

THE STATE OF SOUTH CAROLINA
In the SUPREME COURT OF SOUTH CAROLINA

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APR 23 2019

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
DeAndrea Benjamin, Circuit Court Judge

S.C. SUPREME COURT

Opinion No. 19-UP-066
S. C. Ct. of App. Filed February 13, 2019

U.S. Bank, National
Association, as trustee for
the Holders of the Banc of
America Funding
Corporation, 2008-FTI,

Respondent,

v.

Rhonda Lewis Meisner a/k/a
Rhonda L. Meisner, Bank of
America, N.A. and SCBT of
whom Rhonda L. Meisner is:

Petitioner

APPENDIX

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
DeAndrea Benjamin, Circuit Court Judge

Case No. 2016-001019

U.S. Bank, National
Association, as trustee for the
Holders of the Banc of
America Funding Corporation,

Respondent,

Rhonda Lewis Meisner a/k/a Rhonda L. Meisner, Bank
of America, N.A. and SCBT

v.

Appellant.

Of Whom Rhonda Lewis Meisner is the

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The South Carolina Court of Appeals

U.S. Bank, National Association, as Trustee for the
Holders of The Banc of America Funding Corporation,
2008-FT1 Trust, Mortgage Pass Through Certificates,
Series 2008-FT1, Respondent,

v.

Rhonda Lewis Meisner a/k/a Rhonda L. Meisner; Bank
of America, N.A.; and SCBT, Defendants,

Of whom Rhonda Lewis Meisner is the Appellant,

And Bank of America is also a Respondent.

Appellate Case No. 2014-002098

ORDER

Appellant has filed a notice of appeal from the circuit court's order denying her motion to dismiss and the circuit court's order denying her motion to reconsider. Because orders denying a motion to dismiss are not immediately appealable, we dismiss this appeal. *See Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000) (stating the denial of a Rule 12(b), SCRCP, motion is not immediately appealable).


FOR THE COURT

Columbia, South Carolina

FILED

JUN 11 19 14

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of The Banc of America Funding
Corporation, 2008-FT1 Trust, Mortgage Pass-
Through Certificates, Series 2008-FT1,

PLAINTIFF,

vs.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner; Bank of America, N.A.; and SCBT,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-40-2063

**ORDER STRIKING DEFENDANT'S
JURY TRIAL DEMAND
AND FOR
MANDATORY REFERENCE**

RICHLAND COUNTY
FILED
2016 APR 13 PM 2:33
JANETTE W. MCGRIDE
C.C.D. & G.S.

This matter came before the Honorable DeAndrea Gist Benjamin on Plaintiff's Motion for an Order striking Defendant's jury demand and referring this matter to the Honorable Joseph M. Strickland, Master in Equity for Richland County, pursuant to Rule 53(b), SCRCF. The Court conducted a hearing on the Motion on December 16, 2015. Based upon the parties' oral arguments and respective memoranda, this Court finds as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Defendant mortgagor Rhonda Lewis Meisner a/k/a Rhonda L. Meisner ("Defendant Meisner") filed an Amended Answer on August 10, 2015, which contains a demand for a jury trial. The Answer raises counterclaims for a declaratory judgment, breach of contract, breach of contract accompanied by fraudulent act, and abuse of process, in addition to affirmative defenses. Defendant Meisner's counterclaims for declaratory judgment, breach of contract, and breach of contract accompanied by fraudulent act are also asserted as crossclaims against Defendant Bank of America, N.A ("BANA"). Defendant Meisner further asserts crossclaims

against Defendant BANA for violation of S.C. Code 29-3-310, and against Defendant SCBT for slander of title.

In order to determine whether a counterclaim is compulsory in South Carolina, the courts use the “logical relationship” test. *N.C. Federal Savings and Loan Assoc. v. DAV Corp.*, 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989). “A counterclaim is compulsory only if a ‘logical relationship’ exists between the claim and counterclaim.” *Advance International, Inc. v. NC National Bank of SC*, 316 S.C. 266, 269, 449 S.E.2d 580, 582 (1994). If a counterclaim arises out of the same transaction or occurrence as the opposing party’s claim, it is compulsory. *DAV* at 517. In a foreclosure action, a counterclaim is compulsory when there is a “logical relationship” between the counterclaim and the enforceability of the Note and Mortgage. *Carolina First Bank v. BADD, LLC, et. al.*, 2015 S.C. LEXIS 45, 7 (2015) (finding guarantor’s claims for breach of contract and civil conspiracy did not arise from the same transaction or occurrence as execution of guaranty agreements because they did not affect the execution or enforceability of the guaranty agreements). The test of a “logical relationship” is whether the counterclaim would affect the lender’s right to enforce the note and foreclose the mortgage. *Wells Fargo Bank, NA v. Michael Smith, et al.*, 398 S.C. 487, 493, 730 S.E.2d 328, 332 (2012).

The alleged factual basis for Defendant Meisner’s counterclaims is that the Plaintiff’s predecessor, BANA, erroneously ceased making monthly automatic payments on the loan. See Amended Ans. ¶34. This is the sole contention that gives rise to the counterclaims asserted against Plaintiff. However, even if Defendant’s allegations are proven true, they do not have any impact upon the terms of the subject note and mortgage, her obligations thereunder, and their enforceability against Defendant. Specifically, Defendant Meisner’s counterclaims for

declaratory judgment¹, breach of contract, breach of contract accompanied by fraudulent act, and abuse of process bear no logical relationship to either the execution of the note and mortgage or their enforceability. It is undisputed that Defendant Meisner signed the note and mortgage, and that the terms of the note and mortgage have not been modified. Instead, Defendant Meisner asserts claims based solely upon the prior servicer's alleged failure to continue drafting automatic monthly payments on the loan which, if proven, may at best entitle Defendant to an offset from the Plaintiff's total debt amount for her damages on these permissive claims. Accordingly, Defendant's counterclaims are permissive and she has waived her right to a jury trial by asserting them in Plaintiff's equitable foreclosure action.

It is further evidence of the permissive nature of Defendant's counterclaims for declaratory judgment, breach of contract, and breach of contract accompanied by fraudulent act that Defendant Meisner seeks to assert *identical crossclaims* against the other Defendants based upon the same facts, i.e., BANA's alleged failure to continue drafting monthly automatic payments on the loan. See *DAV* at 519 (cross-claims are permissive); Rule 13(g), SCRP (party may assert cross-claim against co-party). These claims, whether asserted against Plaintiff and/or the other Defendants, would merely entitle Plaintiff to monetary damages. None of the proposed claims, if successful, would have any effect upon the enforceability of the note and mortgage.

By asserting said permissive claims in this foreclosure action, Defendant Meisner has waived the right to a jury trial. See *Wachovia Bank, National Association v. Blackburn*, No. 27359, 2014 WL 766311 at *4 (February 26, 2014) (finding that where the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury

¹ Defendant Meisner's declaratory judgment claim also seeks a determination that she is entitled to assert appraisal rights; however, Plaintiff has waived a deficiency and appraisal rights are only applicable in actions where a deficiency is sought. See S.C. Code 29-3-680 ("In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked... may within thirty days after the sale of the mortgaged property apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.")

trial). Furthermore, affirmative defenses raised in response to an equitable cause of action are inherently equitable in nature, and not triable by a jury. *See Farley v. Matthews*, 186 S.C. 294, 167 S.E. 502 (1933). This being an action for foreclosure of a mortgage and, as such, an action in equity, it is an appropriate matter to be referred to the Master in Equity. *See Collier v. Green*, 244 S.C. 346, 137 S.E.2d 277 (1964).

It is, therefore, hereby

ORDERED that this case be referred to Honorable Joseph M. Strickland, Master in Equity for Richland County, who shall exercise all power and authority which a Circuit Judge sitting without a jury would have, including but not limited to, making findings of fact and conclusions of law; directing entry of final judgment; hearing any issues, including motions, after sale or judgment; issuing any and all orders, supplemental orders, and writs of assistance, and hearing any issues involving possession and/or removal of property and appraisal proceedings under Section 29-3-360, *et seq.* of the South Carolina Code, with any appeal from the final judgment being to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules. Any judicial sale of the property subject of this action may be held on a day other than the regular judicial sale day.

IT IS SO ORDERED.



The Honorable DeAndrea Gist Benjamin

Columbia, South Carolina

4-12, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for the
Holders of The Banc of America Funding
Corporation, 2008-FT1 Trust, Mortgage Pass-
Through Certificates, Series 2008-FT1,

PLAINTIFF,

vs.

Rhonda Lewis Meisner a/k/a Rhonda L. Meisner;
Bank of America, N.A.; and SCBT,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-40-2063

ORDER STRIKING DEFENDANT'S
JURY TRIAL DEMAND
AND FOR
MANDATORY REFERENCE

2014 JUL 24 AM 8:58
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

This matter came before the Court on the Plaintiff's motion for an order striking Defendant's jury demand and referring this matter to the Honorable Joseph M. Strickland, Master in Equity for Richland County, pursuant to Rule 53(b), SCRCP.

The defendant mortgagor Rhonda Lewis Meisner a/k/a Rhonda L. Meisner ("Defendant") served an answer on May 15, 2013 which contains a demand for a jury trial. The answer raises counterclaims for breach of contract and a declaratory judgment that Defendant is entitled to statutory appraisal rights pursuant to S.C. Code 29-3-680, in addition to affirmative defenses.

As a threshold matter, the counterclaim for a declaratory judgment has no bearing on the lender's right to enforce the note and foreclose the mortgage and is not legal in nature. A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue. Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). While this counterclaim potentially may require the Court to construe the terms of the note and mortgage, it relates exclusively to the determination of Defendant's rights after the sale of the foreclosed premises under those same agreements and because the underlying action is a foreclosure which sounds in equity, this counterclaim necessarily flows from this same underlying issue. See Hardy v. Aiken, 369 S.C. 160, 631 S.E.2d 539 (2006) (holding that

underlying issue in declaratory judgment action to enforce restrictive covenants is equitable and not legal action to construe a contract). Moreover, this counterclaim is moot in that it prematurely seeks a declaration that Defendant is entitled to statutory appraisal rights pursuant to S.C. Code §29-3-680. Pursuant to that statute, a mortgagor defendant in a foreclosure action upon which a deficiency judgment is rendered may within thirty days after the sale of the mortgage property apply by petition to the Clerk of Court for an appraisal. See S.C. Code §29-3-680(a) ("In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within thirty days *after the sale of the mortgaged property* apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.")(emphasis added). The property that is the subject of this action has not been sold at foreclosure sale, and does not provide a basis for Defendant to request a jury trial.

The sole legal counterclaim raised in the Answer is for breach of contract, and the thrust of Defendant claims with regard to that cause of action is that the prior servicer and Plaintiff's predecessor in interest improperly applied escrow payments to the loan account. Defendant does not allege that the alleged misapplication is the reason for the default in monthly mortgage payment. In fact, the Answer does provide contain any allegation that the alleged conduct which Defendant contend gives rise to her counterclaim for breach of contract is related in any manner to the default in payments; since Plaintiff's foreclosure action is centered entirely on the obligations created by the note and mortgage and the Defendants' default thereunder, Defendants' legal counterclaim does not arise from the same transaction or occurrence as Plaintiff's foreclosure action and is necessarily permissive.

By asserting this permissive claim in the instant foreclosure action, Defendant has waived the right to a jury trial. See Wachovia Bank, National Association v. Blackburn, No. 27359, 2014 WL 766311 at *4 (February 26, 2014) (finding that where the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial). Furthermore,

affirmative defenses raised in response to an equitable cause of action are inherently equitable in nature, and not triable by a jury. See Farley v. Matthews, 186 S.C. 294, 167 S.E. 502 (1933). This being an action for foreclosure of a mortgage and, as such, an action in equity, it is an appropriate matter to be referred to the Master in Equity. See Collier v. Green, 244 S.C. 346, 137 S.E.2d 277 (1964).

It is, therefore, hereby

ORDERED that this case be referred to Honorable Joseph M. Strickland, Master in Equity for Richland County, who shall exercise all power and authority which a Circuit Judge sitting without a jury would have, including but not limited to, making findings of fact and conclusions of law; directing entry of final judgment; hearing any issues, including motions, after sale or judgment; issuing any and all orders, supplemental orders, and writs of assistance, and hearing any issues involving possession and/or removal of property and appraisal proceedings under Section 29-3-360, *et seq.* of the South Carolina Code, with any appeal from the final judgment being to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules. Any judicial sale of the property subject of this action may be held on a day other than the regular judicial sale day.

IT IS SO ORDERED.


Judge/Clerk of Court

Columbia, South Carolina

7-7, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for the
Holders of The Banc of America Funding
Corporation, 2008-FT1 Trust, Mortgage Pass-
Through Certificates, Series 2008-FT1,

PLAINTIFF,

vs.

Rhonda Lewis Meisner a/k/a Rhonda L. Meisner;
Bank of America, N.A.; and SCBT,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-40-2063

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

RICHLAND COUNTY
FILED
2014 JUN 27 PM 1:59
JEANNETTE W. MCERIDIC
C.C.P. & G.S.

THIS MATTER came before the Court upon the filing of Defendant Rhonda Lewis Meisner a/k/a Rhonda L. Meisner's Motion to Dismiss ("Motion") pursuant to Rule 12(b)(8), SCRPC. A hearing was held on June 10, 2014, and attended by counsel for the Plaintiff and the Defendant, *pro se*. Based upon the arguments and the memoranda submitted by the parties, I find, conclude and order that Defendant's Motion is denied based upon the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff brings the instant action for foreclosure of real property located in Richland County, pursuant to S.C. Code 15-7-10(3). The Lis Pendens, Summons, Complaint, and Notice Foreclosure Intervention were filed on March 31, 2014.
2. On April 25, 2014, Plaintiff filed a Certification of Exemption from S.C. Supreme Court Administrative Order 2011-05-02-01, on the grounds the real property that is the subject of this foreclosure is not an "owner-occupied dwelling" as defined in the Administrative Order.
3. Defendant filed a Motion to Dismiss on May 6, 2014, asserting Rules 12(b)(8) and (9), SCRPC¹ as the stated grounds therefor. On or about May 15, 2014, Defendant served an Answer and Counterclaim on the Plaintiff.

¹ The Court notes that the South Carolina Rules of Civil Procedure do not contain a Rule 12(b)(9). Therefore this order only addresses the motion as it pertains to Rule 12(b)(8), SCRPC.

4. Plaintiff possesses a first lien, purchase money mortgage on the subject property given by Defendant Meisner to Bank of America N.A., its successors or assigns, dated August 13, 2003, and recorded in the Richland County Register of Deeds Office on August 18, 2003 in Book 838 at Page 2632, in the amount of \$61,516.00.
5. By virtue of an Assignment of Mortgage dated April 3, 2013 and recorded May 2, 2014 in Book 1943 at Page 1234, South Carolina Bank and Trust, NA assigned the subject mortgage to U.S. Bank, National Association, as trustee for the Holders of The Banc of America Funding Corporation, 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1, the present lienholder and Plaintiff herein.
6. Defendant South Carolina Bank & Trust ("SCBT") is named as a party to this action by virtue of a mortgage given by Defendant Meisner to South Carolina Bank and Trust, NA, dated November 27, 2007, and recorded December 18, 2007, in Book 1384 at Page 3706, in the amount of \$50,000.00. The interest of this Defendant, if any, is junior and subordinate to Plaintiff's purchase money mortgage.
7. The Motion alleges that Plaintiff's predecessor in interest, Bank of America N.A. failed to answer a separate action commenced by Defendant SCBT to foreclose its second mortgage lien on the property that is the subject of this action. For this reason, Defendant seeks a dismissal of Plaintiff's foreclosure action pursuant to Rule 12(b)(8).

CONCLUSIONS OF LAW

8. In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. See Rule 12(b)(8), SCRCPP.
9. South Carolina narrowly interprets Rule 12(b)(8), such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under this Rule. See Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524; quoting Beatty v. Liberty Mut. Ins. Group, 893 N.E.2d 1079, 1084 (Ind. App. Ct. 2008) (applying 12(b)(8) dismissal "where the parties, subject matter, and remedies are precisely the same, and it also applies when they are only substantially the same.")

10

10. Plaintiff holds a first lien, purchase money mortgage on the subject property. See Compl. ¶ 9. The foreclosure of SCBT's second lien would have no effect upon the validity or existence of Plaintiff's lien, and therefore Plaintiff is not a necessary party to the SCBT foreclosure. In fact, Plaintiff's predecessor in interest was voluntarily dismissed as a party to that action on April 24, 2014. As a result, Plaintiff's failure to respond to the SCBT foreclosure action is simply not basis for dismissal of this action under Rule 12(b)(8).

11. Defendant's default under the terms of the note and mortgage assigned to Plaintiff is entirely unrelated to her performance under the terms of the Defendant's loan agreement with SCBT.

12. Because the loan agreements between Plaintiff and Defendant, and SCBT and Defendant are wholly independent and distinct from one another, Plaintiff's Motion is denied.

IT IS THEREFORE ORDERED THAT Defendant's Motion to Dismiss pursuant to Rule 12(b)(8), SCRCP is denied.

IT IS SO ORDERED.



The Honorable DeAndrea G. Benjamin

Columbia, South Carolina

Date: 6-27-14

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP402063

U.S. Bank, National Association, as trustee for the
Holders of the Bank of America Funding Corp.

Rhonda Lewis Meisner

2008-FT1 Trust, Mortgage Pass through
Certificates Series 2008 FT1
PLAINTIFF(S)

A.K.A Rhonda L. Meisner; Bank of America, N.A. and SCBT

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Motion for Reconsideration has been denied. The court did not receive a copy of the motion as required under rule 59(g), SCRPC.

INFORMATION FOR THE PUBLIC INDEX

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

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

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

Circuit Court Judge MBJudge Code 2161Date 9-5-14

For Clerk of Court Office Use Only

This judgment was entered on the 10 day of Sept, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 10 day of Sept, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Maggie A. Arcure

ATTORNEY(S) FOR THE PLAINTIFF(S)

Rhonda Meisner Prose

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO.: 2014-CP-40-2063

U. S. Bank National Association, as)
Trustee for the Holders of The Banc)
Of America Funding Corporation)
2008-FTI Trust, Mortgage Pass-)
Through Certificated, Series 2008- FITI,)
Plaintiff,)
vs.)
Rhonda Lewis Meisner a/k/a Rhonda)
L. Meisner; Bank of America, N.A.;)
And SCBT,)
Defendant(s))

ORDER TO VACATE
ORDER
STRIKING DEFENDANT'S
JURY TRIAL
DEMAND AND FOR
MANDATORY REFERENCE

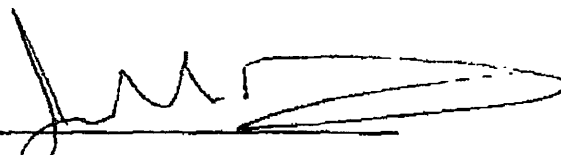
2015 JAN 12 AM 8:34
FILED
RICHLAND COUNTY
CLERK OF COURT
J. W. MOSENFELDER
CLERK

The matter before the court is the Plaintiff's motion for an order striking Defendant's jury demand and referring this matter the Honorable Joseph M. Strickland, Master in Equity for Richland County, pursuant to Rule 53(b), SCRCP. The order was inadvertently signed by the Clerk of Court on July 7, 2014 and filed in Richland County on July 24, 2014. The order should have been signed by a Circuit Court Judge.

Thus, the order signed by the Clerk of Court is hereby vacated and remanded to the Court of Common Pleas.

IT IS SO ORDERED.

Columbia, South Carolina
January 12, 2015


Joseph M. Strickland,
Richland County Master in Equity

13

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee
for the Holders of The Banc of America
Funding Corporation, 2008-FTI Trust,
Mortgage Pass-Through Certificates, Series
2008-FT1,

PLAINTIFF,

vs.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner; Bank of America, N.A.; and SCBT,

DEFENDANT(S).

TO THE ABOVE NAMED DEFENDANT(S):

IN THE COURT OF COMMON PLEAS
C/A NO: 2014-CP-40-

SUMMONS AND NOTICES

(NON-JURY MORTGAGE FORECLOSURE)

FILED
2014 MAR 31 AM 11:31
JEANETTE W. McBRIDE
C.C.P. & G.S.

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or to otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the plaintiff's attorneys at their office, 4000 Faber Place, Suite 450 (29405), P.O. Box 71727, North Charleston, South Carolina, 29415, or to otherwise appear and defend the action pursuant to applicable court rules, within thirty (30) days after service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of such service; and if you fail to answer the Complaint or otherwise appear and defend within the time aforesaid, the Plaintiff in this action will apply to the Court for relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff.

YOU WILL ALSO TAKE NOTICE that pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, as amended effective September 1, 2002, the Plaintiff will move for a general Order of Reference to the Master in Equity for Richland County, which Order shall, pursuant to Rule 53(b) of the

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of The Banc of America Funding
Corporation, 2008-FT1 Trust, Mortgage Pass-
Through Certificates, Series 2008-FT1,

PLAINTIFF,

vs.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner; Bank of America, N.A.; and SCBT,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO. 2014-CP-40-

COMPLAINT

(NON-JURY MORTGAGE FORECLOSURE)

FILED
2014 MAR 31 AM 11:31
JEANETTE W. McBRIDE
C.C.P. & G.S.

The Plaintiff alleges as follows:

1. The Plaintiff, a corporation or other legal entity, brings this foreclosure action to collect a debt and/or enforce a mortgage, security interest, or other rights in property securing the debt.
2. The Plaintiff is the servicer and/or mortgagee of the note and mortgage covering real property located in Richland County, which is the subject of the within captioned action, and is entitled to enforce same.
3. The defendant(s) named herein may have an interest in the property that is the subject of this action.
4. Any defendant(s) described herein as Judgment Creditor(s) have by filing judgment(s) designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of §15-35-840 of the South Carolina Code of Laws (1976 as amended).
5. Upon information and belief, the defendant(s) Rhonda Lewis Meisner a/k/a Rhonda L. Meisner is not in the military service of the United States of America pursuant to the provisions of the Servicemembers Civil Relief Act (2003).
6. On or about August 13, 2003, for value received, Rhonda L. Meisner executed and delivered to Bank of America, N.A. a certain promissory note in the sum of \$61,516.00, together with interest thereon pursuant to the terms of the note.
7. To secure the payment of the said note and debt, secured thereby, and in accordance with the terms and conditions thereof, on August 13, 2003, Rhonda L. Meisner executed and delivered to Bank of America, N.A., its successors and assigns, a mortgage covering the following described property:

All that certain piece, parcel or lot of land, situate, lying and being on the southern side of Koon Store Road (S-40-61), North of the City of Columbia, in the County of Richland, State of South Carolina, being shown and delineated as Lot No. 9, containing one acre, on a plat prepared for Eberdease Thomas by Douglas E. Platt, Sr., Reg. Land Surveyor, dated May 9, 1979 and recorded in Plat Book Y at page 4038; said lot being bounded and measuring as follows: On the North by Koon Store Road measuring thereon 100 feet; on the East by Lot 10 measuring thereon 435.6 feet; on the South by property of Denny Hills North measuring thereon 100 feet; and on the West by Lot 8, property of Eberdease Thomas, measuring thereon 435.6 feet; be all measurements a little more or less; subject to easements and restrictions of record.

TMS #: 12100-04-23

Property Address: 406 Koon Store Rd, Columbia, SC

8. Thereafter the mortgage was recorded in the Office of the Register of Deeds for Richland County in book 838 at page 2632 on August 18, 2003.

9. The above-referenced instrument constitutes a purchase money mortgage with the proceeds of the loan being used to purchase the property above described.

10. Subsequently, the subject mortgage was assigned or otherwise transferred to U.S. Bank, National Association, as trustee for the Holders of The Banc of America Funding Corporation, 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1, the Plaintiff herein.

11. Due solely to inadvertence and scrivener's error the legal description in the plaintiff's mortgage and vesting deed recorded August 18, 2003 in book 838 at page 2627 incorrectly references the plat of the subject property as being dated May 9, 1979 instead of the correct date of March 20, 1979.

12. The plaintiff seeks reformation of the legal description to correctly reference the plat of the subject property as being dated March 20, 1979, comport with the public records.

13. Pursuant to the Administrative Order of the Chief Justice, 2009-05-22-01, the loan that is subject of this action may be eligible for participation in the Home Affordable Modification Program (HMP), however, that process has been completed without resulting in modification under the HMP due to no response from borrower.

14. Pursuant to the terms of the mortgage, any sums paid by the plaintiff for inspecting and securing the subject property, for fire and other hazard insurance, taxes and assessments for the mortgaged premises, and any costs of collection, including reasonable attorney's fees, are secured by the mortgage.

15. The monthly payments due on said note and mortgage are in default since July 12, 2013, although demand for payment thereof has been made and the plaintiff, as the holder of the said note and mortgage, after providing all required notices, elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of July 12, 2013, the

sum of \$ 26,945.74, together with interest at the rate of 5.40% per annum, from June 12, 2013, and also for the costs and disbursements of this action, including attorney's fees.

16. Pursuant to Section 37-3-105, South Carolina Code of Laws (1976 as amended), the mortgage lien, which is the subject of this action, is a first lien on real estate and is not a 'consumer loan' for the purposes of the South Carolina Consumer Protection Code. Any notice of right to cure has been given as required.

17. The Plaintiff does not demand a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due unto the plaintiff, including costs and attorney's fees.

18. The following Defendant(s) claim(s), or may claim a lien upon or interest in the subject property as follows:

- a. Bank of America, N.A., by virtue of a mortgage from Rhonda Lewis Meisner, dated September 19, 2005, and recorded September 23, 2005, in Book 1101 at Page 2609, in the amount of \$30,364.00.
- b. SCBT, by virtue of the following
 - i. A mortgage originally given to South Carolina Bank and Trust, NA, from Rhonda Lewis Meisner, dated November 26, 2007, and recorded December 18, 2007, in Book 1384 at Page 3706, in the amount of \$50,000.00.
 - ii. Deficiency Judgment against Rhonda Meisner, filed August 8, 2012 in Case No. 2011-CP-40-6318, in the amount of \$34,165.22.

The interests or liens of the above Defendants, if any, are junior and subordinate to the plaintiff's purchase money mortgage.

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

1. The amount due upon the said note and mortgage held by Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action
2. The said Plaintiff's Mortgage be declared a first mortgage lien and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.
3. The Court grant reformation of the legal description in the Plaintiff's mortgage and vesting deed recorded August 18, 2003 in book 838 at page 2627 to correctly reference the plat of the subject property as being dated March 20, 1979, to comport with the public records.

4. The mortgaged premises be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

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

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

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

5. An Order be entered directing and empowering the Sheriff of Richland County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

6. An Order be entered for the ejectment of the defendants in possession herein and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures and items not subject to the lien of the plaintiff's mortgage, which personal property if not removed shall be deemed abandoned and shall be removed by the plaintiff or its agents from the subject property by placing said property on the public street or highway or by any other means.

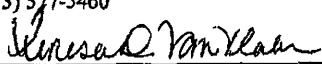
7. An Order be entered granting the appointment of a Receiver to secure and supervise the rental of the property sought to be foreclosed with authority to take possession thereof and collect rents, issues and profits thereon during the pendency of this action and to hold the same as further security for Plaintiff's debt.

8. An Order be entered for reimbursement of all costs for inspecting and securing the property incurred by the plaintiff as a result of the delinquency.

9. An Order be entered for such other and further relief as may be just and proper.

FINKEL LAW FIRM LLC
P.O. Box 71727
N. Charleston, SC 29415
(843) 577-5460

By:


☐ Thomas A. Shook, SC Bar # 68340
☐ Susan S. White, SC Bar # 5453
☐ Andrew M. Wilson, SC Bar # 72553
☐ Elizabeth S. Moore, SC Bar # 69236
☒ Teresa D. Van Vlase, SC Bar # 11118
Attorneys for Plaintiff

March 27, 2014

GB049

58020.F 3801

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for the
Holders of The Banc of America Funding
Corporation, 2008-FT1 Trust, Mortgage Pass-
Through Certificates, Series 2008-FT1,

PLAINTIFF,

vs.

Rhonda Lewis Meisner a/k/a Rhonda L. Meisner;
Bank of America, N.A.; and SCBT,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 2014-CP-40-2063

LIS PENDENS

(NON-JURY MORTGAGE FORECLOSURE)

JEANETTE W. MCBRIDE
C.C.P. & G.S.

2014 MAR 31 AM 11:31

FILED

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this court upon Complaint of the above-named Plaintiff against the above-named Defendant(s) for foreclosure of a certain mortgage of real estate given by Rhonda L. Meisner to Bank of America, N.A. in the amount of \$61,516.00, dated August 13, 2003, and recorded in the Office of the Register of Deeds for Richland County in Book 838 at Page 2632 on August 18, 2003 at 5:08 p.m.

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

All that certain piece, parcel or lot of land, situate, lying and being on the southern side of Koon Store Road (S-40-61), North of the City of Columbia, in the County of Richland, State of South Carolina, being shown and delineated as Lot No. 9, containing one acre, on a plat prepared for Eberdease Thomas by Douglas E. Platt, Sr., Reg. Land Surveyor, dated March 20, 1979 and recorded in Plat Book Y at page 4038; said lot being bounded and measuring as follows: On the North by Koon Store Road measuring thereon 100 feet; on the East by Lot 10 measuring thereon 435.6 feet; on the South by property of Denny Hills North measuring thereon 100 feet; and on the West by Lot 8, property of Eberdease Thomas, measuring thereon 435.6 feet; be all measurements a little more or less; subject to easements and restrictions of record.

TMS# 12100-04-23

Property Address: 406 Koon Store Rd, Columbia, SC

FINKEL LAW FIRM LLC

Post Office Box 71727

North Charleston, South Carolina 29415

(843) 577-5460

By:

Teresa D. Van Vlake

- ☐ Thomas A. Shook, SC Bar # 68340
 - ☐ Susan S. White, SC Bar # 5453
 - ☐ Andrew M. Wilson, SC Bar # 72553
 - ☐ Elizabeth S. Moore, SC Bar # 69236
 - ☒ Teresa D. Van Vlake, SC Bar # 11118
- Attorneys for Plaintiff

March 27, 2014

19

GA

Affidavit of Service



DOCKET NUMBER: 14-cv-40-2063
COURT OF COMMON PLEAS FOR RICHLAND COUNTY, SC
CASE STYLE:

FILE NUMBER: F43801

PLAINTIFF U.S. BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE HOLDERS OF THE BANK OF AMERICA FUNDING CORPORATION, 2008-FT1 TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2008-FT1; et seq.

DEFENDANT RHONDA LEWIS MEISNER A/K/A RHONDA L. MEISNER; et al.

SERVICE OF PROCESS ON: BANK OF AMERICA, N.A.

METHOD OF SERVICE: A true and correct copy of the above-described papers were served on the below-named party in the following manner:

(x) (CORPORATION/PARTNERSHIP) By leaving a copy with an officer, a managing or general agent, or with any other agent authorized by appointment or by law to receive service of process.

PLACE OF SERVICE: 200 meeting at
charleston, SC 29401

Is the place of service the dwelling house or usual place of abode for the party being served? () Yes (x) No

DATE OF SERVICE: 04/02/2014 TIME OF SERVICE: 11:20 AM

TYPE OF DOCUMENTS: (x) SUMMONS & COMPLAINT (x) LIS PENDENS
(x) OTHER: NOTICE OF FORECLOSURE INTERVENTION

DESCRIPTION OF PARTY RECEIVING DOCUMENTS: The person receiving the documents is described as follows:

Name AMY ROULTH; Relationship/Title AUTHORIZED AGENT
Sex FEMALE; Race WHITE; Facial Hair NO;
Age(prox.) 31-35; Height(prox.) 5'6"; Weight(prox.) 140

COMMENTS:

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: ZACHARY A COX

Signature of Process Server

Date

STATE OF SC

COUNTY OF Charleston

I, Zachary A Cox, am and subscribed before me this 2 day of APRIL, in

year of 2014
Personally known to me or _____ identified by the following document:

Number/Reference: _____

Notary Public for South Carolina

Notary Public (Legal Signature)
Commission Expiration 1/27/2022

20

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

U.S. BANK, NATIONAL ASSOCIATION,)
AS TRUSTEE FOR THE HOLDERS OF THE)
BANC OF AMERICA FUNDING)
CORPORATION, 2008-FT1 TRUST,)
MORTGAGE PASS-THROUGH)
CERTIFICATES, SERIES 2008-FT1,)

Plaintiff,)

vs.)

RHONDA LEWIS MEISNER A/K/A)
RHONDA L. MEISNER; BANK OF)
AMERICA, N.A.; AND SCBT,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C/A #: 2014-CP-40-2063

RICHLAND COUNTY
FILED
21 APR 14 PM 12:45
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

**ANSWER OF DEFENDANT
SCBT**

COMES NOW the Defendant SCBT, answering Plaintiff's Complaint as follows:

1. SCBT denies each and every allegation contained in the Complaint which is not hereinafter specifically admitted or to which a response is not otherwise provided.
2. SCBT states that it is a bank authorized to do business in the state of South Carolina.
3. SCBT admits so much of Paragraph 18 of the Complaint alleging that it has an interest in the subject property by virtue of a mortgage lien recorded in the Office of the Register of Deeds for Richland County in Book 1384 at Page 3706 and by virtue of a Deficiency Judgment against Rhonda Meisner filed in the Richland County records, Judgment Roll # 2011-CP-40-6318. SCBT lacks sufficient information or knowledge at this time to form a belief as to the remaining allegations contained in Paragraph 18 and demands strict proof thereof.
4. SCBT lacks sufficient information or knowledge at this time to form a belief as to the allegations contained in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the Complaint and therefore denies the same, except to the extent that such matters are of public record.
5. SCBT would show that, pursuant to written agreement between the defendant(s) Rhonda Lewis Meisner, as debtor(s), and this Defendant, as creditor, SCBT is entitled to

recovery of attorney's fees and costs in connection with its efforts to protect its interest under the agreement and the mortgage and hereby requests that the Court award attorney's fees and costs to this Defendant consistent therewith.

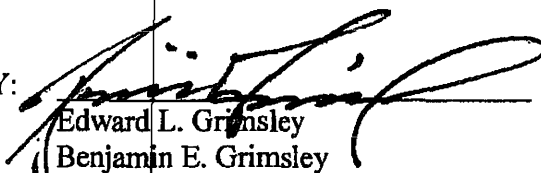
6. SCBT respectfully requests that the Court determine the relative priority of the liens on the subject property and, upon sale of the subject property, permit this Defendant to share in the proceeds from sale in accordance with such determination.

WHEREFORE, having fully answered the Complaint, SCBT prays that this Court protect its interest by:

- A. Recognizing the lien of its mortgage against the property subject of this action;
- B. Recognizing the lien of its judgment against the property subject of this action;
- C. Awarding proceeds, including attorney's fees and costs, to SCBT from the sale of the subject property according to law and as determined by this Court;
- D. Requiring proof from the Plaintiff of the allegations in its Complaint not admitted by this Defendant; and
- E. For such other and further relief as this Court may deem just and proper.

GRIMSLEY LAW FIRM, LLC
P. O. BOX 11682
COLUMBIA, SC 29211
(803) 233-1177

BY:


Edward L. Grimsley
Benjamin E. Grimsley
Attorneys for SCBT

April 10, 2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI Trust, Mortgage pass
Through Certificates, Series 2008-FTI,

Plaintiff,
v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner; Bank of America, N.A.; and SCBT

Defendants

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2014-CP-40-2063

ANSWER & COUNTERCLAIM JURY
TRIAL DEMANDED

RICHLAND COUNTY
FILED
2014 MAY 15 PM 4:11
JEANNETTE W. MCBRIDE
C.C.P. & C.V.

**TO: TERESA D. VAN VLAKE ESQ. ATTORNEY, AND EDWARD GRIMSLEY OF
GRIMSLEY LAW FIRM FOR SCBT**

Defendant, Rhonda Meisner, answering the Complaint of the Plaintiff herein would respectfully show
unto the Court as follows:

FIRST DEFENSE
(General Denial)

1. Each and every allegation of the Complaint not herein specifically admitted, qualified or explained is denied. As an initial matter the action here-in is subject to a motion to dismiss filed by the Defendant pursuant to S.C. Rules of Civ. P. Rule 12(b) (8) (9) as an action in equity (2013-CP-40-7144) has already commenced naming the predecessor in servicing as a Defendant. The Defendant specifically denies the amounts owed in the above mentioned complaint.
2. The Defendant is without knowledge to dispute ¶1 of the complaint to the extent that the Plaintiff purport to suggest that the Plaintiff is a corporation or other legal entity that is authorized to bring this foreclosure action; however, the Defendant specifically denies many of the facts asserted in this complaint. According to Defendants records, the loan in question is current considering the re-application of funds received by the Plaintiff from the escrow account associated with the loan in this litigation.

3. The Defendant does not have adequate information to admit or deny ¶2 which states that the Plaintiff is the authorized agent acting as the servicer for the aforementioned loan and is therefore authorized to act on behalf of U. S. Bank, National Association, as trustee for the holders of the Banc of America Funding Corporation, 2008-FTI Trust, Mortgage Pass Through Certificates, Series 2008-FTI.
4. Paragraph 3 is denied to the extent it purports to suggest that the transfer of the servicing rights were incomplete or inconsistent with the contract between the Plaintiff party and Bank of America, NA or that it purports to suggest a relationship (or right) which may not legally be recognized in the State of South Carolina. Defendant specifically reserves the right to challenge any interest in the real property associated with the above referenced complaint by Defendants or the previously filed mortgage foreclosure action ,South Carolina Complaint reference # 2013-CP-40-7144.
5. Defendant is without knowledge to admit or deny the allegations in ¶4 to determine whether proper service was affected to other Defendants pursuant to S. C. Code Ann. §15-35-840.
6. Defendant admits paragraph 5
7. Defendant is without knowledge to admit or deny the actual dates and legal entities named in paragraph 6 without reviewing the original documents.
8. Defendant is without knowledge to admit or deny the legal description supplied by the Plaintiff associated with tax map # 1200-04-23. The Defendant Rhonda Meisner admits she owns the property located at 406 Koon Store Road, Columbia, SC 20203.
9. Defendant is without present knowledge to admit or deny the information in Paragraph 8.
10. Defendant is without knowledge to admit or deny paragraph 9 to the extent it purports to describe a mortgage that has been unconfirmed by the Defendants.
11. Defendant is without knowledge to admit or deny Paragraph 10.
12. Defendant is without knowledge to admit or deny Paragraph 11.

13. Defendant objects to any change in the legal documents prior to Plaintiff's gaining legal title to the property as described in Paragraph 12.
14. Defendant denies receipt of any request for information by Plaintiff for the Home Affordable Modification Program as described in Paragraph 13.
15. Defendant denies Paragraph 14 to the extent the Plaintiff purports to suggest that all fees are attached to the mortgage as described in Paragraph 14 prior to a mortgage foreclosure hearing.
16. Defendant denies Paragraph 16 to the extent it purports to convey that a right to cure has been received by the Defendant, Rhonda Meisner.
17. Defendant accepts the waiver of deficiency as absolute by the Plaintiff in Paragraph 17.
18. Defendant expressly denies the validity of the judgement referenced in Paragraph 18 at ii. Defendant denies the mortgage dated Sept. 19, 2005 has not been paid. Defendant denies the amount owed referenced in Paragraph 18 at i is \$50,000.
19. Defendant, Rhonda Meisner specifically invokes her rights under the appraisal statute S.C. Code Ann. §29-3-610 and specifically prays the Court will direct Plaintiff to pay Defendant any proceeds of the sale.
20. Defendant Rhonda Meisner denies the amount owed in the Complaint are accurate and demands strict proof of all amounts owed. Defendant, Rhonda Meisner's amount owed is subject to the provisions of S.C. Code § 29-3-660 *et. seq.*
21. Any response inconsistent with the Defendant's previous responses are denied.
22. Defendant attempted in good faith to work out a settlement of claims with predecessor servicer Bank of America, N.A. that would avoid foreclosure.
23. Defendant Rhonda Meisner requires strict proof that she owes money to the Plaintiff and in the exact amounts but the amounts are governed by S.C. Code § 29-3-660 *et. seq.*

24. **SECOND DEFENSE**

(Estoppel)

25. The Plaintiff should be estopped to foreclose. The Plaintiff purports to be the current servicer of the loan; however, any rights the Plaintiff has are those rights assumed from the previous servicer.
26. The Plaintiff's purportedly assumed the servicing rights from Bank of America, NA. At the time of the assumption the Defendant Rhonda Meisner was in a dispute with Bank of America, N.A. regarding a newly imposed escrow account. This escrow account did not reflect accurate payments and reductions which was brought to the attention of the previous servicer Bank of America, N.A. The loan payment amounts was automatically drafted from Defendants Bank accounts with the new servicer without consideration of the application of payments made Rhonda Meisner to the Richland County Tax Assessor's office .
27. The Plaintiff's predecessor in servicing the loan Bank of America, N.A. then made a duplicate payment to the Richland County Assessor's office and charged the payment to the escrow account.
28. Defendant complained of the extra amounts deducted from the checking account as well as Bank of America's refusal to request a refund from Richland County and eliminate the need for the newly opened escrow account.

THIRD DEFENSE
(Unclean Hands)

29. The Plaintiff's request to foreclose should be denied under the unclean hands doctrine. The Plaintiff was in a dispute with the previous servicer of the loan regarding the implementation of an escrow account which the Plaintiff has " assumed" in the servicing of the loan in question.
30. Plaintiff's predecessor in servicing has refused to apply the funds charged to the escrow account and transferred the servicing rights to the current Plaintiff.
31. Plaintiff did not transfer the debiting rights from Defendants checking account without proper notification of the transfer of the loan and failed to make the required notifications pursuant to

the Dodd-Frank Consumer Financial Protection Act of 2010 (subtitle E sect. 1462 and sect. 1465.)

32. Violations of the Dodd-Frank Consumer Financial Protection Act constitutes unclean hands by the previous servicer Bank of America, N.A.. The liability of the acts of the servicer are imputed to the principal.

COUNTERCLAIM

FIRST CAUSE OF ACTION (Declaratory Judgment)

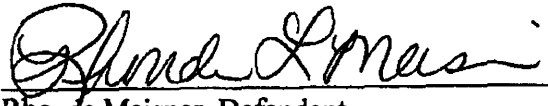
33. Defendant incorporates the allegations contained above as if fully set forth verbatim.
34. Upon information and belief the Defendants are entitled to a declaratory judgment pursuant to S.C.R.C.P 57 and S.C. Code Ann. §§15-53-10 through 15-15-140 to determine a question in actual controversy between or among the parties as to their respective rights and liabilities under a Note AND Mortgage pertaining to real property located at 406 Koon Store Road and more particularly described in the Plaintiff's Complaint, which is incorporated by reference and to determine the respective rights and obligations of the parties with respect to the amount of excess funds distributions pursuant to the first filed leins under South Carolina law and to determine the appraisal rights of the Defendant.
35. Defendant Rhonda Meisner was not notified in writing before the transaction that a waiver of appraisal rights would be required. The only written information about the waiver of appraisal rights was contained in the mortgage itself, which was not provided "before" the transaction it was provided during the transaction.
36. Defendant Rhonda Meisner seeks a declaratory judgment that she is entitled to her statutory appraisal rights; that the appraised value will be substituted for the high bid at the foreclosure auction if the appraised value is greater than the high bid and that the amount she would be obligated to pay.

37. The Defendant prays that the Court more fully inquire into the terms and conditions of the Note and Mortgage and issue its declaration as to the rights, responsibilities and obligations of the parties.
38. The Defendant, Rhonda Meisner reserves the right to assert any further claims or defenses that may be appear disclosed during discovery in this case.

FOR A SECOND CAUSE OF ACTION: BREACH OF CONTRACT

39. The Plaintiffs have breached the contract and have attempted via a change in servicer to avoid liability for the breach by not resolving the escrow dispute prior to transferring the servicing of the loan.
40. The Plaintiff's have also failed to comply with the Dodd-Frank Consumer Protection statute and by initiating this action, the Defendant should be entitled to costs, fees and punitive damages as a violation of the unfair trade practices act S.C. Code Ann. §39-5-10; §39-5-20; and §39-5-35.
41. The Plaintiff's predecessor in servicing Bank of America, N.A. also breached the implied covenant of good faith and fair dealing inherent in all contracts in South Carolina by transferring the servicing of the loan prior to resolution of the escrow dispute or reassigning disputed funds to the payment of the mortgage.
42. The Defendant prays for an accurate accounting acknowledging the dual payments to the Richland County Assessor's office.
43. The Defendant reserves the right to add additional counterclaims as may arise after discovery in this litigation.
44. **WHEREFORE**, having answered the Plaintiff's Complaint the Defendant prays the Complaint be dismissed with costs and grant the relief requested in the Defendants' Counterclaim including trial by jury of the legal issues at hand, costs, expenses and all such orders to be determined by the Court as fair and just.

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "Rhonda Meisner", is written over a horizontal line.

Rhonda Meisner, Defendant

P.O. Box 689

Blythewood, S.C. 29016

(803) 960-3696

pegasus333@icloud.com

pegasus@nuvox.net

May 15, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as
trustee for the Holders of the Banc of
America Funding Corporation, 2008-FT1
Trust, Mortgage Pass-Through
Certificates, Series 2008-FT1,

Plaintiff,

v.

Rhonda Lewis Meisner, a/k/a Rhonda L.
Meisner; Bank of America, N.A.; and
SCBT,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-40-2063

ANSWER OF DEFENDANT BANK
OF AMERICA, N.A.

RICHLAND COUNTY
FILED
2014 AUG 26 AM 10:11
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Defendant Bank of America, N.A. ("Defendant" or "BANA") answers the Complaint of the Plaintiff above-named by saying and alleging as follows:

FOR A FIRST DEFENSE

1. Without waiving its right to dismiss this Complaint, Defendant BANA specifically denies each and every allegation of the Complaint that is not specifically admitted and demands strict proof thereof.

2. In answering the allegations of Paragraphs 1 and 2 of the Complaint, Defendant BANA does not currently have sufficient information to admit the allegations; therefore, Defendant BANA denies the allegations and demands strict proof thereof.

3. In answering the allegations in Paragraph 3 of the Complaint, Defendant BANA admits only so much that it has an interest in the property that is the subject of this action, but specifically denies the remaining allegations of this Paragraph.

4. In answering the allegations of Paragraph 4 of the Complaint, Defendant BANA responds and states that these allegations contain legal conclusions which do not require a response. To the extent any response to these allegations is required, Defendant BANA denies the allegations and demands strict proof thereof.

5. In answering the allegations in Paragraphs 5, 6, 7 and 8 of the Complaint, Defendant BANA does not currently have sufficient information to admit the allegations; therefore, Defendant BANA denies the allegations and demands strict proof thereof.

6. In answering the allegations of Paragraph 9 of the Complaint, Defendant BANA responds and states that these allegations contain legal conclusions which do not require a response. To the extent any response to these allegations is required, Defendant BANA denies the allegations and demands strict proof thereof.

7. In answering the allegations of Paragraphs 10 and 11 of the Complaint, Defendant BANA does not currently have sufficient information or belief to admit the allegations; therefore, Defendant BANA denies the allegations and demands strict proof thereof.

8. In answering the allegations of Paragraph 12 of the Complaint, these allegations do not require a response. To the extent any response to these allegations is required, Defendant BANA denies the allegations and demands strict proof thereof.

9. In answering the allegations of Paragraphs 13, 14, 15, 16 and 17 of the Complaint, these allegations contain legal conclusions to which no response is required. To the extent any

response to these allegations is required, Defendant BANA denies the allegations and demands strict proof thereof.

10. In answering the allegations of Paragraph 18(a) of the Complaint, Defendant BANA admits only so much that it has an interest in the property that is the subject of this action, but specifically denies the remaining allegations of this Paragraph.

11. In answering the allegations of Paragraph 18(b) of the Complaint and its subparts, Defendant BANA does not currently have sufficient information or belief to admit the allegations; therefore, Defendant BANA denies the allegations and demands strict proof thereof.

FOR A SECOND DEFENSE

12. Plaintiff's Complaint fails to allege sufficient facts upon which to constitute a cause of action against Defendant BANA pursuant to Rule 12(b)(6), such that the Complaint should be dismissed.

FOR A THIRD DEFENSE

13. Defendant BANA's mortgage was duly recorded in the Richland County Register of Deeds, such that Plaintiff was on notice of its recording.

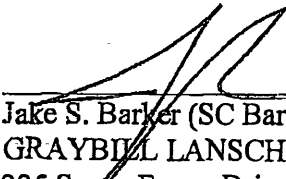
14. Plaintiff, by virtue of being placed on notice of the recording of the mortgage has knowingly waived any and all rights to contest the validity of said mortgage.

15. As a result of Plaintiff's waiver, its Complaint is barred.

WHEREFORE, having answered Plaintiff's Complaint, Defendant BANA prays to this Honorable Court to order Plaintiff to protect the priority of Defendant BANA's mortgage, order

that any sale of the subject property be subject to Defendant BANA's mortgage lien; to satisfy Defendant BANA's mortgage lien plus interest from any sale of the real property that is the subject matter of this action, plus costs and attorneys' fees, and for such further relief as this Court deems proper.

Attorneys for Defendant Bank of America, N.A.



Jake S. Barker (SC Bar #77449)
GRAYBILL LANSCH & VINZANI, LLC
225 Seven Farms Drive, Suite 107
Charleston, South Carolina 29492
Direct Dial: (843) 408-4063
jbarker@glvlawfirm.com

Charleston, South Carolina
August 25, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI,

Plaintiff,
v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and SCBT

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. ~~2015~~ CP-40- 02063

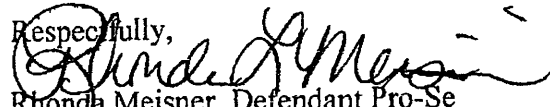
2014
CM
FIRST AMENDED SUMMONS

RICHLAND COUNTY
FILED
2015 AUG 10 PM 2:29
JEANETTE W. NICERONE
CLERK, S.P. & G.S.

TO: THE PLAINTIFF AND CO- DEFENDANTS NAMED ABOVE; U.S. Bank, National Association, as trustee for the Holders of the Banc of America Funding Corporation, 2008-FTI, represented by attorney Magalie Arcure; Bank of America, N.A. represented by attorney Jake Barker; and SCBT represented by attorney Ed Grimsley.

YOU ARE HEREBY SUMMONED and required to answer this FIRST Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Amended Complaint on the Defendant Rhonda Meisner at PO Box 689 Blythewood South Carolina 29016 , within 30 days after service hereof , exclusive of the day of such service, with three days added for mail service and if you fail to answer the Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Amended Complaint. Any Answer that you serve on the parties in this action must be filed with the Clerk of Court and copying all parties to the action within a reasonable period of time after service or contemporaneously therewith.

August 10, 2015

Respectfully,

Rhonda Meisner, Defendant Pro-Se
Post Office Box 689
Blythewood, SC 29016
pegasus333@icloud.com
(803)212-5407

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI,

Plaintiff,
v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and SCBT

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-2063

FIRST AMENDED COMPLAINT

RICHLAND COUNTY
FILED
2015 AUG 10 PM 2:30
JEANETTE W. MCBRIDE
CLERK, S.C.P. & C.S.

**TO: TERESA D VAN FLAKE ESQ., MAGALIE ARCURE, ATTORNEYS FOR THE
PLAINTIFF; EDWARD GRIMSLEY, ATTORNEY FOR THE CO-DEFENDANT SCBT
JAKE BARKER, ATTORNEY FOR CO-DEFENDANT BANK OF AMERICA, N.A.**

The Defendant Rhonda Meisner further answering the Complaint of the Plaintiff herein would respectfully show unto the Court as follows:

FIRST DEFENSE
(General Denial)

1. Each and every allegations of the Complaint not herein specifically admitted, qualified or explained is denied. As an initial matter the action here-in is subject to a motion to dismiss filed by the Defendant pursuant to S.C. Rules of Civ. P. Rule 12(b)(7) (8) as an action in equity (2013-CP-40-7144) has already commenced naming the predecessor in servicing as a Defendant. The Defendant specifically denies the amounts owed in the above mentioned complaint.
2. The Defendant is without knowledge to dispute ¶ 1 of the complaint to the extent that the Plaintiff purports to suggest that the Plaintiff is a corporation or other legal entity that is authorized to bring this foreclosure action; however, the Defendant specifically denies many of the facts asserted in this complaint. According to Defendants records, the loan in question is current considering the re-application of funds received by the Plaintiff from the escrow account associated with the loan in this litigation. No evidence of payments or

applications were attached to the complaint as evidence of the applications of payments to the loan.

3. The Defendant does not have adequate information to admit or deny ¶ 2 which states that the Plaintiff is the authorized agent acting as the servicer and/or mortgagee for the aforementioned loan and is therefore authorized to act on behalf of U.S. Bank, National Association, as trustee for the holders of the Bank of America Funding Corporations, 2008- FT1 Trust, Mortgage Pass through Certificates, Series 2008-FT1.
4. Paragraph 3 is denied to the extent it purports to suggest that the transfer of the servicing rights were incomplete or inconsistent with the contract between the Plaintiff party and Bank of America, N.A. or that it purports to suggest a relationship (or right) which may not legally be recognized in the State of South Carolina. Defendant specifically reserves the right to challenge any interest in the real property associated with the above reference complaint by Plaintiff or co-defendant Bank of America, N.A. or the previously filed mortgage foreclosure action, South Carolina Complaint reference # 2013-CP-40-7144.
5. Defendant is without knowledge to admit or deny the allegations in ¶ 4 to determine whether proper service was affected to other Defendants pursuant to S.C. Code Ann. § 15-35-840.
6. Defendant admits ¶ 5
7. Defendant is without knowledge to admit or deny the actual dates and legal entities named in ¶ 6 without reviewing the original documents.
8. Defendant is without knowledge to admit or deny the legal description supplied by the Plaintiff associated with tax map # 12000-04-23. The Defendant Rhonda Meisner admits she owns the property located at 406 Koon Store Road, Columbia, South Carolina 29203.

9. Defendant is without present knowledge to admit or deny ¶ 8.
10. Defendant is without knowledge to admit or deny ¶ 9 to the extents it purports to describe a mortgage that has been unconfirmed by the Defendant.
11. Defendant is without knowledge to admit or deny ¶ 10.
12. Defendant is without knowledge to admit or deny ¶ 11.
13. Defendant objects to any change in the legal documents prior to Plaintiff's gaining legal title to the property as described in ¶ 12
14. Defendant denies receipt of any request for information by Plaintiff for the Home Affordable Modification Program as described in ¶ 13
15. Defendant denies ¶ 14 to the extent the Plaintiff purports to suggest that all fees are attached to the mortgage as described in ¶ 14 prior to a mortgage foreclosure hearing.
16. Defendant denies that she caused the default as described in ¶ 15 and demands strict proof thereof. Defendant further denies that all of the costs, disbursements and attorney's fees attach to the amount owed and further responds that these attachments can only be approved by a judge or jury interpreting the contract between the parties.
17. Defendant denies ¶ 16 to the extent it purports to convey that a right to cure has been received by the Defendant Rhonda Meisner
18. Defendant accepts the waiver of deficiency as absolute by the Plaintiff in ¶ 17. However, since Bank of America, N.A. is still a party to the previously filed lawsuit 2013-CP-40-7144 where a deficiency was demanded and as such the Defendant asserts her rights under the deficiency statute for appraisal should the court grant foreclosure.
19. Defendant expressly denies the validity of the judgments referenced in ¶ 18 at ii.
Defendant denies the mortgage dated Sept 19, 2005 has not been paid. Defendant denies

the amount owed reference in ¶ 18 at I. is \$50,000.

20. Defendant Rhonda Meisner specifically invokes her rights under the appraisal statute S.C. Code Ann. 29-3-10 and specifically prays the Court will direct Plaintiff to pay Defendant Rhonda Meisner any proceeds of the sale should the Court order foreclosure.
21. Defendant Rhonda Meisner denies the amount owed in the Complaint are accurate and demands strict proof of all amounts owed. Defendant, Rhonda Meisner amount owed is subject to the provisions of S.C. Code Ann. § 29-3-660 *et. seq.*
22. Defendant Rhonda Meisner asserts the Bank is due any money determined to be owed by a judge or jury but US Bank or the predecessor Bank of America, N.A. is not entitled to the equity in the property. The owner of the note and mortgage possess only a right to the amount owed and not to any right associated with the equity in the property.
23. The plaintiff's request for the property to be sold and the equity of redemption be barred represents a penalty not allowed by South Carolina law.
24. Any response inconsistent with the Defendant's previous responses are denied.
25. Defendant attempted in good faith to work out a settlement of claims with the predecessor servicer Bank of America, N.A. that would avoid foreclosure.
26. Defendant Rhonda Meisner requires strict proof that she owes money to the Plaintiff and in the exact amounts but the amounts are governed by S.C. Code § 29-3-660 *et. seq.*
27. Defendant Rhonda Meisner demands strict proof of the amounts owed and requires a Jury Trial for the determination of whether the attorney fees are available to the Defendants under the contract terms of the mortgage and the note. ¶ 15 is Denied to the extent it purports to conclude the Plaintiff is owed money under the note and or mortgage referenced in this case.

FOR A FIRST DEFENSE ESTOPPEL

28. The Plaintiff should be estopped to foreclose. The Plaintiff purports to be the current servicer and holder of the note and mortgagee of the loan; however, any rights the Plaintiff has are encompassed and contained exclusively within the rights assumed from the previous servicer and or holder of the note and mortgage, Bank of America, N.A.
29. The Plaintiff purportedly assumed the servicing rights and or the note and mortgage from Bank of America, N.A. by assignment. At the time of the assumption the defendant Rhonda Meisner was in a dispute with Bank of America, N.A. regarding a newly imposed escrow account. This escrow account did not reflect accurate payments and deductions which was brought to the attention of the previous servicer Bank of America, N.A.
30. The loan payment amounts were automatically drafted from the defendant Rhonda Meisner's personal bank accounts pursuant to the agreement in the original loan documenting the agreement between the parties. Drafts from the personal bank account of Rhonda Meisner have occurred monthly since the inception of the loan and increased with the amounts for the new escrow account.
31. The increase in the monthly draft amounts did not take into consideration the application of payments made by Rhonda Meisner directly to the Richland County tax assessor's office which had occurred in the previous years of the loan.
32. The Plaintiff's predecessor in servicing the loan, Bank of America, N.A. then made duplicate payments to the Richland County Assessor's office and charged the duplicate payment to the defendant Rhonda Meisner's escrow account.
33. The terms of the note which were agreed upon by and between Bank of America, N.A.

and Rhonda Meisner at the inception of the loan in 2003, specifically required if the Mortgagor (Rhonda Meisner) elected automatic payments, in order to stop or cease the payments the mortgagor must notify the servicer in writing for the request to cease debiting the automatic payments.

34. Defendant Meisner made no such request and upon information and belief the note and mortgage was not sold and or endorsed to another entity at the time Bank of America, N.A. ceased automatic withdrawals of the appropriate payments causing the default now referenced in the above mentioned complaint.
35. Bank of America, N.A. was aware of their obligations to debit the checking account of Ms. Meisner because they had been doing so for the previous 7 plus years without interruption and Bank of America, N.A. drafted the document so Bank of America, N.A. was on actual notice of their continuing obligations to debit the checking account and to apply the funds to the note and mortgage originated in 2003.
36. Bank of America, N.A. was aware under the terms of the contract with Rhonda Meisner that they could change the amount debited from her checking account and took advantage of this contractual provision and changed the debited amount in the last several months of the account prior to assigning the note and mortgage to the plaintiff, US Bank.
37. Bank of America, N.A. has not filed in the Richland County register of deeds office any changes to the ownership of the note and mortgage prior to the assignment of the mortgage to U.S. Bank, National Association, as trustee for the Holders of the Banc of America Funding Corporation, 2008-FT1 that occurred in early 2014; however Bank of America, N.A. ceased debiting the bank account in July of 2013, a frank violation of the agreement between the parties.

38. Upon information and belief U.S. Bank, National Association, as trustee for the Holders of the Banc of America Funding Corporation, 2008-FT1 is a trust governed by the pooling and servicing agreements associated with trust.
39. Upon information and belief trusts like the Plaintiff in this case U.S. Bank, National Association, as trustee for the Holders of the Banc of America Funding Corporation, 2008-FT1 closes in the year of the inception of the trust or within months of the inception of the trust.
40. The plaintiff purports to have accepted ownership of the note and mortgage years after the creation of the trust without providing documentation attached to the lawsuit that the trust remained open or was re-opened and could accept the assignment into the trust.
41. Defendant complained of the dual payments and the extra amounts deducted from the checking account as to Bank of America's refusal to request a refund from Richland County and to adjust the escrow account accordingly or to eliminate the need for the newly opened escrow account or in the alternative credit the payments made by Meisner directly to Richland County tax assessor for payment of taxes as such prior to assignment the trust account was inaccurate.

