

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

William O. Spencer, Jr., Special Referee

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MAY 13 2019

SC Court of Appeals

Appellate Case No. 2018-000355

JPMorgan Chase Bank, National Association, ... Respondent,

v.

Fritz A. Timmons, ... Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD
JPMorgan Chase Bank, National Association,
PLAINTIFF,
VS.
Fritz A. Timmons,
DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-13-768

SUMMONS

2015 NOV 30 PM 3 43
FAYE L. CLERK
CLERK
CHESTERFIELD

(150268.00577)

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2712 Middleburg Drive, Suite 200, Post Office Box 2065, Columbia, South Carolina 29202; within thirty (30) days after the 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 the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

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

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

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code § 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the mortgage identified in the Complaint is hereby perfected and Plaintiff hereby gives further notice that all rents shall be payable directly to it by delivery of the same to its undersigned attorneys from the date of default forward. In the alternative, the Plaintiff will move a Judge of this Circuit Court on

the tenth (10th) day after service hereof, or as soon as counsel for Plaintiff may be heard, for an Order enforcing the assignment of rents, if any, and/or profits, if any, compelling payments of all such funds covered by the mortgage and/or by status and/or by common law directly to the undersigned attorneys for the Plaintiff, which Motion is based upon the original Note and Mortgage identified in the Complaint therein and attached hereto as well as any applicable laws, statutes or regulations.

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

SCOTT AND CORLEY, P.A.

By: _____

Ronald C. Scott, SC Bar #4996
Reginald P. Corley, SC Bar #69453
Angelia J. Grant, SC Bar #78334
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ATTORNEYS FOR PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
803-252-3340

11/25, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

JPMorgan Chase Bank, National Association,

PLAINTIFF,

VS.

Fritz A. Timmons,

DEFENDANT(S).

(150268.00577)

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-13-768

COMPLAINT
Claim and Delivery - Mobile/Manufactured
Home,
and
Foreclosure - Non-Jury
(Deficiency Demanded)

2015 NOV 30 PM 3:43
CHESTERFIELD COUNTY

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

1. This is an action for foreclosure of a mortgage upon certain real estate in Chesterfield County, South Carolina.

2. Plaintiff is a corporation or other legal entity securing or collecting debts or enforcing mortgages, security interests or other rights in property securing debts in the State of South Carolina pursuant to § 33-15-101(B)(8) and is the real party in interest under SCRC 17(a) to enforce the Note and Mortgage described herein.

3. Plaintiff or its counsel has reviewed this mortgage loan for compliance with the Home Affordable Modification Program (HMP), as required by the Administrative Order of the South Carolina Supreme Court issued by Chief Justice Jean H. Toal on May 22, 2009. The servicer for the mortgage loan described in this foreclosure action is participating in the HMP, but the HMP process as specified by U.S. Treasury Department's Supplemental Directive 09-01 has been completed without resulting in a modification because the borrower(s) failed to respond to the servicer's inquiry within 30 days as set forth in the applicable guidelines.

4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

5. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of Section 15-35-840 of the Code of Laws of South Carolina (1976).

6. Heretofore, under date of June 13, 2001, Fritz A. Timmons made, executed and delivered to Hartsville Community Bank, NA a certain mortgage note ("Note") in writing wherein and whereby Fritz A. Timmons promised to pay to Hartsville Community Bank, NA, its successors and assigns, the principal sum of \$76,000.00.

7. In order to secure the payment of said Note, the said Fritz A. Timmons did on the same date, to-wit, June 13, 2001, make, execute and deliver to Mortgage Electronic Registration Systems, Inc., as nominee for Hartsville Community Bank, NA; its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of Deeds for Chesterfield County, on June 20, 2001, in Book 350, at Page 1137; thereafter, said Mortgage was assigned to JPMorgan Chase Bank, National Association by assignment instrument dated April 2, 2015 and recorded April 20, 2015 in Book 477 at Page 214.

The description of the premises as contained in said mortgage is as follows:

All that certain piece, parcel or lot of land containing 10.94 acres situate, lying and being located in the County of Chesterfield, State of South Carolina as shown on plat prepared for Gabriel Brown dated October 5, 1993 by Manson Drew Case and recorded in Plat Book 41 at Page 151; said plat being incorporated herein by specific reference thereto.

This being the same property conveyed to Fritz A. Timmons by Deed of Gabriel T. Brown and Amy A. Brown dated May 24, 2001 and recorded May 25, 2001 in Book 387 at Page 1157 in the ROD Office for Chesterfield County.

TMS No. 144 000 000 011

Property address: 1111 Tabernacle Church Road
Hartsville, SC 29550

FOR A FIRST CAUSE OF ACTION

(Claim and Delivery - Mobile/Manufactured Home)

8. The Plaintiff incorporates the allegations of Paragraphs 1 – 7 herein.

9. Upon information and belief, a 2001 Horton ECHO mobile/manufactured home, Serial No. H172739GLR, sits upon the real property described above. The Plaintiff is also informed and believes that the Defendant is presently in possession of the mobile/manufactured home and the Plaintiff is informed and believes it is entitled to possession and ownership of the mobile/manufactured home. The Plaintiff's lien is notated on the Certificate of Title to the mobile home.

10. The terms and condition of Plaintiff's Note and Lien on the mobile or manufactured home have been breached and broken by the default of the Defendant(s) Fritz A. Timmons.

11. Upon said default, Plaintiff immediately became the owner of said personal property and is now legally entitled to possession thereof, namely the collateral (mobile or manufactured home) itemized in Plaintiff's Note and Certificate of Title.

12. Upon information and belief, said personal property is wrongfully detained by the Defendant(s) for a reason, if any, unknown to the Plaintiff.

13. Upon information and belief, said personal property has not been taken for a tax assessment or fine pursuant to a statute or sold under an execution or attachment against the property of the Plaintiff.

14. Plaintiff is informed and believes that Defendant(s) are presently in possession of the personal property covered under Plaintiff's Note, Mortgage and Certificate of Title.

15. Plaintiff has duly demanded possession of said personal property from the Defendant(s), but the Defendant(s) have failed and refused to give up the possession thereof.

16. Plaintiff is informed and believes that it is entitled to an Order of the Court ordering Defendant(s) to surrender possession of the mobile home to Plaintiff, ordering that the subject personal property be sold in accordance with South Carolina law – more specifically, together with the real estate described herein - and that the proceeds be applied to the debt owed Plaintiff; in the alternative, in the event possession cannot be had, the Plaintiff is informed and believes that it is entitled to a money judgment against the Defendant(s) Fritz A. Timmons for all sums due the Plaintiff without prejudice to its right to repossession.

17. The Plaintiff, pursuant to §36-9-601(a)(2), *Code of Laws of South Carolina*, 1976, as amended (Uniform Commercial Code as enacted in South Carolina), elects to proceed as to both the personal property described herein and the real property described herein in accordance with its rights and remedies in respect to these properties, and to sell the real and personal property together.

FOR A SECOND CAUSE OF ACTION

(Foreclosure of Mortgage)

18. The Plaintiff incorporates the allegations of Paragraphs 1 – 17 herein.

19. The Defendant, South Carolina Department of Motor Vehicles, is a governmental agency of the State of South Carolina and is responsible for issuing Certificates of Title for mobile/manufactured homes in the State of South Carolina.

20. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of Section 15-35-840 of the Code of Laws of South Carolina (1976).

21. Plaintiff is informed and believes that the Mortgage constitutes a purchase money first mortgage lien on the subject real estate and improvements thereon, including any mobile/manufactured home located thereon.

22. Plaintiff and/or its counsel has complied with all of their obligation(s) under the

specific terms of the Note and Mortgage being foreclosed as well as all applicable Federal or State statutes or regulations, including, but not limited to, the furnishing of any notices (where applicable), e.g. post referral loss mitigation solicitation letter and/or acceleration warning letter as to default and post acceleration reinstatement, provided to the obligor(s), if or where applicable.

23. Plaintiff's counsel has read the allegations in this pleading and to the best of his/her knowledge, and upon information and belief, there are good grounds to support it. Pursuant to the South Carolina Lis Pendens Statute (S.C. Code Section 15-11-10, et. Seq.), Plaintiff's counsel has accomplished a Report on Title whereby Plaintiff's counsel has, upon information and belief, named all parties who claim or may claim an interest in the subject property. This Report on Title is a recoverable charge, expense, or cost as provided for in the Mortgage and/or Note contracts.

24. According to the business records of Plaintiff, which have been made available to its Counsel and also upon information and belief, neither Plaintiff nor its counsel is aware of any party, who executed the Note and/or Mortgage, currently being on active duty (after mortgage was originated) or recently discharged from the active duty of the United States Military or a State Guard or Reserve Unit. In addition, Counsel for Plaintiff has caused and/or conducted a search of the DOD website for which Counsel, upon information and belief, reports that no party, who executed the Note and/or Mortgage, and, to the best of his/her knowledge, is entitled to SCRA protection. If any party has any information or record of a defendant currently being on active duty or recently discharged, it is requested that you contact counsel for Plaintiff immediately as you may possibly be eligible for protection under the Servicemembers Civil Relief Act (SCRA).

25. According to the business records of Plaintiff, which have been made available to its Counsel and upon information and belief, neither Plaintiff nor its counsel is aware of any party to this action currently being in active bankruptcy and under the protection of the United States Bankruptcy Court ("USBK"). In addition, Counsel for Plaintiff has caused and/or has conducted a search of the PACER website for which Counsel, upon information and belief, reports no party, who executed the Note and/or Mortgage, and, to the best of his/her knowledge, is currently eligible for protection of the USBK. If any party has any information or record of a defendant currently being under the bankruptcy protections, it is requested that you notify counsel for Plaintiff immediately. Any demand for a deficiency is not applicable if a party has received a discharge in bankruptcy during the life of the mortgage, or is currently under the active protection of the bankruptcy courts. Moreover, any party to this action who is a

discharged borrower to the debt of the Plaintiff shall not be subject to and is specifically excluded from both the calculation and collection of any amounts due and owing to the Plaintiff, as required by Rule 71(a) of the South Carolina Rules of Civil Procedure.

26. In and by the terms of the Note and the Mortgage, it is provided, among other things, that on failure to pay any installment of either principal and interest or any portion thereof when due, or if any of the conditions and requirements in the Mortgage be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

27. In and by the terms of the Note it is further provided that the maker thereof shall pay a reasonable attorney's fee if the Note be placed in the hands of an attorney for collection after default. Any notice or compliance required by the terms of the Mortgage or by state or federal statutes has been given or complied with prior to, or in the commencement of this action and the Defendants shall be forever barred from raising such notice or compliance.

28. The installments of principal and interest falling due from and after January 1, 2015 have not been paid although demand for the payment thereof has been made and Plaintiff has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the Note and Mortgage the full and just principal sum of \$59,455.94, together with interest thereon at the rate of 7.250% per annum from December 1, 2014, together with reasonable attorney's fees for the collection thereof, escrow advances, late charges, and all other costs and expenses of this action allowable by law, equity, or contract, including but not limited to the costs or charges in reporting to this Honorable Court and/or as may be permitted under Rules 54 and 71, South Carolina Rules of Civil Procedure. Pursuant thereto, Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees, charges and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage.

29. Plaintiff demands a personal or deficiency judgment against Fritz A. Timmons and any right to the same is specifically demanded. If, however, Fritz A. Timmons has previously received a discharge in bankruptcy during the life of the Mortgage, this demand for a deficiency judgment is not applicable. Plaintiff additionally reserves the right to subsequently waive its rights to the personal or deficiency judgment currently requested against the named defendant(s) at any time prior to the occurrence of the requested judicial sales event.

30. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

31. In the event the subject property is sold at Judicial Sale and the successful bidder is a third party, neither Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder.

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

AS TO THE FIRST CAUSE OF ACTION (Declaratory Judgment that Mobile/Manufactured Home is Subject to the Lien of Plaintiff's Mortgage):

1. That under Plaintiff's claim and delivery cause of action, the Court order Defendant(s) James L. Lee to surrender to Plaintiff possession of the secured mobile or manufactured home, and order a sale of the relevant property in accordance with South Carolina law with, and upon the terms requested for, the foreclosure sale requested herein, the proceeds from that sale reducing the debt to Plaintiff. If the property is not available for surrender, in lieu of that, a judgment be granted to Plaintiff against Defendant(s) Fritz A. Timmons.

2. Pursuant to S.C. Code Ann. Section 15-53-10, et seq., order the South Carolina Department of Motor Vehicles to issue a Certificate of Title to the mobile/manufactured home to the successful purchaser of the subject property at the foreclosure sale herein or its successors or assigns.

AS TO THE SECOND CAUSE OF ACTION (Foreclosure of Mortgage):

3. The amount due upon the Note and the Mortgage be ascertained and determined under the direction of this Court, together with attorney's fees and all of the costs or charges incurred in prosecuting this action.

4. The Mortgage be declared a purchase money first lien and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums and/or costs for inspecting and securing the property which may be due or which may be or have been paid by Plaintiff, with reasonable attorney's fees as well as for all of the costs or charges of this action.

5. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished and that the proceeds of sale be applied as follows:

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

Second, to the payment and discharge of the amount due on the Note and Mortgage, together with attorney's fees as aforesaid; and

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

6. Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s) and/or the grantee(s) of the mortgagor(s) and/or tenants occupying or exercising control over the mortgaged premises and hold said assets or the same subject to further Order of this Court.

7. Issue an order directing the Sheriff of Chesterfield County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary; and issue an order, if necessary, directing the South Carolina Department of Motor Vehicles to issue a Certificate of Title on any mobile/manufactured home collateralized under the security documents of the Plaintiff.

8. Plaintiff have judgment against the Defendant(s) Fritz A. Timmons for the full amount found to be due Plaintiff on the Note and Mortgage, with the right to enter personal judgment against the Defendant for any deficiency in this action remaining after sale of the mortgaged premises provided, however, that if Fritz A. Timmons has previously received a discharge in bankruptcy during the life of the Mortgage, then this demand for a deficiency judgment is not applicable at all. Plaintiff additionally reserves the right to subsequently waive its rights to the personal or deficiency judgment currently requested against the named defendant(s) at any time prior to the occurrence of the requested judicial sales event.

9. For an Order authorizing the South Carolina Department of Motor Vehicles to issue a new Certificate of Title for the mobile/manufactured home which is the subject of this foreclosure action to the successful bidder at the foreclosure sale, or its successors or assigns, if necessary.

10. For an Order to extinguish the interests of the Defendants Fritz A. Timmons in the mobile/manufactured home, if any.

11. For such other and further equitable and/or legal relief as the Court may deem just and proper.

SCOTT AND CORLEY, P.A.

By:

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Angella J. Grant, SC Bar #78334
Vance L. Brabham, III, SC Bar
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ATTORNEYS FOR PLAINTIFF
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11/25, 2015

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD) FOURTH JUDICIAL CIRCUIT

JPMorgan Chase Bank, National Association,) Civil Action No. 2015-CP-13-00768
)

Plaintiff,)

vs.)

Fritz A. Timmons,)

Defendant.)

**REPLY TO "MOTION OF
DEFAULT, TO DISMISS, TO QUIET
TITLE AND COUNTERCLAIM OF
DEFENDANT FRITZ A. TIMMONS**

2017 JUL 14 AM 11:40
CLERK OF COURT
SOUTH CAROLINA

Plaintiff JPMorgan Chase Bank, National Association ("Chase"), by and through its undersigned counsel, hereby submits its Reply to Defendant Fritz A. Timmons' ("Defendant") "Motion of Default, to Dismiss, to Quiet Title and Counterclaim," denying each and every allegation contained therein unless expressly admitted, qualified or explained herein.

**FOR A FIRST DEFENSE TO DEFENDANT'S
COUNTERCLAIM**

1. Defendant failed to serve an Answer within the thirty (30) day period provided by Rule 12(a), SCRCP and failed, therefore, to "admit or deny the averments upon which the adverse party relies" in the Complaint. S.C. R. Civ. P. 12(a), 8(b). Accordingly, pursuant to Rule 8(d), SCRCP, the averments in the Complaint are "admitted." S.C. R. Civ. P. 8(d). Chase accepts the admissions of Defendant as to each and every enumerated paragraph in the Complaint.

2. Responding to Paragraph 1 on Page 1,¹ Chase admits only that the Certificate of Exemption from Administrative Order 2011-05-02-01, the contents of which speaks for itself. To the extent Paragraph 1 on Page 1 contains allegations inconsistent with the contents of the

¹ Defendant failed to identify the paragraphs and, therefore, Chase will refer to each indented section contained in the document as if it were a separately numbered paragraph.

Certificate, Chase denies those allegations. Further responding to Paragraph 1 on Page 1, Chase denies all of the allegations and legal conclusions therein, denies the existence of fraud upon the court, and denies violation of the rules set forth therein.

3. Paragraph 2 on Page 1 contains legal conclusions which do not require a response. To the extent a response is deemed necessary, Chase denies the allegations therein. Further responding to Paragraph 2 on Page 1, Chase denies that it lacks standing in this action and denies that dismissal is appropriate. All remaining allegations and legal conclusions in Paragraph 2 on Page 1 are denied.

4. Paragraph 3 beginning on Page 1 contains legal conclusions which do not require a response. To the extent a response is deemed necessary, Chase denies the allegations therein. Further responding to Paragraph 3 beginning on Page 1, Chase denies all allegations and legal conclusions therein and denies applicability of and violation of the Fair Debt Collection Practices Act.

5. Paragraph 4 on Page 2 contains legal conclusions which do not require a response. To the extent a response is deemed necessary, Chase denies the allegations therein. Further responding to Paragraph 4 on Page 2, Chase denies all allegations and legal conclusions therein and further states that it is the holder of the Note and assignee of the Mortgage.

6. Responding to Paragraph 5 beginning on Page 2, Chase admits only that it properly filed a Complaint on November 30, 2015, and specifically denies that the filing of the same violated the S.C. Supreme Court Administrative Order No. 2011-05-02-01. Further responding to Paragraph 5 on Page 2, Chase admits only that a continuance was entered in May 24, 2016, as evidenced by a Form 4 Order filed with the Court on May 25, 2016, and specifically denies all

other allegations of Defendant related thereto. Chase denies all of the remaining allegations and legal conclusions in Paragraph 5.

7. Chase denies the allegations and legal conclusions in Paragraph 6 on Page 3.

8. Chase denies the allegations and legal conclusions in Paragraph 7 on Page 3.

9. Chase denies the allegations and legal conclusions in Paragraph 8 on Page 3.

10. Chase denies the allegations and legal conclusions in Paragraph 9 on Page 3.

11. Chase denies the allegations and legal conclusions in the First Affirmative Defense, Pages 3–4, including subparts (1) to (5), and further denies that Defendants is entitled to the relief he seeks therein.

12. Chase denies the allegations and legal conclusions in the Second Affirmative Defense, Pages 4–5, including subparts (1) to (6), and further denies that Defendants is entitled to the relief he seeks therein.

13. Chase denies the allegations and legal conclusions in the Third Affirmative Defense, Pages 5–7, including subparts (1) to (10), and further denies that Defendants is entitled to the relief he seeks therein.

14. Responding to Paragraph 1 of the Counterclaim on Page 7, Chase denies the allegations therein and states that it has the legal right to enforce and collect on the Note and to foreclose on the Mortgage.

15. Paragraph 2 of the Counterclaim on Page 7, states a legal conclusion which does not require a response. To the extent a response is deemed necessary, Chase denies the allegations in Paragraph 2 of the Counterclaim on Page 7.

16. Paragraph 3 of the Counterclaim on Page 7, states legal conclusions which do not require a response. To the extent a response is deemed necessary, Chase denies the allegations in

Paragraph 3 of the Counterclaim on Page 7. Further responding to Paragraph 3 of the Counterclaim on Page 7, Chase denies the allegations therein and specifically states that it is entitled to enforce the Note and does have an interest in the Mortgage.

17. Chase denies the allegations in Paragraph 4 of the Counterclaim on Page 7.

18. Paragraph 5 of the Counterclaim on Page 7, states legal conclusions which do not require a response. To the extent a response is deemed necessary, Chase denies the allegations in Paragraph 5 of the Counterclaim on Page 7. Further responding to Paragraph 5 of the Counterclaim on Page 7, Chase denies the allegations therein and specifically states that it is the Mortgagee entitled to enforce the Mortgage and that the Mortgage was properly witnessed and recorded.

19. Chase denies the allegations in Paragraph 6 of the Counterclaim on Page 7.

20. Paragraph 7 of the Counterclaim, which begins on Page 7, states legal conclusions which do not require a response. To the extent a response is deemed necessary, Chase denies the allegations in Paragraph 7 of the Counterclaim.

21. Chase denies the allegations in Paragraph 8 of the Counterclaim on Page 8.

22. Responding to the unnumbered Paragraphs on Page 8, following Paragraph 8 of the Counterclaim, Chase denies the allegations and legal conclusions therein and denies that Defendant is entitled to any of the relief he seeks.

23. Responding to the Paragraph beginning with "WHEREFORE," including subparagraphs (1) to (5), Chase denies this Paragraph and denies that Defendant is entitled to any relief he seeks therein.

24. Responding to the Paragraph beginning with "Due to Ex parte communications," Chase denies the allegations and legal conclusions contained therein.

**FOR A SECOND DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(Failure to State a Claim)**

25. Defendant's counterclaim fails to state facts sufficient to constitute a cause of action against Chase, and therefore Defendant's counterclaim must be dismissed pursuant to Rule 12(b)(6) or 12(c) of the South Carolina Rules of Civil Procedure.

