LOCATION: LATTA, SOUTH CAROLINA  
METHOD OF DISPOSITION: BURIAL  
DECEDENT'S RESIDENCE: 11 LEICHESTER ROAD, CHARLESTON, CHARLESTON COUNTY, SC, 29407

MARITAL STATUS: WIDOWED (AND NOT)

SURVIVING SPOUSE'S NAME: NA

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: ANNA BELL OWENS  
INFORMANT'S NAME: JENNIFER FERGUSON  
MAILING ADDRESS: 11 LEICHESTER ROAD, CHARLESTON, SC, 29407  
FUNERAL HOME: MURRAY'S MORTUARY, 4060 RIVERS AVENUE, NORTH CHARLESTON, SC, 29405  
FUNERAL DIRECTOR: CHARDALE MURRAY  
EMBALMER'S NAME: CHARLIE MURRAY  
ACTUAL OR PRESUMED DATE OF DEATH: OCTOBER 12, 2018  
ACTUAL OR PRESUMED TIME OF DEATH: 1130  
CAUSE OF DEATH - PART I:  
METASTATIC ENDOMETRIAL CANCER

RELATIONSHIP: DAUGHTER  
LICENSE NUMBER: 2653  
LICENSE NUMBER: 3635  
MANNER OF DEATH: NATURAL

OTHER SIGNIFICANT CONDITIONS - PART II:

CORONER CONTACTED? NO  
DATE OF INJURY: NA  
PLACE OF INJURY: NA

ACTUAL OR PRESUMED TIME OF INJURY: NA

INJURY AT WORK? NA

HOW THE INJURY OCCURRED?  
NA

CERTIFIER NAME AND TITLE: DO TIFFANY E. RICHTER

LICENSE NUMBER: 1662

DATE OF ISSUANCE: JANUARY 11, 2019  
SPECIAL INSTRUCTIONS:

SC07352180

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

David L. Wilson, Jr.  
Acting Director

Angela P. Saleeby  
Assistant State Registrar

Revision Date: 04/09/2015

ANY ALTERATION OR FABRICATION OF THIS CERTIFICATE IS A VIOLATION OF THE LAW

[REDACTED]

**ROBERT L. GAILLIARD**  
ATTORNEY AT LAW, LLC

1072 KING STREET, SUITE E  
CHARLESTON, SC 29403

PHONE: (843) 577-5250

FAX: (843) 577-9933

EMAIL: RLGAILLIARDLAW@AOL.COM

19 MAR '18 04:51

January 18, 2018

Clerk  
Probate Court  
84 Broad Street  
Charleston, SC 29401

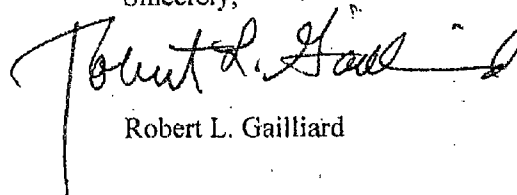
Re: Estate of Laura Ferguson  
2018-ES-10-

Dear Madame Clerk:

Enclosed please find the Form 300, the Death Certificate and filing fees to open the Estate on the above-mentioned case. Please clock-in and send file copy to me in the stamped envelope provided.

RLG/me

Sincerely,



Robert L. Gailliard

EXHIBIT E

Application/Petition for Appointment for  
Personal Representative

(2019-ES-10-00468)

STATE OF SOUTH CAROLINA

COUNTY OF: CHARLESTON

IN THE MATTER OF:  
LAURA FERGUSON  
(Decedent)

19 MAR 13 PM 3:51

THE PROBATE COURT

CASE NUMBER: 2018-ES-10 00468  
9

**\*COMPLETE THIS SECTION ONLY IF FILING PETITION FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT**

\*JENNIFER FERGUSON,  
Petitioner(s)  
vs.  
Respondent(s)

**APPLICATION FOR INFORMAL**

(check any that apply)

**\*PETITION FOR FORMAL**

- PROBATE OF WILL
- APPOINTMENT

- TESTACY
- APPOINTMENT

If this is a formal filing, please explain on page 3 or attach pleadings pursuant to *SC Rules of Civil Procedure*.