SECOND DEFENSE UNCLEAN HANDS

42. Defendant incorporates the allegations contained above as if fully set forth verbatim.
43. The Plaintiff's request to foreclose should be denied under the unclean hands doctrine.
- The Defendant, Rhonda Meisner was in a dispute with the previous servicer and owner of the note and mortgage of the 2003 loan regarding the implementation of an escrow account which the Plaintiff has "assumed" in the servicing and /or ownership of the note and mortgage of the loan in question.

44. Additionally, unless the Plaintiff, U.S. Bank, National Association, as trustee for the Holders of the Banc of America Funding Corporation, 2008-FTI, trust was re-opened pursuant to the pooling and servicing agreement or the prospectus then the transfer of the note and mortgage into the trust after a "note default" is a fraudulent conveyance and as such voids the transfer of the note and mortgage into the trust. The Plaintiff's original lawsuit that was filed pled the Defendant Rhonda Meisner was in default since July 12, 2013 and that the note and mortgage were transferred to the Plaintiff U.S. Bank, National Association, as trustee for the Holders of the Banc of America Funding Corporation, 2008-FTI in April of 2014.
45. According to the pleadings by the plaintiff, U.S. Bank, National Association, as trustee for the Holders of the Banc of America Funding Corporation, 2008-FTI received the assignment after the note was in default.
46. Receiving the note and mortgage assignment after default makes, the Plaintiff, U.S. Bank, a third party creditor as described under Article III and Article IX of the Uniform Commercial Code by accepting a "defaulted" note and mortgage.
47. The Plaintiff's predecessor in servicing, Bank of America, N.A. did not properly credit the payments made directly to Richland County Treasurer for property taxes by Rhonda Meisner and instead Bank of America, N.A. insisted on paying Richland County and charge the defendant duplicate amounts by requiring an escrow account which had not previously been required.
48. Bank of America, N.A. did not continue debiting the mortgage payments pursuant to the note and or mortgage agreements nor did they transfer their rights of debiting to the Plaintiff U.S. Bank upon assignment without interruption from Defendant's checking

account. The Bank of America, N.A. did not make the required notifications pursuant to the laws regulating servicers of notes and mortgages or the Dodd-Frank Consumer Financial Protection Act of 2010(subtitle E sect. 1462 and sect. 1465) or the original note and mortgage agreements regarding drafting of the payments from defendants checking account.

49. Violation of the Dodd-Frank Consumer Financial Protection Act constitutes unclean hands by the previous servicer Bank of America, N.A. The liability of the acts of the servicer are imputed to the principal.
50. The violations of the law covered by the Dodd-Frank Act are also violations for second homes and investment properties.
51. Violation of the laws regulating servicing agents and violations of the requirements for transfers of the servicing rights also constitutes unclean hands.
52. The plaintiff US Bank, National Association, as trustee for the Holders of the Banc of America Funding Corporation, 2008-FTI has assumed the breaches associated with the Bank of America, N.A.'s failure to continue debiting and the failure of Bank of America, N.A. to transfer the debiting rights associated with the note and mortgage when they transferred and or assigned the note and mortgage created the default status.

**FOR A FIRST CAUSE OF ACTION REQUEST FOR DECLARATORY
JUDGMENT ACTION**

53. Defendant incorporates the allegations contained above as if fully set forth verbatim herein.
54. Upon information and belief the defendant Rhonda Meisner is entitled to a declaratory judgment pursuant to S.C. R.C. P. 57 and S.C. Code Ann. §§ 15-53-10 through §15-15-140 to determine a question in actual controversy between or among all of the parties

including the co-defendants as to the real party in interest, who is the true owner of the note and mortgage and their respective rights and liabilities under a note AND mortgage and the associated lis pendens pertaining to real property located at 406 Koon Store Road and more particularly described in the Plaintiff's complaint, which is incorporated by reference and to determine the respective rights and obligations of all of the parties with respect to the amount of excess funds distributions pursuant to the first filed liens under South Carolina law and to determine the appraisal rights of the Defendant, Rhonda Meisner.

55. Defendant Rhonda Meisner was not notified in writing before the transaction that a waiver of appraisal rights would be required pursuant to South Carolina law. The only written information about the waiver of appraisal rights was contained in the mortgage itself, which was not provided "before" the transaction and therefore does not comply with South Carolina law. It was provided during the transaction and did not include the requisite disclaimer language of S.C. Code Ann. §29-3-680 (B).
56. Defendant Rhonda Meisner seeks a declaratory judgment that pursuant to the terms of the note and mortgage the Plaintiff's cessation of drafting the defendants bank account caused the default in the above mentioned lawsuit and is therefore the source of the breach in the agreement between the parties.
57. Defendant Rhonda Meisner seeks a declaratory judgment that she is entitled to her statutory appraisal rights; that the appraised value will be substituted for the high bid at the foreclosure sale auction if the appraised value is greater than the high bid and that the amount she would received pursuant to the sale be according to the appraisal.
58. Because a deficiency is not demanded in the current lawsuit referencing the 2003 note

and the mortgage; the Defendant seeks an order of the Court or declaratory judgment that the Defendant Rhonda Meisner if the sale of the property is ordered is entitled to substitute the appraisal amount for the sale amount of the property if the Court rules the property can be sold.

59. Further she seeks a declaratory judgment that the co-defendants must prove the amounts listed in the lis pendens . Additionally, the Defendant further seeks order from the Court that the liens associated with the co-defendant SCBT be removed from the lis pendens and eliminated from this litigation as SCBT has changed their lawsuit to a suit on a note which does not provide for an encumbrance on the property.
60. Pursuant to S.C. Code Ann. § 29-3-380 the defendant requests as part of the declaratory judgment action the submission to the jury to decide whether the 2005 mortgage to Bank of America, N.A. has been paid and whether Bank of America, N.A. is liable under S.C. Code Ann. §29-3-320 for failure to enter a satisfaction of mortgage after notice.
61. Pursuant to S.C. Code Ann. § 29-3-630 the defendant requests as part of the declaratory judgment the amount owed in sum certain terms prior to an order of foreclosure be determined to be liquidated damages subject to pre-judgment and post-judgment interest.
62. Pursuant to S.C. Code Ann. §29-3-660 the defendant requests as part of the declaratory judgment that the defendant is offered the protections of S.C. Code §29-3-660 as opposed to S.C. Code Ann. §29-3-650 based on the previous lawsuit of the parties as pled in 2013-CP-40-7144 including appraisal rights pursuant to S.C. Code Ann. §29-3-680 (B) and rights to a jury trial pursuant to S.C. Code Ann. §15-23-60 and S.C. Rules of Civ. P. Rule 38(a).
63. The Defendant further prays that the Court enter its declaration as to the amounts owed

by each party with a final accounting being applied to the outstanding balances of the loan, if any and order a bond be purchased in lieu of foreclosure or the amounts paid within the Court ascribed time limits.

64. The Defendant prays that the Court more fully inquire into the terms and conditions of the Note and Mortgage referenced and issue its declaration as to the rights, responsibilities and obligations of the parties.

65. The Defendant Rhonda Meisner reserves the right to assert further claims or defenses that may appear disclosed during discovery in the case.

FOR A SECOND CAUSE OF ACTION BREACH OF CONTRACT BY BANK OF AMERICA, N. A.

66. Defendant incorporates the allegations contained above as if fully set forth verbatim herein.

67. The co-defendant Bank of America, N.A. has breached the terms of the note contract with the defendant Rhonda Meisner by not debiting her checking account as agreed.

68. The co-defendant Bank of America, N.A. has attempted via a change in servicer to avoid liability for the breach by not assigning the debiting to the new servicer.

69. The co -defendant Bank of America, N.A. has breached the contract of the note by not resolving the escrow dispute prior to transferring the servicing of the loan in this litigation.

70. The co-defendant, Bank of America, N.A. has breached the terms of the note and mortgage contract with Rhonda Meisner by ceasing debiting of her account without receiving a written request for stopping the debit from her bank account, calling the loan in default and refusing to accept additional payments which is a frank violation of the contract terms of the note.

**FOR A THIRD CAUSE OF ACTION BREACH OF CONTRACT
ACCOMPANIED BY A FRAUDULENT ACT BY BANK OF AMERICA, N.A.**

71. Defendant incorporates the allegations contained above as if fully set forth verbatim herein.
72. The co-defendant Bank of America, N.A. by ceasing to debit the bank account of Rhonda Meisner as agreed in the contract terms of the note and then declaring the mortgage in default has violated the contract terms of the note and the mortgage.
73. The co-defendant Bank of America, N.A. intentionally and maliciously ceased the debiting of the bank account and then declared the note and mortgage in default, with full knowledge that the Defendant had not requested any such action.
74. The co-defendant Bank of America, N.A. by ceasing to debit the account while still owning the note and mortgage committed a fraudulent act by declaring its own actions as a default event and accelerating the mortgage.
75. The co-defendant Bank of America, N.A. did not have the authority to cease debiting the bank account of defendant Meisner pursuant to the contract terms.
76. The co-defendant Bank of America, N.A. unauthorized manipulation of the debiting functions of the defendant's account is a fraudulent act by a servicer.
77. The co-defendant Bank of America, N.A.'s fraudulent servicing actions of ceasing to debit the Defendants checking account without the express request and authority to do so amounts to a breach of the note contract accompanied by a fraudulent act.
78. The co-defendant, Bank of America, N.A. by causing the breach, declaring the loan in default, refusing to accept additional payments and refusing to prior to the transfer or assignment of the loan has committed a fraudulent act.
79. The co defendant Bank of America, N.A. knew in certain terms a required written request

from defendant Meisner is the only way to stop the debiting of the account; however, without permission the co defendant Bank of America, N.A. ceased debiting the account in order to create the default and then refused to accept payments once the wrongful act was discovered.

80. The Plaintiff's have also failed to comply with the Dodd-Frank Consumer Protection statute and by initiating this action, the Defendant should be entitled to costs, fees and punitive damages as a violation of the unfair trade practices act S.C. Code Ann. § 39-5-10; § 39-5-20 and § 39-5-35.

81. The Plaintiff's predecessor in servicing Bank of America, N.A. also breached the implied covenant of good faith and fair dealing inherent in all contracts in South Carolina by transferring the servicing of the loan without transfer of the debiting rights and prior to resolution of the escrow dispute or reassigning the disputed funds to the payment of the mortgage.

82. Defendant Prays for an accurate accounting acknowledging the dual payments to the Richland County Assessor's office.

83. The plaintiff in this action has caused to be entered on the account attorney fees that have not been granted by the Court in violation of the agreement between the parties.

84. Attorneys fees in this action are subject to interpretation of the contract and therefore the determination of whether the fees are available and to which party considering the contract terms and circumstances of the case should be presented to the jury.

85. The defendant reserves the right to add additional counterclaims and cross claims as may arise during discovery in this litigation.

**FOR A FOURTH CAUSE OF ACTION ABUSE OF PROCESS BY U.S. BANK IN
VIOLATION OF SOUTH CAROLINA COMMON LAW AND THE LAWS OF
EQUITY**

86. The defendant repeats and incorporates the allegations contained above as if fully set forth verbatim herein.
87. The Plaintiff, U.S. Bank pursuant to article 3 of the Uniform Commercial Code is a third party debt collector and as such possesses only the rights conveyed as part of the assignment.
88. The Plaintiff U.S. Bank drafted and submitted a "Proposed Order" to the Clerk of Court, Jeanette McBride for signature and processing that included findings of fact and conclusions of law.
89. The "Proposed Order" was drafted, attached to a motion for mandatory referral to the Master in Equity Judge that included not only findings of fact but also included a "strike of the Jury demand" by the Defendant, Rhonda Meisner, a substantial and substantive right.
90. The "Proposed Order" was submitted by members of the bar of South Carolina representing the Plaintiff Bank and was a willful, wanton and an overt act in perverting the use of the Court's normal process for submitting a motion or requesting a hearing for referral to the Master in Equity Judge.
91. The "Proposed Order" circumvented the normal processes of the Court by circumventing the fact finder Judge and/or Jury from the process.
92. The "Proposed Order" circumvented and perverted the normal processes of the Court by placing the Clerk of Court on equal footing as a Circuit Court Judge and/or a Jury.
93. The Plaintiff US Bank intentionally , willfully and wantonly submitted the "Proposed

Order" to the Clerk of Court at a time when a motion to reconsider was under advisement by the Court.

94. The Plaintiff US Bank willfully and wantonly circumvented the Court's normal process for motions and hearings in order to get the collateral advantage of denying defendant Meisner to a hearing and /or a trial with a jury in order to fast track the foreclosure process.
95. The Plaintiff's use of the process they employed is improper because it (a) authorized the Clerk of Court to sign the "Proposed Order " without the Clerk possessing the authority under the laws of South Carolina to sign the order that made findings of fact and conclusions of law.
96. The Plaintiff's use of the process also impermissibly placed the Clerk of Court on par with a Circuit Court Judge and potentially placed the Master in Equity in the position of making rulings without the jurisdiction to do so.
97. The Plaintiff's use of the process impermissibly placed the Clerk of Court in a position of practicing law without a license as the Clerk of Court has admitted she is not an attorney or a judge.
98. The Plaintiff, US Bank's willful and reckless abuse of process actions has damaged the defendant Rhonda Meisner by causing her to spend additional money on motion fees parking, gas, office supplies and other expenses associated with defending the Plaintiff's abuse of process actions. The Defendant Rhonda Meisner expended approximately 47 hours of her time researching the referral, drafting replies, speaking with the Clerk of Court and drafting motions and attending hearings before the Master in equity and mounting a defense and counterclaim to the " illegal referral to the Master in Equity"

caused by the Plaintiff's actions.

99. The Plaintiff, US Bank's willful and reckless abuse of process actions have caused serious incremental stress to the Defendant in addition to the normal stress and anxieties associated with litigation in the weeks and months prior to discovery of the fact that the "Proposed Order" was not allowed by law to be signed by the Clerk of Court.
100. The Plaintiff US Bank's abuse of process actions are capable of repetition as US Bank's parent company US Banc Corp. is one of the largest Bank's in the United States and therefore represents a risk and threat to other citizens going through a foreclosure action filed by US Bank in the State of South Carolina warranting punitive damages to deter the plaintiff, US Bank's future actions in South Carolina.
101. These specific abuse of process actions of US Bank are an affront to public policy as their actions are implemented to deny the right of a defendant the right of having a Judge or Jury determine the findings of fact and conclusions of law prior to ruling on the referral to the Master in Equity.
102. The Plaintiff, U.S. Bank's actions have the potential to violate the due process clause of the United States Constitution by depriving the Defendant Rhonda Meisner the proper processes afforded by the South Carolina Rules of Civil Procedure and the United States Constitution and for her defenses, counterclaims and cross claims to be heard by a Judge and/or a Jury.
103. The Plaintiff, U.S. Bank's actions have the potential to be replicated against other citizens of the State of South Carolina should the Plaintiff again attempt to circumvent the processes of the Circuit Court warranting punitive damages.
104. The Plaintiff, U.S. Bank was aware their actions were unlawful because they

acknowledged that Rule 53(b) only allows for a general Order of Reference in their Summons and Notices filed on March 31, 2014.

105. The Plaintiff, US Bank's intentional, willful and wanton actions of attempting to circumvent and abuse the Court's processes by impermissibly allowing the Clerk of Court to sign an Order that the State of South Carolina has never legally allowed, amounts to an abuse of process as the Clerk's office has never been authorized by law to make findings of fact and conclusions of law and their actions warrant punitive damages.

**FOR A FIFTH CAUSE OF ACTION: BANK OF AMERICA, N.A HAS FAILED
TO FILE SATISFACTION OF MORTGAGE AFTER NOTICE PURSUANT TO
S.C. CODE ANN. § 29-3-310**

106. Defendant incorporates the allegations contained above as if fully set forth verbatim.
107. The Plaintiff US Bank listed a mortgage in the lis pendens by Bank of America, N.A. that has been paid in full and therefore completely satisfied.
108. The Co-defendant Bank of America, N.A. has not entered a satisfaction of the mortgage in the public records or released the lien associated with the mortgage pursuant to S.C. Code Ann. § 29-3-310.
109. The Co-defendant Bank of America, N.A. reported in 2008 that the 2005 mortgage to Rhonda Meisner had gone into foreclosure to the credit bureaus; however this loan was previously paid off via an online banking transfer.
110. Rhonda Meisner in the process of getting another loan in 2008 found the reporting error by Bank of America, N.A. and the fact the Bank of America, N.A. was reporting that the mortgage had not been satisfied based on the bank's reports to the credit agencies and that the loan was in foreclosure by Bank of America, N.A.

111. Rhonda Meisner requested the wrongful reports to the credit agencies be removed and the satisfaction of the mortgage along with release of lien to be entered by Bank of America, N.A.; the reporter of the wrongful information.
112. Bank of America, N.A. promised to correct the wrongful reports and enter satisfaction of the mortgage loan and release of the lien against the subject property.
113. The corrections of the wrongful information to the credit agencies was completed by Bank of America, N.A. as evidenced by the ability of Ms. Meisner to get the additional loan for which she applied; however, the Bank of America, N.A. did not enter a satisfaction of the mortgage as required by S.C. Code Ann. § 29-3-310.
114. The Failure of Bank of America, N.A. to enter satisfaction of the mortgage and the accompanying release of lien subjects them to liability for their failure pursuant to S.C. Code Ann. § 29-3-320.
115. Pursuant to S.C. Code Ann. §29-3-320 the defendant Rhonda Meisner is entitled to specific remuneration for the Bank of America, N.A.'s violation of the statute. Specifically, 50 % of the value of the mortgage or \$25,000 whichever is less. The amount of the mortgage is \$30,000; therefore the statutory penalty of \$15,000 is a liquidated damage.
116. The amount certain for recovery as outlined and detailed pursuant to the statute amounts to liquidated damages in the amount of \$15,000.
117. Liquidated damages under South Carolina law are subject to pre-judgment interest from the date of the violation and post-judgment interest as well as attorney's fees and costs.

FOR A SIXTH CAUSE OF ACTIONSLANDER OF TITLE BY BANK OF AMERICA, N.A.

118. Defendant incorporates the allegations contained above as if fully set forth verbatim herein.
119. The Failure of Bank of America, N.A. to enter satisfaction of the mortgage creates a slander of title for the property located at 406 Koon Store Road.
120. Bank of America, N.A. was on notice that the loan initiated in 2005 by Rhonda Meisner was paid in full in 2008.
121. Bank of America, N.A. 's refusal to remove the mortgage encumbrance after notice of the failure to file for satisfaction makes the refusal willful, wanton and made with reckless disregard of the rights of Rhonda Meisner's peaceful enjoyment of her property without the cloud on the title of an erroneous lien.
122. Bank of America, N.A.'s actions have resulted in special damages such as the extra costs associated with the research, drafting of motions, copying, parking fees and time spent researching and defending the specific portion of the action associated with the erroneous liens which should equate to attorney's fees (since the defendant is pro-se) against third party claimants as well as the co-defendant Bank of America, N.A.
123. Bank of America, N.A. actions have resulted in the diminishment of value of the property in the eyes of third party as evidenced by the co-defendant SCBT changing their action from foreclosure to a suit on a note; effectively making Defendant Meisner defend two lawsuits instead of one, thereby doubling the effort and expense of the defense.
124. The lack of removal of the liens by Bank of America, N.A. resulted in the diminishment of the property in the eyes of third parties and prompted the 30 (b) (6) deponent for SCBT to change his lawsuit from a mortgage foreclosure action to a suit on the note which he noted was due to Bank of America's liens and is a special damage

resulting directly from Bank of America's refusal to satisfy the mortgage of already paid loans with the Richland County register of deeds office.

125. The co-defendants' actions were willful and wanton and with reckless disregard to the rights of Ms. Meisner for the peaceful enjoyment of her property without the additional encumbrance of already satisfied liens in the form of a mortgage encumbrance which diminished the value of the property and prevented disposal of the property expeditiously.

126. The plaintiff US Bank and the co-defendant Bank of America, N.A. have requested reimbursement of attorneys fees pursuant to the note and the mortgage entitling defendant Meisner to a right of trial by jury for the contract interpretation.

**FOR A SEVENTH CAUSE OF ACTION SLANDER OF TITLE BY SCBT BASED
ON COMMON LAW PRINCIPLE OF EQUITY**

127. Defendant incorporates the allegations contained above as if fully set forth verbatim herein.

128. The plaintiff US Bank has referenced liens by the co-defendant SCBT which should have been removed from the Lis Pendens by SCBT .

129. The co defendant SCBT has elected to pursue suit on a note in a separate action; therefore, the lis pendens referencing any loans or judgments by SCBT should be removed from the lis pendens in this action.

130. SCBT was on notice that reference to the liens should have been removed from the property in this action because the Honorable Alison Renee Lee vacated the liens in a previous action 2013-CP-40-7144.

131. The reference of the liens effectively puts SCBT in a position of a dual course for recovery via the present foreclosure action and their independent action of a suit on a

note 2013-CP-40-7144 and should not be allowed.

132. The Honorable Alison Renee Lee has already removed the liens from the lis pendens associated with 2013-40-CP-7144 and the co-defendant, SCBT was aware the liens were still in tact in this case but failed or refused to file a request for amendment to the lis pendens in this action by requesting the removal subsequent to the Court's Order that a lis pendens was not appropriate for SCBT because of the change in the action to suit on a note.

133. The Defendant requests the Court to enforce the Honorable Alison Lee's direction to SCBT and direct U.S. Bank to file an amended lis pendens eliminating SCBT's liens.

The defendant Rhonda Meisner for the above reasons and all references to the record respectfully requests the Court to enter its judgment finding

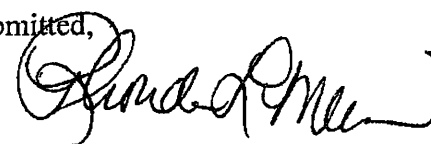
- 1) The Plaintiff US Bank is a third party debt collector pursuant to article 3 of the UCC based on the pleadings in the case.
- 2) The co-defendant Bank of America, N.A. caused the default of the mortgage and note by ceasing to debit defendant Meisner's account, causing the referenced default and then declining to accept payments and accelerate the note.
- 3) A finding the Plaintiff U.S. Bank, as a third party debt collector abused the process of the Courts and in doing so has violated the unfair trade practices act S.C. Code Ann. § 39-5-10; § 39-5-20 and § 39-5-35 and has damaged the defendant Rhonda Meisner and U.S. Bank's actions warrant actual and punitive damages to be proved at trial.
- 4) A finding that co-defendant Bank of America, N.A. slandered the title of defendants' Rhonda Meisner's property located at 406 Koon Store Road, Columbia, SC 29203 by not removing the mortgage lien from 2005 and therefore damaged defendant Meisner.

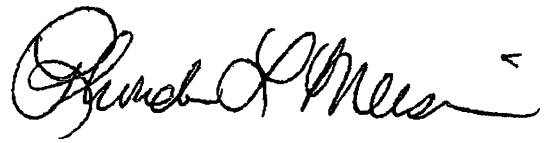
- 5) A finding that co-defendant's Bank of America, N.A.'s failure to remove the liens associated with the 2005 mortgage that was satisfied violated S.C. Code Ann. §29-3-310 warranting recovery via S.C. Code Ann. §29-3-320.
- 6) A declaratory judgment that Bank of America's damages to Rhonda Meisner be subtracted from the amounts owed to the rightful owner of the note and mortgage once determined and prior to calculation of any monies owed for the note in this case.
- 6) The liens associated with SCBT as referenced and recorded in the lis pendens be removed from the litigation.
- 7) A determination that the counterclaims, cross claims and the availability of recovery of attorney's fees are subject to contract interpretation and therefore warrant a jury trial as the facts and arguments are sufficiently connected between the foreclosure action, the cross claims and the counterclaims as to not allow for bifurcation of trials.
- 8) A determination that the case be submitted to ADR and the Jury Trial Roster based on the facts of the case.

And for an order of all other such relief as may be appropriate and available under the law including a trial by jury for all causes of action that are have rights to a jury trial, for attorney fees or the commensurate amount in damages of time spent and punitive judgments against the Plaintiff and co-defendant Bank of America, N.A., pre-judgment and post-judgment interest as to all liquidated damages for Bank of America, N.A.'s failure to file satisfaction of lien and all such other Orders as the Court may determine and for all other judgments as the Court may determine to be fair and just.

Respectfully Submitted,

SIGNATURE LINE NEXT PAGE





Rhonda L. Meisner
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July 13, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for the
Holders of The Banc of America Funding
Corporation, 2008-FT1 Trust, Mortgage Pass-
Through Certificates, Series 2008-FT1,

PLAINTIFF,

vs.

Rhonda Lewis Meisner a/k/a Rhonda L. Meisner;
Bank of America, N.A.; and SCBT,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-40-2063

**PLAINTIFF'S REPLY TO DEFENDANT'S
AMENDED ANSWER AND
COUNTERCLAIM**

RICHLAND COUNTY
FILED
2015 AUG 21 AM 10:55
JEANETTE W. MCENRY
CLERK

Plaintiff, by undersigned counsel, hereby submits its Reply to the Amended Answer and Counterclaim ("Answer") filed by Rhonda Lewis Meisner a/k/a Rhonda L. Meisner ("Defendant").¹ In support of its Reply, Plaintiff states as follows:

1. Unless expressly admitted herein, Plaintiff denies each and every allegation in the Answer.
2. Each allegation of the Complaint in this matter is hereby incorporated by reference. Plaintiff denies any factual allegation in the Answer inconsistent therewith and demands strict proof.
3. Plaintiff craves reference to the public records of Richland County, South Carolina, for the subject documents of Plaintiff's action, and denies anything inconsistent therewith.
4. Plaintiff denies paragraph 1 of the Answer and demands strict proof. Plaintiff avers that civil action 2013-CP-40-7144 is an action for foreclosure of a second mortgage held by Defendant SCBT in which Plaintiff's predecessor-in-interest was voluntarily dismissed as a party. Further responding, Defendant Meisner's Motion to Dismiss the instant action pursuant to Rule 12(b)(8) was denied on the grounds that the Defendant's loan agreements with Plaintiff and SCBT are wholly independent and distinct from one another and Plaintiff was not a necessary party to the SCBT foreclosure as a senior lienholder.

¹ Plaintiff notes that Defendant's Answer is styled as a "First Amended Complaint".

5. Plaintiff denies paragraph 2 of the Answer to the extent it alleges that the subject loan is not in default, and demands strict proof. To the extent the reminder of paragraph 2 requires a response, Plaintiff denies same and demands strict proof.
6. To the extent paragraphs 3 through 17 of the Answer require a response, Plaintiff denies same and demands strict proof.
7. Plaintiff admits so much of paragraph 18 of the Answer which alleges that Plaintiff does not demand a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due unto the Plaintiff, including costs and attorney's fees. Plaintiff denies the remainder of paragraph 18 and demands strict proof.
8. To the extent paragraph 19 of the Answer requires a response, Plaintiff denies same and demands strict proof.
9. Paragraph 20 of the Answer appears to state legal conclusions which require no response; to the extent a response is required, Plaintiff craves reference to applicable South Carolina law, denies anything inconsistent therewith, and demands strict proof.
10. Paragraphs 21 and 22 of the Answer appear to state legal conclusions which require no response; to the extent a response is required, Plaintiff craves reference to applicable South Carolina law, denies anything inconsistent therewith, and demands strict proof. Plaintiff denies the remainder of paragraphs 21 and 22 and demands strict proof.
11. Plaintiff denies paragraph 23 of the Answer, and demands strict proof.
12. To the extent paragraph 24 of the Answer requires a response, Plaintiff denies same and demands strict proof.
13. Plaintiff has insufficient information to admit or deny the allegations of Paragraphs 25 of the Answer; therefore, denies same and demands strict proof
14. Paragraphs 26 and 27 of the Answer appear to state legal conclusions which require no response; to the extent a response is required, Plaintiff craves reference to applicable South Carolina law, denies

anything inconsistent therewith, and demands strict proof. Plaintiff denies the remainder of paragraphs 26 and 27 and demands strict proof.

15. Plaintiff admits so much of paragraph 28 of the Answer which may be construed to allege that Plaintiff is the holder of the subject note and assignee of the corresponding mortgage. Plaintiff denies the remainder of paragraph 28 and demands strict proof.

16. Plaintiff admits so much of paragraph 29 which may be construed to allege that Plaintiff is the assignee of the original creditor. Plaintiff has insufficient information to admit or deny the remainder of paragraph 29; therefore, denies same and demands strict proof.

17. Plaintiff has insufficient information to admit or deny paragraphs 30 through 32 of the Answer; therefore, denies same and demands strict proof.

18. In response to paragraph 33 of the Answer, Plaintiff craves reference to the terms of the subject note and mortgage, denies anything inconsistent therewith, and demands strict proof.

19. Plaintiff has insufficient information to admit or deny paragraphs 34 through 36 of the Answer; therefore, denies same and demands strict proof.

20. Plaintiff admits so much of paragraph 37 of the Answer which may be construed to allege that an assignment of mortgage from the original mortgagee to Plaintiff was recorded in the Richland County Register of Deeds office on May 2, 2014 in Book 1943 at Page 1234. Plaintiff has insufficient information to admit or deny the remainder of paragraph 37; therefore, denies same and demands strict proof. Plaintiff specifically denies any violation of state and/or federal law.

21. Plaintiff admits so much of paragraph 38 of the Answer which may be construed to allege that it is a private trust and party to a servicing agreement with its servicer for the subject loan, Nationstar Mortgage, LLC. Plaintiff denies the remainder of paragraph 38 and demands strict proof.

22. Plaintiff denies paragraphs 39 and 40 of the Answer and demands strict proof.

23. Plaintiff has insufficient information to admit or deny paragraph 41 of the Answer; therefore, denies same and demands strict proof.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Violation of 15 U.S.C. § 1638 (Dodd Frank Act §§ 1462, 1465))

24. Plaintiff notes that paragraphs Plaintiff 42 through 52 of the Answer are denoted as a defense; to the extent they maybe construed to allege a counterclaim for violation of 15 U.S.C. § 1638 *et seq.*, Plaintiff responds as follows.

25. To the extent paragraph 42 of the Answer requires a response, Plaintiff denies same and demands strict proof.

26. Plaintiff denies paragraphs 43 through 45 of the Answer; therefore, denies same and demands strict proof.

27. Paragraph 46 of the Answer appears to state legal conclusions which require no response; to the extent a response is required, Plaintiff craves reference to applicable South Carolina law, denies anything inconsistent therewith, and demands strict proof.

28. Plaintiff has insufficient information to admit or deny paragraph 47 of the Answer; therefore, denies same and demands strict proof.

29. Paragraph 48 through 52 of the Answer appears to state legal conclusions which require no response; to the extent a response is required, Plaintiff craves reference to applicable South Carolina and federal law, denies anything inconsistent therewith, and demands strict proof. Plaintiff has insufficient information to admit or deny the remainder of paragraphs 48 through 52; therefore, denies same and demands strict proof. Plaintiff specifically denies any violation of South Carolina and/or federal law.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(Declaratory Judgment)

30. Plaintiff reasserts the foregoing statements as if set forth at length herein.

31. To the extent paragraph 53 of the Answer requires a response, Plaintiff denies same and demands strict proof.

32. Paragraph 54 of the Answer appears to state legal conclusions for which no response is required. To the extent that a response is required, Plaintiff craves reference to applicable South Carolina law and

denies anything inconsistent therewith. Plaintiff denies the remainder of paragraph 54 and demands strict proof.

33. Paragraph 55 of the Answer appears to state legal conclusions for which no response is required. To the extent that a response is required, Plaintiff craves reference to applicable South Carolina law and denies anything inconsistent therewith. Plaintiff has insufficient information to admit or deny the remainder of paragraph 55; therefore, denies same and demands strict proof.

34. Plaintiff denies paragraphs 56 through 65 of the Answer and demands strict proof. Plaintiff specifically denies any violation of South Carolina and/or federal law.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION
(Breach of Contract)

35. Plaintiff reasserts the foregoing statements as if set forth at length herein.

36. Plaintiff notes that paragraphs 66 through 70 of the Answer appear to state a crossclaim against Defendant Bank of America, which does not require a response from Plaintiff. To the extent any of the foregoing allegations may be construed to allege a counterclaim against Plaintiff, Plaintiff denies same and demands strict proof. Plaintiff specifically denies any violation of South Carolina and/or federal law.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

37. Plaintiff reasserts the foregoing statements as if set forth at length herein.

38. Plaintiff notes that paragraphs 71 through 79 of the Answer appear to state a crossclaim against Defendant Bank of America, which does not require a response from Plaintiff. To the extent any of the foregoing allegations may be construed to allege a counterclaim against Plaintiff, Plaintiff denies same and demands strict proof. Plaintiff specifically denies any violation of South Carolina and/or federal law.

39. Plaintiff denies paragraphs 80 through 85 of the Answer and demands strict proof. Plaintiff specifically denies any violation of South Carolina and/or federal law.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION
(Abuse of Process)

40. Plaintiff reasserts the foregoing statements as if set forth at length herein.

41. To the extent paragraph 86 of the Answer requires a response, Plaintiff denies same and demands strict proof.

42. Plaintiff denies paragraph 87 of the Answer and demands strict proof.

43. In response to paragraphs 88 and 89 of the Answer, Plaintiff admits only that a Motion to Strike the Defendant's Jury Demand and for a Mandatory Order of Reference was properly filed with the Court, duly granted pursuant to Rule 53, SCRPC, subsequently vacated, and is pending a hearing date in the Court of Common Pleas. Plaintiff denies the remainder of paragraphs 88 and 89, and demands strict proof.

44. Plaintiff denies paragraphs 90 through 105 of the Answer and demands strict proof. Plaintiff specifically denies any violation of South Carolina and/or federal law.

FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION
(Failure to Satisfy Mortgage/Violation of S.C. Code § 29-3-310)

45. Plaintiff reasserts the foregoing statements as if set forth at length herein.

46. Plaintiff notes that paragraphs 106 through 117 of the Answer appear to state a crossclaim against Defendant Bank of America, which does not require a response from Plaintiff. To the extent any of the foregoing allegations may be construed to allege a counterclaim against Plaintiff, Plaintiff denies same and demands strict proof. Plaintiff specifically denies any violation of South Carolina and/or federal law.

FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION
(Slander of Title as to Defendant Bank of America)

47. Plaintiff reasserts the foregoing statements as if set forth at length herein.

48. Plaintiff notes that paragraphs 118 through 126 of the Answer appear to state a crossclaim against Defendant Bank of America, which does not require a response from Plaintiff. To the extent any of the foregoing allegations may be construed to allege a counterclaim against Plaintiff, Plaintiff denies same and demands strict proof. Plaintiff specifically denies any violation of South Carolina and/or federal law.

FOR A FIRST DEFENSE TO THE EIGHTH CAUSE OF ACTION
(Slander of Title as to Defendant SCBT)

49. Plaintiff reasserts the foregoing statements as if set forth at length herein.

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50. Plaintiff notes that paragraphs 127 through 133 of the Answer appear to state a crossclaim against Defendant SCBT, which does not require a response from Plaintiff. To the extent any of the foregoing allegations may be construed to allege a counterclaim against Plaintiff, Plaintiff denies same and demands strict proof. Plaintiff specifically denies any violation of South Carolina and/or federal law.

FOR A FURTHER DEFENSE TO DEFENDANT'S COUNTERCLAIM

51. Plaintiff reasserts the foregoing statements as if set forth at length herein.

52. Defendant has a debt due and owing to Plaintiff.

53. In order to secure the payment of the subject loan, Defendant did make, execute, and deliver to Plaintiff, its successors and assigns, a certain real estate Mortgage covering real property located in the County and State aforesaid and specifically described in said Mortgage.

54. Plaintiff and Defendant intended the subject real property to serve as security for the payment of the debt.

55. As a result, Plaintiff has an equitable lien on the property.

56. Because Defendant defaulted on the loan, Plaintiff is entitled to the relief prayed for in its Complaint.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

57. Plaintiff avers that Defendant's claims are barred by the doctrine of laches and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

58. Plaintiff avers that Defendant's claims are barred by the doctrine of estoppel and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

59. Plaintiff avers that Defendant's claims are barred by the doctrine of waiver and should be dismissed with prejudice.

65 65

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

60. Plaintiff avers that Defendant's claims are barred by the applicable statute(s) of limitations and statute(s) of repose, and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

61. Plaintiff avers that Defendant's claims are barred by the statute of frauds and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

62. Plaintiff avers that Defendant's claims are barred by the doctrine of release, and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

63. Defendant has failed to state facts sufficient to constitute a cause of action against Plaintiff pursuant to Rule 12(b)(6), SCRCP, and Defendant's claims should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

64. Defendant's damages, if any, are the result of her own actions and/or omissions or the actions, omissions of individuals over whom Plaintiff exercised no control, or both.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

65. Defendant's claims are barred by her failure to perform certain conditions precedent under his loan agreement with Plaintiff.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

66. The relief requested by Defendant is barred by S.C. Code § 15-36-10.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

67. Plaintiff reserves the right to assert additional claims and defenses as they may become known.

WHEREFORE, Plaintiff requests that the Court dismiss the Defendant's Counterclaims with prejudice, award Plaintiff its costs and attorneys' fees, and grant such other and further relief as is just and necessary.

bb

FINKEL LAW FIRM LLC


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Attorneys for the Plaintiff

Dated: August 18, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as
trustee for the Holders of the Banc of
America Funding Corporation, 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and
SCBT,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. ^{2014 CM} ~~2015~~ CP-40-2063

**DEFENDANT BANK OF
AMERICA'S ANSWER TO FIRST
AMENDED COMPLAINT OF
DEFENDANT RHONDA LEWIS
MEISNER**

RICHLAND COUNTY
FILED
2015 SEP -3
11:14
CLERK

Defendant Bank of America, N.A. ("BANA") answers the First Amended Complaint filed by Rhonda Lewis Meisner on August 10, 2015 ("Amended Complaint") by saying and alleging as follows:

1. Without waiving its right to dismiss this Amended Complaint, BANA specifically denies each and every allegation of the Amended Complaint that is not specifically admitted and demands strict proof thereof.

AS TO THE FIRST DEFENSE – "GENERAL DENIAL"

2. In answering the allegations of Paragraphs 1-21 of the Amended Complaint, these paragraphs do not contain allegations which require a response from BANA. To the extent any response is required, BANA denies the allegations and demands strict proof thereof.

3. In answering the allegations of Paragraphs 22 and 23 of the Amended Complaint, BANA responds and states that these allegations contain legal conclusions, which do not require a response. To the extent any response to these allegations is required, BANA denies the allegations and demands strict proof thereof.

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4. In answering the allegations of Paragraph 24 of the Amended Complaint, this paragraph does not contain allegations which require a response from BANA. To the extent any response is required, BANA denies the allegations and demands strict proof thereof.

5. In answering the allegations of Paragraphs 25 of the Amended Complaint, BANA does not currently have sufficient information or belief to admit the allegations; therefore, BANA denies the allegations and demands strict proof thereof.

6. In answering the allegations of Paragraphs 26 and 27 of the Amended Complaint, BANA responds and states that these allegations contain legal conclusions, which do not require a response. To the extent any response to these allegations is required, BANA denies the allegations and demands strict proof thereof.

AS TO THE FIRST DEFENSE – “ESTOPPEL”

7. In answering the allegations of Paragraphs 28 and 29 of the Amended Complaint, BANA responds and states that these allegations contain legal conclusions, which do not require a response. To the extent any response to these allegations is required, BANA denies the allegations and demands strict proof thereof.

8. In answering the allegations of Paragraphs 30 and 31 of the Amended Complaint, BANA does not currently have sufficient information or belief to admit these allegations; therefore, BANA denies the allegations and demands strict proof thereof.

9. In answering the allegations of Paragraph 32 of the Amended Complaint, BANA denies the allegations and demands strict proof thereof.

10. In answering the allegations of Paragraph 33 of the Amended Complaint, BANA would crave reference to the documents referenced therein; as to any allegation inconsistent with those documents, BANA denies the allegations and demands strict proof thereof.

11. In answering the allegations of Paragraphs 34, 35, 36 and 37 of the Amended Complaint, BANA denies the allegations and demands strict proof thereof.

12. In answering the allegations of Paragraph 38 of the Amended Complaint, BANA responds and states that these allegations contain legal conclusions, which do not require a response. To the extent any response to these allegations is required, BANA denies the allegations and demands strict proof thereof.

13. In answering the allegations of Paragraphs 39, 40 and 41 of the Amended Complaint, BANA does not currently have sufficient information or belief to admit the allegations; therefore, BANA denies the allegations and demands strict proof thereof.

AS TO THE SECOND DEFENSE – UNCLEAN HANDS

14. In answering Paragraph 42 of the Amended Complaint, BANA re-alleges and reincorporates its responses to the preceding paragraphs as if repeated verbatim.

15. In answering the allegations of Paragraphs 43 and 44 of the Amended Complaint, BANA responds and states that these allegations contain legal conclusions, which do not require a response. To the extent any response to these allegations is required, BANA denies the allegations and demands strict proof thereof.

16. In answering the allegations of Paragraph 45 of the Amended Complaint, BANA would crave reference to the documents referenced therein; as to any allegation inconsistent with those documents, BANA denies the allegations and demands strict proof thereof.

17. In answering the allegations of Paragraph 46 of the Amended Complaint, BANA responds and states that these allegations contain legal conclusions, which do not require a response. To the extent any response to these allegations is required, BANA denies the allegations and demands strict proof thereof.

18. In answering the allegations of Paragraphs 47 and 48 of the Amended Complaint, BANA denies the allegations and demands strict proof thereof.

19. In answering the allegations of Paragraphs 49, 50, 51, and 52 of the Amended Complaint, BANA responds and states that these allegations contain legal conclusions, which do not require a response. To the extent any response to these allegations is required, BANA denies the allegations and demands strict proof thereof.

AS TO THE FIRST CAUSE OF ACTION – “REQUEST FOR DECLARATORY JUDGMENT”

20. In answering Paragraph 53 of the Amended Complaint, BANA re-alleges and reincorporates its responses to the preceding paragraphs as if repeated verbatim.

21. In answering the allegations of Paragraphs 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 and 64 of the Amended Complaint, BANA responds and states that these allegations contain legal conclusions, which do not require a response. To the extent any response to these allegations is required, BANA denies the allegations and demands strict proof thereof.

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22. In answering the allegations of Paragraphs 65 of the Amended Complaint, this paragraph does not contain allegations which require a response from BANA. To the extent any response is required, BANA denies the allegations and demands strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION – “BREACH OF CONTRACT BY BANK OF AMERICA, N.A.”

23. In answering Paragraph 66 of the Amended Complaint, BANA re-alleges and reincorporates its responses to the preceding paragraphs as if repeated verbatim.

24. In answering the allegations of Paragraphs 67, 68, 69 and 70 of the Amended Complaint, BANA denies the allegations and demands strict proof thereof.

AS TO THE THIRD CAUSE OF ACTION – “BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT BY BANK OF AMERICA, N.A.”

25. In answering Paragraph 71 of the Amended Complaint, BANA re-alleges and reincorporates its responses to the preceding paragraphs as if repeated verbatim.

26. In answering the allegations of Paragraphs 72, 73, 74, 75, 76, 77, 78, 79, 80 and 81 of the Amended Complaint, BANA denies the allegations and demands strict proof thereof.

27. In answering the allegations of Paragraphs 82 of the Amended Complaint, this paragraph does not contain allegations which require a response from BANA. To the extent any response is required, BANA denies the allegations and demands strict proof thereof.

28. In answering the allegations of Paragraphs 83 of the Amended Complaint, BANA does not currently have sufficient information or belief to admit the allegations; therefore, BANA denies the allegations and demands strict proof thereof.

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29. In answering the allegations of Paragraph 84 of the Amended Complaint, BANA responds and states that these allegations contain legal conclusions, which do not require a response. To the extent any response to these allegations is required, BANA denies the allegations and demands strict proof thereof.

30. In answering the allegations of Paragraph 85 of the Amended Complaint, this paragraph does not contain allegations which require a response from BANA. To the extent any response is required, BANA denies the allegations and demands strict proof thereof.

AS TO THE FOURTH CAUSE OF ACTION – ‘ABUSE OF PROCESS BY U.S. BANK’

31. In answering Paragraph 86 of the Amended Complaint, BANA re-alleges and reincorporates its responses to the preceding paragraphs as if repeated verbatim.

32. In answering the allegations of Paragraph 87 of the Amended Complaint, BANA responds and states that these allegations contain legal conclusions, which do not require a response. To the extent any response to these allegations is required, BANA denies the allegations and demands strict proof thereof.

33. In answering the allegations of Paragraphs 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104 and 105 of the Amended Complaint, BANA does not currently have sufficient information or belief to admit the allegations; therefore, BANA denies the allegations and demands strict proof thereof.

AS TO THE FIFTH CAUSE OF ACTION – ‘FAILURE TO FILE SATISFACTION OF MORTGAGE AGAINST BANK OF AMERICA, N.A.’

34. In answering Paragraph 106 of the Amended Complaint, BANA re-alleges and reincorporates its responses to the preceding paragraphs as if repeated verbatim.

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35. In answering the allegations of Paragraph 107 of the Amended Complaint, BANA would crave reference to the documents referenced therein; as to any allegation inconsistent with those documents, BANA denies the allegation and demands strict proof thereof.

36. In answering the allegations of Paragraph 108 of the Amended Complaint, BANA denies the allegation and demands strict proof thereof.

37. In answering the allegations of Paragraph 109 of the Amended Complaint, BANA would crave reference to the documents referenced therein; as to any allegation inconsistent with those documents, BANA denies the allegations and demands strict proof thereof.

38. In answering the allegations of Paragraphs 110, 111, and 112 of the Amended Complaint, BANA does not currently have sufficient information or belief to admit the allegations; therefore, BANA denies the allegations and demands strict proof thereof.

39. In answering the allegations of Paragraph 113 of the Amended Complaint, BANA denies the allegation and demands strict proof thereof.

40. In answering the allegations of Paragraph 114 of the Amended Complaint, BANA responds and states that these allegations contain legal conclusions, which do not require a response. To the extent any response to these allegations is required, BANA denies the allegations and demands strict proof thereof.

41. In answering the allegations of Paragraphs 115, 116 and 117 of the Amended Complaint, BANA denies the allegations and demands strict proof thereof.

AS TO THE SIXTH CAUSE OF ACTION – “SLANDER OF TITLE BY BANK OF AMERICA, N.A.”

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42. In answering Paragraph 118 of the Amended Complaint, BANA re-alleges and reincorporates its responses to the preceding paragraphs as if repeated verbatim.

43. In answering the allegations of Paragraph 119 of the Amended Complaint, BANA responds and states that these allegations contain legal conclusions, which do not require a response. To the extent any response to these allegations is required, BANA denies the allegations and demands strict proof thereof.

44. In answering the allegations of Paragraph 120, 121, 122, 123, 124, 125 and 126 of the Amended Complaint, BANA denies the allegation and demands strict proof thereof.

AS TO THE SEVENTH CAUSE OF ACTION – ‘SLANDER OF TITLE AGAINST SCBT’

45. In answering Paragraph 127 of the Amended Complaint, BANA re-alleges and reincorporates its responses to the preceding paragraphs as if repeated verbatim.

46. In answering the allegations of Paragraph 128, 129, 130, and 131 of the Amended Complaint, BANA would crave reference to the documents referenced therein; as to any allegation inconsistent with those documents, BANA denies the allegations and demands strict proof thereof.

47. In answering the allegations of Paragraphs 132 and 133 of the Amended Complaint, BANA does not currently have sufficient information or belief to admit the allegations; therefore, BANA denies the allegations and demands strict proof thereof.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

48. BANA avers that the claims in the Amended Complaint are barred by the doctrine of laches and should be dismissed with prejudice.

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FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

49. BANA avers that the claims in the Amended Complaint are barred by the doctrine of estoppel and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

50. BANA avers that the claims in the Amended Complaint are barred by the doctrine of waiver and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

51. BANA avers that the claims in the Amended Complaint are barred by the applicable statute(s) of limitations and statute(s) of repose and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

52. BANA avers that the claims in the Amended Complaint are barred by the statute of fraud and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

53. BANA avers that the claims in the Amended Complaint are barred by the doctrine of release and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

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54. BANA avers that the claims in the Amended Complaint fail to state facts sufficient to constitute a cause of action against BANA pursuant to Rule 12(b)(6), SCRPC, and the Amended Complaint should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

55. BANA avers that the damages, if any, asserted in the Amended Complaint are the result of the actions of Rhonda Lewis Meisner and/or her omissions, or the actions and/or omissions of individuals over whom BANA exercised no control, or both.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

56. BANA alleges that the claims in the Amended Complaint are barred by the failure of Rhonda Lewis Meisner to perform certain conditions precedent under her loan agreement with BANA.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

57. BANA avers that the claims in the Amended Complaint are barred by S.C. Code § 15-36-10.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

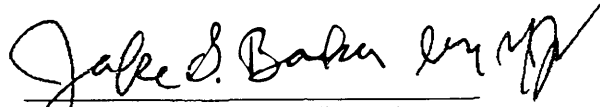
58. BANA further reserves the right to assert additional claims and defenses as they become known.

WHEREFORE, having answered the Amended Complaint, Defendant Bank of America, N.A. prays to this Honorable Court to order the claims of Defendant Rhonda Lewis Meisner

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against Bank of America, N.A. be dismissed, to award Defendant Bank of America, N.A. its costs and fees for defending this matter, and for such other relief that may be proper.

Attorney for Bank of America N.A.,

A handwritten signature in black ink, appearing to read "Jake S. Barker" followed by a stylized flourish.

Jake S. Barker (SC Bar #77449)
GRAYBILL LANSCH & VINZANI, LLC
225 Seven Farms Drive, Suite 107
Charleston, South Carolina 29492
Direct Dial: (843) 408-4063
jbarker@glvlawfirm.com

Charleston, South Carolina
August 31, 2015

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

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if set forth herein verbatim.

4. Paragraph 54 of the Defendant's Counterclaims calls for legal conclusion and therefore does not require a response. To the extent a response is required, Defendant SCBT denies Paragraph 54 of the Defendant's Counterclaims.

5. Defendant SCBT lacks information at this time sufficient to form a belief as to the allegations contained in Paragraphs 55, 56, 57 and 58 of the Defendant's Counterclaims and therefore denies the allegations.

6. Defendant SCBT denies the allegations contained in Paragraph 59 of the Defendant's Counterclaims.

7. Defendant SCBT lacks information at this time sufficient to form a belief as to the allegations contained in Paragraphs 60, 61, 62, 63, 64, and 65 of the Defendant's Counterclaims and therefore denies these allegations.

8. Defendant SCBT lacks information at this time sufficient to form a belief as to the allegations contained in Paragraphs 66, 67, 68, 69, and 70 of the Defendant's Counterclaims and therefore denies these allegations.

9. Defendant SCBT lacks information at this time sufficient to form a belief as to the allegations contained in Paragraphs 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, and 85 of the Defendant's Counterclaims and therefore denies these allegations.

10. Defendant SCBT lacks information at this time sufficient to form a belief as to the allegations contained in Paragraphs 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, and 105 of the Defendant's Counterclaims and therefore denies these allegations.

11. Defendant SCBT lacks information at this time sufficient to form a belief as to the allegations contained in Paragraphs 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, and

117 of the Defendant's Counterclaims and therefore denies these allegations.

12. Defendant SCBT lacks information at this time sufficient to form a belief as to the allegations contained in Paragraphs 118, 119, 120, 121, 122, 123, 124, 125, 126 and 127 of the Defendant's Counterclaims and therefore denies these allegations.

13. Defendant SCBT admits so much of Paragraph 128 of the Defendant's Counterclaims asserting that the Plaintiff has identified lien or liens against the subject property in favor of the Defendant SCBT, but denies the remaining allegations in Paragraph 128 of the Defendant's Counterclaims.

14. Defendant SCBT admits so much of Paragraph 129 of the Defendant's Counterclaims asserting that this Defendant has filed a suit on a Note by separate action, but denies the remaining allegations in Paragraph 129 of the Defendant's Counterclaims.

15. Defendant SCBT denies Paragraph 130 of the Defendant's Counterclaims.

16. Defendant SCBT denies Paragraph 131 of the Defendant's Counterclaims.

17. Defendant SCBT denies Paragraph 132 of the Defendant's Counterclaims.

18. Defendant SCBT denies Paragraph 133 of the Defendant's Counterclaims.

FOR A SECOND DEFENSE
(Dismissal pursuant to Rule 12(b)(6), SCRCP)

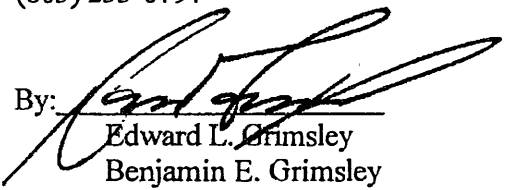
19. Defendant SCBT realleges and incorporates the preceding paragraphs as fully as if set forth herein verbatim.

20. To the extent the Defendant asserts claims against the Defendant SCBT through their Defenses, such claim or claims fail to state facts sufficient to constitute a cause of action against the Defendant SCBT.

WHEREFORE, having fully answered the Counterclaims of the Defendant, Defendant SCBT prays that this Court protect its interest by:

- A. Barring the Counterclaims of the Defendant Rhonda Lewis Meisner a/k/a Rhonda L. Meisner by recognizing the defenses plead herein.
- B. For such other and further relief as this Court may deem just and proper.

GRIMSLEY LAW FIRM, LLC
P. O. Box 11682
Columbia, South Carolina 29211
(803) 233-0797

By: 

Edward L. Grimsley

Benjamin E. Grimsley

Attorneys for the Defendant SCBT

September 9, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for the
Holders of The Banc of America Funding
Corporation, 2008-FT1 Trust, Mortgage Pass-
Through Certificates, Series 2008-FT1,

PLAINTIFF,

vs.

Rhonda Lewis Meisner a/k/a Rhonda L. Meisner;
Bank of America, N.A.; and SCBT,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-40-2063

PLAINTIFF'S REPLY TO DEFENDANT'S
ANSWER AND COUNTERCLAIM

RICHLAND COUNTY
FILED
2014 MAY 28 AM 11:52
JANETTE W. MCBRIDE
C.C.P. & G.S.

Plaintiff, by undersigned counsel, hereby submits its Reply to the Answer and Counterclaim ("Answer") filed by Rhonda Lewis Meisner a/k/a Rhonda L. Meisner ("Defendant"). In support of its Reply, Plaintiff states as follows:

1. Unless expressly admitted herein, Plaintiff denies each and every allegation in the Answer.
2. Each allegation of the Complaint in this matter is hereby incorporated by reference. Plaintiff denies any factual allegation in the Answer inconsistent therewith and demands strict proof.
3. Plaintiff craves reference to the public records of Richland County, South Carolina, for the subject documents of Plaintiff's action, and denies anything inconsistent therewith.
4. Paragraph 1 of the Answer appears to state legal conclusions for which no response is required. To the extent that a response is required, Plaintiff craves reference to applicable South Carolina law and denies anything inconsistent therewith. Plaintiff has insufficient information to admit or deny the remaining allegations of paragraph 1; therefore, denies same and demands strict proof.
5. Plaintiff denies paragraph 2 of the Answer to the extent it alleges that the subject loan is not in default, and demands strict proof. To the extent the reminder of paragraph 2 requires a response, Plaintiff denies same and demands strict proof.
6. To the extent paragraphs 3 through 16 of the Answer require a response, Plaintiff denies same and demands strict proof.

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7. Plaintiff admits so much of paragraph 17 of the Answer which alleges that Plaintiff does not demand a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due unto the Plaintiff, including costs and attorney's fees. Plaintiff denies the remainder of paragraph 17 to the extent it is inconsistent with the foregoing, and demands strict proof.
8. To the extent paragraph 18 of the Answer requires a response, Plaintiff denies same and demands strict proof.
9. Plaintiff denies paragraphs 19 and 20 of the Answer and demands strict proof.
10. To the extent paragraph 21 of the Answer requires a response, Plaintiff denies same and demands strict proof.
11. Plaintiff has insufficient information to admit or deny the allegations in paragraph 22 of the Answer; therefore, denies same and demands strict proof.
12. Plaintiff denies paragraph 23 of the Answer, and demands strict proof.
13. Plaintiff notes that the Answer contains no paragraph 24.
14. Plaintiff denies paragraph 25 of the Answer and demands strict proof.
15. Plaintiff has insufficient information to admit or deny the allegations of paragraphs 26, 27, and 28 of the Answer; therefore, denies same and demands strict proof. Plaintiff specifically denies any violation of federal and/or South Carolina law.
16. Plaintiff denies paragraph 29 of the Answer and demands strict proof.
17. Plaintiff has insufficient information to admit or deny the allegations in paragraph 30 of the Answer; therefore, denies same and demands strict proof.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Violation of 15 U.S.C. § 1638 (Dodd Frank Act §§ 1462, 1465))

18. Plaintiff reasserts the foregoing statements as if set forth at length herein.
19. Plaintiff denies paragraphs 31 and 32 of the Answer and demands strict proof. Plaintiff specifically denies any violation of federal law.

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FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(Declaratory Judgment)

20. Plaintiff reasserts the foregoing statements as if set forth at length herein.
21. To the extent paragraph 33 of the Answer requires a response, Plaintiff denies same and demands strict proof,
22. Paragraph 34 of the Answer appears to state legal conclusions for which no response is required. To the extent that a response is required, Plaintiff craves reference to applicable state law and denies anything inconsistent therewith.
23. Plaintiff has insufficient information to admit or deny the allegations in paragraph 35 of the Answer; therefore, denies same and demands strict proof.
24. Plaintiff denies paragraphs 36, 37, and 38 of the Answer and demands strict proof.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION
(Breach of Contract)

25. Plaintiff reasserts the foregoing statements as if set forth at length herein.
26. Plaintiff denies paragraphs 39 through 43 of the Answer and demands strict proof. Plaintiff specifically denies any violation of federal and/or South Carolina law.

FOR A FURTHER DEFENSE TO DEFENDANT'S COUNTERCLAIM

27. Plaintiff reasserts the foregoing statements as if set forth at length herein.
28. Defendant has a debt due and owing to Plaintiff.
29. In order to secure the payment of the subject loan, Defendant did make, execute, and deliver to Plaintiff, its successors and assigns, a certain real estate Mortgage covering real property located in the County and State aforesaid and specifically described in said Mortgage.
30. Plaintiff and Defendant intended the subject real property to serve as security for the payment of the debt.
31. As a result, Plaintiff has an equitable lien on the property.
32. Because Defendant defaulted on the loan, Plaintiff is entitled to the relief prayed for in its Complaint.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

33. Plaintiff avers that Defendant's claims are barred by the doctrine of laches and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

34. Plaintiff avers that Defendant's claims are barred by the doctrine of estoppel and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

35. Plaintiff avers that Defendant's claims are barred by the doctrine of waiver and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

36. Plaintiff avers that Defendant's claims are barred by the applicable statute(s) of limitations and statute(s) of repose, and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

37. Plaintiff avers that Defendant's claims are barred by the doctrine of release, and should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

38. Defendant has failed to state facts sufficient to constitute a cause of action against Plaintiff pursuant to Rule 12(b)(6), SCRPC, and Defendant's claims should be dismissed with prejudice.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

39. Defendant's damages, if any, are the result of her own actions and/or omissions or the actions, omissions of individuals over whom Plaintiff exercised no control, or both.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

40. Defendant's claims are barred by her failure to perform certain conditions precedent under his loan agreement with Plaintiff.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

41. The relief requested by Defendant is barred by S.C. Code § 15-36-10.

FURTHER ANSWERING AS A COMPLETE AND AFFIRMATIVE DEFENSE

42. Plaintiff reserves the right to assert additional claims and defenses as they may become known.

WHEREFORE, Plaintiff requests that the Court dismiss the Defendant's Counterclaims with prejudice, award Plaintiff its costs and attorneys' fees, and grant such other and further relief as is just and necessary.

FINKEL LAW FIRM LLC


Magalie A. Arcure (S.C. Bar #8855)
Post Office Box 41489
Charleston, South Carolina 29423
Tel: (843) 577-5460
Facsimile: (843) 577-5135
Attorneys for the Plaintiff

Dated: May 23, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

SCBT F/K/A SOUTH CAROLINA
BANK AND TRUST, N.A.,

Plaintiff,

v.