**FOR A THIRD DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(Good Faith)**

26. Chase would show that any actions taken by Chase and/or procedures followed by Chase concerning Defendant were taken in good faith, in a reasonable manner, and that said actions and/or procedures were authorized by contract or law, reasonable in time or manner, and therefore, Defendant is precluded from recovery against Chase.

**FOR A FOURTH DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(Estoppel, Waiver, Release, and Laches)**

27. Defendant's counterclaims may be barred by the doctrines of estoppel, waiver, release, and laches.

**FOR A FIFTH DEFENSE TO DEFENDANTS'
AMENDED ANSWER AND COUNTERCLAIM
(Failure to Mitigate Damages)**

28. The damages recoverable by Defendants, if any, must be reduced by any amount of damages case by Defendants' failure to mitigate such damages in whole or in part.

**FOR A SIXTH DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(Failure to Perform)**

29. Chase would show that Defendant failed to perform under the contract and/or agreement and, therefore, the counterclaim must be dismissed.

**FOR A SEVENTH DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(Statute of Limitations)**

30. Defendant's counterclaims may be precluded by the statute of limitations.

**FOR AN EIGHTH DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(Recoupment and Set-Off)**

31. While denying that Defendant's counterclaims have any merit, Defendant was advanced a sum of money, and he promised to pay the money in full with interest at a stated rate. Chase affirms that Defendant is in default pursuant to the loan agreement and, therefore, Defendant does not have any basis whatsoever for the affirmative relief he seeks in the counterclaim, but if the Court were to grant such relief, Chase would be entitled to repayment of the sum advanced, plus interest, as a recoupment and/or set-off against such relief, and Chase would also be entitled to an order of this Court recognizing and declaring Chase's equitable right to repayment in full, plus interest.

**FOR A NINTH DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(Failure to Satisfy Condition Precedent)**

32. Chase would show that Defendant failed to satisfy a condition precedent.

**FOR A TENTH DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(Lawful Conduct and No Damages)**

33. Chase's conduct was lawful and caused no harm, and, therefore, Defendant cannot establish his burden to show that Chase acted in contravention of applicable law.

FOR AN ELEVENTH DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(Contract Terms)

34. Chase would show that the terms and conditions of the Note and Mortgage, act as a complete defense to Defendant's counterclaim.

FOR A TWELFTH DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(Substantial Compliance)

35. Defendant's claim is barred because Chase substantially complied with any applicable statutory requirements and, therefore, the doctrine of substantial compliance bars the recovery Defendant seeks.

FOR A THIRTEENTH DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(Statute of Frauds/Parol Evidence)

36. Defendant's counterclaim may be barred by the statute of frauds and/or the parol evidence rule.

FOR A FOURTEENTH DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(FDCPA Inapplicable)

37. Chase will show that the FDCPA does not apply to the facts and circumstances of the case.

FOR A FIFTEENTH DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(Holder in Due Course)

38. Chase would show that at all times it was acting as a holder in due course as defined by the laws of the State of South Carolina and therefore is not subject to any of the defenses or claims raised by Defendant which relate to the acts or omissions of parties other than Chase.

**FOR A SIXTEENTH DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(No Private Right of Action)**

39. Defendant's counterclaim may fail for lack of a private right of action.

**FOR A SEVENTEENTH DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(Standing)**

40. Defendant may lack standing to assert the counterclaim.

**FOR AN EIGHTEENTH DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(Punitive Damages)**

41. Chase would show that an award of punitive damages would violate the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- a. the judiciary's ability to correct a punitive damages award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;
- b. any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- c. any award of punitive damages based upon the wealth of Chase violates due process guarantees;
- d. the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- e. an excessive award of punitive damages violates the due process guarantees of Chase;
- f. an award of punitive damages that is neither reasonable nor proportionate to the alleged wrong committed is irrational, arbitrary, furthers no legitimate purpose, and is an unconstitutional deprivation of the property of Chase;
- g. an award of punitive damages that is grossly disproportionate to any compensatory damages awarded violates Chase's due process guarantees;
- h. an award of punitive damages based solely on vicarious liability or the doctrine of respondeat superior is violative of due process guarantees;
- i. due to the lack of standards for determining punitive damages, Chase lacks fair notice of the punishment to which it could be subjected;

- j. even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness;
- k. an award of punitive damages that does not comport with the three guideposts articulated in *State Farm Mutual Automobile Insurance Company v. Campbell* fails to satisfy constitutional due process guarantees; and
- l. the Defendant's claim for punitive damages violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of Chase.

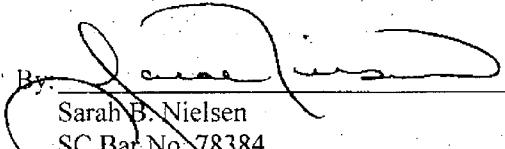
FOR A NINETEENTH DEFENSE TO DEFENDANT'S
COUNTERCLAIM
(Reservation)

42. Chase expressly reserves any and all defenses that mature after filing this Reply.

WHEREFORE, having fully responded to Defendant's Counterclaim, Plaintiff JPMorgan Chase Bank, National Association prays that the counterclaim be dismissed, with prejudice, and for such other and further relief as the Court may deem just and proper.

SIGNATURE PAGE ATTACHED

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Attorneys for JPMorgan Chase Bank, National Association

Columbia, South Carolina

7/12, 2017

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHESTERFIELD
4 JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
5 Plaintiff,
6 vs. CASE NO. 2015-CP-13-00768
7 FRITZ A. TIMMONS,
8 Defendant.

9 HEARING

COPY

10 DATE: September 6, 2017
11 TIME: 2:03 p.m.
12 LOCATION: Law Offices of
13 Spencer Law Firm
14 301 West Main Street
15 Chesterfield, SC
16 TAKEN BY: Counsel for the Plaintiff
17 REPORTED BY: Geraldine Mendoza

18 A. WILLIAM ROBERTS, JR., & ASSOCIATES
19 Fast, Accurate & Friendly
20

21 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376
22 Columbia, SC Greenville, SC Charlotte, NC
23 (803) 731-5224 (864) 234-7030 (704) 573-3919
24
25



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR PLAINTIFF
3 JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION:

4 NELSON MULLINS RILEY & SCARBOROUGH, LLP
5 BY: SARAH B. NIELSEN
1320 Main Street
6 17th Floor
Columbia, SC 29201
(803) 255-9284
7 Sarah.nielsen@nelsonmullins.com

8
9 DEFENDANT; PRO SE (not present)

10 ALSO PRESENT:

11 WILLIAM O. SPENCER, JR. - SPECIAL REFEREE
12

13 (INDEX AT REAR OF TRANSCRIPT)
14
15
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17
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1 MR. SPENCER: This is the case of JP.
2 Morgan Chase Bank National Association, Plaintiff,
3 vs Fritz A. Timmons, Defendant.

4 Case Number 2015CP13-768. This matter
5 was referred to me as special referee. This is an
6 action to foreclose the mortgage on Real Estate,
7 and I have reviewed Mr -- I have reviewed a
8 response to the motion for summary judgement filed
9 by the Plaintiff, and -- I mean, filed by the
10 Defendant, Mr. Timmons. He was noticed of the
11 hearing and is not present.

12 Also, prior to the hearing, he served
13 the Plaintiff with a demand for a jury trial, and I
14 will take up that matter first.

15 We're here on the Plaintiff's motion
16 for summary judgement; is that correct?

17 MS. NIELSEN: That's correct. We have
18 a motion for a partial summary judgement on
19 Mr. Timmons' defences; and a motion for judgement
20 on the pleadings as to his counterclaim.

21 MR. SPENCER: Okay. And I'll go ahead.
22 This is a matter in equity, and I find that this is
23 a nonjury matter to be heard by the special
24 referee, and that there are no issues to be tried
25 by a jury, so any demand, whether timely or not,

1 I'm going to rule that this is a nonjury matter
2 heard by me, and his demand for a jury trial is
3 denied.

4 And so, if you would go ahead and
5 proceed.

6 MS. NIELSEN: I will, Your Honor.
7 Thank you. I will note, for the record, that we
8 did provide written notice of today's hearing to
9 Mr. Timmons at the address that he has provided to
10 us; Post Office Box 367, Hartsville, South Carolina
11 29551. We also provided notice to 1827 Tabernackle
12 Church Road, McBee, South Carolina 29101.

13 You may realize that I'm not from South
14 Carolina, given the way that I just pronounced that
15 town. I appreciate you not giving me too hard of a
16 time about that.

17 So, notice was served on Mr. Timmons on
18 August 15th, 2017. The first motion is Plaintiff's
19 motion to strike the request for default filed by
20 Mr. Timmons and for judgement on the pleadings as
21 to his counterclaim.

22 The purported default that Mr. Timmons
23 alleges is one related to a continuance of the
24 prior foreclosure hearing. The case before it was
25 referred popped up on a nonjury roster in



1 Chesterfield, because the stay was in place
2 pursuant to the administrative order on foreclosure
3 intervention, the hearing was continued by form for
4 order. Umm, and Mr. Timmons claims that the
5 continuance of that hearing results in a default of
6 some sort by the Plaintiff.

7 MR. PENCER: Okay. So the Plaintiff
8 did appear at a term nonjury before it was
9 referred?

10 MS. NIELSEN: I don't know if anyone
11 appeared, Your Honor. Were weren't involved at the
12 time. All I have is the form that we pulled from
13 the Court file saying FCI; foreclosure
14 intervention, and it was continued at that time.

15 MR. SPENCER: Oh, okay.

16 MS. NIELSEN: And at that time, Mr.
17 Timmons had not filed any sort of responsive
18 pleading either, because the case was state.

19 Umm, and as we know, default is
20 governed by Rule 55; to be in default you have to
21 have a judgement for affirmative relieve sought
22 against you.

23 As I noted, at that time, Mr. Timmons
24 had not filed any pleading against my client,
25 JPMorgan Chase, and therefore, there isn't any

1 default.

2 When a counterclaim actually was filed,
3 a reply was also submitted along with a motion for
4 a judgement on the pleadings, so we would ask that
5 the motion or request for default be denied or
6 stricken in its entirety; that's the first piece of
7 the motion.

8 The second piece is, as to the
9 counterclaim for alleged violation of the Fair Debt
10 Collection Practices Act. We move for judgement on
11 the pleadings because the FDCPA only applies to
12 debt collectors, and debt collector is a term that
13 specifically defined by the statutory Scheme
14 15-USC-16-92A, Subsection 6, and a debt collector
15 is one who attempts to collect the debts due to
16 another, and it specifically excludes entities
17 collecting their own debt.

18 The District Court in South Carolina in
19 a case known as Studemiah vs Ray has held that the
20 FDCPA does not apply to creditors, mortgagors,
21 mortgage servicing entities, because they're not
22 debt collectors under the FDCPA, and therefore,
23 they're exempt from liability.

24 In this case, given that responsive
25 pleadings by Mr. Timmons fails to address the



1 allegations as to the debt and the default on the
2 debt, he has essentially conceded those allegations
3 and cannot set forth a legally viable claim for
4 alleged violation of the Fair Debt Collection
5 Practices Act.

6 MR. SPENCER: I agree. So ordered that
7 that be stricken.

8 MS. NIELSEN: Your Honor, I just want
9 to briefly address, and I have a copy of his
10 responsive pleading if you would like to see it.

11 MR. SPENCER: And you say it was not
12 timely filed and served?

13 MS. NIELSEN: His responsive pleading?

14 MR. SPENCER: Yes.

15 MS. NIELSEN: His responsive pleading
16 was timely. The jury demand is not timely.

17 MR. SPENCER: Right.

18 MS. NIELSEN: Umm, the responsive
19 pleading was timely because it was filed after the
20 certification of compliance with the administrative
21 order within that 30-day period.

22 At that time, he did not demand a trial
23 by jury on the legal counterclaim for alleged
24 violation of the FDCPA, and we filed a reply to the
25 counterclaim. So, under Rule 38, he had ten days.

1 to thereafter demand a jury trial if he wanted it,
2 and the jury demand was submitted about 40 days
3 later on August 25th, so it would, in fact, be
4 untimely, and we filed a response to that effect as
5 well.

6 MR. SPENCER: Okay. So he waived his
7 right.

8 MS. NIELSEN: So he has waived his
9 right to a jury trial.

10 MR. SPENCER: Absolutely.

11 MS. NIELSEN: To the extend he had one
12 as to the FDCPA claim, which we would argue he had
13 waived anyway, because it would be a permissive
14 counterclaim because it doesn't impact the validity
15 of the note and mortgage and therefore having
16 brought it in response to an equitable foreclosure
17 action, he has waived it again; two grounds for
18 waiving any chance for a jury trial.

19 Out of an abundance of caution, the
20 pleading makes reference to Quiet Title, fraud on
21 the Court and the South Carolina Tort Claims Act.
22 There aren't any elements; two of those aren't even
23 causes of action, but to the extent they would be
24 construed as causes of action, we believe that they
25 fail as a matter of law.

As to Quiet Title, there's no contention that Defendant doesn't have title to the property subject to Chase's mortgage, so there isn't title to be quieted.

Fraud on the Court requires that the judgement be entered and then you're seeking to set it aside. Here we don't have a foreclosure judgment yet entered against him, so it's not a proper claim; and the Tort Claims Act is inapplicable because I don't know of any state political subdivision or employee thereof seeking immunity from Tort, so to the extent those can be construed as claims, we're requesting that they similarly be stricken from the pleading.

MR. SPENCER: I agree. They are stricken.

MS. NIELSEN: Thank you, Your Honor.

I'll move then to the second motion filed on behalf of JP Morgan Chase, which is a motion for partial summary judgement as to Defendant's affirmative defences of standing and real party and interest. He claims that there is a division of the note and mortgage that could never be put back together; that Chase does not hold the original note and makes some challenge to the

1 assignment of the mortgage; though I can't quite
2 decipher what that challenge is.

3 We moved for summary judgement given
4 that Chase holds the original note, which I have a
5 copy of today with me. We notified Mr. Timmons
6 that we would have it with us today, if Your Honor
7 is interested in expecting it. It is the original
8 note with Mr. Timmons' signature. It bears two
9 endorsements; a special endorsement. It's three
10 pages.

11 On the last page, there is a special
12 endorsement under South Carolina Code 36-3-205A.
13 That endorsement is from Hartsville Community Bank,
14 which is the original note holder to Crescent Bank
15 and Trust Company. That endorsement renders the
16 note payable to Crescent bank.

17 Crescent Bank then also included a
18 stamped endorsement, that is a blank endorsement
19 making it payable to bearer under 36-3-109C, and
20 36-3205B; mere possession alone renders the holder
21 of the note endorsement blank, and the person
22 entitled to enforce the instrument is the note
23 holder.

24 Because Chase through its counsel
25 currently holds the note, is the note holder with

1 the right to enforce the instrument under the South
2 Carolina code.

3 We know in South Carolina that holding
4 the original note confers standing and real party
5 and interest status on the holder, and therefore,
6 we believe that we're entitled to summary judgement
7 on the standing defence.

8 In addition to holding the original
9 note, Chase is also the assignee of the mortgage.
10 While the note represents the obligation to repay
11 the debt, the mortgage establishes a lien on the
12 property that secures the repayment of the debt.

13 In this case, there was a mortgage
14 assignment reported on April 28, 2015 in Volume
15 477, Page 214, and the District of South Carolina
16 has ruled in such instances that a borrower cannot
17 challenge the mortgage assignment given that is not
18 a party thereto and does not have standing to
19 challenge that document. We actually have the
20 original assignment as well with the stamp on it.

21 Given that both the note and the
22 mortgage were transferred, they're never truly
23 separated, and given the evidence presented, we
24 believe that we are entitled to judgement as a
25 matter of law on both the standing and the real

1 party interest defendants asserted in his pleading,
2 and that's the extent of our partial summary
3 judgement motion.

4 MR. SPENCER: I will grant that partial
5 summary judgement motion. You do have a standing
6 in over the holder of the note and the mortgage.

7 MS. NIELSEN: Thank you, Your Honor.

8 MR. SPENCER: And the proper party to
9 bring that action.

10 MS. NIELSEN: That resolves both of
11 Chase's motions. Mr. Timmons also requested
12 dismissal of the foreclosure action, alleging that
13 we did not properly claim standing. Given summary
14 judgement, I believe that issue would be moved.

15 MR. SPENCER: It would be.

16 MS. NIELSEN: Okay. That's all I have,
17 Your Honor.

18 MR. SPENCER: Okay. You got your
19 proposed order?

20 MS. NIELSEN: I don't have one, but
21 I'll be happy to put one together and I can e-mail
22 it to you.

23 MR. SPENCER: That would be greet.

24 MS. NIELSEN: Okay. I can do that.

25 MR. SPENCER: You can write my e-mail

1 down.

2 MS. NIELSEN: Yes, sir.

3 MR. SPENCER: It's Spencerlaw@shtc.net.

4 MS. NIELSEN: What's today? Today is
5 Wednesday. Can I have it sent to you by Monday?
6 Is that okay?

7 MR. SPENCER: Yes, that'll be fine.

8 MS. NIELSEN: I will send you something
9 on all motions.

10 MR. SPENCER: You will send that notice
11 of sale, the whole package too, because we have
12 agreed to notice of sale also.

13 MS. NIELSEN: At this point the case
14 will probably refer to another law firm and they'll
15 pick up and prepare that rest of the package.

16 MR. SPENCER: Okay. I didn't know how
17 that works.

18 MS. NIELSEN: Yeah. We were only
19 brought in for mostly just the litigated issues,
20 and then I'm assuming that it will go back to Scott
21 and Corely.

22 MR. SPENCER: Okay.

23 MS. NIELSEN: And as soon as this order
24 is entered, the case will go back to them and then
25 they'll pick up.

1 MR. SPENCER: Okay. All right. So, I
2 was only special referee for your summary judgement
3 motion?

4 MS. NIELSEN: No. I mean, you have
5 jurisdiction for the rest of the case. I think
6 that the other foreclosure firm will notice a
7 final. At this point, I believe he may have one
8 affirmative defence of maybe on clean hands, so
9 that I think that they'll schedule a hearing on
10 that issue, and at the same time as the final
11 foreclosure hearing, and then they'll go from
12 there.

13 MR. SPENCER: All right. I'll have you
14 prepare the proposed order.

15 MS. NIELSEN: Okay.

16 MR. SPENCER: Thank you.

17 MS. NIELSEN: Okay, thank you.

18 MR. SPENCER: Thank you. And this
19 reference is adjourned.

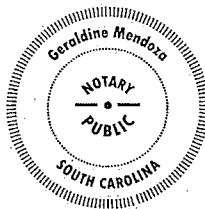
20 (The deposition was concluded at 2:14
21 p.m.)
22
23
24
25

CERTIFICATE OF REPORTER

I, GERALDINE MENDOZA, Court Reporter
and Notary Public for the State of South Carolina
at Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 6th day of September,
2017 at Chesterfield, South Carolina.



GERALDINE MENDOZA
My Commission expires
July 7, 2023

I N D E X

Page Line

CERTIFICATE OF REPORTER 15 1

REQUESTED INFORMATION INDEX

PAGE LINE

Proposed Order 12 18

E X H I B I T S

(No Exhibits Proffered)



STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

JPMorgan Chase Bank, National Association,

PLAINTIFF,

VS.

Fritz A. Timmons,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-13-768

CERTIFICATE OF EXEMPTION/WITHDRAWAL FROM ARBITRATION

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION BECAUSE:

___ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas, corpus, or prohibition;

___ this action is appellate in nature;

___ this is a post-conviction relief matter;

___ this is a contempt of court proceeding;

___ this is forfeiture proceeding brought by the State; or

X this is a mortgage foreclosure action.

Date: 11/25, 2015

SCOTT, AND CORLEY, P.A.

By: _____

Ronald C. Scott, SC Bar #4896
Reginald P. Corley, SC Bar #69453
Angelia J. Grant, SC Bar #78334
Vance L. Brabham, III, SC Bar #71250
William S. Koehler, SC Bar #74935
ATTORNEYS FOR PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
803-252-3340

J. Harrison Rushton, SC Bar #100406
Andrew M. Wilson, SC Bar #72553
Andrew M. Sullivan, SC Bar #100464
Jessica S. Corley, SC Bar #80470
James L. Williams, SC Bar #102408

NOTE: Motion must be presented to the court, a hearing held, and a finding made, for exemption or withdrawal from arbitration for "strong and compelling reason" sought pursuant to Rule 1(d), Rules of Circuit Court Arbitration.

2015 NOV 30 PM 3:43
FILED
CLERK OF COURT
CHESTERFIELD COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

JPMorgan Chase Bank, National Association,

PLAINTIFF,

VS.

Fritz A. Timmons,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-13-768

NOTICE OF MORTGAGOR'S RIGHT TO
FORECLOSURE INTERVENTION

(150268.00577)

TO THE DEFENDANT(S) Fritz A. Timmons:

PLEASE TAKE NOTICE THAT pursuant to the Supreme Court of South Carolina Administrative Order 2011-05-02-01, you may be eligible for foreclosure intervention programs for the purpose of resolving the above-referenced foreclosure action. If you wish to be considered for a foreclosure intervention program, you must contact Scott and Corley, P.A., 2712 Middleburg Drive, Suite 200, Columbia, South Carolina 29204 or call (803) 252-3340 within **thirty (30) days** after being served with this notice.

Scott and Corley, P.A. represents the Plaintiff in this action. We do not represent you. The South Carolina Rules of Professional Conduct prohibit our firm from giving you any legal advice.

IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN THIS FORECLOSURE INTERVENTION PROCESS, THE FORECLOSURE ACTION MAY PROCEED.

NOTICE: THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION YOU PROVIDE WILL BE USED FOR THAT PURPOSE. HOWEVER, IF YOU HAVE PREVIOUSLY RECEIVED A DISCHARGE FROM BANKRUPTCY, THIS MESSAGE IS NOT AND SHOULD NOT BE CONSTRUED AS AN ATTEMPT TO COLLECT A DEBT, BUT ONLY AS A REQUIREMENT PURSUANT TO THE ABOVE-REFERENCED ADMINISTRATIVE ORDER.

SCOTT AND CORLEY, P.A.

By:

Ronald C. Scott, SC Bar #4986
Reginald P. Corley, SC Bar #69453
Angelina J. Grant, SC Bar #78334
Vance L. Brabham, III, SC Bar
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Andrew M. Wilson, SC Bar #72553
Andrew M. Sullivan, SC Bar #100464
Jessica S. Corley, SC Bar #80470
James L. Williams, SC Bar #102408

11/25, 2015

Request for Foreclosure Intervention

Case Name: JPMorgan Chase Bank, National Association v. Fritz A. Timmons
 Case No. 2015-CP-13
 SLF File No. 150268.00677

This information is requested for the express purpose of foreclosure intervention via Mortgage's attorney pursuant to S.C. Supreme Court Administrative Order 2011-05-02-01.

Even if you have already requested information from JPMorgan Chase Bank, National Association in response to a letter you may have previously received from the Scott and Corley, P.A. or JPMorgan Chase Bank, National Association concerning your loss mitigation options to avoid a final foreclosure judgment and foreclosure sale, it is still important that you also complete this form and return it to the Scott and Corley, P.A.

Please check one of the two choices below regarding: 1111 Tabernacle Church Road, Hartsville, SC 29550:

☒ I am the owner of and occupy the property as my principal residence.

☐ I am the owner but do not occupy the property.

If you own and occupy 1111 Tabernacle Church Road, Hartsville, SC 29550 as your principal residence and are interested in the following type(s) of loss mitigation, please indicate your interest(s) below (check all that interest you):

☐ Deed in Lieu

☐ Short Sale

☐ Payment Plan

Other: _____

☐ Forbearance Agreement

☒ Loan Modification

PLEASE NOTE THAT YOU MAY NOT QUALIFY FOR ALL THE OPTIONS LISTED ABOVE. NO REPRESENTATION OF ANY KIND IS BEING MADE REGARDING THE AVAILABILITY OF ANY LOSS MITIGATION OPTION OR YOUR QUALIFICATION FOR ANY OPTION.

☐ I do not wish to participate in any Foreclosure Intervention Program.

So that we may offer you the fullest possible assistance, please provide the information requested below:

Contact Information

Home Phone # 843-335-6283

Current Address: (Apt) PO Box 367 Hartsville SC
(Phys) 1827 Tabernacle church Rd
McBee SC 29101

Cell Phone # _____

May the servicer send you an email message? ☐ Yes

☐ No

Email address _____

Fritz A. Timmons (Signature)

(Signature)

Fritz A. Timmons (Print Name)

(Print Name)

12-30-2015

Return to Scott and Corley, P.A., P.O. Box 2066, Columbia, SC 29202 or via fax to (855) 601-4921
 or via email to loam@scottandcorley.com.

NOTICE: THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION YOU PROVIDE WILL BE USED FOR THAT PURPOSE. HOWEVER, IF YOU HAVE PREVIOUSLY RECEIVED A DISCHARGE FROM BANKRUPTCY, THIS MESSAGE IS NOT AND SHOULD NOT BE CONSTRUED AS AN ATTEMPT TO COLLECT A DEBT, BUT ONLY AS A REQUIREMENT PURSUANT TO THE ABOVE-REFERENCED ADMINISTRATIVE ORDER.

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFEILD)
)
JPMorgan Chase Bank,)
National Association.)
)
Plaintiff,)
vs.)
)
Fritz A. Timmons)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-13-00768

**MOTION OF DEFAULT, TO DISMISS,
TO QUIET TITLE AND
COUNTERCLAIM**

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2017 JUN 29 AM 11:15

The action of exemption from administrative order 2011-05-02-01 is no less then Fraud Upon the Court (Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985)) by the Plaintiff and violations of 15-36-10 as well as Rule 407, SCACR - rules 1.2 (d), 3.4(a) and (d), 4.1(b) and 8.4(a), (b) and (c).

It is clear that to have standing in this foreclosure case, Plaintiff must not only be the **holder and owner of the original Note**, but also the **Mortgage as well**. Plaintiff's Complaint in this case fails to meet this criteria. Plaintiff **lacks standing to initiate and prosecute the foreclosure, and dismissal pursuant to Rule 17(a) and Rule 12(b)(6) SCRCF is appropriate.**

Under the "FAIR DEBT COLLECTION PRACTICES ACT", 15 U.S.C. 1692, the Plaintiff cannot show it has right to collect the note debt and to request foreclosure, allege: At all times material, Plaintiff is a "debt collector" as the term is defined under 15 U.S.C. §1692a(6); And at all material times, the Note debt is a "debt" as defined under 15 U.S.C. §1692a(5); Plaintiff violated the Fair Debt Collection Practices Act when it filed a Complaint in Foreclosure against the Defendant because it is threatening to take a

legal action that it cannot legally take and used a false misrepresentation or deception to collect a debt. 15 U.S.C. §1692(e)(5), (e)(10). See: *Glazer v. Chase Home Finance, LLC*, No. 10-3416 (6th Cir. 2013)(held that mortgage foreclosure is debt collection under the Act).

Administrative order 2011-05-02-01 specifies that a "Mortgagee" must be the owner and holder of the of the note and mortgage, Therefore, the Plaintiff Fails this Requirement and is not the "Mortgagee" and has no Legal Entitlement to any Debt, Ipso Facto, any payments and/or attempted payments made to the Plaintiff was strictly on a voluntary basis. In Accordance to the Requirements, the Plaintiff failed to show that it was the owner and holder of the original Note and Mortgage at the time the Complaint was filed. Precedent from the United States Supreme Court's decision in *Carpenter v. Longan*, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872) which the Court found "clearly supports the notion that the Plaintiff must own the Note and the Mortgage to foreclose on the property (emphasis in the opinion)". Plaintiff failed to show that it owned the Mortgage at the time the Complaint was filed", and **Hartsville Community Bank** is the **holder of record of the mortgage** of which has been satisfied. Any actions upon a mortgage is bound under SC Codes title 29 chapter 3 and recorded appropriately in the County. A mere copy of a mortgage or note in the hands of a party has no more legal authority or merit than a copy in a Courts Record. As in this case, a Claim for foreclosure without any evidence of being the holder and owner of the mortgage and note has no merit at all.

On November 30, 2015, the plaintiff filed an intervention and foreclosure in direct violation of administrative order 2011-05-02-01. A Hearing for foreclosure without cause

was held on May 24, 2016 of which was continued although the plaintiff defaulted, Also a direct violation of administrative order 2011-05-02-01 of which is still pending.

Therefore, this Action is Barred under double jeopardy clause of the Constitution and is also Barred due to the continuance of the Foreclosure of which is still pending, Ipso Facto the pending litigation must be finalized prior to any other same actions.

The foreclosure filed on November 30, 2015 lacks any Cause of Actions. The Plaintiff also defaulted for the Hearing of May 24, 2016 and has shown no interest in continuing the litigation of that hearing.

The Plaintiff has Refused to disclose evidence for the Actions of blocking the defendant of making payments via website as well as the transcripts of phone conversation of which the plaintiff Refused to accept Payments, Ipso Facto, denying the defendant the Rights of Due Process.

In this current claim by the Plaintiff, the Plaintiff has failed to inform this Court of its Refusal to accept Payment from its previous actions of intervention.

Therefore, with the Plaintiffs unlawful claims to a debt that has no legal standing to collect on a mortgage and note of which the Plaintiff does not Lawfully hold or own, this Court must dismiss this claim for lack of jurisdiction.

FIRST AFFIRMATIVE DEFENSE

Plaintiff and/or its respective agents, representatives, and/or successors has/have misrepresented the facts to deceive the court to obtain standing that does not exist as if Plaintiff is the owner of Defendant's Note and Mortgage without alleging any legal

assignment of the Note, or providing any other information regarding the alleged Assignment. Thus, violating Rule 407, SCACR Rules 1.2(d) , 3.4(a) and (d), 4.1(b) and 8.4 (a), (d) and (e)

- 1) Plaintiff failed to inform the court that it previously filed an intervention and foreclosure in violation of administrative order 2011-05-02-01.
- 2) Plaintiff failed to inform the court of the ongoing litigation in said court.
- 3) Plaintiff failed to inform the court of its default and lack of action/interest in perusing said hearing of foreclosure. Rule 55, SCRC
- 4) Plaintiff failed to inform the court of its refusal to accept payment for the original filing of intervention.
- 5) Plaintiff knowingly filed false, fraudulent, unlawful and deficient documents to expedite this foreclosure to Defendant's detriment.

WHEREFORE, Plaintiff comes to this court with unclean hands and is prohibited by reason thereof from obtaining the equitable relief of foreclosure from this Court. The Plaintiff's unclean hands result from the Plaintiff's improvident and predatory intentional failure to comply with mandatory terms of Law. This court should refuse the acceleration and deny foreclosure because Plaintiff has waived the right to acceleration or is estopped from doing so because of misleading conduct and unfulfilled contractual and equitable conditions precedent. Defendants demands the Plaintiff's complaint be dismissed with prejudice and for fraud on the court, and for their equivalent of attorney's fees and costs and for all other relief to which this Court finds Defendants entitled.

SECOND AFFIRMATIVE DEFENSE

- 1) Plaintiff and/or its respective agents, representatives, and/or successors has/have misrepresented the facts to deceive the court to obtain standing that does not exist as if Plaintiff is the owner of Defendant's Note and Mortgage without alleging any legal assignment of the Note, or providing any other information regarding the alleged Assignment. By failing to provide the required disclosures
- 2) Plaintiff failed to disclose evidence of blocking defendant from making payments via plaintiff's website from original filing violating Rule 37, SCRCP
- 3) Plaintiff failed to disclose evidence of plaintiff refusal to accept payment via phone from original filing violating Rule 37, SCRCP
- 4) Plaintiff does not allege when or how the Note was assigned to it and omits any information that a valid assignment occurred
- 5) This plaintiff has Failed to state a cause of action for foreclosure
- 6) The date this lawsuit was filed the plaintiff was not the true owner of the claim sued upon; is not the real party in interest and is not shown to be authorized to bring this foreclosure action.

WHEREFORE, Defendants demands the Plaintiff's complaint be dismissed with prejudice and for fraud on the court, and for their equivalent of attorney's fees and costs and for all other relief to which this Court finds Defendants entitled.

THIRD AFFIRMATIVE DEFENSE

- 1) Plaintiff is not the true and lawful owner of said Note and Mortgage securing the same nor are any sums due Plaintiff thereunder.
- 2) The Defendant was indebted to "Hartsville Community Bank" of which has been satisfied and not with the Plaintiff
- 3) County Records show that Hartsville Community Bank is the holder of record of the mortgage of which the mortgage has been satisfied
- 4) The mortgage and note purportedly giving rise to this action was never assigned to Plaintiff.
- 6) Plaintiff is not the holder-in-due course of the underlying note
- 7) Plaintiff was never in the past, nor is it now, in actual possession of either the original note or mortgage and any payment and/or attempted payment was strictly voluntary.
- 8) These acts were wrongful and predatory acts by the plaintiff, as if it were the true party of interest, and were intentional and deceptive.
- 9) The Plaintiff failed, refused or neglected to comply to SC Codes under Title 29, chapter 3
- 10) Plaintiff has no standing to maintain this action. Without holding the note, there can be no action for foreclosure. Accordingly, the action must be dismissed.

WHEREFORE, Defendants request the Court dismiss the Plaintiff's complaint with prejudice, for an award of damages in defendants' favor and against the plaintiff for their actual and/or statutory damages, enter a judgment pursuant to SC Codes §29-3-430. Title 15 Chapter 67 and for attorney's fees and for all other relief to which this Court finds Defendants entitled.

COUNTERCLAIM

- 1) Plaintiff does not have the legal right to collect on the Note debt and to Foreclose;
- 2) In order to collect on the Note debt and to bring a foreclosure action, the Plaintiff must be entitled to enforce the Note and have an interest in the Mortgage;
- 3) Here, Plaintiff is not entitled to enforce the Note and does not have an interest in the Mortgage. Plaintiff is not the Note holder and is not the Mortgagee as it alleges; To be a Note holder, the Plaintiff must have possession of the original Note of which it does not, along with an endorsement;
- 4) The Defendant has never executed a Note in favor of Plaintiff and the Note has never been endorsed in blank or specifically to Plaintiff;
- 5) Plaintiff is not the Mortgagee; Here SC Codes Section 29 chapter 3 require that any actions of a mortgage interest be Recorded in appropriately the County office of the Register of Deeds or Clerk of Courts Office by a South Carolina Lawyer and witnessed.
- 6) The Defendant has never executed a Mortgage in favor of the Plaintiff and Plaintiff has never received an interest in the Mortgage;

- 7) The Statute of Frauds requires that an interest in land be transferred in writing and signed by an authorized party; A Mortgage is an interest in land; Any attempted transfer of land that violates the Statute of Frauds is void;
- 8) The Plaintiff lacks standing and is not the true owner of the claim sued upon, is not the real party in interest and is not shown to be authorized to bring this foreclosure action. Therefore, Plaintiff violated the Fair Debt Collection Practices Act when it filed a Complaint in Foreclosure.

Under the "FAIR DEBT COLLECTION PRACTICES ACT", 15 U.S.C. 1692, the Plaintiff cannot show it has right to collect the note debt and to request foreclosure, allege: At all times material, Plaintiff is a "debt collector" as the term is defined under 15 U.S.C. §1692a(6); And at all material times, the Note debt is a "debt" as defined under 15 U.S.C. §1692a(5); Plaintiff violated the Fair Debt Collection Practices Act when it filed a Complaint in Foreclosure against the Defendant because it is threatening to take a legal action that it cannot legally take and used a false misrepresentation or deception to collect a debt. 15 U.S.C. §1692(e)(5), (e)(10). See: *Glazer v. Chase Home Finance, LLC*, No. 10-3416 (6th Cir. 2013)(held that mortgage foreclosure is debt collection under the Act).

If the Complaint requires that ownership of a real loan be present at the time the Complaint is filed then the Court's jurisdiction has never been invoked. The Court has no choice. And the reason for this is that it is very well-settled that you bring a matter to court that must be an actual controversy and a plea for relief that can be legally granted. The fabrication of instruments after the filing of the lawsuit for the express purpose of the lawsuit is not only lacking in credibility it is clothed in impossibility.

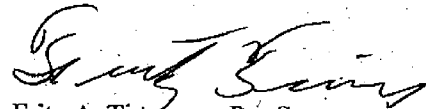
WHEREFORE, Defendant respectfully demands judgment as follows:

1. Dismissing the Complaint in its entirety, with prejudice,
2. Granting Defendant's counterclaims, an award equivalent of attorneys' fees, costs, statutory damages, Non-economic, punitive and actual damages under The Fair Debt Collection Practices Act (U.S. Code Title 15 Chapter 41 Subchapter V).
These damages include but not limited to emotional distress, credit damage, loss of wages, amount claimed by plaintiff, phone harassment either caused directly or indirectly by the plaintiff, ect.
3. Granting Defendant's counterclaims for triple the amount of the above said under the "South Carolina Tort Claims Act".
4. Granting such other, further and different relief as to this Court may deem just, equitable and proper.
5. Quieting the Title

Do to Ex parte communications, Perjury and failure to issue a final Order over a hearing presided by him, Judge Paul M. Burch is hereby Barred from these proceedings under Rule 501, SCACR CANON 3

June 13, 2017

Respectfully



Fritz A. Timmons, Pro Se
P. O. Box 367
(843)-335-6283

STATE OF SOUTH CAROLINA)

COUNTY OF CHESTERFIELD)

JPMorgan Chase Bank, National
Association,

Plaintiff,

vs.

Fritz A. Timmons,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

Civil Action No. 2015-CP-13-00768

**MOTION TO STRIKE "MOTION
OF DEFAULT" AND FOR
JUDGMENT ON THE PLEADINGS
AS TO THE COUNTERCLAIMS**

CREATED BY
JPMORGAN CHASE
NATIONAL ASSOCIATION
2017 JUL 14 AM 11:41

2017 JUL 14 AM 11:41

Plaintiff JPMorgan Chase Bank, National Association ("Chase"), by and through its undersigned counsel, hereby moves this Court pursuant to Rules 8, 12(c) and 12(f) of the South Carolina Rules of Civil Procedure for an order striking the "Motion of Default" and for judgment on the pleadings as to Defendant Fritz A. Timmons' ("Defendant") counterclaim. The grounds for this Motion are as follows:

1. Defendant served a "Motion of Default, to Dismiss, to Quiet Title, and Counterclaim" on June 13, 2017. This document was filed in response to the Complaint for foreclosure and includes three affirmative defenses and one counterclaim. The three affirmative defenses are (1) unclean hands; (2) real party in interest; and (3) standing. The counterclaim is for alleged violation of the Fair Debt Collection Practices Act ("FDCPA"). Chase hereby moves for an Order striking the Motion seeking default and for judgment on the pleadings as to the counterclaim.

2. First, the "Motion of Default" is not proper under the South Carolina Rules of Civil Procedure. Defendant alleges that he is entitled to default against Chase because "[a] Hearing of foreclosure without cause was held on May 24, 2016 of which *was continued* although the plaintiff

defaulted.” (Mot. of Default/Countercl. at p.2 (emphasis added).) The continuance of a hearing does not amount to default under the South Carolina Rules of Civil Procedure. Default is governed by Rule 55, SCRCP. Rule 55(a) provides that “[w]hen a party against whom a judgment for affirmative relief is sought *has failed to plead or otherwise defend* as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).” S.C. R. Civ. P. 55(a) (emphasis added). In this case, as of May 24, 2016, Defendant had not filed a pleading seeking “a judgment for affirmative relief” and, therefore, Chase could not have “failed to plead otherwise defend” in response. In fact, once a counterclaim seeking “a judgment for affirmative relief” was served, Chase pleaded in response and is currently defending. Accordingly, default against Chase is not proper and the “Motion of Default” should be stricken pursuant to Rule 12(f), SCRCP and denied.

3. Second, the counterclaim for alleged violation of the FDCPA fails as a matter of law. The FDCPA defines debt collector as one “who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due *another*.” 15 U.S.C. § 1692a(6) (emphasis added). It specifically excludes an entity collecting debts owed to it. *See id.* Because Chase is attempting to collect the debt owed to it, Chase does not qualify as a “debt collector” and is entitled to judgment as a matter of law on the counterclaim. *See Stoudemire v. Ray*, No. 3:09-2485, 2012 U.S. Dist. LEXIS 31290, at *7–8 (D.S.C. Feb. 9, 2012) (“The FDCPA applies only to ‘debt collectors’ as that term is defined in the statute, and creditors, mortgagors, and mortgage servicing companies are not debt collectors under the FDCPA and are therefore exempt from liability under the FDCPA.”). The FDCPA also fails as improperly pled pursuant to Rule 8, SCRCP. Defendant claims that the FDCPA violation occurred when Chase “filed a Complaint in Foreclosure against the Defendant.” (Mot. of Default/Countercl. at p.8.) However,

in this case, Defendant failed to “admit or deny the averments upon which the adverse party rely[d] in the Complaint for foreclosure. S.C. R. Civ. P. 8(b). Accordingly, pursuant to Rule 8(d), SCRCP, such “[a]verments in a pleading . . . *are admitted* when not denied in the responsive pleading.” *Id.* at (d) (emphasis added). Defendant, having failed to deny the default on the loan obligations, admitted such allegations. Having admitted the default, Defendant effectively concedes the filing of the foreclosure was proper and cannot state a legally cognizable claim for violation of the FDCPA. For this additional reason, Chase seeks judgment on the pleadings in its favor on the counterclaim.

4. Third, to the extent the pleading is construed as one seeking quiet title, relief for fraud on the court, or an alleged violation of the South Carolina Tort Claims Act, those claims would similarly fail as a matter of law. (See Mot. of Default/Countercl. at p.9 (“WHEREFORE,” ¶¶ 3, 5.) At the outset, Defendant does not set forth any facts or elements for quiet title, fraud on the court, or alleged violation of the “South Carolina Tort Claims Act.” All three “claims” would be subject to dismissal for failure to state facts sufficient to constitute a cause of action. Additionally, as to the quiet title action, title to the subject property is currently in the name of Defendant with Chase’s lien attached. There is not any title to be quieted. With respect to fraud on the court, the party must assert the “indispensable elements of such a cause of action,” which are “1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law.” *T v. T*, 378 S.C. 127, 135, 662 S.E.2d 413, 417 (Ct. App. 2008) (citing *Nat’l Sur. Co. of N.Y. v. State Bank of Humboldt*, 120 F.593 (8th Cir. 1903)). In this case, there is

not yet a judgment entered nor is there any fraud, accident, or mistake alleged that is preventing Defendant from asserting any defenses he has available to him. In fact, Defendant has asserted defenses to the foreclosure and the parties are currently in the process of litigating those defenses. Finally, the South Carolina Tort Claims Act was enacted to "grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by [the Act]." S.C. Code Ann. § 15-78-20(b). As such, it is simply not applicable to this foreclosure case.