**\*NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC), AND PAY THE STATUTORY FILING FEE OF \$150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

**I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.**

1. Applicant/Petitioner(s): JENNIFER FERGUSON  
 Address: 137 Roosevelt Drive, St. Steven, SC, 29479  
 Telephone (Work): \_\_\_\_\_  
 (Home): (843) 575-8842  
 (Cell): \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Relationship to Decedent: DAUGHTER

2. Decedent Information:  
 Full Legal Name (including all known names): LAURA E. FERGUSON  
 Date of Birth: JANUARY 31, 1927  
 Date of Death: OCTOBER 12, 2018  
 Age at Date of Death: 91

3. Venue for this proceeding is proper in this County because:  
 Decedent was domiciled in this County at date of death:  
 Address: 11 LEICHESTER ROAD County: CHARLESTON State: South Carolina.  
 Decedent was **not** domiciled in **South Carolina**, but property of Decedent was located in this County at date of death at:  
 Address: \_\_\_\_\_ County: \_\_\_\_\_ State: South Carolina  
 Decedent has a right to take legal action in this County because:

If the above address is the address of a nursing home, prison, or other residential facility, please give the last address of the Decedent prior to entering a facility:

4(a). Names and addresses of beneficiaries ( devisees) named in the Will.

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent

See attached for additional devisees (check if applicable).

4(b). Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will).

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Jennifer A. Ferguson	1955	137 Roosevelt Dr St Stevens, SC 29479	Daughter
Levi Ferguson	Predeceased		

See attached for additional intestate heirs (check if applicable).

4(c). Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

YES  NO If no, please explain on page 3.

5. Did Decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the Decedent been born since his/her death, or is any birth of a child of the Decedent anticipated? (This includes illegitimate children.)

NO  YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

NO  YES If yes, please explain, on page 3.

7. Has a Guardian or Conservator ever been appointed by a Court for this person?

NO  YES If yes, please explain on page 3.

8. Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this state or elsewhere?

NO  YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any Demands for Notice (FORM #111ES) of any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

NO  YES If yes, please state details, including names and addresses on page 3.

10. Have more than ten (10) years passed since the Decedent's death?  
 NO  YES If yes, please state circumstances authorizing tardy probate on page 3.

11(a). Did the Decedent own probate real estate?  
 NO  YES If yes, an approximate value of \$ 0 (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

11(b). Did the Decedent own probate personal property?  
 NO  YES If yes, an approximate value of \$ 1,000.00 (Note: A complete inventory of probate assets with fair market values is to be filed after Personal Representative is appointed.)

12. Have you made a diligent search for a Will of the Decedent?  
 YES  
 NO If no, please explain on page 3 below.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the Decedent's Will:
- The original is attached.
  - The original is in the Court's possession.
  - An exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
  - An exemplified (authenticated) copy of a Will not probated in another jurisdiction is attached.
  - The original of the Will is lost, destroyed, or otherwise unavailable, however, a copy or a description of its contents is attached. (for formal proceeding, explain below or attach supplemental pleadings)

2. The execution date of the Will was: \_\_\_\_\_  
Codicil(s): \_\_\_\_\_

3. Is there a memorandum that disposes of tangible personal property pursuant to 62-2-512?  
 NO  YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?  
 YES  NO If no, please explain on page 3.

5. To the best of your knowledge, is any witness to the will an "interested witness" (i.e., does the will make any devise to a witness, a witness's spouse, or a witness's issue)?  
 NO  YES If yes, please explain on page 3.

---

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I and II HERE.  
(If more space is required, use additional sheets.)