RHONDA LEWIS MEISNER; BANK
OF AMERICA, N.A.; AND SCBT
F/K/A SCBT, N.A.,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2013-CP-40-7144

**ANSWER OF DEFENDANT BANK
OF AMERICA, N.A.**

2014 APR -4 AM 11:41
CLERK OF COURT
FILED

Defendant Bank of America, N.A. ("Defendant" or "BANA") answers the Amended Complaint of the Plaintiff above-named by saying and alleging as follows:

FOR A FIRST DEFENSE

1. Without waiving its right to dismiss this Amended Complaint, Defendant BANA specifically denies each and every allegation of the Amended Complaint that is not specifically admitted and demands strict proof thereof.

2. In answering the allegations of Paragraph 1 of the Amended Complaint, Defendant BANA does not currently have sufficient information to admit the allegations; therefore, Defendant BANA denies the allegations and demands strict proof thereof.

3. In answering the allegations in Paragraph 2 of the Amended Complaint, these allegations do not require a response. To the extent any response is required, Defendant BANA denies the allegations and demands strict proof thereof.

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4. In answering the allegations of Paragraphs 3 and 4 of the Amended Complaint, Defendant BANA responds and states that these allegations contain legal conclusions which do not require a response. To the extent any response to these allegations is required, Defendant BANA denies and demands strict proof thereof

5. In answering the allegations in Paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the Amended Complaint, Defendant BANA does not currently have sufficient information to admit the allegations; therefore, Defendant BANA denies the allegations and demands strict proof thereof.

6. Defendant BANA denies the allegations of Paragraph 14 of the Amended Complaint and demands strict proof thereof.

7. In answering the allegations of Paragraphs 15 and 16 of the Amended Complaint, Defendant BANA does not currently have sufficient information or belief to admit the allegations; therefore, Defendant BANA denies the allegations and demands strict proof thereof.

8. In answering the allegations of Paragraph 17 of the Amended Complaint and its subparts, Defendant BANA admits only so much that it has an interest in the property that is the subject of this action, but specifically denies the remaining allegations of this Paragraph.

9. In answering the allegations of Paragraph 18 of the Amended Complaint and its subparts, Defendant BANA does not currently have sufficient information or belief to admit the allegations; therefore, Defendant BANA denies the allegations and demands strict proof thereof.

10. In answering the allegations of Paragraph 19 of the Amended Complaint, these allegations contain legal conclusions to which no response is required. To the extent any

response to these allegations is required, Defendant BANA denies and demands strict proof thereof.

11. In answering the allegations of Paragraphs 20, 21 and 22 of the Amended Complaint, Defendant BANA does not currently have sufficient information or belief to admit the allegations; therefore, Defendant BANA denies the allegations and demands strict proof thereof.

FOR A SECOND DEFENSE

12 Plaintiff's Amended Complaint fails to allege sufficient facts upon which to constitute a cause of action against Defendant BANA pursuant to Rule 12(b)(6), such that the Amended Complaint should be dismissed.

FOR A THIRD DEFENSE

13. Defendant BANA's mortgages were duly recorded in the Richland County Register of Deeds, such that Plaintiff was on notice of their recording.

14. Plaintiff, by virtue of being placed on notice of the recording of the mortgages has knowingly waived any and all rights to contest the validity of said mortgages.

15. As a result of Plaintiff's waiver, its Amended Complaint is barred.

FOR A FOURTH DEFENSE

16. Defendant BANA's mortgages were duly recorded in the Richland County Register of Deeds, such that Plaintiff was on notice of their recording.

17. Defendant BANA's mortgage dated August 12, 2003 and recorded on August 18, 2013 in Book 838 at Page 2632 ("2003 BANA Mortgage") represents a first priority mortgage on the subject property senior to any interest of the Plaintiff, and any judgment obtained by the Plaintiff or any sale of the subject property shall be subject to the 2003 BANA Mortgage interest.

18. Defendant BANA's mortgage dated September 19, 2005 and recorded on September 23, 2005 in Book 1101 at Page 2609 ("2005 BANA Mortgage") represents a mortgage on the subject property senior to any interest of the Plaintiff, and any judgment obtained by the Plaintiff or any sale of the subject property shall be subject to the 2005 BANA Mortgage.

WHEREFORE, having answered Plaintiff's Amended Complaint, Defendant BANA prays to this Honorable Court to

- i. dismiss this Amended Complaint;
- ii. protect the priority of Defendant BANA's Mortgages;
- iii. declare that the 2003 BANA Mortgage represents a first priority mortgage on the subject property senior to any interest of the Plaintiff, and any judgment obtained by the Plaintiff or any sale of the subject property shall be subject to the 2003 BANA Mortgage;
- iv. declare that the 2005 BANA Mortgage represents a mortgage on the subject property senior to any interest of the Plaintiff, and any judgment obtained by the Plaintiff or any sale of the subject property shall be subject to the 2005 BANA Mortgage;
- v. award all costs and attorneys' fees; and
- vi. for such further relief as this Court deems proper.

(signature on following page)

Attorneys for Defendant Bank of America, N.A.



M. Jeffrey Vinzani (SC Bar #07988)

Jake S. Barker (SC Bar #77449)

GRAYBILL LANSCH & VINZANI, LLC

225 Seven Farms Drive, Suite 107

Charleston, South Carolina 29492

Direct Dial: (843) 628-7732

jvinzani@glvlawfirm.com

jbarker@glvlawfirm.com

Charleston, South Carolina

April 3, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as
trustee for the Holders of the Banc of
America Funding Corporation, 2008-FT1
Trust, Mortgage Pass-Through
Certificates, Series 2008-FT1,

Plaintiff,

v.

Rhonda Lewis Meisner, a/k/a Rhonda L.
Meisner; Bank of America, N.A.; and
SCBT,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-40-2063

**RESPONSE OF DEFENDANT BANK
OF AMERICA, N.A. TO ANSWER
AND CROSS-CLAIM OF
DEFENDANT RHONDA LEWIS
MEISNER, a/k/a RHONDA L.
MEISNER**

RICHLAND COUNTY
FILED
2014 AUG 26 AM 10:18
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Defendant Bank of America, N.A. ("Defendant" or "BANA") responds to the Answer and Cross-Claim of Defendant Rhonda Lewis Meisner, a/k/a Rhonda L. Meisner dated June 12, 2014 ("Cross-Claim") by saying and alleging as follows:

FOR A FIRST DEFENSE

1. Without waiving its right to dismiss this Cross-Claim, Defendant BANA specifically denies each and every allegation of the Complaint that is not specifically admitted and demands strict proof thereof.

2. In answering the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of the Cross-Claim, these allegations do not set forth claims against Defendant BANA which require a response. To the extent any response to these allegations is required, Defendant BANA denies the allegations and demands strict proof thereof.

3. Defendant BANA specifically denies the allegations of Paragraph 22 of the Cross-Claim and demands strict proof thereof.

4. In answering the allegations of Paragraphs 23 and 24 of the Cross-Claim, these allegations do not set forth claims against Defendant BANA which require a response. To the extent any response to these allegations is required, Defendant BANA denies the allegations and demands strict proof thereof.

5. Defendant BANA specifically denies the allegations of Paragraphs 25, 26, 27, 28, 29, 30, 31 and 32 of the Cross-Claim and demands strict proof thereof.

6. In answering the allegations of Paragraph 33 of the Cross-Claim, Defendant BANA re-alleges its responses to the allegations contained above as if fully set forth verbatim.

7. In answering the allegations of Paragraphs 34, 35, 36 and 37 of the Cross-Claim, Defendant BANA does not currently have sufficient information or belief to admit the allegations; therefore, Defendant BANA denies the allegations and demands strict proof thereof.

8. In answering the allegations of Paragraph 38 of the Cross-Claim, these allegations do not require a response. To the extent any response to these allegations is required, Defendant BANA denies the allegations and demands strict proof thereof.

9. In answering the allegations of Paragraphs 39, 40, and 41 of the Cross-Claim, these allegations contain legal conclusions to which no response is required. To the extent any response to these allegations is required, Defendant BANA denies the allegations and demands strict proof thereof.

10. In answering the allegations of Paragraphs 42, 43 and 44 of the Complaint, these allegations do not require a response. To the extent any response to these allegations is required, Defendant BANA denies the allegations and demands strict proof thereof.

FOR A SECOND DEFENSE

11 The Cross-Claim fails to allege sufficient facts upon which to constitute a cause of action against Defendant BANA pursuant to Rule 12(b)(6), such that the Cross-Claim should be dismissed.

FOR A THIRD DEFENSE

12. The Cross-Claim is barred by the doctrine of Laches.

FOR A FOURTH DEFENSE

13. The Cross-Claim is barred by the doctrine of Waiver and Estoppel.

FOR A FIFTH DEFENSE

15. The Cross-Claim is barred by the doctrine of set-off.

WHEREFORE, having answered Plaintiff's Complaint, Defendant BANA prays to this Honorable Court to order Plaintiff to protect the priority of Defendant BANA's mortgage, order that any sale of the subject property be subject to Defendant BANA's mortgage lien; to satisfy Defendant BANA's mortgage lien plus interest from any sale of the real property that is the subject matter of this action, plus costs and attorneys' fees, and for such further relief as this Court deems proper.

Attorneys for Defendant Bank of America, N.A.





Jake S. Barker (SC Bar #77449)
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225 Seven Farms Drive, Suite 107
Charleston, South Carolina 29492
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jbarker@glvlawfirm.com

Charleston, South Carolina
August 25, 2014

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1	STATE OF SOUTH CAROLINA	)	
2	COUNTY OF RICHLAND	)	COURT OF COMMON PLEAS
3			
4	U.S. Bank N.A., et al.,	)	
5	Plaintiff,	)	
6	vs.	)	2014-CP-40-02063
7	Rhonda Lewis Meisner, et al.,	)	
8	Defendant.	)	TRANSCRIPT OF RECORD
9	SCBT, et al.,	)	
10	Plaintiff,	)	
11	vs.	)	2014-CP-40-07144
12	Rhonda Lewis Meisner, et al.,	)	
13	Defendant.	)	

December 16, 2015
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

A P P E A R A N C E S:

MAGALIE ARCURE CREECH, ESQ.
Attorney for the Plaintiff U.S. Bank

JONATHAN M. MILLING, ESQ.
Attorney for the Plaintiff SCBT

RHONDA LEWIS MEISNER, PRO SE
Appearing for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

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I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

DECEMBER 16, 2015

THE COURT: U.S. Bank v. Rhonda Lewis Meisner?

MS. CREECH: Yes, Your Honor. I am here for that.

THE COURT: Which case are you here for?

MR. MILLING: I am in SCBT v. Meisner.

THE COURT: All right. SCBT v. Rhonda Lewis Meisner.

And are you Ms. Meisner?

MS. MEISNER: Yes, Your Honor, I am.

THE COURT: Are you Pro Se?

MS. MEISNER: Yes, ma'am, I am.

THE COURT: And this is the Plaintiff's motion to strike jury trial?

MS. CREECH: Yes, Your Honor.

THE COURT: And then the Plaintiff SCBT has a motion for summary judgment on the pleadings?

MR. MILLING: Yes, Your Honor.

THE COURT: And then you all have two motions to compel?

MS. CREECH: Yes, Your Honor. U.S. Bank has a motion to compel against Ms. Meisner.

THE COURT: All right. So if you will give me a little bit of background information on the cases, and then I will be glad to hear from you.

1 And your name?

2 MS. CREECH: I am Magalie Creech, for the
3 Plaintiff.

4 THE COURT: All right. Yes, ma'am?

5 MS. CREECH: Thank you, Your Honor.

6 This is a residential foreclosure action
7 against Ms. Meisner. The property that is the
8 subject of this action has not been occupied and is
9 therefore exempt from the 2011 administrative
10 order. The loan is in default, has been in default
11 since July 12th of 2013. And the Plaintiff
12 commenced this foreclosure action in March of 2014.

13 In response, Ms. Meisner filed an answer and
14 counterclaim, which was most recently amended in
15 August to assert counterclaims for declaratory
16 judgment, violation of the truth and lending act,
17 breach of contract, breach of contract accompanied
18 by fraudulent act, and abuse of process.

19 The Plaintiff has moved to strike the
20 Defendant's legal counterclaims on the grounds that
21 by asserting them in this equitable foreclosure
22 action she has waived her right to a jury trial on
23 those claims, specifically the legal counterclaim
24 for violation of the truth and lending act, breach
25 of contract, breach of contract accompanied by

1 fraud, and abuse of process are not compulsory
2 under Rule 13(a) because they do not arise out of
3 the same transaction or occurrence as the
4 Plaintiff's foreclosure action.

5 The test as to whether a counterclaim is
6 compulsory is within the context of the
7 foreclosure, which was most recently cited in the
8 Carolina First v. BADD, LLC, case. That is -- I
9 have a Westlaw cite that I will be happy to
10 provide. But a guarantor's counterclaims for
11 breach of contract and civil conspiracy were found
12 to be permissive because they did not logically
13 relate to the execution of the guarantee agreement
14 and their enforcement.

15 And the conduct which Ms. Meisner has asserted
16 gives rise to these civil counterclaims occurred
17 after the default in loan payments, some of which
18 occurred during -- within the foreclosure
19 litigation and does not have any impact on the
20 terms of the note and mortgage or the Plaintiff's
21 ability to enforce the note and mortgage against
22 Ms. Meisner.

23 Furthermore, if Ms. Meisner were to be
24 successful with those claims, in fact she would be
25 entitled to money damages, which would act as a

1 set-off on the debt amount, but they are permissive
2 because, again, they do not logically relate to the
3 Plaintiff's foreclosure action and that they do not
4 preclude enforcement of the note and the mortgage.

5 For those reasons, Your Honor, we have
6 requested that the Court strike the jury demand and
7 to refer this case under Rule 53 as it is an
8 equitable foreclosure action to the master in
9 equity.

10 THE COURT: Okay. Let me make sure I'm clear.
11 It is your position that -- what is your position
12 as to a counterclaim?

13 MS. CREECH: The counterclaims needs to be
14 adjudicated, the legal counterclaims would need to
15 be adjudicated before the foreclosure, but we --
16 under Rule 13(a) they are not compulsory, and
17 therefore by asserting them in an equitable action
18 the right to a jury trial on the legal claims has
19 been waived. The legal counterclaims are
20 permissive based on the conduct which gives rise to
21 those claims having occurred after the execution of
22 the instrument, which is not in dispute, and after
23 the default in payment of the loan.

24 THE COURT: All right. But your position is
25 that because she asserted those on the equitable

1 claim of foreclosure that she is waiving a jury
2 trial?

3 MS. CREECH: That is correct, Your Honor.

4 THE COURT: And then you said Carolina First
5 v.?

6 MS. CREECH: Carolina First v. BADD, LLC. I
7 have a Westlaw citation. This came out of the
8 advance sheets in I believe April of this year.
9 And another case which sets forth the applicable
10 test for determining the right to a jury trial on
11 legal claims asserted within an equitable action is
12 Wachovia Bank v. Blackburn. That is 407 S.C. 321.

13 THE COURT: All right. All right. So your
14 motion is to strike the jury trial and refer to the
15 master?

16 MS. CREECH: Yes, Your Honor.

17 THE COURT: All right, thank you.

18 Yes, ma'am, Ms. Meisner?

19 MS. MEISNER: Good afternoon, Your Honor. I
20 did have a memorandum that I just filed. And,
21 unfortunately, because of the protective order, I
22 did not get a chance to get it in. I actually got
23 the notice via e-mail on the same day that you had
24 asked for these to be turned in. But I did file
25 this earlier. If I could hand it to you. I'd

1 like --

2 THE COURT: Did you give a copy to the other
3 side?

4 MS. MEISNER: Yes, ma'am, I did. Prior to
5 coming in I did give that to Ms. Creech. I'm
6 sorry, I want to call her Ms. Arcure, but
7 Ms. Creech.

8 I, quite obviously, am opposed to the motion
9 for a couple of reasons. First of all, I do think
10 that the counterclaims are compulsory. The Supreme
11 Court outlined that whether a claim is permissive
12 or compulsory and whether a party is entitled to a
13 jury trial in Verenes v. Alvanos, 387 S.Ct. 11, 15.
14 And it is all in the brief. But it also in
15 Wachovia Bank v. Blackburn went through how a test
16 logically relates to the complaint. And I'll just
17 skip down to Item Number 4. It says:

18 If the complaint is equitable -- which
19 obviously a foreclosure action is
20 equitable -- and the counterclaim is
21 legal and compulsory, the Plaintiff or
22 the Defendant has a right to a jury
23 trial on the counterclaim.

24 And then skipping down, it says:

25 The procedure for handling that is the

1 judge may, pursuant to 42(b), order a
2 separate trial or if the trials are
3 separated they can determine which claim
4 should be tried first.

5 And then so forth. So it goes on. A breach
6 of contract claim is quite obviously a compulsory
7 counterclaim because it arises out of the same
8 transaction and occurrence. It is actually part
9 and parcel to the contract.

10 And my contention in the breach claim, which
11 is -- I think it is about 117 items long, is that
12 it was not me that breached the complaint. This
13 was a mortgage loan that was automatically drafted
14 out of my checking account every month for eight
15 and a half years. And Bank of America unilaterally
16 decided that they were just going to stop taking
17 the money out of my account.

18 In doing so, they have -- both U.S. Bank and
19 Bank of America have submitted conflicting
20 affidavits, of which I do have a copy for you.
21 Bank of America says that they sold the loan to
22 U.S. Bank in the same month as they stopped
23 debiting my account. However, U.S. Bank, in their
24 filings before the Court, actually said that they
25 got a -- it was assigned to them on April 2nd, but

1 it was actually notarized a day later, but they did
2 put in the pleadings.

3 So, Your Honor, either Ms. Creech's customers
4 have submitted a fraudulent affidavit to your court
5 or Mr. Barker's customers have submitted a
6 fraudulent affidavit, because they can't sell it in
7 July and then eight months later sell it again when
8 they said that they have already sold it and lost
9 it and done it.

10 So my point is, is that the breach of contract
11 claim is part of the foreclosure action because it
12 is actually a legal interpretation of the note,
13 which is tied to the mortgage.

14 In that note it specifically says that if you
15 were going to -- if I wanted to stop the payments
16 coming out of my account, I had to give them
17 written notice. I gave no such written notice.
18 There is no documentation of the notice. They just
19 stopped taking the money out.

20 And then, you know, two and a half months
21 later filed for foreclosure and would not accept
22 the money -- would not accept additional money to
23 cure what they considered the breach. However, of
24 course, I'm contending there is a breach.

25 In addition to that, what happened

1 subsequently, and I think part of the -- if you'll
2 look in the back part of the tablet, the Honorable
3 Joseph Strickland struck the referral previously
4 because -- in somewhat of an end run, the bank --
5 and I'm not sure who it is, I'm not casting
6 aspersions, I'm just saying that they improperly
7 gave the clerk of court, the Honorable Jeanette
8 McBride, an order that made conclusions of fact
9 and -- made findings of facts and conclusions of
10 law which far exceed the scope of this process.

11 You know, a foreclosure action, if there is
12 going to be a referral, only a judge like yourself
13 can sign an order of referral. Ms. McBride in her
14 position cannot. And that is abuse of process.
15 And, because this action is currently in front of
16 the Court, that counterclaim I believe is
17 compulsory as well.

18 And then there was one other thing that I
19 wanted to mention. And I also did ask for -- oh,
20 the order that Judge Strickland signed was on
21 January 12th of this year. And he basically just
22 said it was signed erroneously by the clerk of
23 court.

24 My position of that is, you know, attorneys
25 understand that the clerk of court can't make

1 findings of fact striking jury demands or mandatory
2 referral without a hearing, without a judge ruling
3 on it. So I think that this was an end run that is
4 somewhat egregious because, you know, this for me
5 is not my primary home. But there are people that
6 come before your court, Your Honor, that if it is
7 their primary home they are going to lose it. And
8 when a bank does something like, if they do have
9 counterclaims and if they don't have the money to
10 get an attorney to automatically send that to the
11 master in equity and say, Guess what, there is no
12 jury trial available. That is unfair and that is
13 an abuse of process.

14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 Yes, ma'am?

17 MS. CREECH: Thank you, Your Honor.

18 I think some of the issues that Ms. Meisner
19 has addressed are outside of the scope of this
20 motion, but I will try to address them all in
21 order.

22 First, with respect to affidavits in this
23 case, the Plaintiff has not filed any affidavits,
24 so I'm not aware as to what she may be referring to
25 with that.

1 Second, the assignment of mortgage in this
2 case, Your Honor, Ms. Meisner is not a party to
3 that contract and lacks standing to challenge the
4 assignment of mortgage. An assignment of mortgage
5 is not required in South Carolina, so to the extent
6 that that has any impact on whether her -- on her
7 argument as to whether the counterclaims are legal
8 and therefore compulsory is irrelevant.

9 And if we are going to discuss the terms of
10 the note, they state that she is required to make
11 her monthly payments, which has not occurred. And
12 it is her responsibility to make those payments as
13 required per the terms of the note and mortgage.
14 Therefore, her counterclaims, which may deal with
15 application of payment and perhaps relate to the
16 debt amount, does not arise out of the same
17 transaction or occurrence as the Plaintiff's
18 foreclosure action. But if she may have some
19 dispute as to the debt figures, perhaps she will
20 request a live witness to testify as to the
21 damages, but as to liability on the foreclosure
22 action, that is clear, and her counterclaims do not
23 have any impact on that.

24 With respect to the --

25 THE COURT: What about her position regarding

1 the -- I don't think she used the terminology --
2 but regarding bifurcating the two cases?

3 MS. CREECH: As I understand it -- I believe
4 that she was citing the Blackburn case, which we
5 also cited. It states that:

6 A trial judge may, under Rule 42, order
7 separate trials of the legal and
8 equitable claims, or may order the
9 claims tried in a single proceeding.

10 And in other cases it has been held that in a
11 context of an equitable action which has legal
12 counterclaims, the legal counterclaims should be
13 adjudicated first.

14 That is really not the issue. The issue that
15 we're presenting to the Court is whether she is
16 entitled to a jury trial on those legal claims.
17 And our position is that she is not under Rule
18 13(a).

19 The prior order of reference was signed by the
20 clerk of court, which, pursuant to Rule 53, it
21 states that the judge or the clerk of court shall
22 sign an order of reference.

23 So we styled that motion as a form motion with
24 a proposed order. No hearing was requested. And
25 it was referred to Judge Strickland. He then

1 determined that a hearing would be more appropriate
2 and the matter was remanded back to circuit court,
3 and now we are here today to argue that very same
4 issue.

5 So, with respect to the prior reference, at
6 that point that is really no longer an issue
7 because Ms. Meisner is getting her day to assert
8 her position with respect to the counterclaims.

9 But, again, the case law is very clear that
10 the legal counterclaims will only logically relate
11 to the transaction or occurrence in the foreclosure
12 if it has any impact on the execution of the loan
13 instrument and the enforceability.

14 The terms are not in dispute. There hasn't
15 been a payment since July of 2013. And her
16 counterclaims do nothing to change that. Again,
17 her counterclaims are requesting money damages,
18 which would operate as a set-off on the debt amount
19 under the loan.

20 Another case, Your Honor, that we would like
21 to cite to is Advance International v. North
22 Carolina National Bank of S.C -- that is 316 S.C.
23 266 -- which found that claims for fraud,
24 negligence, and Unfair Trade Practices Act in a
25 foreclosure action were not compulsory because

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1 those claims did not affect the enforceability of
2 the note.

3 And we are asserting the same position based
4 on the legal counterclaims that Ms. Meisner
5 asserted.

6 THE COURT: Yes, ma'am?

7 MS. MEISNER: Oh, I'm sorry. I'm just waiting
8 for you.

9 THE COURT: Go ahead. I am trying to jot
10 down --

11 MS. MEISNER: Your Honor, I just wanted to
12 make a distinction between a couple of the cases
13 that Ms. Creech has mentioned.

14 She referenced the BADD, LLC. That it is a
15 third party counterclaim. All third party
16 counterclaims are permissive.

17 As an initial matter, actually Ms. Creech's
18 client is not the original holder of the note and
19 the mortgage, and the breach of contract action
20 involved Bank of America. Bank of America has been
21 noticed about this hearing, but they are not here
22 today. They were aware of it.

23 And so I guess what I'm saying is it is
24 irreconcilable to say that a breach of the contract
25 that they are trying to enforce is not related to

1 the contract they are trying to enforce. That is a
2 non sequitur. And the Supreme Court has been clear
3 that if there is a breach of contract that it would
4 preclude foreclosure. If the legal claims for Bank
5 of America to foreclose, if they were the initiator
6 of the breach, then equitable estoppel would not
7 allow them to foreclose. Therefore, the legal
8 interpretation of the breaching agreement based on
9 the note is what is relevant, whether it is a
10 compulsory counterclaim or not.

11 But I think Bank of America is -- in my -- in
12 fact, in Number 34 of my amended complaint, it
13 basically -- and 33, Number 33 and 34 -- it
14 basically says:

15 Bank of America was aware of your
16 obligation to debit the checking account
17 because they have been doing so for the
18 previous seven years without
19 interruption.

20 Bank of America drafted the document, so they
21 were on actual notice of their continuing
22 obligation -- drafted the note -- so they were on
23 notice of their continued obligation to debit the
24 account and apply the funds unless it was requested
25 by me. And I never requested that. And they never

1 sent me notice saying that.

2 If they sold the note, Bank of America still
3 had the same obligation -- if they were selling
4 every legal obligation that they had, then they
5 should have transferred the debiting process to
6 whoever they sold it to.

7 Now, I do have -- and, unfortunately, I did
8 not make a copy of this. It was my error. I do
9 have Bank of America's certified statement. And
10 the affidavits that I was referencing earlier that
11 Ms. Creech said she was unaware of any, is the
12 affidavit of indebtedness and an assignment from
13 Bank of America.

14 They said that their assignment -- while they
15 say that I'm not a party to that assignment, they
16 still can't tell you things that are inaccurate
17 because they just can't, you know, represent
18 something that happened on April 2nd when this
19 affidavit from Bank of America says that it
20 happened back in July. And this affidavit was
21 signed in November.

22 So their representation -- Bank of America's
23 representation was that they sold the loan to U.S.
24 Bank back in July and then U.S. Bank said that they
25 purchased it or assumed it or it was assigned or

1 somehow conveyed the following March or April. I
2 think it was April 2nd, I believe.

3 But, in any event, the breach of the contract,
4 who breached the contract is essential to the
5 ability to foreclose and, as such, is a compulsory
6 counterclaim.

7 And I was trying to think of something else.
8 The cases that Ms. Creech referenced with the third
9 party guarantors who are not party to the mortgage
10 but they actually raised a counterclaim based on
11 their position as a guarantor, I think you did say
12 that earlier, that that is a third party permissive
13 claim.

14 This is a situation where it was Bank of
15 America and me in the same contract, the same
16 negotiation. And they stopped debiting my account.
17 That is a breach of the contract based on the note.

18 And I'm trying to think if there was anything
19 else. I was trying to take notes. I think there
20 is something else I'm missing.

21 Oh, if in fact Bank of America is accurate and
22 the note -- or, excuse me, U.S. Bank is accurate
23 and the note and the mortgage were transferred in
24 April, that makes U.S. Bank a third party debt
25 collector, which under the U.C.C., all of the

1 things that Ms. Creech said were not available as a
2 counterclaim are available, because if she is a
3 third party debt collector, which is a debt
4 collector that assumes any mortgage, loan, note
5 pursuant to the U.C.C., becomes a third party debt
6 collector.

7 So it is a material issue of fact whether Bank
8 of America's affidavit is to be believed or U.S.
9 Bank's affidavit is to be believed as far as when
10 the note and thing was transferred.

11 So I guess what I'm saying is, discovery is
12 not over. And I think referral and the strike of
13 the jury demand prior to the end of discovery would
14 be premature and somewhat prejudicial, because if
15 we find out she is a third party Defendant, then I
16 have lost my chance to a jury trial, even though I
17 do believe these are compulsory counterclaims.

18 THE COURT: All right.

19 MS. MEISNER: I can show you the thing if you
20 want to see it. And I can make copies later for
21 you if you would like for me to do that.

22 THE COURT: What is that?

23 MS. MEISNER: This is their -- Bank of
24 America's responses to the interrogatories that I
25 sent where they said that they sold the loan to

1 U.S. Bank back in -- nine months before they sold
2 it -- before they said they sold it, or assigned
3 it.

4 THE COURT: Yes, ma'am?

5 MS. CREECH: Just to clarify a couple of
6 things. The Plaintiff in this action, U.S. Bank,
7 is the assignee of a loan that was originated by
8 Bank of America.

9 Bank of America is also named as a Defendant
10 because they are the mortgagee of a second lien in
11 the action.

12 So Ms. Meisner has engaged in some discovery
13 with Bank of America. However, as it relates to
14 the first mortgage lien in this action, it is the
15 Plaintiff who is the party in interest.

16 With all due respect to Ms. Meisner, I am not
17 really following the argument with respect to Bank
18 of America's -- her claims with Bank of America as
19 they relate to the Plaintiff. But what is of note
20 is that the claims that she has asserted against
21 the Plaintiff, who, again, is the mortgagee, and as
22 the mortgagee collecting its own debt, is not a
23 third party debt collector, are simply permissive,
24 because, again, they do not preclude enforcement of
25 the note and mortgage or do anything to allege that

1 she didn't execute them or that the terms were
2 somehow modified. None of that is pled in her
3 answer and counterclaim.

4 And the argument that discovery is necessary
5 to develop these issues is simply irrelevant
6 because these are her allegations. These are her
7 claims. And we believe that discovery is proper.
8 But as to whether or not they are compulsory or
9 permissive, that can be determined from the case in
10 the answer itself.

11 What else was addressed? I apologize. It was
12 a lot of other issues. But, again, I think that we
13 are digressing from the issue before the Court,
14 which is whether the legal counterclaims asserted
15 by Ms. Meisner are compulsory or permissive.

16 And the case law, the case of Carolina First
17 Bank v. BADD, LLC, do relate to guarantors working
18 with the Defendant based on the personal
19 guarantees, but there are other cases where a
20 mortgagor's claims, counterclaims, for fraud, for
21 violation of the Unfair Trade Practices Act,
22 violations of the Truth and Lending Act, again, are
23 all determined to be permissive because, again, all
24 you get is money damages, but it doesn't affect the
25 terms of the note or the thorough enforcement.

1 MS. MEISNER: Your Honor, I'm sorry, I just
2 remembered something when she sat down. May I
3 address you?

4 THE COURT: Yes.

5 MS. MEISNER: When she mentioned that she is
6 the owner of the note and mortgage, if Bank of
7 America breached the contract prior to finding
8 that, it is black letter law that she only got what
9 they assigned. And if they were in breach -- and I
10 did put as a third cause of action breach of
11 contract accompanied by a fraudulent act. It is at
12 Page 13, Item 71 of my counterclaim.

13 And it basically says our agreement was that
14 they were going to debit my checking account unless
15 I told them not to. And they stopped doing that.
16 That is a breach of the contract. If they did --
17 if they breached that, then their -- my equitable
18 defense is against Bank of America. That is what
19 she received from the assignment.

20 And so I guess my argument is, because it
21 involves the note and the servicing and the breach
22 of the note, like who breached what, it is a
23 compulsory counterclaim.

24 Specifically, the additional function to
25 enforce the abuse of process that I talked about

1 circumventing a judge in this matter and sending
2 items, certainly any attorney licensed to practice
3 law in South Carolina understands that a clerk of
4 court can't make findings of fact.

5 THE COURT: So the abuse of process would not
6 be -- that is after.

7 MS. MEISNER: Well, Your Honor, the Supreme
8 Court has been clear about whether it relates to
9 the enforcement of -- this foreclosure action is
10 part of the process. It is not so attenuated that
11 it is not part of the process. We're here before
12 you to find out whether we're going to have a jury
13 trial or a bench trial or whatever. But that
14 process is still part of the action of foreclosure.
15 And the action of foreclosure only happens after
16 the breach.

17 The question for the Court becomes, Did Bank
18 of America breach the contract by not debiting the
19 account and then assign that breach over to U.S.
20 Bank? Or, you know, their claim is that I stopped
21 paying. Well, I can't make them debit my checking
22 account. And if they won't take money
23 afterwards -- once I found out that they weren't
24 debiting the account for this loan, a couple of
25 months later I sent them \$1,000. They just sent it

1 back to me and said, No, we want to foreclose. You
2 owe us \$26,000 on \$150,000 property. We would
3 rather have the property.

4 THE COURT: Let me ask you this, Ms. Creech.
5 What is your position on -- she is saying that the
6 bank stopped taking her payments and that is why --
7 she is saying that the bank stopped taking her
8 payments, which were being drafted from her
9 account, and that therefore the bank breached the
10 contract, and then she says that that is
11 compulsory.

12 MS. CREECH: Well, we have yet to -- this next
13 motion that we are going to address is again a
14 motion to compel. We still don't have any
15 information from Ms. Meisner which supports those
16 claims. So to the extent that it relates to the
17 factual allegations on that, I am not really in a
18 position to speak to that, but --

19 THE COURT: Well, let me just ask you this I
20 guess hypothetically. The abuse of process, I'm
21 not -- that seems -- I mean, when you get into
22 things -- well -- I'm trying to decide if it is
23 permissive or compulsory. But the one that is
24 concerning me is if she had some agreement with the
25 bank and the bank was supposed to draft her account

1 and then, for whatever reason, the bank stopped
2 drafting her account for the payments -- let's just
3 say that is what happened. As you stated, we don't
4 know if that is what happened at this point. And
5 then the bank notifies her that they were going to
6 foreclose on the property because the account was
7 not drafted and she got behind in the mortgage
8 payments. Would that not, under the breach of
9 contract, be compulsory?

10 MS. CREECH: No, not based on these facts,
11 because the note that the Plaintiff is seeking to
12 enforce, which is what governs the rights of the
13 parties, requires Ms. Meisner to make the payments
14 every month. It does not state that the lender
15 must debit -- must accept payments via certain
16 drafting method. At the end of the day, whether
17 she had some understanding that they were going to
18 draft those payments or if she asked them to stop
19 doing that is not dispositive because it doesn't do
20 anything to deviate or otherwise advocate her
21 requirement to make the payments every month.

22 MS. MEISNER: Your Honor, may I find that in
23 the note to read to you, because it is in the note
24 or the mortgages. It is in there.

25 MS. CREECH: The note does provide that the

1 party may elect automatic payments.

2 THE COURT: Yes, ma'am?

3 MS. MEISNER: I am looking for that because it
4 does say, If you elect to have it automatically
5 debited, you -- in order to stop the debiting, you
6 must send a written notice to the bank in order to
7 stop that. I did not send a written notice to the
8 bank. And it is part of this. I'm looking for it.

9 MS. CREECH: I'm happy to read the paragraph
10 regarding automatic payment on Page 2 of the note.

11 It states that:

12 If you choose to have payments made from
13 a designated account and have arranged
14 with us to do so, we will automatically
15 draft a payment. Drafts are to be made
16 on the payment due date or immediately
17 after payment due if the payment due is
18 on Saturday, Sunday, or legal holiday.
19 If your account does not contain any
20 amount due, it is your obligation
21 without notice from us to make the full
22 payment. Even if you have a manual
23 payment on automatic payment, an
24 automatic payment will be drafted from
25 your designated account unless you make

1 such manual payment or the full payment
2 due at least three business days prior
3 to the due date. However, if you make
4 less than a full manual payment at least
5 three business days prior to the due
6 date, only the remaining amount
7 currently due will be drafted. To stop
8 an automatic draft, you must contact us
9 at least three business days prior to
10 the scheduled payment draft. We may
11 accept late payments, partial payments,
12 or checks or money orders marked payment
13 in full or similar notations or payment
14 accompanied by a letter, but our
15 acceptance of the payment indicates our
16 agreeing to the terms set forth in the
17 letter without us waiving or losing any
18 of our rights under law or under this
19 agreement.

20 It does not state that they are required to
21 accept -- or that they are required to
22 automatically draft every month. It is still her
23 obligation to make the monthly payment.

24 MS. MEISNER: Your Honor, to me it is quite
25 clear: To stop an automatic draft, you must

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1 contact us three business days prior to the
2 scheduled payment draft.

3 That is pretty black and white. I mean, I
4 have got to let them know. And I thought it said
5 in writing. But it said that I had to let them
6 know, and that just absolutely did not occur.

7 But, in any event, any dispute over this
8 contract, this contract -- there is nothing on here
9 that says U.S. Bank. This is a Bank of America/
10 Rhonda Meisner contract. They are not here. Any
11 breach is compulsory in the counterclaims. And she
12 assumed it, in April or in July, or whenever it
13 turns out that they assumed it, but it is -- you
14 know --

15 MS. CREECH: Bank of America no longer has an
16 interest in this loan. It has been fully purchased
17 and is not serviced by them. So we are -- as we
18 understand the counterclaims have been pled, the
19 Plaintiff is responding to the breach of contract
20 allegation, that the assignee has assumed all of
21 the rights and responsibilities associated with the
22 loan on this account.

23 And, again, to the extent that it is
24 necessary, nothing in the provisions we just read
25 preclude or otherwise release Ms. Meisner of the

1 responsibility to make her monthly payments. And
2 that is the essence of the foreclosure action. And
3 her counterclaims don't have anything to do with
4 that.

5 THE COURT: All right. Thank you. I'll take
6 a look at it.

7 MS. MEISNER: I beg your pardon, Your Honor.
8 This is the assignment where they said -- this is
9 by U.S. Bank, Nationstar Mortgage. And it says
10 that: Bank of America, by Nationstar Mortgage, as
11 attorney in fact, received this loan on April 3rd
12 of 2014, not back when the breach happened.

13 So, again, we're back to the whole thing. The
14 breach was before this assignment. And this is
15 what they have given to your court.

16 MS. CREECH: And that is, again, not relevant.
17 Those claims have been asserted against us, and
18 we're defending them. I am not really sure --

19 THE COURT: All right.

20 MS. CREECH: I will be very brief, Your Honor,
21 with the motion to compel. We filed -- we served
22 Ms. Meisner with interrogatories, requests for
23 production, and requests for admission back in June
24 of 2014. She did receive responses to the requests
25 for admission, but did not receive responses to the

1 interrogatories and requests for production. We
2 filed a motion to compel on September 2nd of 2014
3 in the year before last. Since then we did receive
4 responses to the interrogatories, but the requests
5 for production remain outstanding. So we're first
6 seeking an order from the Court compelling
7 Ms. Meisner to respond for requests for production.

8 And with respect to the interrogatories that
9 we did receive, we're requesting the Court to order
10 complete responses to Interrogatories Number 3, 7,
11 and 9 through 14.

12 Ms. Meisner has objected to a number -- to the
13 majority of these requests on the grounds that
14 they lack standing. I will read a few of them into
15 the record.

16 For example, in our Interrogatory Number 3,
17 where the Plaintiff has requested an itemization of
18 the damages that she sustained. She has objected
19 based on standing, that it is overly broad, and
20 states that her damages can only be determined by a
21 jury.

22 With all due respect, Your Honor, these are
23 her damages and her claims. She should be able to
24 tell us how much money she is contending is owed to
25 her.

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1 With respect to Interrogatory Number 7, we
2 have asked her to state the facts which give rise
3 to her affirmative defenses in the case. She has
4 objected to those again on the grounds that the
5 Plaintiff lacked standing, that it speaks to a
6 legal conclusion.

7 Again, we are simply trying to ascertain the
8 facts upon which she is basing her claim.

9 Response to Interrogatory Number 9, we are
10 asking -- and she disputes the amount that is due
11 to the Plaintiff. Please state the amount, if any,
12 that remains unpaid and the party's liability for
13 such debt.

14 Again, she makes the same objection based on
15 lack of standing, that it is overly broad, and that
16 a jury is to determine how much is due on the note
17 and mortgage.

18 And the same with respect to Response Number
19 10, which is really I think at the crux of her
20 claims, asking her to state the facts and
21 circumstances and information supporting her claim
22 that she is not in default under the terms of the
23 note and mortgage.

24 Again, she is asserting that we lacked
25 standing and that it is overly burdensome, and

1 seeks legal conclusions that are impermissible.

2 And then for Responses 11 through 14, she
3 objects based on standing. And has not responded
4 at all, simply has objected based on standing and
5 that it is not being relevant.

6 With all due respect, Your Honor, we are
7 simply trying to ascertain the merits of these
8 claims and the facts which she is contending.

9 And with the responses we have right now, we
10 were unable to make anything of it. So we
11 respectfully request an order compelling responses
12 to the requests for production and Interrogatories
13 3, 7, and 9 through 14 to be fully and completely
14 responded to.

15 Thank you.

16 THE COURT: Thank you.

17 Any response?

18 MS. MEISNER: Yes, ma'am. As far as the
19 allegation based on what my claim for damages are,
20 I filed a 132-item, 22-page counterclaim that set
21 out in detail the information that they stopped
22 debiting the account, all of the reasons why all of
23 these things have gone on.

24 With regard to her motion to compel, I am
25 happy to do that. I'm happy to provide documents.

1 However, all of these are bank statements of mine.
2 I don't have any documents. It has all been
3 electronically. So I would have a 7- or 8-page
4 bank statement that I would have to redact the
5 whole thing with one line that said, Automatic
6 debit, Bank of America.

7 And, again, they are not Bank of America. I
8 don't -- you know, documents as far as how I paid
9 the mortgage over the last eight and a half years
10 was a line item on my bank account. For me to go
11 through eight years of line items when they simply
12 could ask Bank of America for the electronic, you
13 know, history of the account, that seems a lot
14 more -- a lot easier to do.

15 Now, if you tell me that I have got to go home
16 and get -- print out eight years of bank statements
17 and redact everything on there but that one line
18 item, I will do it. But I think that that is
19 overly burdensome, and I don't think it is going to
20 change anything as far as what they know about the
21 account.

22 For eight and a half years the account was
23 debited. Bank of America stopped debiting it. It
24 seems more appropriate to compel Bank of America,
25 if they don't have the electronic entries, to

1 provide them those electronic entries. But I'll do
2 what you tell me to do, Your Honor.

3 THE COURT: All right. Well, you are going to
4 have to do -- I am going to grant the motion to
5 compel. You have to produce it as part of
6 litigation. You have to produce the documents in
7 the requests to produce. And you need to answer 3,
8 7, and 9 through 14, provide complete answers to
9 those.

10 MS. MEISNER: And, Your Honor, if I may? I
11 never got any objections, specific objections,
12 other than her oral objections here. She has never
13 sent oral objections or put it in any motion for
14 the Court before today. So just so you know, I
15 don't -- have you sent that and I did not receive
16 it?

17 MS. CREECH: This motion to compel was filed a
18 year before we received -- we received responses I
19 believe last month from Ms. Meisner.

20 MS. MEISNER: So what you are saying I did not
21 do you have never sent to me or given me an
22 opportunity --

23 MS. CREECH: Well, the rules speak -- it is
24 part of our motion to compel complete responses and
25 responses to requests for production and it is part

1 of the instruction in the request to respond, which
2 you were served with.

3 THE COURT: All right. And anything else?

4 MS. CREECH: Nothing further, Your Honor.

5 THE COURT: All right. I'll take a look at
6 this motion to strike the request for jury trial,
7 refer to master, and I will get something back to
8 you all shortly.

9 MS. CREECH: Thank you very much, Your Honor.

10 MS. MEISNER: Is it possible to take a quick
11 break before we start? The next motion is going to
12 be really big.

13 THE COURT: Well, it is not going to be very
14 long. Actually, y'all have -- each motion is
15 scheduled for 30 minutes, and you have already --
16 on this one you have already gone over on the 30
17 minutes. But you can take a break.

18 MS. MEISNER: I am just going to run to the
19 restroom.

20 THE COURT: Okay.

21 MS. CREECH: Thank you very much, Your Honor.

22 (WHEREUPON, a break was taken.)

23 *****

24 MR. MILLING: This is a different case number,
25 a different action, Judge.

1 THE COURT: Completely different?

2 MR. MILLING: Other than having involved some
3 of the same parties, Ms. Meisner is central to both
4 of the actions, this current action, as well as the
5 one she just had.

6 The last action, I have not -- quite frankly,
7 I don't have much knowledge about that other case,
8 other than understanding Bank of America was a
9 primary lienholder on the same piece of property.
10 I think SCBT initially filed a foreclosure action
11 in this case number upon realizing that Bank of
12 America had the first lienholder. That file
13 amended the foreclosure adding them confirming that
14 they took priority, so they converted this to a
15 suit on a note.

16 THE COURT: So is it the same property?

17 MR. MILLING: It was the same piece of
18 property, I believe. And then she subsequently,
19 I'm assuming, stopped making payments on that
20 account, and that is when they initiated the
21 foreclosure.

22 But we don't have -- other than being
23 identified because we filed this action, I think
24 SCBT also has a judgment against Ms. Meisner based
25 upon a guarantee of a note owed by Sand Dollar,

1 LLC.

2 MS. MEISNER: That was reversed and remanded
3 by the Court of Appeals. And the determination
4 hasn't been finalized.

5 MR. MILLING: I would disagree that it was
6 reversed and remanded. A portion of it has been
7 vacated because, based upon the Court of Appeals,
8 they determined that Judge Strickland didn't have
9 sufficient evidence in the record to award
10 attorney's fees. But everything else was affirmed.
11 I have got a copy of that case, Your Honor, if you
12 would like it.

13 THE COURT: If you can give me a copy.

14 MS. MEISNER: And, Your Honor, just -- this is
15 somewhat complicated, but in fact that is still
16 under appeal. And Judge Strickland does not want
17 to rule on the amount of damages.

18 And what happened in that case is, SCBT
19 foreclosed on two of the rental properties. I
20 brought one loan current. The other loan was not
21 current, but I told them that I would be able to do
22 that. I lost my job for about nine months.

23 And what happens with these banks is they all
24 have cross-defaulting clauses in them, so if you
25 get behind with one bank or if one bank initiates

1 foreclosure, then they all want to jump on the
2 bandwagon, so to speak.

3 In any event, those particular loans, there
4 still are outstanding questions on the judgments
5 because I was able to purchase those rental houses
6 back in a different LLC. The bank filed a motion
7 to vacate the sale claiming that the proper
8 valuation of the property was not what they bid at
9 the judicial sale. They bid \$10,000 on one
10 property and \$25,000 on another property, and then
11 proceeded to argue, because I was able to buy the
12 properties back in a different LLC, that the sale
13 should be vacated and the value of the property
14 should be the mortgage value.

15 It is a long and complicated story, but
16 basically Judge Strickland still has not ruled on
17 that because of the attorney fees question that was
18 vacated and remanded. So that still is not on
19 there.

20 There is a petition for certiorari to the
21 Supreme Court for the cross-application of
22 deficiency statutes with non deficiency statutes
23 based on the fact when SCBT initially filed the
24 lawsuit they filed a deficiency demanded action,
25 which meant that guarantors have certain rights and

1 processes like --

2 THE COURT: All right. Well, we are going to
3 get to this motion.

4 MS. MEISNER: Okay. I'm sorry, Your Honor. I
5 was just trying to be thorough because, you know,
6 at first glance it looks like that it is an easy
7 answer, but it is not a simple question. Those
8 liens are still in limbo, if you will.

9 THE COURT: All right.

10 MR. MILLING: Thank you, Your Honor. May it
11 please the Court?

12 Judge, as I alluded to earlier, this action
13 was initially filed on November 26th, 2013, as a
14 foreclosure. It was subsequently amended to add
15 Bank of America after observing that they had a
16 lien on the piece of property as well.

17 On May 29th of 2014, SCBT filed a second
18 amended summons and complaint which did not seek to
19 foreclose on this property, but rather only sought
20 to enforce their rights under a note in this case
21 that had been executed by Ms. Meisner.

22 Judge, Bank of America has been dismissed as a
23 party to this action by SCBT. There were
24 counterclaims and affirmative defenses which were
25 brought by Ms. Meisner as a part of her response to

1 our second amended complaint.

2 Judge, there were no cross-claims. There were
3 no third-party claims against Bank of America, or
4 anything like that. It was just the counterclaims.

5 Judge, we can go through each of the
6 counterclaims. There was estoppel, which was an
7 affirmative defense, which was raised. There was
8 unclean hands is another affirmative defense which
9 was raised. There were counterclaims of
10 declaratory judgment seeking to determine her
11 appraisal rights under the appraisal statute,
12 29-3-680; counterclaim for slander of title; and
13 the counterclaim for abuse of process.

14 Judge, I have attempted to address each of
15 these in my motion for summary judgment motion, as
16 well as judgment on the pleadings. I will go
17 through as briefly as I can hitting the highlights
18 of these basically, Judge.

19 Based upon what we know in this case and what
20 Ms. Meisner has admitted to in her deposition, she
21 acknowledges that there was a debt. She
22 acknowledges that she received \$50,000. She
23 acknowledges that she has not made payments to
24 bring the account current.

25 That is the sum and substance of what we would

1 move for summary judgment based upon our claims.

2 Judge, we looked at the affirmative defenses.
3 As you can tell from the last hour, Ms. Meisner is
4 a very intelligent person. She certainly had every
5 opportunity to read the documents that she executed
6 in this case under the note. The law of South
7 Carolina has long established that somebody has an
8 affirmative duty to read the documents, therefore
9 are bound by it.

10 Based upon that, based upon her opportunity to
11 read these documents, based upon the fact that she
12 does not qualify for estoppel, we are entitled to
13 judgment on the pleadings based upon that
14 affirmative defense.

15 Unclean hands is an equitable defense. This
16 is an action under the law. Therefore, based upon
17 the case that I cited in my motion, unclean hands
18 is not a valid affirmative defense in this case.

19 Her first counterclaim was one for declaratory
20 judgment. That has nothing to do with this suit on
21 a note right now. It is not ripe for adjudication.
22 We are not seeking to foreclose upon the property.
23 If she wants to bring that as a part of another
24 action in the foreclosure the U.S. Bank case is
25 going to want, that is up to her, but it has

1 nothing to do with this pending suit on a note.

2 Slander of title. That is outlined in my
3 motion. The filing of a lis pendens is absolutely
4 privileged. It is provided for by statute, Judge.
5 That is what was done in this case. It was done --
6 the lis pendens was filed with the initial
7 complaint in November of 2013. An amended lis
8 pendens was filed February 2014 when it was still a
9 foreclosure action. One was not included May 29th
10 when Judge Lee subsequently entered an order, I
11 believe in September 2014, vacating that lis
12 pendens because the foreclosure action was no
13 longer pending.

14 South Carolina recognizes that this is an
15 absolute privilege. It is not a valid
16 counterclaim.

17 The abuse of process, as I outlined in my
18 memorandum, there is insufficient even allegations
19 to sustain that.

20 Judge, based upon what I have outlined in my
21 motion, we are entitled to summary judgment and for
22 the counterclaims and affirmative defenses be
23 stricken, and judgment to be entered on behalf of
24 SCBT.

25 THE COURT: Yes, ma'am?

1 MS. MEISNER: May I give you the memorandum?

2 These are attachments with the 30(b)(6) deposition
3 of Mr. Boyd that are binding on the Court.

4 MR. MILLING: And, Judge, I received a copy
5 about 3:25 this afternoon.

6 THE COURT: All right. Yes, ma'am?

7 MS. MEISNER: And, Your Honor, just to kind of
8 give a recap of things. This case again was stayed
9 because part of the allegations in the complaint
10 are that SCBT did abuse the process. I think in my
11 memorandum it talks about what they did with the
12 Sand Dollar case. Those cases have not been
13 adjudicated as far as the liens-on the property,
14 but they did file those. And the Supreme Court has
15 been clear that when you file a lis pendens that is
16 not legal by law, even though it is a completely
17 privileged filing, if the underlying filing of the
18 lis pendens, because real property does create a
19 cause of action for abuse of process. The
20 Honorable Alison Lee did vacate that before.

21 But even before getting to the summary
22 judgment --

23 THE COURT: She denied it. She didn't vacate
24 it.

25 MS. MEISNER: She vacated the lis pendens, and

1 actually she granted a continuance.

2 MR. MILLING: She did dismiss the lis pendens
3 in September of '14.

4 MS. MEISNER: Yes. So she vacated it, but
5 they should have never had that on there. When
6 they changed from a mortgage foreclosure to a lis
7 pendens, a note, as Judge Lee recognized and ruled,
8 until a note has determined the amount, you cannot
9 attach that to real property. So we had a full
10 hearing in front of her, and she did vacate the lis
11 pendens.

12 Because that case was stayed -- and I think
13 that there was some confusion about when it was
14 re-added back to the court's docket thinking that
15 the appeal had been finalized, Judge Strickland has
16 never ruled on those actions, but because he
17 overruled, or reversed and remanded those
18 judgments, the amounts that were on the property
19 were erroneously placed on the property. So it is
20 not a matter of whether they were erroneous, it is
21 a matter of how erroneous they were.

22 And typically the Supreme Court has looked at
23 the damage to the property being the amount of the
24 defect. I think there was a case -- and I'm trying
25 to remember the case -- a woman had -- and a

1 husband owned a property and the husband went
2 behind the woman's back and got a mortgage on it,
3 and they said that that was improper by the bank
4 because the bank put a lis pendens on it. In any
5 event, that was not allowed.

6 In my recent -- once I realized that it was
7 back on the docket, I did file a motion and
8 memorandum of continuance to complete discovery and
9 for mandatory mediation.

10 Judge Lee did -- we had a meeting in her
11 chambers, and she did grant the continuance until
12 March.

13 The deposition for the 30(b)(6) deponent, the
14 30(b)(6) deponent was unprepared. And if you will
15 read his deposition, several of the things he had
16 no answers to.

17 He also was confused about a bank subsidiary
18 that actually collected accounts. I believe once
19 the discovery is over that they are going to be
20 liable for a wrongful foreclosure in this action as
21 well, because -- and I've got payments from 2013
22 that they did not --

23 THE COURT: I thought you all weren't seeking
24 foreclosure?

25 MR. MILLING: We're not.

1 MS. MEISNER: Your Honor, they changed it.
2 Their initial suit was a foreclosure, and when they
3 filed the foreclosure these payments showed that
4 the account was up to date. So they filed the
5 foreclosure action and then changed it to a suit on
6 the note, because they know that they can't do
7 that.

8 His comment about that I acknowledged that I
9 did not pay, the actual testimony in the deposition
10 was -- he said, Why did you stop making payments on
11 this account? And I said, Because you sued me.

12 And if you looked at the 30(b)(6) deponent,
13 they stopped applying the payments. In fact,
14 Mr. Boyd says -- first of all, he was confused what
15 happened. They apparently -- the bank had an
16 employee whose briefcase was stolen and my
17 information was in the briefcase. So the bank
18 assigned me a new loan number. And the loan number
19 was originally -- and I know you are not supposed
20 to give this -- last four digits 9857 -- no, 3989.
21 They assigned me a new loan number, which was 5987.
22 But they did not credit payments made and said that
23 I was in default. But I have got documentation of
24 the payments that were made.

25 And, in fact, Mr. Boyd, in their affidavit to

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1 the court, they said that no payments had been made
2 since July or August of 2013. But here is payments
3 in November, in August of 2013.

4 Mr. Boyd, in his deposition, I asked him, Have
5 you ever heard of Community Bank and Trust? Are
6 you aware --

7 I can't say that I have, was his answer.

8 Are you aware if they are affiliated with
9 South Carolina Bank and Trust in any way?

10 No, I'm not.

11 Could you identify the loan number?

12 And then he went through the loan number.

13 And I said, Did that loan number change at any
14 time?

15 Yes, I believe it did.

16 Can you tell me when that occurred?

17 I think it was August of 2013.

18 What was the previous account number?

19 I don't have it with me. And then he found
20 it.

21 Then he goes on to testify that -- Earlier you
22 testified that the last payment made on the
23 account -- can you refresh my memory?

24 August 14 of 2013.

25 And you said that in August of 2013 there was

1 a change in the account numbers; is that correct?

2 That's right.

3 How did you merge the information?

4 So it goes on. Anyway, the 30(b)(6) deponent
5 acknowledged that the account numbers changed in
6 August. I have documentation that payments were
7 made after that. And he also said -- he did
8 finally remember who Community Bank and Trust was.
9 And he did finally acknowledge -- well, he said he
10 couldn't answer the question today.

11 In any event, the 30(b)(6) deponent only got
12 his questions to prepare for his deposition one day
13 in advance of the deposition.

14 We went through the whole -- all of the
15 questions and answers, and he was unable to answer
16 many of the questions. But when he did go through
17 the answers, he did say that the bank just doesn't
18 have to credit the account. They can cash the
19 check, but they don't have to credit the account.
20 That is a paraphrase of mine. I can find the exact
21 quote.

22 This is contrary to South Carolina law. You
23 can't give a bank money and then cash your check
24 and then say, Oh, well, here, I am going to give it
25 back to you and I am going to pursue foreclosure.

1 That is not right.

2 MR. MILLING: Judge, she can't just throw out,
3 That is not South Carolina law. If she wants to
4 cite to a law, that is fine. But South Carolina
5 law does allow banks and lenders, if the account is
6 not brought current, to initiate foreclosure, to
7 initiate suits on an account.

8 And what I haven't heard from Ms. Meisner is
9 that she is still making payments.

10 MS. MEISNER: Your Honor, the testimony of the
11 30(b)(6) deponent will make it clear that it was
12 irrelevant for me to continue making payments
13 because once we were in litigation they weren't
14 keeping them, and they were sending payments back
15 to me in lump sum. They would send me \$3,000
16 checks.

17 THE COURT: They usually require you to pay in
18 full.

19 MS. MEISNER: I was already paid up. That is
20 what I'm saying. They did not credit the account.
21 I was not behind, according to my records. They
22 put an insurance policy on there. I had insurance.
23 A force to pay the policy is not allowed when you
24 have insurance. I told them I had insurance. They
25 didn't take it off. They had this bank that is one

1 of their affiliates receive payment and then say
2 they never got any payments. That is what his
3 affidavit said.

4 He also says -- Mr. Grimsley asked me in the
5 deposition, Why did you stop making payments?

6 If I'm going to give them a payment and they
7 are going to send me a check back, what point is
8 that? After it is in litigation, the breach of the
9 contract already happened again way before. And
10 the question is, Who breached the contract? I can
11 prove that I made payments. They can't prove that
12 they didn't -- that they -- what they can prove is
13 exactly what their 30(b)(6) deponent says: We took
14 the payments, but we don't have to apply them.

15 And it becomes a matter of accounting. And
16 what happens -- and, unfortunately, that is why
17 there are so many issues with foreclosure. When
18 one bank goes to a foreclosure, they all decide
19 that there is something going on and they are going
20 to get there first before somebody files for
21 bankruptcy, or something like that, and they don't
22 get their money.

23 THE COURT: All right.

24 MS. MEISNER: I mean, that is just the way it
25 is. But, in any event, Your Honor, we had an

1 agreement to resume the 30(b)(6) deposition because
2 Mr. Boyd was not prepared.

3 And, additionally, the bank did not answer any
4 interrogatories or requests for production from
5 2000 and -- that I sent them in 2014. The reason
6 for that is, I think both of us were -- and I know
7 Mr. Milling has just joined the case, what, a month
8 ago?

9 MR. MILLING: Maybe 45 days ago, Judge.

10 MS. MEISNER: So he has just joined the case.
11 He is the third attorney firm on this case. The
12 first attorney firm was Rogers, Townsend and
13 Thomas. And they were the actual people that were
14 involved -- they are still involved in the appeal
15 process for the liens that were placed on there
16 erroneously. Then Mr. Grimsley had it.

17 So during the time that Mr. Grimsley had it,
18 the case was stayed. And then all of a sudden it
19 was put back on the docket. But we never had the
20 discovery from the bank of all these documents of,
21 you know, when they received things.

22 I've got canceled checks and deposits from
23 their bank showing that payments were made. And
24 they -- other than them giving an affidavit which
25 conflicts with my payments and receipts, they have

1 not put forth any evidence that there was a breach
2 prior to them initiating the lawsuit.

3 And I think that I can prove that the loans
4 were up to date and they filed this maliciously
5 because they were mad that they got a lot of
6 attorney's fees based on the appeal from the other
7 thing that they can't get because, you know, when
8 you get to the appeals court it is \$1,000. That
9 is -- you know, if they don't agree with you, that
10 is the attorney's fees that are involved.

11 But this is simply a case of retribution.
12 They had no reason to do this to me. And, you
13 know, they just didn't. And if they are doing it
14 to me, they are doing it to a lot of other people
15 too, Your Honor.

