THE STATE OF SOUTH CAROLINA

In The Court of Appeals

23617

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Cynthia Graham Howe, Master-in-Equity Judge

RECEIVED
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SC Court of Appeals

Appellate Case No.: 2016-001550

Branch Banking and Trust Company .....Respondent

v.

Cindy B. Hunt; Willow Greens

Homeowners Association, Inc.;

CJ Developers, LLC.....Defendant(s),

Of Whom Cindy B. Hunt is .....Appellant

RECORD ON APPEAL: Volume 1 pages 1-492

Cindy B. Hunt, Pro Se, SC Bar # 65408.
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[1] The hearing on the MFS was held 9/17/2014. This appeal does not include the 10/20/2014 Order. The 10/20/2014 Order has an outstanding motion to alter or amend in the lower court.

[2] A hearing was held on several motions on 4/21/2014. This appeal does not include the 10/22/2014 Order. The 10/22/2014 Order has an outstanding motion to alter or amend in the lower court.

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[5] Under Rule 12(b)(2) and 12(b)(5) FRCP.

[6] HC Public Index - see Pages 1933-1935; and Notice of Withdrawal - see Pages 1936-1938.

[7] No Memorandum was filed with the MTD.

[8] In several documents in the Record - Hunt has mistakenly referred to this document with a file date of 6/23/2014. The correct file date is 6/25/2014.

[9] No Memorandum was filed with the MTD.

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62 Complaint & index see Pages 233-260

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65 USPTO 2013 Certificate Pages 1821-1824

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73 9/05/2013 MTD see Pages 423-428

74 – 79 Blank

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82	12/22/2014 Hunt's Response to Remand	Pages 1847-1870
83	01/03/2015 BBT's Reply (13, 13-1, 13-2)	Pages 1871-1880
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87	05/11/2015 **Order of Remand**	see Pages 130-135
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90	6/25/2014 MTD of lawsuit # 4	see Pages 429-432
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94	Order filed 10/28/2014 (from BBT)	see Pages 85-90
95	8/27/2015 Email to BBT	Pages 1885-1886
96	Documents served on 8/11/2015	None
97	7/27/2015 Letter to the HC Clerk of Court	Pages 1887-1891
98	Order filed 6/3/2015	see Pages 136-138
99	9/11/2013 Notice [of Motion Scheduling]	Pages 1892-1894
100	Affidavit of Hunt	Pages1895-1898
101	11/25/2014 Order re address	see Pages 91-97
102	Blank	
103	Blank	

[13] Hunt received this document from the HC Clerk of Court on 8/10/2015. See exhibit # 97.

104 6/20/2013 Affidavit of non service Pages 1899-1900

105 7/15/2014 Cert of Service; 9/30/2014 Cert of Service; 9/30/2014 Receipt for MFDJ, etc; and 9/30/2014 Notice of Hearing See Pages 539-546

106 11/2/2015 Amended Notice of Hearing; 11/2/2015 Cert of Service; 11/2/2015 USPS Cert Return Receipt None

107 10/14/2014 Transcript of hearing see Pages 829-958

10. Email: 10/15/2014 between Foerster, Hunt & Miller Page 1901-1902

Email: 10/23/2014 from Judge Howe Pages 1903

Email: 10/28/2014 at 9:38 pm from S Foerster Pages 1904-1905

Email: 06/17/2016 at 1:17 pm from CB Hunt Pages 1906-1928

Email: 02/26/2016 at 1:26 pm from CB Hunt Pages 1929-1932

11. The below ECFs are used in Hunt's response to BBT's motion to remand. See exhibit # 82.

ECF 11-1 see WGHOA affidavit of service at exhibit # 81.

ECF 11-2 see CJ Developers affidavit of service at exhibit # 81.

ECF 14-2 - see Mortgage Late Notice exhibit # 49 entry # 14-2

ECF 22 - see exhibit # 61

ECF 29 - see exhibit # 46

ECF 30-31 - see exhibit # 43

ECF 64 - see exhibit # 52

ECF 97 - see exhibit # 51

ECF 108 - - see exhibit # 47 entry # 108

12. ACRONYMS

AFCB – Attorney Fees and Costs to BBT

AFCH – Attorney Fees and Costs to Hunt

BBT – Branch Banking & Trust

BSA – Banking Service Agreement

BOFD – Breach of Fiduciary Duty

CC – Counterclaims

CD – Certificate of Deposit

CFB – Coastal Federal Bank

CRA – Credit Reporting Agency

FAC – First Amended Complaint / Counterclaims

FDIC – Federal Deposit Insurance Corporation

HC – Horry County

HCPD – Horry County Police Department

IOLTA – Interest on Lawyers Trust Account

MFAFC – Motion for Attorney Fees and Costs

MFDJ – Motion for Default Judgment

MTAOA – Motion to Alter or Amend

MTD – Motion to Dismiss

MTR – Motion to Remand

NOR – Notice of Removal

PD – Punitive Damages

POD – Payable on Death account

RR – Report and Recommendation of the Magistrate of the USDC

SAC – Second Amended Complaint

SCPC - South Carolina Probate Court

SCSC – South Carolina Supreme Court

SC SOS – South Carolina Secretary of State

SOL – Statute of Limitation

TAC – Third Amended Complaint

UFTPA – Unfair Trade Practice Act

USCA - United States Court of Appeals

USPS – United States Postal Service

USDC – United States District Court

USPTO – United States Patent and Trademark Office

WGHOA – Willow Green Homeowners Association

Certification: I hereby certify that the Record on Appeal contains no matter which is irrelevant to this appeal.

Respectfully Submitted,

C B Hunt

Cindy B Hunt (SC Bar # 65408) Date: July 08, 2017

Pro Se

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Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 41

Order: Doc. # 110 of 4:09-2151

#41

Exhibit 41

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

CINDY B. HUNT, Plaintiff, -vs- BRANCH BANKING & TRUST COMPANY, DANNY FOGLE, CATHY LAMBERT, JUDY TEAL, MARK BOOZ, KACI SANSBURY and DAVID CRAVEN, Defendants.	Civil Action No.: 4:09-cv-2151-JMC-TER **OPINION AND ORDER**

I. INTRODUCTION

In this action, Plaintiff, who is proceeding *pro se*[1], asserts claims arising out of her banking relationship with Defendant Branch Banking & Trust (BB&T). In her Second Amended Complaint, Plaintiff asserts causes of action for violation of privacy under S.C. Code Ann. § 37-30-110, et al, violation of 18 U.S.C. § 1005, violation of 18 U.S.C. § 1030, fraud, negligent misrepresentation, conversion, breach of fiduciary duty, violation of the South Carolina Probate Code, and violation of 12 U.S.C. § 1972. Presently before the Court is Defendants'[2] Motion to Dismiss (Document # 41) Plaintiff's Second Amended Complaint. Plaintiff filed her Response (Document # 53) on July 13,

[1]At the time the Second Amended Complaint was filed, Plaintiff was represented by counsel. However, counsel subsequently moved to be relieved, and her motion was granted.

[2]In this motion, "Defendants" shall refer to all Defendants except for David Craven, who has not made an appearance in this action. Plaintiff has filed a Motion for Default Judgment (Document # 68), which Defendants have opposed, arguing Plaintiff has failed to properly serve Craven. The Motion for Default Judgment will be addressed separately.

2010.[3]

II. FACTUAL ALLEGATIONS

In her Second Amended Complaint, Plaintiff alleges that in May of 2000, she opened a Payable on Death/Revocable Trust Account (POD) with Defendant BB&T[4], naming her cousin, Costella Hunt Davis (Davis), as beneficiary. Second Amended Complaint ¶ 8. She alleges that the POD account was opened improperly as a joint account with Plaintiff and Davis as co-owners of the account. *Id.* at ¶ 9. Plaintiff regularly deposited money into the POD account. *Id.* Plaintiff further alleges that her customer profile with BB&T contained incorrect information for years, including information related to other persons and loans and accounts held by other persons. *Id.* at ¶ 11.

On January 19, 2008, Davis visited a BB&T branch in Conway, South Carolina and inquired about her mortgage with the bank. *Id.* at ¶ 12. Defendant Kaci Sansbury (Sansbury), an employee of BB&T told her she had a certain amount of money in her account, which was actually the amount of money Plaintiff held in the POD account. *Id.* Sansbury also disclosed other information about the account to Davis. *Id.* Davis informed Plaintiff of the disclosure. *Id.* at ¶ 13.

On or around January 22, 2008, Plaintiff began telephoning Defendants and the legal department at BB&T, complaining of the disclosure to Davis. *Id.* at ¶ 14. Plaintiff alleges that Defendants were non-responsive and denied any wrongdoing. *Id.*

In April or May of 2008, Plaintiff cashed a check a BB&T that was later subjected to a stop

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[3]Plaintiff first filed a Response (Document # 48) on June 2, 2010, and then filed an Amended Response (Document # 53) on July 13, 2010. The court will rely on Plaintiff's Amended Response.

[4]Plaintiff began her banking relationship with Coastal Federal Bank in 1993. *Id.* at ¶ 1. In August of 2007, Coastal Federal Bank merged with BB&T. *Id.* at ¶ 10. For ease of reference, the court will refer to the bank as BB&T.

payment by the issuing agency. *Id.* at ¶ 15. Claiming they had the right of set-off, BB&T withdrew the money for this check from Plaintiff's POD account without Plaintiff's permission. *Id.* Plaintiff demanded return of these monies, but the bank refused. *Id.* Plaintiff withdrew her accounts from BB&T. *Id.* at ¶ 16.

Plaintiff complained about the mishandling of her POD account to the Federal Deposit Insurance Corporation (FDIC). *Id.* at ¶ 17. Plaintiff alleges Defendants Sansbury, Mark Booz (Booz), Judy Teal (Teal) and David Craven (Craven) omitted or gave false information to the FDIC. *Id.*

III. LEGAL STANDARD

A. Federal Rule of Civil Procedure 12(b)(2)

When a defendant files a motion to dismiss the plaintiff's complaint for lack of personal jurisdiction under Rule 12(b)(2), "the burden is on the plaintiff to establish the existence of a ground for exercising such jurisdiction." *ESAB Group, Inc. v. Centricut, LLC*, 34 F.Supp.2d 323, 328 (D.S.C.1999). In the absence of an evidentiary hearing, the court may rely on the parties' pleadings, affidavits, and other legal documents, and the plaintiff need only make a *prima facie* showing of jurisdiction. *Mylan Lab., Inc. v. Akzo, N.V.*, 2 F.3d 56, 60 (4th Cir.1993). "In considering a challenge on such a record, the court must construe all relevant pleading allegations in the light most favorable to the plaintiff, assume credibility, and draw the most favorable inferences for the existence of jurisdiction." *Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir.1989).

B. Federal Rule of Civil Procedure 12(b)(6)

For a complaint to survive a motion to dismiss for failure to state a claim, the Federal Rules of Civil Procedure require that it contain "a short and plain statement of the claim showing that the

pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). Although Rule 8(a) does not require "detailed factual allegations," it requires "more than an unadorned, the-defendant-unlawfully-harmed-me accusation," *Ashcroft v. Iqbal*, --- U.S. ----, ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)), in order to "give the defendant fair notice ... of what the claim is and the grounds upon which it rests," *Twombly*, 550 U.S. at 555 (internal citations omitted). Stated otherwise, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 570). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw [a] reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Twombly*, 550 U.S. at 556). A complaint alleging facts which are "merely consistent with a defendant's liability ... stops short of the line between possibility and plausibility of 'entitlement to relief.' " *Id.* (quoting *Twombly*, 550 U.S. at 557, 127 S.Ct. 1955, 167 L.Ed.2d 929) (internal quotation marks omitted).

In evaluating a motion to dismiss, a plaintiff's well-pleaded allegations are taken as true, and the complaint, including all reasonable inferences therefrom, is liberally construed in the plaintiff's favor. *McNair v. Lend Lease Trucks, Inc.*, 95 F.3d 325, 327 (4th Cir.1996). The court may consider only the facts alleged in the complaint, which may include any documents either attached to or incorporated in the complaint, and matters of which the court may take judicial notice. *Tellabs v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322, 127 S.Ct. 2499, 168 L.Ed.2d 179 (2007). Although the court must accept the plaintiff's factual allegations as true, any conclusory allegations are not entitled to an assumption of truth, and even those allegations pleaded with factual support need only be accepted to the extent that "they plausibly give rise to an entitlement to relief." *Iqbal*, 129 S.Ct.

at 1950. A court may dismiss a complaint where "after accepting all well-pleaded allegations in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff's favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief." *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir.1999).

IV. DISCUSSION

A. Personal Jurisdiction Over Defendant Mark Booz

Defendants argue that this court lacks personal jurisdiction over Defendant Mark Booz, an in-house attorney with BB&T who works in Winston-Salem, North Carolina, because Booz has had no contacts with the state of South Carolina regarding the events giving rise to this litigation. Defendants present Booz's Affidavit in which he avers that on May 15, 2008, in the course of his employment with BB&T, he signed and sent a letter to Janet R. Kincaid with the Division of Supervision and Consumer Protection of the FDIC. Booz Aff. ¶ 3 (attached as an Exhibit to Defendants' First Motion to Dismiss (Document # 20)). He prepared the letter in Winston-Salem, North Carolina and it was transmitted to Kincaid in Kansas City, Missouri. *Id.* In the course of the preparation and transmittal of the letter, he had no contact with Plaintiff, her accounts, or any person located in the state of South Carolina. *Id.* The letter involved an analysis by members of the legal department of BB&T of the law related to factual matters raised by previous correspondence from Kincaid. *Id.* The May 15, 2008, letter addresses the "Complaint of Cindy B. Hunt" and references both a letter from Kincaid dated May 8, 2008, and a letter from Defendant Judy Teal to the FDIC dated April 11, 2008. Booz Letter Dated May 15, 2008 (attached as an Exhibit to Plaintiff's Response (Document # 53)). Booz avers that other than the May 15, 2008, correspondence to Kincaid, he has had no contact with Plaintiff or any account maintained by her with BB&T. Booz

Aff. ¶ 4.

Defendants argue that this letter, drafted in North Carolina to a recipient in Missouri, is insufficient to establish the requisite minimum contacts with South Carolina to confer personal jurisdiction in this court. Plaintiff argues that the facts that the letter involves an account in South Carolina and references a factual scenario that took place in South Carolina[5] are sufficient to establish minimum contacts with this state.

A court may exercise specific jurisdiction when "the out of state defendant engage[s] in some activity purposely aimed toward the forum state and ... the cause of action arise[s] directly from that activity." *ESAB Group, Inc. v. Centricut, LLC*, 34 F.Supp.2d 323, 331-32 (D.S.C.1999). A federal district court possesses specific personal jurisdiction over a non-resident defendant only "if such jurisdiction is authorized by the long-arm statute of the state in which it sits and application of the long-arm statute is consistent with the due process clause of the Fourteenth Amendment." *Consulting Engineers Corp. v. Geometric Ltd.*, 561 F.3d 273, 277 (4th Cir. 2009) (internal citations omitted). South Carolina's long arm statute provides,

> (A) A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's:
> (1) transacting any business in this State;
> (2) contracting to supply services or things in the State;
> (3) commission of a tortious act in whole or in part in this State;
> (4) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State;
> (5) having an interest in, using, or possessing real property in this State;
> (6) contracting to insure any person, property, or risk located within this State at the time of contracting;

[5]The letter addresses the conversation between Davis and Sansbury during which Sansbury allegedly reveals to Davis the existence of the supposed POD account and the balance of the account. *See* Booz Letter.

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> (7) entry into a contract to be performed in whole or in part by either party in this State; or
> (8) production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.
> (B) When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him.

S.C. Code Ann. § 36-2-803. South Carolina has interpreted its long-arm statute to be co-extensive with the limits of federal due process, and the test for specific personal jurisdiction in South Carolina therefore focuses on due process alone. *Foster v. Arletty 3 S.A.R.L.*, 278 F.3d 409, 414 (4th Cir. 2002).

The Fourth Circuit has applied a three-part test when evaluating the propriety of exercising specific jurisdiction: (1) whether and to what extent the defendant "purposely availed" itself of the privileges of conducting activities in the forum state, and thus invoked the benefits and protections of its laws; (2) whether the plaintiff's claims arise out of those forum-related activities; and (3) whether the exercise of jurisdiction is constitutionally "reasonable." *Christian Sci. Bd. of Dirs. of the First Church of Christ v. Nolan*, 259 F.3d 209, 215-16 (4th Cir. 2001) (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415-16, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 476-77, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1988)).

The first two prongs of the due-process test articulate the "minimum contacts" requirement of constitutional due process. *Consulting Engineers*, 561 F.3d at 278. "The minimum contacts test requires the plaintiff to show that the defendant 'purposefully directed his activities at the residents of the forum' and that the plaintiff's cause of action 'arise[s] out of' those activities." *Id.* at 277 (quoting *Burger King Corp*, 471 U.S. at 472). "[T]he defendant's conduct and connection with the

forum State [must be] such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980). This requirement "ensures that a defendant will not be hauled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated contacts,' or of the 'unilateral activity of another party or a third person.'" *Tetrev v. Pride Intern., Inc.*, 465 F.Supp.2d 555, 559 (D.S.C.2006) (quoting *Burger King Corp.*, 471 U.S. at 472).

First, Plaintiff does not point to the subsection of South Carolina's long-arm statute under which her claims against Booz would fall. The only allegations in the Second Amended Complaint asserted against Booz are the causes of action for false entry in a bank statement in violation of 18 U.S.C. § 1005, computer fraud under 18 U.S.C. § 1030, and common law fraud. To the extent Plaintiff asserts that these claims fall under subsection (A)(3) of the long-arm statute, that is, commission of a tortious act in whole or in part in this State, the Second Amended Complaint fails to allege and Plaintiff fails to make a sufficient showing that Booz committed any acts in South Carolina. There are no allegations nor is there any evidence in the record that Booz ever communicated with anyone in South Carolina regarding Plaintiff's accounts or that he directed that any action take place in South Carolina with respect to Plaintiff's accounts. The only factual allegations specifically referring to Booz are that he resides in Winston-Salem, North Carolina and that he omitted or gave false information to the FDIC regarding the alleged mishandling of Plaintiff's POD account. Second Amended Complaint ¶ 17. Plaintiff has failed to allege or show that Booz purposely availed himself of the privileges of conducting activities in South Carolina because there is nothing in the pleadings or otherwise in the record to show that he conducted any activities in South Carolina. The fact that he referenced activities conducted by others in South Carolina in a

letter drafted and transmitted completely outside of this state is insufficient to show that he conducted activities in this state. Any contacts Booz may have with the state of South Carolina are too attenuated to allow this court to exercise personal jurisdiction over him. Thus, dismissal of Booz pursuant to Rule 12(b)(2) is appropriate.

B. Failure to State a Claim as to Specific Causes of Action

1. 18 U.S.C. § 1005

In her second cause of action, Plaintiff asserts a claim under 18 U.S.C. § 1005, which is a federal criminal statute without a private right of action. *See, e.g., Hardie v. Grenier*, 84 Civ. 4710(CSH), 1987 WL 33600 at 1 n. 1 (S.D.N.Y. Dec. 23, 1987) (Haight, D.J.), *aff'd*, 849 F.2d 1467 (2d Cir.1988); *see also Dykes v. PCA Fed. Credit Union*, 1:09-MI-00579, 2010 WL 1529295 at *3 (N.D.Ga. Feb.4, 2010) (Report & Recommendation), *adopted at*, 2010 WL 1529293 (N.D.Ga. Apr.13, 2010); *Carter v. Carter*, 07-13772, 2008 WL 5662081 at *12 (E.D.Mich. July 22, 2008) (Report & Recommendation), *adopted at*, 2009 WL 440968 (E.D.Mich. Feb.23, 2009); *see also Daviditis v. Nat'l Bank of Mattoon*, 262 F.2d 884, 886 (7th Cir.1959). Although not alleged in her Second Amended Complaint, Plaintiff argues in her Response that she brings her claim pursuant to 12 U.S.C. § 503, which provides for civil liability of the federal reserve and member banks, shareholders and officers for violations of certain criminal statutes, including 18 U.S.C. § 1005. Nevertheless, even assuming Plaintiff asserted this cause of action under 12 U.S.C. § 503, Plaintiff's allegations still fail to state a cause of action. Section 1005 makes it a violation to "make[] any false entry in any book, report, or statement of such bank, company, branch, agency, or organization with intent to injure or defraud such bank, company, branch, agency, or organization or any other

company, body politic or corporate, or any individual person . . . ." 18 U.S.C. § 1005.[6] The conclusory allegation that "defendants made several false entries in bank statements, in her personal profile and in other places" is not supported by sufficient factual allegations to allow the court to draw a reasonable inference that Defendants are liable for the misconduct alleged. Further, Plaintiff's Second Amended Complaint contains no allegations that any of the Defendants made any type of false entry with the intent to injure or defraud Plaintiff. Plaintiff's conclusory statement that "these false entries were made intentionally" is insufficient to state a claim to relief that is plausible on its face. As noted above, a complaint alleging facts which are "merely consistent with a defendant's liability ... stops short of the line between possibility and plausibility of 'entitlement to relief.' " *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 557, 127 S.Ct. 1955, 167 L.Ed.2d 929) (internal quotation marks omitted). Accordingly, dismissal of Plaintiff's second cause of action is appropriate.

2. 18 U.S.C. § 1030

Plaintiff's third cause of action also falls under a federal criminal statute, the Computer Fraud and Abuse Act (CFAA), 18 U.S.C. § 1030. This statute specifically provides a private right of action. *See* 18 U.S.C. § 1030(g) ("Any person who suffers damage or loss by reason of a violation of this section may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief."). Nevertheless, Plaintiff's allegations are insufficient to state a claim under the CFAA. All of the violations listed under subsection (a) of § 1030 require either (1) intentionally or knowingly accessing a computer without authorization or exceeding authorization, (2) intentionally or knowingly damaging a protected computer without authorization,

[6]Section 1005 also addresses other violations which are clearly not relevant here.

(3) knowingly trafficking in any password or other information through which a computer may be accessed without authorization, or (4) intentionally extorting money or other thing of value. *See* 18 U.S.C. § 1030(a). The allegations in Plaintiff's Second Amended Complaint do not involve any of these types of violations. With respect to her claim under the CFAA, Plaintiff alleges,

> 29. Defendants committed computer fraud by setting up Plaintiff's Payable on Death account, and other accounts, in a manner not authorized by the Plaintiff. This was on Defendant's protected computer.
> 30. Defendant has made false statements to third parties, including Costella Hunt Davis, the FDIS, and to other third parties inconsistent with the wishes of Plaintiff or any authorization made by Plaintiff.
> 31. Defendants have disclosed private information about Plaintiff and her accounts to third parties without Plaintiff's authorization.
> 32. The fraud involved interstate commerce.

Second Amended Complaint ¶¶ 29-32. Plaintiff appears to allege that Defendants took action without or exceeding *her* authorization. However, this is not what is contemplated by the statute. Plaintiff's allegations fail to state a claim upon which relief can be granted under 18 U.S.C. § 1030. Accordingly, Plaintiff's third cause of action is dismissed.

3. 12 U.S.C. § 1972

Plaintiff's final cause of action is for violation of the antitying provisions of the Bank Holding Company Act, 12 U.S.C. § 1972 *et seq.* Plaintiff alleges her POD account was illegally tied to other accounts, including Costella Hunt Davis' mortgage and loan accounts to other individuals. Second Amended Complaint ¶ 64. She further alleges that this "unusual" banking practice benefitted Defendant BB&T by bringing extra business to the bank, such as loans and mortgages. *Id.* at ¶ 65.

Section 1972(1) sets forth the types of tying arrangements that are prohibited:

> (1) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on

the condition or requirement--

(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;
(B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;
(C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;
(D) that the customer provide some additional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or
(E) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank, or any subsidiary of such bank holding company, other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

The Board may by regulation or order permit such exceptions to the foregoing prohibition and the prohibitions of section 1843(f)(9) and 1843(h)(2) of this title as it considers will not be contrary to the purposes of this chapter.

12 U.S.C. § 1972(1). Plaintiff's conclusory allegations that her POD account was "tied illegally" to other accounts is insufficient to allege cause of action under this section. There are no allegations in the Second Amended Complaint that Defendant BB&T required any customer to obtain or provide any type of additional credit, property or service for that customer to acquire some sort of credit, property or service from the bank. Plaintiff's Second Amended Complaint does not contain sufficient factual matter to state a claim under 12 U.S.C. § 1972 that is plausible on its face. Therefore, Plaintiff's ninth cause of action is subject to dismissal.

4. Supplemental Jurisdiction

As discussed, the court finds that dismissal is appropriate on Plaintiff's claims against Defendant Mark Booz and her claims under 18 U.S.C. § 1005, 18 U.S.C. § 1030 and 12 U.S.C. § 1972. Included in those causes of action subject to dismissal are all of those over which this court

had original jurisdiction, that is, those causes of action arising under federal law.[7] The only claims remaining in this action are Plaintiff's state law claims. Title 28 U.S.C. § 1367(c)(3) provides, in pertinent part, "[t]he district courts may decline to exercise supplemental jurisdiction over a claim ... if ... the district court has dismissed all claims over which it has original jurisdiction...." The Fourth Circuit has recognized that "trial courts enjoy wide latitude in determining whether or not to retain jurisdiction over state claims when all federal claims have been extinguished." *Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir.1995) (holding district court did not abuse its discretion in declining to retain jurisdiction over the state law claims). *See also, e.g., United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726-27, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966); *Revene v. Charles County Comm'rs*, 882 F.2d 870, 875 (4th Cir.1989). Accordingly, the court declines to retain jurisdiction over Plaintiff's remaining state law claims.

V. CONCLUSION

For the reasons discussed above, Defendants' Motion to Dismiss (Document # 41) is **GRANTED** in part and **DENIED** in part. Specifically, Plaintiff's claims against Defendant Mark Booz are dismissed under Rule 12(b)(2), Fed.R.Civ.P., for lack of personal jurisdiction and Plaintiff's second, third, and ninth causes of action are dismissed under Rule 12(b)(6), Fed.R.Civ.P., for failure to state a claim upon which relief can be granted. The court declines to retain jurisdiction over Plaintiff's remaining state law causes of action, and, thus, this case is **DISMISSED** in its entirety. All other pending motions are moot.[8]

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[7]No diversity of jurisdiction exists as Plaintiff and several Defendants are residents of South Carolina.

[8]Plaintiff recently filed a Motion to Amend (Document # 105) her Second Amended Complaint. However, the Motion was filed outside the deadline for amending pleadings set forth in the Scheduling Order (Document # 66) and Plaintiff has failed to establish good cause for

IT IS SO ORDERED.

J. Michelle Childs
United States District Judge

March 23, 2011
Greenville, South Carolina

failing to timely file the Motion. Thus, even if the court were to address the Motion to Amend, it would be dismissed as untimely.

Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 39

Order: Doc. # 124 of 4:09-2151

Exhibit # 39

Doc. # 124

Number of Pages 2

Orders on Motions

4:09-cv-02151-JMC Hunt v. Branch Banking and Trust Company et al **CASE CLOSED on 03/23/2011**

CLOSED, PROSE

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 11/29/2011 at 8:20 AM EST and filed on 11/28/2011

Case Name: Hunt v. Branch Banking and Trust Company et al

Case Number: 4:09-cv-02151-JMC

Filer:

WARNING: CASE CLOSED on 03/23/2011

Document Number: 124(No document attached)

Docket Text:

TEXT ORDER. A court may alter or amend a judgment if the movant shows either (1) an intervening change in the controlling law; (2) new evidence that was not available at trial; or (3) that there has been a clear error of law or a manifest injustice. See Robinson v. Wix Filtration Corp., 599 F.3d 403, 407 (4th Cir. 2010). Plaintiff fails to demonstrate new law or evidence. Additionally, Plaintiff has not shown that she will suffer a manifest injustice as a result of the court's Order or that the court's Order was a clear error of law. The court has noted Plaintiff's argument that the court's Order did not address Plaintiff's claim for violation of privacy under Sections 37-20-110 to 200 of the South Carolina Code. In its Order, the court declined to exercise supplemental jurisdiction over Plaintiff's state law claims. Plaintiff appears to argue that Plaintiff's state law claim of violation of privacy involves reference to 15 U.S.C. §§ 6801-6809 and §§ 6821-6827, and thus the court has original jurisdiction over the claim. However, the court finds that Plaintiff's violation of privacy cause of action does not "necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities," Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 314 (2005), as is required for such a claim to fall under the original jurisdiction of a federal court. Additionally, the court notes Plaintiff's request to amend the court's Order to reflect that Plaintiff's counsel was terminated rather than that Plaintiff's counsel moved to be relieved, and her motion was granted. However, the court's docket [63] states that Plaintiff's counsel's [59] Motion to Withdraw as Attorney was granted. Plaintiff failed to file a motion to amend the docket. Accordingly, the court denies Plaintiff's [119] Motion to Alter or Amend the Judgment. Signed by Honorable J Michelle Childs on 11/28/2011.(hcic,)

Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 40

USCA Orders: May 16, 2012; Reconsideration and June 26, 2012

Exhibit # 40

USCA:

1) 5/16/2012 Order

2) Request for Reconsideration

3) 6/26/2012 Response/Order

20 Pages

FILED: May 16, 2012

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-2388
(4:09-cv-02151-JMC)

CINDY B. HUNT

Plaintiff - Appellant

v.

BRANCH BANKING & TRUST COMPANY; DANNY FOGLE; CATHY LAMBERT; JUDY TEAL; KACI SANSBERRY; MARK BOOZ; DAVID CRAVEN

Defendants - Appellees

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-2388

CINDY B. HUNT,

Plaintiff - Appellant,

v.

BRANCH BANKING & TRUST COMPANY; DANNY FOGLE; CATHY LAMBERT; JUDY TEAL; KACI SANSBERRY; MARK BOOZ; DAVID CRAVEN,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Florence. J. Michelle Childs, District Judge. (4:09-cv-02151-JMC)

Submitted: April 24, 2012 Decided: May 16, 2012

Before WYNN and DIAZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Cindy B. Hunt, Appellant Pro Se. Steven Barry Licata, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Cindy B. Hunt filed suit against the Branch Banking & Trust Company ("Bank") and individual Bank employees, alleging false entry in a bank statement under 18 U.S.C. § 1005 (2002), computer fraud under 18 U.S.C. § 1030 (2008), and violation of privacy under 15 U.S.C. §§ 6801-6809 (2010), as well as numerous state law claims. The district court granted Defendants' motion to dismiss Hunt's Second Amended Complaint, and denied Hunt's subsequent motion to alter or amend its judgment. Hunt now appeals. We have reviewed the record and find no reversible error. Accordingly, we affirm.

Hunt first challenges the district court's denial of her motion to alter or amend its judgment. We review the denial of a Fed. R. Civ. P. 59 motion to alter or amend a judgment for abuse of discretion. Sloas v. CSX Transp., Inc., 616 F.3d 380, 388 (4th Cir. 2010). The district court "necessarily abuses its discretion when it makes an error of law." Id. (citing Wolfe v. Johnson, 565 F.3d 140, 160 (4th Cir. 2009)). "[T]here are three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Pacific Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998) (citation omitted).

On appeal, Hunt fails to highlight a change in controlling law, present new evidence, or identify a clear error of law. Although Hunt contends that the district court erred in failing to analyze her Rule 59(e) motion under Fed. R. Civ. P. 60(b) or Fed. R. Civ. P. 60(d)(3) based upon excusable neglect and fraud on the court, we find that Hunt would not have been entitled to relief under Rule 60(b) or 60(d). Accordingly, the district court did not abuse its discretion in denying Hunt's motion to alter or amend judgment.

Hunt next asserts that the district court erroneously declined to exercise supplemental jurisdiction over Hunt's state law claim for violation of privacy under S.C. Code Ann. §§ 37-20-110 to 37-20-200 (2008) after dismissing all claims over which it had original jurisdiction. We review a district court's decision declining to exercise supplemental jurisdiction over state law claims for abuse of discretion. Jordahl v. Democratic Party of Va., 122 F.3d 192, 203 (4th Cir. 1997); see also Shanaghan v. Cahill, 58 F.3d 106, 110 (4th Cir. 1995) ("[T]rial courts enjoy wide latitude in determining whether or not to retain jurisdiction over state claims when federal claims have been extinguished."). If a district court has original jurisdiction over a civil action, it shall also have supplemental jurisdiction over all other claims that form part of the same case or controversy. 28 U.S.C. § 1367(a) (2000).

However, the district court may decline to exercise supplemental jurisdiction over a claim if the court has dismissed all claims over which it had original jurisdiction. 28 U.S.C. § 1367(c)(3).

In the interest of avoiding "[n]eedless decisions of state law," the Supreme Court has stated that, when "federal claims are dismissed before trial . . . state claims should be dismissed as well." United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966). Accordingly, we find that the district court did not abuse its considerable discretion in declining to exercise supplemental jurisdiction over Hunt's state law claim for violation of privacy.

Hunt also challenges the district court's denial of her Fed. R. Civ. P. 56(h) motions for sanctions. We review the denial of a motion for sanctions for an abuse of discretion. Miltier v. Beorn, 896 F.2d 848, 855 (4th Cir. 1990). On appeal, Hunt fails to present factual allegations to support her conclusory statement that the district court abused its discretion in declining to impose sanctions. We therefore find that the district court did not abuse its discretion in denying Hunt's motions for sanctions.

Based on the foregoing, we affirm the judgment of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the

materials before the court and argument would not aid the decisional process.

AFFIRMED

FILED: June 26, 2012

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-2388
(4:09-cv-02151-JMC)

CINDY B. HUNT

Plaintiff - Appellant

v.

BRANCH BANKING & TRUST COMPANY; DANNY FOGLE; CATHY LAMBERT; JUDY TEAL; KACI SANSBERRY; MARK BOOZ; DAVID CRAVEN

Defendants - Appellees

ORDER

Upon consideration of submissions relative to the motion for reconsideration, the court denies the motion.

Entered at the direction of the panel: Judge Wynn, Judge Diaz and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 52

Number of Pages 16

Order of USDC in lawsuit #2: Doc. #s 63-64 of 4:11-00870

Other Orders/Judgments

4:11-cv-00870-MGL Hunt v. Branch Banking and Trust Company et al

JURY,LC 2,PROSE

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 3/13/2013 at 2:01 PM EDT and filed on 3/13/2013
Case Name: Hunt v. Branch Banking and Trust Company et al
Case Number: 4:11-cv-00870-MGL
Filer:
Document Number: 63

Docket Text:
OPINION AND ORDER: The Court adopts the Magistrate Judge's Report and Recommendation and incorporates it herein. Accordingly, Defendants' Motion to Dismiss is GRANTED and Plaintiff's claims against Defendant Mark Booz are DISMISSED under F.R.Civ.P 12(b)(2) for lack of personal jurisdiction. Further it is ORDERED that this action be DISMISSED without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. The Court DENIES Plaintiff's Motion for an Extension to Time to serve the Summons and Complaint and finds that Plaintiff's request for an Extension of Time to respond to Defendants' Motion to Dismiss is MOOT. Signed by Honorable Mary G Lewis on 3/13/2013. (prou,)

4:11-cv-00870-MGL Notice has been electronically mailed to:

Steven Barry Licata slicata@sc.rr.com

4:11-cv-00870-MGL Notice will not be electronically mailed to:

Cindy B Hunt
195 D Willow Green Drive
Conway, SC 29526

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1091130295 [Date=3/13/2013] [FileNumber=5472071-0
] [937f27fa5cd61975626004bfc674c7f7a814cb899b5a8b1c2906dc8c796398cf751

11cd5f90ec40b2fcebcc8d95eb30bc6c2e45295c74dcb444cb0eb04be5fbc]]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Cindy B. Hunt, Plaintiff, v. Branch Banking and Trust Co., Danny Fogle, David Craven, Mark Booz, Judy Teal, Christopher Okay, Cathy Lambert, Kaci Sansbury, Karen Butcher, Steven Licata, Lisa Heywood and Tamara Cannon, Defendants.	)	Civil Action No.: 4:11-870-MGL **OPINION AND ORDER**

Cindy B. Hunt ("Plaintiff"), proceeding *pro se*[1], initiated this action on April 12, 2011, against Branch Banking and Trust Company ("BB&T"), Danny Fogle ("Fogle"), David Craven ("Craven"), Mark Booz ("Booz"), Judy Teal ("Teal"), Christopher Okay ("Okay"), Cathy Lambert ("Lambert"), and Kaci Sansbury ("Sansbury"), (collectively the "Defendants") alleging causes of action arising out of her banking relationship with BB&T. (ECF No. 1.) On May 10, 2011, Plaintiff filed an Amended Complaint naming Karen Butcher ("Butcher"), Steven Licata ("Licata"), Lisa Heywood ("Heywood") and Tamara Cannon ("Cannon") (collectively the "Defendants") as additional Defendants. (ECF No. 9.) On June 19, 2012, Defendants moved, pursuant to Rules 12(b)(2) and (b)(5) of the Federal Rules of Civil Procedure, to dismiss Plaintiff's Amended Complaint. (ECF No. 34.)[2] A Roseboro Order done in accordance with *Roseboro v. Garrison*, 528

[1]Plaintiff is an attorney licensed in the State of South Carolina.

[2]The Court notes that Plaintiff has previously filed an action, Civil Action No. 4:09-2151, against many of these same Defendants for actions arising out of her banking relationship with BB&T which was dismissed by the Court on March 23, 2011. The Fourth Circuit Court of

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F.2d 309 (4th Cir. 1975) was entered on June 22, 2012, which provided Plaintiff with an explanation of dismissal/summary judgment procedures. (ECF No. 35.) On July 23, 2012, Plaintiff filed a Motion for an Extension of Time to respond to Defendants' Motion to Dismiss and to serve the Summons and Complaint. (ECF No. 42.) Plaintiff filed responses in opposition to the Motion to Dismiss on June 24, 2012, and June 25, 2012. (ECF Nos. 43 & 44.) Defendants filed a reply on August 6, 2012. (ECF No. 49.)

In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III, for pretrial handling. On January 25, 2013, Magistrate Judge Rogers issued a Report and Recommendation recommending that the Defendant's Motion to Dismiss be granted and Plaintiff's Motion for an Extension of time to serve the Summons and Complaint be denied[3]. (ECF No. 55.) For the reasons set forth herein, the Court adopts the Report and Recommendation of the Magistrate Judge and GRANTS Defendants Motion to Dismiss (ECF No. 34). The Court DENIES Plaintiff's Motion for an Extension of Time to serve the Summons and Complaint and finds Plaintiff's request for an Extension of Time to respond to Defendants' Motion to Dismiss is MOOT.

STANDARD OF REVIEW

This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th

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Appeals affirmed the dismissal of that action on May 16, 2012. Plaintiff has also filed a third action arising out of her banking relationship with BB&T, Civil Action No: 4:12-2216 which is currently pending before this Court.

[3]The Magistrate Judge indicated that Plaintiff's Motion for an Extension of Time to respond to Defendants' Motion to Dismiss was moot.

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Cir.1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *Boat v. McDougall*, 454 U.S. 364, 365, 102 S.Ct. 700, 70 L.Ed.2d 551 (1982). The requirement of a liberal construction does not mean, however, that the court can ignore a plaintiff's clear failure to allege facts that set forth a cognizable claim, or that a court must assume the existence of a genuine issue of material fact where none exists. *See United States v. Wilson*, 699 F.3d 789, 797 (4th Cir.2012).

The Magistrate Judge makes only a recommendation to the court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261, 270–71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter with instructions. 28 U.S.C. § 636(b) (1).

In order for objections to be considered by a United States District Judge, the objections must be timely filed and must specifically identify the portions of the Report and Recommendation to which the party objects and the basis for the objections. Fed.R.Civ.P. 72(b); *see United States v. Schronce*, 727 F.2d 91, 94 n. 4 (4th Cir.1984); *Wright v. Collins*, 766 F.2d 841, 845–47 nn. 1–3 (4th Cir.1985). The court need not conduct a *de novo* review when a party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir.1982). In the absence of a timely filed, specific objection, the Magistrate Judge's conclusions are reviewed only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir.2005).

BACKGROUND AND PROCEDURAL HISTORY

The Report sets forth in detail the relevant facts and standards of law on this matter, and the Court incorporates them and summarizes below in relevant part. Plaintiff filed this action on April 12, 2011, alleging various causes of action against Defendants arising out of her banking relationship with BB&T. (ECF No. 1.) Thereafter, On May 10, 2011, Plaintiff filed an Amended Complaint adding additional parties and additional causes of actions. (ECF No. 9.) In her Amended Complaint, Plaintiff asserts multiple causes of action against Defendants. Plaintiff alleges *inter alia* Violations of 18 U.S.C. § 1005, 18 U.S.C. § 1014, and 12 U.S.C. § 503; Breach of Fiduciary Duty; Violation of the Racketeer Influenced and Corrupt Organizations Act; Breach of Trust; Defamation; Fraud; Violations of Sections 37-20-170 and 37-20-200 of the South Carolina Consumer Identity Theft Protection Act; Violations of the Consumer Credit Protection Act; Violations of the South Carolina Unfair Trade Practices Act; Negligence and Conversion. (ECF No. 9.) On May 12, 2012, the Magistrate Judge issued an order directing Plaintiff to bring the case into proper form. (ECF No. 13.) Then, on June 10, 2012, the Magistrate Judge issued an order authorizing service of process. (ECF No. 20.) In the order authorizing service of process, the Magistrate Judge warned Plaintiff that pursuant to Rule 4(m) of the Federal Rules of Civil Procedure that, if Defendants were not served within 120 days after the complaint was filed, the court, on motion or on its own after notice to Plaintiff, must dismiss the action without prejudice against defendants unless Plaintiff showed good cause for the failure to serve the Summons and Complaint. (*Id.* at 2.)

The Magistrate Judge issued an order on October 13, 2011, that directed Plaintiff to either file proof that indicated Defendants had been served or show good cause for her failure to serve

Defendants within the time specified by Rule 4(m). (ECF No. 24.) Plaintiff filed a Reply on October 26, 2011. (ECF No. 28.) In Plaintiff's Reply, she set forth the following response for her failure to serve Defendants:

> 1. As a result of the Defendants conduct in this matter including the threat of a FRCP 11 against the Plaintiff, the Plaintiff has been unable to sit for the Parten [sic] Bar exam resulting in the Plaintiff having not worked since 2008.
>
> 2. High Cost: This pro se Plaintiff finds the high cost of Service of Process on twelve Defendants to be unduly burdensome under the FRCP. As such, the Plaintiff is unable to effect service of process on the twelve Defendants.
>
> 3. The Plaintiff requests that the Court allow Service of Process in this matter on these twelve Defendants through the U.S. Marshal's office.
> Plaintiff's Reply.

(ECF No. 28.)

Defendants moved to dismiss Plaintiff's Amended Complaint pursuant to Rules 12(b)(2) and (5) of the Federal Rules of Civil Procedure on June 19, 2012. The Magistrate Judge recommended that the Court grant the Defendants Motion to Dismiss. (ECF No. 55.)

DISCUSSION

A. Personal Jurisdiction

Defendants move pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure for dismissal of this action against Booz. Defendants contend that this Court may not assert personal jurisdiction over Booz. The Magistrate Judge recommends dismissing Booz.

When a court's personal jurisdiction is challenged, the burden is on the plaintiff to establish that a ground for jurisdiction exists. *Combs v. Baker*, 886 F.2d 673, 676 (4th Cir.1989). When, as here, the Court resolves the motion on written submissions (as opposed to an evidentiary hearing),

Plaintiff need only make a "prima facie showing of sufficient jurisdictional basis," and the Court must construe relevant allegations in favor of Plaintiff. *Id.* However, Plaintiff's showing must be based on specific facts set forth in the record. *Magic Toyota, Inc. v. Se. Toyota Diatribe., Inc.*, 784 F.Supp. 306, 310 (D.S.C.1992).

Here, Defendants contend that Plaintiff's allegations against Booz are identical to the allegations made in a prior action *Hunt v. Branch Banking and Trust et al.*, 4:09-CV-2151-JMC-TER. In that case, the Court dismissed the claims against Booz for lack of personal jurisdiction under F.R.Civ.P. 12(b)(2) and the Fourth Circuit Court of Appeals affirmed that Court's Order of Dismissal on May 16, 2012. The Magistrate Judge, relying on the analysis of personal jurisdiction of Booz set forth in *Hunt v. Branch Banking and Trust et al.*, 4:09-cv-2151-JM-TER, recommended that this Court grant Defendants' motion to dismiss Booz from the instant action.[4]

B. Insufficient Service of Process

Defendants also move for dismissal pursuant to Fed. R. Civ. P. 12(b)(5) for insufficient service of process. (ECF No. 34.) Defendants assert that Plaintiff has failed to properly serve the Defendants within 120 days or request an extension as required by Rule 4(m). Defendants acknowledge in their Motion to Dismiss that after over a year has passed since Plaintiff filed her Amended Complaint and Plaintiff has "now begun attempts to obtain service." (ECF No. 34-1 at 5.) The Magistrate Judge recommends granting Defendant's motion to dismiss due to Plaintiff's failure to serve the summons and complaint within 120 days of authorization of service as required by Rule 4(m) of the Federal Rules of Civil Procedure.

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[4]The Court adopts and incorporates the discussion of the Court in *Hunt v. Brqnch Banking and Trust et al.*, 4:09-cv-2151-JM-TER as to personal jurisdiction over Booz.

The Federal Rules of Civil Procedure require that a defendant be served with a summons and a copy of the complaint within 120 days after the complaint is filed. Fed.R.Civ.P. 4(c)(1), (m). If a defendant is not served within the 120–day period, then "the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed.R.Civ.P. 4(m). The Court must extend the time for service if the plaintiff shows good cause for the failure. *Id.*

In order to show good cause for Plaintiff's failure to serve Defendants within the time specified, Plaintiff must demonstrate that she made reasonable diligent efforts to effect service. Fed. R. Civ. P. 4(m). *See Hammad v. Tate Access Floors, Inc.*, 31 F.Supp.2d 524, 528 (D.Md.1999) (internal quotations omitted). "Courts typically find good cause to extend the Rule 4(m) time limit where external factors stifle a plaintiff's due diligence in effecting service." *Clyburn v. Champagne*, No. 6:10–1925–TMC, 2012 WL 4478971, *5 (D.S.C. Sept.28, 2012) (internal quotations and alterations omitted); 4B Charles Alan Wright & Alan R. Miller, Federal Practice and Procedure: Civil § 1137 (3d ed. 2002) (observing that "good cause is likely (but not always) to be found when the plaintiff's failure to complete service in timely fashion is a result of the conduct of a third person, typically the process server"). For example, courts have found good cause where "the defendant was evading service; the plaintiff experienced difficulty in obtaining defendant's proper address; the plaintiff was misdirected by court personnel as to proper procedure; or a defect in the attempted service was not revealed by the defendant until after the time [had] expired." *Hoffman v. Balt. Police Dep't*, 379 F.Supp.2d 778, 786 (D.Md.2005) (citations omitted). Where a plaintiff's process server makes repeated attempts at multiple locations throughout the 120–day period and the corporate

defendant and its registered agent are not cooperative, there is good cause for an extension of the time allowed for service of process. *United States v. Sea Bay Dev. Corp.*, No. 2:06cv624, 2007 WL 1378544, *5 (E.D.Va. May 8, 2007) (finding good cause even though plaintiff delayed its attempts to serve defendant for over a month after the complaint was filed).

In contrast, "courts have held that mere inadvertence, ignorance of the federal rules, and attorney neglect do not constitute good cause." *Harvey v. Capital Children's Dental Ctr.*, No. 3:09–1836–CMC–PJG, 2010 WL 1294120, *2 (D.S.C. Mar.4, 2010). A plaintiff who makes no attempt at service until the final days of the 120–day period generally cannot demonstrate the "reasonable, diligent efforts to effect service" required for a finding of good cause. *See Hoffman*, 379 F.Supp.2d at 786 (dismissing complaint where "Plaintiff's counsel did absolutely nothing to attempt to serve the[ ] defendants for 118 days, and offers the unavailability of one of his office staff on the final two days as the reason for untimely service"). Upon review, the Magistrate Judge concluded that Plaintiff had failed to set forth good cause for failure to serve the summons and complaint within 120 days of authorization of service as required by Rule 4(m) of the Federal Rules of Civil Procedure and recommended that Plaintiff's Amended Complaint be dismissed without prejudice due to insufficient service of process.

PLAINTIFF'S OBJECTIONS

Plaintiff filed timely objections to the Magistrate Judge's Report and Recommendation. (ECF No. 58.) At the outset, the Court notes that Plaintiff indicates she "objects to almost every line of the Report and Recommendation." (Id. at 7.) As an initial matter, the Court notes that this is at most a general objection which does not direct this Court to any specific portion of the

Magistrate Judge's Report and Recommendation and is insufficient to challenge a Magistrate Judge's findings. *See Diamond,* 416 F.3d at 316. (finding that a "specific written objection" is required to invoke *de novo* review by the district court); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505, 508–09 (6th Cir.1991); *Ford v. Reynolds,* No. 3:11-67, 2011 WL 2581397, * 2 (D.S.C. 2011); *Clark v. Sumter Co.*, No. 9:07-cv-0791, 2008 WL 350480, *1 (D.S.C. 2008).

The crux of the Magistrate Judge's Recommendation to this Court was that the Magistrate Judge found lack of good cause for Plaintiff's failure to serve the summons and complaint within the 120 days of authorization of service as required by F.R.Civ.P. 4(m). Plaintiff indicates that she objects to the recommendation by the Magistrate Judge on this point, but makes no arguments and cites no authority in support of her position. Instead, she suggests *inter alia* that Court lacks subject jurisdiction over this case; that this case should be remanded to the Horry County Probate Court; and that this matter is governed, by the South Carolina Rules of Civil Procedure. These arguments do not address the Magistrate Judge's recommendation concerning the lack of good cause. Plaintiff filed timely objections to the Magistrate Judge's Report and Recommendation. (ECF No. 58.) At the outset the Court notes that Plaintiff indicates she "objects to almost every line of the report and recommendation." (Id. at 7.) Plaintiff asserts her objections are supported by the prior pleadings Civil Action 4:09-JM-TER and appeal to include her request for reconsideration; Civil Action No. 4:11-870-MGL-TER and Civil Action No. 4:12-2216-MGL-TER. *(Id.* at 1.)

Finally, the Court has reviewed Plaintiff's remaining objections and finds they are general objections that merely restate her prior disagreement with the decision of the Court in Civil Action 4:09-2151-JM-TER and the subsequent decision of the Fourth Circuit Court of Appeals affirming

that decision. The Court does not find that these generalized objections about a prior decision are sufficient to raise any questions about the Magistrate Judge's Recommendation in this case .

Upon review of Plaintiff's objections, the Court concludes that her objections provide no basis for this court to deviate from the Magistrate Judge's recommended disposition. Plaintiff's objections are primarily non-specific and are unrelated to the dispositive portions of the Report and Recommendation recommending dismissal and fail to establish that the and Recommendation errs in any respect. Further the objections either state general disagreement with the Report and Recommendation's conclusions, or include arguments which were considered and rejected by the Magistrate Judge. The Court having reviewed Plaintiff's objections finds they have no merit and are hereby overruled.

CONCLUSION

After a thorough review of the Report and Recommendation, the applicable law and the record in this case pursuant to the standard set forth above, the Court finds Plaintiff's objections are without merit. The Court adopts the Magistrate Judge's Report and Recommendation and incorporates it herein. Accordingly, Defendants' Motion to Dismiss is **GRANTED** and Plaintiff's claims against Defendant Mark Booz are **DISMISSED** under F.R.Civ.P. 12(b)(2) for lack of personal jurisdiction. Further it is ORDERED that this action be **DISMISSED** without prejudice pursuant to Rule 4(m) or the Federal Rules of Civil Procedure. The Court **DENIES** Plaintiff's Motion for an Extension to Time to serve the Summons and Complaint and finds that Plaintiff's request for an Extension of Time to respond to Defendants' Motion to Dismiss is **MOOT**.

IT IS SO ORDERED.

/s/Mary G. Lewis
United States District Judge

March 13, 2013
Florence, South Carolina

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Other Events

4:11-cv-00870-MGL Hunt v. Branch Banking and Trust Company et al

JURY,LC 2,PROSE

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 3/13/2013 at 2:12 PM EDT and filed on 3/13/2013

Case Name: Hunt v. Branch Banking and Trust Company et al
Case Number: 4:11-cv-00870-MGL
Filer:
WARNING: CASE CLOSED on 03/13/2013
Document Number: 64

Docket Text:
JUDGMENT: Case is dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. (prou,)

4:11-cv-00870-MGL Notice has been electronically mailed to:

Steven Barry Licata slicata@sc.rr.com

4:11-cv-00870-MGL Notice will not be electronically mailed to:

Cindy B Hunt
195 D Willow Green Drive
Conway, SC 29526

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1091130295 [Date=3/13/2013] [FileNumber=5472101-0] [041d778c444d2356185d6a996a383ec52f7a4965cb7fbb061ff84acdfada8917626 874710f620949ebd793838821e39acdcca86a7e2d738d7341530979bc3390]]

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AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Cindy B. Hunt,
Plaintiff

v.

Branch Banking and Trust Co., Danny Fogle, David Craven, Mark Booz, Judy Teal, Christopher Okay, Cathy Lambert, Kaci Sansbury, Karen Butcher, Steven Licata, Lisa Heywood, and Tamara Cannon,
Defendants

Civil Action No. 4:11-CV-870-MGL

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☐ the plaintiff *(name)* _____ recover from the defendant *(name)* _____ the amount of _____ dollars ($), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____ recover costs from the plaintiff *(name)* _____.

■ other: Plaintiff's claims against Defendant Mark Booz are dismissed under F.R.Civ.P. 12(b)(2) for lack of personal jurisdiction. Case is dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

This action was *(check one)*:

☐ tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

■ decided by the Honorable Mary G. Lewis, United States District Judge, who adopted the Report and Recommendation of the Honorable Thomas E. Rogers, III, United States Magistrate Judge, which granted Defendants' Motion to Dismiss.

Date: March 13, 2013

Larry W. Propes
CLERK OF COURT

s/ Penelope W. Roulston
Signature of Clerk or Deputy Clerk

BBT vs CB Hunt, et al: CASE NO: 2013-CP-26-2528

Exhibit # 61

Magistrate's report and recommendation in lawsuit # 3

#49-2

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

CINDY B. HUNT,

Plaintiff,

-vs-

BRANCH BANKING AND TRUST CO.,

Defendant.

Civil Action No.: 4:12-cv-2216-MGL-TER

REPORT AND RECOMMENDATION

Plaintiff, who is proceeding pro se, alleges numerous state law claims arising out of her banking relationship with Defendant Branch Banking & Trust (BB&T). Plaintiff filed this action in the Court of Common Pleas, Horry County, South Carolina on July 9, 2012. Defendant filed its Notice of Removal in this Court pursuant to 28 U.S.C. §§ 1441 and 1446, asserting that jurisdiction in this court was proper under 28 U.S.C. § 1332. Presently before the Court is Defendant's Motion to Dismiss (Document # 9). Because Plaintiff is pro se, the undersigned issued an order pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the Motion to Dismiss and the possible consequences if she failed to file a response. Plaintiff filed her Response (Document # 14) on September 17, 2012.

All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(e), DSC. Because the Motion to Dismiss is a dispositive motion, this Report and Recommendation is entered for review by the district judge.

Defendant electronically filed its Notice of Removal in this court on Saturday, August 4, 2012.

Removal Documents (attached as Ex. 1 to Pl. Response) pp. 2-3. The same day, Defendant mailed the Notice of Removal to the state court and to Plaintiff. Id. at pp. 4-8. However, prior to either Plaintiff receiving or the state court filing the Notice of Removal, Plaintiff filed a document in state court entitled, "Withdrawal" in which she stated, "The Plaintiff requests that the complaint be withdrawn. The Defendant has not yet answered the complaint. The complaint was served on administrative assistant Layla Adams." See Withdrawal (attached as Ex. B to Def. Motion to Dismiss). The Withdrawal was stamped as filed in the state court on August 6, 2012, at 10:46 am. The Notice of Removal was stamped as filed in the state court on August 6, 2012, at 1:49 pm. See State Court Public Index (attached as Ex. A to Def. Motion to Dismiss). The status of the state court case is listed on the Public Index as "Withdrawn" and the disposition is listed as "Withdrawn or Settled by Parties." See id.

Defendant argues that, because Plaintiff's Withdrawal was filed prior to the filing of the Notice of Removal in state court, this case should be dismissed. Plaintiff argues that her Withdrawal was actually filed after the Notice of Removal was filed in this court and, thus, "the removal was complete on August 4, 2012." Pl. Resp. to Def. Motion p. 1. The procedure for removal is set forth in 28 U.S.C. § 1446. Under this statute, "[f]irst, the defendant must file a notice of removal in the United States district court for the district ... in which the state court action is pending. Second, promptly after filing the notice of removal [in federal court], the defendant must give written notice to adverse parties and must file a copy of the notice of removal with the clerk of the state court." Burroughs v. Palumbo, 871 F.Supp. 870, 871 (E.D.Va.1994) (internal citations omitted) (citing 28 U.S.C. § 1446(a) and (d)). As to this final step, the statute specifically states: "[The defendant] shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further

unless and until the case is remanded." 28 U.S.C. § 1446(d) (emphasis added).

Plaintiff appears to argue that the state court was divested of jurisdiction over this action at the moment the Notice of Removal was filed in this court. However, this argument ignores the plain language of § 1446, which provides that the filing of the notice of removal with the state court "effect[s] the removal." The Fourth Circuit has held that, under § 1446, a state court "loses all jurisdiction to proceed immediately upon the filing of the petition in the federal court and a copy in the state court." South Carolina v. Moore, 447 F.2d 1067, 1073 (4th Cir.1971) (emphasis added). "The obvious inference from the statute and the Fourth Circuit holding is that the state court maintains jurisdiction over the action until the state court receives actual notice of removal." Burroughs, 871 F.Supp. at 872. "Indeed, it would be 'unfair to a state court to hold that it can be stripped of jurisdiction though it has no notice of this fact.'" Id. (citing Charles A. Wright, Law of Federal Courts 247 (1994)). Accordingly, "'[o]nce the notice of removal has been effectively filed in both courts, the federal court takes the case in the posture in which it departed the state court, treating everything done in the state court as if it had been done in federal court.'" Thomas v. North Carolina, No. 1:10-cv-226, 2010 WL 2176075, *4 (M.D.N.C. May 21, 2010) (citing Holmes v. AC & S, Inc., 388 F.Supp.2d 663, 667 (E.D.Va.2004) (holding that amended complaint deleting federal cause of action, filed in state court after notice of removal in federal court but before notice of removal in state court, was in effect filed before removal and, thus, the federal court lacked jurisdiction); see also Davis v. Estate of Harrison, 214 F. Supp. 2d 695 (S.D. Miss. 2002) (dismissing suit, holding that defendants' filing of an answer in federal court before the state court received notice of the removal did not bar plaintiff from filing an effective voluntary stipulation of dismissal without prejudice in state court, as the state court continued to have jurisdiction until it received notice of the removal).