---

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

\_\_\_\_\_

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:

- named as Primary Personal Representative in Will
- named as Alternate Personal Representative in Will
- nominee of Primary Personal Representative in Will
- nominee of Alternate Personal Representative in Will
- surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
- other devisee of Decedent (describe): \_\_\_\_\_ or nominee of said devisee
- surviving spouse of Decedent or nominee of said spouse
- other heir of Decedent (describe): \_\_\_\_\_ or nominee of said heir
- creditor (forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
- other (describe): \_\_\_\_\_

3. List below the name(s) of any other person(s), if any, having an equal or higher priority of appointment than the proposed Personal Representative:

\_\_\_\_\_

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 17 day \_\_\_\_\_

Signature of Applicant/Petitioner: *Monica Edwards*

*Monica Edwards*  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Signature of Co-Applicant/Co-Petitioner: \_\_\_\_\_

Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a Will executed \_\_\_\_\_ and

- Codicil executed \_\_\_\_\_ and
- Memorandum

be informally  GRANTED  DENIED.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

For formal probate of Will, see separate order executed \_\_\_\_\_

**ORDER OF INFORMAL APPOINTMENT**

IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond, if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

Bond

- Fiduciary Bond in the amount of \$ \_\_\_\_\_
- Bond not required for Personal Representative nominated by Will
- Bond not required as Personal Representative is sole heir or sole devisee
- Bond not required as Personal Representative is state agency, bank, or trust company
- Bond waivers filed
- See order dated \_\_\_\_\_
- Other: \_\_\_\_\_

Notice to Creditors

- Required
- Not Required

Executed this 14<sup>th</sup> day of March 2019.

*J. Huchner Assoc.*  
\_\_\_\_\_  
Probate Court Judge

For formal appointment of Personal Representative, see separate order executed \_\_\_\_\_

**QUALIFICATION AND STATEMENT OF ACCEPTANCE**

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: *Jennifer A. Ferguson*  
 Print Name: Jennifer A. Ferguson  
 Address: 137 Roosevelt Drive, St. Steaks, SC

29479

Telephone (Work): N/A  
(Home): 843-575-8842  
(Cell): 843-575-8842  
Email: Jenniferann7199@gmail.com

Signature: Jennifer A. Ferguson  
Print Name: Jennifer A. Ferguson  
Address: 137 Roosevelt Drive  
St. Stevens, SC 29479

Telephone (Work): \_\_\_\_\_  
(Home): \_\_\_\_\_  
(Cell): \_\_\_\_\_  
Email: \_\_\_\_\_

\*Attorney: Robert L. Gailliard  
Address: 1072 King Street, Suite E  
Charleston, SC 29403  
Telephone: (843) 577-6850  
Email: rgailliardlaw@aol.com

\*By completing this information, attorney is designated as attorney of record for assisting Personal Representative until proper withdrawal.

EXHIBIT F

Certificate of Appointment of Personal  
Representative

**ROBERT L. GAILLIARD**  
ATTORNEY AT LAW, LLC

1072 KING STREET, SUITE E  
CHARLESTON, SC 29403

PHONE: (843) 577-5250  
FAX: (843) 577-9933  
EMAIL: RLGAILLIARDLAW@AOL.COM

March 18, 2019

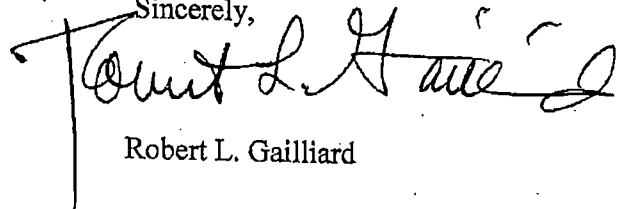
V. Claire Allen Deputy Clerk  
SC Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Laura Ferguson Appeal  
Appellate Case No: 2018-001186

Dear Ms. Allen:

Enclosed please find the Certificate of Appointment naming Jennifer Ferguson who is the daughter of the Late Laura Ferguson as the Personal Representative on the estate. Please allow me to change the captions on the appeals to show that Jennifer Ferguson is now taking over for her mother's appeal.