16 THE COURT: All right. Thank you.
17 Reply?

18 MS. MEISNER: Your Honor, are you going to
19 entertain the motion to compel the discovery?

20 THE COURT: I don't -- what motion to compel?
21 It is not on my docket.

22 MS. MEISNER: We were going to mention that to
23 you.

24 MR. MILLING: Judge, if I can head this off at
25 the pass. There was a motion to compel which was

1 filed. I have gone back through the file. There
2 were discovery responses which were prepared by
3 Mr. Grimsley that were signed by Mr. Grimsley. I
4 have not been able to confirm that they were
5 served. I have got a copy I can give to her here
6 today, head that off.

7 THE COURT: All right.

8 MR. MILLING: Judge, I will try to be as brief
9 as I can.

10 The matter was not stayed because the other
11 action was appealed. These are separate. There is
12 no order of stay, or anything like that. I do not
13 believe that the appellate court rules would
14 provide that. It just happened to come up last
15 month. Ms. Meisner filed a motion to continue that
16 was granted until March, I believe. Nothing -- no
17 discovery was undertaken.

18 I do believe, in looking through Mr. Boyd's
19 deposition, that there was an agreement that if
20 Ms. Meisner tried to resume the deposition that
21 they would hold it open. Nothing was done in the
22 last year. The same agreement was included in
23 Ms. Meisner's deposition. Again, neither side
24 tried to undertake anything with regard to
25 participating in deposition.

1 If I had been made aware prior to the middle
2 of November that there was outstanding discovery,
3 you know, I think that it would have been produced
4 before now. But if we get back to the meat and
5 potatoes of the motion, there is no dispute as to
6 whether or not there was an agreement. There was
7 no dispute that she received the money. There was
8 no dispute that she stopped making payments.

9 She wants to argue why she stopped making
10 payments, but arguments are different from facts,
11 which is what is required at this stage of the
12 game. She is required to come forth with more than
13 mere allegations in her pleadings. We don't have
14 anything supporting that she has made payments,
15 that she has made payments to the court to keep the
16 account current, that she has the money in her bank
17 account right now to bring the account current.
18 She doesn't dispute that she stopped making
19 payments. And that is really what gets us to where
20 we are today.

21 Judge, I have outlined in my motion why each
22 of these affirmative defenses and counterclaims are
23 invalid as a matter of law. We would just ask you
24 to enter judgment for SCBT.

25 MS. MEISNER: Your Honor, again, he is putting

1 the cart before the horse. Once it is in the legal
2 system -- he has already brought us here. I have
3 already been damaged. This foreclosure action and
4 then the change to the suit on the note, this is
5 the damages that result from that.

6 He -- you can't make payments on an account
7 and the bank just decide not to apply them. That
8 is not allowed. And they have brought forth no
9 evidence.

10 In fact, Mr. Boyd in his deposition
11 acknowledged that he had no idea whether they were
12 applied or not. And he was shown payments that he
13 said, Yes, that is the same -- let me find it in
14 here. It is in there. He acknowledged that
15 payments were made to Community Bank and Trust. He
16 acknowledged that the account numbers were the same
17 as SCBT.

18 This is not a case that should be granted
19 summary judgment. In addition, under South
20 Carolina's pleadings standard, this is a common law
21 and state law claim of foreclosure. There are no
22 federal issues. And --

23 THE COURT: This is not a foreclosure action.

24 MS. MEISNER: It is a suit on the note, so it
25 is a legal claim, but it is a common law suit on

1 the note, so it is not a federal -- it does not
2 raise to the Iqbal and Twombly pleading standards,
3 because here a preponderance of the evidence is
4 there.

5 South Carolina requires only a scintilla of
6 evidence for non federal claims to defeat summary
7 judgment. South Carolina has bifurcated the level
8 of evidence needed to defeat summary judgment. And
9 this was Hancock v. Mid-South Management, Opinion
10 26587, of 2009.

11 The fact that the bank had filed pleadings
12 with this court and they said that they did not
13 receive payments that their 30(b)(6) bank deponent
14 acknowledged that they did receive makes this
15 impossible.

16 Now, you know, after we finish discovery --
17 that is another thing. Discovery is not complete.
18 He acknowledged that it is not complete. He has
19 been here for 45 days. And while he says that the
20 case was not stayed, when you look up the case
21 status on the Richland County courthouse, the
22 acknowledgment beside it was "stayed." That is
23 what it said.

24 And I'm sure that there is a computer person
25 here in the courthouse that can look back and find

1 that. That is not something that you -- just
2 somehow gets put on your computer if there wasn't
3 some order or something somewhere.

4 The other thing, Your Honor, he is -- and I
5 say "he." I should say SCBT is confusing the two
6 different causes of action for slander of title.
7 Slander of title is not actionable as a pleading
8 for a defective pleading standard, which the
9 Supreme Court acknowledged. However, it is -- it
10 is a viable claim when you file a lis pendens --
11 when you file a lis pendens and there is no legal
12 right or legal authority to add that to the
13 property.

14 And that is exactly what happened when
15 Mr. Grimsley and Judge Lee acknowledged this. She
16 said, Sure. If it was a mortgage foreclosure
17 action, it is completely privileged. But this is a
18 suit on the note. You didn't remove it.
19 Twenty-one days -- twenty days you have when you
20 file a mortgage foreclosure to actually institute
21 the action or the lis pendens becomes void.

22 Because they did this in reverse, they filed a
23 lis pendens and then changed the action to a suit
24 on a note. Had they filed a suit on a note, the
25 lis pendens would have never been proper. And they

1 did not remove the lis pendens. Therefore, that
2 overstay is a defect in the file of the title,
3 which is actually why there is South Carolina.

4 The abuse of process part, which is the claim
5 that is in there, has been recognized, although
6 there are two causes of action that South Carolina
7 recognizes on the abuse of process or malicious
8 prosecution based on a title -- an erroneous lien,
9 because they are privileged.

10 If it turns out -- and he thinks that there is
11 no material fact. The fact that the bank gave an
12 affidavit to this court and said, We haven't
13 received any payments, and their 30(b)(6) deponent,
14 making binding representations from the bank, said,
15 Oh, we didn't know about those payments. That
16 precludes summary judgment.

17 So I would ask Your Honor to require the bank
18 to finish the -- or to participate at all in
19 discovery and also to resume the 30(b)(6)
20 deposition of Mr. Boyd.

21 And I do think that you can look back and see
22 that I am being truthful about that this was
23 stayed. It had on the case name and it said
24 "stayed."

25 THE COURT: All right. All right.

1 MR. MILLING: Judge, the only thing that I
2 will say is going back and looking at the discovery
3 responses I am about to tender to Ms. Meisner, they
4 don't have anything to do that would defeat our
5 summary judgment motion in this case.

6 The first one requests -- I'm happy to make a
7 copy of these as a part of record, if Your Honor
8 would like, just for consideration.

9 Explain in detail the relationship between
10 SCBT N.A. and SCBT. That doesn't have anything to
11 do with what her request is.

12 Describe in detail each and every factual
13 basis for your contention that it is merely a
14 distinctive accompaniment.

15 The phone number and address of people who
16 have communicated about any claims, whether
17 written, oral, or communications or further
18 statements been requested or taken related to any
19 affirmative defenses or request for statements of
20 agents, investigators, subcontractors of SCBT.

21 And then we get to documents requested
22 detailing the transfer of ownership between the two
23 entities. Documents related to Sand Dollar, which
24 is the other entity. E-mails between Rhonda
25 Meisner or have Rhonda Meisner's name in there.

1 Judge, these just don't have anything to do
2 with whether or not she paid her debt.

3 MS. MEISNER: And, Your Honor, you know, I
4 would disagree that --

5 THE COURT: All right. I know you disagree.
6 I have heard enough.

7 All right, thank you.

8 MS. MEISNER: Your Honor, may I say one other
9 thing?

10 THE COURT: No, ma'am.

11 All right. I have your memos. I have allowed
12 you all to proceed, him to present the motion and
13 you to respond, him to respond, you to respond
14 again, and respond again. So I think I have heard
15 enough.

16 Thank you.

17 MR. MILLING: Thank you, Your Honor.

18 MS. MEISNER: Thank you, Your Honor.

19 MR. MILLING: Judge, if you could, just for
20 the court reporter, make sure that I am providing a
21 copy of these to Ms. Meisner.

22 MS. MEISNER: Your Honor, can I give you this
23 motion to compel their discovery that was filed on
24 November 12th?

25 THE COURT: It is already in the file.

1 MS. MEISNER: Oh, okay.

2 THE COURT: And he apparently has given you
3 the documents. So at this point it is moot if he
4 is going to give you the documents today.

5 MS. MEISNER: Well, Your Honor, I haven't had
6 a chance to look at what he has given me. The
7 30(b)(6) deponent said that --

8 MR. MILLING: Would you acknowledge, please,
9 that you received a copy of it?

10 MS. MEISNER: Well, I am acknowledging I
11 received what you just gave me, but --

12 MR. MILLING: If you can identify the
13 document, please, just so the record is clear.

14 MS. MEISNER: Okay. It says, Plaintiff's
15 First Set of Interrogatories and Requests for
16 Production. But there is nothing produced.

17 MR. MILLING: I beg your pardon?

18 MS. MEISNER: There is nothing produced. The
19 request for production asks for e-mails. So there
20 is no e-mails in there.

21 MR. MILLING: Judge, we can do that at a later
22 date.

23 THE COURT: All right.

24 MS. MEISNER: Your Honor, I feel somewhat -- a
25 little bit railroaded, because this case was

1 stayed, and they put it back on the docket. Judge
2 Lee did grant a continuance. And we -- you know,
3 -- some of the things that I have asked for, they
4 have not -- these are all Secretary of State
5 filings, they are things that I already have. Here
6 is a Certificate of Existence for SCBT. And --

7 THE COURT: What you need to do, ma'am, is
8 review the documents. And if they are not
9 complete, then you will need to file something with
10 the court. But I have to be able to, just as she
11 did earlier, have to be able to say where the
12 documents are lacking or what has not been
13 answered. You have to send him a letter, give him
14 an opportunity to cure it. If he does not, then
15 you have to file a motion to -- another motion to
16 compel at that time.

17 MS. MEISNER: Yes, ma'am.

18 THE COURT: But he -- but the Court has to
19 have some detail as to what it is he did not answer
20 and if, in fact, me or another judge is going to
21 order him to respond to it. So you almost have to
22 go through and list right now what is lacking or
23 deficient and then send an e-mail and give him an
24 opportunity to respond. If he does not respond,
25 then you have to come back before the Court. That

1 is the proper way to handle it.

2 MS. MEISNER: Yes, ma'am, I will do that.

3 THE COURT: And I understand you just got them
4 today. That is why it is almost impossible to do
5 that.

6 MS. MEISNER: Well, and I wasn't trying to be
7 hard to get along with, it is just I don't find
8 these to be responsive at all.

9 THE COURT: All right.

10 MS. MEISNER: But, in any event, Your Honor,
11 if it is possible, I did not enter any of the
12 payments into the record with the -- I think that
13 the 30(b)(6) deponent's deposition testimony should
14 be adequate, but if you do require either
15 additional pleadings, I would just ask that you
16 would allow me to either amend the pleadings that
17 you find deficient. I think that they are
18 adequate, but --

19 THE COURT: You mean -- you have to make a
20 motion to amend.

21 MS. MEISNER: Well, that is what I'm doing.
22 He had a motion to strike my counterclaim. I feel
23 like that the pleadings were sufficient to not
24 allow the strike of the counterclaim. However, if
25 Your Honor finds them deficient, I would ask to be

1 given the opportunity to, you know, provide the
2 Court with amended pleadings to make those
3 sufficient.

4 THE COURT: You would have to file a motion to
5 amend your counterclaim is the appropriate way to
6 do that.

7 MS. MEISNER: All right, yes, ma'am.

8 THE COURT: All right, thank you.

9 MS. MEISNER: Thank you, Your Honor.

10 MR. MILLING: Thank you, Your Honor.

11 (WHEREUPON, the proceedings were concluded.)
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(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 16th day of December, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 13, 2016

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) COURT OF COMMON PLEAS
2014-CP-40-02063

U.S. Bank N.A.,)
Plaintiff,)
vs.) TRANSCRIPT OF RECORD
Rhonda Lewis Meisner,)
Defendant.)

July 10, 2014
Columbia, South Carolina

B E F O R E:
THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

A P P E A R A N C E S:
MAGALIE ARCURE, ESQ.
Attorney for the Plaintiff
RHONDA LEWIS MEISNER, PRO SE
Appearing for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

JUNE 10, 2014

THE COURT: All right. So U.S. Bank N.A. v. Rhonda Lewis Meisner.

And you are Ms. Vlake? Van Vlake?

MS. ARCURE: Ms. Arcure.

THE COURT: What is it?

MS. ARCURE: Magalie Arcure.

THE COURT: Can you spell that for me?

MS. ARCURE: M-A-G-A-L-I-E. And the last name is A-R-C-U-R-E.

THE COURT: And you are Ms., is it Meisner?

MS. MEISNER: Yes, ma'am.

THE COURT: And this is a motion that has been filed by Ms. Meisner; is that correct?

MS. MEISNER: Yes, ma'am. And that's -- yes.

THE COURT: And it is a motion to --

MS. MEISNER: To dismiss and/or join. And in the motion I inadvertently did a motion on a 12(b)(8) and (b)(9), but what I meant was a 12(b)(7) and (b)(8), the (b)(7) in reference to Rule 19.

THE COURT: All right, yes, ma'am, I will be glad to hear from you.

MS. MEISNER: Okay. Initially, I will just give you a little bit of history with regard to the

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1 parties in this case.

2 This particular mortgage and note is
3 presumably held by U.S. Bank and Trust, the actual
4 Plaintiff in the action that is being requested to
5 dismiss and/or join them to a previous action.

6 That mortgage and trust was initially given to
7 Bank of America. And they have been the owner of
8 such for -- since 2003.

9 They sold it at some point and/or changed the
10 servicing rights at some point. So currently in
11 question is who actually owns it, because Bank of
12 America, in their response, or their reply, to
13 SCBT, which is a junior lienholder, foreclosure
14 action, said that they have an interest in that
15 note, that particular note and mortgage as well.

16 So starting with U.S. Bank -- well, actually
17 SCBT's action. They filed in November an action
18 for mortgage foreclosure. That action included a
19 previous -- some previous liens that are now in the
20 Court of Appeals, which they have not ruled on. So
21 I replied to that action -- well, I didn't know
22 about that action because they actually served
23 me -- the service was improper. So they refiled.
24 They got a new set of attorneys because they
25 recognized that there was a conflict of interest

1 with the attorneys representing the Court of
2 Appeals action and this action. So they did a
3 transfer to a new group of attorneys. They refiled
4 the mortgage foreclosure. And in refiling the
5 mortgage foreclosure, the lis pendens, they redid
6 the previous judgments that are not available to
7 them to add to this action.

8 In the mortgage foreclosure they also
9 identified as a Defendant Bank of America, who is
10 the superior lienholder, or at the time of the
11 action was the superior lienholder.

12 Bank of America at some point, and the
13 timeline is unclear, which is why it is important
14 that U.S. Bank be joined to this action as opposed
15 to initiating a new action, and I will go over
16 that.

17 THE COURT: And that is what I'm confused
18 about. U.S., they are not a -- they are the
19 Plaintiff, is that --

20 MS. ARCURE: Yes.

21 MS. MEISNER: Yes, ma'am. So what happened is
22 this. I apologize, Magalie, I think you probably
23 were going to try to -- what happened is this.
24 SCBT filed a mortgage foreclosure action as a
25 junior lienholder. As such, according to the Rules

1 of Civil Procedure -- and I can find that for
2 you -- a second lienholder can file for foreclosure
3 with a prior mortgage redemption under South
4 Carolina annotated 29-320. So their foreclosure
5 action was subject to the superior lien.

6 They filed that action, notified Bank of
7 America about the lawsuit. Bank of America
8 defaulted by not responding in the 30-day time
9 period.

10 In my response, which was timely, I said that
11 there were issues with the Bank of America
12 servicing agreement because of a dispute between
13 property taxes. What happened is I did not pay the
14 property taxes exactly on the date due. And so
15 they instituted an escrow account. That escrow
16 account then paid the property taxes, but I had
17 paid the property taxes too, so there was an issue
18 with the servicing on that account.

19 I'm giving you a little bit of minutia only so
20 you understand that because of the question with
21 what U.S. Bank actually acquired is at issue. You
22 know, whenever you acquire anything you acquire
23 only what they have to give. And Bank of
24 America -- we were in dispute. They changed their
25 servicing person. They have been automatically

1 debiting their payments out of my checking account
2 since the inception of the loan. There had never
3 been a break. But then they changed their
4 servicing without notification, without the notice
5 that is required under the Dodd-Frank Act, which
6 came into effect in 2010 and specifically
7 references the secure type trust loan.

8 The reason for that is, Number One, to have
9 some continuity about the way the secure possession
10 works from the standpoint of pooling in servicing
11 agreements when these loans are sold as a trust so
12 that exactly what is before Your Honor today
13 doesn't happen, so that Bank of America is still
14 claiming an interest in the note and mortgage via
15 their answer and U.S. Bank is saying, No, we're
16 going to file a lawsuit, we don't care that our
17 previous predecessor in the mortgage and note
18 are -- you know, defaulted and didn't answer. By
19 doing this we can circumvent and gain -- regain
20 rights lost by the predecessor in servicing.

21 THE COURT: All right. So help me out here.
22 So I'm confused because you say you are trying to
23 join U.S. Bank National Association. Who are you
24 trying to dismiss?

25 MS. MEISNER: I'm trying to dismiss them.

1 They want to join, or if Your Honor feels it
2 appropriate for them to join the other lawsuit by
3 their predecessor in title and their predecessor in
4 servicing, Bank of America, then they can certainly
5 do that. But right now, even -- and I do have an
6 exhibit to show you, if I may?

7 THE COURT: All right. Let me hear from you
8 real quick.

9 MS. ARCURE: Thank you, Your Honor.

10 U.S. Bank is a successor in interest to Bank
11 of America, and they hold a first position, first
12 money mortgage.

13 The assignment of mortgage from Bank of
14 America to U.S. Bank was recorded on April 2nd of
15 2014. So at the time that South Carolina Bank and
16 Trust, who holds a second mortgage, brought their
17 foreclosure action against Ms. Meisner, they named
18 Bank of America because of their first position
19 mortgage, but because Bank of America's mortgage
20 would be unaffected by that foreclosure of the
21 second mortgage, they were dismissed as a party.
22 They are not a necessary party. And now that a
23 separate proceeding has been brought by Bank of
24 America, successor in interest, to foreclose its
25 lien, Bank of America -- excuse me, U.S. Bank has

1 named all necessary parties, including the SCBT.
2 And a dismissal under Rule 12(b) would require
3 identity of the parties and identity of the
4 claimants, neither of which are present here. U.S.
5 Bank was not a necessary party in the other
6 foreclosure action, and that is why they have been
7 dismissed. And even if they were a necessary
8 party, the facts and circumstances giving rise to
9 the South Carolina Bank and Trust claims are wholly
10 distinct from those that are at issue in this
11 foreclosure action. They are a different
12 instrument. And so that leaves the motion to be
13 dismissed.

14 THE COURT: All right. Yes, ma'am?

15 MS. MEISNER: Your Honor, if you look back at
16 the timeline, again, we talked about, you know,
17 when things happened and when things are
18 transferred in and out. And I was going to give
19 you an exhibit that --

20 THE COURT: I will be glad to look at it.

21 MS. MEISNER: Okay. Thank you. This is
22 actually -- and I am making a motion that -- they
23 may not -- U.S. Bank may not have the ability to
24 even proceed with this. And the reason is because
25 the corporate assignment of their mortgage is

1 defective. So that is another reason to dismiss
2 this case.

3 THE COURT: All right. Is that filed with the
4 court today? Because I can't hear it if it is not
5 filed today. Have you filed a motion and served
6 them with a copy of that motion?

7 MS. MEISNER: Yes, ma'am. I have filed the
8 motion with the court.

9 MS. ARCURE: The only motion that we have been
10 served with is a motion to dismiss under Rule
11 12(b)(8).

12 THE COURT: Yes, you just made another motion.

13 MS. MEISNER: Well, yes. Well, Your Honor, in
14 looking at the actual date -- and I'll give you
15 this information -- let me hand this to you. This
16 is a copy of their assignment. It was listed as
17 Exhibit 1 in my memorandum to do -- and I think
18 that the memorandum did reference what has been
19 filed with the court and actually in the record of
20 the court. And if you look at that, they do the
21 transfer the day before they actually did the
22 notarization of that transfer. So the transfer
23 happened -- if you look down under corporate
24 assignment of mortgage, it says: Date of
25 assignment, April 2nd, 2014, Bank of America as

1 attorney in fact. And then she writes 4/3/2014 in
2 two separate places. So the notarization of the
3 assignment is separate.

4 Also this happened, as I mentioned in the
5 memorandum in support of the dismissal, this
6 happened in Nebraska, and then the previous
7 assignment was in California. So basically these
8 assignments are going all over the country. And I
9 don't think that that is an effective assignment
10 with a notary that notarizes something that
11 occurred the day before. You know, it could be
12 just a scrivener's error where, you know, they say,
13 Oh, we made a mistake, we didn't -- we meant the
14 2nd. But that is not what it is in the court
15 record.

16 Before we even address that portion, getting
17 back to the timeline that I was talking about
18 earlier, SCBT filed a lis pendens back in November.
19 Even though that lis pendens was absolutely
20 inaccurate -- and I actually am current on that
21 loan. It is a long story. I claimed abuse of
22 process with the way that they -- they are
23 basically trying to get the liens that were in the
24 Court of Appeals actually effected prior to a
25 decision by the Court of Appeals. So I've made a

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1 motion for a hearing on that particular decision.
2 But, they filed that in November. So Bank of
3 America knew about the lis pendens back in
4 November, even though they were not served as a
5 party.

6 In February of this year they actually were
7 made a party as a Defendant, February 19th. So in
8 February they were served. They had until, at the
9 earliest, the end of March to respond to that.
10 They did not respond to that.

11 In my response, I actually made counterclaims
12 for a couple of things which are in the contract,
13 the initial contract, which Ms. Arcure's clients
14 have acquired via their transfer of either and/or
15 servicing rights or ownership of that note and
16 mortgage.

17 Those counterclaims -- while SCBT can dismiss
18 them in the action and refile their thing as a suit
19 on note, they can't -- and I'm objecting to that
20 too, because what they are attempting to do is
21 basically give Bank of America the opportunity to
22 redeem their default via the U.S. Bank filing their
23 motion -- filing their action. But they can
24 only -- U.S. Bank can only get from Bank of America
25 what they have to give. And the default Defendant,

1 whether it is a counterclaim or any other claim,
2 once they are a default Defendant, their voice is
3 silent before the court.

4 In my counterclaim, I specifically asked for a
5 declaratory judgment based on the right that the
6 mortgage and the note that SCBT was seeking to
7 enforce, that declaratory judgment would affect
8 U.S. Bank's ability to do anything as a superior
9 lienholder. Basically SCBT would in effect have to
10 pay their loan, but because of the legal
11 counterclaim, the U.S. Supreme Court has said that
12 you have to resolve legal counterclaims prior to
13 equitable claims.

14 In this situation, SCBT is doing two things.
15 They are creating a war on three fronts for me,
16 which, you know, going over judicial economy,
17 because of some of the claims against Bank of
18 America with regard to their servicing prior to --
19 via the Dodd-Frank Act as well as SCBT attempting
20 to collect these liens, all of those are legal
21 issues.

22 The other thing that Ms. Arcure has done in
23 her brief is, there are several things that each of
24 the parties have waived and several things that
25 each of the parties is demanding.

1 For example, Ms. Arcure in her suit, or U.S.
2 Bank is saying that they want to have a
3 receivership for rent. Well, Bank of America in
4 their answer did not request that, even though
5 their answer was late. So even if they would have
6 requested it, it would have been untimely because
7 their voice was silent as to the default.

8 So now they have asserted new claims. I, in
9 my declaratory judgment request, asked for the
10 appraisal rights pursuant to the statute for
11 appraisal rights. And, I'm sorry, I don't have
12 that statute now. But in the counterclaim to the
13 initial SCBT action, I requested appraisal rights
14 which would affect the price of the property and
15 any ability for deficiency.

16 U.S. Bank has not asked for a deficiency,
17 mainly because the note that went in there is
18 potentially owned by Fannie Mae, Freddie Mack, that
19 was reassigned to Bank of America in an unknown
20 note, but if it went into the securitization trust
21 prior to the transfer of that loan, then it is
22 still under that. So they don't ask for a
23 deficiency. But SCBT has asked for a deficiency.

24 Now that all of this has gone on, SCBT wants
25 to say, Okay, Bank of America, we're going to give

1 you a pass because we're going to eliminate our
2 claims against you, our legal and equitable claims
3 against you. But they can't eliminate my legal and
4 equitable claims against Bank of America.

5 And Ms. Arcure's assumption of those issues
6 can't be dismissed by bringing a new suit. I mean,
7 she can't just resurrect, you know, all of the
8 benefits of being a new Plaintiff by ignoring a
9 default status of the previous predecessor.

10 So going back to what we talked about, Bank of
11 America is in default at the end of March, but my
12 answer and counterclaim against both Bank of
13 America and SCBT were served. Bank of America
14 filed their answer. And in their amended complaint
15 on April 4th, they still -- they say that they do
16 have rights at Paragraph, I think Paragraph 8,
17 right to the mortgage and the note that U.S. Bank
18 is now starting a new action on.

19 THE COURT: All right.

20 MS. MEISNER: So they both can't have rights
21 to the same mortgage and note. And, again --

22 THE COURT: All right.

23 MS. MEISNER: Sorry.

24 THE COURT: That's fine. All right. Yes,
25 ma'am. I will give her an opportunity to respond.

1 MS. ARCURE: Just simply that the foreclosure
2 in South Carolina Bank and Trust junior mortgage
3 does not affect whatsoever the first lien position
4 mortgage. They are not a necessary party. Whether
5 they were named as defaulted or weren't named is
6 irrelevant when there was a different loan
7 instrument. And there is simply no basis to
8 dismiss the action based on 12(b)(8). It is not a
9 requirement of identity of the parties or identity
10 of the claimants present.

11 And that is all I have, Your Honor. If it
12 convenient, I did print out the index for the South
13 Carolina Bank and Trust foreclosure action which
14 shows that they filed an amended complaint back in
15 February and Bank of America answered. And then in
16 April they were dismissed as a party.

17 THE COURT: All right. So, just so I'm clear,
18 U.S. Bank has the first lien?

19 MS. ARCURE: Yes.

20 THE COURT: Or mortgage?

21 MS. ARCURE: Not on the property being
22 foreclosed by South Carolina Bank and Trust. That
23 is the position. In their foreclosure action they
24 don't challenge the validity or priority of Bank of
25 America, now U.S. Bank's, first mortgage.

1 THE COURT: All right. And that issue is
2 before the Court of Appeals?

3 MS. ARCURE: No, not to my knowledge. I think
4 what Ms. Meisner is referring to -- and please
5 correct me if I'm wrong -- is that there are other
6 foreclosure actions which proceeded to judgment
7 which she has appealed, and those are pending in
8 the Court of Appeals. And to the extent that those
9 are judgments and those entities may have claims
10 against -- in property and interest in said
11 property as a judgment creditor, that would affect
12 whether or not they be named as a party. That is
13 not before the court today.

14 MS. MEISNER: And, Your Honor, that is
15 actually part of my claim against the abuse of
16 process because the foreign judgment --

17 THE COURT: Well, that is not before me today.

18 MS. MEISNER: Well, it is indirectly because
19 that is the counterclaim against Bank of America
20 and SCBT, which, again, is her predecessor in
21 servicing and in right to this thing.

22 They can't both -- and one of the things that
23 they -- and I know that this was just a mistake,
24 but in the return to dismiss she said that this
25 property is located in Horry County, but we know

1 that is not the case.

2 But Rule 12(b)(7) specifically gives the
3 authority to join parties to an action that are
4 necessary. And it is my supposition that Bank of
5 America is the -- was the correct party when they
6 defaulted. And according to the transfers, U.S.
7 Bank purportedly has owned the loan for longer than
8 this April because they can't receive the mortgage
9 and the note at the same time they foreclose.

10 And there is a case that -- it basically says
11 when you get something, you need to notify people
12 so that the proper parties are sued in the first
13 place, or the proper parties are joined in the
14 first place. U.S. Bank did not do that. Had they
15 filed their mortgage transfers, foreclosure note,
16 whatever, at the time that they actually assumed
17 the note and the mortgage, which at this state we
18 don't know what the date is other than the
19 erroneous declaration and corporate assignment of
20 mortgage. Well, the contradictory assignment of
21 mortgage on the 2nd, and then the notarization on
22 the 3rd. We don't know what that date is, but we
23 know that it was before April because they filed
24 their motion after that.

25 Because there are several substantive claims,

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1 such as the right to appraisal, the appraisal
2 statute, the right to a jury trial on the legal and
3 claims that preceded that, the Bank of America, as
4 well as the SCBT, the jury waivers that are noticed
5 in the mortgage to Bank of America that were
6 assumed by U.S. Bank, the contract interpretation
7 between Bank of America that U.S. Bank assumed.

8 Now, Ms. Arcure went over some of the
9 compulsory -- and whether a counterclaim is
10 compulsory or not.

11 A declaratory judgment with regard to what is
12 going to happen in the foreclosure of a junior
13 lienholder to the respective rights of the notice
14 and parties is compulsory if it arises out of the
15 same transaction.

16 They were notified as a Defendant in the same
17 transaction while the origination of the loan is
18 not what is in question, it is the foreclosure,
19 that is the transaction.

20 THE COURT: I hate to cut you off, but, ma'am,
21 I have to stick to the issue that is before me
22 today. The other case is not before me, and so it
23 is my understanding -- and your position is that
24 Bank of America was the original lienholder and
25 that your case should be dismissed because -- U.S.

1 should be dismissed because of the assignment and
2 when the assignment occurred and that Bank of
3 America is the true person that is the lienholder.
4 Is that your position for purposes of this hearing
5 today?

6 MS. MEISNER: For purposes of this hearing,
7 because some of the legal and equitable questions
8 have merged with Bank of America and U.S. Bank as
9 the acquirer of Bank of America, this action should
10 be dismissed against U.S. Bank for two reasons.
11 For two -- you know, the faulty assignment, Number
12 One; and, Number Two, the fact that they are
13 seeking to gain additional substantial rights that
14 Bank of America has already waived in their
15 default. So they can't get rights that Bank of
16 America no longer has assigned to them.

17 THE COURT: Okay. Thank you.

18 MS. MEISNER: And, Your Honor, may I say one
19 other thing? The Supreme Court did look at whether
20 a counterclaim is compulsory or not in Wells Fargo
21 Bank v. Smith. And because the counterclaims that
22 I raised earlier are compulsory defense
23 counterclaims, Bank of America should have
24 responded to those counterclaims. And they were
25 notified of this hearing today. And they could

1 have shown up. But they did not.

2 THE COURT: All right. Thank you. All right,
3 I'll get something to you all. Thank you.

4 MS. MEISNER: Did you want these other
5 exhibits that I had of the transfer from Bank of
6 America in too? Because they transferred in and
7 out of Bank of America in March and in April and
8 their default was in February.

9 THE COURT: You gave me the corporate
10 assignment, Exhibit 1?

11 MS. MEISNER: Exhibit 1. There is also
12 Exhibit 2 and --

13 THE COURT: I'll take a look at it.

14 MS. MEISNER: And also the mortgages. So
15 you'll make this part of the record?

16 MS. ARCURE: To the extent that it helps to
17 clarify, Bank of America no longer has any interest
18 in this property. They assigned their entire
19 interest in the form of a note and mortgage to U.S.
20 Bank in an assignment of mortgage. It is not
21 required, but one was done nonetheless. U.S. Bank
22 is the holder of the original note and mortgage,
23 which I have with me today. To the extent that the
24 motion did incorporate elements of the motion to
25 dismiss, based on my understanding they should also

1 be denied.

2 THE COURT: All right, ma'am, you can make
3 that a part of the record.

4 MS. MEISNER: All right. And, Your Honor,
5 just so you are aware, Bank of America in their
6 answer to SCBT, even though it was late, they did
7 claim an interest in the property in the note and
8 the mortgage. So they claimed an ownership
9 interest. It is exactly what you are hearing in
10 the news about multiple banks claiming the same
11 ownership and same interest in the same note and
12 mortgage, which is why they should be joined with
13 the original suit so that they can -- so to fully
14 litigate the issues of the rights between the
15 parties, and so forth.

16 THE COURT: All right. Thank you.

17 MS. ARCURE: Thank you.

18 THE COURT: All right, we will make that as a
19 part of the record. Hand those to the court
20 reporter.

21 MS. MEISNER: Yes, ma'am. It is Exhibit 2,
22 which is the assignment from U.S. Bank and Bank of
23 America. Again, another assignment in and out.
24 And the actual mortgage that is a question as to
25 legal issues that are involved. And also the

1 previous mortgage which Bank of America did not
2 satisfy. So that is another one of the legal
3 claims that again involve Bank of America.

4 THE COURT: All right. And you can make those
5 part of the record. Thank you.

6 (WHEREUPON, Defendant's Exhibit Nos. 1 -
7 4 were marked for identification and
8 received into evidence.)

9 THE COURT: All right, thank you.

10 (WHEREUPON, the proceedings were concluded.)
11
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13
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15
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17
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19
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21
22

23 (END OF TRANSCRIPT)
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

}
}
}

I, Deborah M. McCurdy, Official Court Reporter for the Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 10th day of June, 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 11, 2016

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable DeAndrea Gist Benjamin, District Court Judge

Case No. 2014-CP-40-2063

U.S. BANK, N.A. as trustees
for the holders of the Banc of
America Funding Corporation
Trust, 2008-FT1, Mortgage
passthrough certificates 2008-
FT1

Respondent,

v.

Rhonda Meisner, Bank of
America, N.A., SCBT

Respondent.

NOTICE OF APPEAL

Rhonda Meisner appeals the Order of the Honorable DeAndrea Gist Benjamin dated April 13, 2016. The appellant received notice of the Order on April 15, 2016. The filing of this notice of appeal is within 30 days of notice of the filing of the Order.

May 12, 2016

Rhonda Meisner
Post Office Box 689
Columbia, South Carolina 29016
(803) 206-3402
pegasus333@icloud.com

RECEIVED
MAY 12 2016
SC Court of Appeals

2016 MAY 12 PM 3:47

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and SCBT

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-2063

MOTION TO DISMISS PURSUANT TO
S.C. RULES OF CIV. P. RULE 12(b)(8) and
Rule 12(b)(9)

RICHLAND COUNTY
FILED
JANETTE W. MCBRIDE
CLERK
MAY - 6 AM 10:14
C.C.P. & G.S.

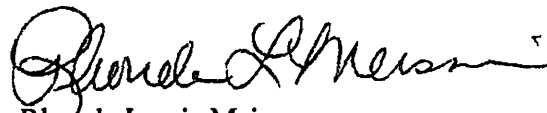
The Defendant Rhonda Lewis Meisner moves for dismissal of the above referenced case Docket No. 2014-CP-40-2063 pursuant to S.C. Code Ann. Rule 12(b)(8)(9). The Plaintiff's were on notice of the pending litigation via the filing of the lis pendens and the summons and complaint via Court filings and acknowledged the existence of SCBT's loans by naming them as a co-defendant. Additionally, Bank of America, the previous servicer of the loan was notified by SCBT that an action was initiated and assigned a case # of C.A. 2013-CP-40-7144 according to SCBT Court filings and certificates of service of the action initiated and should have responded to the Summons and Complaint initiated by SCBT in a timely fashion. The Plaintiff's did not reply/respond to the Summons and Complaint issued by SCBT in a timely way; therefore, the above referenced suit should be dismissed as it is an attempt to circumvent process.

The Plaintiff's in the instant suit had notice and did not respond to the summons and complaint initiated by SCBT. The Plaintiff's have caused additional costs to Defendant due to their negligence in attempting to prosecute the new claims submitted in this filing instead of responding to the previously filed suit and as a result has harmed Defendant. Instead of responding to the lawsuit that named the previous servicer on file, the Plaintiff's are attempting

to circumvent their lack of response to the original litigation and garner additional benefits by initiating this action. Plaintiff's would have been aware of the litigation had they been diligent in their review of the lis pendens and property search prior to filing this original action as it involves the same property.

In support of the motion the Defendant Rhonda Meisner will rely on the Court filings, applicable statutory and case law and a memorandum of law that will be filed with the Court prior to a hearing on this motion.

Respectfully Submitted,



Rhonda Lewis Meisner
Post office Box 689
Blythewood, SC 29016
pegasus333@icloud.com
pegasus@nuvox.net
(803)960-3696

May 6, 2014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI Trust, Mortgage pass
Through Certificates, Series 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner; Bank of America, N.A.; and SCBT

Defendants

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2014-CP-40-2063

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS ABOVE ENTITLED
ACTION PURSUANT TO S.C.RULES. OF
CIV. P. 12(b)(8)(9).

**TO: TERESA D. VAN VLAKE ESQ., MAGALIE ARCURE ATTORNEYS FOR U.S. BANK
TRUSTEE (CAPTIONED ABOVE); JAKE S. BARKER AND JACKIE BROWN OF
GRAYBILL, LANSCH AND VINZANI, LLC ATTORNEYS FOR DEFENDANT
BANK OF AMERICA, N.A. EDWARD GRIMSLEY OF GRIMSLEY LAW FIRM
FOR SCBT.**

Defendant, Rhonda Meisner, respectfully submits this memorandum with attachments pursuant to the
Court's order in advance of the motion to dismiss hearing scheduled for June 10, 2014 to be held
before the Honorable DeAndrea G. Benjamin.

BACKGROUND

The Plaintiff, U.S. Bank as trustee (full caption above) (hereinafter "Trustee") is the purported
trustee of the owner of the note and mortgage that Rhonda Meisner ("hereinafter Meisner") originally
gave to Bank of America, N.A. (hereinafter "Bank of America") for the premises located at 406 Koon
Store Road. The co-Defendant, Meisner was in dispute with Bank of America regarding the 2012
requirement of opening an escrow account associated with the mortgage and the payment of Richland
County Taxes by both Bank of America and Meisner. Bank of America refused to request a refund
from Richland County and "re-fund" the newly imposed escrow account. Prior to the resolution of the
dispute; Bank of America sold and or transferred the servicing rights to Nationstar Bank (hereinafter
"Nationstar"). In early 2010, the Dodd-Frank Consumer Financial Protection Act of 2010 (subtitle E

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sect. 1462 and sect. 1465.) was implemented which in part created obligations for the transfer and notice requirements when a loan is "owned" or "securitized" and the servicer of that loan changes. It also provides requirements for notice and funding requirements for escrow accounts. This Act was created in part to protect consumers and to make transparent the party with whom the consumer should be dealing.

In the instant case, 2014-CP-40-2063 the Trustee, the presumed manager for the owner and holder of the note and first mortgage has initiated a lawsuit when the former originator and servicer, Bank of America has already defaulted by not answering timely in a previously filed suit no 2013-CP-40-7144 that was initiated by SCBT (hereinafter "SCBT"). Meisner timely responded to 2013-CP-40-7144 and specifically made affirmative counterclaims to the Plaintiff (SCBT) and the co-defendants (See Record of Case for 2013-40-CP-7144 Meisners' answer to amended complaint) and repeated below:

[a] declaratory judgment pursuant to S.C.R.C.P 57 and S.C. Code Ann. §§15-53-10 through 15-15-140 to determine a question in actual controversy between or among the parties as to their respective rights and liabilities under a Note AND Mortgage pertaining to real property located at 406 Koon Store Road and more particularly described in the Plaintiff's Complaint, which is incorporated by reference and to determine the respective rights and obligations of the parties with respect to the amount of any deficiency judgment due and owing, and to determine the appraisal rights of the Defendant, Rhonda Meisner.

Additionally, Meisner pled her Statutory appraisal rights pursuant to S.C. Code Ann. § 29-3-680 because SCBT had demanded a deficiency and attempted to add additional liens to the suit not available by law.

Notice of U.S. Bank via Lis Pendens filed by SCBT

The Plaintiff (SCBT) in 2013-40-CP-7144 filed a Lis Pendens in November of 2013 and referenced the specific address (406 Koon Store Road Columbia, SC) along with the tax map number TMS# 12100-04-23. While the attorneys representing U.S. Bank is located in North Charleston, the Lis Pendens associated with Richland County properties are online and can be accessed through the

internet. While the predecessor in servicing rights and the original creditor Bank of America, N.A. was not noticed in the November 26, 2013 filing, prior to initiating the filing in March of 2014, the attorneys representing U.S. Bank were on notice via the public records. Additionally, on February 19, 2014 the Grimsley law firm filed an amended Lis pendens and named U.S. Bank's predecessor in servicing and original creditor Bank of America, N.A. and again specifically noted the address of the property and the associated Tax Map # of TMS #12100-04-23, so the attorneys were further notified of the litigation and could have contacted the Grimsley law firm or their colleagues at Bank of America, N.A. and apparently did so in reviewing the transfers in and out of Bank of America, N.A.

Default Status of Bank of America, N.A.

The Co-Defendant Bank of America was served via its agent of SCBT's amended Complaint in February of 2014. Bank of America, N.A. did not respond to SCBT's lawsuit captioned 2013-40-CP-7144 until April 4, 2014 which was not within the 30 days allowed by the South Carolina Rules of Civil Procedure and as such is a default Defendant. Ms. Meisner timely responded to the lawsuit and specifically requested a Declaratory Judgment involving all of the parties associated with the case and their respective rights and obligations.

Bank of America, N.A. in their late answer of the Amended Complaint, specifically asserts that it has an interest in the subject property at ¶8 of their answer and filed a certificate of service for the amended complaint on the same day as the assignment was notarized for the transfer in assignment which purportedly happened the day before in Nevada and California; therefore making the Plaintiff U.S. Bank's lawsuit captioned 2014-CP-40-2063 duplicate and not allowed under the South Carolina Rules of Civil Procedure and the Defendant Rhonda Meisner requests the Court issue an order dismissing 2014-CP-40-2063 as duplicative and awarding Ms. Meisner fees and costs and crediting any attorney fees submitted by Finkel law firm to Ms. Meisner's verified debt as a sanction for the filing of duplicative suits when they were on notice of the filings via

the public records. **EXHIBIT #1** Corporate Assignment of Mortgage (assignee U.S. Bank assignor Bank of America dated April 2, 2014 but witnessed April 3, 2014) **EXHIBIT #2** Assignment of mortgage dated March 14, 2014 **EXHIBIT #3** Original mortgage given to Bank of America, N.A. dated 2013 (which was not satisfied properly) **EXHIBIT #4** Mortgage dated September 19, 2005.

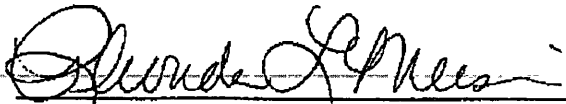
Importantly, Bank of America, N.A. was the owner of the mortgage in February when SCBT first noticed their amended Complaint and during the time Bank of America, N.A. did not timely respond pursuant to the South Carolina Rules of Civil Procedure. While SCBT can voluntarily dismiss their claims against Bank of America, N.A. in Case # 2013-7144, SCBT cannot dismiss the timely counter claims against Bank of America, N.A. in the form a Declaratory judgment request. The Supreme Court discussed the importance of proper recording practices in *National Bank of Newberry v. Livingston*. 155 S.C. 264 284, 152 S.E. 410, 417-419 (1930).

Additionally, because SCBT has requested to amend their Complaint and change from a foreclosure action to the legal action of a suit on the note and triable by jury it would be manifestly unfair to have two separate actions pending with the same entities as contemplated by the rules. Judicial economy also favors dismissing this suit as untimely and duplicative and requiring U.S. Bank to be held liable as the assumer of Bank of America's default with regard to the earlier filed suit. Currently, both U.S. Bank and Bank of America, N.A. claim ownership of the same mortgage and note an issue that has recently gained nationwide focus with regard to securitized trusts.

Because affirmative counter claims have been raised and Bank of America, N.A. is in default their untimely counterclaims and defenses are also outside of the Court's jurisdiction according to case law and the S.C. rules of Civil procedure. By law it's successor U.S. Bank is also in default of the previously filed action and it would be extremely prejudicial to allow U.S. Bank to attempt to circumvent the Judicial process to redeem or cure Bank of America, N.A.'s default status simply by filing a new lawsuit. For this and all of the above reasons, the Defendant and Cross Plaintiff respectfully requests the Court to enter an order of dismissal pursuant to 12 (b) (8)(9) of 2014-CP-40-

2063 and award Ms. Meisner costs, expenses and all other such remedies as the Court finds appropriate under the frivolous proceedings statute.

Respectfully submitted:

A handwritten signature in cursive script, appearing to read "Rhonda Meisner", written over a horizontal line.

Rhonda Meisner, Defendant
P.O. Box 689
Blythewood, S.C. 29016
(803) 960-3696
pegasus333@icloud.com
pegasus@nuvox.net

June 4, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for the
Holders of The Banc of America Funding
Corporation, 2008-FT1 Trust, Mortgage Pass-
Through Certificates, Series 2008-FT1,

PLAINTIFF,

vs.

Rhonda Lewis Meisner a/k/a Rhonda L. Meisner;
Bank of America, N.A.; and SCBT,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-40-2063

PLAINTIFF'S RETURN TO DEFENDANT'S
MOTION TO DISMISS

RICHLAND COUNTY
FILED
2014 JUN 10 AM 9:12
JEANETTE M. MCBRIDE
C.C.P. & C.S.

U.S. Bank, National Association, as trustee for the Holders of The Banc of America Funding Corporation, 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1, by and through its undersigned counsel, hereby responds to Rhonda Lewis Meisner a/k/a Rhonda L. Meisner's ("Defendant") Motion to Dismiss Plaintiff's Complaint ("Motion") made pursuant to Rule 12(b)(8), SCRPC. Plaintiff alleges as follows.

1. Unless expressly admitted herein, Plaintiff denies each and every allegation in the Motion.
2. Each allegation of the Complaint in this matter is hereby incorporated by reference. Plaintiff denies any factual allegation in the Motion inconsistent therewith and demands strict proof.
3. Plaintiff craves reference to the public records of Richland County, South Carolina, for the subject documents of Plaintiff's action, and denies anything inconsistent therewith.
4. Plaintiff brings the instant action for foreclosure of real property located in Horry County, pursuant to S.C. Code 15-7-10(3). Therefore jurisdiction and venue is proper.
5. The Motion alleges that Plaintiff's predecessor in interest, Bank of America N.A. failed to answer an action commenced by Defendant South Carolina Bank & Trust ("SCBT") to foreclose its second mortgage lien on the property that is the subject of this action. For this reason, Defendant seeks a dismissal of Plaintiff's foreclosure action pursuant to Rule 12(b)(8).

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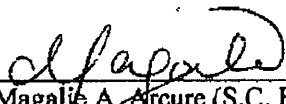
6. In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. See Rule 12(b)(8), SCRCF.
7. South Carolina narrowly interprets Rule 12(b)(8), such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under this Rule. See Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 674 S.E.2d 524; quoting Beatty v. Liberty Mut. Ins. Group, 893 N.E.2d 1079, 1084 (Ind. App. Ct. 2008) (applying 12(b)(8) dismissal “where the parties, subject matter, and remedies are precisely the same, and it also applies when they are only substantially the same.”)
8. Plaintiff holds a first lien, purchase money mortgage on the subject property. See Compl. ¶ 9. The foreclosure of SCBT’s second lien would have no effect upon the validity or existence of Plaintiff’s lien, and therefore Plaintiff is not a necessary party to the SCBT foreclosure. In fact, Plaintiff’s predecessor in interest was voluntarily dismissed as a party to that action on April 24, 2014. As a result, Plaintiff’s failure to respond to the SCBT foreclosure action is simply not basis for dismissal of this action under Rule 12(b)(8).
9. Moreover, even if Plaintiff were a necessary party to SCBT’s foreclosure, it would not be required to assert its cause of action foreclosure as a crossclaim because it does not arise from the same transaction giving rise to SCBT’s claims.
10. “By definition, a counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party’s claim.” Wells Fargo Bank, N.A. v. Smith, 398 S.C. 487, 495, 730 S.E.2d 328, 332-33 (Ct. App. 2012); see also Rule 13(a), SCRCF. Claims that arise out of separate transactions or occurrences than the subject matter of the opposing party’s claims are, instead, permissive. Rule 13(b), SCRCF. The South Carolina Supreme Court has adopted the logical relationship test to determine whether a counterclaim is compulsory. See N.C. Fed. Sav. & Loan Ass’n v. DAV Corp., 298 S.C. 514, 517, 381 S.E.2d 903, 905 (1989). Specifically within the context of an action for foreclosure, the determination of whether a counterclaim is compulsory is made by asking whether the counterclaim would affect the lender’s right to enforce the note and foreclose the mortgage. See Wells Fargo Bank,

398 S.C. at 496, 730 S.E.2d at 333; see also N.C. Fed. Sav. & Loan Ass'n, 298 S.C. 518-19, 381 S.E.2d at 905.

11. Defendant's default under the terms of the note and mortgage assigned to Plaintiff is utterly unrelated to her performance under the terms of the Defendant's loan agreement with SCBT. Because the loan agreements between Plaintiff and Defendant, and SCBT and Defendant are wholly independent and distinct from one another, Plaintiff's Motion must be denied.

WHEREFORE, Plaintiff requests that the Defendant's Motion be stricken or denied, and that the Plaintiff be granted attorneys fees and sanctions as appropriate.

FINKEL LAW FIRM LLC


Magalie A. Arcure (S.C. Bar 78855)
Post Office Box 41489
Charleston, SC 29423
Main: (843) 577-5460
Facsimile: (843) 577-5135
Attorneys for the Plaintiff

Dated: June 6, 2014

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2014-CP-40-2063

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI Trust, Mortgage pass
Through Certificates, Series 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner; Bank of America, N.A.; and SCBT

Defendants

Motion to Alter and Amend Pursuant to
SCRCP Rule 59-e and Motion for Relief of
Judgment pursuant to SCRCP Rule 60(b)

RICHLAND COUNTY
FILED
JAN 30 PM 4:36
J. H. B. S.

TO: TERESA D. VAN VLAKE ESQ., MAGALIE ARCURE ATTORNEYS FOR U.S. BANK, TRUSTEE (CAPTIONED ABOVE); JAKE S. BARKER AND JACKIE BROWN OF GRAYBILL, LANSCH AND VINZANI, LLC ATTORNEYS FOR DEFENDANT BANK OF AMERICA, N.A. EDWARD GRIMSLEY OF GRIMSLEY LAW FIRM FOR SCBT.

Defendant, Rhonda Meisner, respectfully submits this motion to alter and amend the Judgment of the Honorable DeAndrea G. Benjamin in the above mentioned case from the Motion to Dismiss hearing of June 10, 2014. *Attached Exhibit A - Order*

(1) The Court did not rule on the oral motion made by the Plaintiff that the Court did not have subject matter or personal jurisdiction pursuant to the defects in the assignments from co-Defendant Bank of America, NA to the purported Plaintiff as named above.

(2) The Plaintiff respectfully requests a review of the decision that pursuant to SCRCP Rule 12(b)(8) the above mentioned predecessor in title and servicing Bank of America, NA had already defaulted in a previous action and therefore, the above suit was inappropriately filed. because both suits were attempting to foreclose on the same property.

(3) The SCRCP specifically allows for equitable payment of the first mortgage and that therefore once the filing by SCBT was initiated, the above named Plaintiff stood in the shoes of Bank of America, NA as a "assumer of " the mortgage and note.

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BACKGROUND

The Plaintiff, U.S. Bank as trustee (full caption above) (hereinafter "Trustee") is the purported trustee of the owner of the note and mortgage that Rhonda Meisner ("hereinafter Meisner") originally given to Bank of America, N.A. (hereinafter "Bank of America") for the premises located at 406 Koon Store Road. The co-Defendant, Meisner was in dispute with Bank of America regarding the 2012 requirement of opening an escrow account associated with the mortgage and the payment of Richland County Taxes by both Bank of America and Meisner. Bank of America refused to request a refund from Richland County and "re-fund" the newly imposed escrow account. Prior to the resolution of the dispute; Bank of America sold and or transferred the servicing rights to Nationstar Bank (hereinafter "Nationstar").

In the instant case, 2014-CP-40-2063 the Trustee, the presumed manager for the owner and holder of the note and first mortgage has initiated a lawsuit when the former originator and servicer, Bank of America has already defaulted by not answering timely in a previously filed suit no 2013-CP-40-7144 that was initiated by SCBT (hereinafter "SCBT"). Meisner timely responded to 2013-CP-40-7144 and specifically made affirmative counterclaims to the Plaintiff (SCBT) and the co-defendants (See Record of Case for 2013-40-CP-7144 Meisners' answer to amended complaint) and repeated below:

[a] declaratory judgment pursuant to S.C.R.C.P 57 and S.C. Code Ann. §§15-53-10 through 15-15-140 to determine a question in actual controversy between or among the parties as to their respective rights and liabilities under a Note AND Mortgage pertaining to real property located at 406 Koon Store Road and more particularly described in the Plaintiff's Complaint, which is incorporated by reference and to determine the respective rights and obligations of the parties with respect to the amount of any deficiency judgment due and owing, and to determine the appraisal rights of the Defendant, Rhonda Meisner.

Additionally, Meisner pled her Statutory appraisal rights pursuant to S.C. Code Ann. § 29-3-680 because SCBT had demanded a deficiency in the previously filed suit and attempted to add

additional leins to the suit not available by law. SCBT subsequently changed their position to a suit on a note; however Bank of America, NA still maintains it has an ownership interest in the note and mortgage of the present action via filings with this Court.

Hearing held on June 10, 2014 before the Honorable DeAndrea Benjamin

During the hearing on June 10, Ms. Meisner made an oral motion pursuant to SCRPC Rule 30(b)(1)(2) that the Plaintiff lacked standing due to improper mortgage assignments and therefore the Court lacked jurisdiction over the subject matter and the Defendant, Rhonda Meisner due to the irregularities in the transfers of the mortgage and note; the Court did not rule on this oral motion. The assignments of the note and mortgage were made as EXHIBITS during the hearing. The lack of standing, as a matter of law requires dismissal without prejudice of the action. Specifically, the affidavit notarizing the transfer conflicted with the actual date of the assignment making the notarization of assignment void under South Carolina law. (Both the mortgage assignment and note was entered into evidence. As a matter of law, Bank of America, NA still maintains ownership of the note and mortgage without correction of the faulty assignment. Logically speaking, if the assignment was "notarized" for an individual on a date different than the transfer; this assignment would no doubt be fraudulent under the Statute of Frauds. This interpretation of a different standard of proof elicits an equal protection analysis of the 14th amendment to the United States Constitution. Additionally, the allowance of a transfer of property without standing to pursue the action would be a deprivation of private property without due process. Quite obviously, South Carolina law does not allow notarization of a previous assignment occurring on a different day than the notarization of the event. (See the actual documents submitted as EXHIBIT #1 AND EXHIBIT #2) into evidence at the June 10, 2014 hearing.) Importantly, in Bank of America, NA responses the previously filed lawsuit, they

claimed an ownership interest. At the hearing, representative of the Plaintiff acknowledged receipt of the answer by Ms. Meisner to the lawsuit which according to Court documents also alleged a lack of standing.

Previous arguments are referenced below:

Notice of U.S. Bank via Lis Pendens filed by SCBT

The Plaintiff (SCBT) in 2013-40-CP-7144 filed a Lis Pendens in November of 2013 and referenced the specific address (406 Koon Store Road Columbia, SC) along with the tax map number TMS# 12100-04-23. While the attorneys representing U.S. Bank is located in North Charleston, the Lis Pendens associated with Richland County properties are online and can be accessed through the internet. While the predecessor in servicing rights and the original creditor Bank of America, N.A. was not noticed in the November 26, 2013 filing, prior to initiating the filing in March of 2014, the attorneys representing U.S. Bank were on notice via the public records. Additionally, on February 19, 2014 the Grimsley law firm filed an amended Lis pendens and named U.S. Bank's predecessor in servicing and original creditor Bank of America, N.A. and again specifically noted the address of the property and the associated Tax Map # of TMS #12100-04-23, so the attorneys were further notified of the litigation and could have contacted the Grimsley law firm or their colleagues at Bank of America, N.A. and apparently did so in reviewing the transfers in and out of Bank of America, N.A.

Default Status of Bank of America, N.A.

The Co-Defendant Bank of America was served via its agent of SCBT's amended Complaint in February of 2014. Bank of America, N.A. did not respond to SCBT's lawsuit captioned 2013-40-CP-7144 until April 4, 2014 which was not within the 30 days allowed by the South Carolina Rules of Civil Procedure and as such is a default Defendant. Ms. Meisner timely responded to the lawsuit and

specifically requested a Declaratory Judgment involving **all of the parties** associated with the case and their respective rights and obligations.

Bank of America, N.A. in their late answer of the Amended Complaint, **specifically asserts that it has an interest in the subject property at ¶8 of their answer and filed a certificate of service for the amended complaint on the same day as the assignment was notarized for the transfer in assignment which purportedly happened the day before in Nevada and California;** therefore making the Plaintiff U.S. Bank's lawsuit captioned 2014-CP-40-2063 duplicate and not allowed under the South Carolina Rules of Civil Procedure and the Defendant Rhonda Meisner requests the Court issue an order dismissing 2014-CP-40-2063 as duplicative and awarding Ms. Meisner fees and costs and crediting any attorney fees submitted by Finkel law firm to Ms. Meisner's verified debt as a sanction for the filing of duplicative suits when they were on notice of the filings via the public records. **EXHIBIT #1** Corporate Assignment of Mortgage (assignee U.S. Bank assignor Bank of America dated April 2, 2014 but witnessed April 3, 2014) **EXHIBIT #2** Assignment of mortgage dated March 14, 2014 **EXHIBIT #3** Original mortgage given to Bank of America, N.A. dated 2003 (which was not satisfied properly) **EXHIBIT #4** Mortgage dated September 19, 2005.

Importantly, Bank of America, N.A. was the owner of the mortgage in February when SCBT first noticed their amended Complaint and during the time Bank of America, N.A. did not timely respond pursuant to the South Carolina Rules of Civil Procedure. While SCBT can voluntarily dismiss their claims against Bank of America, N.A. in Case # 2013-7144, SCBT cannot dismiss the timely counter claims against Bank of America, N.A. in the form a Declaratory judgment request. The Supreme Court discussed the importance of proper recording practices in *National Bank of Newberry v. Livingston*, 155 S.C. 264 284, 152 S.E. 410, 417-419 (1930).

Additionally, because SCBT has requested to amend their Complaint and change from a foreclosure action to the legal action of a suit on the note and triable by jury it would be manifestly unfair to have two separate actions pending with the same entities as contemplated by the rules.

Judicial economy also favors dismissing this suit as untimely and duplicative and requiring U.S. Bank to be held liable as the assumer of Bank of America's default with regard to the earlier filed suit. Currently, both U.S. Bank and Bank of America, N.A. claim ownership of the same mortgage and note an issue that has recently gained nationwide focus with regard to securitized trusts.

Because affirmative counter claims have been raised and Bank of America, N.A. is in default their untimely counterclaims and defenses are also outside of the Court's jurisdiction according to case law and the S.C. rules of Civil procedure. By law it's successor U.S. Bank is also in default of the previously filed action and it would be extremely prejudicial to allow U.S. Bank to attempt to circumvent the Judicial process to redeem or cure Bank of America, N.A.'s default status simply by filing a new lawsuit. For this and all of the above reasons including the oral argument of lack of standing and as a result lack of subject matter jurisdiction over the subject and the Defendant; the Defendant and Cross Plaintiff respectfully requests the Court to enter an order of dismissal pursuant to 12 (b)(1),(2),(8) of 2014-CP-40-2063 and award Ms. Meisner costs, expenses and all other such remedies as the Court finds appropriate under the frivolous proceedings statute.

Respectfully submitted:



Rhonda Meisner, Defendant
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June 30, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for the
Holders of The Banc of America Funding
Corporation, 2008-FT1 Trust, Mortgage Pass-
Through Certificates, Series 2008-FT1,

PLAINTIFF,

vs.