Based on the foregoing authority, Plaintiff's Withdrawal was filed prior to the removal to this court becoming effective and while the state court still had jurisdiction over this case. Rule 41(a)(1), SCRCP, provides that "an action may be dismissed by the plaintiff without order of the court (A) by filing and serving a notice of dismissal at any time before service by the adverse party of an answer or motion for summary judgment, whichever first occurs." Because no court order was necessary to dispense of Plaintiff's case, it was properly marked as withdrawn at the time the Withdrawal was filed. Therefore, this case was withdrawn by Plaintiff prior to removal becoming effective. As such, it is recommended that Defendant's Motion to Dismiss (Document # 9)[1] be granted and this case be dismissed without prejudice because Plaintiff withdrew it before removal became effective.

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

January 25, 2013
Florence, South Carolina

[1]Defendant has raised other grounds for dismissal in the Motion to Dismiss, but the court need not reach those issues.

Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 43

Order: Doc. #s 30-31 of 4:12-2216

Other Orders/Judgments

4:12-cv-02216-MGL Hunt v. Branch Banking and Trust Company

JURY,LC 2,PROSE

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 3/13/2013 at 3:41 PM EDT and filed on 3/13/2013
Case Name: Hunt v. Branch Banking and Trust Company
Case Number: 4:12-cv-02216-MGL
Filer:
Document Number: 30

Docket Text:
OPINION AND ORDER: The Court adopts the Magistrate Judge's Report and Recommendation and incorporates it herein. Accordingly, Defendant's Motion to Dismiss is GRANTED and this case is DISMISSED without prejudice. Signed by Honorable Mary G Lewis on 3/13/2013. (prou,)

4:12-cv-02216-MGL Notice has been electronically mailed to:

Steven Barry Licata slicata@sc.rr.com

4:12-cv-02216-MGL Notice will not be electronically mailed to:

Cindy B Hunt
195 D Willow Green Drive
Conway, SC 29526

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1091130295 [Date=3/13/2013] [FileNumber=5472492-0] [395132476b175df727c2d1aeefdf44d3b260d4301514241cee013a8622315b54ada 1e2ec1da6754bd34f4068a519b52da0b616461aeb1da3231940b8cb175e65]]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Cindy B. Hunt, Plaintiff, vs. Branch Banking and Trust Company, Defendant.	)	Civil Action No.: 4:12-2216-MGL-TER **OPINION AND ORDER**

This is the third lawsuit filed by Plaintiff Cindy B. Hunt ("Plaintiff") arising out of her banking relationship with Defendant Branch Banking and Trust Company ("BB&T"). This matter is now before the Court with the Report and Recommendation of United States Magistrate Judge Thomas E. Rogers, III, made in accordance with 28 U.S.C. § 636(b)(1) (2006) and Local Civil Rule 73.02 for the District of South Carolina. Plaintiff, who is proceeding *pros se*[1], alleges various state law causes of action against BB&T. In the underlying matter Defendant moves pursuant to F.R.Civ.P. 12(b)(6) to dismiss this action based upon Plaintiff's voluntary dismissal of the case prior to removal. (ECF No. 9.) The Magistrate Judge recommends that the Court grant Defendant's Motion to Dismiss. (ECF No. 22.) For the reasons set forth herein, the Court adopts the Magistrate Judge's Report and Recommendation and GRANTS Defendant's Motion to Dismiss.

BACKGROUND

The Magistrate Judge's Report sets forth in detail the relevant facts and standards of law on this matter, and the Court incorporates them and summarizes them below in relevant part. Plaintiff

[1]Plaintiff is a licensed attorney in the State of South Carolina.

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filed the instant action on July 9, 2012, in the Horry Court of Common Pleas, Horry County, South Carolina alleging various state law causes of action. (ECF No. 1.) On Saturday, August 4, 2012, Defendant filed its notice of removal pursuant to 28 U.S.C. §§ 1441 and 1446, asserting jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 through the electronic CM/ECF system. Notice was mailed to both Plaintiff and the Clerk of Court of Horry County on that same day. (*Id.* pp. 4-8.) The removal petition was docketed with this Court on Tuesday August, 7, 2012. Prior to either the Plaintiff receiving or the state court filing the Notice of Removal, Plaintiff filed a document in state court entitled "Withdrawal" which stated that:

> The Plaintiff requests that the Complaint be withdrawn. The Defendant has not answered the complaint. The complaint was served on administrative assistant Layla Adams."
>
> (ECF No. 9-2.)

The State Court stamped Plaintiff's Withdrawal as 10:46 A.M. on August 6, 2012. Defendants' Notice of Removal was stamped 1:49 P.M. on August 6, 2012, by the State Court. (ECF No. 9-1.) In the Public Index, the status of the state court case was listed as "Withdrawn" and the disposition was listed as "Withdrawn or Settled by the Parties." *Id.* The Magistrate Judge issued his Report and Recommendation and recommended the court grant Defendant's Motion to Dismiss pursuant to F.R.Civ.P. 12(b)(6) based on Plaintiff's voluntary dismissal of the action prior to removal.

STANDARD OF REVIEW

The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). The Court is charged with making a *de*

novo determination of those portions of the Report and Recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

However, the Court need not conduct a *de novo* review when a party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir.1982). In the absence of a timely filed, specific objection, the Magistrate Judge's conclusions are reviewed only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir.2005).

DISCUSSION

The Magistrate Judge recommends granting Defendant's Motion to Dismiss. First, the Magistrate Judge determined that Plaintiff's Withdrawal filed in state court was filed prior to the removal to this Court becoming effective and while the state court had jurisdiction. Next he concluded that since no Court Order is needed to discharge Plaintiff's case, it was correctly noted as withdrawn at the time Plaintiff's Withdrawal was filed. Finally, the Magistrate Judge, concluded that the case was Withdrawn before Removal had become effective and therefore, the case pending before this Court should be DISMISSED.

Plaintiff raised multiple objections to the Magistrate Judge's Report and Recommendation. The Court has been able to glean one specific objection as to the Magistrate Judge's recommendation that the Plaintiff's Withdrawal was effective prior to the Removal becoming effective.

Plaintiff argues that Rule 41(a)(1), SCRCP, requires both filing and service for a voluntary dismissal to be effective. The Court disagrees. First, under Rule 41(a)(1) of the South Carolina

Rules of Civil Procedure, a plaintiff may dismiss an action without leave of court before the defendant files an answer or before a motion for summary judgment is filed. *Burry & Son Homebuilder, Inc. v. Ford*, 310 S.C. 529, 426 S.E.2d 313 (1992). In this matter, neither an answer nor a motion for summary judgment had been filed. In fact, Plaintiff acknowledged an answer had not been filed when she filed her state court Withdrawal. (ECF No. 9-2.) Next, as fully discussed by the Magistrate Judge, the State marked the disposition of this case as "Withdrawn" before the Removal had been completed. Finally, Plaintiff appears to have forgotten that she voluntarily filed the Withdrawal at issue in this matter.

Plaintiff's other objections fail to address any infirmity in the Report and Recommendation. Instead, they are general and conclusory objections that merely restate her disagreement with prior decisions of the Court and do not direct the court to any specific error in the Magistrate Judge's Report and Recommendation. Although, the Court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's report to which objections have been filed, the Court need not conduct a de novo review when a party makes only general and conclusory objections. *Orpiano*, 687 F.2d at 47. Here, the Court does not find that these generalized objections about prior court decisions are sufficient to raise any questions about the Magistrate Judge's Recommendation in this case .

CONCLUSION

Upon review of Plaintiff's objections, the Court concludes that her objections provide no basis for this court to deviate from the Magistrate Judge's recommended disposition and are overruled. The Court adopts the Magistrate Judge's Report and Recommendation and incorporates it herein. Accordingly, Defendant's Motion to Dismiss is **GRANTED** and this case is **DISMISSED** without prejudice.

IT IS SO ORDERED.

/s/ Mary G. Lewis
United States District Judge

March 13, 2013
Florence, South Carolina

Other Events

4:12-cv-02216-MGL Hunt v. Branch Banking and Trust Company

JURY,LC 2,PROSE

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 3/13/2013 at 3:46 PM EDT and filed on 3/13/2013
Case Name: Hunt v. Branch Banking and Trust Company
Case Number: 4:12-cv-02216-MGL
Filer:
WARNING: CASE CLOSED on 03/13/2013
Document Number: 31

Docket Text:
JUDGMENT: Case is dismissed without prejudice. (prou,)

4:12-cv-02216-MGL Notice has been electronically mailed to:

Steven Barry Licata slicata@sc.rr.com

4:12-cv-02216-MGL Notice will not be electronically mailed to:

Cindy B Hunt
195 D Willow Green Drive
Conway, SC 29526

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1091130295 [Date=3/13/2013] [FileNumber=5472524-0] [6adb560e0f6805695d2f5bacdce6ef1b738a06ed57c1dcf32d94a4ca894f5b37daf 9f2aaee7f45ef65ce441fed6c560c98b0749a8cf32e10f75cb470fe751950]]

57

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Cindy B. Hunt,
Plaintiff
v.
Branch Banking and Trust Company,
Defendant

Civil Action No. 4:12-CV-2216-MGL

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☐ the plaintiff *(name)* _____ recover from the defendant *(name)* _____ the amount of _____ dollars ($__), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____ recover costs from the plaintiff *(name)* _____.

■ other: Case is dismissed without prejudice.

This action was *(check one)*:

☐ tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

■ decided by the Honorable Mary G. Lewis, United States District Judge, who adopted the Report and Recommendation of the Honorable Thomas E. Rogers, III, United States Magistrate Judge, which granted Defendant's Motion to Dismiss.

Date: March 13, 2013

Larry W. Propes
CLERK OF COURT

s/ Penelope W. Roulston
Signature of Clerk or Deputy Clerk

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Branch Banking and Trust Company,

Plaintiff,

v.

Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC;

Defendants.

(504335-03166)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2013-CP-26-2528

GENERAL ORDER OF REFERENCE
Deficiency Judgment Waived

FILED
HORRY COUNTY
13 NOV -4 AM 10:56
MELANIE HUGGINS-WARD
CLERK OF COURT

It appears that the above-captioned case is a mortgage foreclosure action involving issues which, pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure, and the common law of this state, may properly be referred upon the Court's own motion to a court of equity. Accordingly,

IT IS ORDERED that this action be, and the same hereby is, referred to the Honorable Cynthia Graham Howe, as Master in Equity, to direct entry of final judgment in this action pursuant to Rule 53(e)(1)SCRCP, and all matters arising from or reasonably related to such action. The Master in Equity shall retain jurisdiction to perform all necessary acts incident to this foreclosure action including issuance of a writ of assistance of any rule to show cause including but not limited to any rule to show cause why a party should not be bound by the Judgment of Foreclosure. Further, the Master in Equity shall retain jurisdiction to hear any action contesting the validity of the foreclosure action or sale or any motions pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b). Pursuant to Rule 53(e), SCRCP, any appeal from the final judgment entered by the Master in Equity in Equity shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

/s/ Larry B. Hyman

Larry B. Hyman, Jr.
Judge of the Fifteenth Judicial Circuit

Conway, South Carolina

October 11, 2013

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THURSDAY 10/3/13
2 - 8

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2602528

PLAINTIFF(S)	DEFENDANT(S)	
Branch Banking and Trust Company	**Cindy B Hunt** **CJ Developers LLC**	**Willow Greens Homeowners Association Inc**

Submitted by: CLERK OF COURT

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

FILED
HORRY COUNTY
OCT 10 2013
CLERK OF COURT

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other:

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

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

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

CASE REFERRED TO MASTER, FORMAL ORDER TO FOLLOW BY ATTY HEARN.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Circuit Court Judge LARRY B. HYMAN, JR.	**2152** **Judge Code**	10/3/2013 **Date**

For Clerk of Court Office Use Only

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

Andrew Augustyn Powell PO Box 100200 Columbia, SC 29202 JOHN HEARN PO Box 100200 Columbia, SC 29202	**Cindy B Hunt** 195 D Willow Green Drive Conway, SC 29526
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
Court Reporter NATALIE DAHL	**Melanie Huggins-Ward - Clerk of Court**

STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS | **MOTION INFORMATION FORM AND COVER SHEET**

COUNTY OF HORRY | CASE NO. 2013-CP-26-2528

Branch Banking and Trust Company ☑ Plaintiff
v.
Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC; ☐ Defendant
Check box above indicating submitting party

name, S.C.Bar no. and address of plaintiff's attorney	name, S.C.Bar no. and address of Defendant's attorney
John J. Hearn (SC Bar # 6635) Rogers Townsend & Thomas, PC 220 Executive Center Drive (29210) Post Office Box 100200 Columbia, SC 29202-3200 Tel: (803) 771-7900 Fax: (803) 343-7017 Email: John.Hearn@rtt-law.com	

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☑ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: YES/NO

SECTION II: Motion Type

☐ Written motion attached
☑ Form Motion —
I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ 7/21/13
Signature of Attorney for Plaintiff/Defendant — October 4, 2013 Date submitted

SECTION II: Motion Fee

☑ PAID —AMOUNT: $25.00
☐ EXEMPT:
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent status
- ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act
- ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication
- ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: Referred to Master by Motion and Order of Court

JUDGE'S SECTION

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

_____
JUDGE
CODE:_____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ DATE FILED
(print name)
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED—AMOUNT DUE: _____

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Branch Banking and Trust Company,

Plaintiff,

vs.

Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2013-CP-26-2528

SCHEDULING ORDER

HORRY COUNTY
14 MAY -6 AM 8:28
CLERK OF COURT

THIS MATTER is before the Court on Plaintiff Branch Banking and Trust Company's ("Plaintiff") Motion for a Scheduling Order filed on November 22, 2013. The Court held a hearing on this motion on February 6, 2014, during which time the necessity for a scheduling order and the estimated time frame for resolving this case were discussed.

NOW, THEREFORE, it is ordered that:

1. Motions to join other parties and amend the pleadings shall be served no later than **April 10, 2014**.
2. Parties shall serve a document identifying by full name, address, and telephone number each person whom they expect to call as an expert at trial no later than:
   a. Defendants: **May 19, 2014**.
   b. Plaintiff: **June 16, 2014**.
3. Depositions shall be taken by **August 4, 2014**.
4. This case shall be subject to being called for trial on or after **September 15, 2014**.

AND IT IS SO ORDERED.

Cynthia Graham Howe
Master in Equity for Horry County

April 30, 2014

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-26-2528

Branch Banking and Trust Company,

PLAINTIFF(S)

Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC

DEFENDANT(S)

Submitted by:
Sean M. Foerster (SC Bar# 77466)
Attorneys for Plaintiff
Rogers Townsend & Thomas, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, SC 29202-3200
(803)771-7900-Tel. (803)343-7013 - Fax
sean.foerster@rtt-law.com
(504335-3166 SMF)

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

14 MAR -6 AM 8:28
CLERK OF COURT
HORRY COUNTY

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Cynthia Graham Howe, Master in Equity — 3073 Judge Code — 4/30/14 Date

For Clerk of Court Office Use Only

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

Sean M. Foerster
Rogers Townsend & Thomas, PC
P. O. Box 100200
Columbia, SC 29202
(504335-3166)

ATTORNEY(S) FOR THE PLAINTIFF(S)

Stephen C. Ouverson, Esquire
Parsons Ouverson Stark & Guest, PA
P. O. Box 2850
Murrells Inlet, South Carolina 29576

ATTORNEY(S) FOR THE DEFENDANTS

Cindy B. Hunt
195-D Willow Creek Drive
Conway, SC 29526

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA COUNTY OF HORRY Branch Banking and Trust Company, Plaintiff, vs. Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC, Defendants.	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2013-CP-26-2528 ORDER

FILED
HORRY COUNTY
2014 OCT 20 PM 12:39
MELANIE HUGGINS-WARD
CLERK OF COURT

This matter came before the Court at a hearing on September 17, 2014, regarding the Motion for Sanctions of Defendant Cindy B. Hunt ("Hunt").[1] Hunt appeared *pro se*. Sean M. Foerster, Esquire, appeared on behalf of Plaintiff Branch Banking and Trust Company ("BB&T") and opposed the motion. For the reasons set forth herein, the motion is denied.

Relevant Facts

Hunt's counterclaims against BB&T in this case are based on three main factual allegations:

- First, she alleges that BB&T improperly treated her Payable on Death/Revocable Trust Account ("POD account") as a joint account with the POD account's beneficiary, Costella Hunt Davis, and BB&T allegedly disclosed information about the POD account to the beneficiary (hereinafter referred to as the "POD account issue").
- Second, she alleges that her customer profile with BB&T showed the existence of what she believed to be two loans that did not belong to her—identified on the customer profile as "transfer management" and "portfolio" (hereinafter referred to as the "unauthorized loans issue").
- Finally, she alleges that BB&T improperly exercised its right of set-off against her POD Account to recover money after Hunt cashed a check with BB&T that was later subject to a stop payment by the issuing agency (hereinafter referred to as the "set-off issue").

Hunt allegedly complained about these issues to the FDIC and the Horry County Police Department, and those entities conducted investigations into these matters. Hunt alleges that BB&T destroyed evidence related to these issues during the investigations. Hunt supported her motion with the following documents:

[1] Hunt's motion for sanctions is based on her belief that BB&T destroyed evidence necessary for her to prove her counterclaims.

- As to the POD account issue, Hunt offered a letter dated April 11, 2008, from Judy Teal of BB&T to the FDIC that stated that "BB&T identified beneficiary profiles and deleted them from the on-line system."
- As to the POD account issue and the set-off issue, Hunt offered an "Exit Interview" form apparently completed by BB&T on May 19, 2008, after Hunt chose to close her account with the bank. Hunt points to the fact that BB&T checked the "No" box next to the field for "Account Saved." Hunt construes this marking to mean that BB&T deleted her account records.
- As to the unauthorized loans issue, Hunt offered a letter dated September 27, 2010, from Natasha Alderman of BB&T to Hunt stating: "According to our records your account profile currently does not reflect these loans." Hunt believes this letter to be an acknowledgement by BB&T that "transfer management" and "portfolio" were in fact loans and that BB&T destroyed evidence of their existence.
- As to the unauthorized loans issue, Hunt also offered a letter dated October 21, 2010, from Lisa Haywood of BB&T to the Horry County Police Department in response to the Department's search warrant for information related to the account numbers for the alleged loans labeled "transfer management" and "portfolio." The letter stated: "We are unable to produce documents as requested. We have no record of accounts with BB&T in reference to the account numbers listed on [the] subpoena." Hunt construes this letter to mean that BB&T destroyed evidence of these alleged loans.

In opposition to Hunt's motion, BB&T relied on the Affidavit of Shonda Chestnut and the Affidavit of Judy Teal, both filed herein on October 1, 2013. Shonda Chestnut, a former employee of Coastal Federal Bank until it merged with BB&T, explained in her affidavit that the items titled "transfer management" and "portfolio" on Hunt's customer profile were not loans at all. (Chestnut Aff. ¶ 7.) Rather, "transfer management" was an internal mechanism for facilitating automatic drafts utilized in loan payments. (Chestnut Aff. ¶ 5.) "Portfolio" was an identifying number for a loan portfolio assigned to the customer under which other loans would be grouped. (Chestnut Aff. ¶ 6.)

Judy Teal, an officer of BB&T, in her affidavit, addressed the POD account issue and explained that "[d]ue to the manner in which Coastal Federal had maintained its records as to the beneficiaries of those accounts, the payable on death account was also reflected under the beneficiaries' name (Costella Hunt Davis) showing the existence of the account and the status of

Ms. Davis as a beneficiary so that when Ms. Davis' social security number was entered into BB&T's system, the payable on death account was reflected." (Teal Aff. ¶ 6.) Ms. Teal alleges that the POD account issue occurred due to an unintended computer programming effect during the conversion process of the accounts when Coastal Federal merged with BB&T. (Teal Aff. ¶ 10.) Ms. Teal states that after learning of this issue in late January 2008, BB&T promptly deleted the customer profiles for beneficiaries on the accounts acquired from Coastal Federal to prevent this from happening in the future. (Teal Aff. ¶¶ 8-9.)

Conclusions of Law

The Court denies Hunt's motion because there is no proof that BB&T destroyed or altered evidence relevant to the claims in this case.

Spoliation of evidence refers to the willful destruction or material alteration of vital evidence or to the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation. *See Austin v. Beaufort Cnty. Sheriff's Office*, 377 S.C. 31, 35, 659 S.E.2d 122, 124 (*citing Hannah v. Heeter*, 584 S.E.2d 560, 573 (W. Va. 2003)); *see also Silvestri v. General Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001).

The documents offered by Hunt in support of her motion do not demonstrate spoliation of evidence by BB&T. In fact, these documents are consistent with the two affidavits relied on by BB&T in opposition to her motion.

The letter dated April 11, 2008, stating that "BB&T identified beneficiary profiles and deleted them from the on-line system," is consistent with the statements in Ms. Teal's affidavit that the beneficiary profile was deleted promptly after BB&T discovered the unintended computer programming effect arising from the Coastal Federal merger. But her affidavit clarifies that the deletion of the profile was done to correct the issue and prevent disclosure of account information in the future. There was no evidence that BB&T deleted the beneficiary profile in order to destroy evidence of alleged misconduct with respect to Hunt's POD account. BB&T deleted the profile 5 years before this case was filed, and there is no evidence that this litigation was reasonably foreseeable at the time. Finally, Hunt has not showed the Court that the deleted beneficiary profile could not be recovered or that BB&T does not have a backup copy of it.

As to the "Exit Interview" form dated May 19, 2008, Hunt misconstrues BB&T's marking the "No" box next to the field for "Account Saved." The Court does not construe this as meaning that BB&T was destroying her account records. Rather, it referred to whether the bank's exit interviewer was able to save the account from being closed. This is the only logical construction of the form given that it also asks, "What could we have done better to *save* your account?" Even if Hunt's reading of this form is correct, it would be insufficient prove that

BB&T destroyed her account records. Hunt has not shown the Court that she ever requested these records from BB&T through discovery or otherwise, and therefore she has no way of knowing if they have been destroyed or not.

The letter dated September 27, 2010, stating that "[a]ccording to our records your account profile currently does not reflect these loans," and the letter dated October 21, 2010, stating that "[w]e have no record of accounts with BB&T in reference to the account numbers listed on [the] subpoena," are consistent with the statements in Ms. Chestnut's affidavit that the items on Hunt's customer profile titled "transfer management" and "portfolio" were not loan accounts. Therefore, Hunt has not provided sufficient proof that these alleged "loans" ever existed, much less that BB&T destroyed evidence of them.

NOW, THEREFORE, it is ordered that:

1. The Motion for Sanctions of Defendant Cindy B. Hunt is DENIED.

AND IT IS SO ORDERED.

Cynthia Graham Howe
Master in Equity for Horry County

October 17, 2014

4
QA

STATE OF SOUTH CAROLINA COUNTY OF HORRY Branch Banking and Trust Company, Plaintiff, vs. Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC, Defendants.	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2013-CP-26-2528 **ORDER DENYING DEFENDANT'S MOTIONS**

HORRY COUNTY
OCT 22 AM 10:51
ROZLAINE HUGGINS-WARD
CLERK OF COURT

A hearing was held before this Court on April 21, 2014, regarding several outstanding motions of Defendant Cindy B. Hunt (hereafter "Hunt"). Hunt appeared *pro se*. Sean M. Foerster, Esquire, appeared on behalf of Plaintiff Branch Banking and Trust Company (hereafter "BB&T") and opposed the motions. For the reasons set forth herein, all of Hunt's motions are denied.

Relevant Facts

Hunt's motions require a discussion of three prior federal lawsuits that she brought against BB&T.[1] The first federal case was Hunt v. Branch Banking and Trust Company et al., C/A # 4:09-cv-02151-JMC (D.S.C. filed Aug. 13, 2009) (hereafter "Federal Lawsuit # 1"). Based on the Court's review of the filings in Federal Lawsuit # 1, it appears that Hunt asserted various claims against BB&T based on three main factual allegations:

- First, she alleged that BB&T improperly treated her Payable on Death/Revocable Trust Account ("POD") as a joint account with the POD account's beneficiary, Costella Hunt Davis, and BB&T allegedly disclosed information about the POD account to the beneficiary (hereafter the "POD account issue").
- Second, she alleged that her customer profile with BB&T showed the existence of two loans that did not belong to her (hereafter the "unauthorized loans issue").

[1] Copies of certain filings from all three cases were provided to the Court at the hearing.

- Finally, she alleged that BB&T improperly exercised its right of set-off against her POD Account to recover money after Hunt cashed a check with BB&T that was later subject to a stop payment by the issuing agency (hereafter the "set-off issue").

In Federal Lawsuit # 1, BB&T filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b) in lieu of an Answer. The federal court granted BB&T's Motion to Dismiss. The United States Court of Appeals for the Fourth Circuit affirmed the District Court's granting of BB&T's Motion to Dismiss, thereby ending Federal Lawsuit # 1.

The second federal case was Hunt v. Branch Banking and Trust Company et al., C/A # 4:11-cv-0870-MGL-TER (D.S.C. filed Apr. 12, 2011) (hereafter "Federal Lawsuit # 2"). Federal Lawsuit # 2 involved substantially the same, if not identical, facts and claims as those presented in Federal Lawsuit # 1: the POD account issue, the unauthorized loans issue, and the set-off issue.[2] Again, in lieu of an Answer, BB&T filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b). The federal court granted BB&T's Motion to Dismiss Federal Lawsuit # 2 due to Hunt's failure to serve the summons and complaint in that action. Hunt did not appeal this case.

The third federal case was Hunt v. Branch Banking and Trust Company, C/A # 4:12-cv-02216-MGL (D.S.C. filed Aug. 6, 2012) (hereafter "Federal Lawsuit # 3"). Hunt originally filed this lawsuit in the Horry County Court of Common Pleas in civil action no. 2012-CP-26-5264, but BB&T filed a Notice of Removal of the case to federal court. Again, Hunt's complaint in Federal Lawsuit # 3 involved substantially the same, if not identical, facts and claims as those presented in the two prior federal lawsuits: the POD account issue, the unauthorized loans issue, and the set-off issue. Again, in lieu of an Answer, BB&T filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b).

[2] Report and Recommendation p. 7, C/A # 4:11-cv-0870, entered on Jan. 25, 2103 ("By her own admission this case involves substantially the same, if not the identical, facts and claims as those present in the 2009 action.").

Prior to Hunt receiving or the state court filing BB&T's notice of removal, Hunt filed a document in state court entitled, "Withdrawal," through which Hunt withdrew her lawsuit. Based on this, the federal court found that Hunt had voluntarily dismissed her case in state court prior to removal becoming effective. Thus, the federal court dismissed Federal Lawsuit # 3. The Horry County Court of Common Pleas marked her case as withdrawn and closed it.

BB&T thereafter filed this foreclosure action against Hunt on April 16, 2013. According to several affidavits from BB&T's process server filed herein, BB&T unsuccessfully tried serving Hunt with the pleadings at the following addresses: 195D Willow Greens Drive in Conway, SC; 1311 Whaley Street Apt. 209 in Columbia, SC; and 400 Willow Green Drive Unit G in Conway, SC.

BB&T filed an Affidavit for Order of Publication on August 12, 2013, seeking permission to serve Hunt with the pleadings through publication after being unable to serve her personally. The Clerk of Court entered an Order for Publication on August 12, 2013.

Meanwhile, Hunt had filed an Answer and Counterclaim on August 2, 2013. Hunt's affirmative defenses and counterclaims in this case involve substantially the same, if not identical, facts and claims as those presented in the three prior federal lawsuits: the POD account issue, the unauthorized loans issue, and the set-off issue.

Hunt later filed a "Waiver of Service of Process" on August 13, 2013. Therefore, BB&T never attempted service pursuant to the Order for Publication.

Hunt filed the following motions during this case, all of which were heard at the hearing on April 21, 2014:

1. Motion pursuant to Rule 12(b)(5), SCRCP asserted within her Answer—filed on 8/2/2013;

2. "Motion for Emergency Hearing/Injunction, Quash Order of Publication, Complaint and Lis Pendens; and Stay order of Publication"—filed on 8/12/2013;

3. "Motion to Alter or Amend the Judgment and Restraining Order"—filed on 8/21/2013);

4. "Motion to Alter or Amend Judgment"—filed on 9/9/13;

5. "Motion for Default Judgment"—filed on 9/9/13;

6. "Motion to Strike" asserted within her "Response to BB&T's Motion to Dismiss"—filed on 9/19/2013;

7. "Objections and Motion for Contempt/Motion to Strike"—filed on 10/22/2013;

8. Motion pursuant to Rule 12(b)(6), SCRCP asserted within her Answer—filed on 8/2/2013;

9. "Motion for Summary Judgment on Counterclaims/Defenses"—filed on 8/2/2013;

10. "Motion to Strike Answer of Willow Greens Homeowners Association, Inc."—filed on 10/17/2013;

11. "Motion for Production of Note"—filed on 10/22/2013; and

12. "Motion for Continuance of Pre-trial Hearing"—filed on 1/7/2014.

Motions one through four concern whether the Court has personal jurisdiction over Hunt and the validity of BB&T's application for an Order for Publication. Motions five through nine relate to activity that occurred during the three prior federal lawsuits brought by Hunt against BB&T.

On October 1, 2013, BB&T filed two affidavits: one from Shonda Chestnut, an employee of Coastal Federal Bank prior to its merger with BB&T, and one from Judy Teal, a Senior Vice President with BB&T. These affidavits refuted the three factual bases for Hunt's claims and defenses in this case: the POD account issue, the unauthorized loans issue, and the set-off issue. The affidavits alleged that the disclosure of the POD account information to the beneficiary was an inadvertent result of BB&T's merger with Coastal Federal, but that it was quickly fixed and the beneficiary never had access to the POD account. The affidavits alleged that there were no unauthorized loans under Hunt's customer profile. Rather, they state that one of the notations on Hunt's customer profile referred to an internal auto-draft mechanism and the other simply

identified the portfolio number under which her loan was grouped. Finally, the affidavits referenced the Bank Services Agreement under which BB&T obtained the right of set-off over Hunt's accounts.

Conclusions of Law

Hunt's motions are denied for the following reasons:

1. **Motions No. 1-4 are denied as moot.**

The issue of the sufficiency of service of process and the Court's personal jurisdiction over Hunt raised in these motions is moot because Hunt has voluntarily appeared in this action and submitted to the jurisdiction of the Court. The attack on the Order for Publication is also moot because BB&T never served Hunt through publication after she voluntarily appeared.

"Voluntary appearance by defendant is equivalent to personal service." Rule 4(d), SCRCP. "An appearance may be expressly made by formal written or oral declaration, or record entry, or it may be implied from some act done with the intention of appearing and submitting to the court's jurisdiction." Stearns Bank Nat. Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 338, 644 S.E.2d 793, 796 (Ct. App. 2007). "No specific act constitutes an appearance, as a defendant may choose to come into court with trumpets, or quietly by the back door." Id.

Hunt's Motion pursuant to Rule 12(b)(5), SCRCP argues that service of process was insufficient. The "Motion for Emergency Hearing/Injunction, Quash Order of Publication, Complaint and Lis Pendens; and Stay order of Publication," the "Motion to Alter or Amend the Judgment and Restraining Order," and the "Motion to Alter or Amend Judgment/Motion for Default Judgment" dispute the Affidavit for Order of Publication and attack the validity of the Order of Publication itself.

However, through her filing of the Answer and Counterclaim and "Waiver of Service of Process," Hunt voluntarily appeared in this action and thereby waived all objections to the sufficiency of the service of process. There is no question that the Court now has personal jurisdiction over Hunt. Further, BB&T never exercised the right to serve her through publication

as it was no longer necessary after her voluntary appearance. Therefore, Hunt's motions one through four are denied as moot.

2. **Motion No. 5 ("Motion for Default Judgment") is denied because BB&T is not in default.**

Hunt seeks a default judgment against BB&T in this action because it did not file answers to her federal court complaints in the three prior federal lawsuits.

However, in federal court, serving a motion pursuant to Rule 12 stays the time to answer a complaint until 14 days after the motion is denied. Fed. R. Civ. P. 12(a)(4). In all three federal lawsuits, BB&T filed timely Motions to Dismiss pursuant to Fed. R. Civ. P. 12(b), and all three cases were dismissed. As such, BB&T was not required to answer in any of those three federal lawsuits.

Even if BB&T had defaulted in those federal lawsuits, only the District Court would have jurisdiction to enter default judgments against BB&T on those complaints. Further, BB&T is not in default in this action because it filed a timely Motion to Dismiss in response to Hunt's counterclaims in this action. Therefore, Hunt's Motion for Default Judgment is denied.

3. **Motion No. 6 ("Motion to Strike") is denied because BB&T's foreclosure claim was not compulsory to the federal lawsuits and the Affidavit of Judy Teal did not waive BB&T's right to enforce the mortgage against Hunt.**

Hunt asks the Court to strike BB&T's Complaint on the grounds that: (1) its foreclosure cause of action was a compulsory counterclaim to the three prior federal court lawsuits and BB&T failed to assert it in those actions; and (2) BB&T waived its right to enforce the mortgage against Hunt because the Affidavit of Judy Teal filed in Federal Lawsuit # 1 failed to discuss the mortgage loan.

"By definition, a counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party's claim." Wells Fargo Bank, NA v. Smith, 398 S.C. 487, 495, 730 S.E.2d 328, 332-33 (Ct. App. 2012). "The test for determining if a counterclaim is compulsory is whether there is a 'logical relationship' between the claim and the counterclaim."

[1] Similar to the federal rule, Rule 6, 12(a)(1) SCRCP allows a party to move to dismiss instead of filing an answer. If the Court denies the motion, the moving party must then file and serve an answer thereafter within 15 days.

Id. In this context, the "logical relationship" determination is made by asking whether Hunt's claims would affect BB&T's right to enforce the note and foreclose the mortgage. Id. at 496, 730 S. E.2d at 333.

Hunt's claims in all three federal lawsuits concerned the POD account issue, the unauthorized loans issue, and the set-off issue. None of these concerned her default on the repayment of the mortgage loan at issue in this foreclosure. None of Hunt's federal court claims would have affected the enforceability of the Note and Mortgage at issue in this case. Therefore, BB&T's foreclosure claim was not compulsory to any of the three federal lawsuits. Even if it had been a compulsory counterclaim to those actions, this argument still fails because, as mentioned above, all three federal lawsuits were dismissed before any pleading of a counterclaim was required of BB&T.

Hunt contends that the failure of Judy Teal's affidavit to discuss the mortgage loan at issue in this foreclosure case somehow constitutes an acknowledgement by BB&T that her mortgage loan does not exist. The Court finds her contention nonsensical. At the hearing, Hunt herself acknowledged the existence of the mortgage loan at issue in this case. Further, she acknowledged defaulting on the mortgage loan. The silence of Judy Teal's affidavit with regard to this mortgage loan is understandable, as this mortgage loan was not at issue in Federal Lawsuit # 1. Therefore, the Affidavit of Judy Teal does not evidence a waiver of BB&T's right to enforce the mortgage against Hunt.

For these reasons Hunt's Motion to Strik[illegible]

4. **Motion N[illegible]tion to Strike") is denied because BB&T never admitted the allegations in Hunt's federal court complaints and more than one attorney within the law firm representing BB&T was permitted to sign filings.**

This motion appears to seek sanctions against BB&T and its foreclosure counsel on a theory that this foreclosure action is frivolous due to BB&T's alleged admission to all of Hunt's federal complaints by failing to file answers in the three federal lawsuits. This argument has no

merit because, as discussed above, BB&T did not default in the federal lawsuits. BB&T filed motions to dismiss in all three lawsuits, which were granted by the federal court. Therefore, BB&T did not admit anything in Hunt's federal court complaints.

Even if BB&T had been deemed to have admitted the allegations in Hunt's federal court complaints, it would not render this foreclosure lawsuit frivolous because the subject matter of the Complaint in this case differs from the subject matter of the complaints in the three federal lawsuits. The Complaint in this case concerns Hunt's default on her mortgage loan. The three federal court complaints concerned the POD account issue, the unauthorized loans issue, and the set-off issue.

The motion also seeks sanctions due to pleadings and other filings in this case being signed by more than one attorney at the law firm representing BB&T. However, the Court is unaware of, and Hunt has failed to cite to, any authority stating that the signing of pleadings is limited to a single attorney within the law firm representing BB&T in this action.

For these reasons, Hunt's "Objections and Motion for Contempt/Motion to Strike" is denied.

5. Motion No. 8 (Motion pursuant to Rule 12(b)(6,) SCRCP) is denied because BB&T's complaint sets forth sufficient factual allegations to state a claim for foreclosure.

Hunt argues that the Complaint fails to state a claim for foreclosure against her. The Court disagrees.

"In considering a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the circuit court must base its ruling solely upon the allegations set forth on the face of the complaint." Charleston County School Dist. v. Harrell, 393 S.C. 552, 558, 713 S.E.2d 604, 607 (2011). "The motion may not be sustained if the facts alleged in the complaint and the inferences drawn therefrom would entitle the plaintiff to relief under any theory." Id. "[P]leadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial justice is done between the parties." Id. at 557 *quoting* Overcash v. S.C. Elec. & Gas Co., 364

S.C. 569, 572, 614 S.E.2d 619 (2005) (citing Stroud v. Riddle, 260 S.C. 99, 102, 194 S.E.2d 235 (1973)).

"It is a well-settled principle that in resolving a Rule 12(b)(6) motion to dismiss, the court is limited to a consideration of the allegations contained within the four corners of the complaint." Id. at 559, 713 S.E.2d at 608.

In the Complaint, BB&T alleges that Hunt took out a note and mortgage and owed a debt to BB&T. It alleges that Hunt defaulted on the repayment of the debt. It alleges unliquidated damages due to the loan default. It set forth sufficient factual allegations to show that BB&T is the real party in interest to foreclose the mortgage.

Looking only within the "four corners" of the Complaint, the Court finds that BB&T has sufficiently stated a cause of action for foreclosure. Hunt's motion pursuant to Rule 12(b)(6), SCRCP is denied.

6. **Motion No. 9 ("Motion for Summary Judgment on Counterclaims/Defenses") is denied because there is a genuine issue of material fact with respect to Hunt's defenses and counterclaims.**

Hunt's Motion for Summary Judgment is denied because: (1) the affidavits of Shonda Chestnut and Judy Teal filed by BB&T in this case create a genuine issue of material fact with respect to her defenses and counterclaims; and (2) BB&T's pending Motion to Dismiss raises legitimate questions as to whether Hunt's counterclaims state valid and timely causes of action at all.

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences that can be drawn from the evidence must be viewed in the light most favorable to the non-moving party." Rosen v. University of South Carolina, 398 S.C. 703, 708, 731 S.E.2d 298 (Ct. App. 2011). "[I]n cases applying the preponderance of the evidence

burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Id.

Hunt's affirmative defenses and counterclaims in this action are based on the same factual allegations as her claims in the three prior federal court actions—the POD account issue, the unauthorized loans issue, and the set-off issue. The affidavits of Shonda Chestnut and Judy Teal set forth allegations that refuted Hunt's assertions on all three of these issues. These affidavits provided a sufficient amount of evidence to create a genuine issue of material fact in this case.

Further, BB&T's pending Motion to Dismiss and arguments at the hearing raise questions as to whether several of the Hunt's counterclaims are time-barred or state a valid cause of action.

For these reasons, summary judgment on Hunt's counterclaims and defenses is inappropriate at this time, and her motion is therefore denied.

7. **Motion No. 10 ("Motion to Strike Answer of Willow Greens Homeowners Association, Inc.") is denied as moot.**

Hunt asks the Court to strike the "Answer, Consent to Order of Reference, and Request for Notice of Surplus Funds of Defendant Willow Greens Homeowners Association, Inc." filed on May 6, 2013. However, Defendant Willow Greens Homeowners Association, Inc. filed a "Withdrawal of Answer" on November 5, 2013. The Court therefore denies this motion as moot.

8. **Motion No. 11 ("Motion for Production of Note") is denied because it is not ripe for determination.**

Hunt asks the Court to enter an order requiring BB&T to produce a copy of her promissory note to her. This is in essence a motion to compel production. However, a party may only move for an order compelling production "if [the other] party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested." Rule 37(a)(2), SCRCP.

Hunt concedes that she never served BB&T with a request for production pursuant to the Rule 34, SCRCP before filing this motion. Further, BB&T's counsel agreed at the hearing to mail Hunt a copy of the promissory note resolving the need for this motion. Therefore, the motion is denied because it is not ripe for determination.

9. **Motion No. 12 ("Motion for Continuance of Pre-trial Hearing") is denied as moot.**

Hunt's motion originally sought a continuance of a hearing held in this case on February 6, 2014. Because that hearing has come and gone, the motion is now moot and therefore denied.

NOW, THEREFORE, IT IS ORDERED THAT:

All of the following motions filed by Defendant Cindy B. Hunt are hereby denied:

a. Motion pursuant to Rule 12(b)(5), SCRCP asserted within her Answer—filed on 8/2/2013;

b. "Motion for Emergency Hearing/Injunction, Quash Order of Publication, Complaint and Lis Pendens; and Stay order of Publication"—filed on 8/12/2013;

c. "Motion to Alter or Amend the Judgment and Restraining Order"—filed on 8/21/2013);

d. "Motion to Alter or Amend Judgment"—filed on 9/9/13;

e. "Motion for Default Judgment"—filed on 9/9/13;

f. "Motion to Strike" asserted within the "Response to BB&T's Motion to Dismiss"—filed on 9/19/2013;

g. "Objections and Motion for Contempt/Motion to Strike"—filed on 10/22/2013;

h. Motion pursuant to Rule 12(b)(6), SCRCP asserted within her Answer—filed on 8/2/2013;

i. "Motion for Summary Judgment on Counterclaims/Defenses"—filed on 8/2/2013;

j. "Motion to Strike Answer of Willow Greens Homeowners Association, Inc."—filed on 10/17/2013;

k. "Motion for Production of Note"—filed on 10/22/2013; and

l. "Motion for Continuance of Pre-trial Hearing"—filed on 1/7/2014.

AND IT IS SO ORDERED.

The Honorable Cynthia Graham Howe
Master in Equity for Horry County

17th day of October, 2014
Conway, South Carolina

Horry County
SOUTH CAROLINA
Committed to Excellence

After Five Days Return To
Melanie Huggins – Ward
Clerk of Court of Horry County
P.O Box 677
Conway, South Carolina 29528-0677

Cindy B. Hunt
195 D Willow Green Drive
Conway, SC 29526
2013-2528

EXH-SMP 29526

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Case No.: 2013-CP-26-2528

Exhibit # 94

ORDER filed 10/28/2014 from BBT

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-26-2528

Branch Banking and Trust,
PLAINTIFF(S)

Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC
DEFENDANT(S)

Submitted by: The Honorable Cynthia Graham Howe

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

FILED IN HORRY COUNTY
2014 OCT 28 AM 9:04
JANIE HUGGINS HARD
CLERK OF COURT

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

Defendant Cindy B. Hunt's Motion for Entry of Default Judgment against Plaintiff BB&T is hereby denied as moot. All counterclaims asserted by the Defendant in this action were previously dismissed by this Court following an October 14, 2014 hearing regarding Plaintiff's Motion to Dismiss the First Amended Counterclaims of Defendant Cindy B. Hunt. As such, there are no remaining counterclaims to which the Plaintiff could be considered in default.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk : Foreclosure Matter

INFORMATION FOR THE JUDGMENT INDEX

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

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

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Master in Equity

3073
Judge Code

10/27/14
Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Sean Foerster
Rogers Townsend & Thomas, PC
PO Box 100200
Columbia, SC 29202-3200

ATTORNEY(S) FOR THE PLAINTIFF(S)

Cindy B. Hunt
195-D Willow Creek Dr.
Conway, SC 29526

Steve Ouverson
Parsons, Ouverson, Stark & Guest, PA
PO Box 2850
Murrells Inlet, SC 29576

CJ Developers, LLC
1421 Graham Road
Mansfield, OH 44903

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ROGERS TOWNSEND & THOMAS, PC
POST OFFICE BOX 100200 (29202)
220 EXECUTIVE CENTER DRIVE
COLUMBIA, SOUTH CAROLINA 29210
P 803.771.7900 F 803.343.7017
W RTT-LAW.COM

Sean M. Foerster
Sean.Foerster@RTT-LAW.COM
P 803.744-1855

ROGERS TOWNSEND
ATTORNEYS AT LAW

October 28, 2014

Cindy B. Hunt, Esquire
195-D Willow Greens Drive
Conway, SC 29526

RE: *Branch Banking and Trust Company vs. Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC,*
Civil Action# 2013-CP-26-2528
Our File# 504335-3166

Dear Ms. Hunt:

Enclosed is a copy of a filed Form 4 Order, in reference to the above matter, which I hereby serve upon you.

Very truly yours,

Sean M. Foerster

/odw
Enclosure

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

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ROGERS TOWNSEND
ATTORNEYS AT LAW

ROGERS TOWNSEND & THOMAS, PC
POST OFFICE BOX 100200
COLUMBIA, SOUTH CAROLINA 29202
RTT-LAW.COM

Cindy B. Hunt, Esquire
195-D Willow Green Drive
Conway, SC 29526

9526938276

ZIP 29210
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US POSTAGE
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10/28/2014
FIRST-CLASS MAIL

COLUMBIA
SC 290
29 OCT '14
PM 1 L

Case No.: 2013-CP-26-2528

Exhibit # 101

11/25/2014 ORDER from the USDC -

Other Orders/Judgments

4:14-cv-04352-BHH-TER Branch Banking and Trust Company v. Hunt et al

LC 2,PROSE

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 11/25/2014 at 1:56 PM EST and filed on 11/25/2014

Case Name: Branch Banking and Trust Company v. Hunt et al
Case Number: 4:14-cv-04352-BHH-TER
Filer:
Document Number: 9

Docket Text:
ORDER directing plaintiff to notify Clerk in writing of any address changes. Signed by Magistrate Judge Thomas E Rogers, III on 11/25/2014. (dsto,)

4:14-cv-04352-BHH-TER Notice has been electronically mailed to:

Samuel Calvin Waters waters@rtt-law.com

Reginald P Corley corley@rtt-law.com

Vance Lyn Brabham, III vbrabham@qlawfirm.com

Michael Peter Morris mmorris@rtt-law.com

William Stapleton Koehler billy@westonadams.com

Robert Paul Davis rdavis@rtt-law.com

Sean Matthew Foerster sean.foerster@rtt-law.com, tabitha.scott@rtt-law.com

Andrew Augustyn Powell andrew.powell@rtt-law.com

John Frank McLeod, IV mcleodjf@gmail.com

4:14-cv-04352-BHH-TER Notice will not be electronically mailed to:

Cindy B Hunt
195 D Willow Green Drive

92

Conway, SC 29526

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1091130295 [Date=11/25/2014] [FileNumber=6474931-0] [0a0cde5bbea111307c9d509f9611115212d92b24a1fb7ecf1f125717994dfbe3af ae90808a850caba6762665f0a4e0297f15620ec3c947440ca61f362328b69c]]

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Branch Banking and Trust Company, Plaintiff, vs. Cindy B. Hunt, Willow Greens Homeowners Association, Inc., and CJ Developers, LLC, Defendant.	) C/A No. 4:14-4352-BHH-TER)))) ORDER)))))

Cindy B. Hunt ("Defendant") appears in this case without legal counsel, or, in other words, *pro se*. ECF No. 1. Under Local Civil Rule 73.02(B)(2) of the United States District Court for the District of South Carolina, pretrial proceedings in this action have been referred to the assigned United States Magistrate Judge. This order is issued to inform Defendant of the special pleading rules applicable to *pro se* litigants in this District.

Defendant is a *pro se* litigant. Her attention is directed to the following important notice and to the procedural directions that follow:

TO DEFENDANT:

You are ordered to always keep the Clerk of Court advised in writing (**Post Office Box 2317, Florence, South Carolina 29501**) if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this order, you fail to file something you are required to file within a deadline set by a District Judge or a Magistrate Judge, your case may be dismissed for violating this order. Therefore, if you have a change of address before this case is ended, you must comply with this order by immediately advising the Clerk of court in writing of such change of address. Your failure to do so will not be excused by the court.

Put this order with your own record of this case so that you will not overlook your duty. If an attorney serves you by mail on behalf of a Plaintiff or another Defendant you also have a duty to notify that attorney if your address is to be changed for mail purposes.

All future filings by Defendant in this case should be mailed to the Office of the Clerk of Court in Florence, South Carolina. (see address above). All documents requiring Defendant's signature shall be signed with her full legal name written in her own handwriting. Pro se litigants shall not use the "s/typed name" format used in the Electronic Case Filing System.

In all future filings with this court, Defendant is directed to write or type text on one side of a sheet of paper only and not to write or type on both sides of any sheet of paper. Defendant is further instructed not to write to the edge of the paper, but to maintain one inch margins on the top, bottom and sides of each

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paper submitted. Defendant will strictly comply with requirements for "short and plain" statements of claims and defenses in all pleadings under Rule 8 of the Federal Rules of Civil Procedure as well as the requirements for "concise summary," "concise statement" and "brevity" set forth in Local Civil Rule 7.05 of the United States District Court for the District of South Carolina.

Defendant Hunt is also hereby apprised that a copy of any pleading, motion, and other paper filed by Defendant Hunt with the Clerk of Court in connection with this case must be personally signed by Defendant Hunt. After they are presented by Defendant Hunt to the Clerk of Court for filing on the docket, service of such documents on Plaintiff and other Defendants shall be accomplished through operation of the ECF System.

IT IS SO ORDERED.

s/ Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

November 25, 2014
Florence, South Carolina

Defendant's attention is directed to the important notice on the following page

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IMPORTANT INFORMATION ....PLEASE READ CAREFULLY

WARNING TO PRO SE PARTY OR NONPARTY FILERS

All Documents That You File with the Court Will Be Available to the Public on the Internet Through Pacer (Public Access to Court Electronic Records) and the Court's Electronic Case Filing System. **CERTAIN *PERSONAL IDENTIFYING INFORMATION* SHOULD NOT BE INCLUDED IN OR SHOULD BE REMOVED FROM ALL DOCUMENTS *BEFORE* YOU SUBMIT THE DOCUMENTS TO THE COURT FOR FILING.**

Rule 5.2 of the Federal Rules of Civil Procedure provides for privacy protection of electronic or paper filings made with the court. Rule 5.2 applies to ***ALL*** documents submitted for filing, including pleadings, exhibits to pleadings, discovery responses, and any other document submitted by any party or nonparty for filing. Unless otherwise ordered by the court, a party or nonparty filer should not put certain types of an individual's personal identifying information in documents submitted for filing to any United States District Court. If it is necessary to file a document that already contains personal identifying information, the personal identifying information should be "**blacked out**" or **redacted** prior to submitting the document to the Office of the Clerk of Court for filing. A person filing any document containing their own personal identifying information **waives** the protection of Rule 5.2(a) by filing the information without redaction and not under seal.

1. Personal information protected by Rule 5.2(a):

(a) Social Security and Taxpayer identification numbers. If an individual's social security number or a taxpayer identification number must be included in a document, the filer may include only the last four digits of that number.
(b) Names of Minor Children. If the involvement of a minor child must be mentioned, the filer may include only the initials of that child.
(c) Dates of Birth. If an individual's date of birth must be included in a document, the filer may include only the year of birth.
(d) Financial Account Numbers. If financial account numbers are relevant, the filer may include only the last four digits of these numbers.

2. Protection of other sensitive personal information – such as driver's license numbers and alien registration numbers – may be sought under Rule 5.2(d)(Filings Made Under Seal) and (e) (Protective Orders).

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Cindy B Hunt
195 D Willow Green Drive
Conway, SC 29526

Case No.: 2013-CP-26-2528

Exhibit # 84

ORDER filed 1/13/2015
WITH Envelope

STATE OF SOUTH CAROLINA COUNTY OF HORRY Branch Banking and Trust Company, Plaintiff, vs. Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC, Defendants.	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2013-CP-26-2528 ORDER

HORRY COUNTY
2013 SEP 13 PM 1:15
CLERK OF COURT

This matter came before the Court at a hearing on October 14, 2014, regarding Plaintiff Branch Banking and Trust Company's ("BB&T") Motion to Dismiss the Amended Counterclaims of Defendant Cindy B. Hunt ("Hunt"). Sean M. Foerster, Esquire, appeared on behalf of BB&T. Hunt appeared *pro se* and opposed the motion. For the reasons set forth herein, the Court grants the motion and dismisses all of Hunt's counterclaims with prejudice.

Relevant Facts

On June 6, 2014, Hunt filed a "First Amended Counterclaims and Defenses" asserting the following seven counterclaims against BB&T: 1) constructive fraud, 2) negligence *per se*, 3) conversion, 4) breach of fiduciary duty, 5) violation of S.C. Code Ann. §§ 62-6-101 to 62-6-106, 6) violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et seq.*, and 7) breach of contract.[1] These counterclaims are based on three main factual allegations:

- First, she alleges that BB&T improperly treated her Payable on Death/Revocable Trust Account ("POD account") as a joint account with the POD account's beneficiary, Costella Hunt Davis, and BB&T allegedly disclosed information about the POD account to the beneficiary (hereinafter referred to as the "POD account issue"). This is a basis for all seven counterclaims.
- Second, she alleges that her customer profile with BB&T showed the existence of what she believed to be two loans that did not belong to her—identified on the customer profile as "transfer management" and "portfolio" (hereinafter referred to as the "unauthorized loans issue"). This is a basis for all of the counterclaims except for constructive fraud.

[1] Hunt previously asserted all of these counterclaims except for the breach of contract counterclaim in her Answer and Counterclaim filed on August 2, 2013. At a hearing on May 20, 2014, the Court dismissed those counterclaims without prejudice, but gave Hunt leave to amend them.

- Finally, she alleges that BB&T improperly exercised its right of set-off against her POD account to recover money after Hunt cashed a check with BB&T that was later subject to a stop payment by the issuing agency (hereinafter referred to as the "set-off issue"). This is a basis for all of the counterclaims except for constructive fraud.

BB&T filed a Motion to Dismiss Hunt's Amended Counterclaims on June 25, 2014. BB&T alleged that the counterclaims for constructive fraud, negligence *per se*, conversion, breach of fiduciary duty, violation of the South Carolina Unfair Trade Practices Act, and breach of contract are barred by the applicable statutes of limitation, and that the remaining claim for violation of S.C. Code Ann. §§ 62-6-101 to 62-6-106 fails to state a valid cause of action.

In her pleadings and through her statements in open court, Hunt admitted that:

- She discovered the POD account issue no later than March 24, 2008. (First Amd. Counterclaim and Def. ¶ 80)("Hunt complained to the Federal Deposit Insurance Corporation (FDIC) on March 24, 2008 about the disclosure of the POD account information to Davis."); (Hr'g Tr. 44:3-13)("THE COURT: I thought you told me that you found out in March of 2008 that BB&T told Ms. Davis that she was a beneficiary of your payable on death account. MS. HUNT: They did tell her she was the beneficiary at that time. THE COURT: So that's when you first found out that Ms. Davis -- that BB&T told Ms. Davis that she was the beneficiary of your payable on death account? MS. HUNT: Yes, ma'am.").
- She discovered the unauthorized loans issue in November 2009. (First Amd. Counterclaim and Def. ¶ 60)("Hunt discovered in late 2009 that the 7/19/2007 customer profile showed that Hunt had the following accounts at BBT: Checking Direct Free Interest (savings account); Checking-Interest Checking (POD Trust); Debit Card; transfer management (an unauthorized loan); a closed auto loan; a closed conventional mortgage; an active conventional mortgage; Portfolio (an unauthorized loan); a closed commercial loan; Credit Card and Hunt's IOLTA."); (Hr'g Tr. 23:10-17)("THE COURT: The transfer of management and the portfolio, which was discovered in November of 2009? MS. HUNT: Yes, ma'am. THE COURT: You don't dispute that, do you? MS. HUNT: Well, I dispute -- no ma'am, substantially not."); (Hr'g Tr. 40:20-23)("THE COURT: I've asked you about the transfer management of the portfolio account. You admit that you discovered that in November of 2009? MS. HUNT: Yes, ma'am."); (Hr'g Tr. 52:9-14)("THE COURT: Your transfer management account, the portfolio account, those were discovered in November of 2009; is that correct? MS. HUNT: Yes, ma'am. That was discovered by me in November of 2009.").

- She discovered the set-off issue sometime in April 2008. (First Amd. Counterclaim and Def. ¶¶ 99-100)("On or about 4/2008 BBT subjected the POD trust to a setoff of $855.00. Hunt demanded the return of the $855.00 and BBT refused.");(Hr'g Tr. 40:24-41:6)("THE COURT: Okay. What about the set-off issue that BB&T set off, apparently, a check that one of your clients gave you? MS. HUNT: That was in 2008. I've been filing all along. THE COURT: That was in April of 2008. You admit you discovered that in 2008? MS. HUNT: Yes, ma'am.").

Corroborating the above dates is the fact that Hunt previously filed three federal lawsuits against BB&T based on these same issues.[2]

Hunt filed the first of these federal cases against BB&T on August 13, 2009. *Hunt v. Branch Banking and Trust Company et al.*, C/A # 4:09-cv-02151-JMC (D.S.C. filed Aug. 13, 2009) (hereinafter "Federal Lawsuit # 1"). A review of Hunt's complaint in Federal Lawsuit # 1 reveals that her claims were based on the POD account issue and the set-off issue. (*See* Complaint in Federal Lawsuit #1 ¶ 9)("[T]he Payable on Death account was set up improperly by the defendants, as a joint account, with Plaintiff Hunt and Costella Hunt Davis as co-owners."); (Complaint in Federal Lawsuit #1 ¶ 12)("Defendant Kaci Sansbury, an employee of BB&T, told Davis that she had a certain amount of money in her account. This was the amount of money in Plaintiff's Payable on Death account. When Davis protested, saying this balance was incorrect, Sansbury insisted, and disclosed further information about the Payable on Death account held by the Plaintiff."); (Complaint in Federal Lawsuit #1 ¶ 15)("Around late April, early May 2008, Plaintiff cashed a check at defendant BB&T that was later subjected to a 'stop payment' by the issuing agency. Claiming they had the right of set-off, Defendant Bank withdrew the money for this check from Plaintiff's alleged Payable on Death account without obtaining Plaintiff's permission. Plaintiff demanded the return of these monies, and defendant bank refused."). The federal complaint included three of the claims that Hunt now asserts in this action: conversion, breach of fiduciary duty, and breach of contract. (*See* Complaint in Federal Lawsuit #1 ¶¶ 42-53, 59-64.)

In Federal Lawsuit # 1, BB&T filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b). On March 23, 2011, the federal court granted BB&T's motion and dismissed Federal Lawsuit # 1 without prejudice to her state law claims.

Hunt filed a second federal case on April 12, 2011. *Hunt v. Branch Banking and Trust Company et al.*, C/A # 4:11-cv-00870-MGL (D.S.C. filed Apr. 12, 2011) (hereinafter "Federal Lawsuit # 2"). A

[2] The footnotes contained in Hunt's "First Amended Counterclaims and Defenses" incorporate by reference filings from the three federal lawsuits. The court may consider documents incorporated by reference into the pleading without converting a 12(b)(6) motion into a motion for summary judgment. *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009). Further, "[t]he court is authorized to take judicial notice of public information such as court documents without transforming a motion to dismiss under Rule 12(b)(6) into a motion for summary judgment." *Sec'y of State for Def. v. Trimble Navigation, Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007).

review of Hunt's complaint in Federal Lawsuit # 2 reveals that her claims were based on the POD account issue, the set-off issue, and the unauthorized loans issue. (*See* Complaint in Federal Lawsuit # 2 ¶¶ 15-35.) While Hunt first pleaded the unauthorized loans issue in this second lawsuit, her federal complaint confirmed that she discovered the unauthorized loans issue in November 2009. (*See* Complaint in Federal Lawsuit # 2 ¶ 23)("Plaintiff discovered in November 2009 that the printout of the 7/19/2007 customer profile contained at least two unauthorized loans. The Complaint was amended immediately to include the at least two unauthorized loans."). The federal complaint included five of the claims that Hunt now asserts in this action: breach of fiduciary duty, constructive fraud, conversion, violation of the South Carolina Unfair Trade Practices Act, and negligence *per se*. (*See* Complaint in Federal Lawsuit # 2 pp. 10-11; 16-18; 32-36.)