Sincerely,



Robert L. Gailliard

Encl: Copy of Certificate of Appointment  
Copy: Jennifer Ferguson  
John B. Kelchner, ESQ.

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE PROBATE COURT

IN THE MATTER OF:  
LAURA E. FERGUSON  
(Decedent)

CERTIFICATE OF APPOINTMENT

CASE NUMBER: 2019ES1000468

This is to certify that  
JENNIFER FERGUSON

is/are the duly qualified

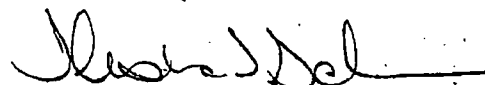
- PERSONAL REPRESENTATIVE
- SUCCESSOR PERSONAL REPRESENTATIVE
- SPECIAL ADMINISTRATOR

In the above matter and that this appointment, having been executed on the 14th  
day of March, 2019 is now in full force and effect.

RESTRICTIONS:

NONE

Executed this 14th day of March, 2019



IRVIN G. CONDON, JUDGE OF PROBATE  
BY ESTATE CLERK

Do not accept a copy of this certificate without  
the raised seal of the Probate Court.

EXHIBIT G  
Deed to Simmons

BK K 589PG521

AFTER FILING RETURN TO HAMPTON GREEN, LLC (DMG)  
P O BOX 20009  
CHARLESTON, SC 29413

STATE OF SOUTH CAROLINA )  
 ) QUIT CLAIM DEED (w/ warranty and life estate)  
COUNTY OF CHARLESTON ) (TITLE NOT EXAMINED)

**KNOW ALL MEN BY THESE PRESENTS**, THAT WE, **LEVI FERGUSON, JR.**, and **LAURA FERGUSON** (hereinafter whether singular or plural the "Grantor") in the State aforesaid, for and in consideration of the sum of **FIVE AND NO/100 DOLLARS (\$5.00)** AND LOVE AND AFFECTION to the Grantors paid by **WILLIAM T. SIMMONS, III**, (hereinafter whether singular or plural the "Grantee" ) have granted, bargained, sold and released, and, by these presents, do grant, bargain, sell and release unto the said Grantee all of our undivided interest, excepting only a life estate interest in the property retained by the said Grantors, as joint tenants with right of survivorship and not as joint tenants in common, in the following described property

ALL that certain lot, piece or parcel of land with the buildings and improvements thereon, situate, lying and being in the City of Charleston, State aforesaid, and being known and designated as Lot 23, Block E, Parkshore Subdivision, Section III, located on South Carolina Highway #7, City of Charleston Charleston County, South Carolina, by Sigma Engineers, Inc , dated November 9, 1976, and recorded in the R M C Office for Charleston County on December 2, 1976, in Plat Book AG, Page 147 Said lot having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat

ALSO all its right, title and interest in and to that marshland as shown on the above referenced plat, title to this saltmarsh portion is expressly not warranted

BEING the same property conveyed to Joseph Stasiataitis Contractor, Inc , by Deed of Griffith-Knapp, a Partnership, recorded in the R M C Office for Charleston County in Book T-115, Page 110 on May 9, 1978

BEING the same property conveyed to the Grantors herein by Deed of Joseph Stasiataitis Contractor, Inc , dated May 22, 1979 and recorded in the Charleston County RMC Office in Book G-119 at page 84 on May 25, 1979

TMS# 415-10-00-049

Grantee's Address 11 Leicester Road  
Charleston, SC 29407

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to said Premises belonging, or in anywise incident or appertaining

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee his heirs and assigns, forever

AND the Grantors do hereby bind the Grantors and the Grantors' Heirs, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantee herein above named the Grantee's Heirs and Assigns against the Grantor and the Grantor's Heirs and against every person whomsoever lawfully claiming, or to claim the same or any part thereof