Rhonda Lewis Meisner a/k/a Rhonda L. Meisner;
Bank of America, N.A.; and SCBT,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-40-2063

**MOTION TO STRIKE
JURY TRIAL DEMAND
AND FOR
MANDATORY ORDER OF REFERENCE**

2014 JUL 24 AM 8:58
JEANNETTE W. McBRIDE
C.C.P. & G.S.
FILED
RICHLAND COUNTY

The undersigned attorneys for Plaintiff and pursuant to Rule 53 SCRPC, as amended effective September 1, 2002, move before this Honorable Court to strike the Defendant's demand for a jury trial and for the foreclosure action herein to be referred to the Honorable Joseph M. Strickland, Master in Equity for Richland County, with authority to enter a final judgment in the case pursuant to Rule 53 (b) SCRPC. Pursuant to Rule 53(e) SCRPC, any appeal therefrom shall be to the Supreme Court or the Court of Appeals, as provided by the South Carolina Appellate Court Rules. As further set forth herein, Defendant has waived the right to a jury trial on her legal counterclaim for breach of contract because it is permissive and was raised in response to Plaintiff's equitable foreclosure action.

JURY TRIAL

It is a caveat of black letter law that an action to foreclose a real estate mortgage is in equity. The Smith Companies of Greenville, Inc., v. Hayes, 311 S.C. 358, 428 S.E.2d 900 (Ct. App. 1993); First Fed. Sav. Bank v. Knauss, 296 S.C. 136, 370 S.E.2d 906 (Ct. App. 1988); Dockside Assoc., Inc. v. Detyens, 294 S.E. 86, 362 S.E.2d 874 (1987); Collier v. Green, 244 S.C. 367, 137 S.E.2d 277 (1964). If any action is one in equity, it is to be tried by the court and the defendant is not entitled to a jury trial. Loyola Fed. Sav. Bank v. Thomasson Properties, 45'

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S.E.2d. 423 (S.C., Ct. App. 1995); C & S Real Estate Services, Inc. v. Massengal, 290 S.C. 299, 350 S.E.2d 191 (1986); Pelfrey v. Bank of Greer, 270 S.C. 691, 244 S.E.2d 315 (1978) ; Collier v. Green, 244 S.C. 367, 137 S.E.2d 277 (1964). In equity, the parties are not entitled, as a matter of right, to a trial by jury. Williford v. Downs, 265 S.C. 319, 321 218 S.E.2d 242, 243 (1975).

“By definition, a counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party’s claim.” Wells Fargo Bank, N.A. v. Smith, 398 S.C. 487, 495, 730 S.E.2d 328, 332-33 (Ct. App. 2012); see also Rule 13(a), SCRPC. Claims that arise out of separate transactions or occurrences than the subject matter of the opposing party’s claims are, instead, permissive. Rule 13(b), SCRPC. The South Carolina Supreme Court has adopted the logical relationship test to determine whether a counterclaim is compulsory. See N.C. Fed. Sav. & Loan Ass’n v. DAY Corp., 298 S.C. 514, 517, 381 S.E.2d 903, 905 (1989). Specifically within the context of an action for foreclosure, the determination of whether a counterclaim is compulsory is made by asking whether the counterclaim would affect the lender’s right to enforce the note and foreclose the mortgage. See Wells Fargo Bank, 398 S.C. at 496, 730 S.E.2d at 333; see also N.C. Fed. Sav. & Loan Ass’n, 298 S.C. 518-19, 381 S.E.2d at 905.

In the present case, the defendant mortgagor Rhonda Lewis Meisner a/k/a Rhonda L. Meisner (“Defendant”) served an answer on May 15, 2013 which contains a demand for a jury trial. The answer raises counterclaims for breach of contract and a declaratory judgment that Defendant is entitled to statutory appraisal rights pursuant to S.C. Code 29-3-680, in addition to affirmative defenses.

As a threshold matter, the counterclaim for a declaratory judgment has no bearing on the lender’s right to enforce the note and foreclose the mortgage and is not legal in nature. A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue. Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). While this counterclaim potentially may require the Court to construe the terms of the note and mortgage, it relates exclusively to the determination of Defendant’s rights after the sale of the

foreclosed premises under those same agreements and because the underlying action is a foreclosure which sounds in equity, this counterclaim necessarily flows from this same underlying issue. See Hardy v. Aiken, 369 S.C. 160, 631 S.E.2d 539 (2006) (holding that underlying issue in declaratory judgment action to enforce restrictive covenants is equitable and not legal action to construe a contract). Moreover, this counterclaim is moot in that it prematurely seeks a declaration that Defendant is entitled to statutory appraisal rights pursuant to S.C. Code §29-3-680. Pursuant to that statute, a mortgagor defendant in a foreclosure action upon which a deficiency judgment is rendered may within thirty days after the sale of the mortgage property apply by petition to the Clerk of Court for an appraisal. See S.C. Code §29-3-680(a) ("In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within thirty days *after the sale of the mortgaged property* apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.") (emphasis added). The property that is the subject of this action has not been sold at foreclosure sale, and does not provide a basis for Defendant to request a jury trial.

The sole legal counterclaim raised in the Answer is for breach of contract, and the thrust of Defendant claims with regard to that cause of action is that the prior servicer and Plaintiff's predecessor in interest improperly applied escrow payments to the loan account. Defendant does not allege that the alleged misapplication is the reason for the default in monthly mortgage payment. In fact, the Answer does provide contain any allegation that the alleged conduct which Defendant contend gives rise to her counterclaim for breach of contract is related in any manner to the default in payments; since Plaintiff's foreclosure action is centered entirely on the obligations created by the note and mortgage and the Defendants' default thereunder, Defendants' legal counterclaim does not arise from the same transaction or occurrence as Plaintiff's foreclosure action and is necessarily permissive.

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By asserting this permissive legal claim in the instant foreclosure action, Defendant has waived their right to a jury trial. See Wachovia Bank, National Association v. Blackburn, No. 27359, 2014 WL 766311 at *4 (February 26, 2014) (finding that where the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial). Furthermore, affirmative defenses raised in response to an equitable cause of action are inherently equitable in nature, and not triable by a jury. See Farley v. Matthews, 186 S.C. 294, 167 S.E. 502 (1933). This being an action for foreclosure of a mortgage and, as such, an action in equity, it is an appropriate matter to be referred to the Master in Equity. See Collier v. Green, 244 S.C. 346, 137 S.E.2d 277 (1964). Based on the foregoing, it would be improper not to strike the jury demand and refer the case. See Pelfrey, 270 S.C. at 695, 244 S.E.2d at 317 ("[t]he lower court was therefore *in error in refusing the motion of appellant for an order of reference* and in refusing to strike from the amended complaint the phrase 'the plaintiff demands a jury trial.'") (emphasis added).

Because Defendant's claim bears no logical relationship to the Plaintiff's enforcement of the note and mortgage in this foreclosure action, it is permissive in nature. Accordingly, the Defendant is not entitled to a jury trial in this foreclosure action.

REFERENCE TO MASTER IN EQUITY

The Plaintiff's action is for foreclosure of a mortgage and, as such, is an action in equity and is an appropriate matter to refer to the Master in Equity. Collier v. Green, 244 S.C. 346, 137 S.E.2d 277 (1964). Further, pursuant to Rule 53(b), SCRPC, this Court may, upon application of any party, direct a reference in this action of all or any of the issues, whether of fact or law.

CONCLUSION

The Plaintiff moves this Court to strike the Defendant's request for a jury trial and refer this action to the Honorable Joseph M. Strickland, Master in Equity for Richland County to direct entry of final judgment in this action under Rule 53(e)(1), SCRPC, with any appeal therefrom to

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be to the Supreme Court or the Court of Appeals, as provided by the South Carolina Appellate Court Rules.

Respectfully submitted,

FINKEL LAW FIRM LLC



Magalie A. Arcure (S.C. Bar 78855)

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Direct: (843) 576-6307

Facsimile: (843) 577-5135

Attorneys for Plaintiff

Dated: June 23, 2014

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and SCBT

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-2063

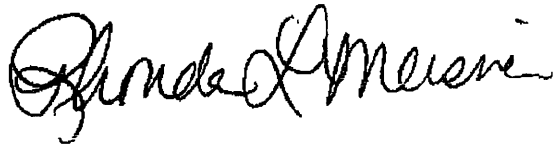
RESPONSE TO MOTION TO STRIKE JURY
DEMAND AND MOTION FOR REFERRAL
TO MAGISTRATE

RECEIVED
2014 JUL -3 PM 2:15
JEANETTE H. MEISNER
C.C.P. & G.S.

The Defendant, Rhonda L. Meisner respectfully submits this memorandum in response to Plaintiff's Motion to Strike the Defendants Jury Demand and motion for an Order of Reference to the Magistrate. As an initial matter, a S.C. Rule of Civ. P. Rule 59-e motion in under advisement to the Honorable DeAndrea Benjamin as the Defendant has alleged the Plaintiff's lack standing to sue based on a faulty assignment of the mortgage and therefore the Circuit Court does not have jurisdiction over the controversy. This argument aside, the Plaintiff is requesting to strike the Jury Demand without the benefit of discovery or other evidence that this is proper. The South Carolina Court of Appeals has already ruled that a Motion to Strike the jury demand was an improper motion prior to conducting discovery in the case. Wells Fargo Bank, N.A. v. Michael Smith decided June 13, 2012 No. 4988. The other confounding fact that requires the services of a fact finder is that another proceeding was initiated (2013-CP-40-7144) where the predecessor in servicing Bank of America, N.A. defaulted and therefore the Plaintiff in the above entitled action assumed the default status of Bank of America, N.A.

Additionally, since the Counterclaims are compulsory and are specifically related to the amount owed as well as the terms of the note and mortgage in the case; a jury demand is properly before the Court. Under South Carolina law, the amount owed is required prior to a foreclosure hearing. Since legal claims must be resolved prior to equitable claims, referral to the Magistrate would be improper in the instant case. The Defendant requests a hearing on the merits of the referral. For the reasons stated above and all references to the record, the Defendant Prays that the Court will deny the referral to the magistrate and deny the motion to strike the jury trial.

Respectfully Submitted,



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July 3, 2014

209

RICHLAND COUNTY
FILED

2014 NOV -4 AM 11:55

JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Rhonda Lewis Meisner
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The Honorable Casey L. Manning
P.O. Box 192
1701 Main Street Room 214
Columbia, SC 29202-0192

2014-40-2063

November 3, 2014

Dear Judge Manning,

I am writing to inform you of a situation regarding the Clerk of Court, Ms. Jeanette W. McBride of Richland County. The Clerk of Court signed and filed an Order of reference to the Master-in-Equity re case # 2014-40-2063. At the time of the referral, not only did I submit a memorandum in opposition to the referral most importantly noting a S.C. Rules of Civ. P. Rule 59(e) pending motion regarding a question of the standing of the Plaintiff (based on a defective assignment of the mortgage and the fact that two Plaintiffs were claiming ownership of the same note and mortgage). Lack of standing deprives the Court of subject matter jurisdiction and this motion was under consideration by the Honorable De Andrea Benjamin at the time of the referral. This motion aside, the answer to the lawsuit requested a jury trial and noted compulsory counter claims which in my opinion warranted a hearing. The South Carolina Supreme Court has ruled that a Master in Equity Order striking a jury demand prior to the close of discovery was prejudicial and reversed the case based on this ruling as was argued in the memorandum in opposition to the referral, as such the Order by a Clerk of Court striking the jury demand is also prejudicial prior to the close of discovery.

The most disturbing part of the Order by the Clerk of Court was her "full adoption" of the Plaintiff's suggested Order without the supervision of a Judge or the authority of a Judge. This is troublesome for many reasons the least of which is that a defective Order of Reference could deprive the Master-in-Equity of jurisdiction. Most importantly, some Defendant's who did not catch the defective referral could lose their private property without due process. While the Clerk of Court completes but important role as an officer of the Court, in this situation, it is my opinion her Order exceeded her authority and her Order indicated an authority on par with a Circuit Court Judge.

I respectfully request your review of this matter and if necessary respectfully request a hearing on the issue.

Signature next page

Warm Regards,

Rhonda Meisner

Rhonda Meisner
Post Office Box 689
Blythewood, SC 29016
(803) 960-3696

CC.

Magaliè Arcure
Finkel law firm

2/1

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee
for the Holders of the Banc of America
Funding Corporation, 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and SCBT

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-2063

DEFENDANT'S RHONDA MEISNER
RESPONSE TO BANK OF AMERICA'S
MOTION TO DISMISS CROSS CLAIMS

RICHLAND CO IN
FILED
2015 APR 22 PM 3:50
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

As an initial matter, the defendant Rhonda Meisner does not believe court has jurisdiction over the case based on the defective filing of the Plaintiff U.S. Bank, National Association, as trustee for the Holders of the Banc of America Funding Corporation, 2008-FTI, and the appeal of the denial of the motion to dismiss to the Court of Appeals. Additionally, if the Court is determined to have jurisdiction even with the defective filings then the co-defendant Bank of America, N.A.'s motion should not be considered as they are a default defendant to the initial suit and a default defendant to Meisner's cross claims.¹²

Further the Master in Equity vacated the referral of the case which was erroneously signed by the clerk of court. The determination of lack of jurisdiction of the Master in Equity was fully briefed and argued during the previous motion to compel hearing. A motion to stay was not heard at that time due to the lack of jurisdiction of the Court which is still pending. Additionally, because the Court of Appeals has yet to rule on the motion for reinstatement, the

¹ Motion to reconsider dismissal of appeal from the Court of Appeals (this motion has not been ruled on and therefore the remittur has not been sent to the Circuit Court.

² Motion to strike reply and enter a default judgment against Bank of America, N.A.

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case has not been returned to the jurisdiction of the Circuit Court.³ Standing is a pre-requisite to filing suit and both Bank of America, NA and U.S. Bank have claimed ownership of the note and mortgage with a defective assignment being filed by US Bank. As such as the primary Plaintiff, a challenge of standing must be resolved prior to continuing the case so as not to prejudice the Defendant, Rhonda Meisner with duplicitous discovery. For the above mentioned reasons all references to the record and oral argument of the issues the Defendant Rhonda Meisner requests the Court stay the inquiry pending the resolution of the issue of standing in the Court of Appeals.

Respectfully Submitted,



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April 22, 2015

³ Meisner's motion to reinstate appeal.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and SCBT

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-2063

MEMORANDUM OF LAW IN OPPOSITION
OF BANK OF AMERICA'S MOTION TO
STRIKE CROSS CLAIMS AND IN
SUPPORT OF MOTION TO STRIKE BANK
OF AMERICA'S REPLY AND FOR A
DEFAULT JUDGMENT AGAINST BANK
OF AMERICA

RICHLAND COUNTY
FILED
2015 MAY 20 PM 3:11
JEANETTE HARRIS
C.C.P. & G.

To: the Plaintiff U.S. Bank and their attorneys Finkel law firm and the Co-defendant Bank of America and their attorneys Graybill, Lansche and Vinzani as listed above. You will please take notice having filed a motion to strike the reply of Bank of America, N.A. and for default judgment against Bank of America, N.A. for the cross claim asserted, Defendant Meisner hereby submits this memorandum of law.

The Defendant Rhonda Meisner respectfully submits this opposition to the Motion to Strike her counterclaims and in support of her motion to strike Bank of America's reply and for default judgment.

BACKGROUND

As an initial matter this lawsuit is the second lawsuit involving the exact same note and the exact same mortgage that has been untimely answered by Bank of America, N.A. (hereinafter "BANA") In the previous lawsuit, which is currently stayed (pending a decision on appeal) Docket No. 2013-CP-40-7144 BANA untimely answered and claimed an ownership interest in the note and mortgage. (EXHIBIT A Answer of Bank of America, N.A. to Docket No. 2013 CP-40-7144). Therefore, BANA is collaterally estopped from arguing it does not maintain an ownership interest in the subject note and mortgage and a question

of fact is before the Court of which entity is the legal and proper owner of the note and mortgage given the Plaintiff is a Trust.

ARGUMENT

BANA has also filed an untimely answer/reply in this lawsuit and therefore their motion to strike the Defendants cross-claims should not be granted. The Plaintiff, U.S. Bank, National Association, as trustee for the Holders of the Banc of America Funding Corporation, 2008-FT1 acknowledged proper service of process to BANA's registered agents in their complaint at No. 5 and attached proof that service was affected and proper. (EXHIBIT B Proof of service on BANA). BANA did not reply, respond or otherwise appear.

Timeliness of BANA's answer to the Cross claims

BANA claims that it received permission to file a late answer from the Plaintiff and submitted as proof an email from Ms. Magalie Arcure, attorney for the Plaintiff U.S. Bank granting permission to file a late answer in July of 2014; however this grant was not only improper as it did not excuse the late answer to the cross claims but it too was untimely and failed to cure the default for the compulsory counterclaims and cross claims. The original lawsuit was filed on March 31, 2014 and the answer and counterclaim for breach of contract and declaratory judgment action was filed by Ms. Meisner on May 15, 2014 which was within 30 days of service of process. She then served via registered mail to Graybill, Lancshe and Vinzani the attorneys representing BANA in Docket No. 2014-CP-40-7144 as well as filed her counterclaims and cross claims with the Court.

BANA failed to answer, plead, reply or otherwise defend the original lawsuit filed by U.S. Bank or the counterclaims and cross claims filed by Ms. Meisner within 30 days of service, plus 5 days of service by mail as required by Rules 6 and 12(a) of the South Carolina Rules of

Civil Procedure. Defendant BANA never requested a written 30 day extension of time from the Plaintiff or the co-defendant within the 30 days as provided by Rule 6 (b)(2) of the South Carolina Rules of Civil Procedure, nor did BANA make a motion to the Court for an expansion of time to reply to the Complaint and counterclaims or cross claims prior to a motion for a default judgment being filed; instead BANA seeks to strike the cross claims of co-defendant Meisner.

BANA filed an answer to the cross claims but not until July of 2014 which is too late. Co-defendant's BANA's untimely reply is a "defective pleading" which should be struck pursuant to Rule 12 (f) of the South Carolina Rules of Civil Procedure. The Court of Appeals specifically addressed an untimely reply and noted that in this state an untimely reply prior to the entry of default does not cure the procedural defect *Stark Truss Co., Inc. v. Superior Const. Corp.*, 360 S.C. 503,509,602 S.E. 2d 99,102 (Cl. App. 2004) (disregarding contrary North Carolina opinion and upholding similar motion where answer was untimely filed prior to entry of default.)

As plainly stated by Rule 55(a) if a party has failed to "plead or otherwise defend as provided by the South Carolina rules of Civil procedure and that fact is made known by affidavit or otherwise (such as this motion for default judgment) the clerk of court will issue a default notice. Stark at 102. When a party has been duly served with the summons and complaint, it was his duty to answer the complaint. Therefore, he must suffer the consequences of this failure to answer. *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E. 2d 894,897 (2001)(internal citations omitted).

For the above reasons and all references to the record the co-defendant requests the Court strike the reply of Bank of America, N.A and enter a judgment of default for the cross claims in the amount of the claims against Defendant Meisner by the Plaintiff. The plaintiff in this case

only has the rights received from BANA e.g. the breached contract terms of the note and mortgage.

Respectfully Submitted,



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May 20, 2015

617

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and SCBT

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-2063

MEMORANDUM IN OPPOSITION OF
BANK OF AMERICA, N.A.'S MOTION TO
STRIKE CROSS CLAIMS AND IN
SUPPORT OF DEFENDANT'S MOTION
FOR A DEFAULT JUDGMENT AND
MOTION TO STRIKE ANSWER OF BANK
OF AMERICA, N.A. AS DEFECTIVE
PLEADING

RICHLAND COUNTY
FILED
2015 JUL 22 PM 4:39
JEANNETTE W. MCBRIDE
C.C.P. & J.S.

The Defendant Rhonda Meisner respectfully submits her memorandum in support of her motion for default against Bank of America, N.A. for the hearing on the motion to strike Bank of America, N.A.'s answer to Defendant Meisner's cross claims and for a default judgment against Bank of America, N.A.

BACKGROUND

This is the second lawsuit based on the same two Bank of America, N.A. notes and mortgages, the "2005 note and mortgage" and the "2003 note and mortgage". One note and mortgage was paid off but Bank of America, N.A. failed to file a satisfaction of the mortgage lien in the public records (hereinafter referred to as "2005 Note and Mortgage") and the other loan is the note and mortgage that was subsequently assigned on April 2, 2014 to U.S. Bank (hereinafter referred to "2003 Note and Mortgage"). Both the "2005 Note and Mortgage" and the "2003 note and mortgage" are implicated in the declaratory judgment action requested in

Rhonda Meisner's answer and as a cause of action in both 2013-CP-40-7144 and 2014-CP-40-2063.

The declaratory judgment action specifically requested a declaration "between and among the *parties* as to their respective rights and liabilities under a note and mortgage [] and to determine the *respective rights and obligations of the parties* with respect to the amount of any deficiency judgment due and owing and to determine the appraisal rights of the defendant". The rights between and among the parties is a counterclaim as well as a cross claim via a request for a declaratory judgment action referencing both Bank of America, N.A. loans referenced in both the complaint by SCBT and in the complaint by US Bank. The "2005 note and mortgage" is therefore referenced in the cross claims by Rhonda Meisner against Bank of America, N.A. as well as the subject of the motion to amend the complaint to assert the additional cross claims of failure to file a satisfaction of mortgage after notice and slander of title against Bank of America, N.A.¹

The previously filed lawsuit was initiated by SCBT, 2013-CP-40-7144 demanded a deficiency judgment and Meisner answered requesting a declaratory judgment as well as preservation of appraisal rights and a jury trial. The reason for the duplicitous lawsuits is due to the fact Bank of America, N.A. was the mortgagee of record in November of 2013 when 2013-CP-40-7144 was filed as well as on February 7, 2014 when SCBT filed an amended summons and complaint naming Bank of America, N.A. as a defendant due to the public records reflecting Bank of America, N.A. as the owner of the two mortgages that are referenced in both complaints and not US Bank. Indeed, US Bank did not acquire the assignment of the mortgage until April 2nd or 3rd of 2014.

¹ Motion to Amend the Complaint filed by the Defendant Rhonda Meisner.

On the very same day (April 2, 2014) that the assignment occurred, US Bank effected service on Bank of America, N.A. via their registered agent Amy Routh as attested to by process server Zachary Cox. **[EXHIBIT A AFFIDAVIT OF SERVICE]** Based on this service date Bank of America, N.A. was required to answer US Bank's lawsuit or enter an appearance or request an extension by March 5, 2014. Here, either US Bank did not own the note and mortgage and is evidence of the lack of standing of US Bank or Bank of America, N.A. is in default.

SCBT summoned Bank of America, N.A. to respond to the amended lawsuit on February 7th of 2014. Therefore, Bank of America, N.A. should have entered an appearance or answered the lawsuit on or before March 13, 2014. Bank of America, N.A. entered an appearance based on their late answer to the lawsuit on April 4, 2014; however their answer pursuant to S.C. R. Civ. P. was due on March 13, 2014. Bank of America, N.A. did not file a written request for extension in the public records but reportedly received an extension within the 30 timeframe for reply from SCBT to file a late reply; however, defendant Meisner was not copied on said request. Meisner requests the Court to confirm the extension prior to the expiration of the time to answer by Bank of America, N.A. Meisner timely answered her amended complaint on March 27, 2014 which contained the declaratory judgment action referencing the "rights and obligations of the parties" and included Bank of America, N.A. This request for declaratory judgment action was *before* Bank of America's answer and appearance but was filed in the Court's records and specifically requested a declaratory judgment "between and among the parties as to their respective rights and liabilities under a note and mortgage [] and to determine the *respective rights and obligations of the parties* with respect to the amount of any deficiency judgment due and owing and to determine the appraisal rights of the

defendant".² within the 30 days of service as required by the S.C. Rules of Civ. procedure. Significantly, Bank of America N.A.'s loan was a first mortgage loan so when SCBT filed the action for foreclosure, the suit implicated Bank of America N.A.'s previously filed first mortgage liens. While SCBT can change their action from a suit on a note and dismiss Bank of America, N.A. , subsequent to the change in the type of action against defendant Meisner; SCBT's dismissal of Bank of America, N.A. did not dismiss Bank of America, N.A. 's involvement in the case as Meisner's answer and counter/cross claim implicated Bank of America, N.A and Ms. Meisner did not dismiss Bank of America, N.A. from the actions. Nor did the change to a suit on the note affect her right to an appraisal pursuant to the deficiency statutes.

Importantly, in Bank of America, N.A.'s late April 4th, 2014 answer Bank of America, N.A. claimed an ownership interest in both the " 2003 and the 2005 notes and mortgages "which included the " 2005 note and mortgage currently claimed by US Bank".

Based on the affidavit of mortgage assignment the assignment was assigned to US Bank of April 2 or 3, 2014. Subsequently, SCBT changed their lawsuit from a mortgage foreclosure action to a suit on a note and then voluntarily dismissed Bank of America, N.A. as a defendant without prejudice and abandoned foreclosure proceedings on April 10, 2014 which was after Meisner's March 27, 2014 answer and counter/cross claim requesting a declaratory judgment action .

SCBT did not file to remove the lis pendens associated with the original lawsuit when they changed their action to a suit on a note that referenced (1) both Bank of America, N.A. loans and (2) improper liens by SCBT . Meisner made a motion to remove the lis pendens from the property in 2013-40-CP-7144 because a lis pendens is not appropriate with a action for a suit

² EXHIBIT A Answer and Counterclaim jury trial demanded filed March 27, 2014 in case # 2013-CP-40-7144 ¶30-40

on a note or a declaratory judgment action. The Honorable Alison Lee agreed with Ms. Meisner and granted Meisner's motion and vacated the lis pendens associated with 2013-40-CP-7144. The vacated lis pendens also did not remove Bank of America, N.A. from the lawsuit because a lis pendens was not filed by Bank of America, N.A. nor would a lis pendens be proper in a declaratory judgment action.

ARGUMENT

The South Carolina Rules of Civil Procedure allows for an extension of the time to answer the complaint against a defendant (1) if requested in writing and with agreement of the parties prior to the expiration of the time to respond. (2) with leave of Court after the time to respond has elapsed via motion and with good cause. Once the time to file an answer has elapsed, a plaintiff cannot "cure" the default of another party with an extension of time granted. *Thynes v. Lloyd*, 294 S.C. 152, 153-154, 363 S.E. 2d 122, 123 (Ct. App. 1987)(holding "whether default was actually entered is of no consequence since the entry of default is purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit of the moving party).

The South Carolina Court of Appeals rejected the argument that an order of default was improper if a party made an appearance after default but prior to entry of default. *Stark Truss Co. v. SUPERIOR CONST. CORP.*, 602 S.E. 2d 99, 360 S.C. 503. The resulting ministerial function of entering a default judgment is not "cured" after a late appearance.

The Court of Appeals further noted in *Stark* pursuant to Rule 55(b)(2) that a party the has "appeared" is entitled to notice and a hearing on the default where the Court can evaluate the propriety of the reason the party did not answer the lawsuit pursuant to the S.C. Rules of Civil Procedure.

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Here, the defendant Bank of America, N.A. did not answer or otherwise appear until July of 2014 when Mr. Barker sent an email to Ms. Arcure asking for permission to file an answer almost 4 months after Bank of America, N.A.'s deadline. **(EXHIBIT B July email from Mr. Barker to Ms. Arcure requesting extension)**. After the time for Bank of America, N.A. to respond to the lawsuit has elapsed, Ms. Arcure did not have the authority or permission to grant an extension only the Court possesses this ability. Bank of America, N.A. was required to file a motion requesting permission for the extension from the Court which they still have not done as of this filing.

BANK OF AMERICA'S DEFAULT ON MEISNER'S CLAIMS

On April 2, 2014 Bank of America, N.A. was served a summons on their agent of record Amy Routh. Bank of America, N.A. did not answer, request an extension or otherwise appear prior to their March 13, 2014 deadline. Meisner filed counter claims against US Bank which also implicated Bank of America, N.A. and as such was a cross claim against Bank of America, N.A. Meisner filed her counterclaims and cross claims and answer with the Court and also sent via regular and certified mail a copy to Jake Barker, the attorney of record for the prior lawsuit 2013-CP-40-7144 for the exact same note and the exact same mortgage on June 12, 2015. On July 17, 2015 only 8 days after requesting permission from Ms. Arcure to file a late response, Mr. Barker sent a letter stating to Ms. Meisner stating the service on him for Bank of America, N.A. was defective because he had not yet been retained, but he did not file a motion under Rule 55 for defective service.[EXHIBIT C letter from Mr. Barker].

The required answer and responsive pleading via Meisner's answer to the lawsuit implicating Bank of America, N.A. (as the previous owner of the note and mortgage) as well as Meisner's request for a declaratory judgment action gave notice to Bank of America, N.A. u

the filing in the Circuit Court. Had Bank of America, N.A. entered an appearance or answered as required in the 30 day time limit they would have received direct notice Meisner's answer.

However, Bank of America, N.A. did in fact receive notice of the answer because Meisner sent a copy to Mr. Barker even though Bank of America, N.A. did not answer or enter an appearance.

The rules of civil procedure are in place for just this sort of situation. While, Bank of America, N.A. did not think it was necessary for them to file an answer to US Bank's lawsuit, Bank of America, N.A. is nevertheless required to enter an appearance in the case after being summoned or be in default if they do not request an extension during the 30 day period to answer.

For the above reasons and all references to the record, the defendant Rhonda Meisner opposes the Bank of America, N.A. motion to strike counterclaims and request to enter judgment that the Bank of America, N.A. did not answer or otherwise timely appear and as a result is in default making their late reply a defective pleading which should be stricken as a matter of course.

Respectfully Submitted,



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July 22, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and SCBT

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-2063

MOTION TO AMEND THE COMPLAINT
and MEMORANDUM IN SUPPORT OF
MOTION

To: The Plaintiff U.S. Bank and the co-Defendants, Bank of America and SCBT listed above please take notice the Defendant, Rhonda Meisner will move within 10 days or as soon as can be heard for a motion to amend her answer, the counterclaims and the cross claims in the above entitled case before the Richland County Circuit Court Judge or his/her designee. The Defendant will so move pursuant to Rule 15 (a) for a motion to amend her answer and the counter and cross claims in the above referenced complaint. The motion to amend adequately addresses the issues in the motion so a separate memorandum is not included in this filing.

INTRODUCTION

The defendant Rhonda Meisner, having partially completed discovery, respectfully requests to amend her answer and the counter and cross claims against the Plaintiff and co-defendants allowed pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure. Rule 15 provides leave to amend the complaint (which also includes cross claims and counterclaims) and can be utilized as late as during the trial, if the Court so allows, to conform the pleadings to the facts of the case. Leave to amend the complaint "shall be freely given when justice so requires." *Parker v. Spartanburg Sanitary Sewer District*, 362 S.C. 276, 286 607 S.E. 2d 711, 716 (Ct. App. 2005)

Here, in addition to the Plaintiff, US Bank creating new claims during the litigation, via their abuses of processes; further inquiry into the original complaint has unearthed additional

defenses, counterclaims and cross claims. The additional amendments with respect to the co-defendants will not prejudice the co-defendant as discovery is not over and currently Bank of America, N.A. has not answered the original complaint timely and the defendant, Rhonda Meisner argues Bank of America, NA is a default defendant.

The amendment to the complaint, if approved by the Court, would allow Bank of America, N.A. to file an answer and mount a defense to the requested amendments to the complaint. The defendant, Rhonda Meisner for the above reasons requests the Court to authorize an amendment to the answer of the complaint, to add counterclaims and cross claims as elucidated in the attached proposed amended answer, counter claim and cross claim. **(EXHIBIT A proposed amended answer, counter claim and cross claim)**

The defendant, Rhonda Meisner requests the complaint be amended to include a claim for 1) abuse of process against the Plaintiff, (US Bank,) (II:) amendment to the cross claim against Bank of America for failure to satisfy a mortgage after notification. (Bank of America) pursuant to S.C. Code Ann. § 29-3-330(B) and for damages pursuant to S.C. Code Ann. 29-3-320 for failure to satisfy the mortgage within 90 days (III.) amendment to the cross claim against Bank of America for slander of title.(Bank of America)(4) amendment to eliminate the judgments attached to the lis pendens by SCBT noted in the above entitled action.

Defendant Rhonda Meisner respectfully submits her memorandum as part of the motion in support of the request to amend the complaints regarding the above causes of action.

BACKGROUND

The Plaintiff U.S. Bank, National Association, as trustee for the Holders of the Banc of America Funding Corporation, 2008-FT1, (hereinafter "US Bank") initiated a foreclosure action based on an assignment of the note and mortgage from Bank of America, N.A., the co-defendant

in this action, that was notarized on a day *later* than the assignment and *after* Bank of America, N.A. declared the loan in default. The pleadings by the Plaintiff US Bank admit to acquiring the mortgage by assignment on April 2 (notarized on April 3) of 2014.¹ Further the plaintiff US Bank argues the loan was in default as of July 12, 2013. In the Lis Pendens filed with this action, US Bank lists several liens that should not be attached to the Lis Pendens associated with this property including a judgment by SCBT and a mortgage which Bank of America, N.A. has not satisfied but was paid off in 2007.

On July 12, 2013 by the Plaintiff US Bank's own pleadings and the April 2014 assignment of the mortgage, the note and mortgage was still owned by Bank of America, N.A. The Plaintiff, US Bank has not provided any evidence of the default and therefore injury to US Bank attached to lawsuit. US Bank relies on the reports of the default by Bank of America, N.A. without attaching evidence of the default from Bank of America, N.A. As such it is unclear who the real party in interest is in this litigation because they also did not attach any evidence of payment or endorsement for the assignment of the note and mortgage in this case until April of 2014 which was after the "reported" default and after the "reported" damage.

As a result of the assignment after the "alleged" default, US Bank is considered a third party debt collector pursuant to South Carolina's adoption of the Uniform Commercial Code as delineated by the Uniform Commercial Code (UCC) article 3 and article 9. Additionally, the only rights the US Bank possesses are the rights acquired by the assignment of the note and mortgage pursuant to S.C. Code Ann. §36-3-203(b). see also : *Twelfth RMA partners, L.P. v. Nat'l Safe Corp.* 335 S.C. 635, 639, 518 S.E. 2d 44, 46 (Ct. App. 1999).

¹ US Bank initial pleadings attaching the mortgage assignments to the complaint.

Additionally, the pleadings in the case reference via the Lis pendens a mortgage given to Bank of America, N.A. by defendant Rhonda Meisner that was initiated in (2005) that has been satisfied and Bank of America, N.A. , after notice of the satisfactions has failed to file the satisfaction of the mortgage pursuant to S. C. Code Ann. §29-3-320

ARGUMENT

The Defendant Rhonda Meisner asserts the following arguments for each and every request for amendment to the answer, counterclaims and cross claims against the Plaintiff, US Bank, and the co-defendants Bank of America, N.A. and SCBT.

I. ABUSE OF PROCESS (BY PLAINTIFF US BANK)

While a motion for reconsideration was still under the advisement of the Court, US Bank intentionally and impermissibly presented a "Proposed Order" for mandatory referral the Master in Equity Judge for the Clerk of Court to sign. The "Proposed Order" contained findings of fact and conclusions of law that *far exceeded* the authority of the Clerk to sign and is referenced by the Master in Equity's Order vacating the referral. US Bank knew, prior to submission of the "Proposed Order" the Bank requested the Clerk to sign far exceeded the authority of the Clerk of Court and under the laws of South Carolina the Bank knew that the Clerk of Court could not legally sign the Order.

This was far more than a mistake by the Plaintiff Bank. Indeed, US Bank hired South Carolina attorneys to represent the Bank in the proceedings and therefore US Bank absolutely knew prior to the submission of the "Proposed Order" that only Judges or Juries are authorized under the laws of South Carolina to make findings of fact and conclusions of law. The Plaintiff's manipulation of the Courts processes by submitting a "Proposed Order" directly to the Clerk of

Court for signature and circumventing Judicial review of the "proposed Order" amounts to an abuse of process.

This perversion of the Court's system was an intentional act by Bank because (1) The Bank drafted and created the "Proposed Order" indicating a signature provision for the Clerk of Court to sign *or* for a Judge's signature placing each on par with the other (2) Circumvented the normal processes by impermissibly requesting the Clerk of Court to sign the "Proposed Order" that she was legally unable to sign (3) Requesting the Clerk of Court to file the "Proposed Order" after signature and presenting payment for the referral to the Master in Equity. (4) Proceeding with requesting a hearing from the Master in Equity knowing the referral was "illegal". (5) Sending an associate to the motion to compel hearing and being informed by the Master in Equity the referral was faulty and that he did not have jurisdiction over the referral (6) Arguing to the Circuit Court that the Master in Equity "sua sponte" vacated the Order of Referral when the Master in Equity had a full evidentiary hearing on the merits regarding the referral his jurisdiction and requested the attorneys "Re-refer" the matter for a Circuit Court Judge to hear.

The facts associated with the "faux referral" amounts to an abuse of process in order to gain a collateral advantage and harm the Defendant Rhonda Meisner.

As the Court of Appeals noted, in *Food Lion, Inc. v. United Food & Commercial Workers International Union* Opinion No. 3533 Heard Oct. 11, 2000- Filed July 8, 2002

"[A]n abuse of process is the employment of legal process for some purpose other than that which is was intended by the law to effect- the improper use of a regularly used process." [] "The purpose itself, though ulterior, need not be illegitimate; rather, the abuse occurs when the purpose is accomplished by using the process in a manner in which it was not intended to be used.[] In our view, "process" as it pertains to the abuse of process *torii*, embraces the full range of activities and procedures attendant to litigation.

See Fowler W. Harper et al., The Law of Torts § 4.9 (3d ed. 1996) See also: *Hart v. O'Malley*, 647 A.2d 542, 551 (Pa. Super. Ct. 1994)("the word 'process' has been interpreted broadly and encompasses the entire range of procedures incident to the litigation process.") (citation omitted)

The Plaintiff US Bank manipulated the processes of the Court in order to facilitate a faster foreclosure proceeding, to deny the defendant Meisner of her right to trial by a jury, increasing the costs associated with the litigation, requiring additional time, effort and expense for hearings associated with the " inappropriate and illegal referral order". The Clerk of Courts office while performing ministerial duties assigned by the Judges of the Court or by statute has never been intended to function as a "fact finder" or given the authority to make "conclusions of law", these actions are reserved for a judge and jury, particularly when the Clerk is not a licensed attorney.

The tort of abuse of process was implemented to protect citizens from perversion of the legal systems in place. The complications associated with the " Proposed Order" (until the tort was discovered) was extremely stressful and incrementally emotionally damaging to defendant Meisner as she initially believed the "Proposed Order" and referral to be legitimate and legal and that she had lost her right to trial by jury.

First, as the plaintiff US Bank is well aware, the " Proposed Order " that was drafted by the Bank, presented for execution by the Clerk of Court, contained multiple findings of facts and conclusions of law which far exceeds the duties of the Clerk's office. While the Clerk can refer cases to the Master in Equity Judge via S.C. Rules of Civil Procedure Rule 53(b) which do not contain a jury demand, counterclaims, other cross claims, findings of fact and conclusions of law this is not the kind and type of "Proposed Order" that was presented to the Clerk for processing and a judge should sign the referral prior to the Clerk of Court effecting the referral.

US Bank impermissibly presented an Order to the Clerk to sign to further US Bank's efforts to deny the Defendant Rhonda Meisner a jury trial for which she is entitled based the request for attorneys fees based on a contract, on the compulsory counterclaims as well as the compulsory cross claims. Instead of submitting the referral to the Court for a hearing that could properly be ruled on or submitting a "proposed order " to the Court for a Judge to sign that included their arguments , US Bank tried to effect an "end run" by submitting the " proposed Order" to the Clerk and effectively putting a Court official in the impermissible position of practicing law or becoming a witness and or party to a case. Even if the Clerk of Court , Ms. Jeanette McBride is an attorney, which she has stated she is not, State law prohibits Court officials from practicing law, including the Master in Equity.

The actions by US Bank represent an abuse of process and their actions have harmed the Defendant Meisner by causing actual damages, as well as emotional damages. The money paid for motions, the time spent defending the "illegal referral" and other expenses including payment for copies, parking and other resources amount to special damages. *Peter's Well Drilling Co. V. Hanzula*, 242 N.J. Super. 16,575 Ad 1375, 1379-81 (Ct. App. Div. 1990) The actions of US Bank have been willful and purposeful and represent a practice and pattern that could harm multiple citizens in the State of South Carolina going through foreclosure proceedings if the practices are replicated. Most notably if the defendants or the attorneys representing them do not challenge the " proposed Order" and the referral, the abuse of process succeeds and the tortfeasor whether US Bank or another plaintiff *gains the benefits from their unlawful use of a lawful procedure*, which is the exact reason the tort of abuse of process exists.

II. FAILURE TO SATISFY MORTGAGE BY BANK OF AMERICA, N.A.

Bank of America, N.A. failed to enter satisfaction of Mortgage Pursuant to S.C. Code Ann. §29-3-310 making them subject to damages pursuant to S.C. Code § 29-3-320 by Bank of America, N.A.

US Bank listed in the Lis Pendens associated with a loan that originated in 2005 between the defendant Rhonda Meisner and Bank of America, N.A. a loan that was previously paid off and Bank of America, N.A. did not enter a satisfaction of mortgage properly. The loan was paid off online and was found by Rhonda Meisner to be reported as "a foreclosure" by the bank in August of 2008. In August/ September of 2008, defendant Meisner was informed that Bank of America, N.A. did not enter a satisfaction of Mortgage based on Bank of America's report to credit bureaus that the mortgage was in foreclosure. The bank investigated and found the mortgage to be paid in full and removed the erroneous entry in the credit reporting agencies files and should have entered satisfaction of the Mortgage after having been told of the error.

The Bank of America, N.A. investigated the error in reporting the foreclosure action and the status of the loan with the credit bureaus, the Bank of America, N.A. corrected the error in the credit bureaus but the Bank of America, N.A failed to enter the satisfaction of the mortgage in the Richland County register of deeds office in 2008 as directed by defendant Meisner.

Defendant Meisner paid the full amount due and owing to Bank of America, N.A. for the approximately \$30,000 debt, requested the erroneous information be removed from her credit report and enter the mortgage satisfied in order to purchase another home, paid the fees associated with the satisfaction and Bank of America, N.A. while they removed the erroneous information from the credit bureau they failed to enter the satisfaction of the mortgage as promised within 3 months subjecting them to the damages available under S.C. Code Ann. §29-3-320 which provides that the Bank of America, N.A. is responsible for compensating Meisner

for one half of the amount of the loan or (\$15,000) plus costs and attorney's fees. (**EXHIBIT B Affidavit of Rhonda Meisner**) *Dykeman v. Wells Fargo Home Mortg., Inc.* 381 S.C. 333, 340, 673 S.E. 2d 804, 807 (2009) Meisner made the appropriate request for satisfaction along with her request for her credit report to be corrected. *Id.* at 339, 673 S.E. 2d at 807 (alterations by court) (quoting *Bostic v. Am. Home Mortg. Servicing, Inc.*, 375 S.C. 143, 154, 650 S.E. 2d 479, 485 (Ct. Appl. 2007))

~~S.C. Code Ann. §29-3-310 does not mandate a written request. *Bostic*, 375 S.C. at 155,~~
650 S.E. 2d at 485. The statute is satisfied if the aggrieved party (1) makes a verbal or written request and (2) demonstrates the mortgagee has received or agreed to this request. *Id.* Here, evidence the Bank of America, N.A. agreed with Ms. Meisner's request is evidenced by the Bank of America, N.A. correction of her credit report to indicate the mortgage was paid in full; however, they did not correct the information in the Richland County register of deeds as promised.²

SLANDER OF TITLE BY BANK OF AMERICA, N.A.

Slander of title has been defined as " a false and malicious statement made in disparagement of a person's title to real or personal property, causing him injury." *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 18-19, 567 S.E. 2d 881, 890 (Ct. App. 2002). The Bank of America, N.A. was informed of their erroneous reporting of a foreclosure (of Meisner's 2005 loan referenced by US Bank in the Lis Pendens) in 2008 when it was discovered as part of an application for a new loan. The Bank of America, N.A. removed the foreclosure from Ms. Meisner's credit report as well as promised satisfaction of the mortgage documents ; however this was not done within 90 days of the request and resulted in slander of title. The Bank of America, N.A. by not removing the mortgage from the public records, publicized a debt that had

²Lis pendens filed with the current action

been paid. The publication via the non removal of the lien was a false statement in that the Bank of America, N.A. was on notice the debt was paid and failed to remove the debt from the public records. The failure of the Bank of America, N.A. to remove the liens was with reckless disregard to and with malice directed at harming the rights of Ms. Meisner to the quiet enjoyment of her property without a cloud being placed on the title of her property.

The resulting "cloud of title" caused the special damages in that it played a role in SCBT initiating a separate action for suit on the note instead of the mortgage foreclosure action initially instituted by SCBT causing defendant Meisner of the special damages of having to defend two separate and distinct suits with two separate sets of defense expenses including all of the expenses previously mentioned . The co- defendant's actions specially harmed defendant Meisner by making her double her time and efforts associated with the defense of two lawsuits as opposed to one lawsuit.

For the above reasons and all references to the record the defendant Rhonda Meisner respectfully requests the Court to enter an Order allowing her to amend her answer, her counter claims, and her cross claims.

Respectfully Submitted,



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July 13, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as
trustee for the Holders of the Banc of
America Funding Corporation, 2008-FT1
Trust, Mortgage Pass-Through
Certificates, Series 2008-FT1,

Plaintiff,

v.

Rhonda Lewis Meisner, a/k/a Rhonda L.
Meisner; Bank of America, N.A.; and
SCBT,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-40-2063

**MEMORANDUM IN OPPOSITION
OF DEFENDANT RHONDA LEWIS
MEISNER'S MOTION TO AMEND**

RICHLAND COUNTY
FILED
2015 JUL 27 AM 10:39
JEANETTE W. HOBBS
C.C.P. & G.S.

Defendant Bank of America ("BANA") respectfully submits this memorandum in opposition to Defendant Rhonda L. Meisner's ("Meisner") Motion to Amend filed July 13, 2015.

BACKGROUND

This is an action by Plaintiff for foreclosure of its mortgage ("US Bank Mortgage") secured by certain real property located in Richland County, South Carolina (the "Property") that is currently owned by Defendant Rhonda Lewis Meisner ("Meisner"). BANA was originally named in the suit by virtue of a junior mortgage on the Property from Meisner to BANA dated September 19, 2005 and recorded September 23, 2005 in Book 1101 at Page 2609 of the Richland County Register of Deeds ("BANA Mortgage"). Plaintiff in this action seeks a judgment of foreclosure against Meisner, a reformation of the US Bank Mortgage, and an Order to sell the Property at public auction.

Mrs. Meisner has responded to the Complaint for Foreclosure and now seeks in the present Motion to Amend filed July 13, 2015 to amend that response ("Motion"). BANA received a copy of the Motion on July 20, 2015, and later learned that a hearing had been set in the matter for July 27, 2015. For the reasons set forth below, Defendant BANA opposes the Motion and asks that the Court deny same.

LEGAL STANDARD

In South Carolina, thirty days after a responsive pleading has been filed, "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires *and does not prejudice any other party.*" S.C. RULE CIV. PROC. 15(a) (emphasis added). Courts in South Carolina "ha[ve] held that it may be denied where the proposed amendment would be futile." Jennings v. Jennings, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010). A motion to amend is addressed to the sound discretion of the trial judge. Foggie v. CSX Transportation, Inc., 313 S.C. 98, 102, 431 S.E.2d 587, 590 (1993).

ARGUMENT

The Motion was not timely served on BANA in advance of the hearing.

In South Carolina, "a written motion ... and notice of the hearing thereof, shall be served *not later than ten days* before the time specified for the hearing." S.C. RULE CIV. PROC. 6(d) (emphasis added). The Motion was filed on July 13, 2015. Subsequent to that, Mrs. Meisner made a request to the Clerk of Court for Richland County to have the Motion heard on July 27, 2015. Mrs. Meisner did not at any time consult with the undersigned regarding this request, and had not served the undersigned or BANA with a copy of the Motion at that point. Despite this, it appears that this request was granted, and that the Motion is set to be heard on July 27, 2015.

BANA was finally served with a copy of the Motion on July 20, 2015, which is less than ten (10) days prior to the hearing date, and therefore a direct violation of Rule 6(d). The rules “provide notice of a hearing ‘shall be served not later than ten days before the time of the hearing.’” Jackson v. Speed, 326 S.C. 289, 310, 486 S.E.2d 750, 760 (1997) (citing S.C. RULE CIV. PROC. 6(d)). In the present case, BANA received neither a Notice of Hearing nor the Motion itself until July 20, 2015 at the earliest, which is clearly less than the ten days required under Rule 6(d). Without proper notice of the Motion, let alone any receipt of the Motion itself, BANA cannot be expected to adequately address the arguments raised therein, and the Court should not grant the Motion. Allowing a hearing to go forward on the Motion would greatly prejudice BANA since there has not been adequate time to respond to the Motion.

Any amendment would prejudice the other parties under Rule 15(a).

While leave to amend is “freely given” in many cases in South Carolina, a Court should not allow a party to amend its pleading if doing so would “prejudice any other party.” Sullivan v. Hawker Beechcraft Corp., 397 S.C. 143, 723 S.E.2d 835 (Ct. App. 2012). The “prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.C.2d 711, 716-17 (Ct. App. 2005). Courts in South Carolina “ha[ve] held that it may be denied where the proposed amendment would be futile.” Jennings v. Jennings, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010). In the present case, any amendment would greatly prejudice BANA, if for no other reason than granting leave to amend would be a direct violation of Rule 6(d)’s notice requirement. Further, as Jennings makes clear, any proposed amendment that is futile may be denied. Jennings, 389 S.C. at 209. As further outlined below, BANA, after a limited opportunity

to review the Motion, believes the amendment is indeed futile. However, because Mrs. Meisner violated Rule 6(d) by not properly serving the Motion and Notice of Hearing, BANA is being unfairly prevented from fully exploring and investigating the futility of the proposed Amendment. This is precisely the reasoning behind the ten day requirement for Rule 6(d). In the present case, there exists a "lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it." Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.C.2d 711, 716-17 (Ct. App. 2005). While BANA believes that the amendment is likely futile, it has not had an opportunity to fully explore this issue, and granting Mrs. Meisner leave to Amend without giving BANA proper notice and opportunity to investigate and respond to the Motion would be premature and highly prejudicial to BANA. Therefore, Mrs. Meisner's motion should not be allowed by the Court.

Meisner is not entitled to Amend under Rule 15(a), SCRCF as any amendment would be futile

Despite the limitations regarding notice set forth above, BANA has attempted to at least review the Motion. In it, it appears that Mrs. Meisner seeks to amend her response in this action to add a claim against BANA for "Slander of Title" whereby she alleges that BANA failed to timely satisfy a Mortgage sometime in 2008. Without getting into the accuracy of Mrs. Meisner's proposed amended claim - which BANA specifically denies, even taking the facts as set forth as completely true, Mrs. Meisner's proposed amendment is completely futile and therefore should be denied.

Any such claim for a slander of title, even if true, would be subject to the statute of limitations in South Carolina. In her proposed pleading, Mrs. Meisner admits that she was aware of the alleged wrongdoing by BANA in 2008. [Motion, Exhibit A, ¶ 68] [Affidavit of Rhonda L.

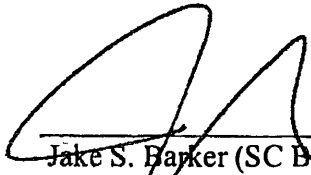
Meisner, ¶ 5]. In South Carolina, a claimant seeking relief via “an action for trespass or damage to real property” must do so “within three years” of the alleged wrongdoing. S.C. CODE ANN. § 15-3-530(3) (1976). Mrs. Meisner’s proposed claim against BANA is that her property was somehow damaged by an alleged failure to satisfy a mortgage. [Motion, Exhibit A, ¶¶ 64-72]. Clearly, as it is now 2015, the statute of limitations on Mrs. Meisner’s claim has run, and any amendment to allow her to assert this stale cause of action would be futile. Therefore, the Court should not grant Mrs. Meisner’s Motion.

CONCLUSION

For the foregoing reasons, Rhonda L. Meisner’s Motion to Amend should be denied.

Respectfully submitted,

GRAYBILL LANSCHE & VINZANI, LLC



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Attorneys for Defendant Bank of America, N.A.

Charleston, South Carolina
July 24, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for the
Holders of The Banc of America Funding
Corporation, 2008-FT1 Trust, Mortgage Pass-
Through Certificates, Series 2008-FT1,

PLAINTIFF,

vs.

Rhonda Lewis Meisner a/k/a Rhonda L. Meisner;
Bank of America, N.A.; and SCBT,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-40-2063

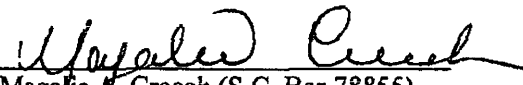
**MOTION TO STRIKE
JURY TRIAL DEMAND
AND FOR
MANDATORY ORDER OF REFERENCE**

FILED
2015 OCT 28 AM 9:25
CLERK OF COURT
RICHLAND COUNTY, S.C.

U.S. Bank, National Association, as trustee for the Holders of The Banc of America Funding Corporation, 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1 ("Plaintiff"), by and through its undersigned counsel, hereby moves to strike the Defendant Rhonda Lewis Meisner's demand for a jury trial as set forth in her Amended Answer and Counterclaim, and for the instant foreclosure action to be referred to the Honorable Joseph M. Strickland, Master in Equity for Richland County, with authority to enter a final judgment in the case pursuant to Rule 53 (b) SCRCP. Pursuant to Rule 53(e) SCRCP, any appeal therefrom shall be to the Supreme Court or the Court of Appeals, as provided by the South Carolina Appellate Court Rules. Plaintiff shall show that based upon the applicable black letter law, Defendant has waived the right to a jury trial on her legal counterclaims because they are permissive and were raised in response to Plaintiff's equitable foreclosure action.

Respectfully submitted,

FINKEL LAW FIRM LLC


Magalie A. Creech (S.C. Bar 78855)
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Telephone: (843) 577-5460
Facsimile: (843) 577-5135
Attorneys for Plaintiff

October 26, 2015

240

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and SCBT

DOCKET NO. 2014-CP-40-2063

DEFENDANT'S MEMORANDUM
OPPOSITION OF MOTION TO STRIKE
JURY TRIAL AND FOR MANDATORY
REFERRAL.

RICHLAND COUNTY
FILED
JAN 16 2015
2:54 PM
JAN 16 2015
P. 8 02

**TO: MAGALIE ARCURE, ESQ. ATTORNEY FOR THE PLAINTIFF AND TO THE
PLAINTIFF ABOVE NAMED AND TO JONATHAN MILLING AND ED
GRIMSLEY, ATTORNEY'S FOR THE DEFENDANT SCBT, N.A. NAMED
ABOVE AND TO JAKE BARKER, ATTORNEY FOR THE DEFENDANT BANK
OF AMERICA, N.A.**

**MEMORANDUM IN OPPOSITION TO MOTION TO STRIKE JURY DEMAND AND FOR
MANDATORY REFERRAL**

As an initial matter, the pleadings in this case with the associated summons were amended on August 10, 2015 with service complete shortly thereafter. Both U.S. Bank and Bank of America, N.A. have outstanding discovery requests that have not been completed. Additionally, U. S. Bank and Bank of America, N.A. have submitted conflicting affidavits as to the owner of the note and mortgage in this case. SEE: affidavit from U.S. Bank employee's compare with Bank of America, N.A. employee's affidavit as EXHIBIT A.

MOTION TO STRIKE JURY DEMAND

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Compulsory counterclaims must be raised in current lawsuits or risk losing the opportunity to raise the issues later. Mortgage foreclosure proceedings is an action in equity; however, the question of "[w]hether a party is entitled to a jury trial is a question of law." *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E. 2d 771, 772 (2010). The South Carolina Supreme Court has explained the process for evaluating counterclaims in *Wachovia Bank v. Blackburn* and instructed as follows:

- (1) If both the complaint and the counterclaim are in equity, the entire matter is triable by the court.
- (2) If both are at law, the issues are triable by a jury.
- (3) If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial.
- (4) If the complaint is equitable and the counterclaim is legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaim unless a valid jury waiver encompasses the counterclaim. If such waiver does not exist, the proper procedure for handling the counterclaims is as follows:
 - (a) the trial judge may, pursuant to Rule 42 (b), order separate trial of the legal and equitable claims, or may order the claims tried in a single proceeding.
 - (b) if separate trial are ordered, the judge must determine which issues are to be tried first. If there are factual issues common to both claims, absent the most imperative circumstances, the at law claim must be tried first. If there are no common factual issues, it is within the trial judge's discretion which claims will be tried first.
 - (c) If the claims are to be tried in a single proceeding and there are factual issues common to both claims, the jury shall first determine the legal issues. The court may then determine the equitable claims, but the jury's determination of common factual issues shall be binding upon the court.

Wachovia Bank, National Association v. William E. Blackburn.

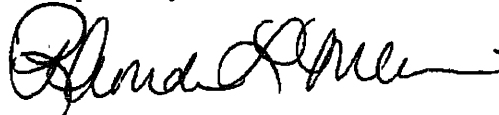
Here, the counter and cross claims for breach of contract and abuse of process are directly related to the foreclosure process and are compulsory and require a jury trial based on the demand in the complaint and the amended complaint. "By definition, a counterclaim is

compulsory only if it arises out of the same transaction or occurrence as the opposing party's claim." *Wells Fargo Bank, N.A. v. Smith*, 398 S.C. 487, 495, 730 S.E. 2d. 328, 332-33 (Ct. App. 2012)(quoting *First Citizens Bank & Trust Co. of S.C. v. Hucks*, 305 S.C. 296, 298, 408 S.E. 2d. 222, 223 (1991).

ABUSE OF PROCESS

For the reasons granted by this Court in the motion to amend the complaint, the defendant/plaintiff Rhonda Meisner respectfully requests the referral to the Master- in-Equity be denied due to the right to the jury trial on the abuse of process claims. The defendant respectfully requests the motions by the plaintiff be denied based on the above arguments.

Respectfully Submitted.



Rhonda Lewis Meisner
PO Box 689
Blythewood, SC 29016
pegasus333@icloud.com
(803) 206-3402

This 16TH DAY OF DECEMBER 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee
for the Holders of the Banc of America
Funding Corporation, 2008-FTI,

Plaintiff,

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and SCBT

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-2063

MOTION TO ALTER AND AMEND
RULING PURSUANT TO SCRPC RULE
59-e

2016 APR 20 PM 12:28

TO THE PLAINTIFF'S ATTORNEY MAGALIE CREECH, JAKE BARKER AND JONATHAN MILLING AND TO THE PLAINTIFF NOTED ABOVE PLEASE TAKE NOTE THAT THE DEFENDANT RHONDA MEISNER WILL MOVE BEFORE THE PRESIDING JUDGE OF THE FIFTH JUDICIAL CIRCUIT OR HIS OR HER DESIGNEE FOR AN ORDER ALTER AND AMENDING THE MOTION TO STRIKE JURY DEMAND AND FOR MANDATORY REFERRAL PURSUANT TO RULE 59-e. THE MOTION IS REQUESTED TO BE HEARD WITHIN 14 DAYS OR AS SOON AS THE COURT ROSTER ALLOWS.

The Defendant, Counter claimant and Cross claimant, Rhonda Meisner respectfully requests the Court to review the decision rendered on April 13, 2016, striking the jury demand and ordering the case referred to the Master in Equity based on the ruling the counter and cross claims were permissive and not mandatory and compulsive, as argued by the defendant in the hearing.

The Court previously denied the real party in interest challenge which was based on a defective U.S. Bank affidavit, and appealed. The Court of Appeals determined the issue to be interlocutory in nature and therefore, not immediately appealable. The Court's recent Order changes the mode of trial, which makes the Order striking the jury demand and for Mandatory referral immediately appealable. Creed v. Stokes, 285 S.C. 542, 331 S.E. 2d 351 (1985) (order

referring case to master in equity affects the mode of trial, which is a substantial right, and party waived objection to the reference and his right to jury trial by failing to immediately appeal the order.

As such, the real party in interest challenge is central to the finding that the cross claims against Bank of America, N.A. are compulsory. Should the transfer to U.S. Bank via a defective affidavit of assignment by Bank of America, N.A. be determined dispositive to the change in ownership of the note and mortgage, then U.S. Bank would be a third party creditor and not the real party in interest as argued in the complaint.¹ It should be noted that Bank of America, N.A. and U.S. Bank offer competing affidavits that conflict as to when the note and mortgage were assigned, sold, or transferred to US Bank. During the deposition of Rhonda Meisner held the Monday before the Order was entered, US bank displayed the original note that indicated the endorsement was blank and therefore, unexecuted as to the date and the party of transfer.