Again, BB&T filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b). On March 13, 2013, the federal court granted BB&T's motion and dismissed Federal Lawsuit # 2 without prejudice.

Hunt filed a third case against BB&T on Aug. 6, 2012. *Hunt v. Branch Banking and Trust Company*, C/A # 4:12-cv-02216-MGL (D.S.C. filed Aug. 6, 2012) (hereinafter "Federal Lawsuit # 3"). Again, her claims were based on the POD account issue, the set-off issue, and the unauthorized loans issue. (*See* Complaint in Federal Lawsuit # 3 ¶¶ 28-64.) Again, the complaint included five of the claims that Hunt now asserts in this action: breach of fiduciary duty, constructive fraud, conversion, violation of the South Carolina Unfair Trade Practices Act, and negligence *per se*. (*See* Complaint in Federal Lawsuit # 3 ¶¶ 105-194; 223-246.)

Again, BB&T filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b). On March 13, 2013, the federal court dismissed Federal Lawsuit # 3 without prejudice.

Conclusions of Law

The Court dismisses all of Hunt's counterclaims with prejudice for the following reasons:

1. The counterclaims for constructive fraud, negligence *per se*, conversion, breach of fiduciary duty, violation of the South Carolina Unfair Trade Practices Act, and breach of contract are time-barred.

Hunt's counterclaims for constructive fraud, negligence *per se*, conversion, breach of fiduciary duty, violation of the South Carolina Unfair Trade Practices Act, and breach of contract are time-barred by their applicable statutes of limitation.

Although Rule 12(b)(6) tests the sufficiency of the pleading, an affirmative defense, such as the statute of limitations, may be raised in a motion to dismiss under Rule 12(b)(6) "when there is no disputed issue of fact raised by an affirmative defense, or the facts are completely disclosed on the face of the pleadings, and realistically nothing further can be developed by pretrial discovery or a trial on the issue raised by the defense...." *Spence v. Spence*, 368 S.C. 106, 124, 628 S.E.2d 869, 878 (2006).

a. The statutory limitations periods for these counterclaims expired prior to Hunt filing the counterclaims in this action.

Each of these counterclaims is subject to a three year statute of limitations. *See* S.C. Code Ann. § 15-3-520; S.C. Code Ann. § 15-3-530(1)("Within three years... an action upon a contract, obligation, or liability, express or implied..."); S.C. Code Ann. § 15-3-530(4)("Within three years...an action for taking, detaining, or injuring any goods or chattels including an action for the specific recovery of personal property..."); S.C. Code Ann. § 15-3-530(5)("Within three years...an action for ... any injury to the person or rights of another, not arising on contract and not enumerated by law..."); S.C. Code Ann. § 15-3-530(7)("Within three years...any action for relief on the ground of fraud..."); S.C. Code Ann. § 39-5-150 ("No action may be brought under this article more than three years after discovery of the unlawful conduct which is the subject of the suit."); *Grillo v. Speedrite Products, Inc.*, 340 S.C. 498, 508, 532 S.E.2d 1, 6 (Ct. App. 2000)(three year statute of limitation set forth in S.C. Code Ann. § 15-3-530(5) applicable to claim for negligence *per se*); *Walsh v. Woods*, 358 S.C. 259, 594 S.E.2d 548 (Ct. App. 2004)("The statute of limitations for both an action upon a contract and a conversion claim is three (3) years."); *Mazloom v. Mazloom*, 382 S.C. 307, 675 S.E.2d 746 (Ct. App. 2009)(A "[c]laim for breach of fiduciary duty is subject to a three-year statute of limitations.").

Under "the discovery rule," the "statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct." *Graham v. Welch, Roberts & Amburn, LLP*, 404 S.C. 235, 239, 743 S.E.2d 860, 862 (Ct. App. 2013). The "exercise of reasonable diligence" means "that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on *notice* that a claim against another party might exist." *Id.* "The date on which discovery of the cause of action should have been made is an objective, rather than subjective, question." *Id.* "In other words, whether the particular plaintiff actually knew he had a claim is not the test." *Id.* "Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist." *Id.* "The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed." *Mitchell v. Holler*, 311 S.C. 406, 409, 429 S.E.2d 793, 795 (1993).

A review of the face of the "First Amended Counterclaims and Defenses," combined with Hunt's admissions at the hearing, reveals that 1) Hunt knew, or should have known by the exercise of reasonable diligence, that one or more causes of action existed based on the POD account issue no later than March 24, 2008; 2) Hunt knew, or should have known by the exercise of reasonable diligence, that one or more

causes of action existed based on the unauthorized loans issue no later than November 2009; and 3) Hunt knew, or should have known by the exercise of reasonable diligence, that one or more causes of action existed based on the set-off issue no later than April 2008. Therefore, the counterclaims based on the POD account issue became time-barred on March 25, 2011, the counterclaims based on the unauthorized loans issue became time-barred in November 2012, and the counterclaims based on the set-off issue became time-barred in April 2011.

Because Ms. Hunt did not file the counterclaims for constructive fraud, negligence *per se*, conversion, breach of fiduciary duty, and violation of the South Carolina Unfair Trade Practices Act in this action until August 2, 2013, and the counterclaim for breach of contract until June 6, 2014, all six of these counterclaims were filed outside of their applicable statutory limitations periods.

b. The federal supplement jurisdiction statute, 28 U.S.C. § 1367(d), does not save the counterclaims from being time-barred.

Contrary to Hunt's assertion, 28 U.S.C. § 1367(d) does not save Hunt's counterclaims from being time-barred. "The period of limitations for any claim asserted under subsection (a)[3], and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d).

While the Court agrees that § 1367(d) is applicable to Hunt's counterclaims because she previously filed them in the federal court actions, it disagrees with Hunt's interpretation of the statute: that the clock stopped running on the statute of limitations on these claims when she filed her federal court lawsuits and only started running again upon their dismissal, leaving her with the remaining, unused portion of the limitations period available at the time she filed the federal actions.

Rather, the proper interpretation of § 1367(d) is that a state law claim brought in federal court pursuant to the supplemental jurisdiction statute must be re-filed in state court within 30 days after dismissal if the limitations period expires during the pendency of the federal case. While the Court is unaware of any published South Carolina case directly on point, North Carolina[4] has adopted this interpretation of § 1367(d). *Huang v. Ziko*, 511 S.E.2d 305 (N.C. Ct. App. 1999). The North Carolina court reasoned that allowing a claimant to deduct the time consumed by the pendency of the federal action from the period of the applicable statute of limitations "is contrary to the policy in favor of prompt prosecution of legal claims." *Id.* at 308.

[3] Subsection (a) is the federal supplemental jurisdiction statute that gives the federal court "supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a).

[4] When a case involves a novel issue of law in South Carolina, courts may "look to other jurisdictions for edification, enlightenment, and guidance." *Lukich v. Lukich*, 368 S.C. 47, 54, 627 S.E.2d 754, 757 (Ct. App. 2006).

Other jurisdictions interpret § 1367(d) the same way. *See Berke v. Buckley Broad. Corp.*, 821 A.2d 118, 123 (2003) ("We agree with the grace-period reasoning. The evident purpose of the statute is only to preserve a plaintiff's right of access to the state court for a minimum thirty-day period in order for it to assert those state causes over which the federal court has declined to exercise jurisdiction and as to which the statute of limitations has run before that declination."); *Juan v. Gov't of N. Mariana Islands*, 6 N. Mar. I. 322, 327 (N. Mar. I. 2001) ("§ 1367(d) operates only to toll the limitations statute during the specified period, and to allow a party to refile within 30 days after dismissal from federal court."); *Kolani v. Gluska*, 75 Cal. Rptr. 2d 257, 262 (1998)("Section 1367 subdivision (d) does not allow plaintiff to 'tack' onto the limitations period the full time during which his federal action was pending.").

Recently, the Fourth Circuit relied on *Huang* and followed its interpretation of § 1367(d). *Glynne v. Wilmed Healthcare*, 699 F.3d 380 (4th Cir. 2012)("The North Carolina Court of Appeals has indicated that the state has no applicable tolling period longer than the 30–day period set out in § 1367(d) ... [a]ccordingly, under the state appellate court's interpretation of § 1367(d), Glynne's claims had to be filed in state court no later than 30 days following entry of the district court order on March 1, 2011."). Our local federal courts appear to interpret § 1367(d) the same way. *See Straub v. County of Greenville, South Carolina*, 2006 WL 1073883 (D.S.C. 2006) (giving the plaintiff only 30 days from the dismissal order to file the state law claims in state court despite a portion of the limitations period still remaining when the plaintiff filed the federal case); *Gadsden v. Florence Cnty. Sch. Dist. Four*, 2008 WL 320196 (D.S.C. 2008)(same).

The Court finds the above authorities persuasive in their interpretation of § 1367(d), and holds that Hunt was required to file these counterclaims no later than 30 days after their dismissal by the federal court.

In this case, Hunt's first federal lawsuit against BB&T was dismissed on March 23, 2011. She filed her second federal lawsuit against BB&T on April 12, 2011. She filed her third federal lawsuit against BB&T on August 6, 2012. Federal Lawsuits # 2 and # 3 were both dismissed on March 13, 2013. Therefore, in order to avail herself of the extension on the statute of limitations granted under § 1367(d), Hunt needed to file her counterclaims by April 12, 2013, at the latest—within 30 days of dismissal of Federal Lawsuits # 2 and # 3. Because she failed to do so, § 1367(d) does not save the counterclaims from being time-barred.

c. S.C. Code Ann. § 15-3-30 did not toll the running of the limitations periods on these counterclaims.

Contrary to Hunt's assertion, S.C. Code Ann. § 15-3-30 did not toll the statutes of limitation on her counterclaims while Hunt resided outside of the state during part of 2013. The statute reads in full:

> If when a cause of action shall accrue against any person he shall be out of the State, such action may be commenced within the terms in this chapter respectively limited after the return of such person into this State. And if, after such cause of action shall have accrued, such person shall depart from and reside out of this State or remain continuously absent therefrom for the space of one year or more, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action.

S.C. Code Ann. § 15-3-30 (emphasis added). This statute affords no protection to a claimant who leaves the state; rather, it only benefits a claimant if the defendant of those claims is out of the State. It would only have tolled the running of the statute of limitations on Hunt's counterclaims if BB&T was out of the state when these counterclaims accrued. That is not the case here. Any other interpretation would be inequitable as it would permit Hunt to simply leave town to avoid the effects of the statute of limitations on her counterclaims. Therefore, S.C. Code Ann. § 15-3-30 does not save the counterclaims from being time-barred.

2. There is no private right of action for a violation of S.C. Code Ann. §§ 62-6-101 to 62-6-106.

Additionally, the Court dismisses Hunt's counterclaim for violation of S.C. Code Ann. §§ 62-6-101 to 62-6-106 because those statutes create no private right of action for their violation.

"In determining whether a statute creates a private cause of action, the main factor is legislative intent[.]" *Georgetown Cnty. League of Women Voters v. Smith Land Co.*, 393 S.C. 350, 353, 713 S.E.2d 287, 289 (2011). "Legislative intent to grant or withhold a private right of action for a violation of the statute is determined primarily from the language of the statute." *Id.* "When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party." *Doe v. Marion*, 373 S.C. 390, 397, 645 S.E.2d 245, 248 (2007).

S.C. Code Ann. §§ 62-6-101 to 62-6-106 do not specifically create a private cause of action. This portion of the probate code is primarily for the benefit and protection of the public generally. Hunt has not cited to, and the Court cannot find any, case law establishing the existence of a private right of action for its violation.[5] Therefore, the Court concludes that no private right of action exists for its violation.

[5] The two cases cited by Hunt at the hearing do not recognize the existence of a private right action for a violation of S.C. Code Ann. §§ 62-6-101 through 62-6-106. *See Kemp v. Rawlings*, 358 S.C. 28, 594 S.E.2d 845 (2004); *Vaughn v. Bernhardt*, 345 S.C. 196, 547 S.E.2d 869 (2001).

NOW, THEREFORE, it is ordered that:

1. The Motion to Dismiss of Plaintiff Branch Banking and Trust Company is GRANTED; and

2. All counterclaims contained in Defendant Cindy B. Hunt's "First Amended Counterclaims and Defenses" filed on June 6, 2014, are dismissed with prejudice.

AND IT IS SO ORDERED.

Cynthia Graham Howe
Master in Equity for Horry County

January 12, 2015

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-26-2528

Branch Banking and Trust Company,

PLAINTIFF(S)

Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC

DEFENDANT(S)

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

HORRY COUNTY
2013 DEC 31 PM 3:27

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of **(List name(s) below)**	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
n/a		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Cynthia Graham Howe, Master in Equity | 3073 Judge Code | 11/21/15 Date

For Clerk of Court Office Use Only

This judgment was entered on the [illegible] day of [illegible], 20[illegible]. A copy mailed first class or placed in the appropriate attorney's box on this day of _____, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Sean M. Foerster
Rogers Townsend & Thomas, PC
P. O. Box 100200
Columbia, SC 29202
(504335-3166)

ATTORNEY(S) FOR THE PLAINTIFF(S)

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Parsons Ouverson Stark & Guest, PA
P. O. Box 2850
Murrells Inlet, South Carolina 29576

ATTORNEY(S) FOR THE DEFENDANTS

Cindy B. Hunt
195-D Willow Creek Drive
Conway, SC 29526

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Horry County
SOUTH CAROLINA
Committed to Excellence

After Five Days Return To
Melanie Huggins – Ward
Clerk of Court of Horry County
P.O Box 677
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C.B. Hunt
195 D Willow Green Drive
Conway SC 29526

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Case No.: 2013-CP-26-2528

Exhibit # 85

4/15/2015 Report and Recommendation

Other Orders/Judgments

4:14-cv-04352-BHH-TER Branch Banking and Trust Company v. Hunt et al

LC 2,PROSE

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 4/15/2015 at 1:35 PM EDT and filed on 4/15/2015

Case Name: Branch Banking and Trust Company v. Hunt et al

Case Number: 4:14-cv-04352-BHH

Filer:

Document Number: 14

Docket Text:

REPORT AND RECOMMENDATION recommending that BB&T's motion to remand(Document #[11]) be granted and this case be remanded to the Court of Common Pleas, Horry County, South Carolina. Objections to R&R due by 5/4/2015. Signed by Magistrate Judge Thomas E Rogers, III on 04/15/2015. (Attachments: # (1) Notice of Right to File Objections)(dsto,)

4:14-cv-04352-BHH Notice has been electronically mailed to:

Samuel Calvin Waters waters@rtt-law.com

Reginald P Corley corley@rtt-law.com

Vance Lyn Brabham, III vbrabham@qlawfirm.com

Michael Peter Morris mmorris@rtt-law.com

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Andrew Augustyn Powell andrew.powell@rtt-law.com

John Frank McLeod, IV mcleodjf@gmail.com

4:14-cv-04352-BHH Notice will not be electronically mailed to:

Cindy B Hunt
195 D Willow Green Drive
Conway, SC 29526

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1091130295 [Date=4/15/2015] [FileNumber=6685939-0
] [84a4c56a140bd31b01a90df38c8ef2e2a9f0d831c084670cc5fc6c1b6f69749046f
5b6b9733d57c720b06f0d1053b48daaaf7a266b23aacf78179d016a238608]]
Document description: Notice of Right to File Objections
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1091130295 [Date=4/15/2015] [FileNumber=6685939-1
] [58612fe1bf44afdc58f5c4a4c4f08da8c9dfe55585ec779157a892fc089ac87e575
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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

BRANCH BANKING AND TRUST COMPANY, Plaintiff, -vs- CINDY B. HUNT, WILLOW GREENS HOMEOWNERS ASSOCIATION, INC, and CJ DEVELOPERS, LLC; Defendants.	)	Civil Action No.: 4:14-cv-4352-BHH-TER **REPORT AND RECOMMENDATION**

I. INTRODUCTION

Plaintiff Branch Banking & Trust (BB&T) filed this foreclosure action in the Court of Common Pleas, Horry County, South Carolina, on April 16, 2013. Defendant Cindy B. Hunt, who is proceeding pro se, removed the action to this court on November 10, 2014, pursuant to 28 U.S.C. § 1441. Presently before the court is BB&T's motion to remand (Document # 11). All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(e), DSC. This report and recommendation is entered for review by the district judge.

II. PROCEDURAL HISTORY

As stated above, BB&T filed this foreclosure action in the Court of Common Pleas, Horry County, South Carolina, on April 16, 2013.[1] Hunt filed an answer and counterclaims in the state court on August 2, 2013. In her answer, Hunt stated that she had not been served and did not waive

[1] All state court documents referenced herein are attached to Hunt's notice of removal.

service of process. Later, on August 13, 2013, Hunt filed a waiver of service of process.[2] A review of the state court documents filed in this action reveal that Hunt continued to participate in the action in state court by filing numerous motions and amended counterclaims. The state court entered orders in October of 2014 denying all of Hunt's motions. Hunt removed the action to this court on November 10, 2014.

In her notice of removal, Hunt references three previous lawsuits she filed against BB&T.[3] Hunt filed the first two cases in this court and the third case in state court, which BB&T subsequently removed to this court pursuant to 28 U.S.C. § 1332. Each of these cases was dismissed. Hunt argues that this court has exclusive jurisdiction over the present action as a result of the previous three actions that were filed in or removed to this court. She further argues that jurisdiction is proper under 28 U.S.C. § 1332. She asserts that the notice of removal is timely because of this court's exclusive jurisdiction and because she was never served with the summons and complaint.

III. DISCUSSION

BB&T argues that remand is appropriate for several, procedural reasons. However, before addressing the procedural concerns in this removal, the court must first address Hunt's argument that this court has exclusive jurisdiction over this action.[4] Although not entirely clear, Hunt's argument

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[2]One day before, on August 12, 2013, the state court entered an order granting BB&T's motion for service by publication. Hunt then filed her waiver of service, stating that "based on Hunt's waiver of service–service has now been accomplished by other means such that there is no need for service by publication as stated in the signed order of publication."

[3]Hunt v. BB&T, No. 4:09-cv-2151-JMC-TER; Hunt v. BB&T, No. 4:11-870-MGL-TER; and Hunt v. BB&T, No. 12-cv-2216-MGL-TER.

[4]Hunt also raises several arguments regarding the merits of this action. However, the only issue presently before the court is whether removal was proper.

for exclusive jurisdiction appears to be based upon the fact that the most recent action she filed against BB&T, which she filed in state court and BB&T removed to this court, was dismissed without prejudice based upon her voluntary dismissal. However, because of our "system of dual sovereignty," the Supreme Court has "consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States." Tafflin v. Levitt, 493 U.S. 455, 458, 110 S.Ct. 792, 795, 107 L.Ed.2d 887 (1990); see also Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 477-478, 101 S.Ct. 2870, 2874-2875, 69 L.Ed.2d 784 (1981); Claflin v. Houseman, 93 U.S. 130, 136-137, 23 L.Ed. 833 (1876). Therefore, "to give federal courts exclusive jurisdiction over a federal cause of action, Congress must, in an exercise of its powers under the Supremacy Clause, affirmatively divest state courts of their presumptively concurrent jurisdiction." Yellow Freight System, Inc. v. Donnelly, 494 U.S. 820, 823, 110 S.Ct. 1566, 1568 (1990) (citing Tafflin, 493 U.S., at 459-460, 110 S.Ct., at 795-796). As such, because this court lacks exclusive jurisdiction over claims arising under federal law absent the express or implied intent of Congress, it strains credulity to find that this court has exclusive jurisdiction over a state foreclosure action. Hunt points to no authority to support her assertion of exclusive jurisdiction. Therefore, this argument is without merit.

BB&T's first argument for remand is that Hunt's removal is untimely. Hunt argues that she was never properly served and, thus, the time-period for filing a notice of removal was never officially triggered. "The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading ...." 28 U.S.C. § 1446(b)(1). In Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 119 S.Ct. 1322, 143 L.Ed.2d 448 (1999), the Supreme Court held that a defendant's thirty-day period to remove a case is triggered by formal, effective service of process. Several courts have construed

Murphy Brothers to hold that the removal period for a defendant does not begin to run until that defendant is properly served or until that defendant waives service. See DiLoreto v. Costigan, 351 F.App'x 747, 750 (3rd Cir.2009); Reliford v. Alexander, No. 3:06-1259-JFA-JRM, 2007 WL 474067, at *3 (D.S.C. Feb. 8, 2007); Reliford v. Pearson, No. 3:03-1561-17BC, 2004 WL 2660229, at *2 (D.S.C. Feb. 19, 2004); Borchers v. Standard Fire Ins. Co., No. C–10–1706, 2010 WL 2608291, at *2 (N.D.Cal. June 25, 2010) (same); Granovsky v. Pfizer, Inc., 631 F.Supp.2d 554, 559 (D.N.J.2009) (same); Brown v. Bristol–Myers Squibb Co., No. A 402CV301LN, 2002 WL 34213425, at *4 (S.D.Miss. Nov.2, 2002) (same, listing cases).

Rule 4(d), of the South Carolina Rules of Civil Procedure provides that "[v]oluntary appearance by defendant is equivalent to personal service." "An appearance may be expressly made by formal written or oral declaration, or record entry, or it may be implied from some act done with the intention of appearing and submitting to the court's jurisdiction." Stearns Bank Nat. Ass'n v. Glenwood Falls, LLP, 373 S.C. 331, 338, 644 S.E.2d 793, 796 (Ct. App. 2007). Hunt first appeared in this action when she filed an answer and counterclaims in the state court on August 2, 2013. Although she stated in her answer than she did not waive service, she later expressly waived service of process on August 13, 2013, stating that the waiver was effective "when the answer, counterclaims/defenses and summary judgment were filed on August 2, 2013." She further stated that "based on Hunt's waiver of service–service has now been accomplished by other means such that there is no need for service by publication as stated in the signed order of publication." Under South Carolina law, "parties are generally permitted to agree to particular methods of service or waiving service altogether." White Oak Manor, Inc. v. Lexington Ins. Co., 407 S.C. 1, 9, 753 S.E.2d 537, 541 (2014). Hunt cannot waive service and represent to the court that no further attempts to serve her

are necessary and later claim she has never been properly served.[5] Further, Hunt submitted to the state court's personal jurisdiction over her by her numerous filings in that court for over a year prior to filing her notice of removal on November 10, 2014. Thus, Hunt's argument that her notice of removal was timely because she was never served is without merit. As such, because Hunt failed to file her notice of removal within thirty days of the date she waived service in this action, her removal is untimely and improper and remand is appropriate.[6]

VI. CONCLUSION

For the reasons discussed above, it is recommended that BB&T's motion to remand (Document # 11) be granted and this case be remanded to the Court of Common Pleas, Horry County, South Carolina.

s/Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

April 15, 2015
Florence, South Carolina

The parties are directed to the important information on the following page.

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[5]See, e.g., Wright v. Guess, No. 3:08-4130-JFA, 2010 WL 348377 *1 (D.S.C. Jan.25, 2010) (citing Lowery v. Stovall, 92 F.3d 219, 223 (4th Cir. 1996)) ("Courts apply judicial estoppel to prevent a party from benefitting itself by maintaining mutually inconsistent positions regarding a particular situation. The purpose of the doctrine is to prevent a party from playing fast and loose with the courts, and to protect the essential integrity of the judicial process.").

[6]As a result, the court need not address BB&T's remaining arguments that removal violates the homestate defendant rule and the rule of unanimity.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
Post Office Box 2317
Florence, South Carolina 29503

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

Case No.: 2013-CP-26-2528

Exhibit # 86

ORDER of Remand from the USDC
with Envelope

Other Orders/Judgments

4:14-cv-04352-BHH Branch Banking and Trust Company v. Hunt et al

LC 2,PROSE

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 5/8/2015 at 9:59 AM EDT and filed on 5/8/2015

Case Name: Branch Banking and Trust Company v. Hunt et al

Case Number: 4:14-cv-04352-BHH

Filer:

Document Number: 18

Docket Text:

OPINION AND ORDER: The Court agrees with the Magistrate Judge and adopts and incorporates by specific reference the Magistrate Judge's [14] Report and Recommendation. IT IS ORDERED, therefore, that the plaintiff's motion to remand (ECF No. [11]) is GRANTED and this action is remanded to the Court of Common Pleas, Horry County, South Carolina, for disposition. The Clerk of this Court is directed to forward the file along with a certified copy of this order to the Clerk of Court for Horry County. Signed by Honorable Bruce Howe Hendricks on 5/8/2015. (prou,)

4:14-cv-04352-BHH Notice has been electronically mailed to:

Samuel Calvin Waters waters@rtt-law.com

Reginald P Corley corley@rtt-law.com

Vance Lyn Brabham, III vbrabham@qlawfirm.com

Michael Peter Morris mmorris@rtt-law.com

William Stapleton Koehler billy@westonadams.com

Robert Paul Davis rdavis@rtt-law.com

Sean Matthew Foerster sean.foerster@rtt-law.com, tabitha.scott@rtt-law.com

Andrew Augustyn Powell andrew.powell@rtt-law.com

John Frank McLeod, IV mcleodjf@gmail.com

4:14-cv-04352-BHH Notice will not be electronically mailed to:

Cindy B Hunt
195 D Willow Green Drive
Conway, SC 29526

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1091130295 [Date=5/8/2015] [FileNumber=6726867-0]
[9d8d0fca8d74a6684ba1e295e9cd6b08e0dbf191cea81dfbb78474cca4a66d45fcdf
9f3f5056271ea618f49c7d335838ebeb05fbcccc5b389d424c91af246f68]]

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Branch Banking and Trust Company, Plaintiff, vs. Cindy Hunt, Willow Greens Homeowners Association, Inc., and CJ Developers, LLC, Defendants.	)	Civil Action No.: 4:14-CV-4352-BHH **OPINION AND ORDER**

The plaintiff Branch Banking and Trust ("the plaintiff") brought this foreclosure action against the defendants Cindy Hunt, Willow Greens Homeowners Association, Inc., and CJ Developers, LLC ("the defendants"). *Pro Se* Defendant Cindy Hunt removed this action to this court on November 10, 2014. (ECF No. 1.) In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the within action was referred to United States Magistrate Judge Thomas E. Rogers for pretrial handling and a Report and Recommendation, because the defendant Cindy Hunt is proceeding *pro se*. Magistrate Judge Rogers recommends that the plaintiff's motion to remand (ECF No. 11) be granted and this action be remanded to the Court of Common Pleas, Horry County, South Carolina, for disposition. The Report and Recommendation sets forth in detail the relevant facts and standards of law and the Court incorporates them without recitation.

The magistrate judge makes only a recommendation to the court. The recommendation has no presumptive weight. The responsibility to make a final

125

determination remains with the court. *Mathews v. Weber*, 423 U.S. 261, 270–71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation (the "Report") to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, the court need not conduct a *de novo* review when a party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of a timely filed, specific objection, the Magistrate Judge's conclusions are reviewed only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

The Magistrate Judge has recommended that the plaintiff's motion to remand (ECF No. 11) be granted. None of the defendants have filed objections to the Report and Recommendation, and the time for doing so expired on May 4, 2015.

CONCLUSION

Having conducted a *de novo* review of the Report and the record, the Court agrees with the Magistrate Judge and adopts and incorporates by specific reference the Magistrate Judge's Report and Recommendation.

IT IS ORDERED, therefore, that the plaintiff's motion to remand (ECF No. 11) is GRANTED and this action is remanded to the Court of Common Pleas, Horry County, South Carolina, for disposition. The Clerk of this Court is directed

to forward the file along with a certified copy of this order to the Clerk of Court for Horry County.

IT IS SO ORDERED.

/s/Bruce Howe Hendricks
United States District Judge

May 8, 2015
Greenville, South Carolina

Cindy B Hunt
195 D Willow Green Drive
Conway, SC 29526

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
P.O. BOX 2317
FLORENCE, SOUTH CAROLINA 29503

OFFICIAL BUSINESS

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MAILED FROM ZIP CODE 29501

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129

Case No.: 2013-CP-26-2528

Exhibit # 87

ORDER filed 5/11/2015 from
Horry County Clerk of Court

ORDER of Remand

MIME-Version:1.0
From:SCDEfilingstat@scd.uscourts.gov
To:scd_ecf_nef@localhost.localdomain
Bcc:
--Case Participants: John Frank McLeod, IV (mcleodjf@gmail.com), Robert Paul Davis (rdavis@rtt-law.com), Michael Peter Morris (mmorris@rtt-law.com), Andrew Augustyn Powell (andrew.powell@rtt-law.com), William Stapleton Koehler (billy@westonadams.com), Sean Matthew Foerster (sean.foerster@rtt-law.com, tabitha.scott@rtt-law.com), Samuel Calvin Waters (waters@rtt-law.com), Vance Lyn Brabham, III (vbrabham@qlawfirm.com), Reginald P Corley (corley@rtt-law.com), Honorable Bruce Howe Hendricks (hendricks_ecf@scd.uscourts.gov), Magistrate Judge Thomas E Rogers, III (rogers_ecf@scd.uscourts.gov)
--Non Case Participants: Magistrate Judge Rogers (rogers_ecf@scd.uscourts.gov)
--No Notice Sent:

Message-Id:<6726869@scd.uscourts.gov>
Subject:Activity in Case 4:14-cv-04352-BHH Branch Banking and Trust Company v. Hunt et al Order Ruling on Report and Recommendation
Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** There is no charge for viewing opinions.**

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 5/8/2015 at 9:59 AM EDT and filed on 5/8/2015

Case Name: Branch Banking and Trust Company v. Hunt et al
Case Number: 4:14-cv-04352-BHH
Filer:
Document Number: 18

Docket Text:
OPINION AND ORDER: The Court agrees with the Magistrate Judge and adopts and incorporates by specific reference the Magistrate Judge's [14] Report and Recommendation. IT IS ORDERED, therefore, that the plaintiff's motion to remand (ECF No. [11]) is GRANTED and this action is remanded to the Court of Common Pleas, Horry County, South Carolina, for disposition. The Clerk of this Court is directed to forward the file along with a certified copy of this order to the Clerk of Court for Horry County. Signed by Honorable Bruce Howe Hendricks on 5/8/2015. (prou,)

4:14-cv-04352-BHH Notice has been electronically mailed to:

Samuel Calvin Waters waters@rtt-law.com

Reginald P Corley corley@rtt-law.com

Vance Lyn Brabham, III vbrabham@qlawfirm.com

Michael Peter Morris mmorris@rtt-law.com

William Stapleton Koehler billy@westonadams.com

Robert Paul Davis rdavis@rtt-law.com

Sean Matthew Foerster sean.foerster@rtt-law.com, tabitha.scott@rtt-law.com

Andrew Augustyn Powell andrew.powell@rtt-law.com

John Frank McLeod, IV mcleodjf@gmail.com

4:14-cv-04352-BHH Notice will not be electronically mailed to:

Cindy B Hunt
195 D Willow Green Drive
Conway, SC 29526

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1091130295 [Date=5/8/2015] [FileNumber=6726867-0]
[9d8d0fca8d74a6684ba1e295e9cd6b08e0dbf191cea81dfbb78474cca4a66d45fcdf
9f3f5056271ea618f49c7d335838ebeb05fbcccc5b389d424c91af246f68]]

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

2013CP2602528

Branch Banking and Trust Company, Plaintiff, vs. Cindy Hunt, Willow Greens Homeowners Association, Inc., and CJ Developers, LLC, Defendants.	Civil Action No.: 4:14-CV-4352-BHH **OPINION AND ORDER**

FILED
HORRY COUNTY
15 MAY 11 AM 8:13
HELEN HUGGINS-WARD
CLERK OF COURT

The plaintiff Branch Banking and Trust ("the plaintiff") brought this foreclosure action against the defendants Cindy Hunt, Willow Greens Homeowners Association, Inc., and CJ Developers, LLC ("the defendants"). *Pro Se* Defendant Cindy Hunt removed this action to this court on November 10, 2014. (ECF No. 1.) In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the within action was referred to United States Magistrate Judge Thomas E. Rogers for pretrial handling and a Report and Recommendation, because the defendant Cindy Hunt is proceeding *pro se*. Magistrate Judge Rogers recommends that the plaintiff's motion to remand (ECF No. 11) be granted and this action be remanded to the Court of Common Pleas, Horry County, South Carolina, for disposition. The Report and Recommendation sets forth in detail the relevant facts and standards of law and the Court incorporates them without recitation.

The magistrate judge makes only a recommendation to the court. The recommendation has no presumptive weight. The responsibility to make a final

133

determination remains with the court. *Mathews v. Weber*, 423 U.S. 261, 270–71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation (the "Report") to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, the court need not conduct a *de novo* review when a party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of a timely filed, specific objection, the Magistrate Judge's conclusions are reviewed only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

The Magistrate Judge has recommended that the plaintiff's motion to remand (ECF No. 11) be granted. None of the defendants have filed objections to the Report and Recommendation, and the time for doing so expired on May 4, 2015.

CONCLUSION

Having conducted a *de novo* review of the Report and the record, the Court agrees with the Magistrate Judge and adopts and incorporates by specific reference the Magistrate Judge's Report and Recommendation.

IT IS ORDERED, therefore, that the plaintiff's motion to remand (ECF No. 11) is GRANTED and this action is remanded to the Court of Common Pleas, Horry County, South Carolina, for disposition. The Clerk of this Court is directed

to forward the file along with a certified copy of this order to the Clerk of Court for Horry County.

IT IS SO ORDERED.

/s/Bruce Howe Hendricks
United States District Judge

May 8, 2015
Greenville, South Carolina

A TRUE COPY
ATTEST: ROBIN L. BLUME, CLERK
BY: Penelope W. Roulston
DEPUTY CLERK



135

Case No.: 2013-CP-26-2528

Exhibit # 98

ORDER filed 6/3/2015

FORM 4

STATE OF SOUTH CAROL[illegible]
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT [illegible] CIVIL CASE

CASE NO. 2013-CP-26-2528

Branch Banking and Trust,	Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; and CJ Developers, LLC
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: The Honorable Cynthia Graham Howe	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

2015 JUN -3 PM 3:25 HORRY COUNTY

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

Under South Carolina common law, a prevailing party generally has no right to recover attorney's fees unless provided for by contract or authorized by statute. Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997); Harris–Jenkins v. Nissan Car Mart, Inc., 348 S.C. 171, 557 S.E.2d 708 (Ct. App. 2001). In any regard, South Carolina does not award attorney's fees to pro se litigants because a fee is never incurred. Calhoun v. Calhoun, 339 S.C. 96, 529 S.E.2d 14 (2000). A *pro se* litigant, whether an attorney or layperson, does not become "liable for or subject to fees charged by an attorney." Hopkins v. Hopkins, 343 S.C. 301, 306, 540 S.E.2d 454, 457 (2000). There is simply no genuine financial obligation to pay because by definition no fee is ever incurred. As such, Defendant's motion for an award of attorney's fees and costs and to stay the action until such fee is paid is hereby denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Foreclosure Matter: Rule 41(d) Motion is Denied

INFORMATION FOR THE JUDGMENT INDEX

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

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

137

[redacted]		$[redacted]

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Master in Equity | 3073 Judge Code | 4/3/15 Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Sean M. Foerster
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202-3200

ATTORNEY(S) FOR THE PLAINTIFF(S)

Cindy B. Hunt
195-D Willow Green Dr.
Conway, SC 29526

Steve Ouverson
Parsons, Ouverson, Stark & Guest, PA
PO Box 2850
Murrells Inlet, SC 29576

CJ Developers, LLC
1421 Graham Road
Mansfield, OH 44903

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA COUNTY OF HORRY Branch Banking and Trust Company, Plaintiff, vs. Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC, Defendants.	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2013-CP-26-2528 ORDER

2015 JUN 15 AM 9:57

This matter came before the Court at a hearing on November 10, 2015, regarding Defendant Cindy B. Hunt's ("Hunt") motions to alter or amend the following three orders entered in this case:

- Form 4 Order entered October 28, 2014, denying Hunt's Motion for Default Judgment;
- Order entered on January 13, 2015, granting Plaintiff Branch Banking and Trust Company's ("BB&T") Motion to Dismiss regarding Hunt's counterclaims; and
- Form 4 Order entered on June 3, 2015, denying Hunt's Motion under SCRCP 41 for attorney's fees and costs.

Hunt appeared *pro se*. Sean M. Foerster, Esquire, appeared at the hearing on behalf of BB&T. For the reasons set forth herein, the Court denies all three of Hunt's motions to alter or amend the above listed orders.

Relevant Facts

Hunt asks the Court to alter or amend the following three orders entered in this case:

1. Form 4 Order entered on October 28, 2014.

On September 30, 2014, Hunt filed a "Motion for Default Judgment" seeking to hold BB&T in default on her amended counterclaims. The motion was based on Hunt's belief that BB&T's response to her amended counterclaims by way of a motion to dismiss was improper, and that BB&T's motion to dismiss did not stay the time for it to file a responsive pleading.

At a hearing on October 14, 2014, the Court dismissed all of Hunt's amended counterclaims. On October 28, 2014, the Court entered a Form 4 Order denying Hunt's "Motion

for Default Judgment" on the grounds of mootness given the dismissal of the amended counterclaims.

On October 30, 2014, Hunt filed a "Motion to alter or amend the Judgment/Orders of the Court under SCRCP 59(e)" asking the Court to alter or amend its denial of her "Motion for Default Judgment" on the grounds that BB&T's motion to dismiss her amended counterclaims was improper and that BB&T should have filed a responsive pleading.

2. Order entered on January 13, 2015.

On June 25, 2014, BB&T filed a Motion to Dismiss Hunt's Amended Counterclaims. At a hearing on October 14, 2014, the Court orally granted BB&T's motion and requested that BB&T's counsel prepare and provide it with a proposed formal order. In the meantime, on October 28, 2014, the Court entered a Form 4 Order stating: "All counterclaims asserted by Defendant in this action were previously dismissed by the Court following an October 14, 2014 hearing regarding Plaintiff's Motion to Dismiss the First Amended Counterclaims of Defendant Cindy B. Hunt." Also on October 28, 2014, BB&T's counsel provided the Court with the requested proposed order by email.

On November 10, 2014, Hunt filed a Notice of Removal concerning this case in the Unites States District Court for the District of South Carolina. *BB&T v. Hunt et al.*, C/A # 4:14-CV-4352 (filed Nov. 10, 2014).

On January 13, 2015, the Court entered a written order granting BB&T's Motion to Dismiss Hunt's Amended Counterclaims to formalize its ruling on October 14, 2014, and the Form 4 Order entered on October 28, 2014.

On May 8, 2015, the District Court remanded the case back to this Court.

On August 11, 2015, Hunt filed a "Motion: Lack of Jurisdiction, SCRCP 59 and SCRCP 60" asking the Court to alter or amend the Order of January 13, 2015, on the grounds that the Court lacked jurisdiction to enter that order while the case was removed to federal court.

3. Form 4 Order entered on June 3, 2015.

On May 27, 2015, Hunt filed a "Motion under SCRCP 41" in which she requested attorney's fees and costs under Rule 41(d), SCRCP, on a theory that the dismissals of her three federal court lawsuits against BB&T somehow triggered this rule in her favor.

On June 3, 2015, the Court entered a Form 4 Order denying her motion for fees and costs.

On August 11, 2015, Hunt filed a "Motion: Lack of Jurisdiction, SCRCP 59 and SCRCP 60" asking the Court to alter or amend its denial of her request for fees and costs.

Conclusions of Law

The Court denies all three of Hunt's motions to alter or amend for the following reasons:

1. The Court did not err in denying Hunt's Motion for Default Judgment Against BB&T.

Hunt's motion to alter or amend the Form 4 Order entered October 28, 2014, does not present any clear error of law on the part of the Court, any intervening change in the law controlling this issue, or any new evidence that would affect the Court's denial of her motion for a default judgment against BB&T. Her motion simply rehashes her argument that BB&T's motion to dismiss her amended counterclaims was improper and that it should have filed a responsive pleading instead.

The Court's dismissal of Hunt's amended counterclaims at the hearing on October 14, 2014, rendered her motion for a default judgment on those counterclaim moot. *Holden v. Cribb*, 349 S.C. 132, 137, 561 S.E.2d 634, 637 (Ct. App. 2002)("A case becomes moot when judgment, if rendered, will have no practical effect upon [an] existing controversy."). Even if her motion had not been mooted, the Court would have still denied Hunt's motion for default judgment because the rules of civil procedure permitted BB&T to file a motion to dismiss the amended counterclaims in lieu of a responsive pleading, despite having earlier filed a previous motion to dismiss her original counterclaims. Rule 12(a), SCRCP ("The service of a motion permitted under this rule alters these periods of time as follows ... if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 15 days after notice of the Court's action..."). Because Hunt's amended counterclaims constituted a new pleading, BB&T was permitted to respond by way of a new motion to dismiss. Rules 12(g) and 12(h) were inapplicable to BB&T's motion to dismiss the amended counterclaims.

For these reasons, the Court denies Hunt's motion to alter or amend the Form 4 Order entered October 28, 2014.

2. The Notice of Removal did not deprive the Court of jurisdiction to enter the Order of January 13, 2015.

The Order of January 13, 2015, is not void for lack of jurisdiction because its entry was merely a ministerial act based on a decision rendered prior to removal that in no way caused the case to "proceed" during the removal period.

The filing of a notice of removal prohibits the state court from "proceeding" until the case is remanded. 28 U.S.C. § 1446(d)("Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.").

However, only "the state court's power to render the particular judgment requested, [is] suspended or held in abeyance until a determination [is] made as to whether the cases involved a federal question more appropriately decided by the federal court." *Limehouse v. Hulsey*, 404 S.C. 93, 106, 744 S.E.2d 566, 573 (2013)(emphasis added).

In a procedurally similar and instructive case, the United States District Court for the District of Utah decided the issue of whether an order entered after removal concerning a ruling made pre-removal violated § 1446(d). *Pebble Creek Homes, LLC v. Upstream Images, LLC*, 547 F. Supp. 2d 1214 (D. Utah 2007). In *Pebble Creek Homes*, the state court ruled on a motion at a hearing thirteen days before the defendant filed a notice of removal. *Id.* at 1216. A proposed order was submitted to the state court the same day as the defendant filed the notice of removal. *Id.* The state court then signed and entered its written order on the motion two days after removal. *Id.*

The Utah District Court held that the "entrance of an order [two days after removal] was simply a ministerial act that did not involve further proceedings within the meaning of the federal removal statute." *Id.* at 1218. The Utah District Court reasoned that

> The only act that Judge Pullan took subsequent to the removal was on July 25, 2007, when he performed the ministerial function of signing and entering the order reflecting his earlier, in-court ruling on July 10, 2007. Because this final, essentially clerical task in no way affected the merits of the already-adjudicated issue disputed by the parties, the court finds that the state court order does not violate § 1446(d). To hold otherwise would enable defendants to effectively nullify dispositive rulings made at state court hearings by rushing to remove the case before the administrative entrance of the written version of the decision.

Id. at 1218-19.

As in *Pebble Creek Homes*, the Court's entry of the Order of January 13, 2015, did not

cause the case to "proceed" any further during the removal period. It merely memorialized the Court's earlier, pre-removal ruling at the hearing on October 14, 2014, and Form 4 Order entered on October 28, 2014.

For these reasons, the Court denies Hunt's "Motion: Lack of Jurisdiction, SCRCP 59 and SCRCP 60" filed herein on August 11, 2015.

3. Hunt is not entitled to attorney's fees and costs.

Hunt is not entitled to attorney's fees and costs because she is not a prevailing party, no contract, statute, or court rule entitles her to attorney's fees, ~~and she is not~~ nor is she represented by an attorney.

First, attorney's fees are generally awardable only to a prevailing party. "A prevailing party has been defined as ... [t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered." *Heath v. Cty. of Aiken*, 302 S.C. 178, 182-83, 394 S.E.2d 709, 711 (1990).

Second, "[i]n South Carolina, the authority to award attorney's fees can come only from a statute or be provided for in the language of a contract." *Seabrook Island Prop. Owners' Ass'n v. Berger*, 365 S.C. 234, 238-39, 616 S.E.2d 431, 434 (Ct. App. 2005). "There is no common law right to recover attorney's fees." *Id.*

Hunt has not prevailed on any of her claims or defenses in this case. Even if she had, she has cited no contract or statute entitling her to attorney's fees and costs. She relies solely upon Rule 41(d), SCRCP, for her claim to attorney's fees and costs.

"If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order." Rule 41(d), SCRCP (emphasis added). "The general rule, however, is that attorney fees are not included in the term 'costs' in the absence of some statutory provision, rule of court, or contract of the parties." *Shuler v. Crook*, 290 S.C. 538, 541, 351 S.E.2d 862, 863 (1986).

Rule 41(d) concerns successive voluntary dismissals by a plaintiff and authorizes the payment of costs only, not attorney's fees. BB&T has not voluntarily dismissed any case against Hunt in which it was the plaintiff. In Hunt's federal lawsuits against BB&T, Hunt was the

plaintiff and BB&T was the defendant. All three actions were dismissed by court orders, not by voluntary dismissals. Therefore, Rule 41(d) is inapplicable.

Finally, a *pro se* litigant, whether an attorney or layperson, does not become liable for or subject to fees charged by an attorney. *Calhoun v. Calhoun*, 339 S.C. 96, 100, 529 S.E.2d 14, 17 (2000). Hunt has represented herself throughout this case, and therefore she has not incurred any attorney's fees.

For these reasons, Hunt's "Motion: Lack of Jurisdiction, SCRCP 59 and SCRCP 60" filed on August 11, 2015, is denied.

NOW, THEREFORE, it is ordered that:

1. The following motions of Defendant Cindy B. Hunt are DENIED:
   a. "Motion to alter or amend the Judgment/Orders of the Court under SCRCP 59(e)" filed herein on October 30, 2014, to the extent it pertained to the Form 4 Order entered October 28, 2014;
   b. "Motion: Lack of Jurisdiction, SCRCP 59 and SCRCP 60 re Order filed on 1/13/2015" filed herein on August 11, 2015; and
   c. "Motion: Lack of Jurisdiction, SCRCP 59 and SCRCP 60" filed herein on August 11, 2015.

AND IT IS SO ORDERED.

June 14, 2016

Cynthia Graham Howe
Master in Equity for Horry County

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-26-2528

Branch Banking and Trust Company

PLAINTIFF(S)

Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC;

DEFENDANT(S)

Submitted by:
Sean M. Foerster (SC Bar# 77466)
Rogers Townsend & Thomas, PC
1221 Main Street, 14th Floor
Post Office Box 100200
Columbia, SC 29202
(803) 744-4444
(803) 343-7013 - Fax
info@rtt-law.com

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2/3 for additional information

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

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

ORDER INFORMATION

This order ☐ ends ☑ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Master in Equity

3073
Judge Code

6/14/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Sean M. Foerster, Esquire
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202-3400
(504335-03166)
ATTORNEY(S) FOR THE PLAINTIFF(S)

Stephen C. Ouverson, Esquire
Parson Ouverson Stark & Guest, P.A.
P. O. Box 2850
Murrells Inlet, South Carolina 29576
ATTORNEY(S) FOR THE DEFENDANT(S)

Cindy B. Hunt
195-D Willow Green Drive
Conway, SC 29526

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

CINDY B. HUNT, Plaintiff, vs. Branch Banking and Trust Company, Danny Fogle, Cathy Lambert, Judy Teal, Mark Booz, and Kaci Sansbury, Defendants.	)	AMENDED COMPLAINT (JURY TRIAL REQUESTED)

The Plaintiff above-named. Complaining of the Defendant herein, would respectfully show this honorable Court the following:

JURISDICTION

1. This action arises under the common and statutory laws of South Carolina, and under the laws of the United States, as hereinafter more fully appears.

2. The Plaintiff, Cindy B. Hunt, is a United States citizen and resident of the County of Horry, State of South Carolina.

3. The defendants Danny Fogle and Kaci Sansbury are, upon information and belief, United States citizens and residents of Horry County, South Carolina. Defendant Judy Teal is, upon information and belief, a resident of Florence County, South Carolina. Cathy Lambert is, upon information and belief, a resident of Horry County, South Carolina. Mark Booz is, upon information and belief, a resident of Winston-Salem, North Carolina.

4. The defendant Branch Banking and Trust Company (hereinafter BB&T), is a corporation headquartered in Winston-Salem, North Carolina. The branch in question is located at 310 Wright Boulevard, Conway, South Carolina 29526, in Horry County.

5. The events in question occurred in Horry County, South Carolina.

6. Plaintiff contends this none of the causes of action in this complaint is subject to arbitration for the reasons listed below and for other reasons that may be offered to the court in pleadings or at a hearing on this matter.

FACTS

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7. The Plaintiff, **Cindy B Hunt** began banking at Coastal Federal Bank by in/around August 1993. Plaintiff, an attorney, opened personal and business accounts at this bank. She also obtained a mortgage from Coastal Federal Bank.

8. In May 2000, Plaintiff Hunt opened a Payable on Death Account, naming her cousin, Costella Hunt Davis, as beneficiary. Plaintiff did this at the recommendation of Defendant Danny Fogle. The account was opened by Cathy Lambert, an employee of BB&T.

9. Upon information and belief, the Payable on Death account was set up improperly by the defendants, as a joint account, with Plaintiff Hunt and Costella Hunt Davis as co-owners. The plaintiff continued to deposit money into the supposed POD account. Plaintiff made these deposits regularly.

10. Coastal Federal Bank merged with BB&T in August 2007.

11. Throughout, Plaintiff relied upon statements provided to her by Coastal Federal and by BB&T regarding the handling of her POD account.

12. On January 19, 2008, Costella Hunt Davis visited the BB&T branch at 2619 Oak Street, Myrtle Beach, South Carolina, 29577, and inquired about her own account. Defendant Kaci Sansbury, an employee of BB&T, told Davis that she had a certain amount of money in her account. This was the amount of money in Plaintiff's Payable on Death account. When Davis protested, saying this balance was incorrect, Sansbury insisted, and disclosed further information about the Payable on Death account held by the Plaintiff.

13. That same evening, Costella Hunt Davis described the improper financial disclosure and violation of privacy to the plaintiff.

14. On/around January 22, 2008, the plaintiff began telephoning defendants, and the legal department at BB&T, complaining about this matter. Plaintiff contended, among other things, that her privacy had been violated and that defendants were prepared to disburse Plaintiff's funds to a third party. Defendants were non-responsive and denied any wrongdoing.

15. Around late April, early May 2008, Plaintiff cashed a check at defendant BB&T that was later subjected to a "stop payment" by the issuing agency. Claiming they had the right of set-off, Defendant Bank withdrew the money for this check from Plaintiff's alleged Payable on Death account without obtaining Plaintiff's permission. Plaintiff demanded the return of these monies, and defendant bank refused.

16. Plaintiff withdrew her bank accounts from BB&T, thus losing benefits. Plaintiff still has a mortgage account at BB&T.

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17. Plaintiff complained about this matter to the FDIC. Plaintiff believes that defendants omitted and/or gave false information to the FDIC regarding this matter.

FOR A FIRST CAUSE OF ACTION:
VIOLATION OF PRIVACY
AGAINST BB&T

18. Each previous paragraph is repeated herein as if verbatim.

19. By disclosing Plaintiff's personal financial information, defendant BB&T violated Plaintiff's privacy as prohibited by the Gramm-Leach-Bliley Act (15 U.S. Code 6801-6809; 6821-6827 etc.).

20. Because of this violation of privacy, Plaintiff has suffered losses in excess of $150,000, constituting loss of privacy, loss of benefits, and other damages.

FOR A SECOND CAUSE OF ACTION:
FALSE ENTRY IN A BANK STATEMENT,
UNDER 18 USC 1005 AND OTHER STATUTES
AGAINST ALL DEFENDANTS

21. Each previous paragraph is repeated herein as if verbatim.

22. Plaintiff contends that defendants made several false entries in bank statements, and in other places, regarding her accounts. These false entries were contained in bank statements, in statements to third parties, and within BB&T's computers.

23. Plaintiff also contends that the defendants have transferred her money from one account to another, in an attempt to hide their actions, without Plaintiff's authorization or permission.

24. These false entries were made intentionally.

25. Because of these false entries, Plaintiff has lost bank services and benefits and suffered other damages.

FOR A THIRD CAUSE OF ACTION:
COMPUTER FRAUD
UNDER 18 USC 1030 AND OTHER STATUTES
AGAINST ALL INDIVIDUAL DEFENDANTS

26. Each previous paragraph is repeated herein as if verbatim.

27. Defendants committed computer fraud by setting up Plaintiff's Payable on Death account, and other accounts, in a manner not authorized by the Plaintiff. This was on Defendant's protected computer.

28. Defendant has made false statements to third parties, including Costella Hunt Davis, the FDIC, and to other third parties inconsistent with the wishes of Plaintiff or any authorization made by Plaintiff.

29. Defendants have disclosed private information about Plaintiff and her accounts to third parties without Plaintiff's authorization.

30. The fraud involved interstate commerce.

31. Because of this computer fraud, Plaintiff has suffered losses in excess of $150,000, constituting loss of privacy, loss of benefits, and other damages.

FOR A FOURTH CAUSE OF ACTION:
FRAUD
AGAINST DEFENDANTS BB&T, DANNY FOGLE, AND JUDY TEAL

32. Each previous paragraph is repeated herein as if verbatim.

33. Defendants conspired to hide their wrongdoing from the plaintiff, from the FDIC, and from other third parties. This fraud involved representations to the plaintiff, to the FDIC, and to other third parties regarding the set-up of Plaintiff's POD account and privacy violations made from the information in that account.

34. Plaintiff had reason to rely on those representations by her bank.

35. Defendants' statements met the following elements of fraud:

a) Defendants made false representations to the plaintiff and to third parties such as the FDIC regarding Plaintiff's POD account, stating that it was set up correctly, when it was set up as a joint account. Defendants also stated that no breach of privacy had occurred.

b) Defendants knew or should have known that their statements were false.

c) Defendants statements were material in that a POD account should be handled differently than a joint account, and the differences involve access to the money in the account, and access to information about the account.

d) Defendants made their statements to the FDIC and to others with reckless disregard for the truth.

e) Defendants intended that the FDIC and other third parties act upon their statements.

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f) Plaintiff was ignorant of the falsity of these statements
g) Plaintiff and other third parties relied on these statements
h) Plaintiff had a right to rely on these statements
i) Plaintiff was injured by a loss of privacy and a loss of benefits.

36. Because of this fraud, Plaintiff has suffered losses involving loss of benefits, loss of privacy, and other damages.

FOR A FIFTH CAUSE OF ACTION:
NEGLIGENT MISREPRESENTATION
AGAINST DEFENDANTS BB&T, DANNY FOGLE. AND CATHY LAMBERT

37. Each previous paragraph is repeated herein as if verbatim.

38. From the time the plaintiff opened her POD account in May 2000, the defendants made false representations to the plaintiff regarding the handling of that account and the nature of that account.

39. Plaintiff had reason to rely on those representations by her bank.

40. Defendant's statements met the following elements of negligent misrepresentation:

a) Defendants made false representations to the plaintiff in assuring her that she had a POD account that would be handled as such;

b) Defendants had a pecuniary interest in making those statements in that they wanted to retain Plaintiff's business

c) Defendants owed a duty of care to the plaintiff, as her banker. Defendants should have handled Plaintiff's account properly.

d) Defendant breached that duty of care by mishandling her POD account and treating is as a joint account;

e) Plaintiff was justified in relying on the representations of her bankers.

f) Plaintiff suffered a pecuniary loss by having to move her accounts to another bank and thus losing benefits. Plaintiff also suffered a loss of privacy when the balance in her account was revealed to the beneficiary.

41. Because of these negligent misrepresentations, Plaintiff has suffered losses involving loss of benefits, loss of privacy, and other damages.

FOR A SIXTH CAUSE OF ACTION:
CONVERSION
AGAINST BB&T

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42. Each previous paragraph is repeated herein as if verbatim.

43. On more than one occasion, Defendant BB&T misappropriated the money in Plaintiff's alleged POD account.

44. The first misappropriation occurred when the account was opened, not as a payable-on-death account but as some other account (probably a joint account), subject to withdrawal by a third party (Costella Hunt Davis), and to usage by the bank itself.

45. Every time the plaintiff deposited money into the supposed POD account, the defendant Bank performed an additional act of conversion. Plaintiff deposited many thousands of dollars into this supposed POD account over the years.

46. An additional act of conversion occurred after January 2008, when BB&T changed the account to a payable-on-death account without Plaintiff's permission.

47. An additional act of conversion occurred toward the end of April 2008, when defendant Bank utilized set-off to cover a check cashed by Plaintiff that was subject to stop-payment Defendant bank withdrew the money from Plaintiff's POD account.

48. Because of these multiple acts of conversion, Plaintiff suffered from damages including loss of funds deposited into the account, loss of privacy, loss of benefits, and other damages.

FOR A SEVENTH CAUSE OF ACTION:
BREACH OF FIDUCIARY DUTY
AGAINST BB&T

49. Each previous paragraph is repeated herein as if verbatim.

50. When the plaintiff deposited her money into the supposed POD account at defendant Bank, she had a right to place her trust in the bank. Plaintiff relied on the bank to create a POD account, which the bank failed to do.

51. Defendant bank breached their duty of care when they failed to create the POD account that Plaintiff had requested.

52. Because of this breach of fiduciary duty, Plaintiff suffered a loss of funds, a loss of privacy, and a loss of benefits.

53. Plaintiff asks this court to assess actual and punitive damages against BB&T for this breach of fiduciary duty.

FOR AN EIGHTH CAUSE OF ACTION:
VIOLATION OF SOUTH CAROLINA PROBATE CODE AGAINST BB&T AND DANNY FOGLE

54. Each previous paragraph is repeated herein as if verbatim.

55. When the plaintiff deposited her money with BB&T, she opened a Payable-on Death (POD) account at the suggestion of Danny Fogle, BB&T employee.

56. Defendants violated the South Carolina Probate Code (62-6-101 et seq;, including 62-6-103(b) when they failed to treat the account as a POD account.

57. This violation continued every time the plaintiff made a transaction with the account, such as a deposit, withdrawal, etcetera.

58. This violation first became clear in January 2008 when the bank revealed private account information to the beneficiary of the POD account.

FOR A NINTH CAUSE OF ACTION:
VIOLATION OF ANTITYING PROVISIONS UNDER THE BANK HOLDING COMPANY ACT, 12 USC 1972 ET FF, AGAINST BB&T

59. Each previous paragraph is repeated herein as if verbatim.

60. Plaintiff contends that defendant BB&T held her funds in an account that was not set up properly as a POD account. Defendant bank used this account to justify extending credit to third parties, including Costella Hunt Davis, who held a mortgage with BB&T.