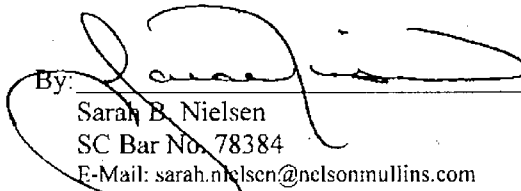
5. Fourth, Chase opposes Defendant's Motion to Dismiss pursuant to Rule 12(b)(6). "A motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the allegations set forth in the complaint and [the court] must presume all well-pled facts to be true." *Gressette v. S.C. Elec. & Gas Co.*, 370 S.C. 377, 379, 635 S.E.2d 538, 538 (2006). In this case, Chase properly pleaded causes of action for claim and delivery and foreclosure in the Complaint.

6. In sum, Defendant's Motion for Default and Dismissal must be denied and Chase is entitled to judgment as a matter of law on Defendant's counterclaim.

This Motion is further based on the pleadings, affidavits, and other documents that may be filed in this case; the South Carolina Rules of Civil Procedure, the applicable statutory and case law of South Carolina, and any memorandum of law or other supporting materials to be submitted prior to, at, or subsequent to a hearing on this Motion.

SIGNATURE PAGE ATTACHED

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7/12, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

JPMorgan Chase Bank, National
Association,

Plaintiff,

vs.

Fritz A. Timmons,

Defendant.

Civil Action No. 2015-CP-13-00768

**MOTION FOR SUMMARY
JUDGMENT ON STANDING AND
REAL PARTY IN INTEREST**

2017 JUL 19 AM 10:43

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Plaintiff JPMorgan Chase Bank, National Association ("Chase"), by and through its undersigned counsel, hereby moves this Court for summary judgment on Defendant Fritz A. Timmons' ("Defendant") Second and Third Affirmative Defenses related to Chase's status as the real party in interest and its standing to pursue foreclosure. The grounds for this Motion are as follows:

1. On November 30, 2015, Chase filed a Complaint for Claim and Delivery and Foreclosure against Defendant. In the Complaint, Chase alleged it is the real party in interest pursuant to Rule 17(a) SCRCP, and that it has the authority to enforce the Note and Mortgage that form the subject of the action. (Compl. at ¶ 2.) Chase further alleged that the Mortgage was assigned to it by assignment dated April 2, 2015, and recorded April 20, 2015. (*Id.* at ¶ 7.) Copies of the Note, Mortgage, and Mortgage Assignment are attached hereto as Exhibit "1," "2," and "3," respectively. The original Note will be produced to the Court for inspection at the date and time of a scheduled hearing on this Motion.

2. In response to the Complaint, Defendant filed a document captioned "Motion of Default, to Dismiss, to Quiet Title and Counterclaim." Therein, he asserted three affirmative

defenses: (1) unclean hands; (2) real party in interest; and (3) standing. Defendant alleges "Plaintiff . . . misrepresented the facts to deceive the court to obtain standing that does not exist as if Plaintiff is the owner of Defendant's Note, or providing any other information regarding the alleged Assignment." He further alleges that "plaintiff was not the true owner of the claim sued upon; is not the real party in interest and is not shown to be authorized to bring this foreclosure action." Finally, Defendant alleges "Plaintiff has no standing to maintain this action" because "[w]ithout holding the note, there can be no action for foreclosure."

3. As outlined herein, because Chase is the holder of the original Note, endorsed in blank, and is the assignee of the Mortgage, it has standing to pursue foreclosure, is the real party in interest and, therefore, seeks summary judgment on the affirmative defenses asserted by Defendant.

4. "Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Michael P. v. Greenville County Dep't of Social Servs.*, 385 S.C. 407, 415, 684 S.E.2d 211, 215 (Ct. App. 2009) (citing *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008)). For a party to have standing, "a litigant must have a personal stake in the subject matter of the litigation." *Id.* at 415-16, 665 S.E.2d at 241. Similarly, Rule 17(a) provides that "[e]very action shall be prosecuted in the name of the real party in interest." S.C. R. Civ. P. 17(a). "The purpose of the real party in interest provision is to assure that a defendant is required only to defend an action brought by a proper party and that such an action need be defended only once." *Bardoon Props., NV v. Eidolon Corp.*, 326 S.C. 166, 169, 486 S.E.2d 371, 373 (1997).

5. It is uncontested that on June 13, 2011, Defendant executed a Note in the original principal sum of \$76,000.00 with Hartsville Community Bank, NA listed as the originating

"Lender." The Note provides that Defendant "understand[s] that that the Lender may transfer this Note." See Ex. 1, ¶ 1. "The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the 'Noteholder.'" *Id.* It is the Noteholder that has the ability to "enforce its rights under this Note against each person individually." *Id.* at ¶ 8. Accordingly, Defendant was on notice from the time of origination that his Note could be freely transferred and that the Noteholder would have all rights to enforce its provisions. The Note currently bears two endorsements: (1) endorsement by Hartsville Community Bank, NA to Crescent Bank and Trust Company and (2) endorsement by Crescent Bank and Trust Company in blank. See Ex. 1 p.3. Plaintiff, through its attorneys, currently holds the original Note, endorsed in blank.

6. Additionally, it is also undisputed that Defendant executed a Mortgage dated June 13, 2001, securing the payment obligations under the Note. The Mortgagee identified in the Mortgage is Mortgage Electronic Registration Systems, Inc. ("MERS") and it states that MERS is "a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns." See Ex. 2 "Definitions," Sec. C. In addition to granting this Mortgage to MERS (solely as nominee for Lender and Lender's successors and assigns), Defendant expressly acknowledged that he "understands and agrees that MERS holds only legal title to the interests granted by [Defendant] in this Security Instrument." See *id.* at "Transfer of Rights in Property." The Mortgage was recorded on June 20, 2001, in Book 350, at Page 1137. The Mortgage was subsequently assigned by MERS, as nominee, to Chase by assignment dated April 2, 2015, and recorded on April 20, 2015, in Book 477 at Page 214. See Ex. 3.

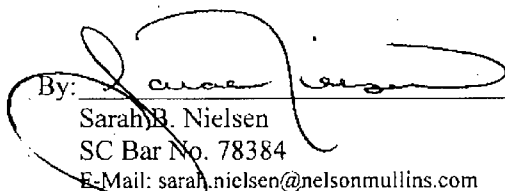
7. Pursuant to South Carolina law on negotiable instruments, Chase is the holder of the Note and has the authority to enforce its provisions, including acceleration and pursuing this

foreclosure action. *See* S.C. Code Ann. § 36-3-109(c) (“An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to Section 3-205(b).”); S.C. Code Ann. § 36-3-301 (“Person entitled to enforce an instrument means (i) the holder of the instrument[.]”); *see also* *Midfirst Bank v. C.W. Haynes & Co.*, 893 F. Supp. 1304, 1318 (D.S.C. 1994) (“South Carolina recognizes the ‘familiar and uncontroverted proposition’ that ‘the assignment of a note secured by a mortgage carries with it an assignment of the mortgage.’”) (citing *Hahn v. Smith*, 157 S.C. 157, 154 S.E. 112 (1930)). Additionally, not only is Chase the holder of the Note, but it is also the assignee of the Mortgage pursuant to a Mortgage Assignment referenced above. Thus, there is no genuine issue of material fact as to Chase’s standing pursuant to South Carolina law and its status as the real party in interest for purposes of the foreclosure. *See, e.g.,* *Scheider v. Deutsche Bank Nat’l Trust Co.*, 572 Fed. Appx. 185, 190 (4th Cir. 2014) (finding mortgage follows the note and finding that when the note is endorsed in blank it “may be enforced by whoever possesses it”); *Great Lakes Credit Union v. Reckling*, No. 6:09-cv-02832, 2010 U.S. Dist. LEXIS 15338, at *3 (D.S.C. Feb. 22, 2010) (stating that as “holder of these instruments, Plaintiff has standing to bring an action on the note or pursue a foreclosure action”); *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 214 493 S.E.2d 826, 833 (1997) (finding that an assignee of mortgage was real party in interest and had the right and duty to foreclose a mortgage); *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) (“In South Carolina, it is well established that an ‘assignee . . . stands in the shoes of its assignor[.]’”) (citation omitted).

8. Based on the foregoing, Chase respectfully requests that this Court grant its Motion for Summary Judgment on Defendant’s affirmative defenses challenging its standing to foreclose and its status as the real party in interest.

This Motion is further based on the pleadings, affidavits, and other documents that may be filed in this case, the South Carolina Rules of Civil Procedure, the applicable statutory and case law of South Carolina, and any memorandum of law or other supporting materials to be submitted prior to, at, or subsequent to a hearing on this Motion.

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7/17, 2017

2017 JUL 19 AM 10:43
Vanda C. Miles
CLERK OF COURT
CHIEF, 1110 COURT, S.C.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD) FOURTH JUDICIAL CIRCUIT

JPMorgan Chase Bank, National) Civil Action No. 2015-CP-13-00768
Association,)

Plaintiff,)

vs.)

Fritz A. Timmons,)

Defendant.)

NOTICE OF HEARING

2017 AUG 17 AM 11:05
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

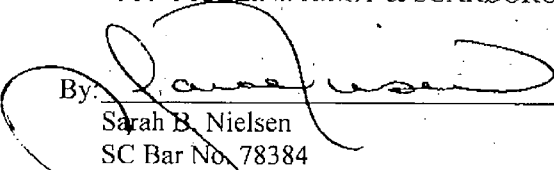
YOU WILL PLEASE TAKE NOTICE that the following motions are scheduled for a hearing to take place on **Wednesday, September 6, 2017**, beginning at **2:00 PM**:

- (1) Plaintiff JPMorgan Chase Bank, National Association's ("Plaintiff") Motion to Strike "Motion of Default" and for Judgment on the Pleadings as to the Counterclaims filed in the above-captioned matter on July 14, 2017;
- (2) Plaintiff's Motion for Summary Judgment on Standing and Real Party in Interest, filed in the above-captioned matter on July 19, 2017; and
- (3) Defendant Fritz A. Timmons' Motion of Default, to Dismiss, to Quiet Title and Counterclaim, filed in the above-captioned matter on June 29, 2017.

The hearing will take place before the Honorable William O. Spencer, Jr., Special Referee, at the Spencer Law Firm, 301 W. Main Street, Chesterfield, South Carolina, 29709. A court reporter will be in attendance to transcribe the hearing.

SIGNATURE PAGE ATTACHED

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August 15, 2017

2017 AUG 17 AM 11:05
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

CERTIFICATE OF SERVICE

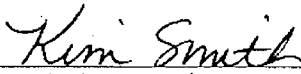
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for JPMorgan Chase Bank, National Association, do hereby certify that I have served the party(ies) listed below with copies of the pleading(s) hereinbelow specified at the following address(es):

Pleadings: Notice of Hearing

Counsel Served: **U.S. Mail**
Fritz A. Timmons, *pro se*
Post Office Box 367
Hartsville, SC 29551

Fritz A. Timmons, *pro se*
1827 Tabernacle Church Road
McBee, SC 29101

2017 AUG 17 AM 11:05
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.



Kim Smith
Administrative Assistant

August 15, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFEILD

JPMorgan Chase Bank,
National Association.

Plaintiff,
vs.

Fritz A. Timmons
Defendant.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-13-00088

Wanda C. Niles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.
2017 AUG 18 AM 11:14
RESPONSE TO MOTION
SUMMARY JUDGEMENT
STANDING AND REAL PARTY
IN INTEREST

With the substitution of counsel for the plaintiff, the current counsel has willfully and knowingly accepted the responsibilities and liabilities of the former counsel including but not limited to any and all of the violations of court rules, state and federal laws as well as to Constitutional laws.

In response to the plaintiff's motion for summary judgment, a summary judgment by this court would be a direct violation of the defendants Rights to Due Process due to the following Violations.

(1) The plaintiff breached the contract because they refused to accept the payment, thus not allowing the borrower to fulfill his end of the bargain which is: Paying off the debt. With the plaintiff assignment on 04/02/2015 while the plaintiff had blocked payment access via website and refused payment by phone on 04/15/2015 without being in default. This "Breach the Contract" voids the Mortgage due to a contract can not be enforced by the party that has breached it. This fall under the Uniform Commercial Code §3-603(b) and invokes discharge. Ipso Facto the plaintiff loses any entitlement to the Mortgage, Thus, nullifies both the Note and Mortgage.

(2) The plaintiff has failed to specify as to what actions it has motioned a summery judgment for. The plaintiff has Two Concurrent filings of foreclosures of which is a direct Violation of the Defendants Rights of Due Process for Violating the Double Jeopardy Clause of the Constitution. A summery judgment would directly violate Administrative Order (Order No. 2009-05-22-01) under which this Court is bound. This Order includes the Following;

- (a) **"No foreclosure hearing may be held in the foreclosure action until the Mortgagee's attorney certifies that the Mortgagee has complied with the requirements of paragraphs B (1) (a) through (e) above,"**. This has been violated by the holding of the first hearing without the certification of the involved attorneys.
- (b) **"If within thirty days after having been served with notice of the Mortgagor's rights, the Mortgagor has failed, refused, or voluntarily elected not to participate in any foreclosure intervention process, the Mortgagee, through its attorney, shall certify that fact to the Court, and the foreclosure action may proceed."** With the Defendant participation of the plaintiff's so called intervention process of which the Plaintiff Refused to accept payments, any foreclosure action is therefore barred, ipso facto, a summery judgment for such actions is also barred.
- (c) **"Agreement shall be reduced to writing, ...and served on all parties in the case"**
- (d) **"shall file and serve on all parties a "Notice of Breach of Agreement". Upon filing and service of such notice, the foreclosure action may proceed"**. The Plaintiff has also failed to file and/or serve any such notice, therefore bars any foreclosure action including a summery judgment.

(e) "The Court having jurisdiction over the foreclosure action **shall hear** and determine any dispute concerning any party's compliance with this order, including without limitation, the **failure of any party to act in good faith** in complying with the terms of this order". With the above "The Court... SHALL HEAR" of the Order, Any Summery Judgment would be a direct Violation of the Order under which this Court is Bound.

With the above Order requirements of which the plaintiff has failed to complied to, a summery judgment would not only violate the defendants Rights of Due Process, a summery judgment would also be barred under the above Order.

The First Filing of foreclosure of which the plaintiff failed to state any Cause of Action and is currently still pending, the hearing of which was held in direct violations of Administrative Order (Order No. 2009-05-22-01) stating "No foreclosure hearing may be held in the foreclosure action until the Mortgagee's attorney certifies that the Mortgagee has complied with the requirements of paragraphs B (1) (a) through (e) above" of which it has failed to conduct. The plaintiff has failed to appear at the hearing, Therefore, the plaintiff has Defaulted. With the first filing still pending and lacks a Cause of action, therefore, a summery judgment would be a violation of the Defendants Rights to Due Process for denying the Defendants to argue his case to the fullest.

With the filing of a second foreclosure without the finalization of the first filing and without any further actions other then just filing of the first foreclosure action, the plaintiff has abandoned and failed to "plead or otherwise defend" their case; Ipso Facto, Defaulted while placing the Defendant Twice in Jeopardy and thereby violating the Constitution. The Double Jeopardy Clause of the Fifth Amendment provides: "[N]or shall any person be

subject for the same offence to be twice put in jeopardy of life or limb." and therefore bars retrial.

In Reference to the Plaintiffs Exhibit 1 (Note), a mere copy of note in question is by far no evidence that the plaintiff is currently or has ever been the owner and/or the holder of the note. A copy of the note is only evidence that the plaintiff has had access to a copy of said note. Therefore, a copy of said Note has no Legal or Merited Standing as to the Holder and/or Owner.

In Reference to the Plaintiffs Exhibit 2 (Mortgage) and 3 (Assignment of mortgage), said mortgage had the assignment to Hartsville Community Bank from 6/13/2001 until the plaintiff's assignment on 04/02/2015 and filed on 04/20/2015, Ipso Facto, undoubtedly proves that the plaintiff:

(a) by refusing to accept any payments within Two Weeks after of the assignment on said mortgage, the plaintiff itself has "Breached the Contract" due to the fact that the plaintiff blocked access for payments and refused to accept any payments accordingly to the dated documents clearly proves the plaintiff was not in default of said mortgage with the plaintiff when the plaintiff refused payments, thus not allowing the borrower to fulfill his end of the bargain which is: Paying off the debt. Therefore, this action invokes Code §3-603(b) of the Uniform Commercial Code that clearly states "If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates." This "Breach of the Contract" thereby Voids the Mortgage, Ipso Facto, the plaintiff is no longer the holder nor owner of

said Mortgage.

If a breach of mortgage/note contract of a mortgagor accelerates the "Debt Due" then a breach of the same mortgage/note contract of a mortgagee accelerates the "Satisfaction" of the mortgage/note. Any thing other would be construed as Unconscionable, see Uniform Commercial Code §2-302.

(b) by not lawfully being entitled to the Assignment (although acting and receiving payment as) of mortgage and being threatened by foreclosure by the plaintiff of property for non payment by the plaintiff prior to the plaintiff's assignment on 04/02/2015 , the plaintiff has violated 18 U.S. Code §1951, 18 U.S. Code §1952 and thereby violating 18 U.S. Code §1956. Therefore, the Plaintiff actions of that of a debt collector violating 15 U.S. Code §1692e.

15 U.S. Code § 1692e states "A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

18 U.S. Code §1951 states " (a) Whoever in any way or degree obstructs, delays, or affects commerce ... or commodity in commerce, by robbery or extortion or attempts or conspires so to do, . (b) As used in this section— (1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened ... fear of injury, immediate or future, to his person or property, or property in his custody or possession, (2) The term "extortion" means the obtaining of property from another, with his consent, induced by

wrongful use of actual ... fear, “

18 U.S. Code § 1952 states “(a) Whoever ... uses the mail ... with intent to—
(1) distribute the proceeds of any unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform— (B) (b) As used in this section (i) “unlawful activity” means ... (2) extortion, ...“

18 U.S. Code § 1956 states “(a) (1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity— (A) (i) with the intent to promote the carrying on of specified unlawful activity; or ... (B) knowing that the transaction is designed in whole or in part— (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; ...”

(c) as not being assignment of the mortgage until 04/02/2015, the previous assignment had also committed “Breached the Contract” for failure to receive/accept payment, failed to file for foreclosure prior to and transferring of the assignment to the plaintiff. Therefore, any foreclosure actions are void of any legal or merited standings due to abandonment.

(d) with the assignment of the mortgage dated 04/02/2015 and with no evidence of the True holder or owner of the “Note” is (a copy of said Note is not evidence of ownership), the Petitioner has failed to comply with Administrative Order (Order No. 2009-05-22-01) and failed to prove ownership at the time of filing for either of the plaintiff's foreclosure filings.

Second, with the Requirements that a party must be the holder and owner of both the Note and Mortgage at the time of filing for foreclosure, In said case did the mortgage follows the note or has been and/or currently separate (Elvin v. Wuchetich, 157 N.E. 243, 244-45 (Ill. 1927) ("It has been often decided that a mortgage cannot exist as an independent security in the hands of one person while the note which it is given to secure belongs to another."); Merritt v. Bartholick, 36 N.Y. 44, 45 (1867) ("[A] transfer of the mortgage without the debt is a nullity, and no interest is acquired by it.")). "Carpenter v. Longan, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872), quoted by Plaintiffs counsel in this oral argument and brief, clearly supports the notion that the Plaintiff must clearly own the Note and the Mortgage to foreclose on the property. Plaintiff failed to show that it owned the Mortgage at the time the Complaint was filed." see Deutsche Bank National Trust Company vs. Scott J. Heinrich (The ninth judicial circuit, state of South Carolina, Charleston, July 30,2013)

Third, if the mortgage is to follow the note, therefore, was the note ever in the hands of the plaintiff or the plaintiff was action strictly in an unlawful Debt Collecting Activities. Ipso Facto, the Amount obtained by the plaintiff was therefore unlawfully collected and has no legal entitlement to said payments over years of which would be in an amount that far exceeds the amount of the "Note". Ipso Facto, even if the plaintiff was actually and currently the holder of the note and mortgage in question then the the mortgage has been satisfied and note paid in full with extra.

The security is worthless in the hands of anyone except a person who has the right to enforce the obligation; it cannot be foreclosed or otherwise enforced. Hence, separating the security and the obligation is ordinarily foolish, since it

will leave one person with an unsecured debt and the other with a security instrument that cannot be enforced. Once the mortgage becomes unsecured, it can not become Lawfully re-secured without the approval of the mortgagor.

The note and mortgage are two distinct things, the former embodying a personal promise to pay and the latter embodying the right to sell real property to satisfy the debt in case of default on the note. The Note is a contract signed by the mortgagor to the owner/holder of the mortgage, this is a contractual bond between the Note and Mortgage under a single Holder/owner. This contractual bond is "Breached" /severed when the mortgage and note is separated. When the Holder/owner of the mortgage willfully separates the note from the mortgage, the holder/owner of the mortgage willfully wavers any rights and/or authority to the enforcement of the Note and the mortgage becomes unsecured of which the holder and/or owner of said note or mortgage do not have the legal authority to secure the mortgage with a note in the name of a third party without the permission or authority of the third party.

This "Breach" can only be cured by the mortgagor approving of a new Contract and not by plaintiff nor nominee placing one paper in the hand of another. Therefore with the "Voidness" of the above said and the separation of mortgage and note, both the note and mortgage are "worthless pieces of paper", Ipso Facto, foreclosure is not lawfully enforceable. In laymen's terms, "if a party with a contractual paper shreds said paper of which voids said contract, that party can not simply tape the shreds back together to restore the validity or legality of said contract."