The defendant would respectfully request the Court to reconsider its finding that the counter claims against US Bank are not mandatory and compulsory because U.S. Bank can only inherit "whatever" Bank of America, N.A. has to confer and if it is determined that Bank of America's failure to draft payments was the cause of the breach of contract; then the breach speaks directly to the enforceability of the note and mortgage by a third party creditor in the foreclosure action. As argued during the hearing, under the UCC a transfer from Bank of America, N.A. to U.S. Bank after the breach makes U.S. Bank a third party creditor. Bank of America, N.A. cannot breach the contract by not drafting payments, which was an express term of the contract and then transfer the mortgage without transferring the liability of the breach by Bank of America, N.A.

¹ First Amended Complaint filed August 10, 2015 at ¶¶45-46

Additionally, the counterclaim for abuse of process by US Bank is part of the action to enforce the note, as was argued in the hearing; therefore, the counterclaim is compulsory and mandatory because it implicated the enforcement tactics of US Bank once the case was docketed which specifically involves the Court's processes. As evidence, the Master in Equity remanded the action back to Circuit Court, finding the actions by the plaintiff to be improper, by gaining the signature of the Clerk of Court that made findings of fact and conclusions of law, instead of a Judge.

While the current plaintiff U.S. Bank did not demand a deficiency, SCBT did demand a deficiency and therefore the appraisal statute was invoked for the property that both plaintiff's reference. Once the protections of the statute are implicated on the property, the Plaintiff's cannot remove the protections by changing the suit or waiving the deficiency when the statute was invoked. Here, SCBT demanded a deficiency, changed the suit to a suit on the note and released Bank of America, N.A. (without prejudice); however, the protections of the deficiency statute were already invoked and cannot be withdrawn by design of the parties. Whether by collusion or accident, the protections of the appraisal statute are part of the original action and cannot be rescinded by the parties.

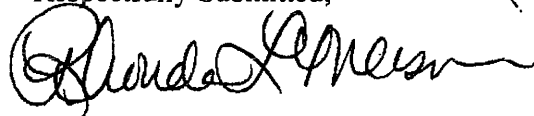
In conclusion, the ruling striking the jury demand and for mandatory reference did not incorporate a finding that the conflicting dates in the affidavit of assignment were either ministerial and of no effect or that the error in the assignment affidavit does not adequately confer the ownership of the note and mortgage to US Bank and therefore, Bank of America, N.A. is still the real party in interest. The defendant respectfully requests a ruling on this issue as it is integral to the finding of mandatory and compulsory counterclaims and cross claims and the issue of availability of mode of trial and therefore, also immediately appealable. The Court also

ruled the appraisal statute was not available to the property; however, the protections of the appraisal statute were already invoked by SCBT, it would be inequitable for the parties to be able to change their actions to avoid defendant's statutory protections.

The statute requires additional steps that protect the defendant, so if the property is deemed available for foreclosure the additional steps must be followed or the due process clause of the United States Constitution is violated. The property is appraised by Richland County at \$145,000 and U.S. Bank's (Bank of America, N.A.'s) mortgage is approximately \$26,000. The plaintiffs should not be allowed to manipulate the Court and circumvent statutory protections by changing their cause of actions.

The entry of the Order was clocked on April 13, 2016. The defendant received the Order on April 14, 2016. This motion is made within 10 days of the Order and a copy was placed in Judge Benjamin's mailbox and mailed to the parties.

Respectfully Submitted,



Rhonda Lewis Meisner
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(803) 206-3402

APRIL 20, 2016

247

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and SCBT

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-2063

MEMORANDUM IN OPPOSITION TO
SUMMARY JUDGMENT

RICHLAND COUNTY
FILED
2016 JUN -1 PM 4:30
JEANNETTE W. MCGRIDE
C.C.P. & G.S.

The Defendant, counter-claimant and cross claimant Rhonda Meisner respectfully
submits this memorandum in opposition to summary judgment.

There are two initial matters which should be addressed. First, the defendant has filed an appeal based on the mode of trial, which is a substantial right. As such the South Carolina Court of Appeals and the Supreme Court of South Carolina has determined, is immediately appealable. Because the mode of trial is a substantial right, the defendant argues neither the Circuit Court nor the Master in Equity's office currently has the ability to hear a substantive motion for summary judgment until the mode of trial question is resolved by the Court of Appeals. Second, the plaintiff U.S. Bank has made a motion for summary judgment which is conclusory without attaching a memorandum in support or evidence to support the motion. Summary judgment is appropriate once the moving party has met its burden of showing there is no question of material fact and the non-moving party has not put forth evidence to contradict the assertion. *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E. 2d 362, 364 (Ct. App. 2004). Therefore, the motion should be summarily dismissed as U.S. Bank has not carried the initial burden of proving

summary judgment is appropriate because U.S. Bank has not attached the requisite evidence to the motion.

Additionally, because the plaintiff U.S. Bank and Bank of America, N.A. have conflicting accounts of when the note and mortgage were transferred from Bank of America, N.A. to U.S. Bank, it is unclear if U.S. Bank even has standing to pursue the action before the Court based on Bank of America's representations to the Court in filings and answers to interrogatories. Conflicting claims of ownership creates a material issue of fact which requires the services of a fact finder.

Argument in opposition of Summary Judgment

This matter is before the Court on Plaintiff's motion for summary judgment pursuant to Rule 56 (c), SCRPC.

The grant of summary judgment is appropriate when there are no genuine issues of material fact and it is clear the moving party is entitled to judgment as a matter of law. Rule 56 (c) SCRPC. Whether there are triable issues of fact, the evidence must be viewed in the light most favorable to the non-moving party. *Koester v Carolina Rental Ctr*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). "[s]ummary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 456, 684 S.E.2d 756, 758 (2009) (quoting *Brockbank*, 341 S.C. at 378, 534 S.E.2d at 692).

The South Carolina Supreme Court has held that the non-moving party, in cases that do not involve a federal question, is required to submit only 'a mere scintilla' of evidence in order to withstand a summary judgment challenge. *Hancock v. Mid-South Management Co. Inc.*, 673 SE.

2d 801, 381 S.C. 326. (1994). The defendant has met this burden; therefore, summary judgment must be denied. Here, Bank of America, N.A., U.S. Bank's predecessor in interest in the note and mortgage associated with the above entitled foreclosure action has claimed an interest in the note and mortgage via filings in a related case. (See: 2013-CP-40-2063). The filings before the Court by U.S. Bank suggests that Bank of America, N.A. transferred ownership of the note and mortgage via an assignment in April of 2014; however, the transfer was notarized a day later which does not comport with South Carolina law. That is, the transfer occurred on April 2, 2014 but was notarized on April 3, 2014. Even if the disparity is a scrivener's error, in over two years the Bank has not attempted to correct the error. Additionally, Bank of America, N.A. has submitted that the transfer occurred in 2013 which creates a material issue of fact as to who the proper party is for purposes of real party in interest and who has the right to foreclose if any such right exists.

Summary judgment is a drastic remedy and should be invoked cautiously so that no person will be improperly deprived of a trial. *Baughman v. American Tel. & Tel Co.*, 306 S.C. 101, 112, 410 S.E. 2d 537 543 (1991). This means that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Id. Doe Ex Rel. Doe v. Batson*, 548 S.E. 2d 854 (S.C. 2001).

Here, just as in Doe, discovery is outstanding and a motion to compel has been filed against Bank of America, N.A. and therefore the grant of summary judgment is premature and precluded as to the cross claims against Bank of America, N.A. Bank of America, N.A. has also claimed an ownership interest in a loan that was previously paid in full but never satisfied. As such, the determination of whether the loan was satisfied requires the services of a fact finder. The South Carolina Supreme Court has made clear that a Bank's failure to enter satisfaction of a

mortgage (even for a home equity line of credit) exposes the Bank to liability for its failure to satisfy the mortgage. *Regions Bank v. Strawn*, Opinion No. 27555 Heard Sept. 23, 2014 filed August 5, 2015. Here, because the liability of Bank of America, N.A. may exceed any claim Bank of America, N.A. has to monies owed, summary judgment is inappropriate. Violations of S.C. Code Ann. 29-3-310 creates liability for punitive damages under S.C. Code 29-3-320 pursuant to *Strawn. Id.*

The questions of material fact as to which entity owns the note and mortgage (U.S. Bank or Bank of America, N.A.) creates a material issue of fact and precludes summary judgment. The defendant further argues the motion for summary judgment should be stayed because the referral to the master in equity is under appeal based on the mode of trial. As such, it is possible that neither the Circuit Court or the Master in Equity has jurisdiction because the Order of referral would be moot should the Court of Appeals agree with the defendant that she is entitled to a jury trial. As such the defendant requests the case be stayed pending appeal of the mode of trial.

Respectfully Submitted,



Rhonda Meisner
PO Box 689
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(803)206-3402

June 1, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and SCBT

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-2063

EXHIBIT B

Affidavit of Rhonda Meisner
Attached to Motion to Amend the Complaint

2015 JUN 13 PM 4:14

I, Rhonda Meisner being of sound mind and over the age of 21 years old submit under penalty of perjury the following facts and I authorize the use of this affidavit in the above captioned lawsuit.

1. I, Rhonda Meisner am the sole owner of 406 Koon Store Road Columbia, SC 29203 and have the property titled in my personal name which has always been the case since the acquisition of the property.
2. I took out a second mortgage line of credit from Bank of America, N.A. referenced in this litigation as the Bank of America, N.A. "2005" loan.
3. This loan was paid off completely via a transfer of funds over my internet banking service later in the year of 2005 or 2006.
4. Bank of America, N.A. improperly applied the payoff resulting in a balance of less than \$5.00 but removed the loan from view on the computer screen terminal.
5. Bank of America, N.A. subsequently reported this loan as going into foreclosure erroneously due to their mistake which was discovered until late 2007 or 2008 when I applied for another loan and the foreclosure was noted in my credit report.
6. I immediately contacted Bank of America, N.A. and requested the erroneous information be removed from my credit report and the lien be removed from my property so that I could get the loan for which I was applying.
7. I was subsequently approved for the loan based on Bank of America, N.A. reportedly correcting the erroneous credit report information and processing the filing of a satisfaction of mortgage with the Richland County Register of Deeds office.
8. The credit report was in fact removed; however, by nature of the fact the mortgage has been referenced in the Lis pendens in this action Bank of America, N.A. has not properly satisfied the 2005 mortgage after notice.

I declare under penalty of perjury the facts associated with the above referenced "2005" are true and accurate as described above.

SIGNATURE LINE NEXT PAGE RHONDA L. MEISNER AFFIDAVIT

252

Rhonda L. Meisner

Rhonda L. Meisner

July 13, 2015

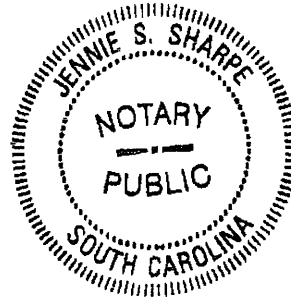
signature for affidavit

notarized this 13 day of July 2015

by Jennie S. Sharpe

notary expires on:

7/23/2017



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and SCBT

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-2063

AFFIDAVIT SUBMITTED UNDER
PENALTY OF PERJURY IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

RICHLAND COUNTY
FILED
2016 JUN - 1 PM 6:30
JEANNETTE W. MCNEEL
C.C.P. & G.S.

1. My name is Rhonda Meisner and I am the defendant counterclaimant and cross claimant in the above entitled action. I certify that the facts submitted pursuant to this affidavit are true and understand that any false statement is subject to a penalty of perjury under South Carolina law. I submit the statements under penalty of perjury.
2. The plaintiff U.S. Bank took my deposition testimony earlier this year. During the proceeding, the plaintiff did not allow me to touch the note associated with the foreclosure action; however, the plaintiff showed me what was purported to be the original note.
3. The back of the note was endorsed in blank with no entity named as the endorsee of the instrument.
4. It is my understanding that for a note to be considered in "possession" of the holder of the note, the note must be endorsed to the actual person or entity possessing the note along with the date of the endorsement.
5. U.S. Bank has made representations that the transfer/assignment of the note and mortgage from Bank of America, N.A. unto itself occurred in April of 2014. Bank of America, N.A. has made representations that the transfer of the note and mortgage occurred in 2013. The date of the transfer is a material issue of fact that is in question.
6. Bank of America, N.A. has claimed ownership interests in both the note and mortgage. U.S. Bank also claims interests as well as loans that have previously been paid in full.
7. The terms of the note/mortgage require that if a direct debit is elected by the mortgagor to pay the mortgage payment, the Bank will continue to debit the checking account of the mortgagor for the mortgage payment unless the mortgagor notifies the bank in writing to cease automatic debits. The defendant Rhonda Meisner represents that she never requested the Bank to cease debiting her account.

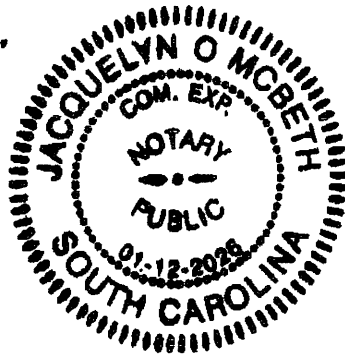
Further affiant sayeth not: signature block next page.


Rhonda Meisner, Defendant

Sworn this 1st day of June, 2016 to

A notary for the state of South Carolina

My commission expires 01/12/2026



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and SCBT

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-2063

MEMORANDUM IN OPPOSITION TO
SUMMARY JUDGMENT

RICHLAND COUNTY
FILED
2016 JUN -1 PM 4:30
JEANNETTE W. MCGRIDE
C.C.P. & G.S.

The Defendant, counter-claimant and cross claimant Rhonda Meisner respectfully submits this memorandum in opposition to summary judgment.

There are two initial matters which should be addressed. First, the defendant has filed an appeal based on the mode of trial, which is a substantial right. As such the South Carolina Court of Appeals and the Supreme Court of South Carolina has determined, is immediately appealable. Because the mode of trial is a substantial right, the defendant argues neither the Circuit Court nor the Master in Equity's office currently has the ability to hear a substantive motion for summary judgment until the mode of trial question is resolved by the Court of Appeals. Second, the plaintiff U.S. Bank has made a motion for summary judgment which is conclusory without attaching a memorandum in support or evidence to support the motion. Summary judgment is appropriate once the moving party has met its burden of showing there is no question of material fact and the non-moving party has not put forth evidence to contradict the assertion. *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E. 2d 362, 364 (Ct. App. 2004). Therefore, the motion should be summarily dismissed as U.S. Bank has not carried the initial burden of proving

summary judgment is appropriate because U.S. Bank has not attached the requisite evidence to the motion.

Additionally, because the plaintiff U.S. Bank and Bank of America, N.A. have conflicting accounts of when the note and mortgage were transferred from Bank of America, N.A. to U.S. Bank, it is unclear if U.S. Bank even has standing to pursue the action before the Court based on Bank of America's representations to the Court in filings and answers to interrogatories. Conflicting claims of ownership creates a material issue of fact which requires the services of a fact finder.

Argument in opposition of Summary Judgment

This matter is before the Court on Plaintiff's motion for summary judgment pursuant to Rule 56 (c), SCRPC.

The grant of summary judgment is appropriate when there are no genuine issues of material fact and it is clear the moving party is entitled to judgment as a matter of law. Rule 56 (c) SCRPC. Whether there are triable issues of fact, the evidence must be viewed in the light most favorable to the non-moving party. *Koester v Carolina Rental Ctr*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). "[s]ummary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 456, 684 S.E.2d 756, 758 (2009) (quoting *Brockbank*, 341 S.C. at 378, 534 S.E.2d at 692).

The South Carolina Supreme Court has held that the non-moving party, in cases that do not involve a federal question, is required to submit only 'a mere scintilla' of evidence in order to withstand a summary judgment challenge. *Hancock v. Mid-South Management Co. Inc.*, 673 SE.

2d 801, 381 S.C. 326. (1994). The defendant has met this burden; therefore, summary judgment must be denied. Here, Bank of America, N.A., U.S. Bank's predecessor in interest in the note and mortgage associated with the above entitled foreclosure action has claimed an interest in the note and mortgage via filings in a related case. (See: 2013-CP-40-2063). The filings before the Court by U.S. Bank suggests that Bank of America, N.A. transferred ownership of the note and mortgage via an assignment in April of 2014; however, the transfer was notarized a day later which does not comport with South Carolina law. That is, the transfer occurred on April 2, 2014 but was notarized on April 3, 2014. Even if the disparity is a scrivener's error, in over two years the Bank has not attempted to correct the error. Additionally, Bank of America, N.A. has submitted that the transfer occurred in 2013 which creates a material issue of fact as to who the proper party is for purposes of real party in interest and who has the right to foreclose if any such right exists.

Summary judgment is a drastic remedy and should be invoked cautiously so that no person will be improperly deprived of a trial. *Baughman v. American Tel. & Tel Co.*, 306 S.C. 101, 112, 410 S.E. 2d 537 543 (1991). This means that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Id. Doe Ex Rel. Doe v. Batson*, 548 S.E. 2d 854 (S.C. 2001).

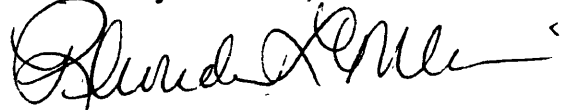
Here, just as in *Doe*, discovery is outstanding and a motion to compel has been filed against Bank of America, N.A. and therefore the grant of summary judgment is premature and precluded as to the cross claims against Bank of America, N.A. Bank of America, N.A. has also claimed an ownership interest in a loan that was previously paid in full but never satisfied. As such, the determination of whether the loan was satisfied requires the services of a fact finder.

The South Carolina Supreme Court has made clear that a Bank's failure to enter satisfaction of a

mortgage (even for a home equity line of credit) exposes the Bank to liability for its failure to satisfy the mortgage. *Regions Bank v. Strawn*, Opinion No. 27555 Heard Sept. 23, 2014 filed August 5, 2015. Here, because the liability of Bank of America, N.A. may exceed any claim Bank of America, N.A. has to monies owed, summary judgment is inappropriate. Violations of S.C. Code Ann. 29-3-310 creates liability for punitive damages under S.C. Code 29-3-320 pursuant to *Strawn. Id.*

The questions of material fact as to which entity owns the note and mortgage (U.S. Bank or Bank of America, N.A.) creates a material issue of fact and precludes summary judgment. The defendant further argues the motion for summary judgment should be stayed because the referral to the master in equity is under appeal based on the mode of trial. As such, it is possible that neither the Circuit Court or the Master in Equity has jurisdiction because the Order of referral would be moot should the Court of Appeals agree with the defendant that she is entitled to a jury trial. As such the defendant requests the case be stayed pending appeal of the mode of trial.

Respectfully Submitted,



Rhonda Meisner
PO Box 689
Blythewood, SC 29016
pegasus333@icloud.com
(803)206-3402

June 1, 2016

105

259

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and SCBT

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-2063

EXHIBIT B

Affidavit of Rhonda Meisner
Attached to Motion to Amend the Complaint

I, Rhonda Meisner being of sound mind and over the age of 21 years old submit under penalty of perjury the following facts and I authorize the use of this affidavit in the above captioned lawsuit.

1. I, Rhonda Meisner am the sole owner of 406 Koon Store Road Columbia, SC 29203 and have the property titled in my personal name which has always been the case since the acquisition of the property.
2. I took out a second mortgage line of credit from Bank of America, N.A. referenced in this litigation as the Bank of America, N.A. "2005" loan.
3. This loan was paid off completely via a transfer of funds over my internet banking service later in the year of 2005 or 2006.
4. Bank of America, N.A. improperly applied the payoff resulting in a balance of less than \$5.00 but removed the loan from view on the computer screen terminal.
5. Bank of America, N.A. subsequently reported this loan as going into foreclosure erroneously due to their mistake which was discovered until late 2007 or 2008 when I applied for another loan and the foreclosure was noted in my credit report.
6. I immediately contacted Bank of America, N.A. and requested the erroneous information be removed from my credit report and the lien be removed from my property so that I could get the loan for which I was applying.
7. I was subsequently approved for the loan based on Bank of America, N.A. reportedly correcting the erroneous credit report information and processing the filing of a satisfaction of mortgage with the Richland County Register of Deeds office.
8. The credit report was in fact removed; however, by nature of the fact the mortgage has been referenced in the Lis pendens in this action Bank of America, N.A. has not properly satisfied the 2005 mortgage after notice.

I declare under penalty of perjury the facts associated with the above referenced "2005" are true and accurate as described above.

SIGNATURE LINE NEXT PAGE RHONDA L. MEISNER AFFIDAVIT

Rhonda L. Meisner

Rhonda L. Meisner

July 13, 2015

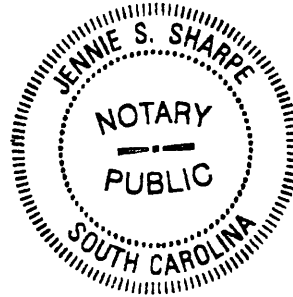
signature for affidavit

notarized this 13 day of July, 2015

by Jennie S. Sharpe

notary expires on:

7/23/2017



EJS

261

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for
the Holders of the Banc of America Funding
Corporation, 2008-FTI,

Plaintiff,

v.

Rhonda Lewis Meisner a/k/a Rhonda L.
Meisner, Bank of America, N.A. and SCBT

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-2063

AFFIDAVIT SUBMITTED UNDER
PENALTY OF PERJURY IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

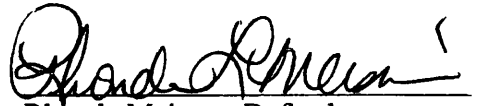
RICHLAND COUNTY
FILED
2016 JUN -1 PM 1:10
JEANNETTE W. MCNEEL
C.C.P. & G.S.

1. My name is Rhonda Meisner and I am the defendant counterclaimant and cross claimant in the above entitled action. I certify that the facts submitted pursuant to this affidavit are true and understand that any false statement is subject to a penalty of perjury under South Carolina law. I submit the statements under penalty of perjury.
2. The plaintiff U.S. Bank took my deposition testimony earlier this year. During the proceeding, the plaintiff did not allow me to touch the note associated with the foreclosure action; however, the plaintiff showed me what was purported to be the original note.
3. The back of the note was endorsed in blank with no entity named as the endorsee of the instrument.
4. It is my understanding that for a note to be considered in "possession" of the holder of the note, the note must be endorsed to the actual person or entity possessing the note along with the date of the endorsement.
5. U.S. Bank has made representations that the transfer/assignment of the note and mortgage from Bank of America, N.A. unto itself occurred in April of 2014. Bank of America, N.A. has made representations that the transfer of the note and mortgage occurred in 2013. The date of the transfer is a material issue of fact that is in question.
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Further affiant sayeth not: signature block next page.

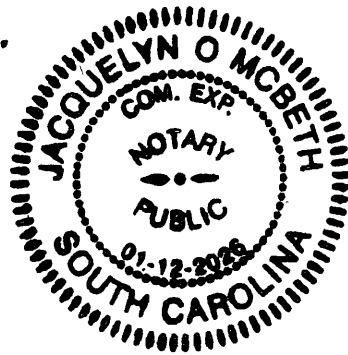
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Rhonda Meisner, Defendant

Sworn this 1st day of June, 2016 to

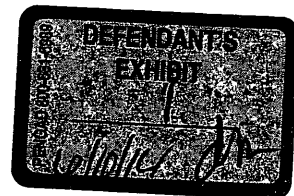
A notary for the state of South Carolina
My commission expires 01/12/2026



225

263

EXHIBIT #1



805

264.

Instrument: 2014032766

Book/Page: R 1943, 1234

Date/Time: 05/02/2014 14:39:54.737

Document: 03

Recording Requested By:
Nationstar Mortgage

When Recorded Return To:

DOCUMENT ADMINISTRATION
Nationstar Mortgage
2617 COLLEGE PARK
SCOTTSBLUFF, NE 69361

CORPORATE ASSIGNMENT OF MORTGAGE

Richland, South Carolina

"MEISNER"

Date of Assignment: April 2nd, 2014

Assignor: BANK OF AMERICA, N.A. BY NATIONSTAR MORTGAGE LLC AS ITS ATTORNEY-IN-FACT at 350 HIGHLAND DRIVE, LEWISVILLE, TX 75067

Assignee: U.S. BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE HOLDERS OF THE BANC OF AMERICA FUNDING CORPORATION, 2008-FT1 TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2008-FT1 at 425 WALNUT STREET, CINCINNATI, OH 45202

Executed By: RHONDA LEWIS MEISNER To: BANK OF AMERICA, N.A.

Date of Mortgage: 08/13/2003 Recorded: 08/18/2003 in Book/Reel/Liber: 00838 Page/Folio: 2632 as Instrument No.: 2003088123 in the County of Richland, State of South Carolina.

Property Address: 406 KOONS DOOR RD, COLUMBIA, SC 29203-0000

KNOW ALL MEN BY THESE PRESENTS, that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the said Assignor hereby assigns unto the above-named Assignee, the said Mortgage having an original principal sum of \$61,516.00 with interest, secured thereby, with all moneys now owing or that may hereafter become due or owing in respect thereof, and the full benefit of all the powers and of all the covenants and provisos therein contained, and the said Assignor hereby grants and conveys unto the said Assignee, the Assignor's interest under the Mortgage.

TO HAVE AND TO HOLD the said Mortgage, and the said property unto the said Assignee forever, subject to the terms contained in said Mortgage.

BANK OF AMERICA, N.A. BY NATIONSTAR MORTGAGE LLC AS ITS ATTORNEY-IN-FACT
On 4-3-2014

By: 

Traci Garton

Assistant

Secretary

WITNESS


Angel Bolton

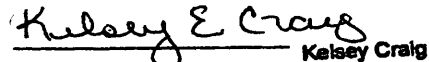
WITNESS


Susan Lindhorst

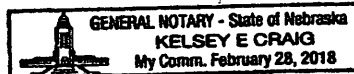
STATE OF Nebraska
COUNTY OF Scotts Bluff

On 4-3-2014, before me, Kelsey Craig, a Notary Public in and for Scotts Bluff in the State of Nebraska, personally appeared Traci Garton, Assistant Secretary, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,


Kelsey Craig

Notary Expires: 2/28/2018



(This area for notarial seal)

"AM1"AM1NATN"04/02/2014 08:11 48 AM" NATTO1NATN0000000000000462191" SCRCHL" 0611826835 SCSTATE_MORT_ASSIGN_ASSN ""BDINATN"

Book 1943-1234

2014032766 05/02/2014 14:39:54.737

Fee:\$6.00 County Tax:\$0.00

Assignment of Mortgage

State Tax:\$0.00



2014032766 John T. Hopkins II

Richland County R.O.D

58022 F 43801

265

EXHIBIT # 2



OFC

266

Instrument: 2014019373

Book/Page: R 1933 1398

Date/Time: 03/20/2014 13:26 11 040

Document: 02

Recording Requested By:

Bank of America, N.A.

When recorded mail to:

CoreLogic

Mail Stop: ASGN

1 CoreLogic Drive

Westlake, TX 76262-9823



DocID# 61287375919751376

Tax ID: 12108-04-23

Property Address:

406 Koons Door Rd

Columbia, SC 29203

SCD-AM 2589216 3/14/2014 NS0630D

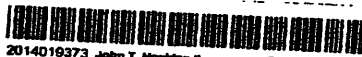
Book 1933-1398

2014019373 03/20/2014 13:26 11 040

Fee:\$0.00 County Tax: \$0.00

Assignment of Mortgage

State Tax: \$0.00



2014019373 John T. Hopkins II

Richland County R.G.O.

This space for Recorder's use

ASSIGNMENT OF MORTGAGE

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is 1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063 does hereby grant, sell, assign, transfer and convey unto U.S. BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE HOLDERS OF THE BANC OF AMERICA FUNDING CORPORATION, 2008-FT1 TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2008-FT1 whose address is C/O BAC, M/C: CA6-914-01-43, 1800 Tapo Canyon Road, Simi Valley, CA 93063 all beneficial interest under that certain Mortgage described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Mortgage.

Beneficiary: BANK OF AMERICA, N.A.

Original Borrower(s): RHONDA LEWIS MEISNER

Date of Mortgage: 8/13/2003

Original Loan Amount: \$61,516.00

Recorded in Richland County, SC on: 8/18/2003, book 00838, page 2632 and instrument number 2003086123

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Mortgage to be executed on

Dated: MAR 14 2014

Bank of America, N.A.

By:

Gloria Provencio
Gloria Provencio
Assistant Vice President

Witness:

Gloria Siordia

Witness:

SWANEE FOLBER

State of California
County of Los Angeles

On MAR 14 2014 before me, Sophie Neary Pok, Notary Public, personally appeared Gloria Provencio, who proved to me on the basis of satisfactory evidence to be the person (s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

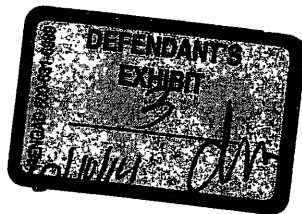
WITNESS my hand and official seal.

Notary Public: Sophie Neary Pok
My Commission Expires: July 30, 2015



267

EXHIBIT #3



Book 00838-2632
 2003086123 08/18/2003 17 08 39 26
 Fee: \$14.00 County Tax \$0.00 State Tax \$0.00

Mortgage

**WHEN RECORDED MAIL TO:**

Bank of America Consumer Collateral Tracking, FL9-700-04-10
 9000 Southside Blvd, Bldg 700
 Jacksonville, FL 32256

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

MORTGAGE

THIS MORTGAGE dated August 13, 2003, is made and executed between RHONDA LEWIS MEISNER, whose address is 1 CHESTER RD, BLYTHEWOOD, SC 29016-8555 (referred to below as "Grantor") and Bank of America, N.A., whose address is 1301 Gervais St., Columbia, SC 29201 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, grants, and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in RICHLAND COUNTY, State of South Carolina:

See Exhibit A, which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.

The Real Property or its address is commonly known as 406 KOONS DOOR RD, COLUMBIA, SC 29203-0000. Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due and shall strictly perform all of Grantor's obligations under this Mortgage.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in good condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

State of South Carolina

I certify that this is a true and correct copy

Date: 8/18/03

Register of Deeds
 Richland County

This document not to scale

269

Loan No: 7022631449

**MORTGAGE
(Continued)**

Page 2

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by South Carolina law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Mortgage:

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of thirty (30) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$10,000.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

LENDER'S EXPENDITURES. If Grantor fails (A) to keep the Property free of all taxes, liens, security interests, encumbrances, and other claims, (B) to provide any required insurance on the Property, or (C) to make repairs to the Property then Lender may do so. If any action or proceeding is commenced that would materially affect Lender's interests in the Property, then Lender on Grantor's behalf may, but is not

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required to, take any action that Lender believes to be appropriate to protect Lender's interests. All expenses incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Mortgage also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Lender may be entitled on account of any default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Mortgage:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Promises. All promises, agreements, and statements Grantor has made in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature and shall remain in full force and effect until such time as Grantor's indebtedness is paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Mortgage:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the indebtedness secured by this Mortgage; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the Grantor; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

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Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refilled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Mortgage, and the Related Documents, and (2) the liens and security interests created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Grantor pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

EVENTS OF DEFAULT. At Lender's option, Grantor will be in default under this Mortgage if any of the following happen:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Default on Other Payments. Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Break Other Promises. Grantor breaks any promise made to Lender or fails to perform promptly at the time and strictly in the manner provided in this Mortgage or in any agreement related to this Mortgage.

False Statements. Any representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Mortgage or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished.

Defective Collateralization. This Mortgage or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The death of Grantor, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Taking of the Property. Any creditor or governmental agency tries to take any of the Property or any other of Grantor's property in which Lender has a lien. This includes taking of, garnishing of or levying on Grantor's accounts with Lender. However, if Grantor disputes in good faith whether the claim on which the taking of the Property is based is valid or reasonable, and if Grantor gives Lender written notice of the claim and furnishes Lender with monies or a surety bond satisfactory to Lender to satisfy the claim, then this default provision will not apply.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the Indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Insecurity. Lender in good faith believes itself insecure.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of the Property and, as mortgagee-in-possession, collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Judicial Foreclosure. Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

Nonjudicial Sale. If permitted by applicable law, Lender may foreclose Grantor's interest in all or in any part of the Personal Property or the Real Property by non-judicial sale.

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Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

Appraisal. Grantor hereby waives the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained by Lender against Grantor in the event of foreclosure under this Mortgage.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshalled, in exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Notice of Sale. Lender will give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Election of Remedies. All of Lender's rights and remedies will be cumulative and may be exercised alone or together. An election by Lender to choose any one remedy will not bar Lender from using any other remedy. If Lender decides to spend money or to perform any of Grantor's obligations under this Mortgage, after Grantor's failure to do so, that decision by Lender will not affect Lender's right to declare Grantor in default and to exercise Lender's remedies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, the amount owing on the indebtedness and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

NOTICES. Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any person may change his or her address for notices under this Mortgage by giving formal written notice to the other person or persons, specifying that the purpose of the notice is to change the person's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors. It will be Grantor's responsibility to tell the others of the notice from Lender.

PAYMENT INFORMATION. If you make a payment(s) before or after the due date, the amount of your final payment may be higher or lower than the original scheduled amount. We may accept late payments or partial payments, even though marked "Payment in Full" (or a similar notation). We may accept payments accompanied by a letter stating that acceptance of the payment indicates our agreement to the terms set forth in the letter without giving up, waiving or losing any of our rights under law or under this Note. You will make all payments by check or money order, payable to us, drawn in U.S. dollars and payable through a U.S. financial institution or the U.S. Post Office. We will credit payments to this Note on the business day received if received before 2:00 P.M. at the location we specify or at one of our banking centers in the state of our address first described above. Otherwise, payments may not be credited to your loan for up to five (5) business days, even if payment is received under our arrangement with an affiliated bank to accept payments from our customers or at one of our ATMs. A business day is any day Monday through Friday that is not a legal holiday. Unless otherwise required by applicable law, to determine whether a late charge is due, we will apply any payment received to the oldest payment due.

NONTITLED SPOUSES AND NON-BORROWER GRANTORS. Any Grantor or Trustor who signs this Deed of Trust, Mortgage or Modification ("Security Instrument") but does not execute the Note or Credit Agreement ("Non-borrower Grantor or Trustor"): (a) is signing only to grant, bargain, sell and convey such Non-borrower Grantor's or Trustor's interest in the Property under the terms of this Security Instrument; (b) is not, by signing becoming personally obligated to pay the Note or Credit Agreement; and (c) agrees that without such Non-borrower Grantor's or Trustor's consent, Lender and any other Grantor or Trustor may agree to renew, extend, modify, forbear or make any accommodations with regard to the terms of all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the obligation evidenced by the Note or the Credit Agreement ("Related Document").

Any spouse of a Grantor or Trustor who is not in title to the Property and who signs this Security Instrument: (a) is signing only to grant, bargain, sell and convey any marital and homestead rights of such spouse in the Property; (b) is not by signing becoming personally obligated to pay the Note or Credit Agreement; and (c) agrees that without such spouse's consent, Lender and any other Grantor or Trustor may agree to renew, extend, modify, forbear or make any accommodations with regard to the terms of any Related Document.

Neither of the two foregoing sentences limit the liability of any Non-borrower Grantor or Trustor or signing spouse of a Grantor or Trustor, as applicable, under any guaranty agreement or other agreement by such person, whereby such person becomes liable for the indebtedness in whole or in part; both such sentences apply notwithstanding any language to the contrary in this Security Instrument or any of the Related Documents and apply only to the extent permitted by applicable law.



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MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Mortgage:

Amendments. What is written in this Mortgage and in the Related Documents is Grantor's entire agreement with Lender concerning the matters covered by this Mortgage. To be effective, any change or amendment to this Mortgage must be in writing and must be signed by whoever will be bound or obligated by the change or amendment.

Caption Headings. Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

Governing Law. This Mortgage will be governed by and interpreted in accordance with federal law and the laws of the State of South Carolina. This Mortgage has been accepted by Lender in the State of South Carolina.

No Waiver by Lender. Grantor understands Lender will not give up any of Lender's rights under this Mortgage unless Lender does so in writing. The fact that Lender delays or omits to exercise any right will not mean that Lender has given up that right. If Lender does agree in writing to give up one of Lender's rights, that does not mean Grantor will not have to comply with the other provisions of this Mortgage. Grantor also understands that if Lender does consent to a request, that does not mean that Grantor will not have to get Lender's consent again if the situation happens again. Grantor further understands that just because Lender consents to one or more of Grantor's requests, that does not mean Lender will be required to consent to any of Grantor's future requests. Grantor waives presentment, demand for payment, protest, and notice of dishonor. Grantor waives all rights of exemption from execution or similar law in the Property, and Grantor agrees that the rights of Lender in the Property under this Mortgage are prior to Grantor's rights while this Mortgage remains in effect.

Severability. If a court finds that any provision of this Mortgage is not valid or should not be enforced, that fact by itself will not mean that the rest of this Mortgage will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Mortgage even if a provision of this Mortgage may be found to be invalid or unenforceable.

Merger. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Successors and Assigns. Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Mortgage.

Waive Jury. All parties to this Mortgage hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of South Carolina as to all indebtedness secured by this Mortgage.

DEFINITIONS. The following words shall have the following meanings when used in this Mortgage:

Borrower. The word "Borrower" means RHONDA LEWIS MEISNER, and all other persons and entities signing the Note.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

Grantor. The word "Grantor" means RHONDA LEWIS MEISNER.

Guaranty. The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, earned interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as provided in this Mortgage.

Lender. The word "Lender" means Bank of America, N.A., its successors and assigns. The words "successors or assigns" mean any person or company that acquires any interest in the Note.

Mortgage. The word "Mortgage" means this Mortgage between Grantor and Lender.

Note. The word "Note" means the promissory note dated August 13, 2003, in the original principal amount of \$61,516.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of this Mortgage is August 12, 2018.



Richland County Register of Deeds

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Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

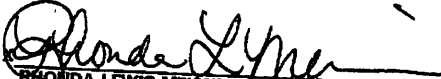
Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.
THIS MORTGAGE IS GIVEN UNDER SEAL AND IT IS INTENDED THAT THIS MORTGAGE IS AND SHALL CONSTITUTE AND HAVE THE EFFECT
OF A SEALED INSTRUMENT ACCORDING TO LAW.

GRANTOR:


RHONDA LEWIS MEISNER, individually (Seal)

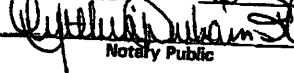
Signed, acknowledged and delivered in the presence of:

x 
Witness
x 
Witness

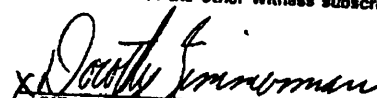
INDIVIDUAL ACKNOWLEDGMENTSTATE OF South CarolinaCOUNTY OF Richland) SS
)

PERSONALLY appeared before me and made oath that he or she saw the within-named Grantor(s) sign, seal, and, as his or her act and deed, deliver the within-written Mortgage for the uses and purposes therein mentioned, and that he or she with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 13day of August, A.D. 20 03


Notary Public (Seal)

My Commission expires: 6-14-06

x 
(Witness)

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Exhibit A

All that certain piece, parcel or lot of land, situate, lying and being on the southern side of Koon Store Road (S-40-61), north of the City of Columbia, in the County of Richland, State of South Carolina, being shown and delineated as Lot No. 9, containing one acre, on a plat prepared for Eberdease Thomas by Douglas E. Platt, Sr., Reg. Land Surveyor, dated May 9, 1979 and recorded in Plat Book Y at page 4038; said lot being bounded and measuring as follows: On the North by Koon Store Road measuring thereon 100 feet; on the East by Lot 10 measuring thereon 435.6 feet; on the South by property of Denny Hills North measuring thereon 100 feet; and on the West by Lot 8, property of Eberdease Thomas, measuring thereon 435.6 feet; be all measurements a little more or less; subject to easements and restrictions of record.

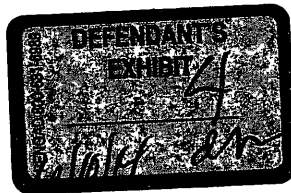
Tax Map #: 12100-04-23

This being the same property conveyed to the Mortgagor by deed of Federal Home Loan Mortgage Corporation dated 08/11/03 and recorded _____ in Record Book _____ at page _____ in the Office of the Register of Deeds for Richland County.

Richland County Register of Deeds

John T. Hopkins II

EXHIBIT #4



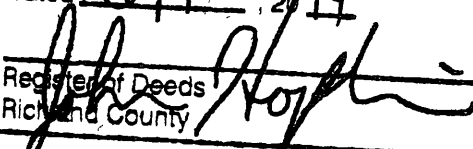
277

Instrument 2005076632

Book/Page R 1101 2609

DateTime 09/23/2005 12:59:18:780

Document 04

State of South Carolina
 I certify that this is a true and correct copy
 Dated 10/14, 2014

 Register of Deeds
 Richland County

WHEN RECORDED MAIL TO:

Bank of America Consumer Collateral Tracking
 FL9-700-04-10
 9000 Southside Blvd, Bldg 700
 Jacksonville, FL 32256

Book 1101-2609
 2005076632 09/23/2005 12:59:18:780 Mortgage
 Fee: \$14.00 County Tax: \$0.00 State Tax: \$0.00


 2005076632 John G. Morris Richland County ROD

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

MORTGAGE

THIS MORTGAGE dated September 19, 2005, is made and executed between RHONDA LEWIS MEISNER, whose address is 1 CHESTER RD, BLYTHEWOOD, SC 29016-8555 (referred to below as "Grantor") and Bank of America, N.A., whose address is 1301 Gervais St., Columbia, SC 29201 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, grants, and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in RICHLAND County, State of South Carolina:

See Exhibit A, which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein. The Real Property or its address is commonly known as 406 KOON STORE RD, COLUMBIA, SC 29203-0000. The Real Property tax identification number is 12100-04-23

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due and shall strictly perform all of Grantor's obligations under this Mortgage.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in good condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other

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**MORTGAGE
(Continued)**

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party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by South Carolina law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for the Existing Indebtedness referred to in this Mortgage or those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Mortgage:

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of thirty (30) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$10,000.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

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Compliance with Existing Indebtedness. During the period in which any Existing Indebtedness described below is in effect, compliance with the insurance provisions contained in the instrument evidencing such Existing Indebtedness shall constitute compliance with the insurance provisions under this Mortgage, to the extent compliance with the terms of this Mortgage would constitute a duplication of insurance requirement. If any proceeds from the insurance become payable on loss, the provisions in this Mortgage for division of proceeds shall apply only to that portion of the proceeds not payable to the holder of the Existing Indebtedness.

LENDER'S EXPENDITURES. If Grantor fails (A) to keep the Property free of all taxes, liens, security interests, encumbrances, and other claims, (B) to provide any required insurance on the Property, (C) to make repairs to the Property or to comply with any obligation to maintain Existing Indebtedness in good standing as required below, then Lender may do so. If any action or proceeding is commenced that would materially affect Lender's interests in the Property, then Lender on Grantor's behalf may, but is not required to, take any action that Lender believes to be appropriate to protect Lender's interests. All expenses incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Mortgage also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Lender may be entitled on account of any default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Mortgage:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in the Existing Indebtedness section below or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Promises. All promises, agreements, and statements Grantor has made in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature and shall remain in full force and effect until such time as Grantor's Indebtedness is paid in full.

EXISTING INDEBTEDNESS. The following provisions concerning Existing Indebtedness are a part of this Mortgage:

Existing Lien. The lien of this Mortgage securing the Indebtedness may be secondary and inferior to an existing lien. Grantor expressly covenants and agrees to pay, or see to the payment of, the Existing Indebtedness and to prevent any default on such indebtedness, any default under the instruments evidencing such indebtedness, or any default under any security documents for such indebtedness.

No Modification. Grantor shall not enter into any agreement with the holder of any mortgage, deed of trust, or other security agreement which has priority over this Mortgage by which that agreement is modified, amended, extended, or renewed without the prior written consent of Lender. Grantor shall neither request nor accept any future advances under any such security agreement without the prior written consent of Lender.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Mortgage:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the Indebtedness secured by this Mortgage; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

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**MORTGAGE
(Continued)**

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SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Mortgage, and the Related Documents, and (2) the liens and security interests created by this Mortgage on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Grantor pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

DEFAULT. Grantor will be in default if any of the following happens:

Payment Default. Grantor fails to make any payment when due under the Note.

Other Payment Defaults. Grantor fails to make any other payment when due under this Mortgage.

Property. The prospect of payment, performance, or realization of the Property is significantly impaired.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default and at any time thereafter but subject to any limitation in the Note or any limitation in this Mortgage, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Subject to any notice and cure provisions required by the South Carolina Consumer Protection Code, Lender shall have the right at its option to declare the entire Indebtedness immediately due and payable.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of the Property and, as mortgagee-in-possession, collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Judicial Foreclosure. Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

Nonjudicial Sale. If permitted by applicable law, Lender may foreclose Grantor's interest in all or in any part of the Personal Property or the Real Property by non-judicial sale.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

Appraisement. Grantor hereby waives the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained by Lender against Grantor in the event of foreclosure under this Mortgage.

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**MORTGAGE
(Continued)**

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Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Notice of Sale. Lender will give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Election of Remedies. All of Lender's rights and remedies will be cumulative and may be exercised alone or together. An election by Lender to choose any one remedy will not bar Lender from using any other remedy. If Lender decides to spend money or to perform any of Grantor's obligations under this Mortgage, after Grantor's failure to do so, that decision by Lender will not affect Lender's right to declare Grantor in default and to exercise Lender's remedies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit, however not to exceed fifteen percent (15%) of the unpaid debt after default, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

NOTICES. Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any person may change his or her address for notices under this Mortgage by giving formal written notice to the other person or persons, specifying that the purpose of the notice is to change the person's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors. It will be Grantor's responsibility to tell the others of the notice from Lender.

PAYMENT INFORMATION. If you make a payment(s) before or after the due date, the amount of your final payment may be higher or lower than the original scheduled amount. We may accept late payments or partial payments, even though marked "Payment in Full" (or a similar notation). We may accept payments accompanied by a letter stating that acceptance of the payment indicates our agreement to the terms set forth in the letter without giving up, waiving or losing any of our rights under law or under this Note. You will make all payments by check or money order, payable to us, drawn in U.S. dollars and payable through a U.S. financial institution or the U.S. Post Office. We will credit payments to this Note on the business day received if received before 2:00 P.M. at the location we specify or at one of our banking centers in the state of our address first described above. Otherwise, payments may not be credited to your loan for up to five (5) business days, even if payment is received under our arrangement with an affiliated bank to accept payments from our customers or at one of our ATMs. A business day is any day Monday through Friday that is not a legal holiday. Unless otherwise required by applicable law, to determine whether a late charge is due, we will apply any payment received to the oldest payment due.

NONTITLED SPOUSES AND NON-BORROWER GRANTORS. Any Grantor or Trustor who signs this Deed of Trust, Mortgage or Modification ("Security Instrument") but does not execute the Note or Credit Agreement ("Non-borrower Grantor or Trustor"): (a) is signing only to grant, bargain, sell and convey such Non-borrower Grantor's or Trustor's interest in the Property under the terms of this Security Instrument; (b) is not by signing becoming personally obligated to pay the Note or Credit Agreement; and (c) agrees that without such Non-borrower Grantor's or Trustor's consent, Lender and any other Grantor or Trustor may agree to renew, extend, modify, forbear or make any accommodations with regard to the terms of all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the obligation evidenced by the Note or the Credit Agreement ("Related Document").

Any spouse of a Grantor or Trustor who is not in title to the Property and who signs this Security Instrument: (a) is signing only to grant, bargain, sell and convey any marital and homestead rights of such spouse in the Property; (b) is not by signing becoming personally obligated to pay the Note or Credit Agreement; and (c) agrees that without such spouse's consent, Lender and any other Grantor or Trustor may agree to renew, extend, modify, forbear or make any accommodations with regard to the terms of any Related Document.

Neither of the two foregoing sentences limit the liability of any Non-borrower Grantor or Trustor or signing spouse of a Grantor or Trustor, as applicable, under any guaranty agreement or other agreement by such person, whereby such person becomes liable for the indebtedness in whole or in part; both such sentences apply notwithstanding any language to the contrary in this Security Instrument or any of the Related Documents and apply only to the extent permitted by applicable law.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Mortgage:

Amendments. What is written in this Mortgage and in the Related Documents is Grantor's entire agreement with Lender concerning the matters covered by this Mortgage. To be effective, any change or amendment to this Mortgage must be in writing and must be signed by whoever will be bound or obligated by the change or amendment.

Caption Headings. Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

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**MORTGAGE
(Continued)**

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Governing Law. This Mortgage will be governed by and interpreted in accordance with federal law and the laws of the State of South Carolina. This Mortgage has been accepted by Lender in the State of South Carolina.

No Waiver by Lender. Grantor understands Lender will not give up any of Lender's rights under this Mortgage unless Lender does so in writing. The fact that Lender delays or omits to exercise any right will not mean that Lender has given up that right. If Lender does agree in writing to give up one of Lender's rights, that does not mean Grantor will not have to comply with the other provisions of this Mortgage. Grantor also understands that if Lender does consent to a request, that does not mean that Grantor will not have to get Lender's consent again if the situation happens again. Grantor further understands that just because Lender consents to one or more of Grantor's requests, that does not mean Lender will be required to consent to any of Grantor's future requests. Grantor waives presentment, demand for payment, protest, and notice of dishonor. Grantor waives all rights of exemption from execution or similar law in the Property, and Grantor agrees that the rights of Lender in the Property under this Mortgage are prior to Grantor's rights while this Mortgage remains in effect.

Severability. If a court finds that any provision of this Mortgage is not valid or should not be enforced, that fact by itself will not mean that the rest of this Mortgage will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Mortgage even if a provision of this Mortgage may be found to be invalid or unenforceable.

Merger. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Successors and Assigns. Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Mortgage.

Waive Jury. All parties to this Mortgage hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of South Carolina as to all indebtedness secured by this Mortgage.

DEFINITIONS. The following words shall have the following meanings when used in this Mortgage:

Borrower. The word "Borrower" means RHONDA LEWIS MEISNER and includes all co-signers and co-makers signing the Note.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

Existing Indebtedness. The words "Existing Indebtedness" mean the indebtedness described in the Existing Liens provision of this Mortgage.

Grantor. The word "Grantor" means RHONDA LEWIS MEISNER.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, earned interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as provided in this Mortgage.

Lender. The word "Lender" means Bank of America, N.A., its successors and assigns. The words "successors or assigns" mean any person or company that acquires any interest in the Note.

Mortgage. The word "Mortgage" means this Mortgage between Grantor and Lender.

Note. The word "Note" means the promissory note dated September 19, 2005, in the original principal amount of \$30,364.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of this Mortgage is September 15, 2020.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments,

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**MORTGAGE
(Continued)**

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agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

X Rhonda Lewis Meisner
RHONDA LEWIS MEISNER

Signed, acknowledged and delivered in the presence of:

X Bar E. Laffey
Witness

X De Anna Rock
Witness

INDIVIDUAL ACKNOWLEDGMENTSTATE OF South Carolina

)

COUNTY OF Richland

) SS

)

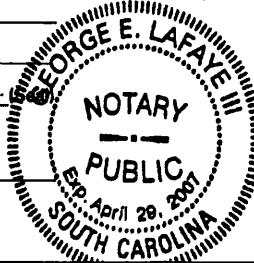
PERSONALLY appeared before me and made oath that he or she saw the within-named Grantor(s) sign, seal, and, as his or her act and deed, deliver the within-written Mortgage for the uses and purposes therein mentioned, and that he or she with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 19thday of September, A.D. 2005

Bar E. Laffey
Notary Public

My Commission expires: 4-29-07

De Anna Rock
(Witness)



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John T. Hopkins II

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EXHIBIT "A"

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, SITUATE, LYING AND BEING ON THE SOUTHERN SIDE OF KOON STORE ROAD (S-40-61), NORTH OF THE CITY OF COLUMBIA, IN THE COUNTY OF RICHLAND, STATE OF SOUTH CAROLINA, BEING SHOWN AND DELINEATED AS LOT NO. 9, CONTAINING ONE ACRE, ON A PLAT PREPARED FOR EBERDEASE THOMAS BY DOUGLAS E. PLATT, SR., REG. LAND SURVEYOR, DATED MAY 9, 1979 AND RECORDED IN PLAT BOOK Y AT PAGE 4038; SAID LOT BEING BOUNDED AND MEASURING AS FOLLOWS: ON THE NORTH BY KOON STORE ROAD MEASURING THEREON 100 FEET; ON THE EAST BY LOT 10 MEASURING THEREON 435.6 FEET; ON THE SOUTH BY PROPERTY OF DENNY HILLS NORTH MEASURING THEREON 100 FEET; AND ON THE WEST BY LOT 8, PROPERTY OF EBERDEASE THOMAS, MEASURING THEREON 435.6 FEET; BE ALL MEASUREMENTS A LITTLE MORE OR LESS; SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

This being the same property conveyed to Rhonda Lewis Meisner by deed of Federal Home Loan Mortgage Corporation dated August 13, 2003, recorded August 18, 2003 in Record Book 838, page 2632.

TMS# 12100-04-23

Richland County Register of Deeds

John T. Hopkins II

PROMISSORY NOTE

ACCOUNT NUMBER 7022631449

Borrower: RHONDA LEWIS MEISNER
1 CHESTER RD
BLYTHEWOOD, SC 29016-8555

Lender: Bank of America, N.A.
c/o South Carolina Main Office
1301 Gervais St.
Columbia, SC 29201



Principal Amount: \$61,516.00

Interest Rate: 5.400%

Date of Note: August 13, 2003

PROMISE TO PAY. I ("Borrower") promise to pay to Bank of America, N.A. ("Lender"), or order, in lawful money of the United States of America, the principal amount of Sixty-one Thousand Five Hundred Sixteen & 00/100 Dollars (\$61,516.00), together with interest at the rate of 5.400% per annum on the unpaid principal balance from August 13, 2003, until paid in full.

PAYMENT. I will pay this loan in 179 payments of \$499.46 each payment and an irregular last payment estimated at \$500.22. My first payment is due September 12, 2003, and all subsequent payments are due on the same day of each month after that. My final payment will be due on August 12, 2018, and will be for all principal and all accrued interest not yet paid. Payments include principal and interest. Unless otherwise agreed or required by applicable law, payments will be applied first to accrued unpaid interest, then to principal, and any remaining amount to any unpaid collection costs and late charges. Interest on this Note is computed on a 365/365 simple interest basis; that is, by applying the ratio of the annual interest rate over the number of days in a year, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. I will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

PREPAYMENT. I may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will relieve me of my obligation to continue to make payments under the payment schedule and will be applied to the next - due payment(s). If a prepayment is insufficient to meet the entire requirements of a particular future installment then I shall be obligated to pay such portion of the installment not covered by the partial prepayment. My obligation to continue to make regular payments under the payment schedule will resume with the next payment coming due after all early payments have been applied. Early payments will reduce the principal balance due and may result in my making fewer payments. I agree not to send Lender payments marked "paid in full", "without recourse" or similar language. If I send such a payment, Lender may accept it without losing any of Lender's rights under this Note, and I will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any checks or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to Lender at the address shown on my coupon book or statement.

LATE CHARGE. If a payment is 10 days or more late, I will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$12.50, whichever is less.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the interest rate on this Note to 18.000% per annum. The interest rate will not exceed the maximum rate permitted by applicable law.

DEFAULT. I will be in default under this Note if any of the following happen:

Payment Default. I fail to make any payment when due under this Note.

Break Other Promises. I break any promise made to Lender or fail to perform promptly at the time and strictly in the manner provided in this Note or in any agreement related to this Note, or in any other agreement or loan I have with Lender.

False Statements. Any representation or statement made or furnished to Lender by me or on my behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished.

Death or Insolvency. Any Borrower dies or becomes insolvent; a receiver is appointed for any part of my property; I make an assignment for the benefit of creditors; or any proceeding is commenced either by me or against me under any bankruptcy or insolvency laws.

Taking of the Property. Any creditor or governmental agency tries to take any of the property or any other of my property in which Lender has a lien. This includes taking of, garnishing of or levying on my accounts with Lender. However, if I dispute in good faith whether the claim on which the taking of the property is based is valid or reasonable, and if I give Lender written notice of the claim and furnish Lender with monies or a surety bond satisfactory to Lender to satisfy the claim, then this default provision will not apply.

Defective Collateralization. This Note or any of the related documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Collateral Damage or Loss. Any collateral securing this Note is lost, stolen, substantially damaged or destroyed and the loss, theft, substantial damage or destruction is not covered by insurance.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note.

Insecurity. Lender in good faith believes itself insecure.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then I will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if I do not pay. I will pay Lender that amount. This includes Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on this Note and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, I also will pay any court costs, in addition to all other sums provided by law.

JURY WAIVER. Lender and I hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or me against the other.

GOVERNING LAW. This Note will be governed by and interpreted in accordance with federal law and the laws of the State of South Carolina. This Note has been accepted by Lender in the State of South Carolina.

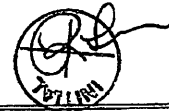
DISHONORED ITEM FEE. I will pay a fee to Lender of \$20.00 if I make a payment on my loan and the check or preauthorized charge with which I pay is later dishonored.

COLLATERAL. I acknowledge this Note is secured by the following collateral described in the security instrument listed herein, all the terms and

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PROMISSORY NOTE (Continued)

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conditions of which are hereby incorporated and made a part of this Note: a Mortgage dated August 13, 2003, to Lender on real property located in RICHLAND County, State of South Carolina.

PROPERTY REQUIREMENTS. If this Note is secured by real or personal property (the "Collateral"), you will do all things required under the Collateral agreement. If we incur an expense because you do not fulfill all the obligations of this Note, or if you or another party do not fulfill all obligations under the Collateral agreement, you will pay those expenses under this Note. If this Note is secured by insurable real or personal Collateral, you agree to obtain and keep maintained, or cause to be obtained and maintained, property insurance, flood insurance (if applicable) and any other insurance required by us for the Collateral in an amount described in the Collateral agreement. You will pay the charge for such insurance, which may be subject to interest at the rate described in this Note. We have the option to reschedule your regular payments for the remaining term (thus increasing the regularly scheduled payment to incorporate the amount of insurance premium plus finance charges on the premium), require a lump sum payment at the maturity of this Note, or demand payment of the premium for this insurance.

PAYMENT INFORMATION. If you make a payment(s) before or after the due date, the amount of your final payment may be higher or lower than the original scheduled amount. We may accept late payments or partial payments, even though marked "Payment in Full" (or a similar notation). We may accept payments accompanied by a letter stating that acceptance of the payment indicates our agreement to the terms set forth in the letter without giving up, waiving or losing any of our rights under law or under this Note. You will make all payments by check or money order, payable to us, drawn in U.S. dollars and payable through a U.S. financial institution or the U.S. Post Office. We will credit payments to this Note on the business day received if received before 2:00 P.M. at the location we specify or at one of our banking centers in the state of our address first described above. Otherwise, payments may not be credited to your loan for up to five (5) business days, even if payment is received under our arrangement with an affiliated bank to accept payments from our customers or at one of our ATMs. A business day is any day Monday through Friday that is not a legal holiday. Unless otherwise required by applicable law, to determine whether a late charge is due, we will apply any payment received to the oldest payment due.

AUTOMATIC PAYMENT AND RESERVATION OF RIGHTS. If you choose to have payments made from a designated account and have arranged with us to do so, we will automatically draft the payment. Drafts will be made on the payment due date or immediately after the payment due date (if the payment due date is on a Saturday, Sunday or legal holiday). If your account does not contain the payment amount due, you understand that it is your obligation without notice from us to make the full payment. Even if you make a manual payment an automatic payment will be drafted from your designated account, unless you make such manual payment for the full payment due at least three (3) business days prior to the due date; however, if you make less than a full manual payment at least three (3) business days prior to the due date, only the remaining amount currently due will be drafted. To stop an automatic draft, you must contact us at least three (3) business days prior to the scheduled payment draft date. We may accept late payments, partial payments or checks and money orders marked "payment in full" (or similar notations) or payments accompanied by a letter stating that our acceptance of the payment indicates our agreement to the terms set forth in the letter without giving up, waiving or losing any of our rights under law or under this Agreement.