61. Plaintiff's POD account was tied illegally to other accounts, such as Costella Hunt Davis' mortgage.

62. This tying of two accounts together was an unusual banking practice that benefited BB&T.

63. Plaintiff asks this court to assess punitive damages against BB&T for this illegal tying.

WHEREFORE, the Plaintiff prays this Court for the following relief:

A) Benefits lost from the closing of Plaintiff's bank accounts;
B) Punitive damages;
C) Reparation for the loss of Plaintiff's privacy, that continues now and into the future;
D) Attorney's fees and costs for bringing this action;
E) Any other relief this Court finds just and proper.

Respectfully submitted,

DATE: August 31, 2009

/s/Laura P. Valtorta
Laura P. Valtorta (FID 5850)
Attorney for Plaintiff
903 Calhoun Street
Columbia, SC 29201
(803) 771-0828

Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 38

SAC: Doc. # 38 of 4:09-2151

Exhibit # 38

Doc. # 38

Number of Pages 9

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

CINDY B. HUNT, Plaintiff, vs. Branch Banking and Trust Company, Danny Fogle, Cathy Lambert, Judy Teal, Mark Booz, David Craven, and Kaci Sansbury, Defendants.	)	SECOND AMENDED COMPLAINT (JURY TRIAL REQUESTED)

The Plaintiff above-named. Complaining of the Defendant herein, would respectfully show this honorable Court the following:

JURISDICTION

1. This action arises under the common and statutory laws of South Carolina, and under the laws of the United States, as hereinafter more fully appears.

2. The Plaintiff, Cindy B. Hunt, is a United States citizen and resident of the County of Horry, State of South Carolina.

3. The defendants Danny Fogle and Kaci Sansbury are, upon information and belief, United States citizens and residents of Horry County, South Carolina. Defendant Judy Teal is, upon information and belief, a resident of Florence County, South Carolina. Cathy Lambert is, upon information and belief, a resident of Horry County, South Carolina. Mark Booz and David Craven are, upon information and belief, residents of Winston-Salem, North Carolina.

4. The defendant Branch Banking and Trust Company (hereinafter BB&T), is a corporation headquartered in Winston-Salem, North Carolina. The branch in question is located at 310 Wright Boulevard, Conway, South Carolina 29526, in Horry County.

5. The events in question occurred in Horry County, South Carolina.

6. Plaintiff contends this none of the causes of action in this complaint is subject to arbitration for the reasons listed below and for other reasons that may be offered to the court in pleadings or at a hearing on this matter.

FACTS

157

7. The Plaintiff, **Cindy B Hunt** began banking at Coastal Federal Bank by in/around August 1993. Plaintiff, an attorney, opened personal and business accounts at this bank. She also obtained a mortgage from Coastal Federal Bank.

8. In May 2000, Plaintiff Hunt opened a Payable on Death/Revocable Trust Account, naming her cousin, Costella Hunt Davis, as beneficiary. Plaintiff did this at the recommendation of Defendant Danny Fogle. The account was opened by Cathy Lambert, an employee of BB&T.

9. Upon information and belief, the Payable on Death/Revocable trust account was set up improperly by the defendants, as a joint account, with Plaintiff Hunt and Costella Hunt Davis as co-owners. The plaintiff continued to deposit money into the supposed POD account. Plaintiff made these deposits regularly.

10. Coastal Federal Bank merged with BB&T in August 2007.

11. Throughout, Plaintiff relied upon statements provided to her by Coastal Federal and by BB&T regarding the handling of her POD account. Plaintiff contends that, unbeknownst to her, her customer profile with Coastal Federal and later with BB&T contained incorrect information for many years. This customer profile contained information related to other persons, and to loans and accounts held by persons other than the Plaintiff.

12. On January 19, 2008, Costella Hunt Davis visited the BB&T branch at Wright Boulevard in Conway, South Carolina, and inquired about her own account, a mortgage. Defendant Kaci Sansbury, an employee of BB&T, told Davis that she had a certain amount of money in her account. This was the amount of money in Plaintiff's Payable on Death account. When Davis protested, saying this balance was incorrect, Sansbury insisted, and disclosed further information about the Payable on Death account held by the Plaintiff.

13. That same evening, Costella Hunt Davis described the improper financial *disclosure and violation of privacy to the plaintiff.*

14. On/around January 22, 2008, the plaintiff began telephoning defendants, and the legal department at BB&T, complaining about this matter. Plaintiff contended, among other things, that her privacy had been violated and that defendants were prepared to disburse Plaintiff's funds to a third party. Defendants were non-responsive and denied any wrongdoing.

15. Around late April, early May 2008, Plaintiff cashed a check at defendant BB&T that was later subjected to a "stop payment" by the issuing agency. *Claiming they had the right of set-off, Defendant Bank withdrew the money for* this check from Plaintiff's alleged Payable on Death account without obtaining

Plaintiff's permission. Plaintiff demanded the return of these monies, and defendant bank refused.

16. Plaintiff withdrew her bank accounts from BB&T, thus losing benefits. Plaintiff still has a mortgage account at BB&T.

17. Plaintiff complained about the mishandling of her POD account to the FDIC. Plaintiff believes that defendants, in particular Sansbury, Booz, Teal, and Craven, omitted and/or gave false information to the FDIC regarding this matter. Booz and Craven are both attorneys and officers of BB&T.

18. Because the defendants did not act in good faith, and for other reasons, Plaintiff alleges that the unilateral contract involved in setting up the supposed POD account is void ***ab initio***.

FOR A FIRST CAUSE OF ACTION:
VIOLATION OF PRIVACY
UNDER SOUTH CAROLINA CODE SECTIONS
37-20-110 et ff (CONSUMER IDENTITY THEFT PROTECTION)
AGAINST BB&T

19. Each previous paragraph is repeated herein as if verbatim.

20. By disclosing Plaintiff's personal financial information, defendant BB&T violated Plaintiff's privacy as prohibited by South Carolina Law and described under the Gramm-Leach-Bliley Act (15 U.S. Code 6801-6809; 6821-6827 etc.). The FDIC has acknowledged that Defendants violated Gramm-Leach-Bliley.

21. Because of this violation of privacy, Plaintiff has suffered losses in excess of $150,000, constituting loss of privacy, damage to plaintiff's credit worthiness, loss of benefits, and other damages.

FOR A SECOND CAUSE OF ACTION:
FALSE ENTRY IN A BANK STATEMENT,
UNDER 18 USC 1005 AND OTHER STATUTES
AGAINST ALL INDIVIDUAL DEFENDANTS

22. Each previous paragraph is repeated herein as if verbatim.

23. Plaintiff contends that defendants made several false entries in bank statements, in her personal profile, and in other places, regarding her accounts. These false entries were contained in bank statements, in statements to third parties, and within BB&T's computers.

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24. Plaintiff also contends that the defendants have transferred her money from one account to another, in an attempt to hide their actions, without Plaintiff's authorization or permission.

25. Plaintiff contends that her customer profile with Coastal Federal and with BB&T contained incorrect information for many years. This customer profile contained information related to other members of her family, such as Ms. Davis, and possibly others.

26. These false entries were made intentionally.

27. Because of these false entries, Plaintiff has lost bank services and benefits and suffered other damages.

FOR A THIRD CAUSE OF ACTION:
COMPUTER FRAUD
UNDER 18 USC 1030 AND OTHER STATUTES
AGAINST ALL INDIVIDUAL DEFENDANTS

28. Each previous paragraph is repeated herein as if verbatim.

29. Defendants committed computer fraud by setting up Plaintiff's Payable on Death account, and other accounts, in a manner not authorized by the Plaintiff. This was on Defendant's protected computer.

30. Defendant has made false statements to third parties, including Costella Hunt Davis, the FDIC, and to other third parties inconsistent with the wishes of Plaintiff or any authorization made by Plaintiff.

31. Defendants have disclosed private information about Plaintiff and her accounts to third parties without Plaintiff's authorization.

32. The fraud involved interstate commerce.

33. Because of this computer fraud, Plaintiff has suffered losses in excess of $150,000, constituting loss of privacy, loss of benefits, and other damages.

FOR A FOURTH CAUSE OF ACTION:
FRAUD
AGAINST DEFENDANTS BB&T, DANNY FOGLE, MARK BOOZ, DAVID CRAVEN, AND JUDY TEAL

34. Each previous paragraph is repeated herein as if verbatim.

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35. Defendants conspired to hide their wrongdoing from the plaintiff, from the FDIC, and from other third parties. This fraud involved representations to the plaintiff, to the FDIC, and to other third parties regarding the set-up of Plaintiff's POD account and privacy violations made from the information in that account.

36. Plaintiff had reason to rely on those representations by her bank.

37. Defendants' statements met the following elements of fraud:

a) Defendants made false representations to the plaintiff and to third parties such as the FDIC regarding Plaintiff's POD account, stating that it was set up correctly, when it was set up as a joint account. Defendants also stated that no breach of privacy had occurred.

b) Defendants knew or should have known that their statements were false.

c) Defendants statements were material in that a POD account should be handled differently than a joint account, and the differences involve access to the money in the account, and access to information about the account.

d) Defendants made their statements to the FDIC and to others with reckless disregard for the truth.

e) Defendants intended that the FDIC and other third parties act upon their statements.

f) Plaintiff was ignorant of the falsity of these statements

g) Plaintiff and other third parties relied on these statements

h) Plaintiff had a right to rely on these statements

i) Plaintiff was injured by a loss of privacy and a loss of benefits.

38. Because of this fraud, Plaintiff has suffered losses involving loss of benefits, loss of privacy, and other damages.

FOR A FIFTH CAUSE OF ACTION:
NEGLIGENT MISREPRESENTATION
AGAINST DEFENDANTS BB&T, DANNY FOGLE, AND CATHY LAMBERT

39. Each previous paragraph is repeated herein as if verbatim.

40. From the time the plaintiff opened her POD account in May 2000, the defendants made false representations to the plaintiff regarding the handling of that account and the nature of that account.

41. Plaintiff had reason to rely on those representations by her bank.

42. Defendant's statements met the following elements of negligent misrepresentation:

a) Defendants made false representations to the plaintiff in assuring her that she had a POD account that would be handled as such;

b) Defendants had a pecuniary interest in making those statements in that they wanted to retain Plaintiff's business

c) Defendants owed a duty of care to the plaintiff, as her banker. Defendants should have handled Plaintiff's account properly.

d) Defendant breached that duty of care by mishandling her POD account and treating is as a joint account;

e) Plaintiff was justified in relying on the representations of her bankers.

f) Plaintiff suffered a pecuniary loss by having to move her accounts to another bank and thus losing benefits. Plaintiff also suffered a loss of privacy when the balance in her account was revealed to the beneficiary.

43. Because of these negligent misrepresentations, Plaintiff has suffered losses involving loss of benefits, loss of privacy, and other damages.

FOR A SIXTH CAUSE OF ACTION:
CONVERSION
AGAINST BB&T

44. Each previous paragraph is repeated herein as if verbatim.

45. On more than one occasion, Defendant BB&T misappropriated the money in Plaintiff's alleged POD account.

46. The first misappropriation occurred when the account was opened, not as a payable-on-death account but as some other account (probably a joint account), subject to withdrawal by a third party (Costella Hunt Davis), and to usage by the bank itself.

47. Every time the plaintiff deposited money into the supposed POD account, the defendant Bank performed an additional act of conversion. Plaintiff deposited many thousands of dollars into this supposed POD account over the years.

48. An additional act of conversion occurred after January 2008, when BB&T changed the account to a payable-on-death account without Plaintiff's permission.

49. An additional act of conversion occurred toward the end of April 2008, when defendant Bank utilized set-off to cover a check cashed by Plaintiff that was subject to stop-payment Defendant bank withdrew the money from Plaintiff's POD account.

50. Because of these multiple acts of conversion, Plaintiff suffered from damages including loss of funds deposited into the account, loss of privacy, loss of benefits, and other damages.

FOR A SEVENTH CAUSE OF ACTION:
BREACH OF FIDUCIARY DUTY
AGAINST BB&T

51. Each previous paragraph is repeated herein as if verbatim.

52. When the plaintiff deposited her money into the supposed POD account at defendant Bank, she had a right to place her trust in the bank. Plaintiff relied on the bank to create a POD account, which the bank failed to do.

53. Defendant bank breached their duty of care when they failed to create the POD account that Plaintiff had requested.

54. In addition, defendant Bank maintained Plaintiff's customer profile incorrectly, linking her with other customers and other accounts not related to her own.

55. Because of these breaches of fiduciary duty, Plaintiff suffered a loss of funds, a loss of privacy, and a loss of benefits.

56. Plaintiff asks this court to assess actual and punitive damages against BB&T for this breach of fiduciary duty.

FOR AN EIGHTH CAUSE OF ACTION:
VIOLATION OF SOUTH CAROLINA PROBATE CODE
AGAINST BB&T AND DANNY FOGLE

57. Each previous paragraph is repeated herein as if verbatim.

58. When the plaintiff deposited her money with BB&T, she opened a Payable-on Death (POD) account at the suggestion of Danny Fogle, BB&T employee.

59. Defendants violated the South Carolina Probate Code (62-6-101 et seq;, including 62-6-103(b) when they failed to treat the account as a POD account.

60. This violation continued every time the plaintiff made a transaction with the account, such as a deposit, withdrawal, etcetera.

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61. This violation first became clear in January 2008 when the bank revealed private account information to the beneficiary of the POD account.

FOR A NINTH CAUSE OF ACTION:
VIOLATION OF ANTITYING PROVISIONS UNDER THE BANK HOLDING COMPANY ACT, 12 USC 1972 ET FF, AGAINST BB&T

62. Each previous paragraph is repeated herein as if verbatim.

63. Plaintiff contends that defendant BB&T held her funds in an account that was not set up properly as a POD account. Defendant bank used this account to justify extending credit to third parties, including Costella Hunt Davis, who held a mortgage with BB&T, and to other persons who obtained loans from BB&T.

64. Plaintiff's POD account was tied illegally to other accounts, such as Costella Hunt Davis' mortgage, and loans to other individuals.

65. This tying of these accounts together was an unusual banking practice that benefited BB&T by bringing extra business to the bank, such as loans and mortgages.

66. Plaintiff asks this court to assess punitive damages against BB&T for this illegal tying.

WHEREFORE, the Plaintiff prays this Court for the following relief:

A) Benefits lost from the closing of Plaintiff's bank accounts;
B) Punitive damages;
C) Reparation for the loss of Plaintiff's privacy, that continues now and into the future;
D) Reparation for any damage that has occurred to Plaintiff's credit worthiness;
E) Attorney's fees and costs for bringing this action;
F) Any other relief this Court finds just and proper.

Respectfully submitted,

DATE: MAY 20, 2010

/s/Laura P. Valtorta
Laura P. Valtorta (FID 5850)
Attorney for Plaintiff
903 Calhoun Street
Columbia, SC 29201
(803) 771-0828

Exhibit #49 Entry #15-8

Exhibit # 15

4:11-cv-00870 Complaint

Number of Pages 67

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

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CINDY B. HUNT,)
Plaintiff,)
vs.)
Branch Banking & Trust Company,) c/a: D-SCX-4-11-CV-000870-001
Danny Fogle, David Craven, Mark)
Booz, Judy Teal, Christopher Okay,) Amended Complaint
Cathy Lambert, Kaci Sansbury,)
Karen Butcher, Steven Licata,) **Jury Trial Requested**
Lisa Haywood and Tamara Cannon,)
Defendants)
_____)

Jurisdiction and the facts:

1. This is an action to recover for a massive fraud, fraudulent concealment and conversion of Plaintiffs' accounts, etc. perpetrated upon her by Defendants, principally through a loan scheme and concealment of the loan scheme from the Plaintiff, FDIC, USDC and the Horry County Police Department (HCPD).

2. This action arises under the common and statutory laws of South Carolina and under the laws of the United States, hereinafter more fully appears.

3. The Plaintiff, Cindy B. Hunt, is a United States citizen, citizen of South Carolina and resident of the County of Horry, State of South Carolina.

4. Defendant Judy Teal is upon information and belief a United States citizen, citizen of South Carolina and a resident of Florence County, South Carolina. Defendants David Craven, Mark Booz and Christopher Okay are upon information and belief United States citizens, citizens of North Carolina and residents of Winston-Salem, North Carolina. Defendant Lisa Haywood is upon information and belief United States citizens, citizens of North Carolina and resident of Robeson County, North Carolina.

5. Defendants Danny Fogle, Cathy Lambert, Kaci Sansbury, Karen Butcher and Tamara Cannon are upon information and belief United States citizens, citizens of South Carolina and residents of Horry County, South Carolina.

6. Defendant Steven Licata is upon information and belief a United States citizen, citizen of South Carolina and a resident of Richland County, South Carolina.

7. The Defendant BB&T, is a corporation headquartered in Winston-Salem, North Carolina. The branch in question is located at 310 Wright Boulevard, Conway, South Carolina, in Horry County.

8. The Defendant BB&T is engaged in a business whose activities affect interstate commerce.

9. The Defendant BB&T is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business.

10. The events in question occurred in Horry County, South Carolina.

11. None of the causes of action in this complaint are subject to arbitration.

12. At all times applicable that the Plaintiff was the only attorney in her law practice.

13. Danny Fogle recommended that the Plaintiff open the POD trust in May 2000 where the Plaintiff named herself trustee and Davis the beneficiary. Kathy Lambert opened the POD trust.

14. Defendant Fogle handled the Davis 9/2004 mortgage application. The mortgage loan was approved in about two weeks time where Davis lived in Maryland, had no assets at BB&T, had not assets in SC and their debt to income ratio was insufficient for a mortgage on a 2nd home.

15. The Plaintiff's deposits and assets for all accounts at Defendant BBT from May 2000 – present exceed three million dollars.

16. The Plaintiff's Interest on Lawyers Trust Account (hereinafter IOLTA) was located at the Defendant Branch Banking and Trust Company (hereinafter BB&T) from April 1996 – May 19, 2008 in Conway, Horry County, South Carolina.

17. Plaintiff's 7/19/2007 customer profile shows that the Plaintiff had the following accounts at Defendant BB&T: Checking-Direct Free Interest (savings account); Checking-Interest Checking (POD Trust); Debit Card; **transfer management (an unauthorized loan)**; a closed auto loan; a closed conventional mortgage; an

active conventional mortgage; **Portfolio (an unauthorized loan)**; a closed commercial loan; Credit Card and the Plaintiff's **IOLTA.**

18. The Plaintiff's refinanced 2007 mortgage remains at Defendant BBT.

19. The Plaintiff is a fiduciary/settler/trustee of her IOLTA.

20. The Defendant BB&T and employees/agents were and are a fiduciary/trustee to the IOLTA.

21. The Plaintiff and the Defendant BB&T and its employees/agents have a fiduciary relationship.

22. All the Defendants had a duty to disclose.

23. On 1/19/2008 Defendant BB&T disclosed the Plaintiffs POD account balance, etc to Davis when she went to the Bank about being reported to a credit reporting agency (herein after CRA) for a late mortgage payment:

    a. The next business day the Plaintiff complained to Defendant BBT.
    b. The Plaintiff spoke on the phone with Ms. Walker, Defendant Fogle and Defendant Teal.
    c. Defendant Teal mailed the Plaintiff in late February 2008 a copy of the signature card for the POD trust account.
    d. Defendant Craven wrote to the Plaintiff on 3/10/2008 and his letter contained several false statements.

24. The Plaintiff complained to the Federal Deposit Insurance Corporation (FDIC) on March 24, 2008. An FDIC proceeding/investigation was held from March 24, 2008 – September 2, 2008. Defendant Teal is not an attorney.

25. According to Defendant Attorney Senior Vice President Craven in his 3/10/2008 letter to the Plaintiff and non certified letter to the FDIC the Plaintiff and the Defendant BBT never had a fiduciary relationship. (Doc. # 13) This was a false statement.

26. According to Defendant Judy Teal in her 4/11/2008 non certified letter to the FDIC the events and 1/19/2008 disclosure to Costella Davis occurred as the result of the Defendant Bank improperly setting up the Plaintiff's POD trust, an account of the Plaintiff's customer profile on Defendant BB&T's protected computer to share an unauthorized beneficiary profile with Costella Davis from May 2000 – about February 2008.

27. Defendant Teal went on to say that the beneficial profile had been deleted. (Doc. # 15)

28. On May 19, 2008, after receiving a copy of the 4/08/2008 letter from the FDIC on or about May 11, 2008, the Plaintiff was forced to close her account and went to the Defendant BB&T to close her POD trust and IOLTA. Defendant Fogle walked the Plaintiff to the door and said in a begging voice: "CB please let it go, please let it go".

29. In October 2008 Defendant Fogle called the Plaintiff at her home wanting to know if she had hired a lawyer yet and stating that he had been forced to resign and that he was worried about losing his retirement.

30. Plaintiff discovered in November 2009 that the printout of the 7/19/2007 customer profile contained at least two unauthorized loans. The Complaint was amended immediately to include the at least two unauthorized loans.

31. Plaintiff wrote to Trustee Defendant BBT on 9/24/2010 disputing the at least two unauthorized loans in her customer profile, etc.

    a. The Trustee Defendant BB&T replied on 9/27/2010 stating: We received your letter disputing two loans reported on your account profile from 7/19/07. According to our records your account profile currently does not reflect these loans.

    b. The only account that Davis has ever had at Defendant BB&T is her 9/2004 mortgage. On 9/24/2004 Davis had insufficient assets (as per the mortgage application, etc) to qualify for a mortgage on a second home.

    c. On 1/19/2008 Defendant Sansbury went into the mortgage portion of the system and was convinced that Davis was the owner of the Plaintiff's POD trust. Defendant Sansbury never did locate the mortgage of Davis. However, six months earlier the 7/19/2007 customer profile of the Plaintiff showed at least two unauthorized loans.

    d. Trustee Defendant BB&T failed to provide the Plaintiff with an updated copy of her customer profile as requested on 9/24/2010 via 1st class and certified mail return receipt.

    e. From at least 8/1993 to 9/26/2010 the trustee Defendant BB&T never advised the Plaintiff of the creation, use/profit of at least two unauthorized loans in her customer profile where the customer profile also contained the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts.

    f. Instead, during the period of 8/1993 to 9/26/200 the officers of trustee Defendant BB&T: Craven, Teal, Booz and Okay stated directly and indirectly to the Plaintiff that there was "no claim of fiduciary duty as no fiduciary

relationship was ever established with BB&T and no disclosure of financial information to Davis."

32. Inside of the Plaintiff's customer profile, Defendant BB&T on its protected computer created and profited from at least two unauthorized loans where the customer profile also contained the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts.

33. As per the above described conduct and law the Plaintiff learned and reasonably suspected that she had been the victim of identity theft. The Plaintiff did two things:

    a. (a) amended the complaint to include a cause of action for identity theft (under SC Code Ann. 37-20-110(9) and 16-13-510) where the USDC stated that the statute did not provide for a civil cause of action; and thereafter
    b. (b) after disputing the at least two unauthorized loans in a letter to trustee Defendant BB&T on 9/24/2010 the Plaintiff filed a police report on Oct. 3, 2010 with the Horry County Police Department (HCPD).

    c. Also, Defendant BB&T on its website has provided its customers with instructions to follow regarding identity theft.

    d. These website instructions include actions to take if you think you've been a victim of Identity Theft to include filing a police report.

34. After filing the police report a search warrant was sent to Trustee Defendant BB&T. Trustee Defendant BB&T returned the search warrant to the HCPD with zero documents stating: "We are unable to produce documents as requested. We have no record of accounts with BB&T in reference to the account numbers listed on subpoena":
    a. The account numbers listed on the search warrant were taken from the 7/19/2007 customer profile.
    b. Included in the 7/19/2007 customer profile is the Plaintiff's current mortgage.
    c. Trustee Defendant BB&T has not to date notified the Plaintiff that it has no record of her mortgage where the Plaintiff continues to pay this mortgage with its assigned new account number.

35. Trustee Defendant BB&T and its employees have failed to disclose for years these matters to the Plaintiff, to the FDIC, the USDC and the Police.

36. On or about 4/2/2004 and 5/2/2008 the trustee Defendant BB&T subjected the POD trust to two improper setoffs. The Plaintiff demanded the return of the 5/2/2008 setoff and the Defendant BBT refused.

37. Diversity jurisdiction under 62-7-201 thru 62-7-204 based on IOLTA: All Defendants have waived personal jurisdiction where this matter involves the Plaintiff's IOLTA as per 62-7-201 thru 62-7-204.

38. Diversity jurisdiction under 28 U.S.C. 1332: All Defendants have waived personal jurisdiction at Doc. # 23 ¶ 29 at page 12 and Doc. # 24 at law governing your account on page 11.

39. Diversity jurisdiction under 28 U.S.C. 1332 - amount: The amount in controversy is in excess of $75,000 exclusive of interest and cost: the Plaintiff loss benefits from the involuntary closure of the POD account which had Coastal Banker Gold Checking (CBGC) benefits in excess of $160,000 at Doc. #s 4 and 10; a mortgage balance of $140, 000.00; fines avoided at 12 U.S.C. 1818 exceed fifty million dollars; and other damages (see prayer for relief).

A. Breach of Fiduciary Duty against all Defendants:

40. Each previous paragraphs and exhibits are repeated herein as if verbatim.

41. Plaintiff and the Defendant BBT and the employees/agents of BBT have a fiduciary relationship based on the following:

    a. The Plaintiff's Interest on Lawyers Trust Account (IOLTA);
    b. The Plaintiff imposed a special confidence in Defendant BB&T and its employees where they actively sought and did gain her trust and confidence;
    c. The residual trust described below at the Breach of Trust cause of action that remains at Defendant BBT;
    d. The Plaintiff's 2007 mortgage, etc.

42. All the Defendants owe the Plaintiff fiduciary duties and continuing fiduciary duties to include – honesty, no misstatement, no conflict of interest, no profit, undivided loyalty, utmost care, an accounting, etc.

43. All Defendants have failed to disclose as here in stated at paragraphs 48 - 160 to the Plaintiff, FDIC, HCPD and this Court.

44. The Defendants have breached their fiduciary duties to the Plaintiff where the Defendants knowingly, willfully and negligently did through its conduct caused illegal access and use of Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, all other accounts of the Plaintiff and the Plaintiff's customer profile to include:

    a. Profiting from the two improper setoffs; improper disclosure to Davis; the creation and use of the unauthorized beneficiary profile; and the creation and use of the at least two unauthorized loan, as further described herein.

45. All Defendants have benefited (interest, avoidance of fines, commissions, etc.) from their breach of fiduciary duties and Defendant BBT continues to benefit from the activities of its employees/agents where the Plaintiff's mortgage remains at Defendant BBT, etc.

46. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, POD, the Plaintiff and her other accounts.

47. **Damages: See below for relief sought.**

B. False Entry under 18 U.S.C. § 1005, 18 U.S.C. § 1014 and 12 U.S.C. § 503 against all individual Defendants:

48. Each previous paragraph and exhibits are repeated herein as if verbatim.

49. Defendants Fogle, Craven, Teal, Okay, Cannon and Booz are an officer or director of Defendant BB&T. The Plaintiff and all of the Defendants are in a fiduciary relationship.

50. Defendant BB&T is a Federal Reserve bank, member bank, depository institution holding company, national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a) [1] of the Federal Reserve Act.

51. A book, report, or statement of Defendant BBT includes: customer profile printout, affidavits to the Court and Plaintiff, letters to Plaintiff, letters to the FDIC and Plaintiff, monthly statements of Plaintiff's accounts, GLBA compliance statements, both Banking Service Agreements (BSA), signature cards, POD account agreement, CD account agreement, loan documents, mortgage documents, Form 1098, Form 1099, real estate tax statements, setoff slips/letters, computers, etc.

52. All individual Defendants did make a book, report, or statement of Defendant BBT which contained false entries to include material omissions, failure to disclose, false statements; and or unauthorized transactions.

53. All individual Defendants did make a book, report, or statement of Defendant BBT with intent to injure or defraud the Plaintiff.

54. All individual Defendants did make a book, report, or statement of Defendant BBT with intent to deceive the FDIC.

55. The Plaintiff read and relied on the book, report, or statement of Defendant BBT for all of her accounts including her POD account, IOLTA, customer profile, mortgage applications, CD, savings account, etc.

56. Defendants Booz, Craven, Fogle, Okay and Teal did knowingly violate or permit the agents, officers, or directors of Defendant BBT to violate provisions of sections 18 USC 1005, 18 USC 1014 and 18 U.S.C. § 1346.

57. The Plaintiff first became aware of the matters at issue in this case when Defendant Sansbury on 1/19/2008 disclosed the Plaintiff's POD account balance to Ms. Davis. (Doc. # 12 ¶ 4)

a. Subsequently, the Plaintiff came to learn that this matter also involved: the IOLTA, fiduciary relationship, at least two unauthorized loans in her customer profile, two unauthorized setoffs and an unauthorized beneficiary profile, etc.

58. In these matters, Defendants Fogle, Craven, Teal, Okay and Booz, participated in or assented to conduct that violated 18 USC 1005, 18 U.S.C. § 1346 and or 18 USC 1014 as follows.

59. On May 31, 2000 the Plaintiff came to the office of the Defendant Lambert to close her regular checking account and open a POD trust account that was recommended by Danny Fogle.

a. On 5/31/2000 Defendants Fogle and Lambert told the Plaintiff that during her life that she and she alone would have access to the monies of the POD trust account. This was a false statement and the Defendants knew that this was a false statement where it was the procedure of Defendant BBT to set up the POD account with an owner profile and a beneficiary profile. Doc. # 15.

b. Also, at that time Defendants Fogle and Lambert told the Plaintiff that the monies of the POD trust would only be made available to Davis at her death and at the time of the Plaintiff's death that Davis must provide the Bank with identification for herself and proof of the Plaintiff's death.

c. The Plaintiff reasonably relied on Defendants Lambert and Fogle; and she read and relied fully on her POD trust signature card (Doc. # 4) and the BSA at Doc. # 23 ¶ 3 at page 5.

d. These Defendants (Lambert and Fogle) used their misrepresentations to obtain moneys, funds, and credits owned by, or under the custody or control of, the FDIC-insured United States bank - BBT and its subsidiaries, in violation of 18 U.S.C. § 1344, 1341, 1346 and 1512:

i. Specifically, in violation of 18 U.S.C. § 1344, as a direct and proximate result of Plaintiffs' reliance on Defendants Fogle and Lambert's misrepresentations, the Defendants were able to and did without the authorization or permission of the Plaintiff unlawfully appropriate the financial resources of the Plaintiff to their own use or the use of third parties knowingly and willfully as shown at Doc. #s 10 and 15 to include an unauthorized beneficiary profile

for Davis that was used to qualify Davis for the 2004 Mortgage and at least two unauthorized loans.

e. The moneys, funds, and credits owned by, or under the custody or control of, the FDIC-insured United States bank - BBT and its subsidiaries and include those listed herein at paragraphs 15 and 51, the beneficiary profile, CD, setoff, all deposits, credits and debits, Davis Mortgage, etc. These accounts generated numerous documents that were mailed to the Plaintiff.

f. From 2000 – present the moneys, funds, and credits owned by, or under the custody or control of, the FDIC-insured United States bank - BBT and its subsidiaries in the Plaintiff's accounts totaled in excess of three million dollars with each transaction being a separate violation of 18 U.S.C. § 1344.

g. The transactions involving the improper set up of the POD account was **unauthorized** and was undertaken without the consent of the Plaintiff, they are fictitious and the recorded transaction is false within the meaning of 18 U.S.C. § 1005 and 18 U.S.C. § 1346.

h. From 5/31/2000 – 5/2008 Defendants Fogle and Lambert in violation of 18 U.S.C. § 1512 and 18 U.S.C. § 1346 knowingly and corruptly concealed their misrepresentations of the POD account set up of a beneficiary profile from the Plaintiff, the FDIC and the Comptroller of Currency with the intent to impair the integrity or availability for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding when Defendants Fogle and Lambert failed to disclose the beneficial profile for Davis in the Plaintiff's customer profile to the Plaintiff and the at least two loans in the Plaintiff's customer profile.

i. Defendants Lambert and Fogle, from 2000-present, used the United States mails to further their schemes, in violation of 18 U.S.C. § 1341/1343, as alleged above in violation of 18 U.S.C. § 1344, 18 U.S.C. § 1512 and 18 U.S.C. § 1346, by placing or causing to be placed in an authorized depository for mail, or depositing or causing to be deposited with private and commercial interstate and international carriers for delivery, the documents generated from these schemes and delivered to the Plaintiff, the FDIC, the HCPD and this Court; and see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

60. 2004 Setoff: Doc. # 5 shows that the Plaintiff's POD account was subjected to an unauthorized setoff on 4/1/2004.

a. The transactions involving the setoff were **unauthorized** and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transaction is false within the meaning of 18 U.S.C. § 1005 and 18 U.S.C. § 1346.

b. All of the Plaintiff's book, report and statements of Defendant BBT at and after the 4/1/2004 setoff which was debited from the POD account made the material omission of not showing that the setoff was unauthorized.

c. The Defendant Lambert used the setoff misrepresentations to obtain the moneys, funds, and credits owned by, or under the custody or control of, the FDIC-insured United States bank - BBT and its subsidiaries, in violation of 18 U.S.C. § 1344, § 1341, § 1343, 1346 and § 1512:

i. Specifically, in violation of 18 U.S.C. § 1344, as a direct and proximate result of Plaintiffs' reliance on the Defendant Lambert's misrepresentations, the Defendant was able to and did without the authorization or permission of the Plaintiff unlawfully appropriate the financial resources of the Plaintiff to their own use.

d. For mail/wire fraud involving Defendant Lambert in the above alleged violation(s) of 18 U.S.C. § 1344, 1346 and 1512 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

61. Davis's 2004 Mortgage: Doc. # 6 shows the application of Davis for her 2004 mortgage at Defendant BBT. Davis' mortgage application was completed by Defendant Fogle on 9/24/2004. (Doc. # 6).

a. Defendant Fogle recommended that the Plaintiff open the POD account where she named herself trustee and Davis the beneficiary.

b. The debt to income ratio for the Davis' was insufficient to qualify for a mortgage on a second home in 9/2004. (Doc. # 6).

c. The Davis's had no assets in South Carolina. The mortgage was approved in less than fourteen days through the use of the US Mail system. And closing occurred less than thirty days from the date of the application, were the closing was done through the US Mail system.

d. The average daily balance of the Plaintiff's POD account in 9/2004 was $11, 255 as per the 9/2004 monthly statement.

e. Davis advised the Defendant BBT twice in writing that she had no accounts at Defendant BBT other than the proposed mortgage. (Doc. # 6).

f. When Davis' social security number was entered into the mortgage portion of Defendant BBT's system the Plaintiff's POD account came up. (Doc. #s 12 and 15);

62. On 09/24/2004 Defendant Fogle with the Davis mortgage in violation of 18 U.S.C. § 1512 and 18 U.S.C. § 1346 knowingly and corruptly concealed the beneficiary

profile and the at least two unauthorized loans in the Plaintiff's customer profile with the intent to impair the loan data integrity or availability for use in an official proceeding; or otherwise obstructs, influences, or impedes an official proceeding when Defendant Fogle failed to disclose the beneficial profile and the at least two unauthorized loans in the Plaintiff's customer profile to the Plaintiff.

63. The Defendant Fogle and Lambert used misrepresentations and concealments to obtain the Davis mortgage through use of the Plaintiff's moneys, funds, and credits owned by, or under the custody or control of, the FDIC-insured United States bank - BBT and its subsidiaries, in violation of 18 U.S.C. § 1344, § 1341, § 1343, 1346 and § 1512:

i. Specifically, in violation of 18 U.S.C. § 1344, as a direct and proximate result of Plaintiffs' reliance on the Defendant Fogle and Lambert's misrepresentations, the Defendants were able to and did without the authorization or permission of the Plaintiff unlawfully appropriate the financial resources of the Plaintiff to their own use or the use of a third party: the Davis mortgage.

64. For mail/wire fraud involving Defendant Fogle in the above alleged violation(s) of 18 U.S.C. § 1344, 1346 and 1512 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

65. **Certificate of Deposit:** Doc. # 9 shows the Plaintiff's certificate of deposit at Defendant BBT. Defendant Fogle completed the certificate of deposit for the Plaintiff on 10/9/2006.

a. The Plaintiff's CD agreement contained material omissions:

i. The 2006 CD agreement did not state that the Plaintiff's POD account was tied to the Davis mortgage;

ii. The 2006 CD agreement did not state that the Plaintiff's POD account was subject to setoff by the Davis mortgage;

iii. The 2006 CD agreement did not state that the Plaintiff's customer profile at Defendant BBT contained at least two unauthorized loans; and

iv. The 2006 CD agreement did not state that the Plaintiff's POD account was subject to setoff by the at least two unauthorized loans in the Plaintiff's customer profile.

66. The Plaintiff's CD agreement that was completed by Defendant Fogle contained unauthorized transactions to include: failures to disclose and material omissions. The transactions involving the failures to disclose and material omissions in the Plaintiff's CD agreement were **unauthorized** and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transaction is false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346.

67. On 10/09/2006 Defendant Fogle opened/completed the certificate of deposit for the Plaintiff and others at Defendant BBT where he knowingly and corruptly concealed the beneficiary profile and the at least two unauthorized loans in the Plaintiff's customer profile with the intent to impair the loan data integrity or availability for use in an official proceeding; or otherwise obstructs, influences, or impedes an official proceeding when Defendant Fogle failed to disclose the beneficial profile and the at least two unauthorized loans in the Plaintiff's customer profile to the Plaintiff. (Doc. # 9).

68. The Defendant Fogle used misrepresentations and concealments to obtain the certificate of deposit moneys, funds, and credits owned by, or under the custody or control of, the FDIC-insured United States bank - BBT and its subsidiaries, in violation of 18 U.S.C. § 1344, § 1341, § 1343, 1346 and § 1512:

a. Specifically, in violation of 18 U.S.C. § 1344, as a direct and proximate result of Plaintiffs' reliance on the Defendant Fogle misrepresentations, the Defendants were able to and did without the authorization or permission of the Plaintiff unlawfully appropriate the financial resources of the Plaintiff to their own use.

69. For mail/wire fraud involving Defendant Fogle in the above alleged violation(s) of 18 U.S.C. § 1344, 1346 and 1512 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

70. Plaintiff's May 2007 Mortgage: Doc. # 7 shows the application for the Plaintiff's current mortgage at Defendant BBT. The Plaintiff's mortgage application was completed by Defendant Butcher, an employee of Defendant BBT. (Doc. #s 3 ¶ 3.i and 7).

a. The Plaintiff's mortgage application contained material omissions:

i. The plaintiff's POD checking account was not listed on the 2007 mortgage application (Doc. #s 10 and 7);

ii. The 2007 mortgage application did not state that the Plaintiff's POD account had a beneficiary profile for Davis (Doc. #s 7 and 15); and

iii. The 2007 mortgage application did not state that the Plaintiff's customer profile at Defendant BBT contained at least two unauthorized loans. (Doc. #s 7 and 10)

b. The accounts of Defendant BBT, a financial institution, are insured by the Federal Deposit Insurance Corporation. (Doc. # 23)

c. The Plaintiff's 2007 mortgage application contained false statement(s):

i. Defendant Butcher listed the Plaintiff's savings account (522009746) with a balance of $1.00. This was a false statement as per the Plaintiff's

monthly statement ending on May 23, 2007 that was mailed to the Plaintiff by Defendant BBT.

d. Defendant Butcher knowingly made the above false statement(s) on the Plaintiff's mortgage application of Defendant BBT (Doc. # 7) for the purpose of influencing in some way the action of the Federal Housing Administration in violation of 18 U.S.C. § 1014.

71. The Plaintiff's mortgage application that was completed by Defendant Butcher contained unauthorized transactions to include: material omissions and false statements. The transactions involving the material omissions and false statement in the Plaintiff's application were **unauthorized** and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transaction is false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346 and 18 U.S.C. § 1014.

72. On 5/18/2007 Defendant Butcher completed the 2007 mortgage refinance for the Plaintiff at Defendant BBT in violation of 18 U.S.C. § 1512 and 1346 where she knowingly and corruptly concealed the beneficiary profile and the at least two unauthorized loans in the Plaintiff's customer profile with the intent to impair the loan data integrity or availability for use in an official proceeding; or otherwise obstructs, influences, or impedes an official proceeding when Defendant Butcher failed to disclose the beneficial profile and the at least two unauthorized loans in the Plaintiff's customer profile to the Plaintiff.

73. The Defendant Butcher used misrepresentations and concealments to obtain the Plaintiff's mortgage through use of the Plaintiff's moneys, funds, and credits owned by, or under the custody or control of, the FDIC-insured United States bank - BBT and its subsidiaries, in violation of 18 U.S.C. § 1344, § 1341, § 1343, § 1346 and § 1512:

a. Specifically, in violation of 18 U.S.C. § 1344, as a direct and proximate result of Plaintiffs' reliance on the Defendant Butcher's misrepresentations and concealment, the Defendants were able to and did without the authorization or permission of the Plaintiff unlawfully appropriate the financial resources of the Plaintiff to their own use.

74. For mail/wire fraud involving Defendant Butcher in the above alleged violation(s) of 18 U.S.C. § 1344, 1346 and 1512 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

75. Printout of the Plaintiff's customer profile: Doc. # 10 shows that the Plaintiff's customer profile at Defendant BBT contained, at least two unauthorized loans with her IOLTA, CD and other accounts on 7/19/2007; transfer management and portfolio.

a. Tamara Cannon was the account officer for the Plaintiff's POD account. (Doc. # 36). Doc. # 10 was given to the Plaintiff by Tamara Cannon.

i. The Plaintiff did not apply for the at least two unauthorized loans. The Plaintiff did not receive any funds from these loans. And the Plaintiff has not repaid these loans. (Doc. # 28). These were false statements.

ii. Defendant BBT and all of its employees failed to disclose the at least two unauthorized loans to the Plaintiff. (Doc. # 29).

b. All the transactions involving all of the Plaintiff's accounts while the at least two unauthorized loans were present in the Plaintiff's customer profile were undertaken without the knowledge or consent of the Plaintiff, they are fictitious and the recorded transactions are false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346.

76. All of the Plaintiff's book, report and statements of Defendant BBT at and after the creation of the at least two unauthorized loans in the Plaintiff's customer profile along with her IOLTA, CD, POD account, mortgages and other accounts (Doc. # 10) made the material **omission** of not showing that the Plaintiff's customer profile contained at least two unauthorized loans.

77. On 07/19/2007 Cannon provided the Plaintiff with a copy of her customer Profile at Defendant BBT in violation of 18 U.S.C. § 1512 and 1346 where she knowingly and corruptly concealed the beneficiary profile in the Plaintiff's customer profile with the intent to impair the loan data integrity or availability for use in an official proceeding; or otherwise obstructs, influences, or impedes an official proceeding when Cannon failed to disclose the beneficial profile in the Plaintiff's customer profile to the Plaintiff.

78. The Defendant Fogle and Cannon used misrepresentations and concealments to obtain the moneys, funds, and credits owned by, or under the custody or control of, the FDIC-insured United States bank - BBT and its subsidiaries, in violation of 18 U.S.C. § 1344, § 1341, § 1343, 1346 and § 1512:

a. Specifically, in violation of 18 U.S.C. § 1344, as a direct and proximate result of Plaintiffs' reliance on the Defendant's misrepresentations and concealment, the Defendants were able to and did without the authorization or permission of the Plaintiff unlawfully appropriate the financial resources of the Plaintiff to their own use or the use of third parties as per Doc. # 10: transfer management and portfolio loans with each transaction being a separate violation of 18 U.S.C. § 1344.

79. For mail/wire fraud involving Defendants Fogle and Cannon in the above alleged violation(s) of 18 U.S.C. § 1344, 1346 and 1512 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

80. **2007 Banking Service Agreement (BSA):** The Defendants mailed the BSA at Doc. #s 23 and 24 to the Plaintiff in May/June 2007. These BSA contains false statements, material omissions and or unauthorized transactions:

a. **POD:** The BSA states that the Plaintiff's POD account would be available to Ms. Davis at the Death of the Plaintiff. (Doc. #s 23 page 5 at ¶ 3) This was a false statement where the affidavit of Davis at Doc. # 12 ¶ 4 shows that the POD account balance was made available to Davis while the plaintiff was and is still alive.

b. **Commercial Setoffs:** Two checks for business services were returned to Defendant BBT: Doc. #s 5 and 16. The BSA states that the Bank reserves the right of setoff against any of the Organization's account. (Doc. #s 24 page 8 ¶ 15) This was a false statement where Doc. #s 5 and 16 shows that both of the setoffs were against the Plaintiff's non commercial POD account where the checks were for commercial legal services. See Defendant Teal's letter at Doc. # 21 and note Defendant Teal's letter lacks certification.

c. **Jurisdiction:** The BSA states that as to the Plaintiff's accounts that jurisdiction and venue would be in South Carolina. (Doc. #s 23 page 12 ¶ 29 and 24 page 11 at law governing your account) This is a false statement where the affidavit of Defendant Booz at Doc. # 20-2 was successful in asserting that this Court does not have personal jurisdiction over him in this matter involving the Plaintiff's accounts at Defendant BBT. (Doc. 110 ¶ IV. A.)

81. The Defendant BBT's BSA at Doc. #s 23 and 24 contains unauthorized transactions to include: false statement(s). The transactions involving the false statements in the BSA were **unauthorized** and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transaction is false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346.

82. In May/June of 2007 the Defendants mailed the Plaintiff a copy of both of the Bank's BSAs. The Defendants used the BSAs to knowingly and corruptly conceal - the beneficiary profile and the at least two unauthorized loans in the Plaintiff's customer profile; improper setoffs; and personal jurisdiction over Defendant Booz with the intent to impair the integrity or availability for use in an official proceeding; or otherwise obstructs, influences, or impedes an official proceeding.

83. The Defendants used misrepresentations and concealments to obtain the moneys, funds, and credits owned by, or under the custody or control of, the FDIC-insured United States bank - BBT and its subsidiaries, in violation of 18 U.S.C. § 1344, § 1341, § 1343, 1346 and § 1512:

a. Specifically, in violation of 18 U.S.C. § 1344, as a direct and proximate result of Plaintiffs' reliance on the Defendant's misrepresentations and concealment, the Defendants were able to and did without the authorization or permission of the Plaintiff unlawfully appropriate the financial resources of the Plaintiff to their own use

or the use of third parties as per Doc. # 15 – beneficiary profile and improper setoffs to the POD; and each transaction/incident being a separate violation of 18 U.S.C. § 1344.

84. For mail/wire fraud involving Defendants Fogle, Booz, Craven, Okay and Teal in the above alleged violation(s) of 18 U.S.C. § 1344, 1346 and 1512 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

85. Disclosure to Davis: The affidavit at Doc. # 12 ¶ 4 states that the Plaintiff's POD account balance was disclosed to Davis.

a. Defendant BBT reported Davis to a credit reporting agency for being late on a mortgage payment: (Doc. # 6).

b. On 1/19/2008 Davis went to Defendant BBT to ask why the Bank had reported her as late on a mortgage payment. (Doc. # 12)

c. Defendant Sansbury entered Davis' social security number into the mortgage portion of the Defendant BBT's system and the Plaintiff's POD account came up.

d. The Plaintiff's customer profile contained non public information.

e. All of the book, report and statements of Defendant BBT at and after the disclosure to Davis made the material omission of not showing the unauthorized disclosure to Davis.

86. All the transactions involving the disclosure to Davis were **unauthorized** and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transaction is false within the meaning of 18 U.S.C. § 1005, in violation of the GLBA and violates 18 U.S.C. § 1346.

87. From March 2008 –June of 2008 the Defendants mailed the Plaintiff monthly bank statements for her accounts at BBT. The Defendants used the monthly statements to knowingly and corruptly conceal - the beneficiary profile and the at least two unauthorized loans in the Plaintiff's customer profile with the intent to impair the integrity or availability for use in an official proceeding; or otherwise obstructs, influences, or impedes an official proceeding.

88. The Defendants used misrepresentations and concealments to obtain the moneys, funds, and credits owned by, or under the custody or control of, the FDIC-insured United States bank - BBT and its subsidiaries, in violation of 18 U.S.C. § 1344, § 1341, § 1343, § 1346 and § 1512:

a. Specifically, in violation of 18 U.S.C. § 1344, as a direct and proximate result of Plaintiffs' reliance on the Defendant's misrepresentations and concealment, the Defendants were able to and did without the authorization or permission of the Plaintiff unlawfully appropriate the financial resources of the Plaintiff to their own use or the use of third parties as per Doc. # 15 – beneficiary profile; the monies

in the POD account and the at least two unauthorized loans in the Plaintiff's customer profile (Doc. # 10); and each transaction/incident being a separate violation of 18 U.S.C. § 1344.

89. For mail/wire fraud involving Defendants Fogle, Sansbury, Teal and Craven in the above alleged violation(s) of 18 U.S.C. § 1344 and 1512 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

90. In February 2008 Defendant Teal mailed the Plaintiff the signature card to the POD account.

a. Defendant Teal's letter to the Plaintiff failed to disclose and or made the material omissions of not stating that:

i. That the Plaintiff's customer profile contained at least two unauthorized loans.

ii. That the Defendant BBT and the employees and agents of Defendant BBT had an active fiduciary relationship with the Plaintiff.

iii. That the disclosure to Davis included the improper disclosure of the account balance, etc.

b. The Feb 2008 letter of Defendant Teal to the Plaintiff caused Defendant Teal to be in violation of 18 U.S.C. § 1512 and § 1346 where she knowingly and corruptly concealed that she made the above failures to disclose and or material omissions in her letter with the intent to impair the integrity or availability of the letter for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

c. The Defendant Teal used misrepresentations and concealments to obtain the moneys, funds, and credits owned by, or under the custody or control of, the FDIC-insured United States bank - BBT and its subsidiaries, in violation of 18 U.S.C. § 1344, § 1341, § 1343, § 1346 and § 1512:

i. Specifically, in violation of 18 U.S.C. § 1344, as a direct and proximate result of Plaintiffs' reliance on the Defendant's misrepresentations and concealment, the Defendant was able to and did without the authorization or permission of the Plaintiff unlawfully appropriate the financial resources of the Plaintiff to their own use or the use of third parties as per Doc. # 15 – beneficiary profile; the monies in the POD account and the at least two unauthorized loans in the Plaintiff's customer profile (Doc. # 10) in violation of 18 U.S.C. § 1344.

d. For mail/wire fraud involving Defendant Teal in the above alleged violation(s) of 18 U.S.C. § 1344, § 1344 and 1512 see paragraphs 139-160 herein where this Defendant and the Plaintiff continue to have a fiduciary relationship.

91. FDIC investigation:

a. The Plaintiff complained to the Federal Deposit Insurance Corporation (FDIC) on March 24, 2008 and June 6, 2008 requesting an investigation and an on site inspection. (Doc. #s 14 & 20) An FDIC proceeding/investigation was held from March 24, 2008 – September 2, 2008. (15 USC 57a(f) and 12 CFR 308).

b. The date that the FDIC received the Plaintiff's complaint, the **date of issuance**, in this matter is March 24, 2008. (Doc. # 14 and 12 CFR 308.7)

92. March 10, 2008 letter of Defendant Craven to the Plaintiff, Teal, BBT and the FDIC:

a. **Violation of 12 CFR 308.7:**
   i. Defendant Craven mailed a letter to the Plaintiff on 3/10/2008. Defendant Craven copied his 3/10 letter to Defendant Teal and Defendant BBT.
   ii. Defendant Teal faxed the 3/10 letter to the Plaintiff and Defendant Teal sent the 3/10 letter to the FDIC on April 11, 2008.
   iii. The 3/10/2008 letter was written by Defendant Craven before the date of issuance (3/24/2008) and written to the Plaintiff; and as such was in violation of 12 CFR 308.7 and lacked certification.

b. The March 10, 2008 letter of Defendant Craven to the FDIC and the Plaintiff caused Defendant Craven to be in violation of 18 U.S.C. § 1512 and § 1346 where he knowingly and corruptly concealed that his letter lacked certification with the intent to impair the integrity or availability of the letter for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

c. The March 10, 2008 (Doc. # 13) letter of Defendant Craven to the FDIC and the Plaintiff contains false statements:

   i. Defendant Craven's letter to the FDIC and the Plaintiff states on page one: "... with the acknowledgement of the existence of your checking account ..." (Doc. # 13) This was a false statement where Defendant Sansbury disclosed the POD account balance. (Doc. # 12 ¶ 4).

   ii. Defendant Craven's letter to the FDIC and the Plaintiff states on page one: "There is no claim for breach of fiduciary duty as no fiduciary relationship was ever established with BBT." (Doc. # 13) This was a false statement where the Plaintiff had her IOLTA at Defendant BBT from 4/1996 – 5/19/2008.

   iii. Defendant Craven's letter to the FDIC and the Plaintiff states on page two: "... or any financial information related to the account such as activity or balances." (Doc.

13) This was a false statement where Defendant Sansbury did disclose the POD account balance to Davis. (Doc. # 12 ¶ 4)

iv. The March 10, 2008 letter of Defendant Craven to the Plaintiff and the FDIC caused Defendant Craven to be in violation of 18 U.S.C. § 1512 and § 1346 where he knowingly and corruptly concealed that he made the above false statements in his letter with the intent to impair the integrity or availability of the letter for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

d. The March 10, 2008 (Doc. # 13) letter of Defendant Craven to the FDIC and the Plaintiff failed to disclose and or made the material omissions of not stating:

i. That the Plaintiff's customer profile contained at least two unauthorized loans.

ii. That the Plaintiff has a fiduciary relationship with Defendant BBT and the employees and agents of Defendant BBT.

iii. That the letter of Defendant Craven was not certified.

e. The March 10, 2008 letter of Defendant Craven to the Plaintiff and the FDIC caused Defendant Craven to be in violation of 18 U.S.C. § 1512 and § 1346 where he knowingly and corruptly concealed that he made the above failures to disclose and or material omissions in his letter with the intent to impair the integrity or availability of the letter for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

93. Defendant Craven's letter to the FDIC and the Plaintiff contains unauthorized transactions to include: false statements, failures to disclose and or material omissions. The transactions involving the false statements, failures to disclose and or material omissions in the letter of Defendant Craven to the Plaintiff and the FDIC were **unauthorized** and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transaction is false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346.

94. For at least two counts of mail/wire fraud involving Defendant Craven in the above alleged violation(s) of 18 U.S.C. § 1512 and § 1346 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

95. April 11, 2008 letter of Defendant Teal to the FDIC:

a. Violation of 12 CFR 308.7 and unauthorized practice of law:

i. After the Plaintiff complained to the FDIC the FDIC wrote to Defendant BBT (Ms. Nye in North Carolina) on Marc 28, 2008.

ii. Defendant Teal of South Carolina responded to the FDIC for Defendant BBT. Defendant Teal mailed her letter to the FDIC on 4/11/2008.

iii. Defendant Teal is not an attorney as is required at 12 CFR 308.7.

iv. In writing the letter to the FDIC in violation of 12 CFR 308.7 Defendant Teal engaged in the unauthorized practice of law where the letter lacks certification.

v. The April 11, 2008 letter of Defendant Teal to the FDIC caused Defendant Teal to be in violation of 18 U.S.C. § 1512 and § 1346 where she knowingly and corruptly concealed that her letter lacked certification with the intent to impair the integrity or availability of the letter for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

b. The April 11, 2008 (Doc. # 15) letter of Defendant Teal to the FDIC contained false statements:

i. Defendant Teal's letter to the FDIC stated on page one: "... and the paid interest amount for the last year of the loan." (Doc. # 15) This was a false statement where Davis was inquiring as to why Defendant BBT had reported her to the credit reporting agency for a late payment. (Affidavit of Davis at Doc. # 6 ¶ 5).

ii. Defendant Teal's letter to the FDIC stated on page one: "... Defendant Sansbury did not disclose whose account she had located when searching for a mortgage loan in Ms. Davis's name ..." (Doc. # 15 page 1) This was a false statement where Defendant Sansbury disclosed that the account belonged to the Plaintiff and that Davis was down as the beneficiary. (Doc. # 12 ¶ 4).

iii. Defendant Teal's letter to the FDIC stated on page one: "... I have explained that Coastal Federal Bank's procedure was to establish a Customer Profile for both the owner and beneficiary of an account ..." (Doc. # 15) This was a false statement where Defendant Teal never had any such conversation with the Plaintiff. (Doc. # 26 ¶ 3.b.).

iv. Defendant Teal's letter to the FDIC stated on page two: "... We did not ... release any financial record information." (Doc. # 15) This was a false statement where Ms. Sansbury did disclose the POD account balance to Davis. (Doc. # 12 ¶ 4).

c. The April 11, 2008 letter of Defendant Teal to the FDIC caused Defendant Teal to be in violation of 18 U.S.C. § 1512 and § 1346 where she knowingly and corruptly concealed that she made numerous false statements in her letter with the intent to impair the integrity or availability of the letter for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

d. Defendant Teal's letter to the FDIC failed to disclose and or made the material omissions of not stating that:

i. That Defendant Teal was not an attorney as is required by 12 CFR 308.7.

ii. That the Plaintiff's customer profile contained at least two unauthorized loans.

iii. That the Plaintiff has a fiduciary relationship with Defendant BBT and the employees and agents of Defendant BBT.

iv. That the letter of Defendant Teal was not certified.

v. That the letter of Defendant Craven was not certified.

e. The April 11, 2008 letter of Defendant Teal to the FDIC caused Defendant Teal to be in violation of 18 U.S.C. § 1512 and § 1346 where she knowingly and corruptly concealed that she made the above failures to disclose and or material omissions in her letter with the intent to impair the integrity or availability of the letter for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

f. **Destruction of evidence:** Defendant Teal went on to say in her 4/11/2008 non certified letter that the beneficial profile had been deleted. (Doc. # 15)

i. The April 11, 2008 letter of Defendant Teal to the FDIC caused Defendant Teal to be in violation of 18 U.S.C. § 1512 where she knowingly and corruptly destroyed the beneficiary profile and or the at least two unauthorized loans in the Plaintiff's customer profile with the intent to impair the integrity or availability of the data for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

g. **Beneficiary Profile:** The April 11, 2008 letter of Defendant Teal to the FDIC at Doc. # 15 states that it was the procedure of Defendant BBT to set up an owner profile and a beneficiary profile for the POD account.

i. All the transactions involving the beneficiary profile for Davis were **unauthorized** and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transaction is false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346.

h. All of the book, report and statements of Defendant BBT at and after the creation of the unauthorized beneficiary profile for Davis made the material omission of not showing the unauthorized beneficiary profile for Davis.

96. Defendant Teal's letter to the FDIC contained unauthorized transactions to include: false statement(s), failures to disclose and material omissions. The transactions involving the false statements, failures to disclose and material omissions in the letter of Defendant Teal to the FDIC were **unauthorized** and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transaction is false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346.

97. For mail/wire fraud involving Defendant Teal in the above alleged violation(s) of 18 U.S.C. § 1512 and § 1346 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

98. On May 8, 2008 the investigative machinery of the FDIC made a very limited finding of a GLBA violation. The GLBA finding and language as stated in the May 8, 2008 letter from the FDIC to the Plaintiff and Defendant BBT is taken from the first paragraph of the pre issuance none certified 3/10/2008 letter of Defendant Craven.

99. **May 2, 2008 Setoff:** Doc. # 16 shows a business IOLTA check for $855.00 of the Plaintiff that was setoff against the Plaintiff's POD account where this was an unauthorized setoff on 5/2/2008.

a. The transactions involving the setoff were **unauthorized** and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transaction is false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346.

100. All of the Plaintiff's book, report and statements of Defendant BBT at and after the 5/2/2008 setoff, which was debited from the POD account, made the material **omission** of not showing the setoff from the IOLTA.