WITNESS our Hands and Seals this 29th day of June, 2006

**Title not examined by preparer.**

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF

Tiffany R Dixon  
Wayne M. Ton

Levi Ferguson Jr.  
LEVI FERGUSON, JR

Tiffany R. Dixon  
Wayne M. Ton

Laura Ferguson  
LAURA FERGUSON

STATE OF SOUTH CAROLINA )

PROBATE

COUNTY OF CHARLESTON )

PERSONALLY appeared before me Wayne M Green and made oath that (s)he saw the within named LEVI FERGUSON, JR , and LAURA FERGUSON, Grantors sign, seal and, as the Grantor's act and deed, deliver the within written Deed, and that (s)he with Tiffany R. Dixon, witnessed the execution thereof

Wayne M. Ton

SWORN to before me this 29th day  
of June 2006

Nancy Galt  
Notary Public of South Carolina  
My Commission Expires 6/17/14

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

AFFIDAVIT

Date of Transfer of Title 29 2006  
Closing Date n/a

PERSONALLY appeared before me the undersigned who being duly sworn deposes and says

- 1 I have read the information on this Affidavit and I understand such information
- 2 The property being transferred BY **LEVI FERGUSON, JR., and LAURA FERGUSON** TO **WILLIAM T SIMMONS, III**, w/ life estate to LEVI FERGUSON JR on June 29 2006
- 3 Check one of the following **The DEED is**  
 (a)  subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth  
 (b)  subject to the deed recording fee as a transfer between a corporation a partnership or other entity and a stockholder partner or owner of the entity or is a transfer to a trust or as a distribution to a trust beneficiary  
 (c)  EXEMPT from the deed recording fee because (exemption 1)  
 Explanation If required Family transfer (exception number 1)  
 (If exempt please skip items 4-6 and go to item 7 of this affidavit )
- 4 Check one of the following if either item 3(a) or item 3(b) above has been checked  
 (a)  The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ \_\_\_\_\_  
 (b)  The fee is computed on the fair market value of the realty which is \$ \_\_\_\_\_  
 (c)  The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ \_\_\_\_\_
- 5 Check YES  or NO  to the following A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land tenement or realty after the transfer If "YES" the amount of the outstanding balance or this lien or encumbrance is \$ \_\_\_\_\_
- 6 The DFED Recording Fee is computed as follows  
 (a) \_\_\_\_\_ the amount listed in item 4 above  
 (b) \_\_\_\_\_ the amount listed in item 5 above (no amount place zero)  
 (c) \_\_\_\_\_ Subtract Line 6(b) and place the result
- 7 As required by Code Section 12-24-70 I state that I am a responsible person who was connected with the transactions as Grantor
- 8 Check if Property other than Real Property is being transferred on this Deed  
 (A) \_\_\_\_\_ Mobile Home  
 (B) \_\_\_\_\_ Other
- 9 N/A ATTORNEY S AFFIDAVIT I state of \_\_\_\_\_ deceased CASE NUMBER \_\_\_\_\_  
 Personally appeared before me the undersigned attorney who being duly sworn certified that (s)he is licensed to practice law in the State of South Carolina that (s)he has prepared the Deed for the Personal Rep In the Lstate of \_\_\_\_\_ deceased and that the grantees therein are correct and confirm to the terms of the will of decedent
- 10 I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction must be fined not more than one thousand dollars or imprisoned not more than one year, or both

Sworn this 29th day of June 2006  
Naura Lake  
Notary Public for South Carolina  
My Commission Expires 6/19/14

By Levi Ferguson Jr.  
LEVI FERGUSON JR Grantor

BK K 589PG524

# RECORDER'S PAGE

NOTE This page MUST remain with the original document



**FILED**

June 30, 2006

BK K 589PG521

Charlie Lybrand, Register  
Charleston County, SC

**Filed By**

Hampton Green, LLC  
602 Rutledge Ave  
P O Box 20009  
Charleston SC 29413

*Handwritten initials*

DESCRIPTION	AMOUNT	
		Q/Claim
Recording Fee	\$ 10 00	
State Fee	<Exempt>	
County Fee	<Exempt>	
Postage		