MISCELLANEOUS. If this Note or Agreement represents a renewal, modification, extension, substitution or consolidation of an obligation owed to us, then you acknowledge and agree that there are no claims, setoffs, avoidances, counterclaims or defenses or rights to claims, setoffs, avoidances, counterclaims or defenses to payment or enforcement of the prior obligation. You agree that if this Note or Agreement is in default, including the failure to make the Minimum Payment by the due date, you will accept calls regarding the collection of this Note or Agreement at any residence or place of employment. The calls can be automatically dialed and a recorded message may be played. You agree such calls will not be "unsolicited" calls for purposes of any federal, state or local law. To improve customer service and security, telephone communications with you may be monitored and recorded. You agree that monitoring or recording may be done and that no additional notice to you or additional approval from you is needed. You authorize us, our parent company, Bank of America Corporation (or any successor company) and Bank of America Corporation's affiliates and subsidiaries ("Affiliates") to: (a) obtain other information deemed necessary concerning the granting and maintaining of this Note or Credit Line Account, including the obtaining of credit bureau and other reports concerning your credit experience and other information from credit reporting agencies, creditors, any department of motor vehicles or similar state agency, your employer (past, present and future) and other persons (and all such entities may release and/or verify such information to us at any time without notification to you or without your consent), and (b) share information with our Affiliates, except to the extent that you have opted out of such sharing as provided in our Privacy Policy for Consumers. This Note or Agreement constitutes the entire understanding and agreement between the parties as to the matters set forth in this Note or Agreement and supercedes all prior understandings and correspondence, oral or written, with respect to the subject matter hereof. We reserve the right to defer or delay the date certain changes are to occur without notice and without being liable for any such deferral or delay. A court decree for divorce or separation or a non-court approved mutual agreement does not affect, eliminate or reduce any person's liability for the Note or Credit Line balance if we are not a party to the decree or agreement. Notwithstanding any other provision contained in the Note or this Agreement, we do not intend to charge, and you shall not be required to pay, any amount of finance charge or fee more than the maximum permitted by applicable law. Any payment in excess of the maximum shall be refunded to you or credited against principal, at our option. If this Note or CreditLine Agreement is a renewal of a prior Note or CreditLine Agreement, then it is the intent of the parties that the Note or CreditLine Agreement evidencing the original extension of credit not be extinguished by the renewal. It is further the intent of the parties that no novation shall occur by the renewal of such extension of credit. Our records shall be evidence of whether this Note or CreditLine Agreement is a renewal. The word "you" shall also mean Borrower. The word "we" shall also mean Lender.

ADDITIONAL GENERAL PROVISIONS. We reserve the right to waive or reduce any or all fees from time to time in our sole discretion without notice. Unless required by law, we need not pay any refund if the amount is less than one dollar (\$1.00). Acceptance of partial payments or partial performance shall not operate as a waiver of any requirement under this Note. Any notice from us shall be deemed to be reasonable if mailed to your address at least five (5) calendar days before the time of the event to which such notice relates. It is your sole and exclusive responsibility to determine any and all aspects of federal, state and local tax law regarding the deduction of interest and costs on this Note. You should consult a tax advisor regarding the deductibility of interest and costs incurred under this Note. We have not provided and do not provide tax advice of any kind. At any time, we may assign or transfer this Note to another person or entity and the assignee will have all of our rights under this Note. You cannot assign or transfer any of your rights or responsibilities under this Note.

RIGHT OF SETOFF. Borrower agrees and authorizes Lender, upon an event of default occurring and to the extent allowed by applicable law, to charge, withdraw or set off all sums owed under this Note or Agreement against any of Borrower's deposits and accounts or securities now or hereafter in the possession of or on deposit with Lender or any Bank of America Corporation affiliate or subsidiary, including without limitation all accounts held jointly with someone else and all accounts Borrower may open in the future (excluding all IRA, Keogh and trust accounts), without prior notice to or demand on Borrower and, at Lender's option, administratively to freeze all such accounts to allow Lender to protect Lender's rights provided in this paragraph. Borrower hereby grants to Lender a contractual possessory security interest in such accounts, and hereby assigns, conveys, delivers, pledges and transfers to Lender all of Borrower's rights, title and interest in such accounts.

BORROWERS PROTECTION PLAN. (Borrowers Protection Plan is a registered trademark of Bank of America Corporation.) If you selected the optional Borrowers Protection Plan, each of the Borrowers covered by the Plan must sign the Optional Borrowers Protection Plan Addendum, which is made a part of and incorporated into this Note. Interest is not charged on the fees for Borrowers Protection Plan.

FL LOANS ONLY: BOOKING/MAINTENANCE FEE. A portion of the Bank Fee (an amount equal to the lesser of \$50 or 2% of the Amount of the Note), if any, disclosed in the Itemization of Amount Financed, is a booking/maintenance fee as provided by Florida Statutes, Section 658.49 (as

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**PROMISSORY NOTE
(Continued)**

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emended from time to time). Any amount above the booking/maintenance fee is either a loan or an origination fee. All fees, charges and other expenses of this loan (if this Promissory Note is secured by real property) are authorized pursuant to Chapter 665, Florida Statutes and Chapter 687.12, Florida Statutes.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon me, and upon my heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

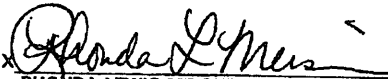
GENERAL PROVISIONS. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. I and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several. This means that the words "I", "me", and "my" mean each and all of the persons signing below

PRIOR TO SIGNING THIS NOTE, I READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. I AGREE TO THE TERMS OF THE NOTE.

I ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

THIS NOTE IS GIVEN UNDER SEAL AND IT IS INTENDED THAT THIS NOTE IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A SEALED INSTRUMENT ACCORDING TO LAW.

BORROWER:

 (Seal)
RHONDA LEWIS MEISNER, individually

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PAY TO THE ORDER OF

WITHOUT RECOURSE

Bank of America, N.A.

BY 
CHRISTINA M. SCHMITT
ASSISTANT VICE PRESIDENT

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Blank

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
DeAndrea Benjamin, Circuit Court Judge

Case No. 2016-001019

U.S. Bank, National
Association, as trustee for the
Holders of the Banc of
America Funding Corporation,
2008-FTI.

Respondent,

Rhonda Lewis Meisner a/k/a Rhonda L. Meisner, Bank
of America, N.A. and SCBT v.

Appellant.

Of Whom Rhonda Lewis Meisner is the

FINAL BRIEF OF APPELLANT

July 7, 2017

Rhonda Lewis Meisner, Appellant
Post Office Box 689
Blythewood, South Carolina 29016
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ISSUES ON APPEAL

- I. WHETHER THE TRIAL COURT CORRECTLY DETERMINED THE PLAINTIFF WAS THE REAL PARTY IN INTEREST THAT POSSESSED THE REQUISITE STANDING TO PURSUE THE FORECLOSURE ACTION.
- II. WHETHER THE TRIAL COURT CORRECTLY DETERMINED THE COUNTER CLAIMS WERE PERMISSIVE.
- III. WHETHER THE TRIAL COURT CORRECTLY DETERMINED THE APPELLANT WAS NOT ENTITLED TO A JURY TRIAL.

ARGUMENT

- I. THE TRIAL COURT ERRED WHEN IT DETERMINED THE PLAINTIFF WAS THE REAL PARTY IN INTEREST TO PURSUE FORECLOSURE.
- II. THE TRIAL COURT ERRED IN DETERMINING THE COUNTER CLAIMS WERE PERMISSIVE.
- III. THE TRIAL COURT ERRED IN DETERMINING THE DEFENDANT WAS NOT ENTITLED TO A JURY TRIAL.

STANDARD OF REVIEW

The appellate courts review a motion to dismiss de- novo. This Court also makes legal findings with no deference to the court below. Whether a party is entitled to a jury trial is a question of law, which the appellate Courts review de-novo. Wachovia Bank, Nat. Ass'n v. Blackburn, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014). Here, the question of whether the cross and counter claims for breach of

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contract, breach of contract accompanied by a fraudulent act and the abuse of process counter claims are compulsory; is a question of law. When an order deprives a party of a mode of trial to which that party is entitled as a matter of right, the order is immediately appealable and failure to do so forever bars appellate review. Flagstar Corp. v. Royal Surplus Lines, 341 S.C. 68, 533 S.E.2d 331 (2000). The appellate Court is not bound by the trial court's legal conclusions. I'On, LLC v. Town of Mount Pleasant, 338 S.C. 406, 411 526 S.E. 2d 718, 718-719 (2000); S.C. Const. art V, § 5 (providing the state's appellate courts have jurisdiction to correct trial court's erroneous legal findings in law and equity cases); S.C. Code Ann. §§ 14-3-320 & 14-8-200 (1976 & Supp. 2001) (providing this state's appellate courts have jurisdiction to correct trial court's erroneous findings of law in equity cases).

STATEMENT OF THE CASE

U.S. Bank "US Bank" initiated a foreclosure action (first mortgage) on March 31, 2014 against the appellant, Rhonda Meisner "Meisner" and attached an assignment of the note and mortgage from Bank of America, N.A. "Bank of America" to US Bank, that was dated April 2, 2014. The assignment was notarized on April 3, 2014, by a notary, in a different state. (2014-CP-40-02063) (**R. p. 20.**) (**R. p. 170:23-25;171-172:1-15**). Bank of America and SCBT (SCBT) were also named defendants.

Previously, SCBT, (second mortgage) a junior lien holder, (in the same property), filed a foreclosure action and named both Bank of America and Meisner as defendants. In the earlier case (2013-CP-40-07144), Bank of America answered the suit and claimed ownership of the same note and mortgage (first mortgage) that U.S. Bank now claims. **(R. p. 165:10-15) (R.p.88-91:17) (R. p. 184 EXHIBITS 1-4).** Bank of America also claimed ownership of a different note and mortgage that had been paid off years earlier, (HELOC) **(R. p. 91:18) (R.p.184 EXHIBITS, 3,4).**

The appellant filed a motion to dismiss pursuant to S.C.R.P. Rule 12(b)(7) and 12(b)(8) based on Bank of America and U.S. Bank's claimed ownership in the same note and mortgage in the previously filed suit by SCBT and requested that U.S. Bank's foreclosure action be dismissed and the cases consolidated for adjudication. **(R.p.187, 88) (R. p. 164:17-21.)**

A hearing was held on the motion on June 10, 2014; however, prior to the hearing, SCBT voluntarily dismissed Bank of America as a defendant and changed SCBT's cause of action to a suit on a note, which SCBT also subsequently dropped and dismissed. (R.p.192 During the June 10, 2014 hearing, appellant Meisner argued the case should be dismissed based on the defective assignment of the note and mortgage which occurred after the lawsuit was filed. **(R. p. 20) (R. p. 171:5-11,17-25;172:1-15).** The Court denied all motions. **(R. p. 8, 12)** Meisner filed a motion to alter and amend and requested a ruling on the alternative oral motions to dismiss

based on the fact the plaintiff/respondent presented inadequate evidence that it owned the note and mortgage at the time U.S. Bank filed the lawsuit (**R. p.171:14-26; 172:1-15**). Additionally, because U.S. Bank claimed the default occurred prior to the assignment of the note and mortgage based on the date of the filings, U.S. Bank would be considered a third- party creditor because they purchased and assumed the note and mortgage after U.S. Bank said Meisner defaulted. (**R.p.16 ¶ 15**) (**R. p. 176:10-18.**)

The appellant, Rhonda Meisner, filed a motion to dismiss based on lack of standing because the lawsuit was filed on March 31, 2014 and U.S. Bank attached an assignment dated April 2, 2014 and notarized April 3, 2014. (**R. 171:20-24**) Meisner claimed U.S. Bank was not the real party in interest based on Bank of America's reported claim to the note and mortgage that U.S. Bank was seeking to foreclose. (**R. p. 16 ¶15.**) The challenge to real party in interest and standing was subsequently determined by this Court as interlocutory, so the appeal was dismissed. (**R. p. 1.**)

Subsequently, the plaintiff U.S. Bank submitted an Order of referral for the foreclosure action to the Clerk of Court for signature and execution. (**R.pp.206-210**) The Order created by the U.S. Bank, and presented to the Clerk of Court for execution, included findings of fact and conclusions of law. (**R. pp. 6-8.**) The South Carolina rules of civil procedure do not provide a mechanism for the clerk of court

to make findings of fact and conclusions of law. (**R. pp. 213-214.**) Whether U.S. Bank's attempt to fast track the foreclosure and circumvent the S.C. Rules of Civil Procedure is an abuse of process and a malicious prosecution is a question for the jury.

ARGUMENT

I. The Trial Court erred in holding that U.S. Bank was the real party in interest that possessed the requisite standing to foreclose on the note and mortgage.

The assignment of the mortgage from Bank of America to U.S. Bank is a defective instrument and was executed after the lawsuit was filed. Therefore, the Court should have found, the respondent was not the real party in interest because the note and mortgage were not properly assigned by Bank of America into U.S. Bank before U.S. Bank filed this lawsuit. (**R.p.187, 88**) (**R. p. 164:17-21.**) (**R. 184 EXHIBITS 1-4**). South Carolina law requires a lawsuit to be brought in the name of the real party in interest. The defendant has the obligation to object early in the litigation, or risk waiver of the objection to the real party in interest if the objection is not raised early. WeSavFinancial Corp. v. Lingefelt, 316 S.C. 442, 450 S.E.2d 580 (1994).

Standing must be determined prior to the Court having a justiciable controversy. As the Supreme Court ruled in Lennon, "[A] threshold inquiry for any court is a determination of justiciability, i.e. whether the litigation presents an active

case or controversy. ‘No justiciable controversy is presented unless the plaintiff has standing to maintain the action.’” Lennon v. South Carolina Coastal Council, 330 S.C. 414, 415, 498 S.E. 2d 906, 906 (Ct. App. 1998) The Supreme Court of the United States ruled that the only party that has standing to sue in a mortgage foreclosure action is the holder of both the note and the mortgage. Carpenter v Longen, 83 U. S. 16 Wall. 271 (1872). As the Supreme Court in Carpenter noted, “[T]his case is a different one from what it would be if the mortgage stood alone, or the note was non- negotiable or had been assigned after maturity”. Id. at note 2. “[T]he note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.” Id. at note 3. Here, the note and mortgage were assigned after the alleged default making the owner of the note and mortgage a third-party debt collector. This assignment occurred after the initiation of the foreclosure action, so at the time the action was filed, there is no evidence U.S. Bank had standing (ownership of the note and mortgage) to pursue the foreclosure action. **(R.p.187, 88) (R. p. 164:17-21.) (R. p.164 EXHIBITS 1-4)**

The Parties representations to the Court suggest the “real party in interest” is Bank of America, N.A., as the assignment of the note and mortgage occurred, *after the breach in contract and after the lawsuit* was filed in the Court. (emphasis by appellant). Therefore, U.S. Bank is a third- party creditor because they received the

assignment after the loan was in default status. This is due to the fact a real party in interest is for the benefit of the defendant. The requirement to object early avoids multiple suits by multiple plaintiffs by requiring the defendant to speak early in the litigation, if the plaintiff has not been properly identified. Here, both Bank of America and U.S. Bank have claimed ownership of the same note and the same mortgage (albeit in different lawsuits). The banks representations, created a genuine issue as to the proper plaintiff, the real party in interest, and whether the plaintiff/respondent, U.S. Bank had standing to initiate the foreclosure action. **(R. p. 20.) (R. p. 170:23-25;171-172:1-15.) (R.p.16 ¶ 15.) (R. p.164 EXHIBITS 1-4.)** The Court should have dismissed the lawsuit without prejudice based on the defective assignment and/or require the respondent/plaintiff to provide proof that U.S. Bank was the proper plaintiff, as the determination of the real party in interest affects the answer to the lawsuit and indeed the course of the lawsuit. **(R.p.16 ¶ 15) (R. p. 170:23-25;171-172:1-15.)** In this case, it is the co-defendant and/or the plaintiff that the appellant alleges is the “breacher” of the contract. The determination of which entity owned the note and mortgage at the time of the alleged breach is central to the counter-claims and cross-claims in this lawsuit as appellant Meisner alleges as do the appellees that Bank of America owned the note and mortgage at the time of the breach. **(R. p. 20.) (R. p. 170:23-25;171-172:1-15.) (R.p.16 ¶ 15.)**

Therefore, the Court should have found the assignment of the note and mortgage was not properly executed and did not transfer ownership of the note and the mortgage from Bank of America to the respondent/plaintiff U.S. Bank. **(R. p. 20.) (R. p. 170:23-25;171-172:1-15.) (R.p.16 ¶ 15.)** In addition to the assignment and notarization being defective, it was executed and notarized after the foreclosure action was filed. **(R.p.15.)**

Bank of America represented to the Circuit Court, in an earlier foreclosure action, that Bank of America possessed an ownership interest in the very same note and mortgage. **(R p.16¶ 15.) (R. p. 170:23-25;171-172:1-15.)** The representation of Bank of America to the Court creates a material controversy regarding the real party in interest and the ownership of the note and mortgage as both U.S. Bank and Bank of America, the predecessor in title, claim ownership. **(R. p. 170:23-25;171-172:1-15.)** The representation of the plaintiff is that the note and mortgage were assigned, after Bank of America breached the contract, which made Bank of America, N.A. the real party in interest instead of U.S. Bank. **(R. p. 179:2-8).**

Bank of America and appellant Meisner executed the note and the mortgage in 2003 **(R. p. 91¶ 17.) (R. p. 164 EXHIBITS 3,4).** The executed note agreement, contained a clause that Bank of America would automatically draft payments for the mortgage. This automatic drafting via agreement, would continue until appellant Meisner requested in writing, to cease the debits. Appellant Meisner never requested

cessation of the debits. (R.113:11-25; 114-117; 120:17-25; 121:1-3) (R. p. 184: EXHIBITS 3,4) As such, any transfer of the instrument, (the note and mortgage previously owned by Bank of America) would include the terms of the instrument including the requirement to draft the payments from appellant Meisner's bank account as usual. (R. p. 120:17-25; 121:1-3.) (R. p. 184: EXHIBITS 3,4)

U.S. Bank alleged in its complaint and asserted that it is the successor in interest to Bank of America; however, the evidence (the assignment) to support the assertions may not be legally sufficient to support the assertions. FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231, (1990) holding modified by City of Littleton, Colo. v. Z.J. Gifts D-4, L.L.C., 541 U.S. 774 (2004) ("It is a long-settled principle that standing cannot be inferred argumentatively from averments in the pleadings, but rather must affirmatively appear in the record.") (internal quotation marks and citations omitted). Ctr. for Legal Reform v. Rakowsky, C/A No. 3:14-cv-01674-JFA (D.S.C. Nov. 14, 2014). Here, the assignment of the note and mortgage purported to occur on April 2, 2014 and notarized a day later while the alleged breach of contract occurred purportedly in 2013. Therefore, there is no injury to U.S. Bank as it purchased or was assigned a "breached contract" and as such is a third- party creditor, that is not entitled to foreclosure because its predecessor in interest, Bank of America, was the breaching party.

II. THE TRIAL COURT ERRED IN DETERMINING THE COUNTER CLAIMS WERE PERMISSIVE.

A. The breach of Contract Claims against Bank of America and U.S. Bank are compulsory because Bank of America's breach is specifically related to enforcement of the note and the ability to foreclose.

"Whether a party is entitled to a jury trial is a question of law". Verenes v. Alvanos, 387 S.C. 11, 15 690 S.E. 2d 771, 772 (2010). I'On, L.L.C. v. Town of Mount Pleasant, 338 S.C. 406, 411, 526 S.E.2d 716, 718-19 (2000); see also S.C. Const. art. V, § 5 (providing this state's appellate courts have jurisdiction to correct trial court's erroneous legal findings in law and equity cases) The Court should have found the breach of contract cross claims and abuse of process claims against U.S. Bank, were legal and compulsory because the contract breach is the basis for U.S. Bank's purported right to foreclose. Bank of America claimed an interest in the note and mortgage and U.S. Bank's foreclosure filing suggested the breach of contract occurred prior to receiving the assignment from Bank of America. (R. p. 20) (R. p. 171:5-11,17-25;172:1-15) (R. p. 113:11-25; 114-117; 120:17-25;121:1-3). It is axiomatic that a breaching party cannot seek restitution for his own breach.

The assignee of a contract receives the complete terms of the contract in the assignment. An assignment is the act of transferring to another all or part of one's property, interest, or rights. Black's Law Dictionary 119 (6th ed. 1992). It includes

transfers of all kinds of property, including negotiable (and non-negotiable) instruments. Id. The assignment of an account involves the transfer to the assignee the right to have money, when collected, applied to the payment of his debt. Id. The interest in the property assigned can be present, future, or contingent; it may represent contract rights to money, property, or performance, or rights to causes of action. 5 S.C. Jur. Assignments § 2 (2006). There are three elements that constitute an assignment: (1) an assignor; (2) an assignee; and (3) transfer of control of the thing assigned from the assignor to the assignee. Donahue v. Multimedia, Inc., 362 S.C. 331, 338, 608 S.E.2d 162, 165 (Ct. App. 2005) (citing Leon v. Martinez, 638 N.E.2d 511 (N.Y. 1994)). “An assignment of a right is a manifestation of the assignor’s intention to transfer it by which the assignor’s right to performance by the obligor is extinguished in whole or in part and the assignee acquires a right to such performance.” Restatement (Second) of Contracts § 317(1) (1981). An assignee stands in the shoes of its assignor. Twelfth RMA Partners, L.P. v. Nat’l Safe Corp., 335 S.C. 635, 639-40, 518 S.E.2d 44, 46 (Ct. App. 1999) (“[T]he assignee should have all the same rights and privileges, including the right to sue . . . as the assignor.”).

Bank of America, the original creditor, as part of the terms in the contract of the note, placed an automatic payment draft provision into the note contract. (**R. p. 120:17-25; 121:1-3; 123:9-26; 124:1-19.**) U.S. Bank represented that it owned the

note and the mortgage via assignment unto it by Bank of America. Therefore, the terms of the note and the mortgage were adopted and gained by U.S. Bank which included the requirement to draft payments from Meisner's account. If this Court determines that U.S. Bank received the contract via assignment before the breach, then U.S. Bank was obligated to draft the mortgage payments, which was an unambiguous term that was elected at the time of execution of the contract and Meisner never rescinded the draft authorization. However, if the Court determines U.S. Bank received the assignment after the breach then U.S. Bank is a third- party debt collector. During the June 10, 2014 hearing the plaintiff admitted that it gained all of the rights under the note via the assignment **(R. p. 117:5-8)**

Appellant Meisner contends she did not default on the loan as she did not request the automatic payments to cease being drafted and Bank of America or U.S. Bank was obligated to continue debiting the account based on the terms of the contract. The provision of the contract required that once elected by the borrower, Bank of America (or any entity with the rights to the contract) would continue to draft payments from Meisner's account to pay the monthly mortgage payments pursuant to the contract unless the notified in writing Meisner to cease the automatic debits and payments. **(R.p.105:10-17.)** Bank of America breached the contract by ceasing automatic debits and payments without receiving a request in writing.

Therefore, as the breacher of the contract neither Bank of America nor U.S. Bank should be allowed to foreclose.

B. The trial court erred in determining the abuse of process counterclaims claims were permissive.

A foreclosure lawsuit is the mechanism or process by which the owner of a note and mortgage holder enforces a note and mortgage contract. The plaintiff must be owed money to pursue the foreclosure. South Carolina is a judicial foreclosure state; therefore, the South Carolina rules of civil procedure for foreclosure must be followed. A manipulation or violation of the South Carolina rules of civil procedure or a manipulation of the foreclosure statutes results in an abuse of process. Abuse of process has been described as “the employment of legal process for some purpose other than that [for] which it was intended by the law to effect-the improper use of a regularly issued process. Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 210, 153 S.E.2d 693, 695 (1967) (quoting 34 Am. Jur. Malicious Prosecution § 3, at 704) The elements of abuse of process are “an ulterior purpose and a willful act in the use of the process not proper in the regular course of the proceedings.” Hainer v. American Med. Int'l, Inc., 328 S.C. 128, 136-37, 492 S.E.2d 103, 107 (1997). In Heintz v. Jenkins, 514 U.S. 291 (1995), the United States Supreme Court held that litigation conduct of attorneys in collecting consumer debts is not exempt from the Fair Debt Collections Protection Act, rejecting arguments of the collection bar to the

contrary. The legal question of whether the breach occurred before assignment and therefore, U.S. Bank is a third- party debt collector would impose liability for the actions during litigation. However, even without this determination, South Carolina law provides relief for the tort of abuse of process.

South Carolina law allows for the Clerk of Court to refer an *uncontested* foreclosure complaint to the Master in Equity pursuant to SCRCF Rule 53. However, a plain reading of the complete statute makes clear that a referral to the Master in Equity by the Clerk of Court is only appropriate in an uncontested foreclosure or a default case and specifically provides the case be returned to the circuit court when any party requests a jury trial. S.C.R.C.P. Rule 53 provides in part:

(b) References. In an action where the parties consent, in a default case, or an action for foreclosure, some or all the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case. *Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court.* A case shall not be referred to a master or special referee for making a report to the circuit court. The clerk shall promptly provide the master or special referee with a copy of the order of reference. *(emphasis added by appellant).*

A plain reading of the complete statute indicates when a jury trial is requested as an answer prior to referral, a circuit court judge must make findings of fact and conclusions of law to make the referral to the Master in Equity.

It is inappropriate for the Clerk of Court to make the referral. If this were not the case, an extra step would be required once the case was referred to the Master in Equity. Pursuant to Rule 38 when a party requests a jury trial the Master in Equity Judge must return those causes of action to the circuit court that are triable by jury. Additionally, the Clerk of Court even if the Clerk is an attorney under the laws of South Carolina cannot make findings of fact and conclusions of law. Because the Order was signed outside of a hearing and without the benefit of briefs, it is unclear whether the Clerk of Court reviewed the pleadings prior to making conclusions of law based on the facts in this case. However, South Carolina law specifically precludes anyone other than a jury or a judge to make findings of fact and conclusions of law. Particularly when the Clerk of Court is not a licensed attorney. **(R.p.214-5.)**

Here, U.S. Bank drafted an order of referral, with knowledge that it was a contested foreclosure with a jury trial demand, that made findings of fact and conclusions of law and presented the order to the Clerk of Court for signature and referral to "fast track" the foreclosure process to deny the appellant of her rights under the foreclosure statutes, the appraisal statutes, and a jury trial pursuant to the South Carolina Constitution and the U.S. Constitution.

U.S. Bank by drafting an order that did not follow South Carolina law and volitionally involved the Court in a back- door attempt to circumvent the legitimate

court processes by presenting the Order to the Clerk of Court for signature and execution. The actions of U.S. Bank were in direct conflict with South Carolina foreclosure statutes and the S.C. rules of civil procedure and its actions were implemented to gain the collateral advantage of a quick foreclosure.

The Appellant argued that the actions of U.S. Bank were capable of replication because U.S. Bank owns thousands of notes and mortgages and therefore, had the potential of affecting many more South Carolina residents if the actions of U.S. Bank were replicated without censure from the Court.

This form of abuse of process is particularly egregious because many of the citizens of South Carolina do not understand the role and function of the Clerk of Court and the potential to abuse the process may be missed by the defendant or the defendant's attorney. This abuse of process is particularly egregious because it has the potential to deny many more South Carolina defendants of their rights under the foreclosure statutes, the appraisal statutes and the South Carolina constitution, while giving the plaintiff the benefit of the deficiency statutes and a quick foreclosure.

The appellant was damaged by the actions of U.S. Bank because their actions added incremental stress, significant incremental research time in defending the action, and expenses for copying, gas, parking and motions fees.

The actions of U.S. Bank might have succeeded had the appellant not noticed the order that was signed by the Honorable Jeannette McBride was contrary to South

Carolina law. Another defendant, in the stress of legal proceedings generally, and of foreclosure proceedings specifically, might not recognize that Ms. McBride did not have the authority, pursuant to the South Carolina Constitution and law, to sign the order. Because U.S. Bank is a large multinational bank it should be not only punished for its attempt to circumvent the system, but a jury should have the opportunity to decide whether punitive damages should be awarded to deter U.S. Bank along with other banks from circumventing, short circuiting, or abusing the process of the system. As such, the appellant avers, she should have a right to a jury trial for the actions of Bank of America and U.S. Bank in the prosecution of their claims and the plaintiff's attempts to manipulate the system.

C. THE CROSS- CLAIM AGAINST BANK OF AMERICA FOR FAILURE TO SATISFY A MORTGAGE PROVIDES FOR A JURY TRIAL.

The cross-claim against Bank of America for failure to satisfy a mortgage that has been satisfied provides for a jury trial. To trigger the penalty and related relief provided in S.C. Code Ann. § 29-3-320, § 29-3-310 requires the mortgagor or purchaser under him to establish (1) he has made full payment of his debts, including any applicable damages, costs, and charges; (2) he has made a request by certified mail or other form of delivery with a proof of delivery the mortgage be satisfied of record; (3) he has made a tender of fees of office for entering satisfaction; and (4) the mortgagee has failed to enter satisfaction in the proper office on the mortgage within three months of the request. Dykeman v. Wells Fargo Home Mortg., Inc., 381

S.C. 333, 340, 673 S.E.2d 804, 807 (2009). "For liability to attach under the applicable statutes, payment of the mortgage is 'only the first step in the mortgage satisfaction process... he had to satisfy the condition precedent of making a request for [the mortgagee] to record his mortgage as satisfied.'" Id. at 339, 673 S.E.2d at 807 (alterations by court) (quoting Bostic v. Am. Home Mortg. Servicing, Inc., 375 S.C. 143, 154, 650 S.E.2d 479, 485 (Ct. App. 2007)). "A request, to trigger the statutory penalty, may not be implied or inferred. The request must affirmatively convey to the mortgagee that a recording of the satisfaction is sought." Id. (citation omitted). However, section 29-3-310 does not mandate a written request. Bostic, 375 S.C. at 155, 650 S.E.2d at 485. The statute is satisfied if the aggrieved party (1) makes a verbal or written request expressing his desire for the mortgagee to satisfy the mortgage and (2) demonstrates that the mortgagee has received or agreed to this request. Id.

III. THE TRIAL COURT ERRED IN DETERMINING THE DEFENDANT WAS NOT ENTITLED TO A JURY TRIAL.

The appellant, in addition to a filed motion to dismiss and motion for damages under the S.C. Code Ann. § 29-3-320 also requested a declaratory judgment action. The requested declaratory judgment action is to determine the rights and responsibilities of each of the parties under the note and mortgage. The action argued the Bank should be estopped from foreclosure because it was the Bank of America

or its assignee U.S. Bank that stopped drafting and applying the payments as agreed in the contract and was therefore the breaching party.

"A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." Felts v. Richland Cnty., 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). Here, the declaratory judgment requests the Court to determine the "breaching party" to the contract and which entity Bank of America, U.S. Bank or appellant Meisner was the breaching entity. As such, the declaratory judgment, while advanced in an equitable case is legal in nature and as such provides a basis for a jury trial because it encompasses compulsory counter-claims and cross-claims.

The declaratory action filed has both defensive and offensive components because the declaratory judgment action requests the Court to determine the rights between and among the parties and to determine the rights and responsibilities of the parties under the note and mortgage. Here, U.S. Bank alleges in the complaint the note and mortgage were assigned unto them on April 2, 2014 and that the default occurred in 2013. U.S. Bank's allegations mean the contract was breached prior to the transfer via assignment unto it. Therefore, the cross claims for breach of contract are sufficiently related to the breach of the note and mortgage by U.S. Bank's predecessor in interest and therefore provides a basis for a jury trial as the breach is related to U.S. Bank's ability to foreclose on the mortgage. Additionally, because

U.S. Bank reportedly received the assignment after the breach of contract, U.S. Bank is a third- party debt collector.

The South Carolina Supreme Court has interpreted SCRCP Rule 13(a) that a counterclaim is compulsory when there is a logical relationship between the claim and the counterclaim. North Carolina Federal Sav. and Loan Ass'n v. DAV Corp., 381 S.E. 2d 903, 905 (S.C. 1989). "The purpose of Rule 13 (a) is 'to prevent multiplicity of actions and to achieve resolution in a single lawsuit of all disputes arising out of common matters.'" Beach Co. v. Twillman, Ltd., 566 S.E. 2d 863, 865 (S.C. Ct. App. 2002) (quoting S. Const. Co. v. Pickard, 371 U.S. 57 (1962) (interpreting the federal counterpart to Rule 13(a), SCRCP)). Additionally, a defendant's failure to assert a compulsory counterclaim precludes her from asserting the claim in a subsequent action. Beach Co. 566 S.E. 2d at 865 (citing Crestwood Golf Club Inc., v. Potter, 493 S.E. 2d 826,835 (S.C. 1997)).

Likewise, when the cross claim is against the predecessor in interest and a declaratory judgment is requested to determine the legal rights and obligations of the parties, the appellant avers the cross claims must be adjudicated in the same proceeding and in the same way as a compulsory counterclaim, therefore cross-claims and counter claims that have a logical relationship to enforcement of the note and mortgage in a foreclosure action entitle the appellant to a jury trial. This is

particularly true when the breaching party, by the claims advanced by the appellee and the co-defendant, is the co-defendant.

The broad language in the declaratory judgment act allows the court to reshuffle the deck if the predecessor in interest is shown to be the breaching party and therefore the “real party in interest” to determine the rights and obligations of the parties and to determine if foreclosure is available as a remedy. This determination is a legal conclusion which provides the basis for a jury trial. Additionally, if the evidence, as the appellant avers, proves that Bank of America breached the contract, foreclosure would be an unavailable remedy for both Bank of America and U.S. Bank.

For the above reasons and all references to the Record on Appeal, the appellant, Rhonda Meisner, respectfully requests this Honorable Court to determine that she is entitled to a jury trial for the determination of the counter claims and cross claims for breach of contract; the counter claim for abuse of process; the cross claim for failure to satisfy a mortgage and remand the case back to the circuit court to be added to the jury roster.

APPELLANT’S INTRODUCTION OF ISSUES ON APPEAL

As an initial matter, the appellant avers all issues raised in her appeal are properly before this Honorable Court of Appeals. First, while the issues of standing and real party in interest were determined to be interlocutory by this Honorable Court

of Appeals, this determination did not remove the fact the issues were properly raised and ruled on by the lower court. In fact, the Order, from this Honorable Court, specifically noted that the appeal was based on both the lower Court's denial of the dismissal of the complaint and the lower Court's denial of the S. C. R. Civ. P. Rule 59 (e) motion. **(R.p.1.)**

Second, the respondents did not make a motion or argument for the exclusion of the S.C.R. Civ. P. Rule 59 (e) from the trial Court or from this Honorable Court's consideration either during a post-hearing motion or during the pendency of the appeal or prior to the issuance of this Honorable Court's remittur.

Third, the South Carolina Supreme Court has previously held a **second** S.C. R. Civ. P. Rule 59-e motion that contains some of the same arguments as the first S.C. R. Civ. P. Rule 59-e motion does not toll the time for appeal. Coward Hund, 336 S.C. 1, 518 S.E.2d 56; Quality Trailer, 349 S.C. 216, 562 S.E.2d 615; and Collins Music, 353 S.C. 559, 579 S.E.2d 524. As such, the trial Court's denial of the first S.C. R. Civ. R. 59-e denial did not toll the time for appeal; therefore, to avoid losing the opportunity to appeal the issue, it was necessary to file the appeal prior to the Lower Court's ruling.

Finally, it is the "first amended complaint" that is the subject of this appeal.

APPELLANT'S POSITION OF STATEMENT OF THE CASE

A. Appellant's reply to "U.S. Bank Filed for Foreclosure because of Appellant's Default on Her Loan."

U.S. Bank, National Association, as trustee for the Holders of the Banc of America Funding Corporation, 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1 ("U.S. Bank"), did not own the note or the mortgage at the time they filed the foreclosure action pursuant to their own court filings; therefore, they assumed an already defaulted loan and as such suffered no injury. (R. p. 20) (R. p. 171:5-11,17-25;172:1-15) (R. p. 113:11-25; 114-117; 120:17-25;121:1-3). Bank of America, N.A. ("Bank of America"), U.S. Bank's predecessor in title claims an ownership interest in the very note U.S. Bank seeks to foreclose. (R p.16 ¶ 15.) (R. p. 170:23-25;171-172:1-15.) (R. p. 177:17-19) U.S. Bank, by the facts alleged in the complaint, and argued in open court may be considered a third- party debt collector due to the fact they assumed the note and mortgage after the alleged default occurred with another company. (R. p. 100:10-12) (R.p.112:23-25; 113-114:1-6.) (R. p. 184 EXHIBITS 1-4.)

Meisner purportedly defaulted on a loan to their predecessor in title, Bank of America and not with any loan owned by U.S. Bank. (R. p. 100:10-12.) (R. p. 184 EXHIBITS 3, 4) Additionally, Meisner argues because the requirement to debit her bank account, as elected as a term in the note, carried the obligation to debit to the new owner of the note. (R. p. 105:10-25;106-108.) (R.p.184 EXHIBIT 3,4) U.S.

Bank was not a party to the contract between Bank of America and Appellant Meisner, therefore they assumed or purchased an already defaulted loan and a breached contract and never suffered any injury in fact. (**R. p. 100:10-12.**) (**R. p. 184 EXHIBITS 3, 4**) Additionally, Bank of America, claimed an interest in not only the note and mortgage initiated in 2005, as the respondent notes in its initial brief, (**Initial brief of Respondent p. 1 last line; p.2.1**), but also claimed an interest in the specific note that is subject of this appeal. (**R. p. 89 ¶ 8; p. 90 ¶13-16 p. 91 ¶17,18, ii, iii, iv.**)

B. Appellant's Reply to "Meisner Files a Motion to Dismiss, Which the Trial Court Denies."

The Appellant's Initial Brief accurately identified the motions by which she sought relief. (**App. In. Br. P. 3:8-12**) This is because the scrivener's error in the lower court's written motion, was corrected in the hearing before the Court. (**R. p. 164:17-24**) The Court accepted the correction via acknowledgement. (**R. p. 164:22-24**). The Respondent noted the scrivener's error in its initial brief; however, importantly, the respondent did not note the Appellant's correction of the errors in front of the Court. (**In. Br. of Resp. p. 2 n. 1**). (**R. p. 164:17-21**) The memorandum in support of the motion to dismiss also specifically addressed the fact that Bank of America claimed an interest in the note and mortgage and noted the fact the assignment that purportedly transferred the instrument was notarized the day before

in Nevada and California. (R. p. 191:17-22.) The memo in support of the motion to dismiss was served on the defendants and filed with the Court in support of the motion to dismiss prior to the June 10, 2014 hearing and not only notes the duplication of the cases but specifically notes that both Bank of America and U.S. Bank claim ownership of the note and mortgage. (R. p. 192: 16-19.)

The question of real party in interest and whether the plaintiff had standing was brought up in the Def's Memorandum in Support of the Motion to Dismiss and was filed and served on the plaintiff prior to the June 10, 2014 hearing and therefore was properly before the Court. (R. p. 189,193). The arguments were reiterated before the Court in the hearing held on June 10, 2014. (R.p.171:12-25). It was specifically pointed out to the Court that the assignments were attached as exhibits to the memorandum in support of dismissal, which pursuant to the Court's order was filed prior to the June 10th hearing. (R. p. 171: 12-25; p. 10: 1-15.) (R. p. 184 EXHIBITS 3,4)

The appellant avers that pursuant to S.C.R. Civ. P. Rule 12 (b), "no defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or *motion*". (emphasis by Appellant). Here, the claims for dismissal were referenced in both the memorandum in support of the motion to dismiss and the oral argument before the Court, with a court reporter present; therefore, **all** the reasons for the motion to dismiss were properly before the Court.

C. Appellant's Reply to "The First Order of Reference is Entered but Subsequently Vacated."

Respondents assert the Order of Reference signed by the Honorable Jeanette McBride was done so inadvertently. Whether the respondents filed the motion to strike and for mandatory Order of Reference was intentional and a violation of the South Carolina Rules of Civil Procedure is a question of law, a determination in the affirmative would provide a basis for a jury demand via an abuse of the foreclosure process. The appellant avers because the respondent objected to the Master in Equity's vacatur of the referral and argued before the Honorable DeAndrea Benjamin that the Clerk is required to sign the referral based on Rule 53, the motion for referral was intentional. (R. p. 110:19-25; p. 111:1-8). This is because the referral contained findings of fact and conclusions of law. This argument was made in the "first amended complaint", the memorandum in opposition of the motion to strike the jury demand, and in oral argument. (R. pp. 49-52 ¶86-105.) (R.p.212-214)

D. Appellant's Reply to "Meisner Files an Amended Answer and Counterclaims and U.S. Bank Obtains an Order of Mandatory Reference."

After a hearing before the Honorable Casey Manning, who granted appellant's motion to amend the counterclaims and the cross claims after the Master in Equity determined the submitted mandatory reference was improper. (R.p.13). The, "first amended complaint" which included the prayer for relief from breach of contract, a breach of contract accompanied by a fraudulent act and the abuse of process claims,

also contained a request for the Court to “determine a question in actual controversy between or among the parties as to their respective rights and obligations under a note AND mortgage pertaining to real property...and to the Appellant filed an amended answer and amended counterclaims and crossclaims.

Respondents characterize the amended answer and counterclaim by the appellant as solely equitable in nature, the appellant disagrees with this assertion. A review of the declaratory judgment request in this case indicates the relief requested includes, a determination of the rights and obligations of the parties under a contract, which is a legal determination. Importantly, the respondent is not a party to the contract the appellant requests the Court to interpret. **(R. p. 124)** which includes a request for declaratory judgment that “determines the real party in interest.” **Resp. Ini. Br. P. 5:5-6. (R. __).**

The Honorable DeAndrea Benjamin determined that the counterclaims were permissive; however, if Bank of America was determined to be the breaching party based on the terms of the contract, foreclosure is not available to the breaching party as a remedy. **(R.p.125:7-14).** The “first amended complaint” plainly states that Appellant Meisner was not the breaching party and that the respondent’s predecessor in title, Bank of America was the breaching party, which would preclude foreclosure. **(R. pp39, 40 ¶¶33-41.)**

REPLY TO THE RESPONDENT'S ARGUMENT

I. THE ISSUE OF WHETHER THE FORECLOSURE ACTION SHOULD BE DISMISSED DUE TO U.S. BANK'S ALLEGED LACK OF STANDING IS PRESERVED FOR REVIEW.

First, and most importantly, this Honorable Court dismissed the previous appeal based on the Denial of the Motion to Dismiss and the Denial of The S.C. R. Civ. P. Rule 59(e) for the sole reason that the appeal was interlocutory in nature and therefore, not immediately appealable. The ruling by this Honorable Court did not address the Court's claim of non-receipt of a copy of the filed S. C. Civ. P. Rule 59 (e) motion and the respondents did not challenge or correct the ruling either in post-trial motions, during the appeal process or in their initial brief. The respondents could have challenged the jurisdiction of the Court of Appeals in the previous dismissal; however, they did not do so and the remittur was issued. Therefore, it is the law of the case that the issues were raised and ruled on by the lower court.

This Court has also previously held if the questions on appeal affects a substantial right, the case is immediately appealable. Here, even though interlocutory issues are included with immediately appealable issues, for the sake of judicial economy, this Honorable Court should consider all the issues in the appeal.

For purposes of S.C. Code Ann. §14-3-330 an order affects a substantial right when it “(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof of any pleading in any action [.]”

This appeal asks this Honorable Court of Appeals to answer the question of whether the counter claims and cross claims are compulsory and entitle the appellant to a jury trial and is therefore immediately appealable. Appellant avers the cross claims and counter claims are compulsory and therefore immediately appealable. If this Honorable Court of Appeals agrees that the respondent does not own the note and the mortgage, then the respondent lacks standing to pursue the action.

The Appellant avers because the Trial Court ruled on the Motion to Dismiss and the Motion to Alter and Amend, the issue of standing and real party in interest is preserved for this Honorable Court’s review. The Order of Dismissal from the Court of Appeals did not make any determinations or rule that the lower Court’s failure to receive a copy of the motion was jurisdictional in nature and the respondents did not challenge this ruling; therefore, the respondent waived the arguments, as the remittur was remitted. (R. p. 1).

The issue of Standing and Real Party in Interest was properly before the Court.

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S.C. R. Civ. P. Rule 7 (b)(1) provides that an application to the court for an order shall be by motion which, *unless made during a hearing or trial in open court with a court reporter present*, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. In this case, the Appellant requested the case be dismissed for multiple reasons by motion, by memorandum and in open court, *with a court reporter present*. The Circuit Court denied the dismissal of the complaint based on S. C. R. Civ. P. Rule 8; However, S.C.R. Civ. P. Rule 7(b) (1) indicated all the arguments made to the Court during the Motion to Dismiss hearing, outlined in the Memorandum in Support of the Motion to Dismiss, and argued in Oral Argument *with a court reporter present* were properly before the Court and therefore included in this ruling.

Because the issues of standing and real party in interest were raised to the Court and ruled on, they are preserved for review. Additionally, because this Court has previously ruled a second S.C.R. Civ. P. Rule 59 (e) does not toll the time for appeal and the mode of trial is a substantial right, the appellant was required to appeal or lose the opportunity to do so.

II. THE TRIAL COURT ERRED IN STRIKING MEISNER'S DEMAND FOR A JURY TRIAL.

123:3-25; 124-126). If the bank is determined to be the breaching party then whether attorney's fees and costs are available pursuant to the terms of the note agreement.

Here, the respondent has requested attorney's fees associated with the foreclosure action based on the contract between the predecessor in title, Bank of America, who the appellant alleges breached the contract by not debiting her payments as required by the note. The appellant is unaware of a statute that provides for attorney's fees in South Carolina absent a contract for mortgage foreclosure actions. Because the declaratory judgment action requests a determination of whether attorney's fees are available under a contract this is an action at law. DePass v. Piedmont Interstate Fair Ass'n, 217 S.C. 38, 59 S.E.2d 495 (1950). (action for collection of attorneys' fee charged pursuant to contract between attorney and client constitutes an action at law giving rise to a right to jury trial)

While the attorney's right to collect the attorney's, fees awarded based on the proceeds of the contract (such as in a foreclosure action) is one in equity; the question of whether the contract provides for a third party (U.S. Bank) to collect attorney's fees from a contract when the predecessor in title is alleged to have breached the contract is a question of law. This determination rests solely on the determination that an amount owed on the note exceeds the amount owed by the breaching party to the non-breaching party. Just as the question of whether a party that breaches a note agreement can invoke the equitable right of foreclosure is a legal question. In

foreclosure actions, the amount owed is required to be determined prior to the foreclosure.

A. The Appellant has a Right to a Jury Trial when counterclaims for Declaratory Judgment affect the right of the Plaintiff to Foreclose.

In N.C. Fed. Sav. & Loan Assn, the Supreme Court of South Carolina held that a breach of an oral agreement purporting to modify a note that the bank was foreclosing on was logically related to the enforceability of the note and was thus compulsory. N.C. Fed. Sav. & Loan Assn, 298 S.C. 518–19, 381 S.E.2d at 905. Additionally, in C & S Real Estate Servs., Inc. v. Massengale, the Court found “Although the counterclaim includes a prayer for actual and punitive damages, the only actual damages alleged are those of Father in incurring attorney's fees and expenses to defend the action. The Whites failed to allege any damages they were seeking. Although Father may have been entitled to a jury trial, he failed to appeal the referee's order and he is not a party to this appeal.” C & S Real Estate Servs., Inc. v. Massengale, 290 S.C. 299, 302, 350 S.E.2d 191, 193 (1986). In C&S, the Court embraced actual expenses such as attorney’s fees, costs and damage to property via the lis pendens entitled parties to a jury trial. Here, the appellant requested such fees in addition to punitive damages and equitable remedies.

Most importantly in the declaratory judgment action is the request to determine that U.S. Bank is a third-party debt collector requiring an interpretation of the UCC. Taken the contract interpretation, cannot simply be categorized as equitable. Particularly when equitable foreclosure requires a determination that a certain amount is owed to the plaintiff more than the amount owed by the plaintiff prior to judgment and sale.

B. The Appellant has a Right to a Jury Trial when the abuse of process claim implicates the due process clause and claims special damages as part of the prayer for relief.

The appellant has alleged that based on the filings by the respondent, Bank of America appears to be the real party in interest because the assignment to U.S. Bank is defective. The appellant has claimed actual, special, and punitive damages against the respondent. (R. pp. 35-59) As such the claim is compulsory pursuant to C&S because a mortgage foreclosure lawsuit is the process to enforce the note and the mortgage and if this process results in tort damages more than the amounts owed, then there is no basis for the equitable remedy of foreclosure. This argument was made in the initial brief. Additionally, the initial brief argued because the actions of the clerk of court violated the law, the appellant should be entitled to a jury trial. The determination of whether the respondent is a third -party debt collector means the litigation conduct would be held against the respondent and was also argued in the initial brief and specifically categorized the actions of the respondent as a tort and

not an equitable injury. (**R. pp. 35-59**). The argument that because the “abuse of process” tort is capable of replication and creates a danger was also presented to the Court and argued on appeal. Additionally, This Court can interpret novel arguments without any deference to the Court below.

C. The appellant has a right to a trial by jury when the damages by the cross claimant are compulsory

As an initial matter, the respondent suggested no argument was made in the initial brief that the appellant was entitled to a jury trial. However, a review of appellant’s initial brief plainly states the appellant is entitled to a jury trial via statute S.C. Code Ann. §29-3-310 and §29-3-320. Additionally, the appellant specifically alleges Bank of America claimed an ownership interest in the note and mortgage erroneously. (**In. Br. Of App.**) The statement that the appellant was entitled to a jury trial also noted the specific statute and the mechanism by which to make the claim.

Generally cross claims are permissive; however, in this case throughout the appeal, the appellant argued the parties are misaligned due to the defective assignment from Bank of America to U.S. Bank a central and critical issue on appeal is who owned the note when and whether their ownership in the note and mortgage and their actions in these proceedings provides a basis for remedy or a basis for punishment.

CONCLUSION

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
DeAndrea Benjamin, Circuit Court Judge

Case No. 2016-001019

U.S. Bank, National
Association, as trustee for the
Holders of the Banc of
America Funding Corporation,
2008-FTI,

Respondent,

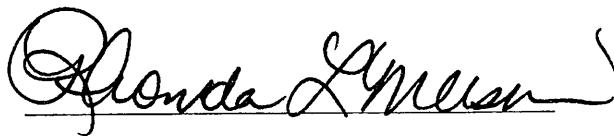
v.

Rhonda Lewis Meisner a/k/a
Rhonda L. Meisner, Bank of
America, N.A. and SCBT

Appellant.

PROOF OF SERVICE FINAL BRIEF AND RECORD ON APPEAL

The appellant certifies she has served a copy of all parties that have submitted a brief by mailing a copy of her final brief and two copies record on appeal to :Trent M. Grissom McGuire Woods, LLP 201 N.Tryon Street Suite 3000 Charlotte, NC 28202 postage pre-paid. ~~Additionally, the appellant filed a copy with the Circuit Court.~~



Rhonda Lewis Meisner, Appellant
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July 7, 2017

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable DeAndrea Gist Benjamin, District Court Judge

Case No. 2014-CP-40-02063

Appellate Case No. 2016-001019

U.S. Bank, National Association, as trustee for the Holders of The Banc of America Funding Corporation, 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1,
.....Respondent,

v.

Rhonda Lewis Meisner a/k/a Rhonda L. Meisner; Bank of America, N.A.; and
SCBT,.....Defendants,

Of whom Rhonda Lewis Meisner is the.....Appellant.

RESPONDENT'S FINAL BRIEF

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Date: September 19, 2017

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE TRIAL COURT CORRECTLY DETERMINED THAT U.S. BANK WAS THE REAL PARTY IN INTEREST THAT POSSESSED THE REQUISITE STANDING TO PURSUE THE FORECLOSURE ACTION
- II. WHETHER THE TRIAL COURT CORRECTLY DETERMINED THE COUNTERCLAIMS WERE PERMISSIVE.
- III. WHETHER THE TRIAL COURT CORRECTLY DETERMINED THE APPELLANT WAS NOT ENTITLED TO A JURY TRIAL.

STATEMENT OF THE CASE

A. U.S. Bank Filed For Foreclosure As A Result Of Appellant's Default On Her Loan.

U.S. Bank, National Association, as trustee for the Holders of The Banc of America Funding Corporation, 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1 ("U.S. Bank"), commenced the underlying equitable action for foreclosure on March 31, 2014 ("Foreclosure Action"), alleging that Rhonda Meisner ("Meisner") defaulted on her promissory note executed on August 13, 2003 ("Note"). Pursuant to the terms of the Note, Meisner promised to pay Bank of America, N.A. ("BANA") the sum of \$61,516.00, plus interest. The Note was secured by a mortgage ("Mortgage") (collectively, the "Loan"), which Meisner executed the same day that she signed the Note, on the real property located at 406 Koon Store Road, Columbia, South Carolina ("the Property").

In the Complaint, U.S. Bank alleged that it was the holder of the Note and the Mortgage and named two additional defendants that it alleged may claim an interest in the Property, South Carolina Bank and Trust, N.A. ("SCBT") and BANA. (R. p. 15 ¶ 2.) U.S. Bank alleged that BANA may claim an interest in the Property stemming from a

mortgage executed in 2005. (R. p. 17 ¶ 18(a).) As for SCBT, U.S. Bank alleged that it might claim an interest in the Property stemming from a 2007 mortgage, executed by Meisner in favor of SCBT, and a deficiency judgment entered against Meisner in Richland County in 2012. (R. p. 17 ¶ 18(b).)

In response, Meisner filed an Answer on May 15, 2014 asserting affirmative defenses as well as counterclaims for: (1) breach of contract, alleging that the “Plaintiffs” failed to resolve an escrow dispute before transferring the servicing of the loan; and (2) a declaratory judgment seeking a determination the parties’ right under the Note and Mortgage as well as appraisal rights for the Property (“Original Answer”). (R. pp. 23-29.)

B. Meisner Files A Motion To Dismiss, Which The Trial Court Denies.

On May 6, 2014, Meisner filed a motion to dismiss the Foreclosure Action pursuant to “S.C. Code Ann. Rule 12(b)(8)(9) [sic]”¹ (“Motion to Dismiss”), and, on June 4, 2014, she filed a memorandum of law in support of the Motion (“Memorandum”). (R. pp. 187-193.) As stated in her Motion to Dismiss and supporting Memorandum, Meisner alleged that the Foreclosure Action should be dismissed because U.S. Bank failed to timely respond to a complaint filed by SCBT in a separate foreclosure action against Meisner, in November 2013, in which SCBT sought to foreclose a junior mortgage on the Property (Case No. 2013-CP-40-7144) (“SCBT Foreclosure”). (R. pp. 187-193.)

Meisner’s Motion to Dismiss came on for a hearing on June 10, 2014. At the hearing, U.S. Bank argued that SCBT’s foreclosure of its junior lien, had no effect on the

¹ Meisner erroneously states in her Initial Brief that she filed her Motion to Dismiss pursuant to SCRCF Rule 12(b)(7) and 12(b)(8). (Appellant’s In. Br. p. 3.) The Record shows, however, that Meisner’s Motion to Dismiss was filed pursuant “S.C. Code Ann. Rule 12(b)(8)(9).” (R. pp. 187-188.)

validity of U.S. Bank's senior lien at issue in this action. (June 10, 2014 T. pp. 7:9–8:13.) Consequently, U.S. Bank argued that its failure to timely respond to the complaint in the SCBT Foreclosure could not serve as a basis for the dismissal of the Foreclosure Action under Rule 12(b)(8), SCRCP. (*Id.*)

During the hearing, Meisner attempted to challenge U.S. Bank's standing to maintain the Foreclosure Action based on her allegation that the Assignment of Mortgage was defective. (June 10, 2014 T. pp. 8:21–9:11.) The Trial Court, however, informed Meisner that it could not hear her argument regarding the Assignment of Mortgage as Meisner had not filed a motion on the issue with the Court. (June 10, 2014 T. pp. 9:3–12.) Although Meisner stated that she had filed a motion challenging U.S. Bank's standing (June 10, 2014 T. p. 9:7–8), the Record shows no such motion was filed—and, in her subsequent Rule 59(e) motion (discussed below), Meisner conceded that she made an *oral* motion challenging U.S. Bank's standing at the June 10th hearing.

C. The First Order of Reference is Entered but Subsequently Vacated.

While Meisner's Motion to Dismiss was still pending, U.S. Bank filed a Motion to Strike Jury Trial Demand and for Mandatory Order of Reference, on July 24, 2014, arguing that Meisner's counterclaims were not legal counterclaims as they did not affect U.S. Bank's right to enforce the Note and Mortgage. U.S. Bank therefore sought an order referring the entire matter to the Master-in-Equity. (R. pp. 206-210.)

On June 27, 2014, the Court entered an order denying Meisner's Motion to Dismiss ("Order Denying Motion to Dismiss"). In the Order, the Trial Court noted that, although Meisner cited Rules 12(b)(8) and (9), SCRCP, as grounds for her Motion to Dismiss, Rule 12(b)(9) did not exist; therefore, the Court only addressed Meisner's Motion pursuant Rule 12(b)(8). (R. pp. 9-11.) The Court denied the Motion to Dismiss

because it concluded Meisner's default under the Note and Mortgage was "entirely unrelated to her performance under the terms of [her] loan agreement with SCBT[.]"

In a motion filed on June 30, 2014, pursuant to Rules 59(e) and 60, SCRCP, Meisner asked the Trial Court to amend the Order Denying Motion to Dismiss, and for relief from the Order ("Motion for Reconsideration"). (R. pp. 197-205.) Meisner asked the Court to reconsider its ruling under Rule 12(b)(8) and noted that the Court had not ruled on her oral motion at the June 10, 2014 hearing challenging the assignment of the Mortgage to U.S. Bank. (R. p. 197.) The Trial Court denied Meisner's Motion for Reconsideration, in a Form 4 order on September 5, 2014, stating that it did not receive a copy of the motion as required by Rule 59(g), SCRCP ("Order Denying Motion for Reconsideration"). (R. p. 12.) Meisner appealed the Order Denying Motion to Dismiss and the Order Denying Motion for Reconsideration. This Court dismissed the appeal as interlocutory in an order entered November 19, 2014. (R. p. 1.)

On July 24, 2014, the Clerk of Court entered an order striking Meisner's demand for a jury trial and referring the matter to the Master-in-Equity ("First Order of Reference"). (R. pp. 6-7.) The Master-in-Equity, Judge Strickland, vacated the First Order of Reference, on January 15, 2015, concluding that the Order was inadvertently signed by the Clerk of Court but should have been signed by a Circuit Court Judge. (R. p. 13; Dec. 16, 2015 T. pp. 13:17-14:5.)

D. Meisner Files an Amended Answer and Counterclaims and U.S. Bank Obtains an Order of Mandatory Reference.

On August 10, 2015, Meisner filed an amended answer and counterclaims ("Amended Answer")² asserting various affirmative defenses and counterclaims for: (1) declaratory judgment to determine the real party in interest; (2) breach of contract against Bank of America; (3) breach of contract accompanied by a fraudulent act against Bank of America; (4) abuse of process against U.S. Bank; (5) failure to file a satisfaction of mortgage against Bank of America; (6) slander of title against Bank of America; and (7) slander of title, based in equity, against SCBT. (R. pp. 35-58.)

After filing its Reply to Meisner's Amended Answer (R. pp. 59-67), U.S. Bank again sought an order of reference when it filed a Motion to Strike Jury Trial Demand and for Mandatory Order of Reference on October 28, 2015 ("Motion for Order of Reference"). U.S. Bank's Motion for Order of Reference was heard on December 16, 2015. (Dec. 16, 2015 T. p. 1.)

On April 13, 2016, the Trial Court entered an order striking Meisner's demand for a jury trial and referred the matter to a Master-in-Equity ("Second Order of Reference"). (R. pp. 2-5.) In the Second Order of Reference, the Trial Court concluded that Meisner's counterclaims and cross-claims, if proven true, would not have any impact on the enforceability of the Note and Mortgage, and were, therefore, permissive. (R. p. 3.) Because Meisner raised the permissive counterclaims and cross-claims in the equitable foreclosure proceedings, the Trial Court concluded that Meisner had waived her right to a jury trial and referred the matter to the Master-in-Equity. (R. pp. 3-4.)

² For clarification, U.S. Bank notes that Meisner titled her Amended Answer as her "First Amended Complaint." (R. p. 35.)

Meisner filed a Motion to Alter and Amend Ruling Pursuant to SCRCR Rule 59-e [sic] ("Motion to Amend") on April 20, 2016. (R. pp. 247-250.) However, no order ruling on Meisner's Motion to Amend appears in the Record.

Meisner filed a Notice of Appeal from the Second Order of Reference on May 12, 2016.

STANDARD OF REVIEW

A mortgage foreclosure is an action in equity. In an appeal from an action in equity tried by a judge, appellate courts may find facts in accordance with their own views of the preponderance of the evidence. However, [w]hether a party is entitled to a jury trial is a question of law. Appellate courts may decide questions of law with no particular deference to the circuit court's findings.