101. The Defendants used their misrepresentations to obtain the setoff moneys, funds, and credits owned by, or under the custody or control of, the FDIC-insured United States bank - BBT and its subsidiaries, in violation of 18 U.S.C. § 1344, § 1341, § 1343, 1346 and § 1512:

i. Specifically, in violation of 18 U.S.C. § 1344, as a direct and proximate result of Plaintiffs' reliance on the Defendant misrepresentations, the Defendant was able to and did without the authorization or permission of the Plaintiff unlawfully appropriate the financial resources of the Plaintiff to the Bank's own use: improper setoff of $855.00.

102. For mail/wire fraud involving the Defendants in the above alleged violation(s) of 18 U.S.C. § 1344 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

103. May 15, 2008 letter of Defendant Booz to the FDIC:

a. Violation of 12 CFR 308.7
   i. On May 8, 2008 the FDIC wrote to Defendant BBT (Ms. Nye) (Doc. # 18): Defendant Booz mailed his 5/15/2008 (Doc. # 19) letter to the FDIC in response to the FDIC's letter dated May 8, 2008.
   ii. The 5/15/2008 letter of Defendant Booz lacked reasonable inquiry by Defendant Booz in violation of 12 CFR 308.7 and thus lacked certification where

      1. Defendant Booz stated on 10/27/2009 in his affidavit at Doc. #20-2 he had no contact or communication with any person located in SC.

2. At Doc. # 110 this Court agreed with Defendant Booz's affidavit at Doc. 20-2 and found that it had no personal jurisdiction over Defendant Booz.

3. Defendant Booz mailed/wired a letter to the FDIC on May 15, 2008. The letter is required to satisfy 12 CFR 308.7 element of **reasonable inquiry** of the matters to which he addressed in his letter.

4. Defendant Booz' letter lacked reasonable inquiry where he never had contact with anyone in South Carolina as per his affidavit to this USDC at Doc. #s 20-2 and 110; and

5. Defendant Booz directed the FDIC to - the non certified letter of Defendant Teal, a person that is not an attorney as required by 12 CFR 308.7; the 3/10/2008 letter of Defendant Craven that lacked good faith certification which was included with Teal's letter; and Defendant Booz gave an incorrect cite to the law, etc.

iii. The May 15, 2008 letter of Defendant Booz to the FDIC caused Defendant Booz to be in violation of 18 U.S.C. § 1512 and § 1346 where he knowingly and corruptly concealed that his letter lacked certification with the intent to impair the integrity or availability of the letter for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding. (Doc. #s 19)

b. The May 15, 2008 letter of Defendant Booz to the FDIC contains false statement(s):

i. Defendant Booz's letter to the FDIC states on page one: "In fact, Ms. Davis held a beneficial interest in the account ..." (Doc. # 19 ¶ 4) This was a false statement where Davis did not hold a beneficial interest in the revocable POD trust account where the Plaintiff was and is still alive. (62-6-103(b) and Doc. # 23 at ¶ 3 on page 5).

ii. The May 15, 2008 letter of Defendant Booz to the FDIC caused Defendant Booz to be in violation of 18 U.S.C. § 1512 and § 1346 where he knowingly and corruptly concealed that he made the above false statements in his letter with the intent to impair the integrity or availability of the letter for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

c. The May 15, 2008 letter of Defendant Booz to the FDIC contains failures to disclose and or the material omissions of not stating that:

i. Defendant Teal was not an attorney as required at 12 CFR 308.7.

ii. That the Plaintiff's customer profile contained at least two unauthorized loans.

iii. The Defendant BBT and its employees/agents have a fiduciary relationship with the Plaintiff.

iv. That the letter of Defendant Teal was not certified.

v. That the letter of Defendant Craven was not certified.

vi. That the letter of Defendant Booz was not certified.

d. The May 15, 2008 letter of Defendant Booz to the FDIC caused Defendant Booz to be in violation of 18 U.S.C. § 1512 and § 1346 where he knowingly and corruptly concealed that he made the above failures to disclose and or material omissions in his letter with the intent to impair the integrity or availability of the letter for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

104. Defendant Booz's letter to the FDIC contained unauthorized transactions to include: false statement(s), failure to disclose and material omissions. The transactions involving the false statements, failure to disclose and material omissions in the letter of Defendant Booz to the FDIC were **unauthorized** and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transaction is false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346.

105. For mail/wire fraud involving Defendant Booz in the above alleged violation(s) of 18 U.S.C. § 1512 and § 1346 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship. Defendant Booz copied his May 15, 2008 letter to Defendant Teal in SC; Ms. Walker of SC and BJ Denny. And Defendant Booz, as per paragraph six of his affidavit at Doc. # 38, included his May 15, 2008 letter by reference to the USDC.

106. Destruction of evidence:

a. On May 19, 2008 during the closure of the POD and IOLTA accounts at Defendant BBT the Plaintiff requested that Mr. Fogle and Ms. McClintic preserve all documents. Defendant Fogle and Ms. McClintic did not preserve the records as is shown at Doc. # 36.

b. The May 19, 2008 conversation at Defendant BBT between the Plaintiff and Defendants Fogle and McClintic caused these Defendants to be in violation of 18 U.S.C. § 1512 and § 1346 where they knowingly and corruptly destroyed the POD and IOLTA account histories in the Plaintiff's customer profile with the intent to impair the integrity or availability of the data for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

c. For mail/wire fraud involving Defendants Fogle and McClintic in the above alleged violation(s) of 18 U.S.C. § 1512 and § 1346 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

107. Failure to Disclose on May 19, 2008:

a. On May 19, 2008 during the closure of the POD and IOLTA accounts at Defendant BBT the Defendants Fogle and McClintic caused themselves to be in violation of 18 U.S.C.

§ 1512 and § 1346 where they knowingly and corruptly failed to disclose the at least two unauthorized loans in the Plaintiff's customer profile with the intent to impair the integrity or availability of the loans for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

b. For mail/wire fraud involving Defendants Fogle and McClintic in the above alleged violation(s) of 18 U.S.C. § 1512 and § 1346 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

108. Attempt to Persuade:

a. On May 19, 2008 after the Plaintiff closed the POD and IOLTA accounts Defendant Fogle walked the Plaintiff to the door and begged her to please leave it alone.

b. Defendant Fogle during an official federal proceeding knowingly and corruptly in violation of 18 U.S.C. § 1512 and § 1346 attempts to persuade the Plaintiff with intent to influence, delay, or prevent the Plaintiff's testimony in the on going official proceeding when he begged the Plaintiff to leave it alone.

c. For mail/wire fraud involving Defendant Fogle in the above alleged violation(s) of 18 U.S.C. § 1512 and § 1346 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

109. June 27, 2008 letter of Defendant Teal to the FDIC:

a. June 6, 2008 complaint: The Plaintiff cashed a check at Defendant BBT as stated at paragraphs 99-102 herein. A stop payment had been placed on the check. Defendant BBT setoff the $855.00 check against the POD account number as listed at Doc. # 16. The Plaintiff demanded the return of the $855.00. Defendant BBT refused and faxed the Plaintiff a copy of the page from the BSA. The Plaintiff made a second complaint to the FDIC: the second complaint involved the business check at Doc. # 16 for $855.00 from the South Carolina Office of Indigent Defense (SCOID). The check was for legal services and mailed to the Plaintiff's business address.

b. Violation of 12 CFR 308.7 and unauthorized practice of law:

i. On June 27, 2008 Defendant Teal mailed a response to the FDIC re the May 2, 2008 setoff (Doc. # 16).

ii. Defendant Teal is not an attorney as is required at 12 CFR 308.7.

iii. In writing the letter to the FDIC in violation of 12 CFR 308.7 Defendant Teal engaged in the unauthorized practice of law where the letter lacks certification.

iv. The June 27, 2008 letter of Defendant Teal to the FDIC caused Defendant Teal to be in violation of 18 U.S.C. § 1512 and § 1346 where she knowingly and corruptly concealed that her letter lacked certification with the intent to impair the integrity or

availability of the letter for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

c. The June 27, 2008 (Doc. # 21) letter to the FDIC contains false statements:

i. Defendant Teal's letter to the FDIC stated on page one: "... stop payment involving her POD checking account." This was a false statement where the stop payment involved the Plaintiff' IOLTA.

ii. The June 27, 2008 letter of Defendant Teal to the FDIC caused Defendant Teal to be in violation of 18 U.S.C. § 1512 and § 1346 where she knowingly and corruptly concealed that she made the above false statements in her letter with the intent to impair the integrity or availability of the letter for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

d. Defendant Teal's June 27, 2008 letter to the FDIC made failures to disclose and the material omissions of not stating that:

i. That Defendant Teal was not an attorney as is required at 12 CFR 308.7.

ii. That the Plaintiff has a fiduciary relationship with Defendant BBT and its employees and agents.

iii. That the check was from the SC Office of Indigent Defense and was for legal services involving the IOLTA and was mailed to the Plaintiff's business office.

iv. That the two letters of Defendant Teal were not certified.

v. That the letter of Defendant Craven was not certified.

vi. That the letter of Defendant Booz was not certified.

e. The June 27, 2008 letter of Defendant Teal to the FDIC caused Defendant Teal to be in violation of 18 U.S.C. § 1512 and § 1346 where she knowingly and corruptly concealed that she made the above failures to disclose and or material omissions in her letter with the intent to impair the integrity or availability of the letter for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

110. Defendant Teal's letter to the FDIC contained unauthorized transactions to include: false statement(s), failures to disclose and material omissions. The transactions involving the false statements, failures to disclose and material omissions in the letter of Defendant Teal to the FDIC were **unauthorized** and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transaction is false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346.

111. For mail/wire fraud involving Defendant Teal in the above alleged violation(s) of 18 U.S.C. § 1512 and § 1346 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

112. **Compliance Privacy Policy Reports (GLBA):** The Defendants caused yearly (2003-2008) compliance reports to be mailed to the Plaintiff. The compliance reports contained false statements:

a. The privacy policy states "we do not share information about our customers or former customers to anyone except as permitted or required by law". This was a false statement where Defendant Sansbury disclosed the Plaintiff's POD account balance, the existence of the POD, etc. to Ms. Davis.

b. The privacy policy states "we do not share information about our customers or former customers to anyone except as permitted or required by law". This was a false statement where the Plaintiff's customer profile at Doc. # 10 contains at least two unauthorized loans.

c. **OOJ:** The annual Compliance Privacy Reports of Defendant BBT to the Plaintiff have caused these Defendants to be in violation of 18 U.S.C. § 1512 and § 1346 where BBT knowingly and corruptly concealed that it made the above false statements in the compliance reports with the intent to impair the integrity or availability of the compliance report for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

113. All of the compliance reports etc of Defendant BBT and its employees and agents to the Plaintiff and the USDC contained unauthorized transactions to include: false statement(s). The transactions involving the false statements in the compliance reports, books, statements to the Plaintiff and the USDC were **unauthorized** and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transactions are false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346.

114. For mail/wire fraud involving Defendants Fogle, Booz, Craven, Okay and Teal in the above alleged violation(s) of 18 U.S.C. § 1512 and § 1346 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

115. **Closed:** The FDIC proceedings/investigation was closed on September 2, 2008.

116. **September 9, 2008 letter of C. Okay to the Plaintiff:**

a. On September 9, 2008 (Doc. # 27 ¶ 11) Defendant Okay mailed a letter to the Plaintiff. Defendant Okay quotes from the letter of Defendant Craven. The September 9, 2008 letter of Defendant Okay contains false statements:

i. Defendant Okay's letter to the Plaintiff states on page one: "... no actual financial information was ever released." This was a false statement where the POD account balance was disclosed to Davis. Doc. # 12 ¶ 4).

ii. The Sept 9, 2008 letter of Defendant Okay to the Plaintiff caused Defendant Okay to be in violation of 18 U.S.C. § 1512 and § 1346 where he knowingly and corruptly concealed that he made the above false statements in his letter with the intent to impair the integrity or availability of the letter for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

b. Defendant Okay's letter to the Plaintiff made failures to disclose and the material omissions of not stating that:

i. That Defendant Teal was not an attorney as is required by 12 CFR 308.7.

ii. That the Plaintiff has a fiduciary relationship with Defendant BBT and its employees and agents.

iii. That the Plaintiff's customer profile contained at least two unauthorized loans.

iv. That the letters of Defendant Teal, Defendant Craven and Defendant Booz to the FDIC and the Plaintiff were not certified.

c. The Sept 9, 2008 letter of Defendant Okay to the Plaintiff caused Defendant Okay to be in violation of 18 U.S.C. § 1512 and § 1346 where he knowingly and corruptly concealed that he made the above failures to disclose and or material omissions in his letter with the intent to impair the integrity or availability of the letter for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding. (Doc. # 27)

117. Defendant Okay's letter to the Plaintiff contained unauthorized transactions to include: false statement(s), failures to disclose and material omissions. The transactions involving the false statements, failures to disclose and material omissions in the letter of Mr. Okay to the Plaintiff were **unauthorized** and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transaction is false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346.

118. For mail/wire fraud involving Defendant Okay in the above alleged violation(s) of 18 U.S.C. § 1512 and § 1346 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

119. **December 18, 2008 response from C. Okay written by Shinault to the Plaintiff's attorney:**

a. On December 1, 2008 Attorney Wilson wrote to Defendant Okay. In response to Attorney Wilson's letter to Defendant Okay came a response written by Lorie Shinault, paralegal on December 18, 2008 through the US mail. (Doc. # 43)

b. Defendant Okay's letter, written by Shinault, to Attorney Wilson made failures to disclose and the material omissions of not stating that:

i. That Defendant Teal was not an attorney as is required by 12 CFR 308.7.

ii. That the Plaintiff has a fiduciary relationship with Defendant BBT and its employees and agents.

iii. That the Plaintiff's customer profile contained at least two unauthorized loans.

iv. That the letters of Defendant Teal, Defendant Craven and Defendant Booz to the FDIC and the Plaintiff were not certified and in violation of 12 CFR 308.7.

v. The Dec 18, 2008 letter of Defendant Okay to the Attorney Wilson caused Defendant Okay to be in violation of 18 U.S.C. § 1512 and § 1346 where he knowingly and corruptly concealed that he made the above failures to disclose and or material omissions in his letter with the intent to impair the integrity or availability of the letter for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

120. Defendant Okay's letter to Attorney Wilson contained unauthorized transactions to include: failures to disclose and material omissions. The transactions involving the failures to disclose and material omissions in the letter of Mr. Okay to Attorney Wilson were **unauthorized** and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transaction is false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346.

121. Defendants Okay used the United States mails to further their schemes, in violation of 18 U.S.C. § 1341 and § 1343, as alleged above in violation of 18 U.S.C. § 1512 and § 1346, by placing or causing to be placed in an authorized depository for mail, or depositing or causing to be deposited with private and commercial interstate and international carriers for delivery, the documents generated from these schemes and delivered to the Plaintiff/Plaintiff's attorney, the FDIC, the HCPD and this Court; and see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

122. During trial in the USDC in case #: 4:09-cv-02151-JMC-TER:

123. Search Warrant: The Plaintiff's 7/19/2007 customer profile shows at least two unauthorized loans: transfer management and portfolio in the Plaintiff's customer profile along with Plaintiff's IOLTA, 2007 mortgage and other accounts.

- **a.** On Oct. 18 2010, during this pending federal judicial proceeding in the USDC, the Horry County Police Department (HCPD) sent a related search warrant to Defendant BBT. (Doc. # 31)
- **b.** On October 21, 2010 the Defendant Haywood mailed the return of search warrant to the HCPD with zero documents. (Doc. # 32)
- **c.** The Horry County Solicitor's office mailed the Plaintiff a copy of the return of search warrant from Defendant Haywood.
- **d.** The return of search warrant contained unauthorized transactions:
  - **i.** The return of search warrant states on page one: "We are unable to produce documents as requested. We have no record of accounts with BB&T in reference to the account numbers listed on subpoena." (Doc. #s 32). This was a statement of an unauthorized transaction where the Plaintiff did not authorize the deletion or erasure or removal of the loans from the customer profile.
- **e.** The return of search warrant made failures to disclose and the material omissions of not stating that:
  - **i.** That Defendant Teal was not an attorney as is required by 12 CFR 308.7.
  - **ii.** That the Plaintiff has a fiduciary relationship with Defendant BBT and its employees and agents.
  - **iii.** That the Plaintiff's customer profile contained at least two unauthorized loans.
  - **iv.** That the letters of Defendant Teal, Defendant Craven and Defendant Booz to the FDIC and the Plaintiff were not certified and in violation of 12 CFR 308.7..
- **f.** The return of search warrant to the HCPD caused Defendant Haywood to be in violation of 18 U.S.C. § 1512 and § 1346 where she knowingly and corruptly concealed the records of the at least two unauthorized loans in the Plaintiff's customer profile with the intent to impair the integrity or availability of the records for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

124. The return of search warrant contained unauthorized transactions to include: false statement(s), failures to disclose and material omissions. The transactions involving the false statements, failures to disclose and material omissions in the motion to dismiss to the USDC were **unauthorized** and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transactions are false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346.

125. For mail/wire fraud involving Defendant Haywood in the above alleged violation(s) of 18 U.S.C. § 1512 and § 1346 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

126. **Oct 2009 and May 2010 Motions to Dismiss and affidavit of Booz:**

a. On Oct 27, 2009 and May 29, 2010 all Defendants did submit a motion to dismiss to the USDC through the USDC's electronic system. The motions to dismiss were submitted by Defendant Licata. The motions to dismiss did make failures to disclose and or the material omissions of not stating:

i. That the USDC had Personal Jurisdiction over Defendant Booz as per the Defendant BBT's Banking Service Agreements at Doc. #s 23 and 24 and as per the SC Probate code: 62-7-201 thru 62-7-204.

ii. That Defendant Teal was not an attorney as is required at 12 CFR 308.7.

iii. That the Plaintiff has a fiduciary relationship with Defendant BBT and its employees and agents.

iv. That the Plaintiff's customer profile contained at least two unauthorized loans.

v. That the following letters to the FDIC and the Plaintiff was not certified: both letters of Defendant Teal, Defendant Craven and Defendant Booz.

vi. The Oct 27, 2009 and May 29, 2010 motions to dismiss to the USDC caused all of the Defendants to be in violation of 18 U.S.C. § 1512 and § 1346 where they knowingly and corruptly concealed that they made the above failures to disclose and or material omissions in their motions with the intent to impair the integrity or availability of the information for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding. The USDC at Doc. # 110 did find that it did not have personal jurisdiction over Defendant Booz.

b. Defendant Booz wrote an affidavit (Doc. # 20-2) that was submitted to the USDC on behalf of the Defendants to be used against the Plaintiff's assertion that the Court had personal jurisdiction over him. The affidavit of Defendant Booz contains false statements:

i. Defendant Booz's affidavit to the Court and against the Plaintiff states on page two at ¶ 3: "The correspondence to which I was responding was presumably forwarded from Ms. Kincaid in Kansas City, Missouri..." This was a false statement where Defendant Booz was responding to Doc. # 18 and this document did not include any enclosures.

ii. Defendant Booz's affidavit to the Court and against the Plaintiff states on page two at ¶ 3: "At the time of the forwarding of the correspondence to the FDIC I was not aware that the Plaintiff in this action, whose account at issue, was a resident of the State of South Carolina." This was a false

statement where Defendant Booz was aware that the Plaintiff was a resident of South Carolina as follows:

1. The May 15, 2008 letter of Defendant Booz referred to at paragraph six of Defendant Booz's sworn affidavit states on page one: In response to your letter, BBT asks that you re-examine Ms. Judy Teal's letter to the FDIC of April 11, 2008.

2. The April 11, 2008 letter of Defendant Teal at page two referred to the included March 10, 2008 letter of Defendant Craven to the Plaintiff at her home in South Carolina and about her South Carolina accounts; and the "unclocked complaint" from the Plaintiff at her home in South Carolina about her South Carolina accounts. (Doc. #s 15 13 and 27).

3. The 3/10/2008 letter of Defendant Craven (Doc. # 13) was addressed to the Plaintiff at her home in Conway, SC and stated that the Plaintiff and Defendant BBT had never established a fiduciary relationship and that Defendant Sansbury did not disclose financial information to Davis.

iii. Defendant Booz's affidavit to the Court and against the Plaintiff states on page two at ¶ 3: "I had no contact or communication with any person located in the state of South Carolina". This was a false statement where Defendant Booz had contact with persons located in South Carolina as follows:

1. Pursuant to paragraph six of Doc. # 20-2: A copy of the May15, 2008 letter (Doc. # 19 at page 2) addressed to the FDIC was also sent to Defendant Teal. Defendant Teal works in Florence, SC a per Doc. #s 15 and 21. Defendant Teal is the Regional Branch Operations Manager, Senior Vice President of Defendant BBT.

2. Pursuant to paragraph six of Doc. # 20-2: A copy of the May15, 2008 letter (Doc. # 19 at page 2) addressed to the FDIC was also sent to Michelle Walker, whom worked out of the Myrtle Beach, SC office and is Defendant BBT's Fraud Investigator. (Doc. # 20 Michell Ward (sp))

iv. The affidavit for lack of personal jurisdiction as to Defendant Booz to the USDC caused all the Defendants to be in violation of 18 U.S.C. § 1512 and § 1346 where they knowingly and corruptly concealed that they made the above false statements in his affidavit with the intent to impair the integrity or availability of Booz as a Defendant in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding. The USDC at Doc. # 110 did find that it did not have personal jurisdiction over Defendant Booz.

c. Defendant Booz wrote an affidavit (Doc. # 20-2) that was submitted to the USDC on behalf of the Defendants to be used against the Plaintiff's assertion that the Court had personal jurisdiction over him. Paragraph 6 of the affidavit referred to and included by reference Defendant Booz's May 15, 2008 letter (Doc. # 19) to the FDIC. The May 15, 2008 letter of Defendant Booz directed the FDIC to see the April 11, 2008 letter of Defendant Teal to the FDIC; and the April 11, 2008 letter of Defendant Teal directed the FDIC to see the enclosed letter of Defendant Craven. Thus, the May 15, 2008 letter of Defendant Booz brought all of the Defendants misconduct during the FDIC investigation as described at paragraphs 91-121 to the USDC.

127. The Oct 27, 2009 and May 29, 2010 motions to dismiss and affidavit of Defendant Booz with the May 15, 2008 letter - to the USDC and the Plaintiff contained unauthorized transactions to include: false statement(s), failures to disclose and material omissions. The transactions involving the false statements, failures to disclose and material omissions in the motion to dismiss and affidavit to the USDC and the Plaintiff were unauthorized and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transactions are false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346.

128. For at multiple counts of mail/wire fraud involving all individual Defendants in the above alleged violation(s) of 18 U.S.C. § 1512 and § 1346 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

129. **November 5, 2010 affidavit of Licata and all other filings of Licata to the USDC and the Plaintiff:**

a. On November 5, 2010 (Doc. # 9-16) Defendant Licata used the USDC's electronic service for delivery of his affidavit to the USDC and the US mail for delivery to the Plaintiff in reference to case #: 4:09-cv-02151-JMC-TER. The November 5, 2010 affidavit of Defendant Licata contains false statements:

i. Defendant Licata's affidavit to the USDC states on page one: Mr. Craven does not work at BBT. This is a false statement.

ii. The November 5, 2010 affidavit of Defendant Licata to the Plaintiff and the USDC caused Defendant Licata to be in violation of 18 U.S.C. § 1512 and § 1346 where he knowingly and corruptly concealed that he made the above false statements in his affidavit with the intent to impair the integrity or availability of Defendant Craven's presence in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding or attempts to do so.

b. Defendant Licata's affidavit and other filings at case #: 4:09-cv-02151-JMC-TER to the USDC and the Plaintiff made failures to disclose and or the material **omissions** of not stating that:

i. That Defendant Teal was not an attorney as is required by 12 CFR 308.7.

ii. That the Plaintiff has a fiduciary relationship with Defendant BBT and its employees and agents.

iii. That the Plaintiff's customer profile contained at least two unauthorized loans.

iv. That the letters of Defendants Teal, Defendant Craven and Defendant Booz to the FDIC and the Plaintiff were not certified.

v. **OOJ:** The November 5, 2010 affidavit of Defendant Licata and other filings to the USDC and the Plaintiff caused Defendant Licata to be in violation of 18 U.S.C. § 1512 and § 1346 where he knowingly and corruptly concealed that he made the above failures to disclose and or material omissions in his letter with the intent to impair the integrity or availability of the information for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding or attempts to do so.

130. Defendant Licata's affidavit to the USDC and the Plaintiff contained unauthorized transactions to include: false statement(s), failures to disclose and or material omissions. The transactions involving the false statements, failures to disclose and material omissions in the affidavit of Defendant Licata to the Plaintiff were **unauthorized** and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transaction is false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346.

131. For mail/wire fraud involving Defendant Licata in the above alleged violation(s) of 18 U.S.C. § 1512 and § 1346 see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

132. All of the reports, books, statements, etc of Defendant BBT failed to disclose and or made material omissions of the following:

a. That Defendant Teal was not an attorney as required at 12 CFR 308.7.

b. The Plaintiff has a fiduciary relationship with Defendant BBT and its employees and agents.

c. That letter of Defendant Teal to the FDIC was not certified

d. That the letter of Defendant Craven was not certified that was sent to the FDIC by Defendant Teal

e. That the letter of Defendant Booz to the FDIC was not certified.

f. That the Plaintiff's customer profile contained at least two unauthorized loans.

133. Books, reports, statements of Defendant BBT and its employees and agents to the Plaintiff, the FDIC and the USDC have caused all of the Defendants to be in violation of 18

U.S.C. § 1512 and § 1346 where they knowingly and corruptly concealed that they made the above failures to disclose and or material omissions in their reports, books and statements of Defendant BBT with the intent to impair the integrity or availability of the reports, books and statements for use in an official proceeding; or otherwise obstruct, influence, or impede an official proceeding.

134. All of the reports, books, statements, etc of Defendant BBT and its employees and agents to the Plaintiff and the USDC contained unauthorized transactions to include: false statement(s), failures to disclose and material omissions. The transactions involving the false statements, failures to disclose and material omissions in the reports, books, statements to the Plaintiff, the HCPD, the FDIC and the USDC were unauthorized and were undertaken without the consent of the Plaintiff, they are fictitious and the recorded transactions are false within the meaning of 18 U.S.C. § 1005 and violates 18 U.S.C. § 1346.

135. Defendants Fogle, Booz, Craven, Okay and Teal , from 2000-present, used the United States mails to further their schemes, in violation of 18 U.S.C. § 1341, as alleged above in violation of 18 U.S.C. § 1344, 18 U.S.C. § 1346 and 18 U.S.C. § 1512, by placing or causing to be placed in an authorized depository for mail, or depositing or causing to be deposited with private and commercial interstate and international carriers for delivery, the documents generated from these schemes and delivered to the Plaintiff, the FDIC, the HCPD and this Court; and see paragraphs 139-160 herein where these Defendants and the Plaintiff continue to have a fiduciary relationship.

136. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

137. **Damages:** 12 U.S.C. 503 makes Defendants Fogle, Craven, Teal, Okay, Cannon and Booz as an officer or director of Defendant BB&T liable for the above listed numerous violations of 18 U.S.C. 1005 and 18 U.S.C. 1014 where the Plaintiff's damages include:

a. The conduct of the Defendants forced the Plaintiff on March 24, 2008 to close her savings account (Doc. # 3) where the Plaintiff was inconvenienced; and

b. The conduct of the Defendants forced the Plaintiff on May 19, 2008 to close the following accounts:

i. POD account (Doc. # 10) where the Plaintiff has loss benefits in excess of $160, 000 as per Doc. # 10 and was inconvenienced; and

ii. IOLTA account (Doc. # 10) and was greatly inconvenienced, etc.; and

c. Defamation as herein stated at paragraphs 178-189; and

d. Breach of fiduciary duties as herein stated at paragraphs 40-47; and

e. The Defendants subjected the Plaintiff to financial ruin, violations of the SC Professional Rules of Conduct to include disbarment, public humiliation and the Plaintiff has been unable to sit for the Patent Bar exam (Defendants have repeatedly threaten a Rule 11 violation Doc. # 39 at page 4); and

f. The Plaintiff has been permanently and materially prejudiced and injured by the conduct of the Defendants in the FDIC proceeding/investigation and the proceeding before this Court where the Defendants have avoided an on site inspection and the evidence thereof, avoided 15 USC 57a(f) and 12 USC 1818, avoided investigation by the HCPD, harassed the Plaintiff and to cause unnecessary delay and needless increase in the cost of litigation as to the unauthorized beneficiary profile and to divert the Plaintiff, the FDIC and the police away from the at least two unauthorized loans in the Plaintiff's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts; and to cause unnecessary delay and needless increase in the cost of litigation as to the at least two unauthorized loans in the Plaintiff's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts, the Plaintiff has suffered a loss of POD benefits, needless increase in the time and cost of litigation where the attorney fees to date are: $1, 328,000.00 and growing.

138. And See below for other relief sought by Plaintiff.

C. RICO against Defendants Booz, Craven, Teal, Okay, Licata, Cannon and Fogle at 18 U.S.C. §§ 1961(4), (5), (9) & 1962(c)-(d): COUNT ONE: Conduct and Participation in a RICO *Enterprise* through a *Pattern of Racketeering Activity*: 18 U.S.C. §§ 1961(5), 1962(c) and COUNT TWO: Conspiracy to Engage in a *Pattern of Racketeering Activity*: 18 U.S.C. §§ 1961(5), 1962(d):

139. Each previous paragraph and exhibits are repeated herein as if verbatim. Substance prevails over form.

140. The Plaintiff and Defendant BBT and its employees/agents have an active and continuous fiduciary relationship as described herein at paragraphs 40 - 47.

141. Particular attention of this honorable Court is now drawn to Doc. #s 1 thru 43, the documentary materials.

142. All of the named individual Defendants are or were an employee/agent of the Defendant BBT at all times applicable.

143. The Defendant BBT, a corporate entity, is the enterprise through which the persons, named individual Defendants, conduct the pattern of racketeering.

144. The racketeering predicate acts here include Bank Fraud, Obstruction of Justice, Mail/Wire Fraud and Lack of Honest Services where these acts are part of an ongoing enterprise from 5/31/2000 through present: use of the Plaintiff's financial resources and identity by the enterprise of individuals for the benefit of the Bank and in providing loans to third parties where the Bank and its employees benefits.

145. At various times and places partially enumerated in Plaintiff's *documentary material*, all the named individual Defendants did associate with a RICO *enterprise* of individuals who were associated in fact and who engaged in, and whose activities did affect, interstate and foreign commerce.

146. All the named individual Defendants did conduct and/or participate, either directly or indirectly, in the conduct of the affairs of said RICO *enterprise* through a *pattern of racketeering activity*, all in violation of 18 U.S.C. §§ 1961(4), (5), (9), and 1962(c).

147. All the named individual Defendants did cooperate jointly and severally in the commission of two (2) or more related RICO predicate acts that are itemized in the RICO laws at 18 U.S.C. §§ 1961(1)(B), and did so in violation of the RICO law at 18 U.S.C. 1962(c) - one of which occurred after the effective date of chapter 96 and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.

148. Plaintiff further alleges that all Defendants did commit two (2) or more of the offenses itemized above in a manner which they calculated and premeditated intentionally to threaten continuity, *i.e.* a continuing threat of their respective *racketeering activities*, also in violation of the RICO law at 18 U.S.C. 1962(c) *supra*.

149. In fact, the continuity of the racketeering activities occur with continued silence and each writing from the Bank where the named individual Defendants fail to provide the Plaintiff with an updated copy of the Plaintiff's customer profile as requested by the Plaintiff on 9/24/2010.

150. **Mail/Wire Fraud, Bank Fraud, Obstruction of Justice and Lack of Honest Services:** The Plaintiff alleges that all of the named individual Defendants have engaged in the racketeering activities of mail/wire fraud, bank fraud, obstruction of justice and failure to provide honest services as describe herein at paragraphs 48 -158 where each obstructive act(s) by the Defendant(s) had the natural and probable effect of interfering with" that proceeding and where each of the named individual Defendants have engaged in multiple counts of the listed racketeering activities in the preservation and concealment of the schemes to defraud from 2000-present each of the named individual Defendants did -

a. intentionally participate

b. in a scheme to defraud

c. the plaintiff of money or property; and or lack of honest services

d. by means of material misrepresentations and or failures to disclose

e. using the United States mails or wires to further their schemes (bank fraud - 18 U.S.C. § 1344; OOJ - 18 U.S.C. § 1512 and Lack of Honest Services - 18 U.S.C. § 1346), in violation of 18 U.S.C. § 1341 and 1343, by placing or causing to be placed in an authorized depository for mail, or depositing or causing to be deposited with private and commercial interstate and

international carriers a book, report or statement, including those listed herein at paragraphs 15 and 51, of Defendant BBT for delivery to the Plaintiff, the FDIC, the USDC and or the HCPD where

f. the Plaintiff relied on the misrepresentation(s) and failures to disclose made in furtherance of the fraudulent schemes, and

g. that such misrepresentation(s) would have been relied upon by a reasonable person that the plaintiff suffered injury as a result of such reliance and

h. That the plaintiff incurred a specifiable amount of damages as described below.

151. At various times and places partially enumerated in Plaintiff's *documentary material*, all named individual Defendants did also conspire to conduct and participate in said RICO *enterprise* through a *pattern of racketeering activity*, in violation of 18 U.S.C. §§ 1962(c) and (d); and 18 U.S.C. §§ 1961(4), (5) and (9).

152. All the named individual Defendants did cooperate jointly and severally in the commission of two (2) or more related predicate acts that are itemized at 18 U.S.C. §§ 1961(1)(B), in violation of 18 U.S.C. 1962(d) - one of which occurred after the effective date of chapter 96 and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.

153. Plaintiff further alleges that all named individual Defendants did commit two (2) or more of the offenses itemized above in a manner which they calculated and premeditated intentionally to threaten continuity, *i.e.* a continuing threat of their respective *racketeering activities*, also in violation of 18 U.S.C. 1962(d).

154. All named individual Defendants agreed to join in a conspiracy whose common related continuous goal was the commission of the predicate acts alleged herein at paragraph 48 - 158 where each obstructive act(s) by the Defendant(s) had the natural and probable effect' of interfering with" that proceeding.

155. The named individual Defendants knew that the alleged predicate acts in paragraphs 48 – 158 were part of a pattern of racketeering activity conducted in such a way as to violate sections 1962(c) of RICO.

156. All of the foregoing acts of racketeering activity were part of a single, continuous pattern of racketeering activity, commencing with the initial formation of the POD trust account in May 2000 and continuing through the present.

157. Defendant BBT having benefited (interest, avoidance of fines, etc.) and continues to benefit from the racketeering activities of its employees/agents have respondeat superior liability under 18 U.S.C. § 1962(c) and (d).

158. At all times pertinent hereto, the conduct of the agents, servants and/or employees of Defendant BB&T was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

159. RICO injuries and Damages include:

a. The conduct of the Defendants forced the Plaintiff on March 24, 2008 to close her savings account where the Plaintiff was inconvenienced; and

b. The conduct of the Defendants forced the Plaintiff on May 19, 2008 to close the following accounts:

i. POD account where the Plaintiff has loss benefits in excess of $160, 000 as per Doc. # 10 and was inconvenienced; and

ii. IOLTA account (Doc. # 10) and was greatly inconvenienced, etc.; and

c. The Defendants have caused the Plaintiff to suffer Defamation as herein stated at paragraphs 178-189; and

d. The named individual Defendants have breached their fiduciary duties to the Plaintiff as herein stated at paragraphs 40-47; and

e. The Defendants subjected the Plaintiff to financial ruin, violations of the SC Professional Rules of Conduct to include disbarment, public humiliation and the Plaintiff has been unable to sit for the Patent Bar exam (Defendants have repeatedly threaten a Rule 11 violation Doc. # 39 at page 4); and

f. The Plaintiff has been permanently and materially prejudiced and injured by the conduct of the Defendants in the FDIC proceeding/investigation and the proceeding before this Court where the Defendants as a result of violating 18 U.S.C. § 1341, § 1343, § 1344, § 1346 and § 1512 have avoided an on site inspection and the evidence thereof, avoided 15 USC 57a(f) and 12 USC 1818, avoided investigation by the HCPD, harassed the Plaintiff and to cause unnecessary delay and needless increase in the cost of litigation as to the unauthorized beneficiary profile and to divert the Plaintiff, the FDIC and the police away from the at least two unauthorized loans in the Plaintiff's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts; and to cause unnecessary delay and needless increase in the cost of litigation as to the at least two unauthorized loans in the Plaintiff's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts, the Plaintiff has suffered a loss of POD benefits, needless increase in the time and cost of litigation where the attorney fees to date are: $1, 328,000.00 and growing.

g. That all Defendants including BBT be required to account for all gains, profits, and advantages (including fines avoided) derived from their several acts of racketeering in violation of 18 U.S.C. 1962(c) and (d).

h. That judgment be entered for Plaintiff and against all Defendants including BBT for Plaintiff's actual damages, and for any gains, profits, or advantages (including fines avoided) attributable to all violations of 18 U.S.C. 1962(c) and (d) according to the best available proof.

i. The Plaintiff requests treble damages to include loss of benefits, mortgage, disgorgement of all profits, defamation damages, fines avoided at 12 U.S.C. 1818, attorney fees and cost, etc.

160. See below for other relief sought by Plaintiff.

D. Breaches of trust against Defendant BBT:

161. Each previous paragraph and exhibits are repeated herein as if verbatim.

162. That trustee Defendant BB&T and its employees and agents illegally and improperly used the Plaintiff's Interest on Lawyer's Trust Account (IOLTA), POD trust, savings account, mortgages, CD, car loan, other accounts and the Plaintiff's customer profile for the benefit of its own business and or third parties when it did the following: two setoffs, disclosure to Davis; creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans and failure to disclose the same in violation of its duties as trustee;

163. Trustee Defendant BB&T in returning the search warrant with zero documents is protecting specific employee(s) from the possible criminal prosecution of identity theft, false entry, bank fraud, computer fraud, criminal libel, forgery, etc. and is attempting to save itself from the fallout of the same to include punitive damages, etc. and huge fines as described at 12 U.S.C. 1818(I)(2) by the FDIC for each day that these matters went on;

164. Trustee Defendant BBT has serious conflicts of interest to include but is not limited to returning the search warrant with zero documents;

165. That under the law the Plaintiff continues to have trust assets of the combined trust at the Defendant BB&T to include but is not limited to the profit and property associated with the unauthorized beneficiary profile; the profit and property associated with the at least two unauthorized loans in the Plaintiff's customer profile; Plaintiff's mortgage and profit; profit made by trustee Defendant BB&T on all accounts of the Plaintiff from 1993 to present time; interest at the legal rate; prejudgment interest; and other assets to be determined after an accounting, etc.;

166. That Defendant BB&T has and continues to make thousands of dollars in profit were it exceeded the use of, improperly or illegally used the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile, etc.;

167. That, on account of the Defendant BB&T's conduct of exceeding, improperly and or illegally using the IOLTA, POD trust, savings account, mortgages, CD, car loan and other account funds, that Defendant BB&T made a profit that does not

belong to it; and that Defendant BB&T committed a constructive fraud and constituted an ex maleficio trust, etc.;

168. That the Defendant BBT collected the said IOLTA, POD trust, savings account, mortgages, CD, car loan and other account funds;

169. That, under the law, the Defendant BB&T was required to keep the IOLTA funds separate, keep the IOLTA funds in a state of security, keep the IOLTA funds accessible only to attorneys of the Plaintiff's law practice, not use the IOLTA trust funds for its own business or third parties and not commingle the IOLTA trust funds with its own funds or others; that Defendant BB&T failed to do all of these things, etc.;

170. That, under the law, the Defendant BB&T was required to keep the POD trust, savings account, mortgages, CD, car loan and other account funds of the Plaintiff not accessible by other customers and not misappropriate the financial resources of the Plaintiff to its own use or the use of a third party; that Defendant BB&T failed to do all of these things, etc.;

171. That, on account of the Defendant BB&T's conduct of exceeding the use of, improperly using and or illegally using the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan and other accounts where the Plaintiff had no knowledge of this and never ratified this conduct - the Defendant BB&T has subjected the Plaintiff, an attorney, to financial ruin, criminal prosecution for mortgage loan application fraud, violations of the SC Professional Rules of Conduct to include disbarment, the inability to earn a living (Plaintiff has been unable to sit for the Patent Bar) and public humiliation, all of which continues each day, etc.;

172. That, on account of the Defendant BB&T exceeding the use of and/or improperly using the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan & other accounts the trust extends to the combined fund, & also created a lien on the entire mass of the Defendant BB&T assets for the assets of the combined fund, etc.;

173. That, on account of the Defendant BB&T exceeding the use of and/or improperly using the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan & other accounts Defendant BBT was unjustly enriched at the expense of the Plaintiff.

174. That under the law the Plaintiff is entitled to be paid immediately and in full out of the assets of Defendant BB&T and to date the Defendant BB&T has not done so where the Defendant BB&T's entire assets are security;

175. The Defendants failed to disclose this conduct to the Plaintiff, the FDIC and the HCPD and this Court; and

176. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

177. **See below for relief sought.**

E. Defamation/libel per se and or slander per se against all Defendants:

178. Each previous paragraph and exhibits are repeated herein as if verbatim.

179. The Defendant BB&T published the false and unauthorized beneficiary profile in its computers to Davis, Karen Butcher, Defendant Sansbury, Tamara Cannon and others.

180. The Defendant BB&T published the at least two false and unauthorized loans in its computers to Defendants Butcher, Cannon and Sansbury, in the printout of the customer profile dated 7/19/2007, and to others.

181. The Defendant BB&T spoke of the false, unauthorized beneficiary profile and at least two unauthorized loans in its computers to Davis, Defendants Butcher, Sansbury, Cannon and others.

182. Defendant BB&T excessively and improperly published the unauthorized beneficiary profile and at least two unauthorized loans since the computer entry was available to the staff at large.

183. The publication and or spoken statements to these third persons were not privileged.

184. The Plaintiff is an attorney.

185. Defendant BB&T was at fault for the publication and spoken statements.

186. The libelous publication and spoken statements were made with actual malice where the Defendant BB&T had knowledge of its falsity or reckless disregard of the truth.

187. The libeling continues each day were the Defendant BB&T has refused to accept responsibility for these illegal and improper entries in the Plaintiff's customer profile.

188. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, willful

and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her accounts.

189. See below for relief sought.

F. Fraud, fraudulent concealment, constructive fraud and fraud in the inducement against all Defendants:

190. Each previous paragraph and exhibits are repeated herein as if verbatim.

191. The Plaintiff is still alive. The Defendant BBT and its employees/agents have a fiduciary relationship with the Plaintiff.

192. Defendant BB&T mailed and provided the Plaintiff numerous documents and monthly statements. Defendants Booz, Craven, Okay and Teal wrote to the Plaintiff and or the FDIC.

193. Defendants Fogle and Lambert told the Plaintiff that during her life that she and she alone would have access to the monies of the POD trust.

194. Defendants Fogle and Lambert told the Plaintiff that the monies of the POD trust would only be made available to Davis at her death and at the time of the Plaintiff's death that Davis must provide the Bank with identification of herself and proof of the Plaintiff's death.

195. Defendants made false representations to the Plaintiff and to third parties about the Plaintiff's POD, other accounts and transactions as stated at False Entry cause of action herein at paragraphs: 48-132.

196. Defendants knew or should have known that their statements were false.

197. Defendants statements were material in that the IOLTA, POD trust and other accounts should have been handled differently from the way the Defendants in fact treated them where the Defendants said and wrote of one type of treatment and did another to include improper and or illegal treatment of the Plaintiff's accounts.

198. Defendants had knowledge of the falsity of their statements or acted with reckless disregard for the truth;

199. Defendants intended for the Plaintiff, the FDIC, HCPD and other third parties to act upon their statements

200. Plaintiff was ignorant of the falsity of these statements

201. Plaintiff and other third parties relied on these statements

202. Plaintiff and other third parties had a right to rely on these statements;

203. Defendants made false representations relating to a present or preexisting fact;

204. Defendants intended to deceive the Plaintiff and other third parties;

205. Plaintiff had a right to rely on the representations made to her.

206. Plaintiff has consequent and proximate injuries.

207. At all times pertinent hereto, the conduct of Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, willful, reckless, and in grossly negligent disregard for federal and state laws and the rights of Plaintiff, the IOLTA and other accounts of the Plaintiff.

208. See below for relief sought.

G. Violations of sections 37-20-170 and 37-20-200 of the Consumer Identity Theft Protection by engaging in conduct that is prohibited by 37-20-110 (5, 9, 12 and 15), 130, 160, 170, 180 and 200 against Defendant BB&T:

209. Each previous paragraph and exhibits are repeated herein as if verbatim.

210. At all relevant times, Plaintiff was a "consumer" as that term is defined by 37-20-110 (1).

211. At all relevant times, Defendant was a "Consumer credit-reporting agency" or "consumer reporting agency" as that term is defined by 37-20-110 (2).

212. At all relevant times, Plaintiff's accounts including her customer profile, etc. were a "Consumer report" or "credit report" as that term is defined by 37-20-110 (3).

213. At all relevant times, Defendant was a "person" as that term is defined by 37-20-110 (10).

214. At all relevant times, Plaintiff's "personal identifying information" is as that term is defined by 37-20-110 (11(a)).

215. The Plaintiff's customer profile contains the following personal identifying information:

a. Plaintiff's name, DOB and address.

b. Plaintiff's full social security number and drivers license number

c. Financial account numbers for multiple accounts

216. At all relevant times, Plaintiff' "records" are as that term is defined by 37-20-110 (14).

217. At all relevant times "file" is as that term is defined by 37-20-110 (8).

218. At all relevant times "identity theft" is as that term is defined by 37-20-110 (9).

219. Defendants mailed yearly notices (2003 – 2008) to the Plaintiff stating that they were in compliance with the Gramm Leach Bliley ACT (GLBA) when they were not in compliance as per the facts of this case.

220. Trustee Defendant BB&T a credit reporting agency, consumer reporting agency and or other person did:

a. Knowingly, willfully and negligently misuse and improperly access the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and customer profile to do the following: two improper setoffs, improper disclosure to Davis, create, use and profit from the unauthorized beneficiary profile, create, use and profit from the at least two unauthorized loans, deletion of beneficiary profile and deletion of at least two unauthorized loans.

b. Knowingly, willfully and negligently make an entry in the Plaintiff's credit file that affects the ability of the Plaintiff to obtain and retain credit, employment, business or professional licenses, investment opportunities, or insurance.

c. Knowingly, willfully and negligently return the search warrant to the HCPD with zero documents and interfered with a criminal investigation of identity theft, criminal libel, bank fraud, computer fraud and false entry, etc.

d. Knowingly, willfully and negligently requested zero personal identifying information as defined in Section 16-13-510(D) from Davis prior to disclosing the Plaintiff's account balance, etc.

e. Knowingly, willfully and negligently for eight years (5/2000 – 5/2008) engage in daily and multiple security breaches of incidents of unauthorized access to and acquisition of records or data of the

Plaintiff that was not rendered unusable through encryption, redaction, or other methods containing personal identifying information that compromised the security, confidentiality, or integrity of personal identifying information maintained by Defendant BB&T when illegal use of the information has occurred or is reasonably likely to occur or use of the information creates a material risk of harm to the Plaintiff. Defendant BB&T did not make a good faith acquisition of the personal identifying of the Plaintiff's information by an employee or agent.

f. Knowingly, willfully and negligently cause the Plaintiff to need a security freeze. And thereafter deprived the Plaintiff of the ability to timely place a security freeze to protect her personal identifying information and credit worthiness where the Plaintiff has suffered multiple credit card denials for large purchases since the deletion of the unauthorized beneficiary profile.

g. Knowingly, willfully and negligently cause the Plaintiff to need to dispute several items in her consumer records. And thereafter deprived the Plaintiff of the ability to timely dispute these items and preserve the consumer records.

h. Knowingly, willfully and negligently violated the GLBA.

i. Knowingly, willfully and negligently sell, lease, loan, trade, rent, or otherwise intentionally disclose the Plaintiff's social security number or a portion of it containing six digits or more to a third party without written consent to the disclosure from the Plaintiff. Defendant BB&T had no legitimate business or government purpose and was not authorized or specifically permitted by law to do so and there was no imperative for the performance of the Defendant BB&T's duties and responsibilities as prescribed by law.

j. Knowingly, willfully and negligently cause the PLAINTIFF to suffer public humiliation, mental and emotional distress, embarrassment and subjected the Plaintiff to financial ruin, violations of the SC Professional Rules of Conduct to include disbarment, public humiliation and the Plaintiff has been unable to sit for the Patent Bar exam (Defendants have repeatedly threaten a Rule 11 violation), attorney fees (to date $1,328,000.00), etc.

221. In so doing the Defendant BBT did knowingly and willfully and negligently engage in multiple incidents of conduct that is prohibited by 37-20-110 (5, 9, 12 and 15), 130, 160, 170, 180 and 200.

222. At all times pertinent hereto, the conduct of Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, willful, reckless, and in grossly negligent disregard for federal and state laws and the rights of Plaintiff, the IOLTA and other accounts of the Plaintiff.

223. See below for relief sought.

H. Violations of sections 15 USC 1681n and 15 USC 1681o of the Consumer Credit Protection by engaging in conduct that is prohibited by 15 U.S.C. §1681 b (a) and (f); 15 U.S.C. §1681 c; 15 U.S.C. §1681c-1,c-2 and 15 U.S.C. §1681 e against Defendant BB&T:

224. Each previous paragraph and exhibits are repeated herein as if verbatim.

225. At all relevant times, Defendant BB&T is a "person" as that term is defined by 15 U.S.C. §1681a(b).

226. At all relevant times, Plaintiff was a "consumer" as that term is defined by 15 U.S.C. §1681a(c).

227. At all relevant times a "consumer report" is as that term is defined by 15 U.S.C. §1681a(d).

228. At all relevant times, Defendant BB&T is a ""consumer reporting agency" as that term is defined by 15 U.S.C. §1681a(f).

229. At all relevant times a "file" is as that term is defined by 15 U.S.C. §1681a(g).

230. At all relevant times "adverse action" is as that term is defined by 15 U.S.C. §1681a(k).

231. At all relevant times, Defendant BB&T is a "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" as that term is defined by 15 U.S.C. §1681a(p).

232. At all relevant times "identity theft" is as that term is defined by 15 U.S.C. §1681a(q).

233. The Plaintiff's customer profile contains the following personal identifying information:

a. Plaintiff's name, DOB and address;
b. Plaintiff's full social security number and drivers license number; and
c. Financial account numbers for multiple accounts, etc.

234. Defendants mailed yearly notices (2003 – 2008) to the Plaintiff stating that they were in compliance with the Gramm Leach Bliley ACT (GLBA) when they were not in compliance as per the facts of this case.

235. Defendant BB&T a corporation, as the term is defined at 15 USC 1681a(b), a consumer reporting agency and a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis did:

a. Knowingly, willfully and negligently misused and improperly accessed the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and customer profile in doing the following: two improper setoffs, improper disclosure to Davis, create, use and profit from the unauthorized beneficiary profile; create, use and profit from the at least two unauthorized loans, deletion of beneficiary profile and deletion of at least two unauthorized loans.
b. Knowingly, willfully and negligently furnished the Plaintiff's consumer report under circumstances other than those described at 15 USC 1681b (a) where the Defendant BB&T did not satisfy subsection (c) of 15 USC 1681b.
c. Knowingly, willfully and negligently used and obtained the Plaintiff's consumer report under circumstances other than those described at 15 USC 1681b (f).
d. Knowingly, willfully and negligently allowed the Plaintiff's consumer report to contain adverse items of information as described at 15 USC 1681c(a)(5) where the Defendant BB&T did not satisfy subsection (b) of 15 USC 1681c: an unauthorized beneficiary profile and the at least two unauthorized loans, etc.
e. Knowingly, willfully and negligently did not maintain reasonable procedures designed to avoid violations of 15 USC 1681c and did not limit the furnishing of consumer reports to the purposes listed under 15 USC 1681b as described at 15 USC 1681e(a),(b).
f. Knowingly, willfully and negligently return the search warrant to the HCPD with zero documents and interfered with a criminal investigation of identity theft, criminal libel, bank fraud, computer fraud and false entry, etc.
g. Knowingly, willfully and negligently requested zero personal identifying information as defined in Section 16-13-510(D) from Davis

integrity of personal identifying information maintained by Defendant BB&T when illegal use of the information has occurred or is reasonably likely to occur or use of the information creates a material risk of harm to the Plaintiff. Defendant BB&T did not make a good faith acquisition of the personal identifying of the Plaintiff's information by an employee or agent.

i. Knowingly, willfully and negligently cause the Plaintiff to need a security freeze. And thereafter deprived the Plaintiff of the ability to timely place a security freeze to protect her personal identifying

information and credit worthiness where the Plaintiff has suffered multiple credit card denials for large purchases since the deletion of the unauthorized beneficiary profile.

j. Knowingly, willfully and negligently cause the Plaintiff to need to dispute several items in her consumer records. And thereafter deprived the Plaintiff of the ability to timely dispute these items and preserve the consumer records.

k. Knowingly, willfully and negligently violated the GLBA.

l. Knowingly, willfully and negligently cause the PLAINTIFF to suffer public humiliation, mental and emotional distress and embarrassment and subjected the Plaintiff to financial ruin, violations of the SC Professional Rules of Conduct to include disbarment, public humiliation and the Plaintiff has been unable to sit for the Patent Bar exam (Defendants have repeatedly threaten a Rule 11 violation), attorney fees (to date $1,328,000.00 and growing), etc.

236. Additionally, the Plaintiff has been damaged, and continues to be damaged, in the following ways:

a. Out of pocket expenses associated with disputing the information only to find the Defendant BB&T has refused to furnish documented evidence that the at least two unauthorized loans have been deleted from the Plaintiff's customer profile.

b. Emotional distress and mental anguish associated with having incorrect derogatory and false personal information transmitted about Plaintiff to other people both known and unknown on the Defendant BB&T computers, hard copy and loan applications;

c. Denial of credit, loans, financing and/or other damages, some known and some not yet known by Plaintiff; and,

d. Decreased credit score which will result in an inability to obtain credit on future loans and or the Plaintiff will have to pay a higher interest rate.

237. In so doing the Defendant BBT did knowingly and willfully and negligently engage in multiple incidents of conduct that is prohibited by 15 USC 1681.

238. At all times pertinent hereto, the conduct of Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, willful, reckless, and in grossly negligent disregard for federal and state laws and the rights of Plaintiff, the IOLTA and other accounts of the Plaintiff.

239. See below for relief sought.

I. Conversion against Defendant BB&T:

240. Each previous paragraph and exhibits are repeated herein as if verbatim.

241. The Defendant BB&T continuously for at least eleven years (2000 - 2011) misused, misappropriated, illegally used and or illegally detained the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and with held profits of two improper setoffs ($226.25 & $855.00), disclosure to Davis, Davis mortgage, and at least two unauthorized loans.

242. Defendant BB&T continuously for at least eleven years (2000 – 2011) wrongfully, unlawfully and without authorization, assumed control and dominion over Plaintiffs' IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and with held profits of two improper setoffs, disclosure to Davis, Davis mortgage, unauthorized beneficiary profile and at least two unauthorized loans.

243. The Defendant BB&T used the Plaintiffs' IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and profits to justify extending loans to others.

244. The Defendant BB&T used the Plaintiffs' IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and profits to show regulatory authorities that the Defendant BB&T's exposure due to default on the unauthorized beneficiary profile and at least two unauthorized loans was replaced by the value of monies/assets held by the Bank that belonged to the Plaintiff.

245. The Defendant BB&T subjected the Plaintiffs' IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and profits to setoff of the Davis mortgage, the unauthorized beneficiary profile and at least two unauthorized loans.

246. The Defendant BB&T through setoff, etc made the Plaintiffs' IOLTA, accessible by persons that were not employed in the Plaintiff's law firm.

247. On 4/02/2004 Defendant BBT did a setoff against the Plaintiff's POD account for $225.00. (Doc. # 5)

248. The $225.25 check was for legal services provided by the Plaintiff where the Plaintiff had her IOLTA at the defendant BBT from April 1996 – May 19, 2008.

249. The $225.25 check had a memo note of: attorney fee.

250. On 5/02/2008 Defendant BBT did a set off against the Plaintiff's POD account for $855.00. The Plaintiff demanded the return of the $855.00 and Defendant BBT refused.

251. The $855.00 check was from the SC Office of Indigent Defense and was for legal services provided by the Plaintiff, where the Plaintiff had her IOLTA at the defendant BBT from April 1996 – May 19, 2008.

252. The $855.00 check was mailed to the Plaintiff's business address of 1415 3rd Ave. STE 103 Conway, SC.

253. The Defendant BBT had two BSA as described at Doc. #s 23 and 24.

254. The trustee Defendant Teal in her June 27, 2008 letter to the FDIC intentionally and incorrectly directed the FDIC away from the IOLTA.

255. The trustee Defendant Teal in her June 27, 2008 letter to the FDIC stated that "the bank exercised the right of setoff" against the POD account and intentionally and falsely cited Reference page 10, section 13 of the enclosed Banking Services Agreement as her authority. (Doc. # 21)

256. Defendant BBT was unjustly enriched at the expense of the Plaintiff through the improper use of all of her accounts at Defendant BBT.

257. Plaintiff has an absolute and unconditional right to the immediate possession to her property rights in the monies and profits of the IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, and customer profile including two improper setoffs, disclosure to Davis, Davis mortgage, unauthorized beneficiary profile and at least two unauthorized loans.

258. Defendants, wrongfully and without authorization, assumed control and dominion over Plaintiffs' property rights in the monies and profits of the IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, and customer profile including two improper setoffs, disclosure to Davis, Davis mortgage, unauthorized beneficiary profile and at least two unauthorized loans.

259. Plaintiffs has made a demand for possession of her property rights in the monies and profits of the IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, and customer profile including two improper setoffs, disclosure to Davis, Davis mortgage, unauthorized beneficiary profile and at least two unauthorized loans and Defendants have failed and refused to restore control and dominion of Plaintiffs' property rights to Plaintiff.

260. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

See below for relief sought.

J. **CONSTRUCTIVE TRUST against Defendant BBT**

261. Each previous paragraph and exhibits are repeated herein as if verbatim.

262. Defendants are in possession of the *res* on which Plaintiff's trust can be imposed, and should be charged as the constructive trustees of that trust.

263. The creation of a constructive trust is supported by breach of fiduciary duties, breach of trust and fraud as alleged in paragraphs 40-47 163-179, 192-210 and herein.

264. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

265. See below for relief sought.

ACCOUNTING against Defendant BBT

K.

266. Each previous paragraph and exhibits are repeated herein as if verbatim.

267. The accounting is supported by breach of fiduciary duties, breach of trust and fraud as alleged in paragraphs 40-47 163-179, 192-210 and herein.

268. Defendants have withheld and concealed the true financial records of the Plaintiff's customer profile and unauthorized activity in the Plaintiff's customer profile from the Plaintiff as alleged herein at paragraphs 48-152.

269. Plaintiff has no adequate remedy at law, as she cannot determine the monetary damages without inspecting the financial records of Defendant BBT.

270. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

271. See below for relief sought.

L. Computer Fraud under 18 USC 1030 ET FF against all individual Defendants: The Plaintiff asserts claims under 18 U.S.C. §§ 1030(a)(2)[(A) and] (C), 1030(a)(4), and 1030(a)(5)(C).

272. Each previous paragraph and exhibits are repeated herein as if verbatim.

273. The conduct involved an interstate or foreign communication.

274. The Plaintiff's customer profile contained non public confidential information.

275. Defendant BB&T is a financial institution with deposits insured by the Federal Deposit Insurance Corporation involved in interstate commerce. All of the individual Defendants were/are employed by Defendant BB&T at all times applicable.

276. Defendants intentionally accessed a computer without authorization or exceeded authorized access.

277. Defendants obtained information contained in a financial record of a financial institution.

278. Defendants knowingly and with intent to defraud, accessed a protected computer without authorization, or exceeded authorized access.

279. Defendants by means of such conduct furthered the intended fraud and obtained something of value.

280. Defendants conduct was a threat to public safety.

281. Defendants intentionally accesses a protected computer without authorization, and as a result of such conduct, recklessly causes damage;

282. Defendants intentionally accesses a protected computer without authorization, and as a result of such conduct, causes damage;

283. Defendants through this conduct caused or attempted to cause a loss to 1 or more persons during any 1-year period aggregating at least $5,000 in value.

284. The Defendants engaged in a taking or withholding of profits, some possession, right, or interest by calculated misstatement or perversion of truth, trickery, deletion of data or other deception against the Plaintiff.

285. Defendant Lambert while using the Defendant BB&T protected computer closed the Plaintiff's regular checking account in May 2000 and opened the POD trust account with the unauthorized beneficial profile.

286. Defendant Lambert did add the coastal gold banker benefits to the regular checking account and the POD trust account.

287. Defendant Sansbury while using the Defendant BB&T protected computer did illegally and without the Plaintiff's consent disclose the account balance, etc. on 1/19/2008 to Davis.

288. Defendant Teal while using the Defendant BB&T protected computer did delete the unauthorized beneficiary profile in furtherance of the intended fraud, etc.

289. The Defendants did through their conduct on protected computers of Defendant BB&T caused improper detention, access and improper use of Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, the Plaintiff's customer profile and with held profits when it did the following: two improper setoffs, improper disclosure to Davis to include advising Davis that she was the owner of the POD which had a balance of about $29,500, creation, use and deletion of the unauthorized beneficiary profile and the creation, use of the at least two unauthorized loans.

290. The Plaintiff's has suffered damages and losses in excess of $5,000.00 for any one year; and the Plaintiff was forced to relocate her accounts causing a loss of benefits valued at in excess of $160,000.00.

291. Defendant Booz stated that Defendant BBT is currently conducting bank-wide privacy training and Ms. Sansbury will participate in this training.

292. Also, the Plaintiff has spent many hours of valuable time away from day-to-day responsibilities, causing losses well in excess of $5000 for any one year.

293. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her accounts.

294. See below for relief sought.

M. Violations under 12 USC § 1972 and § 1975 ET FF against Defendant BB&T:

295. Each previous paragraph and exhibits are repeated herein as if verbatim.

296. The Plaintiff is currently and has been a customer at Defendant BBT from 1993- present.

297. The Defendant BBT extended credit to the Plaintiff to include mortgages, auto loan, commercial loan, etc.

298. The Plaintiff continues to have her 2007 mortgage at Defendant BBT.

299. The Plaintiff's customer profile consisted of her mortgages, commercial loan, car loan, IOLTA, CD, at least two unauthorized loans and other accounts.

300. The Defendant BB&T did extend credit, leased or sold property to or furnished services to the Plaintiff on the condition or requirement that the Plaintiff provide the Bank with some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service: to include the creation and use of the unauthorized beneficiary profile and the creation and use of the at least two unauthorized loans in the Plaintiff's customer profile.

301. The at least two unauthorized loans and the unauthorized beneficiary profile are an illegal service.

302. The Plaintiff has reported Defendant BBT to the FDIC and Horry County Police Department.

303. Defendant BBT reported Davis to the Credit Reporting Agency for a late mortgage payment.

304. The Defendant BB&T tied at least two loans/mortgages to the Plaintiffs accounts through the creation and use of the at least two unauthorized loans.

305. All of the Plaintiff's accounts were subject to setoff, etc. by the two loans/mortgages through the creation and use of the at least two unauthorized loans to include the Davis mortgage.

306. The Plaintiff's accounts included at least four mortgages and car loans were tied to unauthorized loans and unauthorized beneficiary profile.

307. This tying by Defendant BB&T was an unusual banking practices that lead to a lessening of competition or unfair competitive practices.

308. This unusual banking practice by Defendant BB&T brought additional business to the bank including mortgages and loans.

309. The Defendant BB&T failed to disclose this unusual banking practice to the Plaintiff, the FDIC, USDC and the police.

310. This tying by Defendant BB&T has resulted in **defamation of the Plaintiff.**

311. The Defendant BB&T subjected the Plaintiff to financial ruin, violations of the SC Professional Rules of Conduct to include disbarment, public humiliation and the Plaintiff has been unable to sit for the Patent Bar exam (Defendants have repeatedly threaten a Rule 11 violation) and attorney fees (to date $1,328,000.00 and growing), etc.

312. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

313. See below for relief sought.

N. Intentional destruction of Evidence against all Defendants:

314. Each previous paragraph and exhibits are repeated herein as if verbatim.

315. The Defendant BB&T was **intentional** where it caused improper access and improper use of Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan and other accounts in the Plaintiff's customer profile, with held profits and deleted the following: creation, use and deletion of the unauthorized beneficiary profile (Davis mortgage); and the creation, use and deletion of the at least two unauthorized loans.

316. A pending or potential civil action: The Plaintiff notified Defendant BBT of the improper disclosure to Ms. Davis on 1/22/2008 and requested that their legal department call the Plaintiff. (Doc. # 20). On 1/31/2008 Defendant Teal called the Plaintiff.

317. Knowledge of the spoliator of the pending or potential civil action: Defendant Teal in her April 11, 2008 letter to the FDIC states from Feb 1, 2008 through March 17, 2008: "I have had numerous conversations with Ms. Hunt."

318. At least two unauthorized entries under loans were in the Plaintiff's customer profile along with her IOLTA and other accounts on 7/19/2007. (Doc. # 10)

319. Intentional and willful destruction of evidence: During the FDIC proceedings **(March 24, 2008 – Sept 2, 2008)** on 5/19/2008, at the time the Plaintiff closed the IOLTA and POD trust account, The Defendant BBT indicated on the exit interview form that it had not saved the account histories of the POD and IOLTA. (exhibit J).

320. Intentional and willful destruction of evidence: On 9/27/2010 Defendant BBT wrote: *the **two loans** listed on the 7/19/2007 profile are not currently in your profile.*

321. Intentional and willful destruction of evidence: On 10/21/2010 Defendant BBT wrote "We are unable to produce documents as requested. We have no record of accounts with BB&T in reference to the account numbers listed on subpoena."

322. Intentional and willful destruction of evidence: During the FDIC proceedings **(March 24, 2008 – Sept 2, 2008)** the Defendants have engaged in destruction of evidence and false entries to include falsely stating that there was no fiduciary relationship, etc. to deprive the Plaintiff of an on site inspection and evidence thereof.

323. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and

willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

324. And See below for other relief sought.

O. Quiet Title to mortgage for Plaintiff's home against Defendants BBT and Butcher:

325. Each previous paragraph and exhibits are repeated herein as if verbatim.

326. The Plaintiff refinanced her current mortgage in May 2007 with Defendant BBT.

327. Defendant BBT obtained its security interest in the home of the Plaintiff through false entries that fraudulently concealed the true nature of the transaction and or unconscionable conduct.

328. The mortgage application was completed prior to the Plaintiff arriving at the Defendant BBT by Karen Butcher, an employee of Defendant BBT.

329. The 7/19/2007 customer profile listed two unauthorized loans: transfer management and portfolio and other authorized accounts of the Plaintiff. The customer profile was last updated on May 30, 2007.

330. The May 18, 2007 mortgage application listed the Plaintiff's authorized debit.

331. The Plaintiff's May 2007 mortgage application does not list the two unauthorized loans: transfer management and portfolio that are listed in the Plaintiff's customer profile.

332. The Plaintiff disputed the entries "transfer management" and "portfolio" in her customer profile in a 9/24/2010 letter of dispute to the Defendants. The Defendants response in there 9/27/2010 letter was: the two loans listed on the 7/19/2007 profile are not currently in your profile. The Plaintiff read and relied on this statement from Defendant BBT.

333. The Defendants have been very uncooperative in the prosecution of the party responsible for using the Plaintiff's financial resources for the at least two unauthorized loans, etc.

334. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

335. The Plaintiff is current on her mortgage payments.

336. See below for relief sought.

P. Violations of SC Code Ann. sections 62-6-101 thru 62-6-113, 62-7-1001(a) and § 39-5-10 to 560 (UNFAIR TRADE PRACTICES), etc. against all Defendants:

337. Each previous paragraph and exhibits are repeated herein as if verbatim.

338. The Defendants through conduct described herein at paragraphs 40 - 160 has avoided application of 15 USC 57a(f) and 12 USC 1818.

339. The Defendant BB&T engaged in an unfair or deceptive act in the conduct of trade or commerce;

340. The unfair or deceptive act affected public interest; Defendant BBT is a Bank.

341. The practice by Defendant BB&T was a willful or knowing violation of S.C. Code Ann. Sec. 39-5-10 (1976) et seq.

342. The Plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s);

343. The Plaintiff closed her regular checking account in May 2000 to open the POD trust at the recommendation of Defendant Fogle.

344. The regular checking account (1995-2000) had coastal gold benefits in excess of $160,000.00.

345. The Plaintiff converted the savings to the POD trust in May 2000 at the recommendation of Defendant Fogle. The Plaintiff named herself the trustee and Davis the beneficiary.

346. The Plaintiff closed her savings account in March 2008; and she closed the POD trust and IOLTA in May 2008.

347. The Defendant BB&T website on Identity Fraud refers its customers to the FTC website.

348. Closure of an account is recommended by the Federal Trade Commission's (FTC) website if identity theft is suspected.

349. The Plaintiff customer profile at Defendant BB&T had an unauthorized beneficiary profile (2000-2008) and at least two unauthorized loans.

350. The POD Trust account (2000-2008) had coastal gold benefits in excess of $160,000.00. (Doc. # 10) The Plaintiff loss these benefits when she was forced to close this account by the Defendants.

351.

352. The Defendant BB&T yearly (2003-2008) mailed the Plaintiff statements stating that they were in compliance with the GLBA.

353. The facts of this case demonstrate that the Defendant BB&T repeatedly engaged in unfair or deceptive practices prior to the FDIC proceeding, during the FDIC proceeding and after the law suit was filed in the USDC.

354. Defendant Judy Teal stated that the POD trust was set up with a beneficiary profile for Ms. Davis at the inception in 2000.

355. Davis stated in writing twice in 2004 that she had no prior accounts at Defendant BB&T. (Doc. # 6)

356. The Defendants did not follow the SC Probate Code where they failed to treat the account as a POD Trust. This conduct continued every time the Plaintiff and or Davis made a transaction with the account.

357. Defendant BB&T is engaged in businesses that affect public interest.

358. The Plaintiff has attorney fees to date: $1,328,000.00 and growing.

359. The Defendants misconduct was made for an improper purpose to include harassing the Plaintiff and to cause unnecessary delay and needless increase in the cost of litigation and to divert the Plaintiff, the FDIC and the police away from the at least two unauthorized loans in the Plaintiff's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts.

360. The Defendant BB&T did through its conduct caused improper access and improper use of Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and the Plaintiff's customer profile; and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

361. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

362. **See below for relief sought.**

Q. Negligence, negligence per se and gross negligence where conduct violated trust law, fiduciary law, common law, federal law and SC State law to include SC Code Ann. sections 62-6-101 thru 62-6-113, 62-7-1001(a), 12 USC 1972 et ff and § 39-5-10 to 560, etc against Defendant BB&T:

363. Each previous paragraph and exhibits are repeated herein as if verbatim.

364. The Defendant BB&T owes the Plaintiff a duty of care;

365. The Defendant BB&T breached its duty of care to the Plaintiff;

366. The Defendant BB&T failed to exercise slight care;

367. The Plaintiff has damages resulting from the breaches of duty and

368. The Defendant BB&T was negligent, negligent per se and grossly negligent where through its conduct caused improper access and improper use of Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, the Plaintiff's customer profile and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

369. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

370. **See below for relief sought.**

R. Unjust enrichment against Defendant BBT:

371. Each previous paragraph and exhibits are repeated herein as if verbatim.

372. From 2000 to the present, Defendants have unjustly received and retained the following benefits: Profits from the two improper setoffs, the Davis mortgage, the at least two unauthorized loans in the Plaintiffs customer profile and the beneficiary profile.

373. The Defendant BBT has unjustly retained these benefits to Plaintiff's detriment, as Plaintiff has been denied the profits.

374. Defendants' retention of the foregoing benefits violates fundamental principles of justice, equity, and good conscience. Defendants received the benefits only as a result of their intentional and successful efforts to deceive Plaintiff and a continuing failure to disclose to the Plaintiff the illegal use of her customer profile and all accounts of the Plaintiff in its loan scheme.

375. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

376. **And see below for relief sought.**

S. Violation of SC Code Ann. 37-22-190/37-5-108 against Defendant BBT:

377. Each previous paragraph and exhibits are repeated herein as if verbatim.

378. Defendant BBT obtained its security interest in the home of the Plaintiff through false entries that fraudulently concealed the true nature of the transaction; the transaction was not in good faith or fair dealing and or was unconscionable conduct.

379. The Plaintiff refinanced her current mortgage in May 2007. The mortgage application was completed prior to the Plaintiff arriving at the Defendant BBT by Karen Butcher, an employee of Defendant BBT.

380. The mortgage application did not include the at least two unauthorized loans in the Plaintiff's customer profile along with her IOLTA, POD account, savings, mortgage and other accounts; and the Defendants failed to disclose the unauthorized beneficiary profile (joint account) that was connected to the Plaintiff's POD account.

381. The Defendants have improperly resisted investigation by the FDIC and the Horry County Police Department.

382. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

383. See below for relief sought.

T. GLBA under 15 USC 6801-6809 and 6821-6827 etc. against Defendant BB&T where conduct violated State law claims listed below:

384. Each previous paragraph and exhibits are repeated herein as if verbatim.

385. The Defendant BB&T owed the Plaintiff a duty of care as stated under GLBA at 15 USC 6801-6809 and 6821-6827:

a. The Defendant BB&T breached its duty of care to the Plaintiff;

b. The Defendant BB&T failed to exercise slight care; and

c. The Plaintiff has damages resulting from the breaches of duty.

386. As herein stated at paragraphs 48 – 162 the Defendant's conduct included false, fictitious or fraudulent statement or representations to an officer, employee, customer or agent of the financial institution or by providing any document to an officer, employee, or agent of the financial institution, knowing that the document was forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation causing –

a. improper access and improper use of the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, the Plaintiff's customer profile and with held profits when it did the following:

b. two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation and on going use of the at least two unauthorized loans.

387. The Plaintiff's deposits in her POD trust account for January – December 2006 exceeded $500,000.00.

388. The Plaintiffs deposits in her POD trust account and the CD for January – December 2007 exceeded $100,000.00.

389. In 2001, 2002, 2009 and 2010 the Defendant BB&T did not provide the Plaintiff with a clear and conspicuous disclosure, in writing or in electronic form or other form permitted by the regulations of such financial institution's policies and practices.

390. Davis has not and is not in any way affiliated with the Defendant BB&T other than through her mortgage.

391. The Plaintiff is not a commercial entity.

392. Defendants obtained or attempted to obtain, or cause to be disclosed or attempted to cause to be disclosed to Davis and others, customer information of Defendant BBT relating to the Plaintiff -- by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution/BBT; by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution/BBT.

393. The Defendant violated "the appropriate standard of care for the protection, security, and confidentiality of the nonpublic personal information and private data of the Plaintiff numerous times as set by the Gramm-Leach-Bliley Act at to include:

394. 15 U.S.C. § 6801(a): **Unauthorized disclosure to Davis:**

a. The facts of this case started out where the Plaintiff complained to the FDIC on March 24, 2008 (Doc. # 14) as a result of the Defendant Sansbury, an employee of Defendant BBT, having disclosed the Plaintiff's POD account balance, existence of the POD account at BBT, etc. which was "nonpublic personal information" to Ms. Davis without the consent, authorization or direction of the Plaintiff/consumer.

b. Davis was the beneficiary of the POD account.

c. The beneficiary rights of Davis under the POD account do not arise until the death of the Plaintiff and then only after Davis presents with identification and documented notice of the death of the Plaintiff. (S.C. Code Ann. § 62-6-103(b), §62-6-110 and 23 page 5 at ¶ 3)

d. At the time of the disclosure to Davis the Plaintiff was alive and Davis presented with no identification.

e. At the time of the disclosure Davis was checking on her mortgage. Specifically, Davis was inquiring as to why Defendant BBT had reported Davis to a credit reporting agency (Doc. # 6 ¶ 4) when Defendant Sansbury disclosed the Plaintiff's POD account to Davis. (Doc. # 12 ¶ 4)

395. 15 U.S.C. § 6801(a): **Creation and use of the at least two unauthorized loans in the Plaintiff's customer profile along with IOLTA, POD, CD, mortgages, etc.:** See the letter at Doc. # 29 from Defendant BBT and the customer profile at Doc. # 10.

a. On 1/19/2008 Defendant Sansbury was unable to locate the Davis mortgage. (affidavit of Davis at Doc. # 6 at ¶ 7)
b. The Plaintiff's customer profile which contains "nonpublic personal information" at Doc. # 10 also contained at least two unauthorized loans: transfer management and portfolio.
c. The Plaintiff did not apply for these loans, did not receive monies from these loans and has not repaid these loans.
d. The Plaintiff did not authorize Defendant BBT to create and use her customer profile for the Davis mortgage or any other loans.

396. 15 U.S.C. § 6801(a): **Two unauthorized setoffs were made against the Plaintiff's POD account.**

a. The Plaintiff's customer profile contains "nonpublic personal information" and the Plaintiff's POD account.
b. The Plaintiff did not authorize Defendant BBT to set off her POD account for the dollar amounts at Doc. #s 05 and 16.

397. 15 U.S.C. § 6801(a): **The Defendant BBT wrote on 9/27/2010: the loans are no longer in the Plaintiff's customer profile.**

a. The Plaintiff's customer profile contains "nonpublic personal information".
b. Defendant BBT refused to provide the Plaintiff with an updated copy of her customer profile.

398. 15 U.S.C. § 6801(a): **Defendant Teal stated that: Defendant Sansbury was in the mortgage portion of the system and that a beneficiary profile had been set up for Davis.**

a. The unauthorized beneficiary profile was created inside of the Plaintiff's customer profile.
b. The Plaintiff did not authorize Defendant BBT to create, use or delete a beneficiary profile for Davis. The Plaintiff's customer profile contains "nonpublic personal information".

399. The Defendants conduct under 15 USC 6801-6809 and 6821-6827 violates SC law as listed below:

a. Negligence as stated herein at paragraphs 363 - 370;

b. Negligence per se as stated herein at paragraphs 363 - 370;

c. Gross negligence as stated herein at paragraphs 363 - 370,

d. Defamation as stated herein at paragraphs 178-189.

400. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

401. See below for relief sought.

The Plaintiff prays for the following relief:

a) That the Court removes the trustee Defendant BB&T and its employees, appoints a special fiduciary and require an accounting; and

b) Pending a final decision on the Plaintiff's request to remove the trustee Defendant BB&T and its employees that the Court orders relief under Sections 62-7-1002(a), 62-7-1001(b), etc. to protect the trust property or the interests of the beneficiaries, etc; and

c) In its final order that the Court removes the trustee Defendant BB&T and its employees, appoints a special fiduciary, require an accounting and orders relief under Sections 62-7-1002(a), 62-7-1001(b), etc. to protect the trust property and the interests of the beneficiaries, etc; and

d) All of the following:

a. The Plaintiff makes a demand for fifty million dollars;

b. Report Defendant BB&T to the FBI, FDIC-OIG, and the US Attorney.

c. Report Defendants Craven, Booz and Okay to their respective Bar Associations.

d. An **accounting** of all authorized and unauthorized accounts of the Plaintiff customer profile including the Davis mortgage and the CD.

e. The appointment of a special fiduciary; Impose a lien on the Defendant BB&T.

f. Defendants pay a surcharge for mismanagement of the Plaintiff accounts.

g. Strike all pleadings of the Defendants: present and future.

h. Actual and compensatory damages, disgorgement of profits and restitution damages; legal interest, prejudgment and post judgment interest.

i. Defendants pay face value of the Coastal Banker Gold benefits and inconvenience in relocating accounts.

j. Defendants pay setoff monies plus legal interest.

k. Statutory damages, consequential damages, general damages and punitive damages.

l. Constructive and Resulting trusts with tracing.

m. Damages for mental anguish and emotional distress.

n. Quiet title to the Plaintiff's current mortgage at Defendant BBT and punitive damages.

o. Defendants to pay to the Plaintiff all monies paid on the current mortgage with legal and prejudgment interest.

p. Defendants to pay to the Plaintiff the amount of the 2006 CD with legal and prejudgment interest.

q. Defendants to pay to the Plaintiff the life amount of monies deposited in the regular checking account, savings account and POD trust with legal and prejudgment interest.

r. Defendants to pay to the Plaintiff the original loan amount of all of the Plaintiff's authorized loans with legal prejudgment and post judgment interest.

s. Defendants to pay to the Plaintiff the original loan amount of all of the unauthorized loans in the Plaintiff customer profile, including the Davis mortgage with legal, prejudgment and post judgment interest.

t. That the Plaintiff be allowed to amend the Complaint to include more causes of actions damages and add parties, etc.

u. Defendant BB&T to immediately provide in a readable and understandable format the documents that were requested in the Oct 18, 2010 search warrant by the HCPD and any other documents that the HCPD may request.

v. Defendants to pay all costs and expenses, including all attorney fees (past, present and future) to include the Plaintiff, an attorney, and other attorneys pursuant to SC Ann. 62-7-1001(b); SC Ann. 62-7-1004; etc. for this entire matter including the FDIC proceeding.

w. Defendants to pay all costs and expenses, including all attorney fees (past, present and future) to include the Plaintiff, an attorney, and other attorneys for this entire matter including the FDIC proceeding.

x. The attorney fees to date are $1,328,000 plus where the Plaintiff has already paid $8,000.00 of these fees.

y. Any other relief that this Court deems just and proper.

Respectfully submitted,

Cindy B. Hunt

Cindy B. Hunt, Plaintiff
Pro Se
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

DATE: May 10, 2011

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Exhibit # 49 entry # 1

Lawsuit # 3:

1) State Complaint 2012-CP-26-05264

2) Index to exhibits to original complaint

25 Pages

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State of South Carolina	)	IN THE COURT OF COMMON PLEAS
County of Horry	)	FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO: 2012-CP-26- 5264
CINDY B. HUNT,	)	
Plaintiff,	)	
vs.	)	
Branch Banking & Trust Company,	)	
Defendant	)	
	)	

HORRY COUNTY
12 JUL -9 AM 9:32
MELANIE [illegible]-WARD
CLERK OF COURT

SUMMONS IN A CIVIL ACTION

To Defendant: Branch Banking & Trust Company

Address: 200 WEST 2ND STREET

Winston-Salem, North Carolina 27101-4019

A lawsuit has been filed against you.

Within 30 days after service of this complaint on you – you must serve on the Plaintiff an answer to the attached complaint, unless the Court directs otherwise when service of process is made pursuant to Rule 4(e), and provided further that the State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.

THE ANSWER MUST BE SERVED ON THE PLAINTIFF OR PLAINTIFF'S ATTORNEY, WHO'S NAME AND ADDRESS ARE:

Plaintiff: Cindy B. Hunt

Address: 195 D Willow Green Drive

Conway, SC 29526.

IF YOU FAIL TO RESPOND, JUDGMENT BY DEFAULT WILL BE ENTERED AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT. YOU MUST ALSO FILE YOUR ANSWER OR MOTION WITH THE COURT.

Cindy B. Hunt

Cindy B. Hunt, Plaintiff – Pro Se
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

DATE: July 09, 2012

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STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

IN THE COURT OF COMMON PLEAS

Cindy B. Hunt)
Plaintiff(s))

vs.

Branch Banking & Trust Company)
Defendant(s))

CIVIL ACTION COVERSHEET

2012-CP - 26- 5264

Submitted By: CB Hunt
Address: 195 D Willow Green Drive
Conway, SC 29526

SC Bar #:
Telephone #: 843 488-1131
Fax #:
Other:
E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

HORRY COUNTY
2012 JUL -9 AM 9:32
JAMIE HUGGINS-WARD
CLERK OF COURT

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case # 20____-CP-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☒ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: Cindy B. Hunt Date: July 8, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

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FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
County of Horry	)	FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO: 2012-CP-26- 5264
CINDY B. HUNT,	)	
Plaintiff,	)	COMPLAINT
vs.	)	JURY TRIAL REQUESTED
Branch Banking & Trust Company,	)	
Defendant	)	
	)	

HORRY COUNTY
12 JUL -9 AM 9:32
HELAINE [illegible]-WARD
CLERK OF COURT

Jurisdiction and the facts:

1. This is an action to recover for a massive fraud, fraudulent concealment and conversion of Plaintiffs' accounts perpetrated upon her by Defendant, principally through a loan scheme and concealment of the loan scheme from the Plaintiff, FDIC and the Horry County Police Department (HCPD).

2. This action arises under the common and statutory laws of South Carolina and under the laws of the United States, hereinafter more fully appears.

3. The Plaintiff, Cindy B. Hunt, is a United States citizen and resident of the County of Horry, State of South Carolina.

4. Defendant BBT is a corporation headquartered in Winston-Salem, North Carolina.

5. The branch in question is located at 310 Wright Boulevard, Conway, South Carolina, in Horry County.

6. The events in question occurred in Horry County, South Carolina.

7. None of the causes of action in this complaint are subject to arbitration.

8. The Plaintiff is an attorney.

9. The Plaintiff's Interest on Lawyers Trust Account (IOLTA) was located at the Defendant Branch Banking and Trust Company (hereinafter BB&T) from April 1996 – May 2008 in Conway, Horry County, South Carolina.

10. The Plaintiff is a fiduciary/settler/trustee/beneficiary of her IOLTA. The SC Bar is a beneficiary to the IOLTA.

11. The Plaintiff and the Defendant BB&T and its employees/agents have a fiduciary relationship.

12. The Defendant BB&T and employees/agents were and are a fiduciary/trustee to the IOLTA.

13. The Plaintiff imposed a special confidence in Defendant BB&T and its employees where they actively sought and did gain her trust and confidence.

14. At all times applicable that the Plaintiff was the only attorney in her law practice.

15. Danny Fogle recommended that the Plaintiff open the POD trust in May 2000 where the Plaintiff named herself trustee and Davis the beneficiary. Cathy Lambert opened the POD trust.

16. The coastal gold benefits of in excess of $150,000.00 traveled to the POD account. The Plaintiff loss the coastal gold benefits when she closed the POD trust account in May 2008.

17. The Plaintiff is still alive.

18. Davis never made a contribution to the POD account.

19. The Plaintiff's CD, savings and POD trust deposits from May 2000 – May 2008 exceeded a million dollars.

20. In 9/2003 the Plaintiff bought a new home. The Defendant BBT did the mortgage.

21. On or about 4/2004 the trustee Defendant BB&T subjected the POD trust to a setoff.

22. Danny Fogle handled the Davis 9/2004 mortgage application and loan which was approved in about two weeks time where Davis lived in Maryland, had no assets at BB&T, had not assets in SC and their debt to income ratio was insufficient for a mortgage on a 2nd home.

23. The only account that Davis has ever had at Defendant BB&T is her 9/2004 mortgage.

24. On 9/24/2004 Davis had insufficient assets (as per the mortgage application, etc) to qualify for a mortgage on a second home.

25. Davis stated in writing twice in 2004 that she had no prior accounts at Defendant BB&T.

26. The Plaintiff refinanced her 2003 mortgage at Defendant BBT in May 2007. Karen Butcher, an employee of Defendant BBT completed the 2007 mortgage application prior to the Plaintiff arriving at the Bank.

27. The 2007 mortgage loan application did not show the unauthorized loans: transfer management and portfolio.

28. Plaintiff's 7/19/2007 customer profile shows that the Plaintiff had the following accounts at Defendant BB&T: Checking-Direct Free Interest (savings account); Checking-Interest Checking (POD Trust); Debit Card; **transfer management (an unauthorized loan)**; a closed auto loan; a closed conventional mortgage; an active conventional mortgage; **Portfolio (an unauthorized loan)**; a closed commercial loan; Credit Card and the Plaintiff's **IOLTA**.

29. On 1/19/2008 BBT employee Kaci Sansbury went into the mortgage portion of the system and was convinced that Davis was the owner of the Plaintiff's POD trust.

30. On 1/19/2008 Defendant BB&T disclosed the POD account balance, etc to Davis when she went to the Bank about being reported to a credit reporting agency (CRA) for a late mortgage payment.

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31. On 1/19/2008 Sansbury never did locate the mortgage of Davis.

32. Six months earlier the 7/19/2007 printout of the Plaintiff's customer profile showed at least two unauthorized loans.

33. The Plaintiff complained to the Federal Deposit Insurance Corporation (FDIC) on March 24, 2008 about the disclosure to Davis. Defendant BBT wrote four letters to the FDIC: two from Judy Teal, one from David Craven and one from Mark Booz.

34. An FDIC proceeding/investigation was held from March 24, 2008 – September 2, 2008.

35. Teal in her letter to the FDIC did not disclose anything about the at least two unauthorized loans.

36. Booz in his letter to the FDIC did not disclose anything about the at least two unauthorized loans in the customer profile.

37. Craven in his letter to the FDIC did not disclose anything about the at least two unauthorized loans in the customer profile.

38. On or about 4/2008 the trustee Defendant BB&T subjected the POD trust to a setoff of $855.00.

39. The Plaintiff demanded the return of the $855.00 and Defendant BBT refused.

40. The $855.00 check was from the SC Office of Indigent Defense and was for legal services provided by the Plaintiff.

41. The $855.00 check was mailed to the Plaintiff's business address of 1415 3rd Ave. STE 103 Conway, SC.

42. Defendant BBT has at least two Banking Service Agreements (BSA).

43. On May 19, 2008, after receiving a copy of the 4/11/2008 letter from the FDIC on or about May 11, 2008, the Plaintiff went to the Defendant BB&T to close her POD trust and IOLTA.

44. Danny Fogle walked the Plaintiff to the door and said in a begging voice: "CB please let it go, please let it go".

45. Plaintiff discovered after Thanksgiving in late November 2009 that the printout of the 7/19/2007 customer profile contained at least two unauthorized loans: transfer management and portfolio.

46. Plaintiff wrote to Trustee Defendant BBT on 9/24/2010 disputing the at least two unauthorized loans in her customer profile.

47. In the 9/24/2010 letter to Defendant BBT the Plaintiff requested an updated copy of her customer profile.

48. The Trustee Defendant BB&T replied on 9/27/2010 stating: "We received your letter disputing two loans reported on your account profile from 7/19/07. According to our records your account profile currently does not reflect these loans."

49. Trustee Defendant BB&T failed to provide the Plaintiff with an updated copy of the customer profile as requested on 9/24/2010 via 1st class and certified mail return receipt.

50. Defendant BB&T on its website has provided its customers with instructions to follow regarding identity theft.

51. These website instructions include actions to take if you think you've been a victim of Identity Theft to include filing a police report.

52. After disputing the at least two unauthorized loans in a letter to trustee Defendant BB&T on Oct. 3, 2010 the Plaintiff filed a police report with the Horry County Police Department (HCPD).

53. After filing the police report on Oct. 3, 2010 a search warrant was sent to Trustee Defendant BB&T.

54. On 10/21/2010 Defendant BB&T returned the search warrant to the HCPD with zero documents stating: "We are unable to produce documents as requested. We have no record of accounts with BB&T in reference to the account numbers listed on subpoena."

55. The account numbers listed on the search warrant were taken from the 7/19/2007 customer profile.

56. Included in the 7/19/2007 customer profile was the Plaintiff's 2007 mortgage and other accounts.

57. Through 9/24/2010 the trustee Defendant BB&T had not notified the Plaintiff that it has no record of her mortgage where the Plaintiff paid this mortgage with its assigned new account number.

58. From at least 5/31/2000 to 9/26/2010 the trustee Defendant BB&T never advised the Plaintiff of the creation, use/profit or deletion of at least two unauthorized loans in her customer profile where the customer profile also contained the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts.

59. The officers of trustee Defendant BB&T, stated to the Plaintiff that there was "no claim of fiduciary duty as no fiduciary relationship was ever established with BB&T, no disclosure of financial information to Davis, your account was never wrongfully possessed by another, you have suffered no actionable damages..., and without more, BB&T does not believe it would be fruitful to continue to discuss this matter with you any further. Therefore, BB&T will not necessarily respond to any correspondence or other communications from you."

60. Defendant made these false representations to the Plaintiff and to third parties about the Plaintiff's POD, IOLTA, other accounts and transactions.

61. Inside of the Plaintiff's customer profile, Defendant BB&T on its protected computer created and profited from at least two unauthorized loans where the customer profile also contained the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts.

62. A residual trust remains at Defendant BBT.

63. Trustee Defendant BB&T has failed to disclose these matters to the Plaintiff, the FDIC and the HCPD.

64. The Plaintiff wrote to the Defendant BBT on 6/4/2012 via certified mail return receipt requesting satisfaction of mortgage.

First Cause of Action: Violations of Privacy under SC Code sections 37-20-170 and 37-20-200 of the Consumer Identity Theft Protection by engaging in conduct that is prohibited by 37-20-110 (5, 9, 12 and 15), 130, 160, 170, 180, 200 and ET FF against Defendant.

65. Each previous paragraph and exhibits are repeated herein as if verbatim.

66. At all relevant times, Plaintiff was a "consumer" as that term is defined by 37-20-110 (1).

67. At all relevant times, Defendant was a "Consumer credit-reporting agency" or "consumer reporting agency" as that term is defined by 37-20-110 (2).

68. At all relevant times, Plaintiff's accounts including her customer profile, etc. were a "Consumer report" or "credit report" as that term is defined by 37-20-110 (3).

69. At all relevant times, Defendant was a "person" as that term is defined by 37-20-110 (10).

70. At all relevant times, Plaintiff's "personal identifying information" is as that term is defined by 37-20-110 (11(a)).

71. The Plaintiff's customer profile contained the following personal identifying information:

a. Plaintiff's name, DOB and address

b. Plaintiff's full social security number and drivers license number

c. Financial account numbers for multiple accounts

72. At all relevant times, Plaintiff' "records" are as that term is defined by 37-20-110 (14).

73. At all relevant times "file" is as that term is defined by 37-20-110 (8).

74. At all relevant times "identity theft" is as that term is defined by 37-20-110 (9).

75. Defendants mailed yearly notices (2003 – 2008) to the Plaintiff stating that they were in compliance with the Gramm Leach Bliley ACT (GLBA).

76. Trustee Defendant BB&T a credit reporting agency, consumer reporting agency and or other person did:

77. Knowingly, willfully and negligently misuse and improperly access the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and customer profile to do the following: two improper setoffs, improper disclosure to Davis, create, use and profit from the unauthorized beneficiary profile, create, use and profit from the at least two unauthorized loans, deletion of beneficiary profile and deletion of at least two unauthorized loans.

78. Knowingly, willfully and negligently make an entry in the Plaintiff's credit file that affects the ability of the Plaintiff to obtain and retain credit, employment, business or professional licenses, investment opportunities, or insurance.

79. Knowingly, willfully and negligently return the search warrant to the HCPD with zero documents and interfered with a criminal investigation of identity theft, criminal libel, bank fraud, computer fraud and false entry, etc.

80. Knowingly, willfully and negligently requested zero personal identifying information as defined in Section 16-13-510(D) from Davis prior to disclosing the Plaintiff's account balance, etc.

81. Knowingly, willfully and negligently for eight years (5/2000 – 5/2008) engage in daily and multiple security breaches of incidents of unauthorized access to and acquisition of records or data of the Plaintiff that was not rendered unusable through encryption, redaction, or other methods containing personal identifying information that compromised the security, confidentiality, or integrity of personal identifying information maintained by Defendant BB&T when illegal use of the information has occurred or is reasonably likely to occur or use of the information creates a material risk of harm to the Plaintiff.

82. Defendant BB&T knowingly, willfully and negligently did not make a good faith acquisition of the Plaintiff's personal identifying information by an employee or agent.

83. Knowingly, willfully and negligently cause the Plaintiff to need a security freeze.

84. And thereafter deprived the Plaintiff of the ability to timely place a security freeze to protect her personal identifying information and credit worthiness where the Plaintiff has suffered multiple credit card denials for large purchases since the deletion of the unauthorized beneficiary profile.

85. Knowingly, willfully and negligently cause the Plaintiff to need to dispute several items in her consumer records. And thereafter deprived the Plaintiff of the ability to timely dispute these items and preserve the consumer records.

86. Knowingly, willfully and negligently sell, lease, loan, trade, rent, or otherwise intentionally disclose the Plaintiff's social security number or a portion of it containing six digits or more to a third party without written consent to the disclosure from the Plaintiff.

87. Defendant BB&T had no legitimate business or government purpose and was not authorized or specifically permitted by law to do so and there was no imperative for the performance of the Defendant BB&T's duties and responsibilities as prescribed by law.

88. Knowingly, willfully and negligently cause the PLAINTIFF to suffer public humiliation, mental and emotional distress, embarrassment and subjected the Plaintiff to financial ruin, violations of the SC Professional Rules of Conduct to include disbarment, public humiliation and the Plaintiff has been unable to sit for the Patent Bar exam (Defendants have repeatedly threaten a Rule 11 violation), attorney fees (to date $1,328,000.00), etc.

89. Knowingly, willfully and negligently violated "the appropriate standard of care for the protection, security, and confidentiality of the nonpublic personal information and private data of the Plaintiff numerous times as set by the Gramm-Leach-Bliley Act under 15 USC 6801-6809 and 6821-6827 from 2000 - 2008.

Second Cause of Action: Fraud, constructive fraud and fraud in the inducement against Defendant BBT.

105. Each previous paragraph and exhibits are repeated herein as if verbatim.

106. Defendant BB&T mailed and provided the Plaintiff numerous documents and monthly statements.

107. Defendant BBT told the Plaintiff that during her life that she and she alone would have access to the monies of the POD trust.

108. Defendant told the Plaintiff that the monies of the POD trust would only be made available to Davis at her death and at the time of the Plaintiff's death that Davis must provide the Bank with identification of herself and proof of the Plaintiff's death.

109. Defendant knew or should have known that their statements were false.

110. Defendant statements were material in that the IOLTA, POD trust and other accounts should have been handled differently from the way the Defendants in fact treated them.

111. The Defendants said and wrote of one type of treatment and did another to include improper and or illegal treatment of the Plaintiff's accounts.

112. Defendant had knowledge of the falsity of their statements or acted with reckless disregard for the truth.

113. Defendant intended for the Plaintiff, the FDIC, HCPD and or other third parties to act upon their statements.

114. Plaintiff was ignorant of the falsity of these statements.

115. Plaintiff and other third parties relied on these statements.

116. Plaintiff and other third parties had a right to rely on these statements.

117. Defendant made false representations relating to a present or preexisting fact.

118. Defendant intended to deceive the Plaintiff and other third parties.

119. Plaintiff had a right to rely on the representations made to her.

120. Plaintiff has consequent and proximate injury.

121. At all times pertinent hereto, the conduct of Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, willful, reckless, and in grossly negligent disregard for federal and state laws and the rights of Plaintiff, the IOLTA and other accounts of the Plaintiff.

122. **See below for relief sought.**

90. In May 2008 the FDIC found that Defendant BB&T violated GLBA.

91. The Defendant BB&T's conduct included false, fictitious or fraudulent statement or representations to an officer, employee, customer or agent of the financial institution or by providing any document to an officer, employee, or agent of the financial institution, knowing that the document was forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation causing improper access and improper use of the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, the Plaintiff's customer profile and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

92. The Defendant BB&T owed the Plaintiff a duty of care as stated under GLBA at 15 USC 6801-6809 and 6821-6827.

93. The Defendant BB&T breached its duty of care to the Plaintiff.

94. The Defendant BB&T failed to exercise slight care.

95. The Plaintiff has damages resulting from the breaches of duty.

96. The Plaintiff's deposits in her POD trust account for January 2006 – December 2006 exceeded $100,000.00.

97. The Plaintiffs deposits in the POD trust account and the CD for January 2007 – December 2007 exceeded $100,000.00.

98. In 2001, 2002, 2009 and 2010 the Defendant BB&T did not provide the Plaintiff with a clear and conspicuous disclosure, in writing or in electronic form or other form permitted by the regulations of such financial institution's policies and practices.

99. Davis has not and is not in any way affiliated with the Defendant BB&T other than through her mortgage from about 9/2004 thru about 4/2006.

100. The Plaintiff is not a commercial entity.

101. Defendants obtained or attempted to obtain, or cause to be disclosed or attempted to cause to be disclosed to Davis and others, customer information of a financial institution relating to another person-- by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution; by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution.

102. In so doing the Defendant BBT did knowingly and willfully and negligently engage in multiple incidents of conduct that is prohibited by 37-20-110 (5, 9, 12 and 15), 130, 160, 170, 180 and 200.

103. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

104. See below for relief sought.

Third Cause of Action: Negligent misrepresentation, negligence, negligence per se and gross negligence against Defendant BB&T.

123. Each previous paragraph and exhibits are repeated herein as if verbatim.

124. The Defendant BB&T owed the Plaintiff a duty of care.

125. The Defendant BB&T breached its duty of care to the Plaintiff.

126. The Defendant BB&T failed to exercise slight care.

127. The Plaintiff has damages resulting from the breaches of duty.

128. The Defendant BB&T was negligent, negligent per se and grossly negligent where through its conduct caused improper access and improper use of Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, the Plaintiff's customer profile and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

129. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

130. **See below for relief sought.**

Fourth Cause of Action: Conversion against Defendant BB&T.

131. Each previous paragraph and exhibits are repeated herein as if verbatim.

132. The Defendant BB&T continuously for at least eleven years (2000 – 2012) misused, misappropriated, illegally used and or illegally detained the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and with held two improper setoffs ($226.25 & $855.00), disclosure to Davis, Davis mortgage, unauthorized beneficiary profile and at least two unauthorized loans.

133. Defendant BB&T continuously for at least eleven years (2000 – 2012) wrongfully, unlawfully and without authorization, assumed control and dominion over Plaintiffs' IOLTA, POD trust, savings account, mortgages, CD, car loan, customer profile and other accounts; and with held profits; and failed to disclose information of two improper setoffs, disclosure to Davis, Davis mortgage, unauthorized beneficiary profile and at least two unauthorized loans.

134. The Defendant BB&T used the Plaintiffs' IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and profits to justify extending loans to others.

135. The Defendant BB&T used the Plaintiffs' IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and profits to show regulatory authorities that the Defendant BB&T's exposure due to default on the unauthorized beneficiary profile and at least two unauthorized loans was replaced by the value of monies/assets held by the Bank that belonged to the Plaintiff.

136. The Defendant BB&T subjected the Plaintiffs' IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and profits to setoff of the Davis mortgage, the unauthorized beneficiary profile and at least two unauthorized loans.

137. The Defendant BB&T through setoff, etc made the Plaintiffs' IOLTA, accessible by persons that were not employed in the Plaintiff's law firm.

138. On 4/02/2004 Defendant BBT did a setoff against the Plaintiff's POD account for $225.00.

139. The $225.25 check was for legal services provided by the Plaintiff.

140. The Plaintiff had her IOLTA at the defendant BBT from April 1996 – May 19, 2008.

141. The $225.25 check had a memo note of: attorney fee.

142. On 5/02/2008 Defendant BBT did a set off against the Plaintiff's POD account for $855.00.

143. The trustee Defendant Teal in her June 27, 2008 letter to the FDIC stated that "the bank exercised the right of setoff" against the POD account.

144. The trustee Defendant Teal in her June 27, 2008 letter to the FDIC intentionally and incorrectly directed the FDIC to Reference page 10, section 13 of the BSA for non commercial accounts.

145. The trustee Defendant Teal in her June 27, 2008 letter to the FDIC failed to disclose that the setoff should have been made against the IOLTA as per the commercial BSA at entry 75-24 on page 8 at section 15.

146. Defendant BBT was unjustly enriched at the expense of the Plaintiff through the improper use of all of her accounts at Defendant BBT.

147. Plaintiff had an absolute and unconditional right to the immediate possession and/or title to the monies and profits of the IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, and customer profile including two improper setoffs, disclosure to Davis, Davis mortgage, unauthorized beneficiary profile and at least two unauthorized loans.

148. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

149. **See below for relief sought.**

Fifth Cause of Action: Breach of Fiduciary Duty / Breaches of Trust for Violations of SC Common Law and SC Code Ann. section 62-7-1001(a) by engaging in conduct that is prohibited at 62-7-801 thru 62-7-817 against Defendant BB&T.

150. Each previous paragraph and exhibits are repeated herein as if verbatim.

151. The Plaintiff closed the IOLTA on 5/19/2008.

152. Defendant BBT is required to keep adequate records of the administration of the IOLTA.

153. Defendant BB&T deleted the following records: the unauthorized beneficiary profile; and the at least two unauthorized loans in the Plaintiff customer profile with the IOLTA.

154. Defendant BB&T intended to delete the following: the unauthorized beneficiary profile; and the at least two unauthorized loans in the Plaintiff customer profile with the IOLTA.

155. The Plaintiff's customer profile over its life included at least four depositary accounts with Defendant BBT: regular checking, IOLTA, POD account and savings account; at least two unauthorized loans, CD, unauthorized beneficiary profile and other accounts.

156. At no time has the Defendant had proof of death of the Plaintiff.

157. Defendant did an unauthorized beneficiary profile against the POD account for Davis.

158. The FDIC made a finding of violation of the Gramm Leach-Bliley Act in May 2008 for the disclosure to Davis.

159. Plaintiff closed the IOLTA on May 19, 2008.

160. The 7/19/2007 printout of Plaintiff's customer profile shows two unauthorized loans called: transfer management and portfolio.

161. The Defendant BB&T website on Identity Fraud refers its customers to the FTC website.

162. Closure of an account is recommended by the Federal Trade Commission's (FTC) website if identity theft is suspected.

163. The Defendant BB&T yearly (2003-2008) mailed the Plaintiff statements of compliance with the GLBA.

164. The Plaintiff has made numerous transactions involving her IOLTA.

165. Davis made numerous transactions involving her mortgage while the unauthorized beneficial profile was in the Plaintiff's customer profile with the IOLTA, POD and other accounts.

166. The owners of the at least two unauthorized loans: transfer management and portfolio made numerous transactions involving their loans while the unauthorized loans were in the Plaintiff's customer profile with the IOLTA and other accounts.

167. Defendant BBT is a Bank/financial institution.

168. Defendant BB&T is engaged in businesses that affect public interest.

169. The Defendants misconduct was made for an improper purpose to include harassing the Plaintiff and to cause unnecessary delay and needless increase in the cost of litigation and to divert the Plaintiff, the FDIC and the police away from the at least two unauthorized loans in the Plaintiff's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts.

170. The Defendant BB&T did through its conduct caused improper access and improper use of Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and the Plaintiff's customer profile; and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

171. The Defendants breached its fiduciary duty to the Plaintiff where the Defendants knowingly did through its conduct caused improper access and use of Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, the Plaintiff's customer profile and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

172. Defendant BB&T on its protected computer inside of the Plaintiff's customer profile: created and profited from an unauthorized beneficiary profile (Davis mortgage) and at least two unauthorized loans where the customer profile also contained the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts.

173. That trustee Defendant BB&T and its employees illegally and improperly used the Plaintiff's Interest on Lawyer's Trust Account (IOLTA), POD trust, savings account, mortgages, CD, car loan, other accounts and the Plaintiff's customer profile for the benefit of its own business and or third parties when it did the following: two setoffs, disclosure to Davis; creation and use of the unauthorized beneficiary profile; and the creation and use of the at least two unauthorized loans.

174. Trustee Defendant BB&T in returning the search warrant with zero documents is protecting specific employee(s) from the possible criminal prosecution of identity theft, false entry, bank fraud, computer fraud, criminal libel, forgery, etc. and is attempting to save itself from the fallout of the same to include punitive damages, etc. and huge fines as described at 12 U.S.C. 1818(i)(2) by the FDIC for each day that these matters went on.

175. Trustee Defendant BBT has conflicts of interest where it returned the search warrant with zero documents.

176. That under the law the Plaintiff continues to have trust assets of the combined trust at the Defendant BB&T to include but is not limited to the profit and property associated with the unauthorized beneficiary profile; the profit and property associated with the at least two unauthorized loans in the Plaintiff's customer profile; Plaintiff's mortgage and profit; profit made by trustee Defendant BB&T on all accounts of the Plaintiff from 1993 to present time; interest at the legal rate; pre and post judgment interest; and other assets to be determined after an accounting.

177. That Defendant BB&T has and continues to make thousands of dollars in profit were it exceeded the use of, improperly or illegally used the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and customer profile.

178. That, on account of the Defendant BB&T's conduct of exceeding, improperly and or illegally using the IOLTA, POD trust, savings account, mortgages, CD, car loan and other account funds, that Defendant BB&T made a profit that does not belong to it; and that Defendant BB&T committed a constructive fraud and constituted an ex maleficio trust.

179. That the Defendant BBT collected the said IOLTA, POD trust, savings account, mortgages, CD, car loan and other account funds.

180. That, under the law, the Defendant BB&T was required to keep the IOLTA funds separate, keep the IOLTA funds in a state of security, keep the IOLTA funds accessible only to attorneys of the Plaintiff's law practice, not use the IOLTA trust funds for its own business or third parties and not commingle the IOLTA trust funds with its own funds or others; that Defendant BB&T failed to do all of these things.

181. Defendant BB&T allowed the IOLTA, POD trust, savings account, mortgages, CD, car loan and other accounts of the Plaintiff to be accessible by other customers to include the beneficiary profile and the at least two unauthorized loans.

182. Defendant BB&T allowed the IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and financial resources of the Plaintiff to be misappropriated for its own use and or the use of a third parties.

183. That, on account of the Defendant BB&T's conduct of exceeding the use of, improperly using and or illegally using the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan and other accounts where the Plaintiff had no knowledge of this and never ratified this conduct - the Defendant BB&T has subjected the Plaintiff, an attorney, to financial ruin, criminal prosecution for mortgage loan application fraud, violations of the SC Professional Rules of Conduct to include disbarment, the inability to earn a living (Plaintiff has been unable to sit for the Patent Bar) and public humiliation, all of which continues each day.

184. That, on account of the Defendant BB&T exceeding the use of and/or improperly using the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan & other accounts the trust extends to the combined fund, & also created a lien on the entire mass of the Defendant BB&T assets for the assets of the combined fund.

185. That, on account of the Defendant BB&T exceeding the use of and/or improperly using the Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan & other accounts Defendant BBT was unjustly enriched at the expense of the Plaintiff.

186. That under the law the Plaintiff is entitled to be paid immediately and in full out of the assets of Defendant BB&T.

187. To date the Defendant BB&T has not paid the Plaintiff.

188. The Defendant BB&T's entire assets are security.

189. The Defendants failed to disclose this conduct to the Plaintiff.

190. The Defendants knowingly failed to disclose this conduct to the Plaintiff, FDIC and the Police.

191. The Defendant BBT accepted and retained the benefit of profits under these circumstances such that it would be inequitable for Defendant BBT to retain the benefit without payment of value.

192. The Plaintiff's existing 2007 mortgage remains at Defendant BBT.

193. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

194. Plaintiff seeks damages under 62-7-1002 thru 62-7-1004 and 62-7-1001(b); and **See below for relief sought.**

Sixth Cause of Action: Violations of SC Probate Code Ann. sections 62-6-101 thru 62-6-106 against Defendant BB&T.

195. Each previous paragraph and exhibits are repeated herein as if verbatim.

196. The Plaintiff had at least four depositary accounts with Defendant BBT: regular checking, IOLTA, POD account and savings account.

197. The regular checking account (1995-2000) had coastal gold benefits in excess of $150,000.00.

198. The Plaintiff converted the regular checking account to the POD account in May 2000.

199. "P.O.D. account" means an account payable on request to one person during his lifetime and on his death to one or more P.O.D. payees.

200. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee.

201. "Proof of death" includes a death certificate or record or report.

202. The Defendant did a setoff against the POD trust in 4/2004 for a check written to the Plaintiff as a legal fee.

203. The Defendant did a setoff against the POD trust in 4/2008 for a check written to the Plaintiff as a legal fee.

204. The Defendant did a disclosure against the POD account in 1/2008 to Davis.

205. On 1/19/2008 Defendant did not ask Davis for any identification.

206. At no time has the Defendant had proof of death of the Plaintiff.

207. Defendant did an unauthorized beneficiary profile against the POD account for Davis.

208. The FDIC made a finding of violation of the Gramm Leach-Bliley Act in May 2008 for the disclosure to Davis.

209. Plaintiff closed the POD account on May 19, 2008.

210. The 7/19/2007 printout of Plaintiff's customer profile shows two unauthorized loans called: transfer management and portfolio.

211. The Defendant BB&T website on Identity Fraud refers its customers to the FTC website.

212. Closure of an account is recommended by the Federal Trade Commission's (FTC) website if identity theft is suspected.

213. The Defendant BB&T yearly (2003-2008) mailed the Plaintiff statements of compliance with the GLBA.

214. The Plaintiff has made numerous transactions involving her POD account.

215. Davis made numerous transactions while the unauthorized beneficial profile was attached to the POD account.

216. Defendant BBT is a Bank.

217. Defendant BB&T is engaged in businesses that affect public interest.

218. The Defendants misconduct was made for an improper purpose to include harassing the Plaintiff and to cause unnecessary delay and needless increase in the cost of litigation and to divert the Plaintiff, the FDIC and the police away from the at least two unauthorized loans in the Plaintiff's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts.

219. The Defendant BB&T did through its conduct caused improper access and improper use of Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and the Plaintiff's customer profile; and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

220. The Plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s).

221. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

222. **See below for relief sought.**

Seventh Cause of Action: Violation of UNFAIR TRADE PRACTICES Act: SC Code § 39-5-10 thru 39-5-170 against Defendant BB&T.

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223. Each previous paragraph and exhibits are repeated herein as if verbatim.

224. The Plaintiff had at least four depositary accounts with Defendant BBT: regular checking, IOLTA, POD account and savings account.

225. "Proof of death" includes a death certificate or record or report.

226. At no time has the Defendant had proof of death of the Plaintiff.

227. Defendant did an unauthorized beneficiary profile against the POD account for Davis.

228. The FDIC made a finding of violation of the Gramm Leach-Bliley Act in May 2008 against Defendant BBT.

229. Plaintiff closed the savings account in March 2008.

230. Plaintiff closed the IOLTA on May 19, 2008.

231. Plaintiff closed the POD account on May 19, 2008.

232. The Plaintiff's 2007 mortgage remains at Defendant BBT.

233. The 7/19/2007 printout of Plaintiff's customer profile shows two unauthorized loans called: transfer management and portfolio.

234. The Defendant BB&T website on Identity Fraud refers its customers to the FTC website.

235. Closure of an account is recommended by the Federal Trade Commission's (FTC) website if identity theft is suspected.

236. The Defendant BB&T yearly (2003-2008) mailed the Plaintiff statements of compliance with the GLBA.

237. The Plaintiff has made numerous transactions involving her IOLTA.

238. Davis made numerous transactions while the unauthorized beneficial profile was attached to the POD account.

239. Defendant BBT is a Bank.

240. Defendant BB&T is engaged in businesses that affect public interest.

241. The Defendants misconduct was made for an improper purpose to include harassing the Plaintiff and to cause unnecessary delay and needless increase in the cost of litigation and to divert the Plaintiff, the FDIC and the police away from the at least two unauthorized loans in the Plaintiff's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts.

242. The Defendant BB&T did through its conduct caused improper access and improper use of Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and the Plaintiff's customer profile; and with held profits when it did the following:

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two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

243. The Plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s).

244. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

245. Plaintiff seeks damages under: SC Code § 39-5-140(a) actual damages, punitive damages, cost, attorney fees, such other relief as Court deems necessary or proper.

246. **See below for other relief sought.**

Eighth Cause of Action: Mortgage loan fraud under SC Code Ann. 37-22-190 and 37-5-108 and 29-3-310 against Defendant BBT.

247. Each previous paragraph and exhibits are repeated herein as if verbatim.

248. The Plaintiff refinanced her 2003 BBT mortgage with the Defendant BBT in May 2007.

249. The Plaintiff's 7/19/2007 customer profile listed two unauthorized loans: transfer management and portfolio.

250. The Plaintiff 2007 mortgage application did not list the at least two unauthorized loans in the Plaintiff's customer profile along with her IOLTA, POD account, CD, savings, mortgage and other accounts.

251. Judy Teal in her 4/11/2008 letter to the FDIC stated that the events of the 1/19/2008 disclosure to Costella Davis occurred as the result of the Defendant BBT setting up the Plaintiff's POD trust from the beginning (May 2000) to share an unauthorized beneficiary profile with Costella Davis.

252. Judy Teal stated in her 4/11/2008 letter to the FDIC that the Defendant had created a beneficiary profile for Davis that was connected to the Plaintiff's POD account.

253. The Plaintiff disputed the loan entries "transfer management" and "portfolio" in her customer profile in a 9/24/2010 letter of dispute to the Defendant.

254. The Defendant BBT stated in there 9/27/2010 response letter: the two loans listed on the 7/19/2007 profile are not currently in your profile.

255. On 10/21/2010 Defendant BBT wrote to the HCPD: "We are unable to produce documents as requested. We have no record of accounts with BB&T in reference to the account numbers listed on subpoena."

256. The Plaintiff complained to the FDIC in 3/2008.

257. David Craven wrote to the Plaintiff in 3/2008.

258. David Craven falsely stated in his letter that no fiduciary relationship had ever been established between the Plaintiff and Defendant BBT.

259. Judy Teal sent the letter of David Craven to the FDIC.

260. Defendant BBT has not issued a satisfaction of mortgage to the Plaintiff.

261. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

262. **See below for relief sought.**

Ninth Cause of Action: Defamation - libel per se and or slander per se against Defendant BB&T.

263. Each previous paragraph and exhibits are repeated herein as if verbatim.

264. Each previous paragraph and exhibits are repeated herein as if verbatim.

265. The Defendant BB&T published the false and unauthorized beneficiary profile in its computers to Costella Davis, Karen Butcher, Kacl Sansbury, Tamara Cannon and others.

266. The Defendant BB&T published the at least two false and unauthorized loans in its computers to Karen Butcher, Tamara Cannon and Kacl Sansbury, in the printout of the customer profile dated 7/19/2007, and to others.

267. The Defendant BB&T spoke of the false, unauthorized beneficiary profile and at least two unauthorized loans in its computers to Costella Davis, Karen Butcher, Kacl Sansbury, Tamara Cannon and others.

268. Defendant BB&T excessively and improperly published the unauthorized beneficiary profile and at least two unauthorized loans since the computer entry was available to the staff at large.