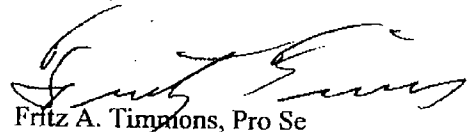
Fourth, with the plaintiff's claim of punitive damages violating the plaintiff's constitution rights without the Court decision of any punitive damages let alone the

amount of any punitive damages is extremely highly suggestive of the plaintiff's guilt of the accusation against them.

Do to Ex parte communications, Perjury and failure to issue a final Order over a hearing presided by him, Judge Paul M. Burch is hereby Barred from these proceedings under Rule 501, SCACR CANON 3

August 16, 2017

Sincerely,



Fritz A. Timmons, Pro Se
P. O. Box 367
Hartsville, SC 29551

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFEILD)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

JPMorgan Chase Bank,)
National Association.)

CASE NO.: 2015-CP-13-00768

Plaintiff,)
vs.)

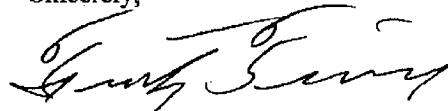
DEMAND FOR JURY TRIAL

Fritz A. Timmons)
Defendant.)

Due to the unlawful "Notice of Hearing" filed by the plaintiff (SC Code 16-17-735) without the consent of the Defendant and without an Order from a Circuit Judge nor Clerk of Court (Rule 53 SCRPC) the Defendant is invoking his Rights under Rule 38 SCRPC and the Defendant Demands Trial by Jury for All Action.

August 25, 2017

Sincerely,



Fritz A. Timmons, Pro Se
P. O. Box 367
Hartsville, SC 29551

2017 AUG 30 AM 11:00
Hilda C. Niles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFEILD)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

JPMorgan Chase Bank,
National Association.

CASE NO.: 2015-CP-13-00768

Plaintiff,
vs.

**RESPONSE TO NOTICE OF
HEARING**

Fritz A. Timmons
Defendant.

Wanda C. Hines
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2017 AUG 30 AM 11:00

This Notice of Hearing submitted by the Plaintiff is a direct violations of the Defendants Rights to Due Process and Rule 53 SCRPC due to the following;

- (1) The Defendant **DOES NOT CONSENT** to this case to be referred to a Special Referee.
- (2) This is a continuation of a hearing in Circuit Court in which the Plaintiff failed to show or plead, Ipso Facto, **DEFAULTED** then filed a second foreclosure action.
- (3) This Case has not been referred to a Special Referee by a Circuit Court Judge nor the Clerk of Court.
- (4) The Plaintiff does not have the Authority to schedule any judicial hearings, That Authority remains with the Clerk of Court and/or Judges.
- (5) The Supposedly Special Referee William O. Spencer, Jr. **Does Not have** the Authority nor Jurisdiction to Hear nor judge any part of this Case.
- (6) Rule 40a SCRPC clearly states "(1) **Clerk to Maintain Docket and Trial Rosters.** The Clerk of Court shall maintain: (1) a General Docket of all cases filed in the Circuit Court;... (3) a Nonjury Docket of all nonjury matters including all motions filed in the Circuit Court."

- (7) Rule 40h SCRCP clearly states "The Chief Judge for Administrative Purposes, in cooperation with the clerk, is responsible for setting all matters on the Nonjury Docket for disposition. Motions may be scheduled for hearing at any time after the period for notice of the motion required by these rules."
- (8) The South Carolina Supreme Court frequently notes, "[p]rocedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008). This Adequate notice is to be 30 days under Rule 40 SCRCP
- (9) Is a Direct Violation of SC Code 15-36-10 (4)(a)(iv) stating "a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;"
- (10) Without the Defendant consenting to a Special Referee, The Plaintiff's Counsel has Directly placed "Fraud upon the Court" and violated the Rules under Rule 407 SCACR
- (11) Has committed ex-parte communications with William O. Spencer, Jr in order to schedule a hearing by either Fraud upon and/or Conspiracy with William O. Spencer

With the above said, the plaintiff's Counsel has Violated SC Code 16-17-735

Which states the Following;

(1) “(C) It is unlawful for a person to act without authority under state law as a ... a circuit court judge, ... a clerk of court ... in determining a controversy, adjudicating the rights or interests of others, or signing a document as though authorized by state law. A person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned not more than one year, or both.”

(2) “(3) "Sham legal process" means the issuance, display, delivery, distribution, reliance on as lawful authority, or other use of an instrument that is not lawfully issued, whether or not the instrument is produced for inspection or actually exists, which purports to: (a) be a ... other order of a court of this State... or administrative agency established by state law; (b) assert jurisdiction or authority over or determine or adjudicate the legal or equitable status, rights, duties, powers, or privileges of a person or property; or (c) require or authorize the ..., trial, ... of a person or property.”

(3) “(4) "Lawfully issued" means adopted, issued, or rendered in accordance with the applicable statutes, rules, regulations, and ordinances of the United States, a state, an agency, or a political subdivision of a state.”

Therefore, the Plaintiff and/or its Counsel has Committed Barratry and Violated SC Code 16-17-10 of which state

(1) “Any person who shall: (1) Wilfully solicit or incite another to bring, prosecute or maintain an action, at law or in equity, in any court having jurisdiction within this State and (a) thereby seeks to obtain employment for himself or for another to prosecute or defend such action...”

(2) “(2) Wilfully bring, prosecute or maintain an action, at law or in equity, in any court having jurisdiction within this State and ... (b) thereby seeks to defraud or mislead the court, ... Shall be guilty of the crime of barratry.”

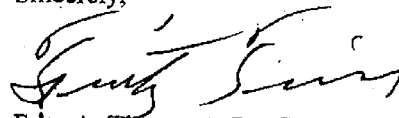
SC Code 16-17-20 states “Any person convicted of barratry shall be forever barred from practicing law in this State.”

Without the Procedure permitted by Law and Rule of Court, it is only possible that ex parte communication between the Plaintiff's Counsel and William O. Spencer Jr. was committed. Thus, violating Rules of Conduct under Rules 407 SCACR and 501 SCACR, ipso facto, the Defendant can only expect a BIAS and UNFAIR hearing by William O. Spencer Jr. and therefore he is automatically disqualified under Rule 501 SCACR Canon 3.

With the above said with the willful violations of the Plaintiff's Counsel, This is an unlawful Action and can not be condoned by this Court. Therefore, Under Rule 38 SCRCP, The Defendant **Demands Trial by Jury.**

August 25, 2017

Sincerely,



Fritz A. Timmons, Pro Se
P. O. Box 367
Hartsville, SC 29551.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD	)	FOURTH JUDICIAL CIRCUIT
JPMorgan Chase Bank, National Association,	)	Civil Action No. 2015-CP-13-00768
	)	
	)	
Plaintiff,	)	
	)	<u>MOTION TO STRIKE</u>
vs.	)	<u>DEFENDANT'S DEMAND FOR</u>
	)	<u>JURY TRIAL</u>
Fritz A. Timmons,	)	
	)	
Defendant.	)	

2017 SEP - 7 AM 11:37
 Wanda C. Piles
 CLERK/COURT
 CHESTERFIELD COUNTY, S.C.

Plaintiff JPMorgan Chase Bank, National Association ("Chase") hereby submits this Motion to Strike Defendant Fritz A. Timmons' ("Defendant") Demand for Jury Trial dated August 25, 2017, and addresses the arguments raised by Defendant in his Response to Notice of Hearing also dated August 25, 2017.¹

PROCEDURAL HISTORY

On November 30, 2015, Chase instituted the above-captioned foreclosure action by filing a Summons and Complaint. Chase alleges that the loan evidenced by a June 13, 2001, Note secured by a Mortgage of the same date is in default. Defendant was served with the Summons, Complaint, and Notice of Right to Foreclosure Intervention on December 7, 2015. The case was stayed pursuant to the S.C. Supreme Court Administrative Order No. 2011-05-02-01, for foreclosure intervention. On May 22, 2017, the Certification of Compliance with the S.C. Supreme Court Administrative Order No. 2011-05-02-01, was filed and the stay was lifted. On that same day, the case was also referred to the Special Referee.

¹ Certificates of service were not included with either submission and the postage reflects a mailing date of August 28, 2017. A copy of the envelope is attached hereto as Exhibit "A."

Defendant served his response to the Complaint on June 13, 2017. The response did not include a jury demand. On July 12, 2017, Chase served a Reply to the counterclaims asserted by Defendant and moved for judgment on the pleadings. Thereafter, on July 17, 2017, Chase moved for summary judgment on the standing and real party in interest defenses raised by Defendant in the June 13, 2017, response to the Complaint. A hearing on all pending motions is scheduled for September 6, 2017. The Notice of Hearing was served on August 15, 2017. Defendant then sent a "Demand for Jury Trial" and a "Response to Notice of Hearing." Chase addresses both the late and improper jury demand and response to the notice of hearing herein.

ARGUMENT

I. Defendant's Demand for a Jury Trial is Late and Improper.

In the document titled "Demand for Jury Trial," Defendant claims to be "invoking his Rights under Rule 38 SCRCP" to demand a trial by jury on the pending motions. However, the demand must be stricken for two reasons: (1) Defendant waived his ability under Rule 38, SCRCP to demand a jury trial and (2) the claims are such that Defendant is not entitled to a jury trial. Each argument will be addressed, in turn.

First, Rule 38, SCRCP outlines the method for demanding a jury trial. It states that "[a]ny party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing[.]" S.C. R. Civ. P. 38(b). In this case, Defendant made a demand in writing. Yet, the demand was served too late. The rule goes on to state that the demand must be served "not later than 10 days after the service of the last pleading directed to such issue." *Id.* In his case, the last pleading "directed to such issue" is Chase's Reply to Defendant's counterclaims. See S.C. R. Civ. P. 7(a) ("There shall be a complaint and an answer; and a reply to a counterclaim denominated as such No other pleadings shall be allowed, except that the court

may order a reply to an answer or a third-party answer[.]”) Chase’s Reply was served on July 12, 2017. Ten days following July 12, 2017, is July 24, 2017 (because the 10th day falls on a Saturday). Defendant’s demand for a jury trial was not made until August 25, 2017—one month too late. Accordingly, Defendant’s “failure . . . to serve a demand as required by this rule and to file it as required by Rule 5(d) **constitutes a waiver** by him of trial by jury.” S.C. R. Civ. P. 38(d) (emphasis added); *see also Rowe Furniture Corp. v. Carolina Wholesale Furniture Co.*, 292 S.C. 575, 576, 357 S.E.2d 725, 725 (Ct. App. 1987) (“S.C. R. Civ. P. 38 provides that the failure of a party to demand a jury trial within ten days of the last pleading constitutes a waiver of trial by jury.”).

Second, Defendant is not entitled to a trial by jury as a matter of right. The South Carolina Constitution provides that “[t]he right of trial by jury shall be preserved inviolate.” S.C. Const. Art. I, § 14. “This provision preserves the right of trial by jury only in those cases in which the parties were entitled to it under the law or practice at the time of the adoption of the Constitution.” *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). “[T]he relevant question in determining the right to a trial by jury is whether the action is legal or equitable.” *Id.* “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, 423 (1975). A “foreclosure action is an action in equity.” *Wachovia Bank, N.A. v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014). It is well established that “[b]ecause a foreclosure action is one sounding in equity, a party is not entitled, as a matter of right, to a jury trial.” *Carolina First Bank v. BADD, L.L.C.*, 414 S.C. 289, 293, 778 S.E.2d 106, 108 (2015). Thus, Defendant is not entitled to a jury trial as a matter of right on the foreclosure action.

Defendant’s counterclaim for alleged violation of the Fair Debt Collection Practices Act (“FDCPA”) similarly does not give rise to a trial by jury as a matter of right. A party is “entitled

to a jury trial on his counterclaims in an equitable action *only if* the counterclaims are *legal and compulsory*.” *BADD*, 414 S.C. at 295, 778 S.E.2d at 109 (emphasis added). While a claim for alleged violation of the FDCPA is legal, it is not compulsory when asserted in response to a Complaint for foreclosure. In South Carolina, the test for determining whether a counterclaim is compulsory under Rule 13(a), SCRCP is the “logical relationship test.” *See North Carolina Fed. Sav. & Loan Ass’n v. DAV Corp.*, 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989). In a foreclosure action, there must be a logical relationship between the “*enforceability of the note* which is the subject of the foreclosure action” and the counterclaim alleged. *Id.* (emphasis added); *see also BADD*, 414 S.C. at 295, 778 S.E.2d at 109 (“In a foreclosure action, a counterclaim arises out of the same transaction or occurrence and is thus compulsory, when there is a ‘logical relationship’ between the counterclaim and the enforceability of the guaranty agreement.”); *Blackburn*, 407 S.C. at 331 n.7, 755 S.E.2d at 442 n.7 (“If the defendant’s prevailing on his counterclaim would affect the bank’s right to enforce the note and foreclose on the mortgage, there is a logical relationship between the counterclaim and the underlying suit, and the counterclaim is compulsory.”).

A violation of the FDCPA, even if proven, does not relate to the enforceability of the Note or Mortgage. Instead, the damages available for a violation of the FDCPA² is “an amount equal to the sum of” “any actual damage sustained by such person as a result of such failure,” “such additional damages as the court may allow, but not exceeding \$1,000,” and “the costs of the action, together with a reasonable attorney’s fee as determined by the court.” 15 U.S.C. § 1692k(a). Defendant’s counterclaim itself seeks “attorneys’ fees,³ costs, statutory damages, non-economic,

² Defendant’s counterclaim for alleged violation of the FDCPA fails as a matter of law as outlined in Chase’s Motion for Judgment on the Pleadings filed on July 14, 2017.

³ Defendant, as a *pro se* litigant, would not be entitled to “attorneys’ fees” and the FDCPA does not provide for punitive damages.

punitive and actual damages under The Fair Debt Collection Practices Act.” (Countercl. at p.9, WHEREFORE (2).) Because a violation of the FDCPA, if proven, would not impact the enforceability of the Note and Mortgage, the counterclaim does not bear a logical relationship to the foreclosure and is not compulsory. A counterclaim for alleged violation of the FDCPA is permissive and, having raised in response to a foreclosure, Defendant has waived any right to trial by jury on the claim. See *Blackburn*, 407 S.C. at 329, 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.”).

II. Defendant’s “Response to the Notice of Hearing” Fails to Raise Any Viable Objections to the Hearing.

In addition to the late demand for a jury trial, Defendant also submitted a “Response to Notice of Hearing” in which he outlines reasons why he believes the hearing on the pending motions cannot go forward and the motions must be tried by a jury. Defendant’s arguments are not supported by the South Carolina Rules of Civil Procedure and, therefore, the hearing should proceed as currently noticed.

First, Defendant claims that the above-captioned matter was not referred to the Special Referee and, correspondingly, the Special Referee does not have any authority or jurisdiction to hear the case. A basic review of the case file evidences that these contentions are simply incorrect. A Motion and Order of Reference was signed and entered by “Wanda C. Miles,” Clerk of Court for Chesterfield County and “Ashley N. Johnson,” Deputy Clerk on May 22, 2017. It ordered that the “action be . . . *referred to the Special Referee* for the within county to take the testimony arising under the pleadings and to make his/her findings of fact and conclusions of law, *with authority to rule on all matters related to this action*, including but not limited to, the authority to enter a final

judgment in the cause and said Special Referee shall and must specifically retain jurisdiction to hear and shall and must hear on the merits any issues after sale or judgment[.]” (Order of Ref. at p.1 (emphasis added).) Because the matter is “an action for foreclosure” the referral to the “special referee by order of . . . the clerk of court” was proper. S.C. R. Civ. P. 53(b). Defendant’s consent to the referral was not required. *See id.* “Once referred, the . . . special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.” *Id.* at (c). Accordingly, the referral was proper and the Special Referee has authority and jurisdiction to hear and decide all pending motions.

Second, Defendant looks to Rule 40, SCRCP claiming that he was not provided adequate notice of the hearing because the notice of hearing was served less than thirty (30) days before the date of the hearing. This argument is erroneous. The portion of Rule 40 on which Defendant relies relates to trial. Rule 40(b), SCRCP provides that “[t]rial shall be had no earlier than 30 days from the date the case first appears on the Jury Trial Roster.” S.C. R. Civ. P. 40(b). However, the hearing noticed is a motions hearing. Rule 6(d), SCRCP governs timely notice of a hearing on a motion. It states:

A written motion other than one which may be heard ex parte, and notice of the hearing thereof, shall be served *not later than ten days before* the time specified for the hearing[.]

S.C. R. Civ. P. 6(d) (emphasis added). In this case, the Notice of Hearing was served on August 15, 2017. The hearing is set to take place on September 6, 2017. The ten day notice requirement was clearly met.

Third, and finally, Defendant’s remaining arguments are simply baseless. He fails to identify any violation of Rule 407 of the South Carolina Appellate Court Rules or a basis for disqualification of the Special Referee under Rule 501 of the South Carolina Appellate Court

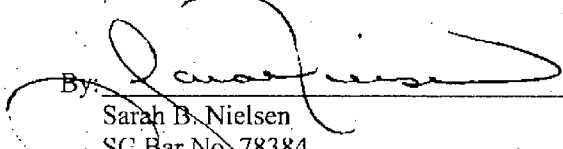
Rules. Defendant lacks any basis in fact for his contention that ex parte communications occurred between Chase's counsel and the Special Referee. And, S.C. Code Ann. § 16-17-735, a criminal statute governing persons impersonating officials or law enforcement officers, is simply inapplicable to the case before the Court.

In sum, the case was properly referred to the Special Referee, the hearing was properly and timely noticed for September 6, 2017, and the remaining arguments as to why the hearing cannot proceed as noticed are baseless.

CONCLUSION

For the foregoing reasons, Chase respectfully requests that the Court strike the demand for jury trial and allow the pending motions to proceed to the properly and timely noticed hearing before the Special Referee on September 6, 2017.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

2017 SEP -7 AM 11:38
Michael C. Riles
CLERK OF COURT
DISTRICT OF COLUMBIA

Attorneys for JPMorgan Chase Bank, National Association

Columbia, South Carolina

September 5, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

JPMorgan Chase Bank,
National Association,

Plaintiff,
vs.

Fritz A. Timmons
Defendant.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-13-00768

**MOTION TO SHOW CAUSE AND TO
STRIKE AND DISREGARD EXEMPTION,
ORDER OF REFERENCE, ORDER/
REFERRED, SECOND FORCLOSURE
ACTION, AND ORDER OF 9/12/2017**

2017 OCT 12 PM 12:58

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

It has recently been brought to the attention of the Defendant that the Plaintiff had filed Certificate of Exemption from Admin Order and a Motion for Order of Reference on 05/22/2017 and an Order/Referred to Master or Special Referee by the Clerk of Court was also filed of which the Defendant was not notified of, These actions are based upon Fraud due to the following Facts:

- (1) the Plaintiff had previously filed a foreclosure Action on 11/30/2015. Violating Administrative Order (Order No. 2009-05-22-01) that Require the above said actions to be filed Prior to a foreclosure Action
- (2) The Plaintiff Failed to file the above said Prior to the Filing of its First Foreclosure action, Ipso Facto, with the a year after the filing of Foreclosure Action the Plaintiff waived its rights to a Special Referee by an Order/Referred by the Clerk of Court, Therefore, any Special Referee must be by Consent of the Defendant and Ordered by the Presiding Judge.
- (3) Foreclosure hearing was held on 05/25/2016 without the Plaintiff's appearance and without argument of which was and still is pending due to the order continuing the action.

Thus the Jurisdiction of the case remains under the Presiding Judge and not the Clerk of Court.

(4) The Plaintiff Failed to take any further action upon its First filing of Foreclosure and Hearing (Failed to plead or otherwise defend its first Action) and filed the above said along with a Second Filing of Foreclosure Violating the Double Jeopardy Clause of the Constitution and placing Fraud upon the Court. Ipso Facto, waived any possible standing or merits to any foreclosure actions.

(5) The Plaintiff Failed to file or serve any type of "Notice of Breach of Agreement" violating and required by Order No. 2009-05-22-01 to proceed with any Foreclosure Action to either its First or Second Action of Foreclosure.

(6) The Plaintiff Failed to show that it was the Actual Owner and Holder of Both the Note and Mortgage at the time of either Filings of Foreclosure or at the Hearing of 05/25/2016 .

(7) The Foreclosure Action is under the Jurisdiction of a Circuit Judge, Ipso Facto, Voids the Order/Referred to Master or Special Referee due to Lack of Jurisdiction of the Clerk. Therefore Voids any Actions and Orders by a Special Referee.

(8) The Plaintiff and not the Clerk of Court arranged a hearing and issued a Notice of Hearing, Ipso Facto, committed Ex parte Communications with the Special Referee Directly Violating Rule 501 SCACR Canon 3

Therefore, with the above said, the Plaintiff had Fraudulently filed the Exemption and Motion a **Year after** a Foreclosure Hearing that is still pending. Ipso Facto, The Clerk of Court did not have Legal Authority to pull the case from under the jurisdiction of a Circuit Judge under which it is pending nor to file the Order/Referred to Master or Special

Referee, Ipso Facto, William O. Spencer, Jr. did not Legally have the Jurisdiction to Conduct any type of hearing as well as ex parte communications with, Ipso Facto, makes the Order of 09/12/2017 Unlawful and Void while violating the Defendants Rights to Due Process.