Wachovia Bank, Nat'l Ass'n v. Blackburn, 407 S.C. 321, 328, 755 S.E.2d 437, 440-41 (2014) (alteration in original) (internal citations and quotation marks omitted).

ARGUMENT

I. THE ISSUE OF WHETHER THE FORECLOSURE ACTION SHOULD BE DISMISSED DUE TO U.S. BANK'S ALLEGED LACK OF STANDING WAS NOT PRESERVED FOR REVIEW.

In her first argument, Meisner contends that the Trial Court erred in holding that U.S. Bank was the real party in interest with standing to foreclose the Note and Mortgage. Meisner, however, has failed to preserve this issue for appellate review as Meisner failed to obtain a ruling from the Trial Court on the issue of U.S. Bank's standing in either the Order Denying Motion to Dismiss or the Second Order of Reference.

In support of her argument that U.S. Banked lacked standing, Meisner cites the transcript of the June 10, 2014 hearing in her Motion to Dismiss and contends that the Trial Court should have dismissed the Foreclosure Action based on an allegedly defective

assignment of the Note and Mortgage. (Appellant's In. Br. pp. 5–9.) In her Motion to Dismiss and supporting Memorandum, Meisner argued that the Foreclosure Action should be dismissed because, she alleged, U.S. Bank failed to timely respond to a complaint filed by SCBT in the SCBT Foreclosure—a separate foreclosure action against Meisner based on a separate promissory note. (R. pp. 187-193.) U.S. Bank argued that SCBT's foreclosure of its junior lien had no effect on the validity of U.S. Bank's senior lien in this Foreclosure Action. (June 10, 2014 T. pp. 7:9–8:13.) Consequently, U.S. Bank argued its failure to timely respond to the complaint in the SCBT Foreclosure could not serve as a basis for the dismissal of the Foreclosure Action under Rule 12(b)(8), SCRCP. (*Id.*)

Meisner attempted to challenge U.S. Bank's standing to maintain the Foreclosure Action based on her allegation that the Assignment of Mortgage was defective. (June 10, 2014 T. pp. 8:21–9:11.) The Trial Court, however, informed Meisner that it could not hear her argument regarding the Assignment of Mortgage as Meisner had not filed a motion on the issue with the Court. Although Meisner stated that she had filed a motion challenging U.S. Bank's standing (June 10, 2014 T. p. 9:7–8), the Record shows no such motion was filed. Additionally, in her subsequent Rule 59(e) motion (discussed below), Meisner conceded that she made an oral motion challenging U.S. Bank's standing at the June 10th hearing.

On June 27, 2014, the Court entered its Order Denying Meisner's Motion to Dismiss. In the Order, the Trial Court noted that, although Meisner cited Rule 12(b)(8) and (9), SCRCP, as grounds for her Motion to Dismiss, Rule 12(b)(9) did not exist; therefore, the Court only addressed Meisner's Motion pursuant Rule 12(b)(8). The Court

denied the Motion to Dismiss because it concluded Meisner's default under the Note and Mortgage was "entirely unrelated to her performance under the terms of [her] loan agreement with SCBT[.]" (R. pp. 8-11.)

In her Motion for Reconsideration, Meisner asked the Trial Court to amend the Order Denying Motion to Dismiss and for relief from the Order stating that the court had not ruled on her oral motion challenging U.S. Bank's standing. (R. pp. 197-205.) The Trial Court, however, denied the Motion for Reconsideration for Meisner's failure to provide the court with a copy as required by Rule 59(g), SCRCF. *See* SCRCF 59(g) ("A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion."). Meisner makes no argument on appeal that the Trial Court erred in denying her Motion to Dismiss for her failure to comply with Rule 59(g), SCRCF. (Appellant's In. Br. pp. 5-9.)

Similarly, in the Second Order of Reference, the Trial Court did not address the issue of U.S. Bank's standing. In her subsequent Motion to Amend, Meisner noted the absence of a ruling on the issue in the Second Order of Reference and requested that the Trial Court amend the Order. (R. pp. 247-250.) Meisner, however, filed her Notice of Appeal without obtaining a ruling on her Motion to Amend.

Because the Trial Court did not rule on the issue of U.S. Bank's standing in its Order Denying Motion to Dismiss or its Second Order of Reference, and because Meisner failed to obtain a ruling on the issue with either her Motion for Reconsideration or her Motion to Amend, she failed to preserve the issue for review. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004) ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower

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court.”); *Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (holding that although an issue was argued before the trial court, because the trial court did not explicitly rule on the issue, and the appellant did not make a Rule 59(e) motion to amend to obtain a ruling, the issue was not preserved for appellate review); *Cowburn v. Leventis*, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005) (“When a trial court makes a general ruling on an issue, but does not address the specific argument raised by a party, that party must make a Rule 59(e) motion asking the trial court to rule on the issue in order to preserve it for appeal.”).

II. THE TRIAL COURT DID NOT ERR IN STRIKING MEISNER’S REQUEST FOR A JURY TRIAL.

The Trial Court did not err by referring the Foreclosure Action to the Master-in-Equity in its Second Order of Reference. In her counterclaims for breach of contract and declaratory judgment, Meisner seeks *equitable* relief for which she has no right to a trial by jury. Additionally, Meisner has waived any right to a jury trial on her remaining counterclaims and her cross-claims as they are *permissive* claims raised in an equitable foreclosure proceeding. Specifically, Meisner’s abuse of process claim is based on activities alleged to have occurred *during* the course of the Foreclosure Action and, therefore, is unrelated to the enforceability of the Note and Mortgage. Similarly, Meisner’s cross-claim against Bank of America for failure to file a satisfaction of mortgage is a permissive claim as it is unrelated to the enforceability of the Note and Mortgage by U.S. Bank.

In *Blackburn*, the Supreme Court of South Carolina explained that “[a] mortgage foreclosure is an action in equity.” 407 S.C. at 328, 755 S.E.2d at 440. Thus, “the parties are not entitled, as a matter of right, to a trial by jury.” *Id.* at 328, 755 S.E.2d at 441

(quoting *Williford v. Downs*, 265 S.C. 319, 321, 218 S.E.2d 242, 243 (1975)). But, “counterclaims—including those raised in equitable actions—may, at times, be entitled to a jury trial.” *Id.* The determination of whether a party raising a counterclaim in a foreclosure action is entitled to a jury trial on its counterclaim depends first on whether the counterclaim is an *equitable* counterclaim or a *legal* counterclaim. *See id.* at 328–29, 755 S.E.2d at 441.

If the claim is a legal counterclaim, the party asserting the claim is entitled to a trial by jury on that claim *only* if the claim is a compulsory counterclaim—a claim that “arises out of the same transaction or occurrence as the opposing party’s claim” and which the party would have lost the right to make had the claim not been asserted in the same action. *Id.* at 330, 755 S.E.2d at 441 (citation and quotation marks omitted). Furthermore, a compulsory counterclaim “affect[s] the bank’s right to enforce the note and foreclose the mortgage.” *See id.* at 330 n.7, 755 S.E.2d at 442 n.7. Alternatively, if the counterclaim is a legal but *permissive* counterclaim, asserting the claim in an equitable action constitutes a waiver of the right to a trial by jury. *Id.* at 330, 755 S.E.2d at 441. For *equitable* counterclaims, however, a party has no right to a jury trial. *Id.* at 329, 755 S.E.2d at 441.

Furthermore, “[w]hether the action is one at law or in equity is determined by the nature of the pleadings and the character of the relief sought.” *RIM Associates v. Blackwell*, 359 S.C. 170, 177–78, 597 S.E.2d 152, 156 (Ct. App. 2004); *Clark v. Hargrave*, 323 S.C. 84, 86, 473 S.E.2d 474, 476 (Ct. App. 1996) (same). Thus, “an action sounding in law may be transformed to one in equity because equitable relief is sought.” *Ins. Fin. Servs., Inc. v. S. Carolina Ins. Co.*, 271 S.C. 289, 294, 247 S.E.2d 315,

318 (1978). Accordingly, “an appellate court is not bound by a party’s characterization of the actions” and may disregard such labels. *RIM Associates v. Blackwell*, 359 S.C. 170, 177–78, 597 S.E.2d 152, 156 (Ct. App. 2004); *Ariail v. Ariail*, 295 S.C. 486, 491, 369 S.E.2d 146, 149 (Ct. App. 1988) (disregarding the label given by the parties to a cause of action and analyzing the claim based on the relief sought). Additionally, even though a counterclaim may be compulsory as it arose out of the “same transaction or occurrence as the opposing party’s claim,” *Blackburn*, 407 S.C. at 330, 755 S.E.2d at 441, where the main purpose of the counterclaim is equitable relief, the counterclaim is properly regarded as sounding in equity, see *Mortgage Elec. Sys., Inc. v. White*, 384 S.C. 606, 615, 682 S.E.2d 498, 502 (Ct. App. 2009) (holding no right to jury trial of a compulsory counterclaim where the relief sought was equitable).

A. Meisner Has No Right to a Jury Trial for Her Counterclaims for Declaratory Judgment or Breach of Contract Because She Seeks Equitable Relief.

Meisner has characterized her counterclaims for declaratory judgment and breach of contract as legal and compulsory counterclaims for which she claims a right to trial by jury. Because the counterclaims do not affect U.S. Bank’s right to enforce the Note and foreclose the Mortgage, the Trial Court properly found the counterclaims to be *permissive*. Alternatively,³ because, the nature of the relief Meisner seeks is primarily equitable in nature—that U.S. Bank be estopped from foreclosing the Mortgage—her counterclaims are equitable claims for which she has no right to a trial by jury. Accordingly, the Second Order of Reference should be affirmed.

³ While the Trial Court concluded these counterclaims were permissive counterclaims (R. p. 4), this Court may affirm on any basis appearing in the record. See *White*, 384 S.C. at 614 n.2, 682 S.E.2d at 502 n.2

In support of these counterclaims, Meisner alleges that Bank of America failed to draft her monthly payments and apply them to her account. (R. p. 40; Amend. Answer ¶ 34.) Assuming *arguendo* that Bank of America did cease Meisner's monthly draft payments, that fact does not affect U.S. Bank's right to enforce the Note and foreclose the Mortgage, rendering her counterclaims to be permissible. *See Blackburn*, 407 S.C. at 330 n.7, 755 S.E.2d at 442 n.7. Having raised permissible counterclaims in an equitable foreclosure action, Meisner has waived her right to a jury trial. *See id.* at 330, 755 S.E.2d at 441.

Alternatively, the Second Order of Reference may be affirmed as the relief which Meisner seeks is equitable relief, for which she has no right to a trial by jury. *See id.* at 329, 755 S.E.2d at 441. As Meisner notes, "a suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." *Felts v. Richland Cty.*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). (Appellant's In. Br. p. 19.) While the declaratory judgment action in *Felts* was characterized as an action in law, the action sought the interpretation of a contract solely to determine if the plaintiff was defined as an employee under the contract at issue. *See id.* When, however, a party files a declaratory judgment action primarily seeking equitable relief the claim is properly considered to sound in equity. *See Lowcountry Open Land Trust v. Charleston S. Univ.*, 376 S.C. 399, 406 n.4, 656 S.E.2d 775, 779 n.4 (Ct. App. 2008) (holding that declaratory judgment action sounded in equity where the primary relief sought was the equitable relief of specific performance, rejecting the argument that the necessity of interpreting the contract meant the action was an action at law); *Gaddy v. Douglass*, 359 S.C. 329, 333, 597 S.E.2d 12, 14 (Ct. App. 2004) (concluding that a declaratory judgment action seeking

to revoke a power of attorney sounded in equity). Similarly, a claim for breach of contract may sound in equity when equitable relief is sought. See *RIM Associates*, 359 S.C. at 177–78, 597 S.E.2d at 156 (concluding that, despite the party’s characterization of its claim as a claim for “breach of contract,” when the party sought the equitable remedy of specific performance, the claim was an equitable claim). Here, although Meisner asserts that her counterclaims for declaratory judgment and breach of contract are legal counterclaims, it is apparent from the pleadings and her arguments on appeal that the primary relief she seeks is *equitable*, precluding her right to a jury trial.

In support of her breach of contract counterclaim, Meisner alleges that BANA breached the terms of the Note before assigning it to U.S. Bank. (Appellant’s In. Br. p. 12.) As a result, she contends “neither Bank of America nor U.S. Bank should be allowed to foreclose.” (*Id.*) As for her counterclaim for declaratory judgment, she contends, “[t]he requested declaratory judgment action is to determine the rights and responsibilities of each of the parties under the [N]ote and [M]ortgage. The action argued the Bank should be *estopped* from foreclosure” (Appellant’s In. Br. p. 19 (emphasis added).) Thus, for both counterclaims, Meisner seeks the *equitable* remedy of estoppel, for which she has no right to a trial by jury. See *Black v. Lexington Sch. Dist.* No. 2, 327 S.C. 55, 62 n.1, 488 S.E.2d 327, 331 n.1 (1997) (“[E]quitable estoppel is an equitable issue to be determined by the judge rather than by the jury.”).

Meisner also erroneously contends that the determination of the rights and obligation of the parties under the Note and Mortgage—the determination of the “real party in interest” with standing—is a “legal conclusion which provides the basis for a jury trial.” (Appellant’s In. Br. p. 21.) But, the determination of a question of law as to

whether a party has standing to sue under a contract does not transform an action in equity into an action in law. *See Sloan v. Greenville Cty.*, 356 S.C. 531, 545, 590 S.E.2d 338, 345–46 (Ct. App. 2003) (concluding that while the defendant asserted the main purpose of the declaratory judgment action was to *construe a written contract*—including whether the plaintiff had standing to sue under the contract—when the remedy sought by the plaintiff was equitable, the action was appropriately characterized as equitable). That the finder of fact will have to determine standing in an equitable action does not, therefore, provide Meisner the right to a jury trial. *See id.*

This rule that an otherwise legal claim may be equitable in nature depending on the primary relief sought applies even if a party to an action seeks monetary damages in addition to equitable relief. *See Mobley Co. v. McLucas*, 99 S.C. 99, 99, 82 S.E. 986, 986 (1914) (holding that the defendant in a foreclosure action was *not* entitled to a jury trial on his counterclaim for damages arising out of the plaintiff's alleged failure to perform its obligations in the contract); *Ins. Fin. Servs., Inc.*, 271 S.C. at 294, 247 S.E.2d at 318 (affirming the circuit court's transfer of the action to the equity calendar despite a party's request for "considerable damages," both actual and punitive, because the damages were "only incidental" to the equitable relief sought); *Doe v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n*, 347 S.C. 642, 645, 557 S.E.2d 670, 672 (2001) (concluding that where the plaintiff's "main purpose" of the action was equitable relief the action sounded in equity despite the plaintiff's prayer for money damages). Thus, when the primary remedy sought is equitable, the action will be an action in equity: "While [one party] will have to pay money . . . if the allegations are proven, that does not mean [the opposing party's] causes of action are legal in nature. Upon looking at the body of the complaint,

the main purpose in bringing this action is equitable, not legal.” *Verenes v. Alvanos*, 387 S.C. 11, 18, 690 S.E.2d 771, 774 (2010) (holding that, when the nature of relief sought pursuant to claim for breach of fiduciary duty was an equitable remedy, there was no right to trial by jury).

Meisner seeks both equitable relief and monetary damages in her claims for declaratory judgment and breach of contract accompanied by a fraudulent act.⁴ (R. pp. __ ¶¶ 60, 61, 80.) A careful review of her Amended Answer makes clear, however, that estopping U.S. Bank from foreclosing the Note and Mortgage is what Meisner really seeks. Meisner’s counterclaims therefore sound in equity. *See Ins. Fin. Servs., Inc.*, 271 S.C. at 294, 247 S.E.2d at 318; *Doe*, 347 S.C. at 645, 557 S.E.2d at 672. Additionally, the Master-in-Equity’s adjudication of Meisner’s counterclaims would not preclude her from recovering her alleged damages. *See Ins. Fin. Servs., Inc.*, 271 S.C. at 294, 247 S.E.2d at 318 (“The trial of a case in a court of equity does not foreclose the award of damages.”). In sum, Meisner has no right to a trial by jury for these counterclaims.

B. Meisner Has No Right to a Jury Trial for Her Counterclaim for Abuse of Process Because the Counterclaim is *Permissive*.

⁴ Although Meisner claimed damages in her counterclaim against Bank of America for breach of contract accompanied by a fraudulent act, she did not plead a claim for relief in her breach of contract counterclaim against Bank of America. (R. p. 46 (Amend. Answer, p. 12).)

Meisner's counterclaim for abuse of process against U.S. Bank is based solely on her allegations relating to U.S. Bank's actions *after* the default on the Note and *during the course of* the Foreclosure Action. As such, the claim is wholly unrelated to the enforceability to of the Note and Mortgage, and the Trial Court properly concluded that Meisner's counterclaim was a *permissive* counterclaim, and Meisner waived her right to a trial by jury by raising the claim in an equitable proceeding.

On June 23, 2014, U.S. Bank filed its First Motion to Strike Jury Trial Demand and for Mandatory Order of Reference along with a proposed order of reference to strike Meisner's demand for a jury trial. The Clerk of Court entered the First Order of Reference on July 24, 2014. On January 15, 2015, however, the Master-in-Equity entered an order *vacating* the First Order of Reference, concluding that the Order was inadvertently signed by the Clerk of Court but should have been signed by a Circuit Court Judge. (R. p. 13; Dec. 16, 2015 T. pp. 13:17-14:5.) Months later, when Meisner filed her Amended Answer, she pled—for the first time—a counterclaim for abuse of process alleging that the Clerk of Court was without authority to sign the First Order of Reference and that U.S. Bank “willfully and wantonly” filed the proposed Order and sought the Clerk's signature in order to “fast track the foreclosure process.” (R. pp. 49-52 (Amend. Answer pp. 15-18).)

On appeal, Meisner contends that the Trial Court erred in concluding that her counterclaim for abuse of process is a permissive counterclaim. (Appellant's In. Br. pp. 12-17.) Yet, she makes no argument on appeal as to how the counterclaim is a compulsory counterclaim. (*See id.*) In her Initial Brief, Meisner discusses the general concept of an abuse of process claim and expands on her allegations that U.S. Bank

improperly sought an order of reference from the Clerk of Court, but she fails to make any argument as to how the Trial Court erred in concluding that her counterclaim was *unrelated* to the execution of the Note and Mortgage or their enforceability. (R. pp. 3-4 (Order of Reference pp. 2-3)). Without making any argument as to *how* the Trial Court erred, Meisner has abandoned this issue on appeal. See *Jinks v. Richland Cty.*, 355 S.C. 341, 344 n.3, 585 S.E.2d 281, 283 n.3 (2003) (concluding that issue raised in appellant's brief was abandoned when appellant provided no argument on the issue); *Jones v. SC Dep't of Health & Envtl. Control*, 384 S.C. 295, 317, 682 S.E.2d 282, 294 (Ct. App. 2009) (argument abandoned where appellant failed to explain *how* the trial court erred).⁵

Assuming *arguendo* that Meisner's allegations regarding U.S. Bank's filing of the First Motion to Strike Jury Trial Demand and for Mandatory Order of Reference are true, U.S. Bank's attempt to obtain an order of mandatory reference from the Clerk of Court determining the mode of trial of the Foreclosure Action would *not* affect its right to commence and maintain the Foreclosure Action as the holder of the Note. Because the determination of U.S. Bank's right to enforce the Note and foreclose the Mortgage is *independent* of the determination of whether it impermissibly sought the First Order of Reference during the Foreclosure Action, her abuse of process counterclaim is a *permissive* counterclaim. See *Blackburn*, 407 S.C. at 330 n.7, 755 S.E.2d at 442 n.7

⁵ Having failed to make *any* argument in her Initial Brief regarding how the Trial Court erred in striking her demand for a jury trial on her counterclaim for abuse of process, Meisner is precluded from raising the issue in a reply brief. See *McClurg v. Deaton*, 395 S.C. 85, 87, 716 S.E.2d 887, 888 (2011) ("It is axiomatic that an issue cannot be raised for the first time in a reply brief."); *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct. App. 2001) (holding that even if an argument is raised in an initial brief, if the argument is conclusory and unsupported by authority, the argument is not preserved for review and the appellant is precluded from *more fully addressing the issue* in a reply brief).

(counterclaims are permissive if they do not affect the lender's right to enforce the note and foreclose the mortgage). Assuming *arguendo* that Meisner's abuse of process counterclaim is a legal counterclaim, because Meisner raised the permissive counterclaim in an equitable foreclosure action, she has waived her right to trial by jury on the claim. See *id.* at 332, 755 S.E.2d at 443 (concluding that raising permissive legal counterclaims in an equitable action constitutes waiver of the right to a jury trial).

C. Meisner Has No Right to a Jury Trial for Her Cross-claim that Bank of America Failed to File a Satisfaction of Mortgage Because the Counterclaim is *Permissive*.

Next, Meisner erroneously contends that the Trial Court erred in finding that her cross-claim against Bank of America alleging its failure to satisfy the Mortgage was a permissive cross-claim.

As an initial matter, Meisner has abandoned this issue on appeal as she has failed to provide *any* argument in her Initial Brief as to how she is entitled to a jury trial on this cross-claim. Beyond her conclusory one-sentence assertion that "[t]he cross-claim against Bank of America for failure to satisfy a mortgage that has been satisfied provides for a jury trial[.]" Meisner provides no argument as to *how* the Trial Court erred. (Appellant's In. Br. pp. 17-18.) Additionally, while Meisner discusses the general concept of a claim for failure to satisfy a mortgage, she fails to make *any* allegations or provide *any* argument regarding Bank of America's alleged failure to satisfy the Mortgage. (*Id.*) As such, she has failed to preserve the issue for review. See *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 304 n.2, 433 S.E.2d 871, 873 n.2 (Ct. App. 1993) (concluding that appellant's one-sentence argument was too conclusory to preserve an issue for appellate review); *Sullivan Co., Inc. v. New Swirl, Inc.*, 313 S.C. 34, 36, 437 S.E.2d 30, 31 (1993) (an appellant's general and unsupported statements that it was

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damaged by respondent's failure to act may be disregarded by the appellate court); *see also Jinks*, 355 S.C. at 344 n.3, 585 S.E.2d at 283 n.3; *Jones*, 384 S.C. at 317, 682 S.E.2d at 294.⁶

Furthermore, had Meisner preserved this issue for review, the Trial Court properly stuck her demand for a jury trial on her cross-claim alleging that Bank of America failed to file a satisfaction of her Mortgage. Rule 13(g) of the South Carolina Rules of Civil Procedure provides that "[a] pleading *may* state as a cross-claim any claim by one party against a co-party" Rule 13(g), SCRPC (emphasis added). As such, "[g]enerally, cross-claims are permissive[.]" *N.C. Fed. Sav. & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 519, 381 S.E.2d 903, 906 (1989). As Meisner has raised a permissive crossclaim against Bank of America in U.S. Bank's foreclosure action, she has waived her right to a jury trial on this issue. *See Blackburn*, 407 S.C. at 330, 755 S.E.2d at 441.

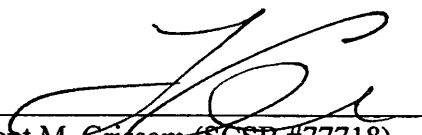
⁶ Having failed to make *any* argument in her Initial Brief regarding as to how the Trial Court erred in striking her demand for a jury trial on this cross-claim, Meisner is precluded from more fully addressing the issue in a reply brief. *See McClurg*, 395 S.C. at 87, 716 S.E.2d at 888; *Glasscock*, 348 S.C. at 81, 557 S.E.2d at 69.

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CONCLUSION

For the reasons and authorities stated above, this Court should affirm the Trial Court's Order Denying Motion to Dismiss and the Second Order of Reference and let this matter proceed by non-jury adjudication.

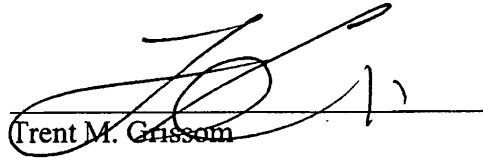
This the 19 day of September, 2017.


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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with Rule 211(b), SCACR.


Trent M. Grissom

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
DeAndrea Benjamin, Circuit Court Judge

Case No. 2016-001019

U.S. Bank, National
Association, as trustee for the
Holders of Banc of America
Funding Corporation, 2008-
FTI Trust, Mortgage pass-
through certificates, series
2008 -FT1

Respondent,

v.

Rhonda Lewis Meisner a/k/a
Rhonda L. Meisner, Bank of
America, N.A. and SCBT of
whom Rhonda Lewis Meisner
is

Appellant.

APPELLANT'S REPLY BRIEF

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Appellant

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APPELLANT'S INTRODUCTION OF ISSUES ON APPEAL

As an initial matter, the appellant avers all issues raised in her appeal are properly before this Honorable Court of Appeals. First, while the issues of standing and real party in interest were determined to be interlocutory by this Honorable Court of Appeals, this determination did not remove the fact the issues were properly raised and ruled on by the lower court. In fact, the Order, from this Honorable Court, specifically noted that the appeal was based on both the lower Court's denial of the dismissal of the complaint and the lower Court's denial of the S. C. R. Civ. P. Rule 59 (e) motion.

Second, the respondents did not make a motion or argument for the exclusion of the S.C.R. Civ. P. Rule 59 (e) from the trial Court or from this Honorable Court's consideration either during a post-hearing motion or during the pendency of the appeal or prior to the issuance of this Honorable Court's remitter.

Third, the South Carolina Supreme Court has previously held a **second** S.C. R. Civ. P. Rule 59-e motion that contains some of the same arguments as the first S.C. R. Civ. P. Rule 59-e motion does not toll the time for appeal. Coward Hund, 336 S.C. 1, 518 S.E.2d 56; Quality Trailer, 349 S.C. 216, 562 S.E.2d 615; and Collins Music, 353 S.C. 559, 579 S.E.2d 524. As such, the trial Court's denial of the first S.C. R. Civ. R. 59-e denial did not toll the time for appeal; therefore, to

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avoid losing the opportunity to appeal the issue, it was necessary to file the appeal prior to the Lower Court's ruling.

Finally, it is the "first amended complaint" that is the subject of this appeal.

APPELLANT'S POSITION OF STATEMENT OF THE CASE

A. Appellant's reply to "U.S. Bank Filed for Foreclosure because of Appellant's Default on Her Loan."

U.S. Bank, National Association, as trustee for the Holders of the Banc of America Funding Corporation, 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1 ("U.S. Bank"), did not own the note or the mortgage at the time they filed the foreclosure action pursuant to their own court filings; therefore, they assumed an already defaulted loan and as such suffered no injury. **(R. p. 105:18-25; 106:1-23)**. Bank of America, N.A. ("Bank of America"), U.S. Bank's predecessor in title claims an ownership interest in the very note U.S. Bank seeks to foreclose. **(June 10, 2014 T. p. 3:10-15) (R. p. 165:9-15)**. U.S. Bank, by the facts alleged in the complaint, and argued in open court may be considered a third-party debt collector due to the fact they assumed the note and mortgage after the alleged default occurred with another company. **(December 16, 2015 T. p. 4:10-12) (R. p. 100:10-12)**.

Meisner purportedly defaulted on a loan to their predecessor in title, Bank of America and not with any loan owned by U.S. Bank. **(December 16, 2015 T. p.**

4:10-12) (R. p. 100:10-12). Additionally, Meisner argues because the requirement to debit her bank account, as elected as a term in the note, carried the obligation to debit to the new owner of the note. (R.p.105:10-25; 106:10-24). U.S. Bank was not a party to the contract between Bank of America and Appellant Meisner, therefore they assumed or purchased an already defaulted loan and a breached contract and never suffered any injury in fact. (R. p. 100:10-24). (R. p. 260) Additionally, Bank of America, claimed an interest in not only the note and mortgage initiated in 2005, as the respondent notes in its initial brief, (**Initial brief of Respondent p. 1 last line; p.2:1**), but also claimed an interest in the specific note that is subject of this appeal. (**Case No. 2013- CP- 40-07144 Answer of Bank of America**) (R. p. 89 ¶ 8).

B. Appellant's Reply to "Meisner Files a Motion to Dismiss, Which the Trial Court Denies."

The Appellant's Initial Brief accurately identified the motions by which she sought relief. (**App. In. Br. P. 3:8-12**) This is because the scrivener's error in the lower court's written motion, was corrected in the hearing before the Court. (**June 10, 2014 T. p. 2:17-21**) (R. 164:17-21). The Court accepted the correction via acknowledgement. (**June 10, 2014 T. p. 2:22-24**) (R. p, 164:22-24). The Respondent noted the scrivener's error in its initial brief; however, importantly, the respondent did not note the Appellant's correction of the errors in front of the

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Court. (**In. Br. of Resp. p. 2 n. 1**). (**June 10, 2014 T. p.2:17-21**) (**R. p. 164:22-24**). The memorandum in support of the motion to dismiss also specifically addressed the fact that Bank of America claimed an interest in the note and mortgage and noted the fact the assignment that purportedly transferred the instrument was notarized the day before in Nevada and California. (**Def. Memo in support of Motion to dismiss p.3:17-22**) (**R. pp. 189-193; p.260.**) The memo in support of the motion to dismiss was served on the defendants and filed with the Court in support of the motion to dismiss prior to the June 10, 2014 hearing and not only notes the duplication of the cases but specifically notes that both Bank of America and U.S. Bank claim ownership of the note and mortgage. (**Memo in support of Motion to dismiss p. 4: 16-19**) (**R. p. 192:16-19**).

The question of real party in interest and whether the plaintiff had standing was brought up in the Def's Memorandum in Support of the Motion to Dismiss and was filed and served on the plaintiff prior to the June 10, 2014 hearing and therefore was properly before the Court. (**R. p. 189-193**). The arguments were reiterated before the Court in the hearing held on June 10, 2014. (**R. p. 170:20-25; R. p. 191**). It was specifically pointed out to the Court that the assignments were attached as exhibits to the memorandum in support of dismissal, which pursuant to the Court's order was filed prior to the June 10th hearing. (**June 10, 2014 T. p. 9:13-25; p, 10:1-15; R. p. 171:13-25;172:1-15**).

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The appellant avers that pursuant to S.C.R. Civ. P. Rule 12 (b), “no defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or *motion*”. (emphasis by Appellant). Here, the claims for dismissal were referenced in both the memorandum in support of the motion to dismiss and the oral argument before the Court, with a court reporter present; therefore, **all** the reasons for the motion to dismiss were properly before the Court.

C. Appellant’s Reply to “The First Order of Reference is Entered but Subsequently Vacated.”

Respondents assert the Order of Reference signed by the Honorable Jeanette McBride was done so inadvertently. Whether the respondents filed the motion to strike and for mandatory Order of Reference was intentional and a violation of the South Carolina Rules of Civil Procedure is a question of law, a determination in the affirmative would provide a basis for a jury demand via an abuse of the foreclosure process. The appellant avers because the respondent objected to the Master in Equity’s vacatur of the referral and argued before the Honorable DeAndrea Benjamin that the Clerk is required to sign the referral based on Rule 53, the motion for referral was intentional. **(December 16, 2015 T. p. 14:19-25; p. 15:1-8) (R.p.110:19-25;111:1-8)**. This is because the referral contained findings of fact and conclusions of law. This argument was made in the “first amended complaint”, the memorandum in opposition of the motion to strike the jury

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demand, and in oral argument. (R. p.106:25; 107,108:1-17.) (R. p. 35) (R.pp.244-246).

D. Appellant's Reply to "Meisner Files an Amended Answer and Counterclaims and U.S. Bank Obtains an Order of Mandatory Reference.

After a hearing before the Honorable Casey Manning, who granted appellant's motion to amend the counterclaims and the cross claims after the Master in Equity determined the submitted mandatory reference was improper. (R. p.13). The, "first amended complaint" which included the prayer for relief from breach of contract, a breach of contract accompanied by a fraudulent act and the abuse of process claims, also contained a request for the Court to "determine a question in actual controversy between or among the parties as to their respective rights and obligations under a note AND mortgage pertaining to real property...and to the Appellant filed an amended answer and amended counterclaims and crossclaims.

Respondents characterize the amended answer and counterclaim by the appellant as solely equitable in nature, the appellant disagrees with this assertion. A review of the declaratory judgment request in this case indicates the relief requested includes, a determination of the rights and obligations of the parties under a contract, which is a legal determination. Importantly, the respondent is not a party to the contract the appellant requests the Court to interpret. which includes

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a request for declaratory judgment that “determines the real party in interest.”

Resp. Ini. Br. P. 5:5-6. (R. p. 260; pp. 35-58).

The Honorable DeAndrea Benjamin determined that the counterclaims were permissive; however, if Bank of America was determined to be the breaching party based on the terms of the contract, foreclosure is not available to the breaching party as a remedy. **(R p.106:3-19)**. The “first amended complaint” plainly states that Appellant Meisner was not the breaching party and that the respondent’s predecessor in title, Bank of America was the breaching party, which would preclude foreclosure.

REPLY TO THE RESPONDENT’S ARGUMENT

I. THE ISSUE OF WHETHER THE FORECLOSURE ACTION SHOULD BE DISMISSED DUE TO U.S. BANK’S ALLEGED LACK OF STANDING IS PRESERVED FOR REVIEW.

First, and most importantly, this Honorable Court dismissed the previous appeal based on the Denial of the Motion to Dismiss and the Denial of The S.C. R. Civ. P. Rule 59(e) for the sole reason that the appeal was interlocutory in nature and therefore not immediately appealable. The ruling by this Honorable Court did not address the Court’s claim of non-receipt of a copy of the filed S. C. Civ. P. Rule 59 (e) motion and the respondents did not challenge or correct the ruling either in

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post-trial motions, during the appeal process or in their initial brief. The respondents could have challenged the jurisdiction of the Court of Appeals in the previous dismissal; however, they did not do so and the remitter was issued. Therefore, it is the law of the case that the issues were raised and ruled on by the lower court.

This Court has also previously held if the questions on appeal affects a substantial right, the case is immediately appealable. Here, even though interlocutory issues are included with immediately appealable issues, for the sake of judicial economy, this Honorable Court should consider all the issues in the appeal.

For purposes of S.C. Code Ann. §14-3-330 an order affects a substantial right when it “(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof of any pleading in any action [.]”

This appeal asks this Honorable Court of Appeals to answer the question of whether the counter claims and cross claims are compulsory and entitle the appellant to a jury trial and is therefore is immediately appealable. Appellant avers the cross claims and counter claims are compulsory and therefore immediately appealable. If this Honorable Court of Appeals agrees that the respondent does not

own the note and the mortgage, then the respondent lacks standing to pursue the action.

The Appellant avers because the Trial Court ruled on the Motion to Dismiss and the Motion to Alter and Amend, the issue of standing and real party in interest is preserved for this Honorable Court's review. The Order of Dismissal from the Court of Appeals did not make any determinations or rule that the lower Court's failure to receive a copy of the motion was jurisdictional in nature and the respondents did not challenge this ruling; therefore, the respondent waived the arguments, as the remitter was remitted. (R. p. 1).

The issue of Standing and Real Party in Interest was properly before the Court.

S.C. R. Civ. P. Rule 7 (b)(1) provides that an application to the court for an order shall be by motion which, *unless made during a hearing or trial in open court with a court reporter present*, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. In this case, the Appellant requested the case be dismissed for multiple reasons by motion, by memorandum and in open court, *with a court reporter present*. The Circuit Court denied the dismissal of the complaint based on

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S. C. R. Civ. P. Rule 8; However, S.C.R. Civ. P. Rule 7(b) (1) indicated all the arguments made to the Court during the Motion to Dismiss hearing, outlined in the Memorandum in Support of the Motion to Dismiss, and argued in Oral Argument *with a court reporter present* were properly before the Court and therefore included in this ruling.

Because the issues of standing and real party in interest were raised to the Court and ruled on, they are preserved for review. Additionally, because this Court has previously ruled a second S.C.R. Civ. P. Rule 59 (e) does not toll the time for appeal and the mode of trial is a substantial right, the appellant was required to appeal or lose the opportunity to do so.

II. THE TRIAL COURT ERRED IN STRIKING MEISNER'S DEMAND FOR A JURY TRIAL.

The respondent claims the prayer for relief is only equitable in nature and this simply is not so. The broad relief requested by the declaratory judgment which includes:

- the request to declare U.S. Bank as a third- party debt collector pursuant to article 3 of the UCC.
- a finding that U.S. Bank as a third- party debt collector abused the foreclosure process and warrants actual and punitive damages.
- A finding that co-defendant slandered the title

- A finding that Bank of America's failure to remove liens associated with the 2005 mortgage violated S.C. Code Ann. §29-3-310.
- Liens associated with SCBT be removed from the lis pendens
- A determination that the counter claims and the cross claims warrant a jury trial and for transfer to the jury roster and for referral to ADR.
- And for an order of all other such relief as may be appropriate and available under the law..., for attorney fees or the commensurate amount of damages of time spent and punitive judgments against the plaintiff and the co-defendant.

The prayer for relief is sufficiently broad such that not only equitable remedy is demanded. Specifically, whether the terms of the contract require the bank to continue drafting the payments and if so, then the bank is the breaching party. **(R. p. 281)**. If the bank is determined to be the breaching party then whether attorney's fees and costs are available pursuant to the terms of the note agreement.

Here, the respondent has requested attorney's fees associated with the foreclosure action based on the contract between the predecessor in title, Bank of America, who the appellant alleges breached the contract by not debiting her payments as required by the note. The appellant is unaware of a statute that provides for attorney's fees in South Carolina absent a contract for mortgage foreclosure actions. Because the declaratory judgment action requests a

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determination of whether attorney's fees are available under a contract this is an action at law. DePass v. Piedmont Interstate Fair Ass'n, 217 S.C. 38, 59 S.E.2d 495 (1950). (action for collection of attorneys' fee charged pursuant to contract between attorney and client constitutes an action at law giving rise to a right to jury trial)

While the attorney's right to collect the attorney's, fees awarded based on the proceeds of the contract (such as in a foreclosure action) is one in equity; the question of whether the contract provides for a third party (U.S. Bank) to collect attorney's fees from a contract when the predecessor in title is alleged to have breached the contract is a question of law. This determination rests solely on the determination that an amount owed on the note exceeds the amount owed by the breaching party to the non- breaching party. Just as the question of whether a party that breaches a note agreement can invoke the equitable right of foreclosure is a legal question. In foreclosure actions, the amount owed is required to be determined prior to the foreclosure.

A. The Appellant has a Right to a Jury Trial when counterclaims for Declaratory Judgment affect the right of the Plaintiff to Foreclose.

In N.C. Fed. Sav. & Loan Assn, the Supreme Court of South Carolina held that a breach of an oral agreement purporting to modify a note that the bank was foreclosing on was logically related to the enforceability of the note and was thus

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compulsory. N.C. Fed. Sav. & Loan Assn, 298 S.C. 518–19, 381 S.E.2d at 905.

Additionally, in C & S Real Estate Servs., Inc. v. Massengale, the Court found “Although the counterclaim includes a prayer for actual and punitive damages, the only actual damages alleged are those of Father in incurring attorney's fees and expenses to defend the action. The Whites failed to allege any damages they were seeking. Although Father may have been entitled to a jury trial, he failed to appeal the referee's order and he is not a party to this appeal.” C & S Real Estate Servs., Inc. v. Massengale, 290 S.C. 299, 302, 350 S.E.2d 191, 193 (1986). In C&S, the Court embraced actual expenses such as attorney’s fees, costs and damage to property via the lis pendens entitled parties to a jury trial. Here, the appellant requested such fees in addition to punitive damages and equitable remedies.

Most importantly in the declaratory judgment action is the request to determine that U.S. Bank is a third-party debt collector requiring an interpretation of the UCC. Taken the contract interpretation, cannot simply be categorized as equitable. Particularly when equitable foreclosure requires a determination that a certain amount is owed to the plaintiff more than the amount owed by the plaintiff prior to judgment and sale.

B. The Appellant has a Right to a Jury Trial when the abuse of process claim implicates the due process clause and claims special damages as part of the prayer for relief.

The appellant has alleged that based on the filings by the respondent, Bank of America appears to be the real party in interest because the assignment to U.S. Bank is defective. The appellant has claimed actual, special, and punitive damages against the respondent. (R. pp. 56-57). As such the claim is compulsory pursuant to C&S because a mortgage foreclosure lawsuit is the process to enforce the note and the mortgage and if this process results in tort damages more than the amounts owed, then there is no basis for the equitable remedy of foreclosure. This argument was made in the initial brief. Additionally, the initial brief argued because the actions of the clerk of court violated the law, the appellant should be entitled to a jury trial. The determination of whether the respondent is a third -party debt collector means the litigation conduct would be held against the respondent and was also argued in the initial brief and specifically categorized the actions of the respondent as a tort and not an equitable injury. (R. pp. 35-58). The argument that because the “abuse of process” tort is capable of replication and creates a danger was also presented to the Court and argued on appeal. (R.pp.49-51). Additionally, This Court can interpret novel arguments without any deference to the Court below.

C. The appellant has a right to a trial by jury when the damages by the cross claimant are compulsory

As an initial matter, the respondent suggested no argument was made in the initial brief that the appellant was entitled to a jury trial. However, a review of

appellant's initial brief plainly states the appellant is entitled to a jury trial via statute S.C. Code Ann. §29-3-310 and §29-3-320. Additionally, the appellant specifically alleges Bank of America claimed an ownership interest in the second note and mortgage erroneously. (R.pp.52-53 ¶¶106-117) The statement that the appellant was entitled to a jury trial also noted the specific statute and the mechanism by which to make the claim.

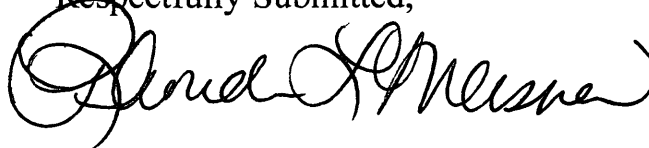
Generally cross claims are permissive; however, in this case throughout the appeal, the appellant argued the parties are misaligned due to the defective assignment from Bank of America to U.S. Bank a central and critical issue on appeal is who owned the note when and whether their ownership in the note and mortgage and their actions in these proceedings provides a basis for remedy or a basis for punishment.

CONCLUSION

As such, the appellant avers all the counter claims and cross claims are compulsory and legal at this juncture until a determination of when the true breach of the contract occurred and by whom due to the underlying question of parties and how they should be aligned. For the reasons and the authorities stated above and in the initial brief, this Court should dismiss the claims against the appellant for lack of standing and remand the actions against the respondent and counter claimant Bank of America for a jury trial.

October 10, 2017

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Rhonda Meisner". The signature is fluid and cursive, with the first name "Rhonda" being more prominent than the last name "Meisner".

Rhonda Meisner
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
DeAndrea Benjamin, Circuit Court Judge

Case No. 2016-001019

U.S. Bank, National
Association, as trustee for the
Holders of the Banc of
America Funding Corporation,
2008-FTI,

Respondent,

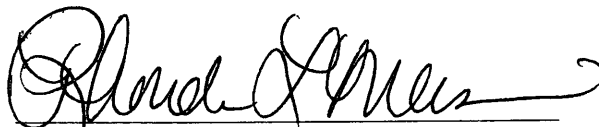
v.

Rhonda Lewis Meisner a/k/a
Rhonda L. Meisner, Bank of
America, N.A. and SCBT of
whom Rhonda Meisner is the

Appellant.

Certificate of Service Reply Brief and Inclusion of 2003 Note to the
Record on Appeal. The appellant certifies that she has served a copy of
the above documents to the counsel of record Trent Grissom McGuire
Woods, LP 201 N. Tryon Street suite 300 Charlotte, NC 28202

October 10, 2017



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
DeAndrea Benjamin, Circuit Court Judge

RECEIVED

Case No. 2016-001019

FEB 28 2019

SC Court of Appeals

U.S. Bank, National
Association, as trustee for
the Holders of the Banc of
America Funding
Corporation, 2008-FTI,

Respondent,

v.

Rhonda Lewis Meisner a/k/a
Rhonda L. Meisner, Bank of
America, N.A. and SCBT

Appellant.

PETITION FOR REHEARING

SUMMARY

The appellant respectfully petitions this Court pursuant to SCACR Rule 221 of this Court's decision of February 13, 2019 that dismissed the appeal. This unanimous Court held in equitable cases, the counter claims must be logically related to the ability of the plaintiff to foreclose the mortgage.

This Court's Previous Holdings

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This Court also found in *South Carolina Community Bank*, that an allegation that the plaintiff bank violated the UTPA was logically related to the enforceability of the note and mortgage. *South Carolina Community Bank, Respondent, v. Salon Proz, LLC, Columbia Empowerment Zone, Inc. d/b/a The Columbia Empowerment Zone and Frank Mitchell, Defendants, Of Which Salon Proz, LLC is the Appellant.* Appellate Case No. 2014-02627. Decided April 26, 2017. Additionally, SCRCR Rule 13(a) provides that a counter claim is compulsory if it arises out of the same transaction and occurrence.

In this case, just like this Court found in *South Carolina Community Bank v. Solan Proz, LLC*, the appellant alleged the respondent U.S. Bank National Association, violated the UTPA by filing a foreclosure action when its predecessor in title breached the repayment agreement *elected as a term in the note* associated with the mortgage that is the subject of the foreclosure action.¹ (**R. Vol. I. p. 48 ¶80**). (emphasis by the appellant).

This Court also found standing and the real party in interest goes to the ability of the plaintiff to get the requested relief (foreclosure of the mortgage). The ability of the plaintiff to foreclose is dependent on the underlying terms of the note and mortgage contracts. U.S. Bank filed for foreclosure on March 31, 2014; however, the mortgage

¹ The appellant requested the note be added to the record. The note was filed; however a review of the record on appeal does not include the note.

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was not conveyed to U.S. Bank from Bank of America until April 2nd and was notarized April 3rd of 2014 which was *after* the lawsuit was filed. (R. Vol. II. P. 260).

The very note associated with this mortgage foreclosure, included the requirement that mortgage payments would be drafted by the bank automatically, if this was an elected as a term of the note. (R. Vol. II p.257 ¶ 7.) This election to have the payments drafted, was made by the parties to the note and mortgage agreements,(Bank of America and the appellant) and was included in the note document itself. (R. Vol. II p.257 ¶ 7.) The note further provided *and required* that once the appellant elected to pay via automatic drafting, the bank then assumed the duty to draft the payments. (R. Vol. II p.257 ¶ 7). The only provision contained (within the body of the note) that allowed for the bank to cease automatic deductions required the appellant to notify Bank of America, in writing of the change in the terms of the repayment of the note, which never occurred. (R. Vol. II p.257 ¶ 7). However, Bank of America and/or U.S. Bank breached the underlying note contract by failing to debit as agreed appellant's bank account and then transferred the same note and mortgage that *included* the debit requirement months later to U.S. Bank, who then filed for foreclosure. (emphasis by appellant).

ARGUMENT

This Court previously held "A mortgage and a note are separate securities for

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the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action.” *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S .C. 364, 374, 684 S.E.2d 199, 204 (Ct.App.2009). “Generally, the party seeking foreclosure has the burden of establishing the existence of the debt *and the mortgagor's default* on that debt.” *Id.* at 374–75, 684 S.E.2d at 205 (emphasis by appellant). “Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction.” *Id.*

Because the requirement to debit the bank account was included in the note itself, a fact finder could find that Bank of America and/or U.S. Bank breached the note agreement associated with the mortgage. U.S. Bank was assigned the note that Bank of America and the appellant agreed to. It is axiomatic that terms of the note and mortgage cannot be changed by either the assignor or the assignee, which included the requirement to debit. As such, foreclosure is not an available remedy because the respondents caused and/ or perpetuated the breach by the failure to debit and then accelerate the loan.

In this case, the counter claim specifically alleged :

1. Appellant Rhonda Meisner denied she caused the default. (**R. Vol. I p.37 ¶ 16**).
2. Appellant Rhonda Meisner elected to have payments drafted in the

original note agreement documents of the parties. (R. Vol. I p.39 ¶ 30)

3. The terms of the note required the Bank of America, N.A (defendant and cross claimant) to automatically debit once this term was elected by the Appellant. (R. Vol. I. p. 39 ¶33; p. 40:1-5)
4. Appellant Rhonda Meisner never requested the bank to cease deductions.(R. Vol. I pl 40 ¶ 34).
5. Appellant Rhonda Meisner alleged Bank of America ceased the debits and caused the default. (R. Vol. I pl 40 ¶ 34 ¶37).
6. Appellant Rhonda Meisner alleged Bank of America had a duty to continue debiting the account. (R. Vol. I pl 40 ¶ 35).
7. Appellant Rhonda Meisner alleged Bank of America could and did change the amounts of the debits. (R. Vol. I pl 40 ¶ 36).
8. Bank of America breached the note agreement by failing to debit the payments for the mortgage and failing to transfer the debiting requirement to U.S. Bank. (R. Vol. I pl 42 ¶ 48 ¶52).
9. The appellant Rhonda Meisner also alleged that U.S. Bank assumed an already defaulted loan making them a third-party debt collector under U.C.C. (R. Vol. I p. 40 ¶46 ¶ 52).
10. The above terms were incorporated in the request for declaratory judgment making it an offensive declaratory judgment and a legal counterclaim. (R. Vol. I p. 44 ¶ 54 p. 45 ¶54:1-7).
11. Among other things the declaratory judgment requested the Court to determine the real party in interest, the proper owner of the note

and mortgage, the rights and obligations of the parties regarding the note and mortgage, including the co-defendants. (R. Vol. I p. 44 ¶ 54)

12. The declaratory judgment action also requested the Court determine that respondent U.S. Bank's failure to draft payments from appellant Meisner's bank account was the cause of the breach. (R. Vol. I p. 44 ¶ 56).

13. The counter claim also argued that U.S. Bank violated the unfair Trade Practices Act UTPA by filing suit on a loan breached by their predecessor in title.(R. Vol. I. p.48 ¶ 80).

Real Party in interest -Declaratory Judgement

The lower court ruling was based on the answer, counter, and cross claims filed on August 10, 2015 which alleged counter claims for declaratory judgment, breach of contract, breach of contract accompanied by a fraudulent act *and* violation of UTPA by initiating this foreclosure action. (R Vol. I.p.2:7-13).

The respondent U.S. Bank understood that there was a breach of contract counter claim, a breach of contract accompanied by a fraudulent act, and violation of UTPA for filing the lawsuit on an instrument that was breached by its predecessor in title. (R. Vol. I p.48 ¶ 80) In fact, the respondent *specifically denied* the counterclaim that it violated the UTPA.(R. Vol. I. p. 63 ¶ 39).

The respondent represented, based on its filings, that the breach of contract occurred July of 2013.(R. Vol. I. p. 16 ¶ 15). The respondent represented that the note and mortgage was assigned April 2 or 3, 2014 based on the dated assignment. Because

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of the respondent's own pleadings, it has admitted it was assigned a defaulted note and mortgage. As such, a jury could find the respondent is a third-party debt collector that has not been damaged.

**The South Carolina Supreme Court's opinion in *Verenes v. Alvanos*
Right to Jury Trial based on Totality of Facts and Prayer for Relief**

Characterization of an "action as equitable or legal depends on the appellant's 'main purpose' in bringing the action." *Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 293, 247 S.E. 2d 315 (1978) (citations omitted). "The main purpose of the action should generally be ascertained from the body of the complaint." *Id.* (citation omitted). "However, if necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action." *Id.* (citation omitted). The nature of the issues raised by the pleadings and character of relief sought under them determines the character of an action as legal or equitable. *Bell v. Mackey*, 191 S.C 105, 119-20, 3 S.E.2d 816, 822 (1939) (citations omitted).

Here, the counter claims and the prayer for relief provide for access to jury trial based on the holdings in *Verenes*. *Verenes v. Alvanos*, 387 S.C. 11, 15 690 S.E. 2d 771, 772 (2010) The prayer for relief requested:

1. The Plaintiff US Bank is a third-party debt collector pursuant to article 3 of the UCC.

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2. The co-defendant Bank of America, N.A. caused the default of the mortgage and note by their actions.
3. A finding the Plaintiff US Bank abused the process of the Courts and has damaged the defendant Rhonda Meisner and US Bank's actions warrant actual and punitive damages to be proved at trial.
4. A finding that co-defendant Bank of America, N.A. slandered the title of defendants' Rhonda Meisner's property located at 406 Koon Store Road, Columbia, SC 29203 by not removing the mortgage lien from 2005 and therefore damaged defendant Meisner.
5. A finding that co-defendant's Bank of America's failure to remove the liens associated with the 2005 mortgage that was satisfied violated S.C. Code Ann. § 29-3-310 warranting recovery via S.C. Code Ann. § 29-3-320.
6. A determination that the counterclaims and the cross claims warrant a jury trial and for transfer to the jury roster and for referral to ADR.

CONCLUSION

It is axiomatic that a party cannot fail to perform an elected portion of a contract and subsequently transfer the mortgage to another entity (respondent) and then claim a jury trial is not available for the very breach the cross defendant caused. South Carolina affords the opportunity of a jury demand for counter claims that are logically related to the ability of the respondent to foreclose. The appellant argues this should be true of a cross

claimant when the predecessor in title is the breaching party and the instrument is transferred after the breach, indeed after the lawsuit was filed.

The respondents should not be allowed to further breach the note contract then deny a jury trial to the appellant when the counter and cross claims for breach of contract are specifically related to the respondent's ability to foreclose. Particularly when the respondent, U.S. Bank, for all intents and purposes, based on its own pleadings, is a third-party debt collector that abused the foreclosure process of the courts.

This Court's ruling in this case is counter to this Court's previous ruling in *South Carolina Community Bank* because the appellant alleged a counterclaim that is a violation of the UTPA by U.S. Bank filing a foreclosure agreement when its predecessor in title and/or servicing caused the breach. This Court's ruling should consider the South Carolina Supreme Court's ruling in *Verenes* and as such evaluate both the prayer for relief and the offensive declaratory judgment action and counter and cross claims and determine a jury trial is warranted.

Here, there is

1. No valid jury waiver
2. A counter claim and a cross claim based on the respondents and its predecessor in title's breach of the documents that are the subject of the foreclosure action,

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3. A claim for abuse of process due to U.S. Bank's referral to the Master in Equity with findings of fact and conclusions of law as determined by the Clerk of Court.
4. A cross claim that allows for a jury trial and if a trial court or jury found the assignments of the mortgage occurred after the lawsuit was filed as the documents reflect then the real party in interest would be Bank of America, warranting a jury trial on this claim alone.

For the above reasons and all references to the record, the appellant respectfully requests this Honorable Court of Appeals to reconsider its decision of February 13, 2019 and remand the case back to the Circuit Court with instructions to add the case to the jury roster.

February 28, 2019

Respectfully Submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
DeAndrea Benjamin, Circuit Court Judge

Case No. 2016-001019

U.S. Bank, National
Association, as trustee for the
Holders of the Banc of
America Funding Corporation,
2008-FTI,

Respondent,

v.

Rhonda Lewis Meisner a/k/a
Rhonda L. Meisner, Bank of
America, N.A. and SCBT

Appellant.

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FEB 28 2019
SC Court of Appeals

PROOF OF SERVICE PETITION FOR REHEARING

The appellant certifies she has served a copy of the petition for rehearing on all parties that have submitted a brief by mailing a copy of her PETITION FOR REHEARING to :Trent M. Grissom McGuire Woods, LLP 201 N. Tryon Street Suite 3000 Charlotte, NC 28202 postage pre-paid



February 28, 2019

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The South Carolina Court of Appeals

U.S. Bank, National Association, as trustee for the
Holders of The Banc of America Funding Corporation,
2008-FT1 Trust, Mortgage Pass-Through Certificates,
Series 2008-FT1, Respondent,

v.

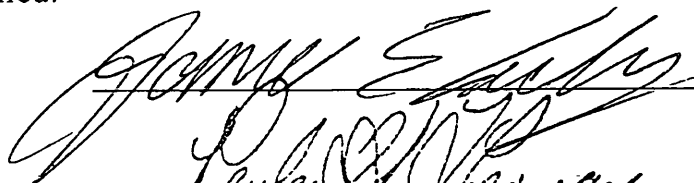
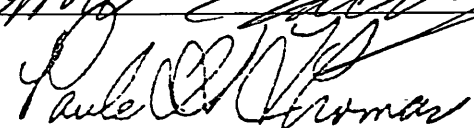
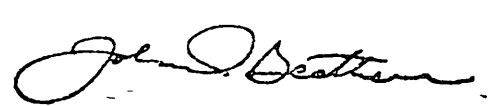
Rhonda Lewis Meisner a/k/a Rhonda L. Meisner; Bank
of America, N.A.; and SCBT, Defendants,

Of whom Rhonda Lewis Meisner is the Appellant.

Appellate Case No. 2016-001019

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

FILED

cc:

March 21, 2019

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Rhonda Lewis Meisner
Magalie Arcure Creech, Esquire
Jacob Shuler Barker, Esquire
Trent M. Grissom, Esquire
The Honorable DeAndrea G. Benjamin

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

U.S. Bank, National Association, as trustee for the
Holders of The Banc of America Funding Corporation,
2008-FT1 Trust, Mortgage Pass-Through Certificates,
Series 2008-FT1, Respondent,

v.

Rhonda Lewis Meisner a/k/a Rhonda L. Meisner; Bank
of America, N.A.; and SCBT, Defendants,

Of whom Rhonda Lewis Meisner is the Appellant.

Appellate Case No. 2016-001019

Appeal From Richland County
DeAndrea G. Benjamin, Circuit Court Judge

Unpublished Opinion No. 2019-UP-066
Submitted January 1, 2019 – Filed February 13, 2019

APPEAL DISMISSED

Rhonda Lewis Meisner, of Blythewood, pro se.

Magalie Arcure Creech, of Finkel Law Firm LLC, and
Jacob Shuler Barker, of Graybill, Lansche & Vinzani,
LLC, both of Charleston; and Trent M. Grissom, of

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McGuire Woods LLP, of Charlotte, North Carolina, all
for Respondent.

PER CURIAM: Dismissed pursuant to Rule 220(b), SCACR, and the following authorities: *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005) ("The right of appeal arises from and is controlled by statutory law."); S.C. Code Ann. § 14-3-330(2) (2017) ("[Our s]upreme [c]ourt shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: . . . [a]n order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action . . ."); *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000) ("Pursuant to [section] 14-3-330(2), this [c]ourt has held on numerous occasions that when a trial court's order deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable."); *Williford v. Downs*, 265 S.C. 319, 321, 218 S.E.2d 242, 243 (1975) ("Ordinarily the granting or refusal of an order of reference is not appealable unless the granting of the reference deprives a party of a mode of trial to which he is entitled by law . . ."); *id.* ("Hence, the issue before the [c]ourt is whether the appellant is entitled to a jury trial [a]s a matter of right. If she is not, the appeal should be dismissed."); *id.* ("The only issue [that] must be decided is whether the case at bar is a legal or equitable action. If it is equitable, the order of reference is not directly appealable."); *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997) ("A mortgage foreclosure is an action in equity."); *Wachovia Bank, Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014) ("In equity the parties are not entitled, as a matter of right, to a trial by jury." (quoting *Williford*, 265 S.C. at 321, 218 S.E.2d at 243)); *id.* ("However, counterclaims—including those raised in equitable actions—may, at times, be entitled to a jury trial."); *id.* at 329, 755 S.E.2d at 441 ("If both the complaint and the counterclaim are in equity, the entire matter is triable by the court."); *id.* ("If both are at law, the issues are triable by a jury."); *id.* at 330, 755 S.E.2d at 441 ("If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial."); *id.* at 330, 755 S.E.2d at 441-42 ("If the complaint is equitable and the counterclaim is legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaim unless a valid jury trial waiver exists that encompasses the counterclaim."); *Blackburn*, 407 S.C. at 330 n.7, 755 S.E.2d at 442 n.7 ("We have previously adopted the 'logical relationship' test to determine whether a counterclaim is compulsory . . ."); *id.* ("Under this

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test, 'the "logical relationship" determination is made by asking whether the counterclaim would affect the lender's right to enforce the note and foreclose the mortgage.'" (quoting *Wells Fargo Bank, Nat'l Ass'n v. Smith*, 398 S.C. 487, 496, 730 S.E.2d 328, 333 (Ct. App. 2012))); *id.* ("If the defendant's prevailing on his counterclaim would affect the bank's right to enforce the note and foreclose the mortgage, there is a logical relationship between the counterclaim and the underlying suit, and the counterclaim is therefore compulsory.").

APPEAL DISMISSED.¹

LOCKEMY, C.J., and THOMAS and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

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