269. The publication and or spoken statements to these third persons were not privileged.

270. Defendant BB&T was at fault for the publication and spoken statements.

271. The libelous publication and spoken statements were made with actual malice where the Defendant BB&T had knowledge of its falsity or reckless disregard of the truth.

272. The libeling continues each day were the Defendant BB&T has refused to accept responsibility for these illegal and improper entries in the Plaintiff's customer profile.

273. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her accounts.

274. **See below for relief sought.**

Tenth Cause of Action: Intentional destruction of evidence against Defendant BB&T.

275. Each previous paragraph and exhibits are repeated herein as if verbatim.

276. Defendant BBT is required to keep adequate records of the administration of the trust.

277. The Plaintiff notified Defendant BBT of the disclosure to Ms. Davis on 1/22/2008 and requested that their legal department call the Plaintiff.

278. Defendant Teal in her April 11, 2008 letter to the FDIC states from Feb 1, 2008 through March 17, 2008: "I have had numerous conversations with Ms. Hunt."

279. Defendant Teal in her April 11, 2008 letter to the FDIC stated that beneficiary profile for Davis had been deleted.

280. At the time the Plaintiff closed the IOLTA and POD trust account, on 5/19/2008, the Defendant BBT indicated on the exit interview form that it had not saved the account histories of the POD and IOLTA.

281. Defendant BB&T deleted the at least two unauthorized loans in the Plaintiff customer profile.

282. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff and her other accounts.

283. **Strike all pleadings of the Defendants: present and future; Default Judgment; actual and punitive damages; and See below for other relief sought.**

Eleventh Cause of Action: Slander of (mortgage) title against Defendant BB&T.

284. Each previous paragraph and exhibits are repeated herein as if verbatim.

285. The Plaintiff financed her 2003 mortgage with the Defendant BBT.

286. In May 2007 the balance of the 2003 mortgage was about $91,000.00.

287. The Plaintiff refinanced her 2003 mortgage in May 2007 with Defendant BBT.

288. In 2007 the property appraised for about $190,000.00.

289. The Defendant recorded the 2007 mortgage with the register of deeds for Horry County.

290. Today the balance of the 2007 mortgage is about $140, 000.00.

291. The Plaintiff 2007 mortgage application did not list the two unauthorized loans in the Plaintiff's customer profile along with her IOLTA, POD account, CD, savings, mortgage and other accounts.

292. Defendant BBT has not issued a satisfaction of mortgage to the Plaintiff.

293. The Plaintiff's interest rate on the 2007 mortgage is 6.375%.

294. The Plaintiff must discharge the 2007 mortgage before she can complete refinancing.

295. At all times pertinent hereto, the conduct of Trustee Defendant BB&T, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, the Plaintiff, mortgages and her other accounts.

296. Special Damages: removal of mortgage on title, return of down payment, return monies paid, pre and post judgment interest, legal interest, costs, attorney fees and punitive damages; and **See below for other relief sought.**

The Plaintiff prays for the following relief:

1) Default Judgment; and

2) The Court removes the trustee Defendant BB&T and its employees, appoints a special fiduciary and require an accounting; and

3) Pending a final decision on the Plaintiff's request to remove the trustee Defendant BB&T and its employees that the Court orders relief under Sections 62-7-1002(a), 62-7-1001(b), etc. to protect the trust property and the interests of the beneficiaries, etc; and

4) In its final order that the Court removes the trustee Defendant BB&T and its employees, appoints a special fiduciary, require an accounting and orders relief under Sections 62-7-1002(a), 62-7-1001(b), etc. to protect the trust property and the interests of the beneficiaries, etc; and

5) All of the following:

a. The Plaintiff makes a demand for fifty million dollars in actual damages;

b. Report Defendant BB&T to the FBI, FDIC-OIG, and the US Attorney.

c. Report Defendants Craven and Booz to their respective Bar Associations.

d. An accounting of all authorized and unauthorized accounts of the Plaintiff customer profile including the Davis mortgage and the CD.

e. The appointment of a special fiduciary; Impose a lien on the Defendant BB&T.

f. Defendants pay a surcharge for mismanagement of the Plaintiff accounts.

g. Strike all pleadings of the Defendants: past, present and future.

h. Actual and compensatory damages, disgorgement of profits and restitution damages; Legal Interest, Prejudgment interest, Post Judgment interest.

i. Defendants pay face value of the Coastal Banker Gold benefits and inconvenience in relocating accounts.

j. Statutory damages, consequential damages, general damages, special damages, actual damages and punitive damages.

k. Constructive and Resulting trusts with tracing.

l. Damages for mental anguish and emotional distress.

m. Defendants to pay to the Plaintiff all monies paid on the current mortgage with legal, prejudgment and post judgment interest; punitive damages.

n. Defendants to pay to the Plaintiff the amount of the 2006 CD with legal, prejudgment and post judgment interest.

o. Defendants to pay to the Plaintiff the life amount of monies deposited in the regular checking account, savings account and POD trust with legal prejudgment and post judgment interest.

p. Defendants to pay to the Plaintiff the original loan amount of all of the Plaintiff's authorized loans with legal, prejudgment and post judgment interest.

q. Defendants to pay to the Plaintiff the original loan amount of all of the unauthorized loans in the Plaintiff customer profile, including the Davis mortgage with legal, prejudgment and post judgment interest.

r. That the Plaintiff be allowed to amend the Complaint to include more causes of actions damages and add parties, etc.

s. Defendant BB&T to immediately provide in a readable and understandable format the documents that were requested in the Oct 18, 2010 search warrant by the HCPD and any other documents that the HCPD may request.

t. Defendants to pay all costs and expenses, including all attorney fees (past, present and future) to include the Plaintiff, an attorney, and other attorneys pursuant to SC Ann. 62-7-1001(b); SC Ann. 62-7-1004; unclean hands (unauthorized practice of law (two accounts), aiding and abetting the unauthorized practice of law (two accounts)), etc. for this entire matter including the FDIC proceeding.

u. Defendants to pay all costs and expenses, including all attorney fees (past, present and future) to include the Plaintiff, an attorney, and other attorneys for this entire matter including the FDIC proceeding.

v. The attorney fees to date are $1,328,000 where the Plaintiff has already paid $8,000.00 of these fees.

w. Any other relief that this Court deems just and proper.

Respectfully submitted,

Cindy B. Hunt

Cindy B. Hunt, Plaintiff
Pro Se
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

DATE: July 09, 2012

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

FLORENCE DIVISION

CINDY HUNT Plaintiff, vs. BRANCH BANKING AND TRUST COMPANY, Defendant.	C/A No.

INDEX TO EXHIBITS TO ORIGINAL COMPLAINT[1]

EXHIBIT	DESCRIPTION
1	January 2011 IRS Form 1098 from BB&T
2	Articles of Merger
3	Affidavit of Cindy B. Hunt dated November 15, 2010*
4	Coastal Federal Account Opening Signature Cards*
5	2004 Stop Payment Notice*
6	Affidavit of Costella H. Davis dated December 13, 2010*
7	Mortgage Application – Cindy B. Hunt 2007*
8	Card – Karen Butcher*
9	Coastal Federal Account Opening 10/9/2006*
10	July 19, 2007 "Customer Relationship Profile" and other material*
11	8/2007 BB&T Account Notices re Merger
12	Affidavit of Costella H. Davis dated June 3, 2008*
13	3/10/2008 Letter David Craven to Hunt*
14	3/12/2008 Letter Hunt to FDIC*
15	4/11/2008 Letter Teal to FDIC*
16	May 2008 Stop Payment and Set-Off Information*
17	May 8, 2008 Letter FDIC to Hunt*
18	May 8, 2008 Letter FDIC to BB&T*
19	May 15, 2008 Letter Booz to FDIC*
20	June 6, 2008 Letter Hunt to FDIC*

[1] The indicated descriptions are as found on the original Exhibits filed by the Plaintiff if her state court complaint where such descriptions were given. Were marked "*", the descriptions are supplied by counsel for the Defendant as the Exhibit, as served contained no description.

21	June 27, 2008 Letter Teal to FDIC*
22	June 12, 2008 Letter FDIC to BB&T*
23	Blank Cover Page (as in served complaint)*
24	Blank Cover Page (as in served complaint)*
25	August 7, 2008 Letter FDIC to Hunt*
26	Affidavit of CBH
27	3/17/2008 demand letter from Hunt 9/09/2008 Response from Attorney Chris Okay, Vice President, BB&T
28	9/24/2010 Dispute letter to BB&T via 1st Class mail and certified return receipt
29	9/27/2010 Letter from BB&T
30	Horry County Police Crime Report
31	Search Warrant
32	Return of Search Warrant
33	BB&T Identity Theft & FDIC.gov
34	3/28/2008 letter from FDIC to BB&T 6/12/2008 letter from FDIC to BB&T
35	9/2/2008 letter from FDIC to Hunt
36	5/19/2008 closure of IOLTA and POD accounts.
37	June 4, 2012 letter to BB&T Mortgage
38	"Doc. #38" [Second Amended Complaint Case No. 4:09-cv-02151*]
39	"Doc #124" {Text Order dated November 29, 2011; Case No. 4:09-cv-02151, Denying Motion to Alter or Amend*]
40	USCA Order dated June 26, 2012
41	Order of Dismissal dated March 23, 2011; Case No. 4:09-cv-02151*
42	Financial Statement of BB&T dated March 13, 2012

BBT vs CB Hunt, et al: CASE NO: 2013-CP-26-2528

Summons, complaint, notice of foreclosure intervention, exemption from ADR by Attorney Montgomery – filed on - 4/16/2013[8]

[8] These pleadings were never served on Hunt by BBT.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Branch Banking and Trust Company,

Plaintiff,

v.

Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC;

Defendant(s).

(004335-03166)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2013-CP-26- 2528

SUMMONS
(NON-JURY)
FORECLOSURE OF REAL ESTATE
MORTGAGE
Deficiency Judgment Waived

2013 APR 16 PM 12:21
MELANIE WILKINS-WARD
CLERK OF COURT
HORRY COUNTY

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering 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, 220 Executive Center Drive, Suite 109, Post Office Box 100200, 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.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

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 Branch Banking and Trust Company.

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
William S. Koehler (SC Bar#74935)
Jaclynn B. Goings (SC Bar #77501)
Andrew A. Powell (SC Bar #100210)
Mary Powers (SC Bar #16534)
J. Pamela Price (SC Bar # 014336)
Cheryl H. Fisher (SC Bar #15213)
Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
Andrew W. Montgomery (SC Bar #79893)
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Martin H. Kiser (SC Bar # 3552)

220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
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Columbia, South Carolina
April 15, 2013

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Branch Banking and Trust Company,

Plaintiff,

v.

Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC;

Defendant(s).

(004335-03166)

IN THE COURT OF COMMON PLEAS

DOCKET NO. **2013-CP-26-2528**

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE MORTGAGE

Deficiency Judgment Waived

2013 APR 16 PM 12:21

ELANIE HOWARD
CLERK OF COURT

HORRY COUNTY

Plaintiff alleges:

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

2. Pursuant to S.C. Code Section 33-15-101(b)(8) Plaintiff is a corporation or other legal entity collecting debts and / or enforcing mortgages, security interests or other rights in property securing debts.

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

4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the Servicer has been unable to establish right party contact and has satisfied the Reasonable Effort Solicitation standard required by the Treasury Department.

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

6. 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 South Carolina Code Section 15-35-840.

7. Heretofore, on or about May 18, 2007, Cindy B. Hunt made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of $147,200.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Cindy B. Hunt made, executed and delivered unto Coastal Federal Bank a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All and singular, that certain piece, parcel or tract of land, situate, lying and being in Conway Township, Horry County, South Carolina and being more particularly shown and designated as Unit 195-D, Phase 6 of Willow Greens Horizontal Property Regime on a plat prepared by Terry M. Watson, RLS No. 7168 for CJ Developers, LLC, a South Carolina Limited Liability Company, dated December 11, 1997, and recorded on June 1, 1998, in the Office of the Register of Deeds for Horry County in Plat Book 155 at Page 113, reference to said plat being craved as forming a part of this description. A copy of the plans for Building 195 certified by Joel R. Carter, AIA, are further shown and recorded on June 1, 1998, in the Office of the Register of Deeds for Horry County in Condominium Cabinet "C" at Page 630.

This being the same property conveyed to Cindy B. Hunt by deed of Christopher T. Brereton and Amanda Brereton dated September 30, 2003 and recorded October 1, 2003 in Book 2648 at Page 1241.

Property Address: 195 -D Willow Greens Dr a/k/a 195 Willow Green Dr., Unit #D
Conway, SC 29526

TMS# 151-36-01-048

9. The Mortgage was signed, witnessed and probated May 18, 2007; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Horry County on May 23, 2007, in Mortgage Book 4906 at page 1953. Branch Banking & Trust Company is successor by merger to Coastal Federal Bank

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the mortgaged premises.

11. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for July 1, 2012, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of July 1, 2012, the principal sum of $137,166.75, with interest from June 1, 2012, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

12. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly waived.

13. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

14. 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.

15. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

16. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. CJ Developers, LLC, by virtue of a mortgage given by Christopher T. Brereton and Amanda Brereton in the amount of $107,000.00, dated March 6, 2001, and recorded March 13, 2001 in Book 2675 at Page 336 Also including any other liens they may have. The Plaintiff is informed and believes that this mortgage has been paid in full and either should be satisfied of record or the lien of the mortgage released from the subject real estate.

B. Willow Greens Homeowners Association, Inc. by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions recorded herein, and any amendments thereto. Also including any other liens they may have.

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

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Determine that the mortgage held by CJ Developers, LLC, recorded March 13, 2001 in Book 2675 at Page 336 has been paid in full, and direct the Clerk of Court/Register of Deeds for Horry County to release the lien of the mortgage from the subject property.

(3) Declare Plaintiff's Mortgage a first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or

insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

(4) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(5) 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 tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(6) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

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

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

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(7) Issue an order directing the Sheriff of Horry County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

(8) Order such other and further relief as may be just and proper.

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
William S. Koehler (SC Bar#74935)
Jaclynn B. Goings (SC Bar #77501)
Andrew A. Powell (SC Bar #100210)
Mary Powers (SC Bar #16534)
J. Pamela Price (SC Bar # 014336)
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Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
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Martin H. Kiser (SC Bar # 3552)

220 Executive Center Drive
Columbia, SC 29210

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(803) 744-4444

Columbia, South Carolina
April 15, 2013

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Branch Banking and Trust Company,

Plaintiff,

v.

Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC;

Defendant(s).

(004335-03166)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2013-CP-26- 2528

NOTICE OF FORECLOSURE INTERVENTION
Deficiency Judgment Waived

FILED
HORRY COUNTY
2013 APR 16 PM 12: 21
MELANIE HUGGINS-WARD
CLERK OF COURT

PLEASE TAKE NOTICE THAT pursuant to the South Carolina Supreme Court Administrative Order 2011-05-02-01, you may have a right to Foreclosure Intervention.

To be considered for any available Foreclosure Intervention, you may communicate with and otherwise deal with the Plaintiff through its law firm, Rogers Townsend & Thomas, PC.

Rogers Townsend & Thomas, PC represents the Plaintiff in this action. Our law firm does not represent you. Under our ethical rules, we are prohibited from giving you any legal advice.

You must submit any requests for Foreclosure Intervention consideration within 30 days from the date you are served with this Notice. **IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN FORECLOSURE INTERVENTION, THE FORECLOSURE ACTION MAY PROCEED.**

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
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Columbia, SC 29210

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

Columbia, South Carolina
April 15, 2013

Pete)

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

13 2528

Branch Banking and Trust Company,
Plaintiff(s)

vs.

Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC;
Defendant(s)

Submitted By: Samuel C. Waters (SC Bar #5958), Cheryl H. Fisher (SC Bar #15213), Reginald P. Corley (SC Bar #69453), Jennifer W. Rubin (SC Bar #16727), Ellie C. Floyd (SC Bar #68635), Michael P. Morris (SC Bar #73560), Eve Moredock Stacey (SC Bar #5300), Robert P. Davis (SC Bar #74030), William S. Koehler (SC Bar#74935), Vance L. Brabham, III (SC Bar #71250), Jaclynn B. Goings (SC Bar #77501), Andrew W. Montgomery (SC Bar #79893), Andrew A. Powell (SC Bar #100210); John F. McLeod, IV (SC Bar # 100693); Mary Powers (SC Bar #16534); Martin H. Kiser (SC Bar # 3552); J. Pamela Price (SC Bar # 014336); Attorneys for the Plaintiff
004335-03166

Rogers Townsend & Thomas, PC
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info@rtt-law.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION ***(Check all that apply)***
If Action is Judgment/Settlement do not complete

- ☐ **JURY TRIAL** demanded in complaint. ☒ **NON-JURY TRIAL** demanded in complaint.
- ☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

FILED
HORRY COUNTY
2013 APR 16 PM 2:27
MELANIE HUDSON
CLERK OF COURT

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts – Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☒ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20___-CP-_____-_____	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)

Inmate Petitions	Administrative Law/Relief	Judgments/Settlements	Appeals
☐ PCR (500)	☐ Reinstate Drv. License (800)	☐ Death Settlement (700)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Judicial Review (810)	☐ Foreign Judgment (710)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Relief (820)	☐ Magistrate's Judgment (720)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Permanent Injunction (830)	☐ Minor Settlement (730)	☐ Municipal (930)
	☐ Forfeiture-Petition (840)	☐ Transcript Judgment (740)	☐ Probate Court (940)
	☐ Forfeiture-Consent Order (850)	☐ Lis Pendens (750)	☐ SCDOT (950)
	☐ Other (899)	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Worker's Comp (960)
		☐ Confession of Judgment (770)	☐ Zoning Board (970)
		☐ Petition for Workers Compensation Settlement Approval (780)	☐ Public Service Commission (990)
		☐ Other (799)	☐ Employment Security Comm (991)
			☐ Other (999)

Special/Complex/Other	
☐ Environmental (600)	☐ Pharmaceuticals (630)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)
☐ Medical (620)	☐ Out-of-State Deposition (650)
☐ Other (699)	☐ Motion to Quash Subpoena in an Out-of-County Action (660)
	☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date:** 4-15-13

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

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FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code § 15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals;

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

004335-03166

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
HORRY COUNTY)

Branch Banking and Trust Company,
Plaintiff

vs.

Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC;
Defendant.

IN THE CIRCUIT COURT FOR THE
FIFTEENTH
JUDICIAL CIRCUIT

2013-CP-26-2528

CERTIFICATE OF EXEMPTION
FROM ADR

DOCKET NO.

FILED
HORRY COUNTY
2013 APR 16 PM 12:21
MELANIE HUGGINS-HARD
CLERK OF COURT

I certify that this action is exempt from ADR because:

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

☑ this is a case involving a mortgage foreclosure; or

☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

Plaintiff/Attorney(s) for Plaintiff(s)

Samuel C. Waters (SC Bar #5958), Cheryl H. Fisher (SC Bar #15213), Reginald P. Corley (SC Bar #69453), Jennifer W. Rubin (SC Bar #16727), Ellie C. Floyd (SC Bar #68635), Michael P. Morris (SC Bar #73560), Eve Moredock Stacey (SC Bar #5300), Robert P. Davis (SC Bar #74030), William S. Koehler (SC Bar#74935), Vance L. Brabham, III (SC Bar #71250), Jaclynn B. Goings (SC Bar #77501), Andrew W. Montgomery (SC Bar #79893), Andrew A. Powell (SC Bar #100210), John F. McLeod, IV (SC Bar # 100693); Mary Powers (SC Bar #16534); Martin H. Kiser (SC Bar # 3552); J. Pamela Price (SC Bar # 014336)

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Post Office Box 100200
Columbia, SC 29202
(803) 744-4444

Defendant/Attorney(s) for Defendant(s)

Date: April 15, 2013

004335-03166

271

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State of South Carolina	)	IN THE COURT OF COMMON PLEAS
County of Horry	)	FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO: 2013-CP-26-2528
Branch Banking and	)	
Trust Company	)	
Plaintiff,	)	
	)	ANSWER
vs.	)	Objection to Rule 53
Cindy B. Hunt; Willow Greens	)	
Homeowners Association, Inc.;	)	
CJ Developers, LLC.	)	
Defendant(s)	)	
_____	)	

HORRY COUNTY
13 AUG -2 PM 4:17
MELANIE HUGGINS-WARD
CLERK OF COURT

These counterclaims are supported by the prior pleadings at c/a 4:09-cv-2151-JMC-TER; c/a 4:11-cv-00870-MGL; and CASE NO: 2012-CP-26-5264 which was removed to the USDC as c/a 4:12-cv-02216-MGL.[1]

Hunt has not been served by BBT. Hunt does not waive service by BBT.

Hunt objects to an order of reference of this matter to a master-in-equity/special referee pursuant to SCRCP 53.

1. Denied. See Defenses and Motion to Dismiss.
2. Denied.
3. Denied.
4. Denied.
5. Denied.
6. Denied.
7. Denied.
8. Denied.
9. Denied
10. Denied.
11. Denied.
12. Admitted.
13. Denied.

[1] Hunt asserts that all of the counterclaims/defenses have been admitted by BBT where the USDC states that BBT did not answer Hunt's complaint at exhibit 43 (Doc. # 30 on page 4). SCRCP 12(a) and SCRCP 8(d).

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14. Denied.
15. Denied.
16. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above or some part thereof, #ADMITTED#

But that such interests or liens are junior and subsequent to the lien of the Plaintiff's Mortgage *******DENIED*********

or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate.

Said liens or interests are of record in the Office of the RMC or the Clerk of Court of the aforesaid county and are described as follows:

A. CJ Developers, LLC, by virtue of a mortgage given by Christopher T. Brereton and Amanda Brereton in the amount of $107, 000.00dated March 6, 2001, and recorded March 13, 2001 in Book 2675 at Page 336. Also including any other liens they may have. The Plaintiff is informed and believes that this Mortgage has been paid in full and either should be satisfied of record or the lien released from the subject real estate.

B. Willow Greens Homeowners Association, Inc. by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions and Restrictions recorded herein, and any amendments thereto. Also including any other liens they may have.

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

(1) Denied.

(2) Admitted.

(3) Denied.

(4) Denied.

(5) Denied.

(6) Denied.

(7) Denied.

(8) Denied.

Affirmative Defenses:

Fraud: See the second cause of action in the counterclaims/defenses; and see arguments in the Motion for Summary Judgment at the second cause of action on pages 6 – 10.

Misrepresentation: See the third cause of action in the counterclaims/defenses; and see arguments in the Motion for Summary Judgment at the third cause of action on pages 10 – 13.

Illegality: See the third cause of action in the counterclaims/defenses; and see arguments in the Motion for Summary Judgment at the third cause of action on pages 10 – 13.

Laches, res judicata, statute of limitations and waiver: Plaintiff-BBT have failed to serve defendant Cindy B. Hunt within the three year statute of limitations. And see the eighth cause of action in the counterclaims/defenses; and see arguments in the Motion for Summary Judgment at the eighth cause of action on pages 23 – 25.

Satisfaction/Release: See the eighth cause of action in the counterclaims/defenses; and see arguments in the Motion for Summary Judgment at the eighth cause of action on pages 23 – 25.

Statute of frauds: See the third cause of action in the counterclaims/defenses; and see arguments in the Motion for Summary Judgment at the third cause of action on pages 10 – 13. Thereafter, Hunt argues that the mortgage[2] is no longer in writing as required such that the statute of frauds is violated by BBT. Fici v. Koon, 372 S.C. 341, 348, 642 S.E.2d 602 (S.C. 2007).

SCRCP 12(b)(5) insufficiency of service of process: Plaintiff-BBT have failed to serve defendant Cindy B. Hunt within the three year statute of limitations. And in this matter it has been over ninety days since the summons and complaint has been filed and BBT has failed to serve Hunt. BBT is currently seeking an order of publication on Hunt where Hunt argues that the affidavits of non service and the affidavit of the order of publication are defective.

SCRCP 12(b)(6) failure to state facts sufficient to constitute a cause of action: Hunt argues that after the application of the above affirmative defenses that BBT has failed to state facts sufficient to constitute a cause of action.

Respectfully submitted,

Cindy B. Hunt
Pro Se
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

DATE: August 2, 2013

[2] For thirty years and for about $145,000.00.

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State of South Carolina	)	IN THE COURT OF COMMON PLEAS
County of Horry	)	FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO: 2013-CP-26-2528
Branch Banking and	)	
Trust Company	)	
Plaintiff,	)	
	)	COUNTERCLAIMS
vs.	)	Non Jury Trial
Cindy B. Hunt; Willow Greens	)	
Homeowners Association, Inc.;	)	
CJ Developers, LLC.	)	
Defendant(s)	)	
_____	)	

HORRY COUNTY
13 AUG -2 PM 4:17
MELANIE WIGGINS-WARD
CLERK OF COURT

These counterclaims are supported by the prior pleadings at c/a 4:09-cv-2151-JMC-TER; c/a 4:11-cv-00870-MGL; and CASE NO: 2012-CP-26-5264 which was removed to the USDC as c/a 4:12-cv-02216-MGL.[1]

Affidavits by Hunt: See attached exhibit # 46; and in CASE NO: 2012-CP-26-5264 see exhibit #s 3 and 26.

Hunt has not been served by BBT. Hunt does not waive service by BBT.

Jurisdiction and the facts:

1. These counterclaims are to recover for a massive fraud, fraudulent concealment and conversion of Plaintiffs' accounts perpetrated upon her by BBT, principally through a loan scheme and concealment of the loan scheme from Hunt, FDIC and the Horry County Police Department (HCPD).

2. This action arises under the common and statutory laws of South Carolina, hereinafter more fully appears.

3. Cindy B. Hunt, is a United States citizen and resident of the County of Horry, State of South Carolina.

4. BBT is a corporation doing business in South Carolina.

5. The branch in question is located at 310 Wright Boulevard, Conway, South

[1] Hunt asserts that all of these counterclaims have been admitted by BBT where the USDC states that BBT did not answer Hunt's complaint at exhibit 43 (Doc. # 30 on page 4). SCRCP 12(a) and SCRCP 8(d).

Carolina, in Horry County.

6. The events in question occurred in Horry County, South Carolina.

7. None of the causes of action in these counterclaims are subject to arbitration.

8. Hunt is an attorney.

9. Hunt's Interest on Lawyers Trust Account (IOLTA) was located at BBT Branch Banking and Trust Company (hereinafter BB&T) from April 1996 – May 2008 in Conway, Horry County, South Carolina.

10. Hunt is a fiduciary/settler/trustee/beneficiary of her IOLTA. The SC Bar is a beneficiary to the IOLTA.

11. Hunt and BBT and its employees/agents have a fiduciary relationship.

12. BBT and employees/agents were and are a fiduciary/trustee to the IOLTA.

13. Hunt imposed a special confidence in BBT and its employees where they actively sought and did gain her trust and confidence.

14. At all times applicable that Hunt was the only attorney in her law practice.

15. Danny Fogle recommended that Hunt open the POD trust in May 2000 where Hunt named herself trustee and Davis the beneficiary. Cathy Lambert opened the POD trust.

16. The coastal gold benefits of in excess of $150,000.00 traveled to the POD account. Hunt loss the coastal gold benefits when she closed the POD trust account in May 2008.

17. Hunt is still alive.

18. Davis never made a contribution to the POD account.

19. Hunt's CD, savings and POD trust deposits from May 2000 – May 2008 exceeded a million dollars.

20. In 9/2003 Hunt bought a new home. BBT did the mortgage.

21. On or about 4/2004 the trustee BBT subjected the POD trust to a setoff.

22. Danny Fogle handled the Davis 9/2004 mortgage application and loan which was approved in about two weeks time where Davis lived in Maryland, had no assets at BB&T, had not assets in SC and their debt to income ratio was insufficient for a mortgage on a 2nd home.

23. The only account that Davis has ever had at BBT is her 9/2004 mortgage.

24. On 9/24/2004 Davis had insufficient assets (as per the mortgage application, etc) to qualify for a mortgage on a second home.

25. Davis stated in writing twice in 2004 that she had no prior accounts at BBT.

26. Hunt refinanced her 2003 mortgage at BBT in May 2007. Karen Butcher, an employee of BBT completed the 2007 mortgage application prior to Hunt arriving at the Bank.

27. The 2007 mortgage loan application did not show the unauthorized loans: transfer management and portfolio.

28. Plaintiff's 7/19/2007 customer profile shows that Hunt had the following accounts at BBT: Checking-Direct Free Interest (savings account); Checking-Interest Checking (POD Trust); Debit Card; **transfer management (an unauthorized loan)**; a closed auto loan; a closed conventional mortgage; an active conventional mortgage; **Portfolio (an unauthorized loan)**; a closed commercial loan; Credit Card and Hunt's **IOLTA**.

29. On 1/19/2008 BBT employee Kaci Sansbury went into the mortgage portion of the system and was convinced that Davis was the owner of Hunt's POD trust.

30. On 1/19/2008 BBT disclosed the POD account balance, etc to Davis when she went to the Bank about being reported to a credit reporting agency (CRA) for a late mortgage payment.

31. On 1/19/2008 Sansbury never did locate the mortgage of Davis.

32. Six months earlier the 7/19/2007 printout of Hunt's customer profile showed at least two unauthorized loans.

33. Hunt complained to the Federal Deposit Insurance Corporation (FDIC) on March 24, 2008 about the disclosure to Davis. BBT wrote four letters to the FDIC: two from Judy Teal, one from David Craven and one from Mark Booz.

34. An FDIC proceeding/investigation was held from March 24, 2008 – September 2, 2008.

35. Teal in her letter to the FDIC did not disclose anything about the at least two additional unauthorized loans.

36. Booz in his letter to the FDIC did not disclose anything about the at least two additional unauthorized loans in the customer profile.

37. Craven in his letter to the FDIC did not disclose anything about the at least two additional unauthorized loans in the customer profile.

38. On or about 4/2008 the trustee BBT subjected the POD trust to a setoff of $855.00.

39. Hunt demanded the return of the $855.00 and BBT refused.

40. The $855.00 check was from the SC Office of Indigent Defense and was for legal services provided by Hunt.

41. The $855.00 check was mailed to Hunt's business address of 1415 3rd Ave. STE

103 Conway, SC.

42. BBT has at least two Banking Service Agreements (BSA).

43. On May 19, 2008, after receiving a copy of the 4/11/2008 letter from the FDIC on or about May 11, 2008, Hunt went to BBT to close her POD trust and IOLTA.

44. Danny Fogle walked Hunt to the door and said in a begging voice: "CB please let it go, please let it go".

45. Plaintiff discovered after Thanksgiving in late November 2009 that the printout of the 7/19/2007 customer profile contained at least two unauthorized loans: transfer management and portfolio.

46. Plaintiff wrote to Trustee BBT on 9/24/2010 disputing the at least two unauthorized loans in her customer profile.

47. In the 9/24/2010 letter to BBT Hunt requested an updated copy of her customer profile.

48. The Trustee BBT replied on 9/27/2010 stating: "We received your letter disputing two loans reported on your account profile from 7/19/07. According to our records your account profile currently does not reflect these loans."

49. Trustee BBT failed to provide Hunt with an updated copy of the customer profile as requested on 9/24/2010 via 1st class and certified mail return receipt.

50. BBT on its website has provided its customers with instructions to follow regarding identity theft.

51. These website instructions include actions to take if you think you've been a victim of Identity Theft to include filing a police report.

52. After disputing the at least two unauthorized loans in a letter to trustee BBT on Oct. 3, 2010 Hunt filed a police report with the Horry County Police Department (HCPD).

53. After filing the police report on Oct. 3, 2010 a search warrant was sent to Trustee BBT.

54. On 10/21/2010 BBT returned the search warrant to the HCPD with zero documents stating: "We are unable to produce documents as requested. We have no record of accounts with BB&T in reference to the account numbers listed on subpoena."

55. The account numbers listed on the search warrant were taken from the 7/19/2007 customer profile.

56. Included in the 7/19/2007 customer profile were Hunt's 2007 mortgage and other accounts.

57. Through 9/24/2010 the trustee BBT had not notified Hunt that it has no record of her mortgage where Hunt paid this mortgage with its assigned new account

number.

58. From at least 5/31/2000 to 9/26/2010 the trustee BBT never advised Hunt of the creation, use/profit or deletion of at least two unauthorized loans in her customer profile where the customer profile also contained Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts.

59. The officers of trustee BBT, stated to Hunt that there was "no claim of fiduciary duty as no fiduciary relationship was ever established with BB&T, no disclosure of financial information to Davis, your account was never wrongfully possessed by another, you have suffered no actionable damages..., and without more, BB&T does not believe it would be fruitful to continue to discuss this matter with you any further. Therefore, BB&T will not necessarily respond to any correspondence or other communications from you."

60. BBT made these false representations to Hunt and to third parties about Hunt's POD, IOLTA, other accounts and transactions.

61. Inside of Hunt's customer profile, BBT on its protected computer created and profited from at least two unauthorized loans where the customer profile also contained Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts.

62. A residual trust remains at BBT.

63. Trustee BBT has failed to disclose these matters to Hunt, the FDIC and the HCPD.

64. Hunt wrote to BBT on 6/4/2012 via certified mail return receipt requesting satisfaction of mortgage.

First Cause of Action: Violations of Privacy under SC Code sections 37-20-170 and 37-20-200 of the Consumer Identity Theft Protection by engaging in conduct that is prohibited by 37-20-110 (5, 9, 12 and 15), 130, 160, 170, 180, 200 and ET FF against BBT.

65. Each previous paragraph and exhibits are repeated herein as if verbatim.

66. At all relevant times, Plaintiff was a "consumer" as that term is defined by 37-20-110 (1).

67. At all relevant times, BBT was a "Consumer credit-reporting agency" or "consumer reporting agency" as that term is defined by 37-20-110 (2).

68. At all relevant times, Plaintiff's accounts including her customer profile, etc. were a "Consumer report" or "credit report" as that term is defined by 37-20-110 (3).

69. At all relevant times, BBT was a "person" as that term is defined by 37-20-110 (10).

70. At all relevant times, Plaintiff's "personal identifying information" is as that term is defined by 37-20-110 (11(a)).

71. Hunt's customer profile contained the following personal identifying information:

a. Plaintiff's name, DOB and address

b. Plaintiff's full social security number and drivers license number

c. Financial account numbers for multiple accounts

72. At all relevant times, Plaintiff' "records" are as that term is defined by 37-20-110 (14).

73. At all relevant times "file" is as that term is defined by 37-20-110 (8).

74. At all relevant times "identity theft" is as that term is defined by 37-20-110 (9).

75. BBTs mailed yearly notices (2003 – 2008) to Hunt stating that they were in compliance with the Gramm Leach Bliley ACT (GLBA).

76. Trustee BBT a credit reporting agency, consumer reporting agency and or other person did:

77. Knowingly, willfully and negligently misuse and improperly access Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and customer profile to do the following: two improper setoffs, improper disclosure to Davis, create, use and profit from the unauthorized beneficiary profile, create, use and profit from the at least two unauthorized loans, deletion of beneficiary profile and deletion of at least two unauthorized loans.

78. Knowingly, willfully and negligently make an entry in Hunt's credit file that affects the ability of Hunt to obtain and retain credit, employment, business or professional licenses, investment opportunities, or insurance.

79. Knowingly, willfully and negligently return the search warrant to the HCPD with zero documents and interfered with a criminal investigation of identity theft, criminal libel, bank fraud, computer fraud and false entry, etc.

80. Knowingly, willfully and negligently requested zero personal identifying information as defined in Section 16-13-510(D) from Davis prior to disclosing Hunt's account balance, etc.

81. Knowingly, willfully and negligently for eight years (5/2000 – 5/2008) engage in daily and multiple security breaches of incidents of unauthorized access to and acquisition of records or data of Hunt that was not rendered unusable through encryption, redaction, or other methods containing personal identifying information that compromised the security, confidentiality, or integrity of personal identifying information maintained by BBT when illegal use of the information has occurred or is reasonably likely to occur or use of the information creates a material risk of harm to Hunt.

82. BBT knowingly, willfully and negligently did not make a good faith acquisition of Hunt's personal identifying information by an employee or agent.

83. Knowingly, willfully and negligently cause Hunt to need a security freeze.

84. And thereafter deprived Hunt of the ability to timely place a security freeze to protect her personal identifying information and credit worthiness where Hunt has suffered multiple credit card denials for large purchases since the deletion of the unauthorized beneficiary profile.

85. Knowingly, willfully and negligently cause Hunt to need to dispute several items in her consumer records. And thereafter deprived Hunt of the ability to timely dispute these items and preserve the consumer records.

86. Knowingly, willfully and negligently sell, lease, loan, trade, rent, or otherwise intentionally disclose Hunt's social security number or a portion of it containing six digits or more to a third party without written consent to the disclosure from Hunt.

87. BBT had no legitimate business or government purpose and was not authorized or specifically permitted by law to do so and there was no imperative for the performance of BBT's duties and responsibilities as prescribed by law.

88. Knowingly, willfully and negligently cause Hunt to suffer public humiliation, mental and emotional distress, embarrassment and subjected Hunt to financial ruin, violations of the SC Professional Rules of Conduct to include disbarment, public humiliation and Hunt has been unable to sit for the Patent Bar exam (BBT has repeatedly threaten a Rule 11 violation), attorney fees (to date $1,328,000.00), etc.

89. Knowingly, willfully and negligently violated "the appropriate standard of care for the protection, security, and confidentiality of the nonpublic personal information and private data of Hunt numerous times as set by the Gramm-Leach-Bliley Act under 15 USC 6801-6809 and 6821-6827 from 2000 - 2008.

90. In May 2008 the FDIC found that BBT violated GLBA.

91. BBT's conduct included false, fictitious or fraudulent statement or representations to an officer, employee, customer or agent of the financial institution or by providing any document to an officer, employee, or agent of the financial institution, knowing that the document was forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation causing improper access and improper use of Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, Hunt's customer profile and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

92. BBT owed Hunt a duty of care as stated under GLBA at 15 USC 6801-6809 and 6821-6827.

93. BBT breached its duty of care to Hunt.

94. BBT failed to exercise slight care.

95. Hunt has damages resulting from the breaches of duty.

96. Hunt's deposits in her POD trust account for January 2006 – December 2006 exceeded $100,000.00.

97. Hunts deposits in the POD trust account and the CD for January 2007 – December 2007 exceeded $100,000.00.

98. In 2001, 2002, 2009 and 2010 BBT did not provide Hunt with a clear and conspicuous disclosure, in writing or in electronic form or other form permitted by the regulations of such financial institution's policies and practices.

99. Davis has not and is not in any way affiliated with BBT other than through her mortgage from about 9/2004 thru about 4/2006.

100. Hunt is not a commercial entity.

101. BBT obtained or attempted to obtain, or cause to be disclosed or attempted to cause to be disclosed to Davis and others, customer information of a financial institution relating to another person-- by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution; by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution.

102. In so doing BBT did knowingly and willfully and negligently engage in multiple incidents of conduct that is prohibited by 37-20-110 (5, 9, 12 and 15), 130, 160, 170, 180 and 200.

103. At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts.

104. See below for relief sought.

Second Cause of Action: Fraud, constructive fraud and fraud in the inducement against BBT.

105. Each previous paragraph and exhibits are repeated herein as if verbatim.

106. BBT mailed and provided Hunt numerous documents and monthly statements.

107. BBT told Hunt that during her life that she and she alone would have access to the monies of the POD trust.

108. BBT told Hunt that the monies of the POD trust would only be made available to Davis at her death and at the time of Hunt's death that Davis must provide the Bank with identification of herself and proof of Hunt's death.

109. BBT knew or should have known that their statements were false.

110.BBT statements were material in that the IOLTA, POD trust and other accounts should have been handled differently from the way BBT in fact treated them.

111. BBT said and wrote of one type of treatment and did another to include improper and or illegal treatment of Hunt's accounts.

112.BBT had knowledge of the falsity of their statements or acted with reckless disregard for the truth.

113.BBT intended for Hunt, the FDIC, HCPD and or other third parties to act upon their statements.

114. Plaintiff was ignorant of the falsity of these statements.

115. Plaintiff and other third parties relied on these statements.

116. Plaintiff and other third parties had a right to rely on these statements.

117. BBT made false representations relating to a present or preexisting fact.

118. BBT intended to deceive Hunt and other third parties.

119. Plaintiff had a right to rely on the representations made to her.

120. Plaintiff has consequent and proximate injury.

121. At all times pertinent hereto, the conduct of BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, willful, reckless, and in grossly negligent disregard for federal and state laws and the rights of Plaintiff, the IOLTA and other accounts of Hunt.

122. See below for relief sought.

Third Cause of Action: Negligent misrepresentation, negligence, negligence per se and gross negligence against BBT.

123. Each previous paragraph and exhibits are repeated herein as if verbatim.

124. BBT owed Hunt a duty of care.

125.BBT breached its duty of care to Hunt.

126.BBT failed to exercise slight care.

127. Hunt has damages resulting from the breaches of duty.

128. BBT engaged in negligent misrepresentation and was negligent, negligent per se and grossly negligent where through its conduct caused improper access and improper use of Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, Hunt's customer profile and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

129. At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts.

130. See below for relief sought.

Fourth Cause of Action: Conversion against BBT.

131. Each previous paragraph and exhibits are repeated herein as if verbatim.

132. BBT continuously for at least eleven years (2000 – 2012) misused, misappropriated, illegally used and or illegally detained Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and with held two improper setoffs ($226.25 & $855.00), disclosure to Davis, Davis mortgage, unauthorized beneficiary profile and at least two unauthorized loans.

133.BBT continuously for at least eleven years (2000 – 2012) wrongfully, unlawfully and without authorization, assumed control and dominion over Plaintiffs' IOLTA, POD trust, savings account, mortgages, CD, car loan, customer profile and other accounts; and with held profits; and failed to disclose information of two improper setoffs, disclosure to Davis, Davis mortgage, unauthorized beneficiary profile and at least two unauthorized loans.

134.BBT used Hunts' IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and profits to justify extending loans to others.

135.BBT used Hunts' IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and profits to show regulatory authorities that BBT's exposure due to default on the unauthorized beneficiary profile and at least two unauthorized loans was replaced by the value of monies/assets held by the Bank that belonged to Hunt.

136.BBT subjected Hunts' IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and profits to setoff of the Davis mortgage, the unauthorized beneficiary profile and at least two unauthorized loans.

137.BBT through setoff, etc made Hunts' IOLTA, accessible by persons that were not employed in Hunt's law firm.

138. On 4/02/2004 BBT did a setoff against Hunt's POD account for $225.00.

139. The $225.25 check was for legal services provided by Hunt.

140. Hunt had her IOLTA at BBT from April 1996 – May 19, 2008.

141. The $225.25 check had a memo note of: attorney fee.

142. On 5/02/2008 BBT did a set off against Hunt's POD account for $855.00.

143. The trustee BBT Teal in her June 27, 2008 letter to the FDIC stated that "the bank exercised the right of setoff" against the POD account.

144. The trustee BBT Teal in her June 27, 2008 letter to the FDIC intentionally and incorrectly directed the FDIC to Reference page 10, section 13 of the BSA for non commercial accounts.

145. The trustee BBT Teal in her June 27, 2008 letter to the FDIC failed to disclose that the setoff should have been made against the IOLTA as per the commercial BSA at entry 75-24 on page 8 at section 15.

146.BBT was unjustly enriched at the expense of Hunt through the improper use of all of her accounts at BBT.

147. Plaintiff had an absolute and unconditional right to the immediate possession and/or title to the monies and profits of the IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, and customer profile including two improper setoffs, disclosure to Davis, Davis mortgage, unauthorized beneficiary profile and at least two unauthorized loans.

148. At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts.

149. See below for relief sought.

Fifth Cause of Action: Breach of Fiduciary Duty / Breaches of Trust for Violations of SC Common Law and SC Code Ann. section 62-7-1001(a) by engaging in conduct that is prohibited at 62-7-801 thru 62-7-817 against BBT.

150. Each previous paragraph and exhibits are repeated herein as if verbatim.

151. Hunt closed the IOLTA on 5/19/2008.

152. BBT is required to keep adequate records of the administration of the IOLTA.

153. BBT deleted the following records: the unauthorized beneficiary profile; and the at least two unauthorized loans in Hunt customer profile with the IOLTA.

154. BBT intended to delete the following: the unauthorized beneficiary profile; and the at least two unauthorized loans in Hunt customer profile with the IOLTA.

155. Hunt's customer profile over its life included at least four depositary accounts with BBT: regular checking, IOLTA, POD account and savings account; at least two unauthorized loans, CD, unauthorized beneficiary profile and other accounts.

156. At no time has BBT had proof of death of Hunt.

157.BBT did an unauthorized beneficiary profile against the POD account for Davis.

158. The FDIC made a finding of violation of the Gramm Leach-Bliley Act in May 2008 for the disclosure to Davis.

159. Plaintiff closed the IOLTA on May 19, 2008.

160. The 7/19/2007 printout of Plaintiff's customer profile shows two unauthorized loans called: transfer management and portfolio.

161.BBT website on Identity Fraud refers its customers to the FTC website.

162. Closure of an account is recommended by the Federal Trade Commission's (FTC) website if identity theft is suspected.

163.BBT yearly (2003-2008) mailed Hunt statements of compliance with the GLBA.

164. Hunt has made numerous transactions involving her IOLTA.

165. Davis made numerous transactions involving her mortgage while the unauthorized beneficial profile was in Hunt's customer profile with the IOLTA, POD and other accounts.

166. The owners of the at least two unauthorized loans: transfer management and portfolio made numerous transactions involving their loans while the unauthorized loans were in Hunt's customer profile with the IOLTA and other accounts.

167.BBT is a Bank/financial institution.

168.BBT is engaged in businesses that affect public interest.

169.BBT misconduct was made for an improper purpose to include harassing Hunt and to cause unnecessary delay and needless increase in the cost of litigation and to divert Hunt, the FDIC and the police away from the at least two unauthorized loans in Hunt's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts.

170.BBT did through its conduct caused improper access and improper use of Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and Hunt's customer profile; and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

171.BBT breached its fiduciary duty to Hunt where BBT knowingly did through its conduct caused improper access and use of Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, Hunt's customer profile and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

172.BBT on its protected computer inside of Hunt's customer profile: created and profited from an unauthorized beneficiary profile (Davis mortgage) and at least two unauthorized loans where the customer profile also contained Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts.

173. That trustee BBT and its employees illegally and improperly used Hunt's Interest on Lawyer's Trust Account (IOLTA), POD trust, savings account, mortgages, CD, car loan, other accounts and Hunt's customer profile for the benefit of its own

business and or third parties when it did the following: two setoffs, disclosure to Davis; creation and use of the unauthorized beneficiary profile; and the creation and use of the at least two unauthorized loans.

174. Trustee BBT in returning the search warrant with zero documents is protecting specific employee(s) from the possible criminal prosecution of identity theft, false entry, bank fraud, computer fraud, criminal libel, forgery, etc. and is attempting to save itself from the fallout of the same to include punitive damages, etc. and huge fines as described at 12 U.S.C. 1818(i)(2) by the FDIC for each day that these matters went on.

175. Trustee BBT has conflicts of interest where it returned the search warrant with zero documents.

176. That under the law Hunt continues to have trust assets of the combined trust at BBT to include but is not limited to the profit and property associated with the unauthorized beneficiary profile; the profit and property associated with the at least two unauthorized loans in Hunt's customer profile; Plaintiff's mortgage and profit; profit made by trustee BBT on all accounts of Hunt from 1993 to present time; interest at the legal rate; pre and post judgment interest; and other assets to be determined after an accounting.

177. That BBT has and continues to make thousands of dollars in profit were it exceeded the use of, improperly or illegally used Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and customer profile.

178. That, on account of BBT's conduct of exceeding, improperly and or illegally using the IOLTA, POD trust, savings account, mortgages, CD, car loan and other account funds, that BBT made a profit that does not belong to it; and that BBT committed a constructive fraud and constituted an ex maleficio trust.

179. That BBT collected the said IOLTA, POD trust, savings account, mortgages, CD, car loan and other account funds.

180. That, under the law, BBT was required to keep the IOLTA funds separate, keep the IOLTA funds in a state of security, keep the IOLTA funds accessible only to attorneys of Hunt's law practice, not use the IOLTA trust funds for its own business or third parties and not commingle the IOLTA trust funds with its own funds or others; that BBT failed to do all of these things.

181. BBT allowed the IOLTA, POD trust, savings account, mortgages, CD, car loan and other accounts of Hunt to be accessible by other customers to include the beneficiary profile and the at least two unauthorized loans.

182. BBT allowed the IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and financial resources of Hunt to be misappropriated for its own use and or the use of a third parties.

183. That, on account of BBT's conduct of exceeding the use of, improperly using and or illegally using Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan and other accounts where Hunt had no knowledge of this and never ratified this conduct - BBT has subjected Hunt, an attorney, to financial ruin, criminal prosecution for mortgage loan application fraud, violations of the SC

Professional Rules of Conduct to include disbarment, the inability to earn a living (Plaintiff has been unable to sit for the Patent Bar) and public humiliation, all of which continues each day.

184. That, on account of BBT exceeding the use of and/or improperly using Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan & other accounts the trust extends to the combined fund, & also created a lien on the entire mass of BBT assets for the assets of the combined fund.

185. That, on account of BBT exceeding the use of and/or improperly using Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan & other accounts BBT was unjustly enriched at the expense of Hunt.

186. That under the law Hunt is entitled to be paid immediately and in full out of the assets of BBT.

187. To date BBT has not paid Hunt.

188. BBT's entire assets are security.

189. BBT failed to disclose this conduct to Hunt.

190. BBT knowingly failed to disclose this conduct to Hunt, FDIC and the Police.

191. BBT accepted and retained the benefit of profits under these circumstances such that it would be inequitable for BBT to retain the benefit without payment of value.

192. Hunt's existing 2007 mortgage remains at BBT.

193. At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts.

194. Plaintiff seeks damages under 62-7-1002 thru 62-7-1004 and 62-7-1001(b); and **See below for relief sought.**

Sixth Cause of Action: Violations of SC Probate Code Ann. sections 62-6-101 thru 62-6-106 against BBT.

195. Each previous paragraph and exhibits are repeated herein as if verbatim.

196. Hunt had at least four depositary accounts with BBT: regular checking, IOLTA, POD account and savings account.

197. The regular checking account (1995-2000) had coastal gold benefits in excess of $150,000.00.

198. Hunt converted the regular checking account to the POD account in May 2000.

199."P.O.D. account" means an account payable on request to one person during his lifetime and on his death to one or more P.O.D. payees.

200.A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee.

201."Proof of death" includes a death certificate or record or report.

202.BBT did a setoff against the POD trust in 4/2004 for a check written to Hunt as a legal fee.

203.BBT did a setoff against the POD trust in 4/2008 for a check written to Hunt as a legal fee.

204.BBT did a disclosure against the POD account in 1/2008 to Davis.

205. On 1/19/2008 BBT did not ask Davis for any identification.

206. At no time has BBT had proof of death of Hunt.

207.BBT did an unauthorized beneficiary profile against the POD account for Davis.

208. The FDIC made a finding of violation of the Gramm Leach-Bliley Act in May 2008 for the disclosure to Davis.

209. Plaintiff closed the POD account on May 19, 2008.

210. The 7/19/2007 printout of Plaintiff's customer profile shows two unauthorized loans called: transfer management and portfolio.

211.BBT website on Identity Fraud refers its customers to the FTC website.

212. Closure of an account is recommended by the Federal Trade Commission's (FTC) website if identity theft is suspected.

213.BBT yearly (2003-2008) mailed Hunt statements of compliance with the GLBA.

214. Hunt has made numerous transactions involving her POD account.

215. Davis made numerous transactions while the unauthorized beneficial profile was attached to the POD account.

216.BBT is a Bank.

217.BBT is engaged in businesses that affect public interest.

218.BBT misconduct was made for an improper purpose to include harassing Hunt and to cause unnecessary delay and needless increase in the cost of litigation and to divert Hunt, the FDIC and the police away from the at least two unauthorized loans in Hunt's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts.

219.BBT did through its conduct caused improper access and improper use of

Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and Hunt's customer profile; and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

220. Hunt suffered monetary or property loss as a result of BBT's unfair or deceptive act(s).

221. At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts.

222.See below for relief sought.

Seventh Cause of Action: Violation of UNFAIR TRADE PRACTICES Act: SC Code § 39-5-10 thru 39-5-170 against BBT.

223. Each previous paragraph and exhibits are repeated herein as if verbatim.

224. Hunt had at least four depositary accounts with BBT: regular checking, IOLTA, POD account and savings account.

225."Proof of death" includes a death certificate or record or report.

226. At no time has BBT had proof of death of Hunt.

227.BBT did an unauthorized beneficiary profile against the POD account for Davis.

228. The FDIC made a finding of violation of the Gramm Leach-Bliley Act in May 2008 against BBT.

229. Plaintiff closed the savings account in March 2008.

230. Plaintiff closed the IOLTA on May 19, 2008.

231. Plaintiff closed the POD account on May 19, 2008.

232. Hunt's 2007 mortgage remains at BBT.

233. The 7/19/2007 printout of Plaintiff's customer profile shows two unauthorized loans called: transfer management and portfolio.

234.BBT website on Identity Fraud refers its customers to the FTC website.

235. Closure of an account is recommended by the Federal Trade Commission's (FTC) website if identity theft is suspected.

236.BBT yearly (2003-2008) mailed Hunt statements of compliance with the GLBA.

237. Hunt has made numerous transactions involving her IOLTA.

238. Davis made numerous transactions while the unauthorized beneficial profile was attached to the POD account.

239. BBT is a Bank.

240. BBT is engaged in businesses that affect public interest.

241. BBT misconduct was made for an improper purpose to include harassing Hunt and to cause unnecessary delay and needless increase in the cost of litigation and to divert Hunt, the FDIC and the police away from the at least two unauthorized loans in Hunt's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts.

242. BBT did through its conduct caused improper access and improper use of Plaintiff's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and Hunt's customer profile; and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

243. Hunt suffered monetary or property loss as a result of BBT's unfair or deceptive act(s).

244. At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts.

245. Plaintiff seeks damages under: SC Code § 39-5-140(a) actual damages, punitive damages, cost, attorney fees, such other relief as Court deems necessary or proper.

246. See below for other relief sought.

Eighth Cause of Action: Mortgage loan fraud under SC Code Ann. 37-22-190 and 37-5-108 and 29-3-310 against BBT.

247. Each previous paragraph and exhibits are repeated herein as if verbatim.

248. Hunt refinanced her 2003 BBT mortgage with BBT in May 2007.

249. Hunt's 7/19/2007 customer profile listed two unauthorized loans: transfer management and portfolio.

250. Hunt 2007 mortgage application did not list the at least two unauthorized loans in Hunt's customer profile along with her IOLTA, POD account, CD, savings, mortgage and other accounts.

251. Judy Teal in her 4/11/2008 letter to the FDIC stated that the events of the 1/19/2008 disclosure to Costella Davis occurred as the result of BBT setting up Hunt's POD trust from the beginning (May 2000) to share an unauthorized beneficiary profile with Costella Davis.

252. Judy Teal stated in her 4/11/2008 letter to the FDIC that BBT had created a beneficiary profile for Davis that was connected to Hunt's POD account.

253. Hunt disputed the loan entries "transfer management" and "portfolio" in her customer profile in a 9/24/2010 letter of dispute to BBT.

254.BBT stated in there 9/27/2010 response letter: the two loans listed on the 7/19/2007 profile are not currently in your profile.

255. On 10/21/2010 BBT wrote to the HCPD: "We are unable to produce documents as requested. We have no record of accounts with BB&T in reference to the account numbers listed on subpoena."

256. Hunt complained to the FDIC in 3/2008.

257. David Craven wrote to Hunt in 3/2008.

258. David Craven falsely stated in his letter that no fiduciary relationship had ever been established between Hunt and BBT.

259. Judy Teal sent the letter of David Craven to the FDIC.

260.BBT has not issued a satisfaction of mortgage to Hunt.

261. At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts.

262.See below for relief sought.

Ninth Cause of Action: Defamation - libel per se and or slander per se against BBT.

263. Each previous paragraph and exhibits are repeated herein as if verbatim.

264. Each previous paragraph and exhibits are repeated herein as if verbatim.

265.BBT published the false and unauthorized beneficiary profile in its computers to Costella Davis, Karen Butcher, Kaci Sansbury, Tamara Cannon and others.

266.BBT published the at least two false and unauthorized loans in its computers to Karen Butcher, Tamara Cannon and Kaci Sansbury, in the printout of the customer profile dated 7/19/2007, and to others.

267.BBT spoke of the false, unauthorized beneficiary profile and at least two unauthorized loans in its computers to Costella Davis, Karen Butcher, Kaci Sansbury, Tamara Cannon and others.

268.BBT excessively and improperly published the unauthorized beneficiary profile

and at least two unauthorized loans since the computer entry was available to the staff at large.

269. The publication and or spoken statements to these third persons were not privileged.

270.BBT was at fault for the publication and spoken statements.

271. The libelous publication and spoken statements were made with actual malice where BBT had knowledge of its falsity or reckless disregard of the truth.

272. The libeling continues each day were BBT has refused to accept responsibility for these illegal and improper entries in Hunt's customer profile.

273. At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her accounts.

274.See below for relief sought.

Tenth Cause of Action: Intentional destruction of evidence against BBT.

275. Each previous paragraph and exhibits are repeated herein as if verbatim.

276.BBT is required to keep adequate records of the administration of the trust.

277. Hunt notified BBT of the disclosure to Ms. Davis on 1/22/2008 and requested that their legal department call Hunt.

278. Teal in her April 11, 2008 letter to the FDIC states from Feb 1, 2008 through March 17, 2008: "I have had numerous conversations with Ms. Hunt."

279. Teal in her April 11, 2008 letter to the FDIC stated that beneficiary profile for Davis had been deleted.

280. At the time Hunt closed the IOLTA and POD trust account, on 5/19/2008, BBT indicated on the exit interview form that it had not saved the account histories of the POD and IOLTA.

281.BBT deleted the at least two unauthorized loans in Hunt customer profile.

282. At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts.

283.Strike all pleadings of BBT: present and future; Default Judgment; actual and punitive damages; and See below for other relief sought.

Eleventh Cause of Action: Slander of all titles (mortgages and car as to Hunt and all other borrowers) against BB&T.

284. Each previous paragraph and exhibits are repeated herein as if verbatim.

285. Hunt financed her 2003 mortgage with BBT.

286. In May 2007 the balance of the 2003 mortgage was about $91,000.00.

287. Hunt refinanced her 2003 mortgage in May 2007 with BBT.

288. In 2007 the property appraised for about $190,000.00.

289.BBT recorded the 2007 mortgage with the register of deeds for Horry County.

290. Today the balance of the 2007 mortgage is about $140, 000.00.

291. Hunt 2007 mortgage application did not list the two unauthorized loans in Hunt's customer profile along with her IOLTA, POD account, CD, savings, mortgage and other accounts.

292.BBT has not issued a satisfaction of mortgage to Hunt.