Therefore the Defendant Motions this Court to Show Cause as to the Actions of the Clerk of Court for issuing the Order/Referred to Master or Special Referee during which the case is being presided over by the Honorable Roger E. Henderson.

The Plaintiff has Claimed that the Defendant had waived his rights to a jury trial, The Facts are that the Plaintiff Failed to serve the Defendant the above said Exemption and Motion and that the Clerk of Court Failed to Serve the Defendant the Order, Ipso Facto, Violating Rule 77d SCRPC (. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by first class mail upon every party affected thereby ... and shall make a note in the case file or docket sheet of the mailing) as well as the Defendants Rights to Due Process by Preventing and Denying the Defendant from defending himself from these actions at the time they was filed. Therefore with the above Failures to Notify and the Failure of the Clerk of Court to Serve the Defendant a Notice for the Hearing on 05/25/2016 ,of which the Defendant found out about only by chance, These Failures to Notify the Defendant of these Actions and Orders is a Direct Violations of Rule 77 Raises the Question as to the Clerk of Court's Willful or Neglectfull.Failing to Notify the Defendant and Depriving him of his Rights of Due Process. It also Raised the Question as to the Possible Collusion of the Clerk to the Petitioner and/or their Counsel.

The filing of a second Foreclosure action over a year after filing of a First Foreclosure Action (of which a Hearing was held and Still Pending) by the Plaintiff also

Violates the Double Jeopardy Clause of the Constitution, Ipso Facto, Voids the above said actions.

Without the Consent of the Petitioner, and the case is being presided over by the Honorable Roger E. Henderson, the Order by William O. Spencer, Jr. is a direct violations of the petitioners Right of Due Process by direct violations of SC Code 14-11-60 of which plainly states "or any other reason for **which cause can be shown the presiding circuit court judge, upon agreement of the parties**" and of Rule 53 SCRPC of which plainly states "In an action **where the parties consent** ... may be referred ... by order of a circuit judge or the clerk of court." In said case, the Order/Referred to Master or Special Referee is based upon Fraud and Filed without Jurisdiction and without the Consent of the Defendant. Ipso Facto, the Certificate of Exemption from Admin Order, Motion for Order of Reference, and the Order/Referred to Master or Special Referee by the Clerk of Court has no merit, standing nor jurisdiction.

Without the Consent of the petitioner and without the Order of the Circuit Court Judge, William O. Spencer, Jr. has acted without Authority as a Judge, Ipso Facto, Committed Barratry (SC Code 16-17-10 (2) Wilfully bring, prosecute or maintain an action, at law or in equity, in any court having jurisdiction within this State and (b) thereby seeks to defraud or mislead the court,) , Committed Conspiracy (SC Code 16-17-410 "... two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means. "), Conspiracy against civil rights (SC Code 16-5-10 " ... attempt by any means, measures, or acts to hinder, prevent, or obstruct a citizen in the free exercise and enjoyment of any right or privilege secured to him by the Constitution and laws of the United States or by the Constitution and laws of this State. ") and SC Code 16-17-735C

(It is unlawful for a person to act without authority under state law as a ... a circuit court judge, a master-in-equity... or other authorized official in determining a controversy, adjudicating the rights or interests of others, or signing a document as though authorized by state law.), Ipso Facto, producing a Shame Legal Process.

SC Code 16-17-735E (3) "Sham legal process" means the issuance, display, delivery, distribution, reliance on as lawful authority, or other use of an instrument that is not lawfully issued, whether or not the instrument is produced for inspection or actually exists, which purports to:

- (a) be a summons, subpoena, judgment, lien, arrest warrant, search warrant, or other order of a court of this State, a law enforcement officer, or a legislative, executive, or administrative agency established by state law;
- (b) assert jurisdiction or authority over or determine or adjudicate the legal or equitable status, rights, duties, powers, or privileges of a person or property; or
- (c) require or authorize the search, seizure, indictment, arrest, trial, or sentencing of a person or property.

With the Above said violations, The Order by William O. Spencer, Jr. is a Direct Violation of SC Code 16-13-10 (" (A) It is unlawful for a person to: (1) falsely make, forge, or counterfeit; cause or procure to be falsely made, forged, or counterfeited; or wilfully act or assist in the false making, forging, or counterfeiting of any writing or instrument of writing; (2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing;"), Ipso Facto, Perjury has been committed in order to Place Fraud upon the Court. Not only has the Plaintiff's Counsel and William O. Spencer, Jr. Violated the Various Rules of Rule 407 SCACR, the notice of hearing was served by

the Plaintiff and not the Clerk of Court, Ipso Facto, Ex parte communications between the Plaintiff's Counsel and William O. Spencer, Jr. had occurred and is a Direct Violation of Rule 501 SCACR Cannon 3 as well as Committed Conspiracy (SC Code 16-17-410)

In Conclusion, With the Plaintiff's Counsel assisting the Plaintiff in and Maintaining the Violations of the above said, The Plaintiff's Counsel has and is continuing to commit Barratry (SC Code 16-17-10) with the assistance of the Clerk of Court and William O. Spencer, Jr. Therefore the Plaintiff's Counsel must be removed and that the Certificate of Exemption from Admin Order, Motion for Order of Reference, Order/Referred to Master or Special Referee, the Second Filing of Foreclosure and the Order of 09/12/2017 by William O. Spencer, Jr. must thereby be Stricken and Discarded.

October 10, 2017

Sincerely,



Fritz A. Timmons, Pro Se
P. O. Box 367
Hartsville, SC 29551

2017 OCT 12 PM 12:58
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

JPMorgan Chase Bank, National Association,

PLAINTIFF,

VS.

Fritz A. Timmons,

DEFENDANT(S).

(150268.00577)

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-13-00768

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

2015 JAN -2 AM 9:16
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

I. INTRODUCTION AND FACTS

On or about June 13, 2001, Fritz A. Timmons (hereinafter referred to as the "Defendant"), executed, and delivered to Hartsville Community Bank, NA a certain Mortgage Note ("Note") in writing wherein and whereby the Defendants promised to pay to the Plaintiff, the principal sum of \$ 76,000.00, together with interest at a rate of 7.25000% per annum on the unpaid balance; said principal and interest being payable in monthly installments initially of \$518.46, commencing on August 1, 2001, and continuing each month thereafter until the Note is fully paid.

In order to secure the payment of said Note, the said Defendant, did on the same date, to wit, June 13, 2001, make, execute and deliver to Mortgage Electronic Registration Systems, Inc., as nominee for Hartsville Community Bank, NA, its successor and assigns, a certain real estate Mortgage ("Mortgage") covering real property located in Chesterfield County, South Carolina as more fully described in said Mortgage.

All that certain piece, parcel or lot of land containing 10.94 acres situate, lying and being located in the County of Chesterfield, State of South Carolina as shown on plat prepared for Gabriel Brown dated October 5, 1993 by Manson Drew Case and recorded in Plat Book 41 at Page 151; said plat being incorporated herein by specific reference thereto.

This being the same property conveyed to Fritz A. Timmons by Deed of Gabriel T. Brown and Amy A. Brown dated May 24, 2001 and recorded May 25, 2001 in Book 387 at Page 1157 in the ROD Office for Chesterfield County.

TMS No. 144 000 000 011

Property address: 1111 Tabernacle Church Road
McBee, SC 29101

A True Copy Attest

Wanda C. Miles

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

The Plaintiff is informed and believes that the Mortgage identified herein and given to the Plaintiff, which is the subject of this foreclosure action, contains a provision wherein it created and granted a security interest in favor of the Plaintiff in the following collateral:

One 2001 Horton ECHO mobile/manufactured home, Serial No. H172739GLR, including any fixtures.

The Plaintiff is also informed and believes that the Defendant is presently in possession of the mobile/manufactured home and the Plaintiff is informed and believes it is entitled to possession and ownership of the mobile/manufactured home as a permanent fixture and/or improvement under the real estate mortgage of the Plaintiff as herein identified and the applicable common and statutory laws of South Carolina.

The mortgage was recorded June 20, 2001 in the Register of Deeds Office for Chesterfield County in Book 350 at Page 1137.

Thereafter, said Mortgage was assigned to JPMorgan Chase Bank, National Association by assignment instrument dated April 2, 2015 and recorded April 20, 2015 in Book 477 at Page 214.

The Mortgage evidences and secures the repayment of money advanced by the Mortgagee to, or on behalf of, the mortgagor and constitutes a purchase money first lien on the Mortgaged premises. Copies of the Note, Mortgage, and Assignment are attached hereto and incorporated herein as Exhibits "1" through "3" respectively.

In and by the terms of said Note and Mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal or interest or any portion thereof when due, or if any of the conditions and requirements in the Mortgage securing the same not be complied with, then the whole principal sum and accrued interest shall, at the option of the legal holder thereof, become at once due and payable without notice, and collectible by foreclosure. In and by the terms of the said Note, it is further provided that the maker thereof shall pay all collection costs, including reasonable attorney's fees, if the said Note be placed in the hands of an attorney for collection after default. Any notice required by the terms of the Mortgage or by state or federal law has been given to the applicable defendant(s) prior to the commencement of the action as evidenced by the attached breach letter incorporated herein as Exhibit "4."

The installments of principal and interest falling due from and after January 1, 2015, have not been paid, thereby placing the Defendant(s) in default under the terms of the Note and Mortgage. Although demand for payment thereof has been made, the Defendant has failed to cure the default.

On November 30, 2015, the Plaintiff filed its Lis Pendens, Summons, and Complaint for Foreclosure. The Defendant has made an appearance in this action by virtue of an answer that will be discussed in this memorandum.

II. DISCUSSION

The Plaintiff has established all of the facts necessary to recover on its cause of action for foreclosure.

Summary judgment is appropriate when "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRPC. With the Plaintiff's initial burden met, the Defendant may not rest upon the mere allegations or denials of their pleadings but must come forward with specific facts showing there is a genuine issue for trial. *Grant v. Mount Vernon Mills, Inc.*, 370 S.C. 138, 142, 634 S.E.2d 15, 17 (Ct. App. 2006).

The Note and Mortgage are direct evidence of the terms and existence of the agreement entered into by the Defendants. See Exhibits "1" and "2". Further bolstering its motion, the Plaintiff submits an Affidavit of Indebtedness (attached hereto and incorporated herein as Exhibit "5"). The Plaintiff's Affidavit clearly establishes the breach of the Note and Mortgage, and the amount and measures of damages sustained by the Plaintiff as a result of the Defendant's breach. Further, the Plaintiff is entitled to recover from the Defendant reasonable attorney's fees and Court costs incurred in bringing this action, and as evidence of the costs expended by the Plaintiff in this action, the Plaintiff submits an Affidavit of Attorney's Fees and Costs to the Court (attached hereto and incorporated herein as Exhibit "6").

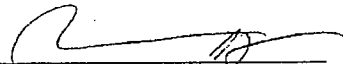
With copies of the Note, Mortgage, Assignment, and the Plaintiff's Affidavit, the essential elements and facts of the Plaintiff's cause of action for foreclosure have been established. See *U.S. Bank Trust Nat. Ass'n v. Bell*, 385 S.C. 364, 374-75, 684 S.E.2d 199, 205 (Ct. App. 2009). As such, there are no material issues of fact and summary judgment is appropriate.

III. CONCLUSION

Plaintiff has clearly established the essential elements necessary to prevail on its action for foreclosure. The Plaintiff has further established that the Answer filed by the Defendant fails to constitute a defense to the Plaintiff's foreclosure action. When taken as a whole, no material issue of fact remains to be decided. Thus, when no issue of material fact exists, the appropriate action is Summary Judgment. *Spencer v. Miller*, 259 S.C. 453, 192 S.E.2d 863 (1972). Accordingly, the Plaintiff prays that the Court award it Summary Judgment as to its cause of action and the relief requested in its Complaint.

ATTORNEY SIGNATURE TO FOLLOW

SCOTT AND CORLEY, P.A.

By: 

Ronald C. Scott (rons@scottandcorley.com), SC Bar #4996
Reginald P. Corley (reggiec@scottandcorley.com), SC Bar #69453
Angelia J. Grant (angig@scottandcorley.com), SC Bar #78334
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Matthew E. Rupert (matthewr@scottandcorley.com), SC Bar #100740
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Louise M. Johnson (ccasiej@scottandcorley.com), SC Bar #16586
Tasha B. Thompson (tashat@scottandcorley.com), SC Bar #76415

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200
Columbia, SC 29204
803-252-3340

December 8 2017

60399301

June 13, 2001
[Date]

HARTSVILLE
[City]

SC
[State]

1111 TABERNACLE CHURCH ROAD, HARTSVILLE, SC 29550
[Property Address]



1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 76,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is HARTSVILLE COMMUNITY BANK, NA

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.2500 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on August 1, 2001. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on July 1, 2031, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 644 SOUTH FOURTH STREET, HARTSVILLE, SC 29550 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 518.46

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

MULTISTATE FIXED RATE NOTE-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

SN (2003) NEW 0508 Form 3200 1/01
VMP MORTGAGE FORMS - (2003) 121-7221
Page 1 of 3 Initials: _____

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, SC

2018 JAN -2 AM 9:16

A True Copy Attest

Wanda C. Miles
EXHIBIT
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

5. LOAN CHARGES

If a law which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.0000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

LTIMONS, FRIT

4442 - 5N (0004)

Page 2 of 3

Form 3200 1/01
bills: _____

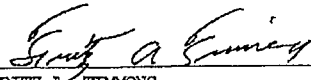
10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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

 (Seal) _____ (Seal)
FRITZ A. TIMMONS -Borrower -Borrower
308-70-5327

_____- (Seal) _____ (Seal)
-Borrower -Borrower

_____- (Seal) _____ (Seal)
-Borrower -Borrower

_____- (Seal) _____ (Seal)
-Borrower -Borrower

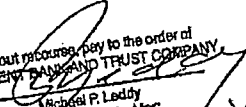
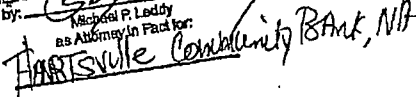
[Sign Original Only]

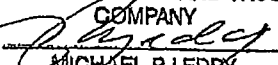
1TIMMONS, FRIT

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Page 3 of 3

Without recourse, pay to the order of: Form 3200 1/01

Without recourse, pay to the order of
CRESCENT BANK AND TRUST COMPANY
By: 
Michael P. Leddy
as Attorney in Fact for:
 HARTSVILLE Community Bank, NA

CRESCENT BANK AND TRUST
COMPANY
By: 
MICHAEL P. LEDDY
EXEC. VICE PRESIDENT

Return To:
RETURN TO: CRESCENT MFG.
SERVICES
5881 GLENRIDGE DR. suite
170, ATLANTA, GA 30328

Prepared By:
RAQUEL SAPIETON

FILED
CLERK OF COURT

01 JUN 20 AM 11 10

002882

CHESTERFIELD COUNTY, SC
PAUL V. CANNARELLA
ATTORNEY AT LAW
P.O. BOX 38
HARTSVILLE, SC 29551

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MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated June 13, 2001 together with all Riders to this document.
(B) "Borrower" is FRITZ A. TIMMONS

see attached description

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2028, Flint, MI 48501-2028, tel. (888) 679-MERS.

1TIMMONS, FRITZ 1000228526
SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS Form 3041 1/01

6A(SC) (0009)

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VMP MORTGAGE FORMS • (800)521-7291

Wanda C. Ellis
CLERK OF COURT
CHESTERFIELD COUNTY, SC

2018 JAN -2 AM 9:16

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PAUL V. CANNARELLA
ATTORNEY AT LAW
P.O. BOX 38
HARTSVILLE, SC 29551

A True Copy Attest

Wanda Ellis
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

(D) "Lender" is HARTSVILLE COMMUNITY BANK, NA

Lender is a NATIONAL BANK
organized and existing under the laws OF THE UNITED STATES
Lender's address is 644 SOUTH FOURTH STREET, HARTSVILLE, SC 29550

(E) "Note" means the promissory note signed by Borrower and dated June 13, 2001
The Note states that Borrower owes Lender Seventy Six Thousand and no/100

Dollars

(U.S. \$ 76,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than July 1, 2031

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

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges
due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following
Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☐ Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,
non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other
charges that are imposed on Borrower or the Property by a condominium association, homeowners
association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by
check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic
instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit
or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller
machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse
transfers.

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

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid
by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i)
damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the
Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the
value and/or condition of the Property.

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

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the
Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its
implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to
time, or any additional or successor legislation or regulation that governs the same subject matter. As used

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In this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the

COUNTY

of

DARLINGTON

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

Parcel ID Number:
1111 TABERNACLE CHURCH ROAD
HARTSVILLE
("Property Address"):

which currently has the address of

[Street]
[City], South Carolina 29550 [Zip Code]

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 8; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

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Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attach priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the Lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

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lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. **Property Insurance.** Borrower shall keep the Improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

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the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

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attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

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(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

ITIMONS, ERIT

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001146

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

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requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

ITIMONS, FRIT

1220-BA(SC) (0005)

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10/11/99

Form 3041 7/01

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. Release. Upon Payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall by any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

111150
LITIMONS, FRIT

FORM 6A(SC) (0005)

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Initials

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

Patricia Sparrow

Fritz A. Timmons (Seal)
FRITZ A. TIMMONS -Borrower

Paul Timmons

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

11TIMMONS, FRITZ

U212-5A(SC) (2005)

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Form 3041 1/01

STATE OF SOUTH CAROLINA,

County of Darlington

Personally appeared before me Paul Carruth
and made oath that he/she saw the within-named Borrower sign, seal, and as his/her/their act and deed,
deliver the within written Mortgage; and that he/she with Patricia Sparrow
witnessed the Execution thereof.

Paul Carruth

Sworn to before me this 13 day of Jun 2001

My Commission Expires: 8-20-03

Patricia Sparrow
Notary Public for South Carolina

11TIMMONS, FRIT

0219-6A(SC) (0005)

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Article: _____

Form 3041 1/01

0011352

All that certain piece, parcel or lot of land containing 10.94 acres situate, lying and being located in the County of Chesterfield, State of Sout Carolina as shown on plat prepared for Gabriel Brown dated October 5, 1993 by Manson Drew Case and recorded in Plat Book 41 at Page 151; said plat being incorporated herein by specific reference thereto.

001138



Chase (Mail Code OH4-7399)
P.O. Box 183205
Columbus, OH 43218
For Undeliverable Mail Only

02/25/2015

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2015 JAN -2 AM 9:16

032490 - 1 of 3 NSPCHDLA-ZA J5960818 0000000

FRITZ A TIMMONS
P O BOX 367
HARTSVILLE, SC 29551

Acceleration Warning (Notice of Intent to Foreclose)

Account: [REDACTED]

Property Address: 1111 TABERNACLE CHURCH RO
HARTSVILLE, SC 29550 (the "Property")

Dear FRITZ A TIMMONS:

Under the terms of the Mortgage or Deed of Trust ("Security Instrument") securing your Loan, JPMorgan Chase Bank, N.A. ("Chase") hereby notifies you of the following:

1. You are in default because you have failed to pay the required monthly installments commencing with the payment due 01/01/2015.
2. As of 02/25/2015, total monthly payments (including principal, interest and escrow if applicable), late fees, insufficient funds (NSF) fees, and other fees and advances due under the terms of your loan documents in the total amount of \$1,343.88 are past due. This past-due amount is itemized below. If applicable, your account may have additional escrow amounts that have been paid out and are due on the Loan. If you have any questions about the amounts detailed below, please call us as soon as possible at 1-800-848-9380.

Total Monthly Payments	\$1,292.04
Late Fees	\$51.84
NSF Fees	\$0.00
Other Fees ¹	\$0.00
Advances ¹	\$0.00
Amount Held in Suspense	\$0.00

¹Other Fees and Advances include those amounts assessed in accordance with your loan documents, and/or permitted by applicable law, or that were authorized for services rendered. If you need additional information regarding any of these amounts, please call us at one of the numbers below.

A True Copy Attest:

Wanda C. Miles

You are also responsible for paying any amounts that become due from the date of this letter through the expiration date set forth in Paragraph 3 below. These amounts may include, but are not limited to, taxes, insurance, inspection fees, and other fees, as permitted by applicable law.

CLERK OF COURT C.P. & G.I.
CHESTERFIELD COUNTY, S.C.

EXHIBIT
"4"

CR37722
BR160_BW160

If you have any reason to dispute the past-due amount listed above, or if you believe your Loan is current, please contact us at the telephone number provided below.

3. Action required to cure the default: You must pay the Total Monthly Payments listed in Paragraph 2 within 35 days from the date of this notice in order to cure this default. All late fees, NSF fees, and other fees and advances are still valid and will need to be repaid under the terms of your loan documents.
4. If you fail to cure the default on or before 04/01/2015, Chase may accelerate the maturity of the Loan, declare all sums secured by the Security Instrument immediately due and payable, and commence foreclosure by judicial proceeding and conduct a sale of the Property. If this happens, Chase will be entitled to collect its expenses incurred in pursuing the remedies provided in the Security Instrument, which may include, but not be limited to, allowable foreclosure/attorney fees, and other expenses permitted by your loan documents or applicable law.
5. You have the right to reinstate after acceleration of the Loan and the right to assert in the foreclosure proceeding the nonexistence of a default, or any other defense to acceleration and foreclosure. However, the amount required to reinstate may be higher than what is owed under Paragraph 2 above, due to additional fees and charges that we are entitled to collect under the Loan, including attorney fees, if permitted by law, related to any foreclosure action we initiate.
6. Kindly remit the total amount due, shown in Paragraph 2 above, to the remittance address listed below. Please note that Chase policy requires certified funds if two insufficient funds (NSF) payments have been received in the last six months. In this event, Chase will not accept a Direct Check, FastPay or SpeedPay. Payments cannot be made at Chase retail bank branches. Please refer to the addresses below for payment information or contact us if you have any questions.