<b>TOTAL</b>	\$ 10 00
--------------	----------

\$ Amount (in thousands)

DRAWER

B - ECP

AUDITOR STAMP HERE

**RECEIVED FROM RMC**

**JUL 07 2006**

PEGGY A MOSELEY  
CHARLESTON COUNTY AUDITOR

PID VERIFIED BY ASSESSOR

REP *[Signature]*

DATE JUL 07 2006

DO NOT STAMP BELOW THIS LINE

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Michael R. Scarborough, Master in Equity

Appellate Case No. 2018-001184

**RECEIVED**  
APR 15 2019  
SC Court of Appeals

Navy Federal Credit Union, ..... Plaintiff/Respondent,

v.

William T. Simmons, III; Laura Ferguson; and, ..... Defendants,  
Ford Motor Credit Company, LLC

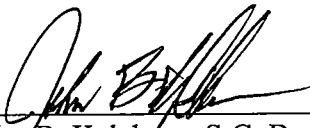
Of whom Laura Ferguson is the Appellant

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on today's date, I served on the person(s) below a copy of the Motion to Dismiss of Respondent Navy Federal Credit Union by depositing same in the United States Mail with sufficient postage affixed and addressed as follows:

Mr. Robert L. Gailliard, Esq.  
1072 King Street, Suite E  
Charleston, SC 29403  
*Attorney for Appellant Laura Ferguson*

Dated: April 15, 2019

  
\_\_\_\_\_  
John B. Kelchner, S.C. Bar #13589  
HUTCHENS LAW FIRM  
P.O. Box 8237 (29202)  
240 Stoneridge Dr., Suite 400  
Columbia, SC 29210  
803-726-2700  
John.kelchner@hutchenslawfirm.com  
*Attorney for Plaintiff-Respondent Navy Federal Credit Union*



HIGH PERFORMANCE LAW™

RECEIVED  
APR 15 2019  
SC Court of Appeals

Foreclosure Department  
Phone: 803-726-2700  
Fax: 803-252-6822  
HutchensLawFirm.com

Offices In:  
Fayetteville, Charlotte, Wilmington, NC | Columbia, SC  
240 Stoneridge Drive  
Columbia, SC 29210

P.O. Box 8237  
Columbia, SC 29202

April 15, 2019

The South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

HAND-DELIVERED

Re: Navy Federal Credit Union v. William T. Simmons, Laura Ferguson and Ford Motor Credit Company, LLC, of whom Laura Ferguson is the Appellant.  
Appellate Case No. 2018-001184

Dear Sir/Madam:

Enclosed please find the original and six (6) copies of the Motion to Dismiss of Respondent Navy Federal Credit Union and a check in the amount of \$50.00 representing the motion fee regarding the above-referenced matter. By copy of this letter, I am serving counsel for the Appellant Laura Ferguson with a copy of the same.

Sincerely,

Enc.

cc: Mr. Robert L. Gailliard, Esq.  
1072 King Street, Suite E  
Charleston, SC 29403  
Attorney for Appellant Laura Ferguson

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR. THE PURPOSE OF THIS COMMUNICATION IS TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE, except as stated below in the instance of bankruptcy protection.  
  
IF YOU ARE UNDER THE PROTECTION OF THE BANKRUPTCY COURT OR HAVE BEEN DISCHARGED AS A RESULT OF A BANKRUPTCY PROCEEDING, THIS NOTICE IS GIVEN TO YOU PURSUANT TO STATUTORY REQUIREMENT AND FOR INFORMATIONAL PURPOSES AND IS NOT INTENDED AS AN ATTEMPT TO COLLECT A DEBT OR AS AN ACT TO COLLECT, ASSESS, OR RECOVER ALL OR ANY PORTION OF THE DEBT FROM YOU PERSONALLY.