Regular Mail:

CHASE
PO BOX 78420
PHOENIX, AZ 85062-8420

Overnight Mail:

CHASE
PO BOX 78420 1820 EAST SKY HARBOR CIRCLE SOUTH
PHOENIX, AZ 85034-9700

Except as required by law, we are under no obligation to accept less than the full amount owed. If you send us less than the full amount owed, we may in our sole discretion apply such partial payment to your Loan without waiving any default or waiving our right to accelerate the Loan and continue with foreclosure proceedings in accordance with Paragraph 4 above.

7. If you are unable to pay the amount past due, Chase has a variety of mortgage assistance options that might help you resolve your default and keep your home; however, we need to talk with you to discuss these options and determine which of them might be appropriate for your circumstances. Please call us as soon as possible at 1-800-848-9380.
8. While the Loan remains in default, we will perform certain tasks to protect our interest in the Property, including visits to your Property at regular intervals during the default. This will be done to determine, as of the date of the inspection, the property condition, occupancy status, and possibly your plans for curing the default and paying this Loan on time. You should anticipate that any costs incurred by Chase will be added to the amount you now owe if permitted by your loan documents or applicable law.

CR37722
BR160_BW160

Here's where to look for help

You can find additional resources below to help you with your mortgage:

- The Homeowners HOPE Hotline can take your call anytime at 1-888-995-HOPE (1-888-995-4673).
- The U.S. Department of Housing and Urban Development (HUD) has a list of agencies that offer free mortgage-assistance counseling. For a list of agencies, call HUD at 1-800-569-4287, or 1-800-877-8339 for TTY services, or go to hud.gov and, under the "Resources" tab, select "Foreclosure Avoidance Counseling."

If you have any questions, please call us at one of the numbers below.

Sincerely,

Chase
1-800-848-9380
1-800-582-0542 TTY
www.chase.com

Enclosed:

- Federal Trade Commission Pamphlet

Important Legal Information

This communication is an attempt to collect a debt and any information obtained will be used for that purpose.

If you are represented by an attorney, please refer this letter to your attorney and provide us with the attorney's name, address, and telephone number.

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, a secured party retains rights under its security instrument, including the right to foreclose its lien.

CR37722
BR160_BW160
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Important Notice To Servicemembers And Their Dependents

If you or any occupant of your home are or recently were on active duty or active service, you may be eligible for benefits and protections under the federal Servicemembers Civil Relief Act (SCRA). This includes protection from foreclosure or eviction. You may also be eligible for benefits and protections under state law or Chase policy. SCRA and state Military benefits and protections also may be available if you are the dependent of an eligible Servicemember.

Eligible service may include:

- Active duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard, or
- Active service as a commissioned officer of the National Oceanic and Atmospheric Administration, or
- Active service as a commissioned officer of the Public Health Service, or
- Service with the forces of a nation with which the United States is allied in a war or Military action, or
- Service with the National Guard of a state militia under a state call of duty, or
- Any period when you are absent from duty because of sickness, wounds, leave, or other lawful cause.

For more information, please call Chase Military Services at 1-877-469-0110.

An Important Reminder For All Our Customers

As stated in the "Questions and Answers for Borrowers about the Homeowner Affordability and Stability Plan" distributed by the Obama Administration, "Borrowers should beware of any organization that attempts to charge a fee for housing counseling or modification of a delinquent loan, especially if they require a fee in advance." Do not sign over the deed to your property to any organization or individual unless you are working directly with your mortgage company to forgive your debt. Never make a mortgage payment to anyone other than your mortgage company without their approval. Loan modification scams should be reported to PreventLoanScams.org, or by calling 1-888-995-HOPE (1-888-995-4673). We offer loan modification assistance free of charge (i.e., no modification fee required). Please call us immediately at 1-866-550-5705 to discuss your options. The longer you delay, the fewer options you may have.

BR160

An important message from the Federal Trade Commission

A note to Homeowners



Facing foreclosure? Scammers are targeting people having trouble paying their mortgages. Some claim to be able to "rescue" homeowners from foreclosures, while others promise loan modifications – for a fee. The Federal Trade Commission, the nation's consumer protection agency, wants you to know how to avoid scams that could make your housing situation go from bad to worse.

Don't Get Hit by a Pitch.

"We can stop your foreclosure!"

"97% success rate!"

"Guaranteed to save your home!"

These kinds of claims are the tell-tale signs of a foreclosure rip-off. Steer clear of anyone who offers an easy out.

Don't Pay for a Promise.

Don't pay any business, organization, or person who promises to prevent foreclosure or get you a new mortgage. These so-called "foreclosure rescue companies" claim they can help save your home, but they're out to make a quick buck. Some may request hefty fees in advance – and then stop returning your calls. Others may string you along before disclosing their charges. Cut off all dealings if someone insists on a fee.

Send Payments Directly.

Some scammers offer to handle financial arrangements for you, but then just pocket your payment. Send your mortgage payments **ONLY** to your mortgage servicer.

Don't Pay for a Second Opinion.

Have you applied for a loan modification and been turned down? Never pay for a "second opinion."

Imitations = Frustrations.

Some con artists use names, phone numbers, and websites to make it look like they're part of the government. If you want to contact a government agency, type the web address directly into your browser and look up any address you aren't sure about. Use phone numbers listed on agency websites or in other reliable sources, like the Blue Pages in your phone directory. Don't click on links or open any attachments in unexpected emails.

Talk to a HUD-Certified Counseling Agency - For Free.

If you're having trouble paying your mortgage or you've already gotten a delinquency notice, free help is a phone call away. Call 1-888-995-HOPE for free personalized advice from housing counseling agencies certified by the U.S. Department of Housing and Urban Development (HUD). This national hotline – open 24/7 – is operated by the Homeownership Preservation Foundation, a nonprofit member of the HOPE NOW Alliance of mortgage industry members and HUD-certified counseling agencies. For free guidance online, visit www.hopenow.com. For free information on the President's plan to help homeowners, visit www.makinghomeaffordable.gov.



Federal Trade Commission
fto.gov/MoneyMatters

Call

1-888-995-HOPE

for free personalized guidance from housing counseling agencies certified
by the U.S. Department of Housing and Urban Development. The
Homeowner's HOPE™ Hotline - open 24/7 - is operated by the
Homeownership Preservation Foundation, a nonprofit member of the
HOPE NOW Alliance of mortgage industry members and
HUD-certified counseling agencies. Or visit

www.hopenow.com

For free information on the President's plan to help homeowners, visit

www.makinghomeaffordable.gov





Chase (Mail Code OH4-7399)
P.O. Box 183205
Columbus, OH 43218
For Undeliverable Mail Only

02/25/2015

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FRITZ A TIMMONS
1111 TABERNACLE CHURCH RO
HARTSVILLE, SC 29550

Acceleration Warning (Notice of Intent to Foreclose)

Account: [REDACTED]
Property Address: 1111 TABERNACLE CHURCH RO
HARTSVILLE, SC 29550 (the "Property")

Dear FRITZ A TIMMONS:

Under the terms of the Mortgage or Deed of Trust ("Security Instrument") securing your Loan, JPMorgan Chase Bank, N.A. ("Chase") hereby notifies you of the following:

1. You are in default because you have failed to pay the required monthly installments commencing with the payment due 01/01/2015.
2. As of 02/25/2015, total monthly payments (including principal, interest and escrow if applicable), late fees, insufficient funds (NSF) fees, and other fees and advances due under the terms of your loan documents in the total amount of \$1,343.88 are past due. This past-due amount is itemized below. If applicable, your account may have additional escrow amounts that have been paid out and are due on the Loan. If you have any questions about the amounts detailed below, please call us as soon as possible at 1-800-848-9380.

Total Monthly Payments	\$1,292.04
Late Fees	\$51.84
NSF Fees	\$0.00
Other Fees ¹	\$0.00
Advances ¹	\$0.00
 Amount Held in Suspense	 \$0.00

¹Other Fees and Advances include those amounts assessed in accordance with your loan documents, and/or permitted by applicable law, or that were authorized for services rendered. If you need additional information regarding any of these amounts, please call us at one of the numbers below.

You are also responsible for paying any amounts that become due from the date of this letter through the expiration date set forth in Paragraph 3 below. These amounts may include, but are not limited to, taxes, insurance, inspection fees, and other fees, as permitted by applicable law.

CR37722
BR160_BW160

If you have any reason to dispute the past-due amount listed above, or if you believe your Loan is current, please contact us at the telephone number provided below.

3. Action required to cure the default: You must pay the Total Monthly Payments listed in Paragraph 2 within 35 days from the date of this notice in order to cure this default. All late fees, NSF fees, and other fees and advances are still valid and will need to be repaid under the terms of your loan documents.
4. If you fail to cure the default on or before 04/01/2015, Chase may accelerate the maturity of the Loan, declare all sums secured by the Security Instrument immediately due and payable, and commence foreclosure by judicial proceeding and conduct a sale of the Property. If this happens, Chase will be entitled to collect its expenses incurred in pursuing the remedies provided in the Security Instrument, which may include, but not be limited to, allowable foreclosure/attorney fees, and other expenses permitted by your loan documents or applicable law.
5. You have the right to reinstate after acceleration of the Loan and the right to assert in the foreclosure proceeding the nonexistence of a default, or any other defense to acceleration and foreclosure. However, the amount required to reinstate may be higher than what is owed under Paragraph 2 above, due to additional fees and charges that we are entitled to collect under the Loan, including attorney fees, if permitted by law, related to any foreclosure action we initiate.
6. Kindly remit the total amount due, shown in Paragraph 2 above, to the remittance address listed below. Please note that Chase policy requires certified funds if two insufficient funds (NSF) payments have been received in the last six months. In this event, Chase will not accept a Direct Check, FastPay or SpeedPay. Payments cannot be made at Chase retail bank branches. Please refer to the addresses below for payment information or contact us if you have any questions.

Regular Mail: CHASE
PO BOX 78420
PHOENIX, AZ 85062-8420

Overnight Mail: CHASE
PO BOX 78420 1820 EAST SKY HARBOR CIRCLE SOUTH
PHOENIX, AZ 85034-9700

Except as required by law, we are under no obligation to accept less than the full amount owed. If you send us less than the full amount owed, we may in our sole discretion apply such partial payment to your Loan without waiving any default or waiving our right to accelerate the Loan and continue with foreclosure proceedings in accordance with Paragraph 4 above.

7. If you are unable to pay the amount past due, Chase has a variety of mortgage assistance options that might help you resolve your default and keep your home; however, we need to talk with you to discuss these options and determine which of them might be appropriate for your circumstances. Please call us as soon as possible at 1-800-848-9380.
8. While the Loan remains in default, we will perform certain tasks to protect our interest in the Property, including visits to your Property at regular intervals during the default. This will be done to determine, as of the date of the inspection, the property condition, occupancy status, and possibly your plans for curing the default and paying this Loan on time. You should anticipate that any costs incurred by Chase will be added to the amount you now owe if permitted by your loan documents or applicable law.

CR37722
BR160_BW160

Here's where to look for help

You can find additional resources below to help you with your mortgage:

- The Homeowners HOPE Hotline can take your call anytime at 1-888-995-HOPE (1-888-995-4673).
- The U.S. Department of Housing and Urban Development (HUD) has a list of agencies that offer free mortgage-assistance counseling. For a list of agencies, call HUD at 1-800-569-4287, or 1-800-877-8339 for TTY services, or go to hud.gov and, under the "Resources" tab, select "Foreclosure Avoidance Counseling."

If you have any questions, please call us at one of the numbers below.

Sincerely,

Chase
1-800-848-9380
1-800-582-0542 TTY
www.chase.com

Enclosed:

- Federal Trade Commission Pamphlet

Important Legal Information

This communication is an attempt to collect a debt and any information obtained will be used for that purpose.

If you are represented by an attorney, please refer this letter to your attorney and provide us with the attorney's name, address, and telephone number.

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only and does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, a secured party retains rights under its security instrument, including the right to foreclose its lien.

CR37722

BR160_BW160

032491 - 2 of 3 NSP0HDLA-ZA J59S0816-000000

Important Notice To Servicemembers And Their Dependents

If you or any occupant of your home are or recently were on active duty or active service, you may be eligible for benefits and protections under the federal Servicemembers Civil Relief Act (SCRA). This includes protection from foreclosure or eviction. You may also be eligible for benefits and protections under state law or Chase policy. SCRA and state Military benefits and protections also may be available if you are the dependent of an eligible Servicemember.

Eligible service may include:

- Active duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard, or
- Active service as a commissioned officer of the National Oceanic and Atmospheric Administration, or
- Active service as a commissioned officer of the Public Health Service, or
- Service with the forces of a nation with which the United States is allied in a war or Military action, or
- Service with the National Guard of a state militia under a state call of duty, or
- Any period when you are absent from duty because of sickness, wounds, leave, or other lawful cause.

For more information, please call Chase Military Services at 1-877-469-0110.

An Important Reminder For All Our Customers

As stated in the "Questions and Answers for Borrowers about the Homeowner Affordability and Stability Plan" distributed by the Obama Administration, "Borrowers should beware of any organization that attempts to charge a fee for housing counseling or modification of a delinquent loan, especially if they require a fee in advance." Do not sign over the deed to your property to any organization or individual unless you are working directly with your mortgage company to forgive your debt. Never make a mortgage payment to anyone other than your mortgage company without their approval. Loan modification scams should be reported to PreventLoanScams.org, or by calling 1-888-995-HOPE (1-888-995-4673). We offer loan modification assistance free of charge (i.e., no modification fee required). Please call us immediately at 1-866-550-5705 to discuss your options. The longer you delay, the fewer options you may have.

BR160

An important message from the Federal Trade Commission

A note to Homeowners



Facing foreclosure? Scammers are targeting people having trouble paying their mortgages. Some claim to be able to "rescue" homeowners from foreclosures, while others promise loan modifications – for a fee. The Federal Trade Commission, the nation's consumer protection agency, wants you to know how to avoid scams that could make your housing situation go from bad to worse.

Don't Get Hit by a Pitch.

"We can stop your foreclosure!"

"97% success rate!"

"Guaranteed to save your home!"

These kinds of claims are the tell-tale signs of a foreclosure rip-off. Steer clear of anyone who offers an easy out.

Don't Pay for a Promise.

Don't pay any business, organization, or person who promises to prevent foreclosure or get you a new mortgage. These so-called "foreclosure rescue companies" claim they can help save your home, but they're out to make a quick buck. Some may request hefty fees in advance – and then stop returning your calls. Others may string you along before disclosing their charges. Cut off all dealings if someone insists on a fee.

Send Payments Directly.

Some scammers offer to handle financial arrangements for you, but then just pocket your payment. Send your mortgage payments **ONLY** to your mortgage servicer.

Don't Pay for a Second Opinion.

Have you applied for a loan modification and been turned down? Never pay for a "second opinion."

Imitations = Frustrations.

Some con artists use names, phone numbers, and websites to make it look like they're part of the government. If you want to contact a government agency, type the web address directly into your browser and look up any address you aren't sure about. Use phone numbers listed on agency websites or in other reliable sources, like the Blue Pages in your phone directory. Don't click on links or open any attachments in unexpected emails.

Talk to a HUD-Certified Counseling Agency - For Free.

If you're having trouble paying your mortgage or you've already gotten a delinquency notice, free help is a phone call away. Call 1-888-995-

-HOPE for free personalized advice from housing counseling agencies certified by the U.S. Department of Housing and Urban Development (HUD). This national hotline – open 24/7 – is operated by the Homeownership Preservation Foundation, a nonprofit member of the HOPE NOW Alliance of mortgage industry members and HUD-certified counseling agencies. For free guidance online, visit www.hopenow.com. For free information on the President's plan to help homeowners, visit www.makinghomeaffordable.gov.



Federal Trade Commission
fto.gov/MoneyMatters

Call

1-888-995-HOPE

for free personalized guidance from housing counseling agencies certified
by the U.S. Department of Housing and Urban Development. The
Homeowner's HOPE™ Hotline - open 24/7 - is operated by the
Homeownership Preservation Foundation, a nonprofit member of the
HOPE NOW Alliance of mortgage industry members and
HUD-certified counseling agencies. Or visit

www.hopenow.com

For free information on the President's plan to help homeowners, visit

www.makinghomeaffordable.gov



STATE OF SOUTH CAROLINA COUNTY OF <u>CHESTERFIELD</u> JPMorgan Chase Bank, National Association PLAINTIFF VS FRITZ A. TIMMONS DEFENDANT(S)	IN THE COURT OF COMMON PLEAS CASE NO. <u>2015-CP-13-00768</u> AFFIDAVIT OF INDEBTEDNESS Wanda C. Miles CLERK OF COURT CHESTERFIELD COUNTY, S.C.
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2018 JAN -2 AM 9:17

Nicole L Smiley, being first duly sworn on oath, states as follows:

1. I am a Authorized Signer of JPMorgan Chase Bank, National Association ("Chase"), and I am authorized to make this affidavit on behalf of Chase. Chase is the loan servicer and the Plaintiff in this action.
2. I make this affidavit based on my review of Chase's business records, as more fully described below. I am over the age of 18 and competent to testify as to the matters contained in this affidavit.
3. A note dated 6/13/2001, in the original principal amount of \$76,000.00 (the "Note") was signed by or on behalf of TIMMONS, FRITZ A ("Borrower"), and was secured by a mortgage on a property located at 1111 TABERNACLE CHURCH ROAD, HARTSVILLE, SC 29550 (the "Mortgage"). The Note and Mortgage, and if selected below, the Loan Modification Agreement are collectively referred to as the "Loan Documents."

Borrower: TIMMONS, FRITZ A
 Property Address: 1111 TABERNACLE CHURCH ROAD, HARTSVILLE, SC 29550
 County: CHESTERFIELD
 Loan Number: XXXXXX4764

A True Copy Attest

Wanda C. Miles
 CLERK OF COURT
 CHESTERFIELD COUNTY, SC

1 of 4

Reviewer ID: Nicole_Smiley_2017-11-10_10:07:44

Supplemental ROA_0188

4. As a mortgage servicer, Chase collects payments from Borrower and maintains up-to-date electronic records concerning the loans it services in its electronic record-keeping system, known as Mortgage Servicing Package ("MSP").

5. I have access to the business records of Chase, including the business records for and relating to the Borrower's loan. I make this affidavit based upon my review of those records relating to the loan and from my own personal knowledge of how they are kept and maintained. The loan records are maintained by Chase in the course of its regularly conducted business activities and are made at or near the time of the event, by or from information transmitted by a person with knowledge. It is the regular practice to keep such records in the ordinary course of a regularly conducted business activity. Chase's records that relate to the loan that I reviewed and relied upon for the statements made in this Affidavit include images of the Note and Chase's electronic servicing system, MSP.

6. Plaintiff, directly or through its agent, is in possession of the original Note.

7. Borrower failed to make the payment that was due for 2/1/2015 under the Loan Documents and has failed to make subsequent payments to bring the loan current, and the entire loan balance is now due and owing to Plaintiff.

8. As of 11/9/2017, Plaintiff seeks to recover the following itemized sums of money that are due and owing under the Loan Documents, exclusive of attorney's fees and costs in this action:

Principal Balance \$ 59,296.69

Borrower: TIMMONS, FRITZ A
Property Address: 1111 TABERNACLE CHURCH ROAD, HARTSVILLE, SC 29550
County: CHESTERFIELD
Loan Number: XXXXXX4764

Reviewer ID: Nicole_Smiley_2017-11-10_10:07:44

V1.0

2 of 4

Interest Due through <u>10/31/2017</u>	\$ <u>12,180.50</u>
Pre-Acceleration Late Charges	\$ <u>103.68</u>
Escrow	
Escrow Deficiency-Real Estate Taxes for the year <u>2016</u>	\$ <u>238.04</u>
Escrow Deficiency-Real Estate Taxes for the year <u>2015</u>	\$ <u>225.58</u>
Escrow Deficiency-Real Estate Taxes for the year <u>2014</u>	\$ <u>0.00</u>
Previous Escrow Deficiency Real Estate Taxes (cumulative)	\$ <u>0.00</u>
Hazard Insurance	\$ <u>4,104.00</u>
Mortgage Insurance Premium / Private Mortgage Insurance	\$ <u>0.00</u>
Escrow Credits	\$ <u>(982.11)</u>
Total Escrow	\$ <u>3,585.51</u>
Broker's Price Opinion/Appraisals	\$ <u>0.00</u>
Property Preservation	\$ <u>0.00</u>
Previous Bankruptcy Fees/Costs	\$ <u>0.00</u>
Property Inspection Fees	\$ <u>336.00</u>
Suspense	\$ <u>(220.18)</u>
Miscellaneous Charges/Credits as Follows:	
	\$ <u>0.00</u>
	\$ <u>0.00</u>
	\$ <u>0.00</u>
	\$ <u>0.00</u>
	\$ <u>0.00</u>

TOTAL \$75,282.20

Borrower: TIMMONS, FRITZ A
Property Address: 1111 TABERNACLE CHURCH ROAD, HARTSVILLE, SC 29550
County: CHESTERFIELD
Loan Number: XXXXXX4764

V1.0

Reviewer ID: Nicole_Smiley_2017-11-10_10:07:44

3 of 4

Supplemental ROA_0190

Interest will continue to accrue in accordance with the terms of the Loan Documents.

The loan has a fixed interest rate of 7.25000%, which is \$11.78 per Diem.

Additional escrow advances and/or fees for inspections, property preservations or otherwise to protect the property may be incurred after the date of this affidavit.

BY: Nicole L. Smiley
Name: Nicole L. Smiley
Date: Nov 10, 2017
Title: Authorized Signer, JPMorgan Chase Bank, N.A.

Subscribed and sworn to before me in said County
this 10 day of November, 2017

By: Nicole L. Smiley

Catherine M. Bertsch
Notary Public Catherine M. Bertsch

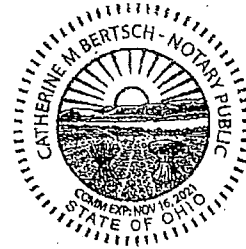
State of OHIO

County of FRANKLIN

My Commission expires: Nov 16, 2021

Personally Known 1 OR Produced Identification

Type of identification produced:



Borrower: TIMMONS, FRITZ A

Property Address: 1111 TABERNACLE CHURCH ROAD, HARTSVILLE, SC 29550

County: CHESTERFIELD

Loan Number: XXXXXX4764

VLS

Reviewer ID: Nicole_Smiley_2017-11-10_10:07:44

4 of 4

Summary

Loan Information

Loan Number	4764
Due Date of Loan	2/1/2015
Investor Number	530
Mortgagor Name	TIMMONS, FRITZ A
Co-Mortgagor Name	
Property Address	1111 TABERNACLE CHURCH ROAD
Property City	HARTSVILLE
Property State	SC
Property Zip	29550
Note Date	6/13/2001
Orig Loan Amount	76,000.00
Principal Balance	59,296.69
Interest From	1/1/2015
Per Diem/Annum Amount	11.78
Good Through Date	10/31/2017
MSP Read Date	11/9/2017
Annual Percentage Rate	7.25000
Total Interest	12,180.50
Pre-Acceleration Late Charge	103.68
Foreclosure Start Date	5/29/2015
Escrow Advance	3,585.51
Escrow Balance	0.00
MTGR Rec Corp Adv Balance	336.00
MGT Insurance(FHA/PMI)	0.00
Total Escrow	3,585.51
Payments to Escrow	-982.11
Suspense Balance	220.18
Restricted Escrow	0.00
Misc Charges/Credits 2	0.00
Misc Charges/Credits 3	0.00
Misc Charges/Credits 4	0.00
Total Amount Due	75,282.20

Reviewer ID: Nicole_Smiley_2017-11-10_10:07:44

Recoverable Corporate Advances

Type	Amount
BPO/Appraisal	0.00
Property Preservation	0.00
Prev Bankruptcy Fees/Costs	0.00
Property Inspection	336.00
FC Fees/Costs	0.00
Misc Fees/Costs	0.00

Escrow Advances

Type	Year	Amount
Escrow Taxes 1	2016	238.04
Escrow Taxes 2	2015	225.58
Escrow Taxes 3	2014	0.00
Hazard Insurance 1	2017	1368.00
Hazard Insurance 2	2016	1368.00
Hazard Insurance 3	2015	1368.00

Reviewer ID: Nicole_Smiley_2017-11-10_10:07:44

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

JPMorgan Chase Bank, National Association,

PLAINTIFF,

VS.

Fritz A. Timmons,

DEFENDANT(S).

(150268.00577)

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-13-00768

NOTICE OF HEARING

2019 JAN 23 AM 11:00
CLERK OF COURT
CHESTERFIELD COUNTY, SC

A hearing on Plaintiff's Motion for Summary Judgment been set in the above-referenced matter for **January 29, 2018 at 11:00 AM**, before the Honorable William O. Spencer, Jr., Special Referee for Chesterfield County, at 301 West Main Street, Chesterfield, SC 29709, for the purpose of reviewing affidavit testimony, findings of facts and conclusions of law and to enter final judgment therein without further order of the court. If you plan to attend, we would respectfully appreciate your sending an email to mariaw@scottandcorley.com or leaving a message for the undersigned at (803) 252-3340. (This is for purposes of notifying you in the event that the hearing is canceled.)

As a result of the hearing, a foreclosure sale could be ordered as soon as allowed by law after the foreclosure hearing.

Records in the possession of the undersigned as of this date reflect only the above parties and the above counsel (if any). Please contact the undersigned immediately if any counsel has filed an appearance and their name is not reflected above as a recipient of this Notice.

According to the business records of Plaintiff, which have been made available to its Counsel and upon information and belief, neither Plaintiff nor its counsel is aware of any party to this action currently being in active bankruptcy and under the protection of the United States Bankruptcy Court ("USBK"). In addition, Counsel for Plaintiff has caused and/or has conducted a search of the PACER website for which Counsel, upon information and belief, reports no party, who executed the Note and/or Mortgage, and, to the best of his/her knowledge, is currently eligible for protection of the USBK. If any party has any information or record of a defendant currently being under the bankruptcy protections, it is requested that you notify counsel for Plaintiff immediately. Any demand for a deficiency is not applicable if a party has received a discharge in bankruptcy during the life of the mortgage, or is currently under the active protection of the bankruptcy courts. Moreover, any party to this action who is a discharged borrower to the debt of the Plaintiff shall not be subject to and is specifically excluded from both the calculation and

collection of any amounts due and owing to the Plaintiff, as required by Rule 71(a) of the South Carolina Rules of Civil Procedure.

SCOTT AND CORLEY, P.A.



Ronald C. Scott (rons@scottandcorley.com), SC Bar #4996

Reginald P. Corley (reggiec@scottandcorley.com), SC Bar #69453

Angelia J. Grant (angig@scottandcorley.com), SC Bar #78334

Jessica S. Corley (jessicac@scottandcorley.com), SC Bar #80470

Allison E. Heffernan (allisonh@scottandcorley.com), SC Bar #68530

Matthew E. Rupert (matthewr@scottandcorley.com), SC Bar #100740

William P. Stork (williams@scottandcorley.com), SC Bar #100242

Louise M. Johnson (ceasiej@scottandcorley.com), SC Bar #16586

Tasha B. Thompson (tashat@scottandcorley.com), SC Bar #76415

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

803-252-3340

2018 JAN 23 AM 10:45
RONALD C. SCOTT
CLERK OF COURT
SOUTH CAROLINA
JUDICIAL BRANCH

THIS IS A COMMUNICATION FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE, EXCEPT AS STATED BELOW IN THE INSTANCE OF BANKRUPTCY PROTECTION.

IF YOU ARE UNDER THE PROTECTION OF THE BANKRUPTCY COURT OR HAVE BEEN DISCHARGED AS A RESULT OF A BANKRUPTCY PROCEEDING, THIS NOTICE IS GIVEN TO YOU PURSUANT TO STATUTORY REQUIREMENT AND FOR INFORMATIONAL PURPOSES AND IS NOT INTENDED AS AN ATTEMPT TO COLLECT A DEBT OR AS AN ACT TO COLLECT, ASSESS, OR RECOVER ALL OR ANY PORTION OF THE DEBT FROM YOU PERSONALLY.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

JPMorgan Chase Bank, National Association,

PLAINTIFF,

VS.

Fritz A. Timmons,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

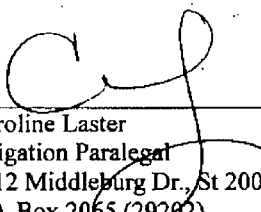
CASE NO. 2015-CP-13-00768

CERTIFICATE OF SERVICE BY MAIL

(150268.00577)

The undersigned hereby certifies that she is an employee of Scott and Corley, P.A. and is a person of such age and discretion as to be competent to serve papers and that on January 18, 2018, she mailed a copy of the Notice of Hearing by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at the Scott and Corley, P.A. office, 2712 Middleburg Drive, Suite 200, Columbia, SC 29204.

Fritz A. Timmons
1827 Tabernacle Church Road
McBee, SC 29101


Caroline Laster
Litigation Paralegal
2712 Middleburg Dr., St 200 (29204)
P.O. Box 2065 (29202)
Columbia, South Carolina

Wanda C. Mills
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2018 JAN 23 AM 10:47

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

JPMorgan Chase Bank,
National Association.

Plaintiff,
vs.

Fritz A. Timmons
Defendant.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-13-00768

RESPONSE TO PLAINTIFF'S
NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGEMENT

2018 JAN 29 AM 10:46
CLERK OF COURT
JAMES C. HARRIS
CLERK OF COURT
JAMES C. HARRIS

The plaintiff's claims of foreclosure are based without evidence, in violations of statutes, SC Supreme Court Orders, and U.S. Case Law, Ipso Facto, has no Legal standing while William O. Spencer has no Jurisdiction or Authority to act as or issue Orders as a Special Referee. William O. Spencer was also hand picked and selected by the opposing party and not by the Court as indicated by the order/motion of reference of May 27, 2017 as well as ex parte communication between the opposing party and William O. Spencer as indicated by the notice of hearing of (p. 16), ipso Facto, showing the bias as well as violation of the rights to due process and state code §14-11-60 as well as Rule 501 canon 3 Both S.C. Code Ann. §14-11-60 and Rule 53(b) SCRCP specifies that both parties must consent and cause to be shown to the presiding judge in order for a Special Referee to be appointed by order of the presiding judge(p 14). The Defendant did not consent to having this Special Referee. The Plaintiff failed to attend and plea at the hearing on May 26, 2016 , therefore, the plaintiff failed to show any Legal Standing or cause that is required by S.C. Code Ann. §14-11-60. With this case under the jurisdiction of a Circuit judge (p 14), it is also required to have the Circuit judge issue an order, ipso facto, the clerk of court acted without jurisdiction by issuing the Order of Reference. This unlawfully appointed Special Referee also directly contradicts the petitioners certificate of

exemption/withdrawal from arbitration of Nov 25, 2015 (p.11) of which is clear evidence of violation of administrative order 201105-02-01.

(1) With the Plaintiff's own Exhibits, as Incontrovertible evidence that the plaintiff has directly violated 15 U.S. Code §1692e. 15 U.S. Code §1692e clearly states "A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section." The plaintiff has clearly threatened the defendant by stating "If you fail to cure the default on or before 04/01/2015, Chase may accelerate the maturity of the Loan, declare all sums secured by the Security Instrument immediately due and payable, and commence foreclosure by judicial proceeding and conduct a sale of the property." (p. 9). The "assignment of mortgage" (and without any evidence of actual existence of) dated 04/02/2015 (p.10), clearly proves beyond any doubt that Chase was not the Owner of said mortgage at time of threat, Ipso Facto, had no legal standing to foreclosure. This evidence also confirms that Chase has also fraudulently attached a previously voided and null "Mortgage" to a Contract that would have been pre-breached and of which is supposedly claimed by Chase without evidence of actual existence of, ownership of nor holding of. An example of this type of fraud would be if (a) a party wrecks a vehicle, (b) the party then acquires insurance on that vehicle, (c) the party claims the vehicle was insured at the time of the wreck by providing the previous owners insurance records and fails to provide evidence of ownership of the vehicle.

(2) Carpenter v. Longan, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872), clearly supports the notion that the Plaintiff must clearly own and hold the Note and the

Mortgage to foreclose on the property. Plaintiff failed to show that it owned or held the Note at the time the Complaint was filed. Plaintiff failed to show that it owned or held the Mortgage at the time the Complaint was filed (p. 11). The Plaintiff is now using "Ghost Evidence" (as explained below) of which has no legal standing in its Motions. The Plaintiff also Failed to State a Cause of Action in its Filing of Foreclosure.

It is clear that to have standing in this foreclosure case, Plaintiff must not only be the holder & owner of the original Note, but also the original Mortgage as well. Plaintiff's Complaint in this case fails to meet this criteria. Plaintiff lacks the standing to initiate and prosecute the foreclosure, and dismissal pursuant to Rule 17(a) and Rule 12(b) (6) SCRPC is appropriate.

Under the "FAIR DEBT COLLECTION PRACTICES ACT", 15 U.S.C. 1692, the Plaintiff cannot show it has right to collect the note debt and to request foreclosure, allege: At all times material, Plaintiff is a "debt collector" as the term is defined under 15 U.S.C. §1692a(6); And at all material times, the Note debt is a "debt" as defined under 15 U.S.C. §1692a(5); Plaintiff violated the Fair Debt Collection Practices Act when it filed a Complaint in Foreclosure against the Defendant because it is threatening to take a legal action that it cannot legally take and used a false misrepresentation or deception to collect a debt. 15 U.S.C. §1692(e)(5), (e)(10). See: *Glazer v. Chase Home Finance, LLC*, No. 10-3416 (6th Cir. 2013)(held that mortgage foreclosure is debt collection under the Act).

(3) The Plaintiff has only given "Ghost Evidence" as evidence for the existence of a Mortgage and Note. The use of Copies from the County records does not give proof to the current existence of the mortgage, it only provides evidence that there was once a mortgage. The same type of "Ghost Evidence" is use for the plaintiff's evidence of the

current existence of the Note. Neither of the "Ghost Evidence" provides evidence of the actual and current existence or holding of the mortgage and/or Note that the Plaintiff claims that they hold and own. Without the original Mortgage and Note as evidence, the Plaintiff has no legal standing of foreclosure. "Copies" used as evidence has no more standing at law then third party hearsay.

(4) Without any evidence to support its claim as to the owner and/or holder of the Note as well as any transfer of ownership, the question of legal standing of the "Mortgage" is raised. With Part 23 of the Mortgage states "Upon Payment of all sums secured by this Security instrument, this Security instrument become null and void. Lender shall release this Security instrument. Borrower shall by any recordation costs. " Ipso Facto, the separation of the note from the mortgage defines that the original Debt to the security instrument has been fulfilled and the mortgage itself is null and void.

Therefore, when the debt on a "note" is paid off and the amount indebted to debtor becomes extinguished, the possibly new owner of said "Note" became owner of said note without a Security instrument, the Security instrument automatically becomes void and null due to all sums has been paid off to the owner of the Security instrument. Ipso Facto, the Mortgage at that time was Breached when it was separated from the Note. The Plaintiff nor its Counsel has any Legal authority to Un-breach, un-void or un-nullify the Mortgage.

(5) The plaintiff has no legal standing for foreclosure do to lack of residential mortgage transaction. This transaction is defined under 15 U.S. Code 1602 (x) "The term "residential mortgage transaction" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent

consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of such dwelling." Therefore, a transaction of a Note without a Mortgage and/or a Mortgage without a Note is not a residential mortgage transaction and without a residential mortgage transaction occurring between the Plaintiff and the originator of the Note and Mortgage, the Plaintiff has no legal standing as a mortgage holder.

(6) The Plaintiff's claims and/or Beliefs against the "Mobile Home" has no legal standing nor legal entitlement. The claims under a mortgage is confined to that of the contract and anything else would be a violation of the Fourth Amendment for the unconstitutional Seizer and an unjust enrichment.

(a) The said mobile home is not collateral of the Mortgage nor the Note. Therefore the Plaintiff has no right of contract for the seizer of the mobile home. Ipso Facto, the Plaintiff has no legal entitlement to said mobile home.

(b) As the name plainly states "mobile", ipso facto, it is not a permanent fixture to the property. Therefore the Plaintiff has no right of contract for the seizer of the mobile home. Ipso Facto, the Plaintiff has no legal entitlement to said mobile home.

(c) The said mobile home with a separate deed/title to that of the land, ipso facto, is not and upgrade nor improvement to the land. Therefore the Plaintiff has no right of contract for the seizer of the mobile home. Ipso Facto, the Plaintiff has no legal entitlement to said mobile home.

(7) The Plaintiff filing of "certificate of exemption from administrative order 201105-02-01" filed on May 22, 2017 is Plaintiff's counsels misconduct and unclean hands. Not only does not comply to Rule 7(b)(1) of which states "shall state with

particularity the grounds therefore," The letter dated May 09, 2016 (p. 12,13,15) by Chase clearly establishes the fact that Chase canceled a payment plan for a mortgage assistance program of which said mortgage had no legal standing. Therefore, the Order obtained by this certificate must be stricken under Rule 60(b)(3) SCRCF, Ipso Facto, the Appointment of a special referee is based upon fraud. The certificate also fails to specify whether the defendant had failed, declined or voluntarily elect of which is contradictory statements. This certificate also fails to state that a hearing was held of which the Plaintiff failed to appear and failed to plead its arguments. The certificate also fails to state that this case is under the jurisdiction of a presiding judge. Therefore, this certificate as well as its order for reference is the Plaintiff's attempt to circumvent its failure of actions for the hearing on May 24, 2016.

(8) With the Plaintiff's specifying the lawyer William O. Spencer to be a special referee and ex parte communication as indicated by the Plaintiff's Notice of hearing (p. 16) along with Judge Burch's previous ex parte communication in another case of which he has committed Perjury by issuing an order over a hearing of which he did not preside over nor in the court room to hear as well as William O. Spencer being Judge Burch's attorney over real estate matters (defendant retains the rights to submit evidence of), Brings forth an extreme Bias and violations onto the said parties. Along with direct violations of S.C. Code Ann. §14-11-60 and Rule 53(b) SCRCF that denies William O. Spencer as a special referee and lack of legal standing on behalf of the plaintiff, these violations would be known to Judge Burch, William O. Spencer, as well as to all of the plaintiff's counsels, therefore, the above said would also know or should have known that these violations constitutes as known violations of the Defendant's Rights to Due Process.

Ipsa Facto, the plaintiffs counsels along with William O. Spencer has conspired to conduct these criminal acts and as expected, if Judge Burch does not remove himself under Rule 501 canon 3, then Judge Burch would not only be part of this conspiracy but would also be violating his oath of office, constitution of the United states, Constitution of South Carolina, abuse of discretion, Color of Law as well as SC Court Rules as William O. Spencer and the plaintiffs counsels are currently doing.

In closing, (1) Chase directly violated 15 U.S. Code §1692e for threatening defendant without any legal standing to do so. (2) any possible debt to the originator of the Note and Mortgage was extinguished and the Mortgage became null and void. (3) Plaintiff failed to provide any evidence that it was the Holder and Owner of said Note and Mortgage at the time it filed for foreclose in accordance to Carpenter v. Longan, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872) under which this court is bound. (4) Plaintiff failed to provide any legal standing that it was or is the actual owner or holder of said Note. (5) Plaintiff failed to provide any legal standing that it was or is the actual owner or holder of said mortgage. (6) Plaintiff is using "Ghost Evidence" (copies) of which has no legal standing. (6) No Residential Mortgage Transaction has occurred between the originator of the Note/Mortgage and with Chase. (7) The Plaintiff and counsel has failed to comply in accordance to administrative order 201105-02-01. (8) The Plaintiff failed to state Cause of action on its original filing of foreclosure. (9) William O. Spencer does not have any jurisdiction in this case and has willfully and knowingly violated S.C. Code Ann. §14-11-60 and Rule 53(b) SCRPC while conspiring with and committing ex parte communication with the plaintiff. (10) Orders issued by William O. Spencer are Void due to lack of jurisdiction and in violation of S.C. Code Ann. §14-11-60 and Rule 53(b)

to lack of jurisdiction and in violation of S.C. Code Ann. §14-11-60 and Rule 53(b) SCRCP. (11) Any fees claimed by the plaintiff's counsel is a burden between the plaintiff and its counsel due to the misconduct and unclean hands of the plaintiff and their counsel. (12) The plaintiff's continuing to unlawfully appoint William O. Spencer as a special referee is another violation under Rule 407 SCACR while motions are pending in a circuit court. (13) With the above said, the Plaintiff and its Counsels are committing barratry (S.C. Code Ann. §16-17-10). (14) Without any legal standing, Chase has failed to show the following; (a) a specific debt owed. Showing of a specific debt with a security instrument (Original and non voided nor null Note and Mortgage) was necessary for an equitable lien to attach (b) a Residential Mortgage Transaction had occurred between Chase and the originator of the Note and Mortgage (c) the defendant had an obligation to Chase, there was no property on which such an obligation could attach. Therefore, Chase is not entitled to an equitable lien, recovery under the theory of unjust enrichment, or any other form of equitable relief. The Defendant is entitled to remedy and recovery under the South Carolina Tort Claims Act, U.S. Code title 15 Chapter 41 as well as other previously mentioned and those the court seems appropriate to apply for non-economic and actual damages and others as this court seems appropriate.

Jan 25, 2018

Sincerely,


Fritz A. Timmons, Pro Se
P. O. Box 367
Hartsville, SC 29551

2018 JAN 29 AM 10:46
WILCOX COUNTY
CLERK OF COURT
JESSE L. HARRIS, CLERK

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

William O. Spencer, Jr., Special Referee

Appellate Case No. 2018-000355

RECEIVED
MAR 08 2019
SC Court of Appeals

JPMorgan Chase Bank, National Association, ... Respondent,

v.

Fritz A. Timmons, ... Appellant.

CERTIFICATE OF COUNSEL

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

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Columbia, South Carolina
March 8, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas
William O. Spencer, Jr., Special Referee

Case No. 2015-CP-13-00768
Appellate Case No. 2018-000355

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JP Morgan Chase Bank, National Association, ...

Respondent,

v.

Fritz A. Timmons, ...

Appellant.

PROOF OF SERVICE

I, the undersigned Paralegal of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for JPMorgan Chase Bank, National Association, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Motion to Supplement the Record on Appeal and
Supplemental Record on Appeal

Counsel/Party Served:

U.S. Mail

Fritz A. Timmons, *pro se*
Post Office Box 367
Hartsville, SC 29551


Meredith S. Keane
Senior Paralegal

March 8, 2019