293. Hunt's interest rate on the 2007 mortgage is 6.375%.

294. Hunt must discharge the 2007 mortgage before she can complete refinancing.

295. At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt, mortgages and her other accounts.

296. Special Damages: removal of mortgage on title, return of down payment, return monies paid, pre and post judgment interest, legal interest, costs, attorney fees and punitive damages; and **See below for other relief sought.**

Hunt prays for the following relief:

1) Default Judgment; and

2) The Court removes the trustee BBT and its employees, appoints a special fiduciary and require an accounting; and

3) Pending a final decision on Hunt's request to remove the trustee BBT and its employees that the Court orders relief under Sections 62-7-1002(a), 62-7-1001(b), etc. to protect the trust property and the interests of the beneficiaries, etc; and

4) In its final order that the Court removes the trustee BBT and its employees, appoints a special fiduciary, require an accounting and orders relief under Sections 62-7-1002(a), 62-7-1001(b), etc. to protect the trust property and the interests of the beneficiaries, etc; and

5) All of the following:

a. Hunt makes a demand for fifty million dollars in actual damages;

b. Report BBT to the FBI, FDIC-OIG, and the US Attorney.

c. Report Craven, Licata and Booz to their respective Bar Associations.

d. An accounting of all authorized and unauthorized accounts of Hunt customer profile including the Davis mortgage and the CD.

e. The appointment of a special fiduciary; Impose a lien on BBT.

f. BBT pays a surcharge for mismanagement of Hunt accounts.

g. Strike all pleadings of BBT: past, present and future.

h. Actual and compensatory damages, disgorgement of profits and restitution damages; Legal interest, Prejudgment interest, Post Judgment interest.

i. BBT pay face value of the Coastal Banker Gold benefits and inconvenience in relocating accounts.

j. Statutory damages, consequential damages, general damages, special damages, actual damages and punitive damages.

k. Constructive and Resulting trusts with tracing.

l. Damages for mental anguish and emotional distress.

m. BBT to pay to Hunt all monies paid on the current mortgage with legal, prejudgment and post judgment interest; punitive damages.

n. BBT to pay to Hunt the amount of the 2006 CD with legal, prejudgment and post judgment interest.

o. BBT to pay to Hunt the life amount of monies deposited in the regular checking account, savings account and POD trust with legal prejudgment and post judgment interest.

p. BBT to pay to the SC Bar the life amount of monies deposited in the IOLTA with statutory damages, legal, prejudgment and post judgment interest and punitive damages, etc.

q. BBT to pay to Davis and the other borrowers pursuant to agreement for each plus loan amount, amount paid on loan with statutory damages, legal, prejudgment and post judgment interest and punitive damages, etc.

r. BBT to pay to Hunt the original loan amount of all of Hunt's authorized loans with legal, prejudgment and post judgment interest.

s. BBT to pay to Hunt the original loan amount of all of the unauthorized loans in Hunt customer profile, including the Davis mortgage with legal, prejudgment and post judgment interest.

r. Hunt is to be allowed to amend the counterclaims to include more causes of actions damages and add parties, etc.

t. BB&T to immediately provide in a readable and understandable format the documents that were requested in the Oct 18, 2010 search warrant by the HCPD and any other documents that the HCPD may request.

u. BBT to pay all costs and expenses, including all attorney fees (past, present and future) to include Hunt, an attorney, and other attorneys pursuant to SC Ann. 62-7-1001(b); SC Ann. 62-7-1004; unclean hands (unauthorized practice of law (two accounts), aiding and abetting the unauthorized practice of law (two accounts)), etc. for this entire matter including the FDIC proceeding.

v. BBT to pay all costs and expenses, including all attorney fees (past, present and future) to include Hunt, an attorney, and other attorneys for this entire matter including the FDIC proceeding.

w. The attorney fees as of March 6, 2013 were $2,665,500 where Hunt has already paid $8,000.00 of these fees.

x. BBT to remove all negative status from the credit reporting agencies on Hunt, Davis and others.

y. BBT to remove all mortgages and liens from the property of Hunt, Davis and others.

z. Any other relief that this Court deems just and proper.

Respectfully submitted,

C B Hunt

Cindy B. Hunt
Pro Se
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

DATE: August 1, 2013

State of South Carolina) IN THE COURT OF COMMON PLEAS

County of Horry) FIFTEENTH JUDICIAL CIRCUIT

) CASE NO: 2013-CP-26-2528

Branch Banking and)

Trust Company)

Plaintiff,) FIRST AMENDED

) COUNTERCLAIMS and DEFENSES

vs.) Non Jury Trial

Cindy B. Hunt; Willow Greens)

Homeowners Association, Inc.;)

CJ Developers, LLC.)

Defendant(s))

_____)

FILED
IN THE COURT OF COMMON PLEAS
2014 JUN -6 PM 3:31
HORRY COUNTY
CLERK OF COURT

This first amended counterclaims and defenses are supported by all the exhibits[1] in this matter and the prior pleadings and documents at c/a 4:09-cv-2151-JMC-TER; c/a 4:11-cv-00870-MGL-TER;[2] Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL[3] and all the pleadings and documents in the present matter at Case No: 2013-CP-26-2528[4] where this matter has been in dispute/litigation for six years (1/2008 – 5/2014).

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[1] See Hunt's affidavits at exhibit #s 3, 26, 46 and 70; and exhibit #s 13-15, 17-22, 25 and 34-35 where Hunt reported BBT to the FDIC in March 2008 and where the FDIC made a finding at exhibit #s 17-18 that BBT violated the Gramm Leach Bliley Act (GLBA); and see exhibit #s 28-33 where Hunt reported BBT to the Horry County Police Department (HCPD) in Sept. 2010 and at exhibit # 32 BBT refused to cooperated with the HCPD. Exhibit #s 1-52 were submitted in the USDC without objection by BBT and included five affidavits from Hunt and Davis. Here in after referred to as lawsuit # 1 - was filed in the USDC by Hunt in 8/2009 – see exhibit # 47. Hunt argues that the USDC dismissed lawsuit # 1 to save the then Defendant BBT and employees from the allegations in the TAC at exhibit # 47 entry # 105-1.

[2] Here in after referred to as lawsuit # 2 - was filed in the USDC by Hunt in 4/2011 – see exhibit # 48. Hunt argues that the USDC dismissed lawsuit # 2 to save the then Defendant BBT and employees from the allegations in the FAC at exhibit # 49 entry # 15-8.

[3] Here in after referred to as lawsuit # 3 where the verified complaint in this civil action was filed by Hunt in this court in 7/2012 and removed by BBT to the United States District Court (USDC) in Florence, SC in 8/2013 where BBT was looking for additional help – see exhibit # 49. Lawsuit # 3 was not appealed to the USCA. However, Hunt argues that after the **USCA** reviewed the pleadings (see bottom right corner of most documents in exhibit # 49) in lawsuit # 3 that the USDC dismissed lawsuit # 3 to help the then Defendant BBT bury its misconduct in state court where BBT thereafter filed lawsuit # 4 in state court.

[4] Here in after referred to as lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

All of the exhibits referred to herein have already been submitted to the Court and BBT.

1. **Jurisdiction/Facts:** These counterclaims are to recover for a massive fraud and conversion of Hunts' accounts perpetrated upon her by BBT, principally through a loan scheme and concealment of the loan scheme from Hunt, FDIC and the Horry County Police Department [5](HCPD).

2. Cindy B. Hunt, is a United States citizen and resident of the County of Horry, State of South Carolina.

3. The BBT branch in question is located at 310 Wright Boulevard, Conway, South Carolina, in Horry County.

4. All of Hunt's accounts and loans were opened in Horry County, SC.

5. This action arises under the common and statutory laws of South Carolina, and Federal Laws of the United States.

6. None of the causes of action in these counterclaims are subject to arbitration.

7. Hunt is an attorney and member of the South Carolina Bar.

8. Hunt became a customer at Coastal Federal Savings Bank in 1993.

9. Coastal Federal Savings Bank while Hunt was a customer changed its name to Coastal Federal Bank.

10. All of Hunt's accounts and loans, etc. were opened at Coastal Federal Savings Bank or Coastal Federal Bank.

11. Coastal Federal Savings Bank was a federal charted bank.

12. The SC State Board of Financial Institutions/ South Carolina Banking Commission did not regulate the banking practices of Coastal Federal Savings Bank.

13. Coastal Federal Bank was a federal charted bank.

14. The SC State Board of Financial Institutions/ South Carolina Banking Commission did not regulate the banking practices of Coastal Federal Bank.

15. At exhibit # 3 (page 2 of 9) Hunt did all of her banking at Coastal Federal Savings Bank, Coastal Federal Bank and BBT from 1993 – 2008.

16. Hunt's affidavits are at exhibit #s 3, 26, 46 and 70.

17. **Merger:** At exhibit # 2 the articles of merger between Coastal Federal Bank and BBT were approved on May 23, 2007 by the North Carolina State Banking

[5] See exhibit #s 28-33 where Hunt reported BBT to the Horry County Police Department (HCPD) in Sept. 2010 and at exhibit # 32 BBT refused to cooperated with the HCPD.

Commission.

18. BBT at exhibit # 2 is a North Carolina state charted commercial bank.

19. The SC State Board of Financial Institutions/South Carolina Banking Commission regulates South Carolina state charted banks.

20. The SC State Board of Financial Institutions/South Carolina Banking Commission does not regulate the banking practices of BBT.

21. Fiduciary Relationship: At exhibit # 3 (page 2 of 9) Hunt's Interest on Lawyers Trust Account (IOLTA) was located at BBT Branch Banking and Trust Company (hereinafter BB&T) from April 1996 – May 2008 in Conway, Horry County, South Carolina.

22. Hunt is a fiduciary/settler/trustee/beneficiary of her IOLTA.

23. The SC Bar is a beneficiary to the IOLTA. [6]

24. Hunt and BBT and its employees/agents have a fiduciary relationship.

25. BBT and employees/agents were and are a fiduciary/trustee to the IOLTA.

26. Hunt imposed a special confidence in BBT and its employees where they actively sought and did gain her trust and confidence.

27. At all times applicable Hunt was the only attorney in her law practice.

28. Hunt's IOLTA trust deposits from April 1996 – May 2008 exceeded three million dollars.

29. **POD trust Account:** At exhibit # 3 (page 3 of 9) Danny Fogle of BBT recommended that Hunt open the POD trust in May 2000.

30. At exhibit # 4 Hunt named herself trustee and Davis the beneficiary of the POD account.

31. Hunt did not authorize the POD account at exhibit # 4 to be a joint account with Davis.

32. At exhibit # 4 Cathy Lambert opened the POD trust.[7]

33. At exhibit # 4 coastal gold benefits of in excess of $160,000.00 traveled to the POD account. [8]

34. Hunt loss the coastal gold benefits at exhibit # 10 when she was forced to close

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[6] See SCACR 412 (a)(3).
[7] See affidavit at exhibit # 3 (paragraph 3.e) and the POD signature card at exhibit # 4 (page 2 of 3).
[8] See affidavit at exhibit # 3 (paragraph 3.e) and the POD signature card at exhibit # 4 (page 2 of 3).

the POD trust account in May 2008.[9]

35. Hunt is still alive.

36. Hunt was the only person that made contributions to the POD trust account.

37. Hunt's CD, savings and POD trust deposits from May 2000 – May 2008 exceeded a million dollars.

38. 2003 Mortgage: At exhibit # 49 entry # 14-6 in 9/2003 Hunt bought a new home. Danny Fogle of BBT did the mortgage. (exhibit # 3 para 3.c.)

39. First setoff: At exhibit # 3 (on page 3 of 9) in 4/2004 BBT subjected the POD trust to a setoff. [10]

40. Hunt had her IOLTA at BBT from April 1996 – May 19, 2008.

41. Hunt did not sign the banking service agreements (BSA).

42. BBT has stated how it will treat non commercial setoffs at exhibit # 44 at page 10 of 28.

43. BBT has stated how it will treat commercial setoffs at exhibit # 45 at page 8 of 15.

44. Hunt did not sign the banking service agreements (BSA).

45. The name on the account of the POD at exhibit # 4 is: Cindy B. Hunt trustee Costella H Davis beneficiary.

46. The checks that resulted in the setoffs to the POD account were not in the name of: Cindy B. Hunt trustee Costella H Davis beneficiary.

47. On 4/02/2004 at exhibit # 5 BBT did a setoff against Hunt's POD account for $225.00.

48. The $225.25 check had a memo note of: attorney fee.

49. 2004 Davis Mortgage: Danny Fogle of BBT handled the Davis 9/2004 mortgage application and loan which was approved in about two weeks time where Davis lived in Maryland, had no assets at BB&T, had not assets in SC and their debt to income ratio was insufficient for a mortgage on a 2nd home. [11]

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[9] See affidavit at exhibit # 3 (paragraph 3.e), exhibit # 10 (page 4 of 7) and the POD signature card at exhibit # 4 (page 2 of 3). Hunt was forced to close the POD account at exhibit # 36 as the result of exhibit # 15 (unauthorized beneficiary profile), exhibit # 17-18 (disclosure to Davis) and see complaint of law suit # 2 at exhibit # 49 entry 15-8 (false statements to the FDIC at paragraphs 91-115) and see exhibit #s 28-33 where Hunt reported BBT to the Horry County Police Department (HCPD) in Sept. 2010 and at exhibit # 32 BBT refused to cooperated with the HCPD and BBT's identity theft policy at exhibit # 33 on 7 of 12 recommends closure of accounts that you know or believe have been tampered with or opened fraudulently.

[10] See exhibit # 5.

[11] See exhibit # 3 (page 3 of 9) and exhibit # 6.

50. The only account that Davis has ever had at BBT was her 9/2004 mortgage. [12]

51. On 9/24/2004 Davis had insufficient assets (as per the mortgage application, etc) to qualify for a mortgage on a second home. [13]

52. At exhibit # 6 in 2004 Davis told BBT twice in her mortgage application that she had no existing accounts (n/a) at BBT.

53. 2007 Mortgage of Hunt: At exhibit # 7 in May 2007 the balance of the 2003 mortgage was about $91,000.00.

54. At exhibit # 7 in May 2007 the property at 195 D appraised for about $200,000.00.

55. At exhibit # 7 Hunt refinanced her 2003 mortgage in May 2007 with BBT. (exhibit # 3 para 3.c.)

56. Karen Butcher, an employee of BBT completed the 2007 mortgage application prior to Hunt arriving at the Bank. [14]

57. BBT presented the 2007 application to Hunt for her signature only.

58. Hunt 2007 mortgage application did not list the at least two unauthorized loans or beneficiary profile in Hunt's customer profile along with her IOLTA, POD account, CD, savings, mortgage and other accounts. (exhibit #s 7, 10 & 28-29, 15)

59. BBT on July 19, 2007 provided Hunt a copy of her customer profile at exhibit # 10.

60. 2007 Customer Profile: Hunt discovered in late 2009 that the 7/19/2007 customer profile showed that Hunt had the following accounts at BBT: Checking-Direct Free Interest (savings account); Checking-Interest Checking (POD Trust); Debit Card; **transfer management (an unauthorized loan)**; a closed auto loan; a closed conventional mortgage; an active conventional mortgage; **Portfolio (an unauthorized loan)**; a closed commercial loan; Credit Card and Hunt's **IOLTA**. [15]

61. Hunt disputed the loan entries "transfer management" and "portfolio" in her customer profile in a 9/24/2010 letter of dispute to BBT. (exhibit #s 10 & 28-29)

62. BBT stated in there 9/27/2010 response letter: the two loans listed on the 7/19/2007 profile are **not** currently in your profile. (exhibit # 28-29)

63. On 10/21/2010 BBT wrote to the HCPD: "We are unable to produce documents as requested. We have no record of accounts with BB&T in reference to the account numbers listed on subpoena." (exhibit #s 10 & 28-32)

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[12] See exhibit # 6.
[13] See exhibit # 6.
[14] See exhibit # 7-8.
[15] See exhibit #s 10 and 28-29.

64. BBT recorded the 2007 mortgage with the register of deeds for Horry County.

65. Today the balance of the 2007 mortgage is about $140, 000.00. (exhibit # 1)

66. Hunt's interest rate on the 2007 mortgage is 6.375%. (exhibit # 7)

67. Hunt must discharge the 2007 mortgage before she can complete refinancing.

68. Hunt's customer profile at **exhibit # 10** contained the following personal identifying information:

a. Hunt's name, DOB and address

b. Hunt's full social security number and drivers license number

c. Financial account numbers for multiple accounts

69. BBT has not issued a satisfaction of the 2007 mortgage to Hunt.

70. Disclosure to Davis: On 1/19/2008 Davis went to the Bank about being reported to a credit reporting agency (CRA) for a late mortgage payment. [16]

71. On 1/19/2008 BBT's employee Kaci Sansbury went into the mortgage portion of the system. [17]

72. On 1/19/2008 while in the mortgage portion of the system at exhibit # 15 and exhibit # 12 BBT told Davis that she was the owner of Hunt's POD account.

73. BBT on January 19, 2008 disclosed to Davis the balance amount in Hunt's POD account. [18]

74. BBT on January 19, 2008 disclosed to Davis that Hunt was the owner/trustee and Davis was the beneficiary of the POD account. (exhibit 12)

75. On 1/19/2008 while in the mortgage portion of the system at exhibit # 15 and exhibit # 12 BBT was unable to find the Davis mortgage. [19]

76. Six months prior to 1/19/2008 the 7/19/2007 printout of Hunt's customer profile at BBT showed at least two unauthorized loans. [20]

77. At exhibit # 13 David Craven an attorney for BBT wrote to Hunt on 3/10/2008.

78. Hunt did not authorize the POD account at exhibit # 4 to be a joint account with Davis.

79. **Start of FDIC proceeding:** An FDIC proceeding/investigation was held from

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[16] See exhibit # 12.
[17] See exhibit # 15 and 12.
[18] See exhibit # 12.
[19] See exhibit # 6 at parag 7.
[20] See exhibit #s 7, 10 and 28-29.

March 24, 2008 – September 2, 2008. [21]

80. At exhibit # 14 Hunt complained to the Federal Deposit Insurance Corporation (FDIC) on March 24, 2008 about the disclosure of the POD account information to Davis.

81. **BBT wrote three letters to the FDIC:** one from Judy Teal, one from David Craven and one from Mark Booz. [22]

82. At exhibit # 14 Hunt in a letter dated 3/12/2008 complained to the FDIC on 3/24/2008.

83. BBT sent the letter of David Craven that was written to Hunt to the FDIC with exhibit # 15 (page 2).

84. At exhibit # 14 the issuance of notice in this matter is March 24, 2008.

85. **12 CFR 308.7 (a) states: *General requirement.*** Every filing or submission of record following the issuance of a notice shall be signed by at least one counsel of record in his or her individual name and shall state that counsel's address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing or submission of record.

86. At exhibit # 15 David Craven's pre-issuance 3/10/2008 letter was written to Hunt and mailed to the FDIC by Teal (a non attorney).

87. David Craven at exhibit # 13 stated in his letter that no fiduciary relationship had ever been established between Hunt and BBT. (Cf. SC Code 62-6-101 (14))

88. Judy Teal (a non attorney) for BBT in her 4/11/2008 letter to the FDIC stated that the events of the 1/19/2008 disclosure to Costella Davis occurred as the result of BBT setting up Hunt's POD trust from the beginning (May 2000) to share an unauthorized beneficiary profile with Costella Davis. (exhibit #s 15 and 12 cf. exhibit # 4)

89. Hunt did not authorize the POD account at exhibit # 4 to be a joint account with Davis.

90. Judy Teal for BBT stated in her 4/11/2008 letter to the FDIC that BBT had created a beneficiary profile for Davis that was connected to Hunt's POD account. (exhibit #s 15 and 12 cf. exhibit # 4)

91. BBT at exhibit # 47 entry # 36 stated that BBT's letter dated 4/11/2008 that was written by Teal to the FDIC was unauthenticated.

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[21] See exhibit # 14 & 35.
[22] See exhibit #s 15 & 21; 13; 19.

92. BBT in its "unauthenticated document" aka the April 11, 2008 response[23] letter to the FDIC - wrote: "[...] BBT identified beneficiary profiles and deleted them from the on-line system."[24]

93. BBT in its "unauthenticated document" aka the April 11, 2008 response[25] letter to the FDIC – improperly included to the FDIC the pre complaint March 10, 2008 letter of attorney David Craven."[26]

94. At exhibits #s 17-18 in May 2008 the FDIC found that BBT violated GLBA. The FDIC's finding was taken from exhibit # 13 a pre-issuance letter that was written to Hunt by Craven.

95. BBT in its May 15, 2008 response[27] letter to the FDIC – directed the FDIC to the "unauthenticated document" aka the April 11, 2008 letter to the FDIC where BBT wrote: "[...] BBT asks that you re-examine Judy Teal's letter to the FDIC of April 11, 2008."[28]

96. **Second Setoff – during FDIC proceeding:** Hunt had her IOLTA at BBT from April 1996 – May 19, 2008.

97. On 5/02/2008 BBT did a set off against Hunt's POD account for $855.00. (exhibit # 16)

98. The $855.00 for legal services was from the SCOID – South Carolina Office of Indigent Defense.

99. On or about 4/2008 BBT subjected the POD trust to a setoff of $855.00. [29]

100. Hunt demanded the return of the $855.00 and BBT refused. [30]

101. The $855.00 check was from the SC Office of Indigent Defense and was for legal services provided by Hunt. [31]

102. The $855.00 check was mailed to Hunt's business address of 1415 3rd Ave. STE 103 Conway, SC. [32]

103. Forced closure of POD and IOLTA: On May 19, 2008, after receiving a copy of the 4/11/2008 letter from the FDIC on or about May 11, 2008, Hunt went to BBT to close her POD trust and IOLTA. [33]

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[23] See Hunt's letter at exhibit # 14 to the FDIC complaining of 1/19/2008 disclosure to Davis. Also, see Davis' affidavit to the FDIC re the 1/19/2008 disclosure.
[24] See exhibit # 15 page 1 paragraph dot # 4.
[25] See Hunt's letter at exhibit # 14 to the FDIC complaining of 1/19/2008 disclosure to Davis. Also, see Davis' affidavit to the FDIC re the 1/19/2008 disclosure.
[26] See exhibit # 15 page 2 paragraph dot # 6. Also, see Craven's letter at exhibit # 13.
[27] See exhibit # 19 – letter from Booz to the FDIC.
[28] See exhibit # 19 at page 1.
[29] See exhibit # 16.
[30] See exhibit # 16.
[31] See exhibit # 16.
[32] See exhibit # 16.
[33] See exhibit #s 16-17 and 36.

104. BBT's in its May 19, 2008 exit interview[34] statement at exhibit # 36 shows that during an active FDIC investigation (3/24/2008-9/2/2008) that BBT did not save the account histories of the IOLTA and POD accounts.[35]

105. Danny Fogle of BBT walked Hunt to the door and said in a begging voice: "CB please leave it alone." [36]

106. Response to FDIC – re finding of disclosure to Davis: Attorney Booz in his letter to the FDIC did not disclose anything about the at least two additional unauthorized loans in the customer profile. [37]

107. **Second complaint to the FDIC:** Hunt at exhibit # 20 complained to the FDIC about the $855.00 setoff to the POD account.

108. **BBT wrote a letter to the FDIC re setoff:** BBT had Judy Teal at exhibit # 21 respond to the FDIC re the $855.00 setoff. [38]

109. All of Hunt's depository accounts, loans, CD and credit card accounts, etc. were opened prior to BBT mailing the BSAs to Hunt.

110. Prior to the merger Hunt never received a banking service agreement (BSA) from CFSB or CFB for any of her accounts, CD, loans, ect.

111. At exhibit # 2 BBT mailed its BSAs to Hunt after May 23, 2007.

112. The June 27, 2008 letter at exhibit # 21 was the second unauthenticated document that was written by Teal to the FDIC. (See exhibit #s 15, 21 and 47 entry # 36)

113. BBT in its June 27, 2008 letter to the FDIC stated that "the bank exercised the right of setoff" against the POD account. (exhibit # 21)

114. BBT in its June 27, 2008 letter to the FDIC directed the FDIC to Reference page 10, section 13 of the BSA for non commercial accounts. (exhibit #s 21 & 44)

115. BBT in its June 27, 2008 letter to the FDIC did not disclose to the FDIC that check at exhibit # 5 was for legal commercial services. (See exhibit # 45 on page 8 at section 15 and exhibit # 21)

116. Hunt demanded the return of the monies at exhibit 20. BBT refused.

117. The debit slips at exhibits #s 5 and 16 identify the setoff monies.

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[34] After receiving exhibit # 17 from the FDIC stating that the FDIC made a finding that BBT had violated GLBA - Hunt went to BBT to close her IOLTA and POD accounts.
[35] See Hunt's affidavit at exhibit # 26 where Hunt requested that BBT preserve all records.
[36] See exhibit # 26 at page 3 of 4.
[37] See exhibit # 19.
[38] See exhibit # 21.

118. BBT has at least two Banking Service Agreements (BSA). [39]

119. BBT has stated how it will treat non commercial setoffs at exhibit # 44 at page 10 of 28.

120. BBT has stated how it will treat commercial setoffs at exhibit # 45 at page 8 of 15.

121. Hunt did not sign the banking service agreements (BSAs).

122. The name on the account of the POD at exhibit # 4 was: Cindy B. Hunt trustee Costella H Davis beneficiary.

123. The checks that resulted in the setoffs to the POD account were not in the name of: Cindy B. Hunt trustee Costella H Davis beneficiary.

124. No Disclosure of Loans: BBT at exhibit #s 13, 15, 19, 21 and 32 in the letters to the Hunt, the FDIC and the HCPD did not disclose anything about the Davis mortgage and the at least two additional unauthorized loans in Hunt's customer profile at exhibit #s 10 and 28-29.

125. Non Attorney Teal in her letter to the FDIC did not disclose anything about the at least two additional unauthorized loans in Hunt's customer profile. [40]

126. Attorney Craven in his letter to the Hunt and the FDIC did not disclose anything about the at least two additional unauthorized loans in Hunt's customer profile. [41]

127. Attorney Booz in his letter to the FDIC did not disclose anything about the at least two additional unauthorized loans in Hunt's customer profile. [42]

128. FDIC FINDING re setoff: The finding of the FDIC at exhibit # 25 is taken from exhibit # 21 - the unauthenticated June 27, 2008 at exhibit # 21 letter of BBT to the FDIC.

129. **End of FDIC Proceeding:** At exhibit # 35 the FDIC closed its file in this matter.

130. 2009 and beyond: Hunt discovered after Thanksgiving in late November 2009 that the printout of the 7/19/2007 customer profile contained at least two unauthorized loans: transfer management and portfolio. [43]

131. Hunt wrote to BBT on 9/24/2010 disputing the at least two unauthorized loans in her customer profile. [44]

132. In the 9/24/2010 letter to BBT Hunt requested an updated copy of her

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[39] See exhibit # 44-45.
[40] See exhibit #s 15 and 21.
[41] See exhibit # 13.
[42] See exhibit # 19.
[43] See exhibit #s 7, 10, 28-29 and 38 (page 2 of 8).
[44] See exhibit #s 28-29.

customer profile. [45]

133. BBT replied on 9/27/2010 stating: "We received your letter disputing two loans reported on your account profile from 7/19/07. According to our records your account profile currently does not reflect these loans." [46]

134. BBT failed to provide Hunt with an updated copy of the customer profile as requested on 9/24/2010 via 1st class and certified mail return receipt.[47]

135. BBT on its website has provided its customers with instructions to follow regarding identity theft. [48]

136. These website instructions include actions to take if you think you've been a victim of Identity Theft to include filing a police report. [49]

137. After disputing the at least two unauthorized loans in a letter to trustee BBT on Oct. 3, 2010 Hunt filed a police report with the Horry County Police Department (HCPD). [50]

138. After filing the police report on Oct. 3, 2010 a search warrant was sent to Trustee BBT. [51]

139. The account numbers listed on the 10/18/2010 search warrant at exhibit # 31 were taken from the 7/19/2007 customer profile that was supplied to Hunt by BBT. [52]

140. On 10/21/2010 BBT returned the search warrant to the HCPD with zero documents stating: "We are unable to produce documents as requested. We have no record of accounts with BB&T in reference to the account numbers listed on subpoena." [53]

141. Included in the 7/19/2007 customer profile at exhibit # 10 were Hunt's 2007 mortgage and other accounts.

142. From 1993 to 9/26/2010 BBT never advised Hunt of the creation, use/profit or deletion of at least two unauthorized loans in her customer profile where the customer profile also contained Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts.

143. From 1993 through the 9/27/2010 letter at exhibit #s 28-29 BBT had not notified Hunt that it has no record of her mortgage where Hunt paid the mortgage with its assigned new account number.

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[45] See exhibit #s 28-29.
[46] See exhibit #s 28-29.
[47] See exhibit #s 28- 29.
[48] See exhibit # 33.
[49] See exhibit # 33.
[50] See exhibit # 30.
[51] See exhibit #s 31 and 28-30.
[52] See exhibit # 10.
[53] See exhibit # 32.

144. The officers of BBT, stated to Hunt that there was "no claim of fiduciary duty as no fiduciary relationship was ever established with BB&T, no disclosure of financial information to Davis, your account was never wrongfully possessed by another, you have suffered no actionable damages..., and without more, BB&T does not believe it would be fruitful to continue to discuss this matter with you any further. Therefore, BB&T will not necessarily respond to any correspondence or other communications from you." [54]

145. BBT made the **false representations** described herein to Hunt and to third parties about Hunt's POD, IOLTA, mortgages, CD and other accounts/loans, etc.[55]

146. Inside of Hunt's customer profile at exhibit # 10 BBT on its protected computer created and profited from at least two unauthorized loans where the customer profile also contained Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts. [56]

147. A residual trust remains at BBT.

148. At exhibit #s 13, 15, 19, 21; exhibit #s 7, 10, 28-32; and exhibit #s 4, 15, and 12 BBT **failed to disclose** the matters described herein to Hunt, the FDIC and the HCPD.

149. BBT in lawsuit # 1 on March 2, 2010 in its Response to "Notice of motion and motion to alert the court of an affidavit submitted in bad faith" at exhibit # 47 entry # 36 wrote at paragraph 4 on page 2 of 4 that the April 11, 2008 letter of BBT to the FDIC was an "unauthenticated document".

150. BBT in its September 27, 2010 response letter to Hunt – wrote: "We received your letter disputing two loans reported on your account profile from 7/19/07. According to our records your account profile currently does not reflect these loans."[57]

151. BBT in its September 27, 2010 response letter to Hunt – did not provide Hunt with an updated copy of her customer profile where Hunt had requested an updated customer profile.[58]

152. In its October 21, 2010 response letter at exhibit # 32 to the Horry County Police Department (HCPD) – BBT wrote: Subject: **Criminal Subpoena** – Cindy B Hunt, Transfer Management, Portfolio
BBT has received Subpoena requesting information regarding the above referenced client(s) and responds as follows:
We are unable to produce documents as requested. We have no record of accounts with BBT in reference to the account numbers listed on subpoena. [...]."
(Cf. exhibit #s 7, 10 and 28-31)

153. BBTs mailed yearly notices (2003 – 2008) to Hunt stating that they were in compliance with the Gramm Leach Bliley ACT (GLBA).

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[54] See exhibit #s 13, 15, 19, 21 & 27.
[55] See exhibit # 13, 15, 19, 21; exhibit #s 7, 10, 28-32; and exhibit #s 4, 15, and 12.
[56] See exhibit #s 7, 10, 28-32; and exhibit #s 4, 15, and 12.
[57] See exhibit #s 28-29.
[58] See exhibit #s 28-29 and 15 U.S.C. 1681i(6)(A)/(B).

154. BBT at exhibit #s 7, 10, 28-29; and exhibit #s 4, 15, and 12 did knowingly, willfully and or negligently misuse and improperly[59] access Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and customer profile.

155. BBT knowingly, willfully and or negligently did make an entry in Hunt's customer profile at exhibit #s 7, 10 and 28-29 that affects the ability of Hunt to obtain and retain credit, employment, business or professional licenses, investment opportunities, or insurance.

156. BBT knowingly, willfully and or negligently did make an entry in Hunt's customer profile at exhibit #s 7,10 and 28-33 that affects the ability of Hunt to obtain and retain credit, employment, business or professional licenses, investment opportunities, or insurance.

157. BBT at exhibit #s 7, 10, 28-33 knowingly, willfully and or negligently returned the search warrant to the HCPD with zero documents.

158. BBT at exhibit #s 7, 10, 28-33 knowingly, willfully and or negligently interfered with the HCPD criminal investigation of identity theft, criminal libel, bank fraud, computer fraud and false entry, etc.

159. BBT knowingly, willfully and or negligently requested zero personal identifying information (exhibit #s 15 and 12) from Davis prior to disclosing Hunt's account balance, etc.

160. BBT at exhibit #s 7, 10, 28-29; and exhibit #s 4, 15, and 12 did knowingly, willfully and or negligently for eight years (5/2000 – 5/2008) did engage in daily and multiple security breaches of incidents of unauthorized access to and acquisition of records or data of Hunt's customer profile at exhibit # 10 that was not rendered unusable through encryption, redaction, or other methods containing personal identifying information that compromised the security, confidentiality, or integrity of personal identifying information maintained by BBT when illegal use of the information has occurred or was reasonably likely to occur or use of the information created a material risk of harm to Hunt.

161. BBT at exhibit #s 7, 10, 28-29; and exhibit #s 4, 15, and 12 did knowingly, willfully and or negligently not make a good faith acquisition of Hunt's personal identifying information by an employee or agent.

162. BBT at exhibit #s 7, 10, 28-29; and exhibit #s 4, 15, and 12 did knowingly, willfully and or negligently cause Hunt to need a security freeze.

163. BBT has never notified Hunt that her accounts, loans customer profile was misused and or involved in criminal conduct. Cf. 9/9/2008 letter at exhibit # 27.

164. BBT deprived Hunt of the ability to timely place a security freeze to protect

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[59] See Hunt's 2007 loan application at exhibit # 7; customer profile at exhibit # 10; Affidavit of Davis at exhibit #s 6 and 12; **the POD signature card at exhibit # 4;** the BSA at exhibit #s 44-45; **Teal letter to FDIC at exhibit # 15; Craven's letter to Hunt at exhibit # 13; GLBA finding at exhibit #s 17 and 18;** BBT says all accounts closed in early 2009 at exhibit # 51 at FN 1; loans no longer in customer profile at exhibit # 28-29; BBT returned search warrant to HCPD with zero documents at exhibit # 28-32.

her personal identifying information and credit worthiness where Hunt has suffered multiple credit card denials for large purchases since the deletion of the unauthorized beneficiary profile and deletion of the at least two unauthorized loans: transfer management and portfolio.

165. BBT knowingly, willfully and or negligently did cause Hunt to need to dispute several items in her consumer records (exhibit #s 7, 6, 4, 12, 15, 10, 26,28-29). And thereafter deprived Hunt of the ability to timely dispute these items and preserve the consumer records.

166. BBT knowingly, willfully and or negligently did sell, lease, loan, trade, rent, or otherwise intentionally disclose Hunt's social security number or a portion of it containing six digits or more to a third party (exhibit #s 4, 12, **15**, **10**, 26,28-29) without written consent to the disclosure from Hunt.

167. BBT as shown through exhibit #s 4, 6-7, 12, 15, 10, 17-18, 26, 28-29 had no legitimate business or government purpose and was not authorized or specifically permitted by law to disclose Hunt's social security number or a portion of it containing six digits or more to a third party without written consent to the disclosure from Hunt.

168. BBT knowingly, willfully and or negligently caused Hunt to suffer public humiliation, mental and emotional distress, embarrassment and subjected Hunt to financial ruin, violations of the SC Professional Rules of Conduct to include disbarment, public humiliation and Hunt has been unable to sit for the Patent Bar exam (BBT has repeatedly threaten a Rule 11 violation), attorney fees (to date $1,328,000.00), etc. (exhibit #s 4, 6-7, 12, 15, 10, 17-18, 26, 28-29, 46-49)

169. BBT knowingly, willfully and or negligently violated "the appropriate standard of care for the protection, security, and confidentiality of the nonpublic personal information and private data of Hunt numerous times as set by the Gramm-Leach-Bliley Act under 15 USC 6801-6809 and 6821-6827 from 2000 - 2008. (exhibit #s 4, 12, 15, 17-18, 10, 26, 28-29, 46)

170. At exhibit #s 17-18 BBT owed Hunt a duty of care as stated under GLBA at 15 USC 6801-6809 and 6821-6827. (exhibit #s 4, 12, 15, 17-18, 10, 26,28-29, 46-49)

171. Hunt's deposits in her POD trust account for January 2006 – December 2006 exceeded $100,000.00.

172. Hunts deposits in the POD trust account and the CD for January 2007 – December 2007 exceeded $100,000.00.

173. In 2001, 2002, 2009 and 2010 BBT did not provide Hunt with a clear and conspicuous disclosure, in writing or in electronic form or other form permitted by the regulations of such financial institution's policies and practices.

174. Davis has not and is not in any way affiliated with BBT other than through her mortgage from about 9/2004 thru 2006. (exhibit #s 12 and 6)

175. Cindy B. Hunt is not a commercial entity.

176. Forced closure of 2007 Mortgage: Hunt wrote to BBT at exhibit # 37 on 6/4/2012 via certified mail return receipt requesting satisfaction of mortgage.

177. BBT has not issued a satisfaction of mortgage to Hunt. (exhibit # 37 and foreclosure complaint)

178. All of these actions as described above amount to more than mere breaches of contract based on BBT's role of financial partner of the IOLTA and the SC BAR at exhibit # 66. There are **no contracts** in this matter where all of the agreements for all loans, cards and deposit accounts between BBT and Hunt are **void ab initio** as a result of BBT **violating** its own banking service agreements (BSA), SCACR 412, SC Code Ann. 62-6-103(b), SC Code Ann. § 36-4-401(a), GLBA, and SC 34-3-510 where these violations are against public policy.

First Cause of Action: constructive fraud against BBT.

179. Each previous paragraph and exhibits are repeated herein as if verbatim.

180. This cause of action includes paragraphs 53-78 and 124-127.

181. BBT told Hunt that the POD account relationship is established by the form of the account as designated on the signature card as is shown at exhibit # 4.

182. Fogle and Lambert echoed the language of the BSA at exhibit 44 page 6 paragraph B. 3 where they stated that during Hunt's life that she and she alone would have access to the monies of the POD trust.

183. Exhibit #s 5 and 16 show two checks paid to Hunt for legal services done by Hunt.

184. BBT at exhibit #s 5 and 16 made setoffs against Hunt's POD account.

185. BBT at exhibit # 10 placed the Davis mortgage and at least two additional unauthorized loans in Hunt's customer profile along with the Hunt's IOLTA, POD, CD, mortgages and other accounts.

186. BBT intended that Hunt act on its recommendation to open a POD account.

187. BBT intended that Hunt act on its statement that the POD account relationship is established by the form of the account as designated on the signature card as is shown at exhibit # 4.

188. The name on the account of the POD at exhibit # 4 is: Cindy B. Hunt trustee Costella H Davis beneficiary.

189. The checks that resulted in the setoffs to the POD account were not in the name of: Cindy B. Hunt trustee Costella H Davis beneficiary.

190. BBT intended that Hunt accept as true that the setoffs had been made from the proper account.

191. Hunt did not bargain for the terms of the POD account.

192. Fogle recommended the POD account to Hunt.

193. Hunt was and is in a fiduciary relationship with BBT and its employees/agents.

194. Hunt had a right to rely that BBT would not place unauthorized mortgages/loans into Hunt's customer profile along with the IOLTA and other accounts. (exhibit #s 44-45 & 66)

195. SCACR 412 requires that only attorneys within a law firm will have access to the firm's IOLTA.

196. Davis and the other borrowers have never been an employee of Hunt's law firm.

197. The unauthorized beneficiary profile at exhibit # 15 gave Davis access to the IOLTA.

198. The unauthorized loans at exhibit # 10 gave those borrowers access to the IOLTA.

199. The unauthorized loans and beneficiary profile provided collateral for the loans of Davis and the others.

200. BBT subjected Hunt to financial ruin where Davis and the others had access to the all monies and assets of Hunt's customer profile and the CD.

201. Hunt was subjected to additional financial ruin where Davis defaulted on her mortgage.

202. For the safety of her IOLTA and reputation and other accounts Hunt at exhibit # 36 closed the IOLTA and POD accounts.

203. At exhibit #s 6 and 12 Davis in her affidavits describe the events that occurred on 1/19/2008 when she went to BBT to check on why BBT had reported her to a credit reporting agency for being late on her mortgage payment.

204. Upon receipt of exhibit # 15 from the FDIC Hunt realized that the POD account relationship was not established by the form of the account as designated on the signature card as is shown at exhibit # 4.

205. Hunt was ignorant of the fact that BBT set Davis up with a beneficial profile to her POD account. (exhibit # 4.)

206. Hunt was ignorant of the fact that BBT used her assets to justify extending a mortgage to Davis and loans to at least two additional unauthorized borrowers.

207. BBT sent Hunt annual letters stating that it was in compliance with the GLBA.

208. The FDIC at exhibit #s 17 and 18 made a finding that BBT had violated GLBA.

209. BBT mailed and provided Hunt in person with numerous documents and monthly statements to include the exhibits in this matter.

210. BBT at exhibits #s 13, 15, 19 and 21 failed to disclose about the at least two

additional loans in Hunt's customer profile as stated at exhibit #28-29.

211. BBT completed the 2007 mortgage application prior to Hunt's arrival on May 18, 2007.

212. BBT presented the 2007 application to Hunt for her signature only.

213. Hunt's 2007 mortgage application did not list the two unauthorized loans (transfer management and portfolio) that was in Hunt's customer profile along with her IOLTA, POD account, CD, savings, mortgage and other accounts. (exhibit #s 7 and 10)

214. Hunt's 2007 mortgage application at exhibit # 7 did not list the POD account. (exhibit # 7 at page 3 of 6)

215. The only account listed on Hunt's 2007 mortgage application is Hunt's savings account with a one dollar balance. (exhibit # 7 at page 3 of 6)

216. BBT (Fogle and Lambert) told Hunt that during her life that she and she alone would have access to the monies of the POD trust. (exhibit # 44 page 6 of 28)

217. BBT (Fogle and Lambert) told Hunt that the monies of the POD trust would only be made available to Davis at her death and at the time of Hunt's death that Davis must provide the Bank with identification of herself and proof of Hunt's death. (exhibit # 44 page 6 of 28)

218. BBT (Fogle and Lambert) knew or should have known that their statements were false. (Cf. exhibit #s 4 & 15; 10 &28-29; 44 page 6 of 28)

219. The statements of BBT were material in that the IOLTA, POD trust, mortgage, CD and other accounts should have been handled differently from the way BBT in fact treated them. (Cf. exhibit #s 4 & 15; 10 &28-29; 44 page 6 of 28 & SC Code 62-6-101; SCACR 412)

220. BBT said and wrote of one type of treatment and BBT did treat the accounts of Hunts as described at exhibit #s 5, 6, 10, 12, 14-18, 20,28-29 & 37.

221. BBT had knowledge of the falsity of their statements or acted with reckless disregard for the truth as shown at exhibit #s 66, 4-7, 10, 12, 14-18, 20 &28-29.

222. At exhibit # 15 BBT wrote to the FDIC that it was the procedure of CFB/BBT to set up the beneficiary of a POD account with a beneficiary profile.

223. Hunt and other third parties relied on the false statements or statements made with reckless disregard for the truth as shown at exhibit #s 66, 4-7, 10, 12-26, 28-32, 37, 46.

224. Hunt and other third parties had a right to rely on the representations made to them by BBT statements as shown at exhibit #s 66, 4-7, 10, 12-26,[60] 28-32, 37, 46.

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[60] See Hunt's affidavit at exhibit # 26 page 3 of 4.

225. BBT intended for Hunt, the FDIC, HCPD and or other third parties to act upon their statements. (exhibit #s 10 & 28-29; exhibit #s 13-25; exhibit #s 28-32 and 44-45)

226. Hunt was ignorant of the falsity of the oral and written statements that she was told by BBT as shown at exhibit #s 4-7, 10, 12, 14-18, 20 &28-29.

227. As shown at exhibit # 66 the SC Bar Foundation listed Coastal Federal Bank and BBT as financial partners.

228. Hunt did all of her banking at Coastal Federal Savings Bank, Coastal Federal Bank and BBT from 1993 – 2008.

229. At exhibit # 15 BBT wrote to the FDIC that it was the **procedure** of CFB to set up the beneficiary of a POD account with a beneficiary profile.

230. BBT made false representations relating to a present or preexisting fact. (exhibit #s 44-45; 62-6-101 ...; 4, 6-7, 12, 15 & 16; 10 & 28-29; SCACR 412)

231. BBT intended to deceive Hunt and other third parties. (Exhibit # 10; exhibit #s 3-7, 12, 26, 46 & 70; exhibit #s 13-25 and 28-32).

232. Hunt has consequent and proximate injury to include all deposits made to unauthorized accounts, all depository accounts accessible by Davis and others, unauthorized use of Hunt's assets as collateral for Davis and others, unauthorized setoffs, payments made on fraudulent mortgages, loss of coastal gold benefits, violation of SCACR 412, no on site inspection by FDIC, limited finding by FDIC and no prosecution by HCPD, job loss, costs and attorney fees.

233. At all times pertinent hereto, the conduct of BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, willful, reckless, and in grossly negligent disregard for federal and state laws and the rights of Hunt, the IOLTA and other accounts of Hunt. (Cf. exhibit #s 44-45; SC Code 34-3-510 & 62-7-801 thru 817; SC Code 62-6-101 ...; SCACR 412; Exhibit #s 4, 5, 6, 12, 15 & 16-18; 10 & 28-29 & 36)

234. See below for relief sought.

Second Cause of Action: Negligence Per Se against BBT.

235. Each previous paragraph and exhibits are repeated herein as if verbatim.

236. This cause of action includes paragraphs 53-69 and 124-127.

237. On 1/19/2008 while in the mortgage portion of the system at exhibit # 15 and exhibit # 12 BBT told Davis that she was the owner of Hunt's POD account.

238. On 1/19/2008 while in the mortgage portion of the system as stated at

exhibit # 15 and exhibit # 12 BBT told Davis that she was the beneficiary of Hunt's POD account.

239. On 1/19/2008 while in the mortgage portion of the system at exhibit # 15 and exhibit # 12 BBT told Davis what the dollar account balance was in Hunt's POD account.

240. On 1/19/2008 while in the mortgage portion of the system as per exhibit # 15 and exhibit #s 12-13 BBT told Davis that the account belonged to Hunt.

241. At exhibit # 14 Hunt complained to the FDIC that BBT had disclosed her POD account information to Davis.

242. At exhibit #s 17 and 18 the FDIC found that BBT has violated GLBA.

243. At all times pertinent hereto, the conduct of BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts.

244. Damages: dollar amount disclosed to Davis at exhibit # 12 ($30K) and $160 K plus of benefits at exhibit # 10 based forced closure of POD and IOLTA at paragraphs 103-105; and

245. See below for relief sought.

Third Cause of Action: Conversion against BBT.

246. Each previous paragraph and exhibits are repeated herein as if verbatim.

247. This cause of action includes paragraph 10.

248. This cause of action includes paragraphs 21-28, 53-69 and 124-127.

249. This cause of action includes all the paragraphs at the fourth cause of action: Breach of Fiduciary Duty against BBT.

250. This cause of action includes all the paragraphs at the seventh cause of action: Breach of Contracts against BBT.

251. Hunt never signed BBT's banking service agreements (BSA) that are shown at exhibit #s 44 and 45.

252. Based on the misconduct of BBT as described in these counterclaims BBT is not entitled to the presumption of debtor/creditor relationship as stated in its BSAs.

253. There was no mutuality of demands between Hunt and Davis/the other borrowers.

254. Hunt had her IOLTA at BBT from April 1996 – May 19, 2008.

255. The name on the May 2000 account of the POD at exhibit # 4 is: Cindy B. Hunt trustee Costella H Davis beneficiary.

256. The checks at exhibit #s 5 and 16 that resulted in the setoffs to the POD account were not in the name of: Cindy B. Hunt trustee Costella H Davis beneficiary.

257. At exhibit #s 5 and 16 Hunt was paid for legal services done by Hunt. (exhibit # 3 pages 3 of 9 & 6 of 9)

258. BBT at exhibit #s 5 and 16 made setoffs against Hunt's POD account. (exhibit # 3 pages 3 of 9 & 6 of 9)

259. On 4/02/2004 BBT did a setoff against Hunt's POD account for $225.00.

260. The $225.25 check was for legal services provided by Hunt.

261. The $225.25 check had a memo note of: attorney fee.

262. On 5/02/2008 BBT did a set off against Hunt's POD account for $855.00. (exhibit # 16)

263. The June 27, 2008 letter at exhibit # 21 was another unauthenticated document that was written by Teal to the FDIC. (See exhibit #s 15, 21 and 47 entry # 36)

264. BBT in its June 27, 2008 letter to the FDIC stated that "the bank exercised the right of setoff" against the POD account. (exhibit # 21)

265. BBT in its June 27, 2008 letter to the FDIC directed the FDIC to Reference page 10, section 13 of the BSA for non commercial accounts. (exhibit #s 21 & 44)

266. BBT in its June 27, 2008 letter to the FDIC did not disclose to the FDIC that check at exhibit # 5 was for legal commercial services. (See exhibit # 45 on page 8 at section 15 and exhibit # 21)

267. The finding of the FDIC at exhibit # 25 is taken from exhibit # 21 - the unauthenticated June 27, 2008 letter of BBT to the FDIC.

268. Hunt demanded the return of the monies at exhibit 20.

269. The debit slips at exhibits #s 5 and 16 identity the setoff monies.

270. BBT at exhibit #s 10 and 28-29 placed at least two unauthorized loans in Hunt's customer profile along with the Hunt's IOLTA, POD, CD, mortgages and other accounts.

271. Exhibit # 49 entry # 15-4 and exhibit # 49 entry # 15-5/6 identifies the unauthorized loan amounts.

272. BBT at exhibit #s 6, 10, 12 and 15 created an unauthorized POD beneficiary profile for Davis. Cf. exhibit # 4.

273. Davis had a mortgage at BBT throughout the existence of the POD beneficiary profile.

274. Davis defaulted on the Davis mortgage while the POD beneficiary profile existed.

275. The Davis mortgage at exhibit # 49 entry # 15-3 is identified in the amount of $126,825.00.

276. Hunt has never been in any way responsible for the debts of Davis/the other borrowers.

277. BBT identified and designated the IOLTA, POD, CD, savings and other account monies in monthly statements to Hunt.

278. BBT continuously for at least eleven years (2000 - 2012) misused, misappropriated, illegally used and or illegally detained Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and with held two improper setoffs ($226.25 & $855.00), disclosure to Davis, Davis mortgage, unauthorized beneficiary profile and at least two unauthorized loans.

279. BBT continuously for at least eleven years (2000 - 2012) wrongfully, unlawfully and without authorization, assumed control and dominion over Hunts' IOLTA, POD trust, savings account, mortgages, CD, car loan, customer profile and other accounts; and with held profits; and failed to disclose information of two improper setoffs, disclosure to Davis, Davis mortgage, unauthorized beneficiary profile and at least two unauthorized loans.

280. BBT used Hunts' IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and profits to justify extending loans to Davis and others.

281. BBT used Hunts' IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and profits to show regulatory authorities that BBT's exposure due to default on the unauthorized beneficiary profile and at least two unauthorized loans was replaced by the value of monies/assets held by the Bank that belonged to Hunt.

282. BBT subjected Hunts' IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and profits to **setoff** of the Davis mortgage, the unauthorized beneficiary profile and at least two unauthorized loans.

283. BBT through **setoff** made Hunts' IOLTA, accessible by persons that were not employed in Hunt's law firm.

284. BBT was unjustly enriched at the expense of Hunt through the improper use of all of her accounts at BBT.

285. HUNT had an absolute and unconditional right to the immediate possession

and/or title to the monies and profits of the IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, and customer profile including two improper setoffs, disclosure to Davis, Davis mortgage, unauthorized beneficiary profile and at least two unauthorized loans.

286. At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts.

287. See below for relief sought.

Fourth Cause of Action: Breach of Fiduciary Duty against BBT.

288. Each previous paragraph and exhibits are repeated herein as if verbatim.

289. This cause of action includes paragraphs 53-69, 103-105, 124-127 and 176.

290. Hunt is an attorney.

291. Hunt did all of her banking at BBT from 1993-2008.

292. Hunt had her attorney-client IOLTA at BBT from 1996-2008.

293. The IOLTA account is a fiduciary account.

294. Exhibit # 10 shows the special designation of the IOLTA.

295. The South Carolina Appellate Court Rule (SCACR) 412 (1) states that: IOLTA means a trust account benefiting the South Carolina Bar Foundation established in an eligible institution for the deposit of pooled nominal or short-term funds of clients or third persons; and (2) defines attorney participation as a law firm of which the lawyer is a member may maintain the account on behalf of any or all lawyers in the firm.

296. BBT had notice at exhibit #s 10 and 66 that the IOLTA was intended to be kept separate or constituted a specific intact fund.

297. Exhibit # 4 shows the special designation of the POD trust account where Hunt named herself trustee of the POD and named Davis the beneficiary-payee at her death.

298. BBT had notice that the POD account was a special trust account that was intended to be kept separate or constituted a specific intact fund.

299. BBT's employee, Danny Fogle, in May 2000 recommended that Hunt open the POD account at BBT.

300. The POD account involved no bargaining by Hunt.

301. The POD account at exhibit # 4 was opened by Cathy Lambert.

302. Lambert and Fogle told Hunt that the POD monies would not be made available to the beneficiary Davis until after Hunt's death.

303. At exhibit # 4 Hunt signed up for a POD account where Hunt relied on the information provided to her by Lambert & Fogle.

304. Hunt read and relied on the BSA.

305. The profits made by BBT were at the expense of Hunt.

306. BBT forced Hunt to close the POD account where Hunt loss $160K in benefits.

307. BBT caused Hunt's titles (mortgages and car) to be based on constructive fraud.

308. BBT caused Hunt to not get a job, suffer public humiliation, mental and emotional distress, embarrassment and subjected Hunt to financial ruin, violations of the SC Professional Rules of Conduct to include disbarment and Hunt has been unable to sit for the Patent Bar exam (Defendants have repeatedly threaten a Rule 11 violation), and caused Hunt attorney fees (as of 3/2013- $2,665,500.00) and costs.

309. At exhibit # 15 BBT created an unauthorized beneficial profile for Davis which was contrary to the intent of Hunt at exhibit # 4.

310. Davis was the beneficiary-payee at the death of Hunt.

311. Hunt is still alive.

312. Any and all charges/debts by BBT against the IOLTA, POD account, CD, Savings were not authorized by Hunt.

313. Any and all charges/debts by BBT against the IOLTA, POD account, CD, Savings were not in accordance with any agreement between Hunt and BBT.

314. A constructive trust ex maleficio was born based on BBT's

conduct as described at exhibit #s 4, 6-7, 10, 12, 15 and 28-29.

315. The constructive trust ex maleficio holds all the monies delivered by Hunt to BBT for all Hunt's accounts and loans at BBT.

316. The constructive trust ex maleficio was intended to be kept separate or constituted a specific intact fund.

317. BBT did with Hunt's trust monies engage in the unauthorized Davis mortgage loan, the additional at least two unauthorized loans in Hunt's customer profile, two unauthorized setoffs against the POD account, etc. and the unauthorized disclosure to Davis.

318. BBT is required to keep adequate records of the administration of the IOLTA.

319. BBT is required to keep adequate records of all of Hunt's accounts.

320. BBT deleted the unauthorized beneficiary profile for Davis.

321. BBT deleted the at least two unauthorized loans in Hunt customer profile with the IOLTA.

322. Hunt's customer profile over its life included at least five depositary accounts with BBT: regular checking, IOLTA, POD account, CD and savings account.

323. At no time has BBT had proof of death of Hunt.

324. The FDIC made a finding of violation of the Gramm Leach-Bliley Act in May 2008 for the disclosure to Davis. **(exhibit #s 17/18)**

325. The 7/19/2007 printout of Hunt's customer profile at exhibit # 10 shows two unauthorized loans called: transfer management and portfolio.

326. BBT website on Identity Fraud refers its customers to the FTC website.

327. Closure of an account is recommended by the Federal Trade Commission's (FTC) website if identity theft is suspected. **(exhibit #s 33)**

328. Hunt reported BBT to the HCPD for identity theft, etc.

329. BBT yearly (2003-2008) mailed Hunt statements of compliance with the GLBA.

330. Hunt has made numerous transactions involving her IOLTA.

331. Davis made numerous transactions involving her mortgage while the unauthorized beneficial profile was in Hunt's customer profile with the IOLTA, POD and other accounts.

332. The owners of the at least two unauthorized loans: transfer management and portfolio made numerous transactions involving their loans while the unauthorized loans were in Hunt's customer profile with the IOLTA and other

accounts.

333. BBT is engaged in businesses that affect public interest.

334. BBT misconduct was made for an improper purpose to include harassing Hunt and to cause unnecessary delay and needless increase in the cost of litigation and to divert Hunt, the FDIC and the police away from the at least two unauthorized loans in Hunt's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts.

335. BBT did through its conduct caused improper access and improper use of Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and Hunt's customer profile; and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

336. BBT breached its fiduciary duty to Hunt where BBT knowingly did through its conduct caused improper access and use of Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, Hunt's customer profile and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

337. BBT on its protected computer inside of Hunt's customer profile: created and profited from an unauthorized beneficiary profile (Davis mortgage) and at least two unauthorized loans where the customer profile also contained Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts.

338. That trustee BBT and its employees illegally and improperly used Hunt's Interest on Lawyer's Trust Account (IOLTA), POD trust, savings account, mortgages, CD, car loan, other accounts and Hunt's customer profile for the benefit of its own business and or third parties when it did the following: two setoffs, disclosure to Davis; creation and use of the unauthorized beneficiary profile; and the creation and use of the at least two unauthorized loans.

339. At exhibit #s 31-32 BBT returned the search warrant to the HCPD with zero documents.

340. BBT has conflicts of interest where it returned the search warrant with zero documents.

341. BBT has and continues to make thousands of dollars in profit were it exceeded the use of, improperly or illegally used Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and customer profile. (exhibit #s 15, 10 & 28-29 & 30-33)

342. BBT collected the IOLTA, POD trust, savings account, mortgages, CD, car loan and other account funds. (exhibit #s 9-10)

343. BBT was required to keep the IOLTA funds separate, keep the IOLTA

funds in a state of security, keep the IOLTA funds accessible only to attorneys of Hunt's law practice, not use the IOLTA trust funds for its own business or third parties and not commingle the IOLTA trust funds with its own funds or others; that BBT failed to do all of these things.

344. BBT allowed the IOLTA, POD trust, savings account, mortgages, CD, car loan and other accounts of Hunt to be accessible by other customers to include the beneficiary profile and the at least two unauthorized loans.

345. BBT allowed the IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and financial resources of Hunt to be misappropriated for its own use and or the use of a third parties.

346. BBT exceeding the use of and/or improperly using Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan & other accounts the trust extends to the combined fund, & also created a lien on the entire mass of BBT assets for the assets of the combined fund.

347. BBT exceeding the use of and/or improperly using Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan & other accounts BBT was unjustly enriched at the expense of Hunt.

348. Hunt is entitled to be paid immediately and in full out of the assets of BBT.

349. To date BBT has not paid Hunt.

350. BBT's entire assets are security.

351. BBT failed to disclose this conduct to Hunt.

352. BBT knowingly failed to disclose this conduct to Hunt, FDIC and the HCPD.

353. BBT accepted and retained the benefit of profits under these circumstances such that it would be inequitable for BBT to retain the benefit without payment of value.

354. Hunt's existing 2007 mortgage remains at BBT.

355. That, on account of BBT's conduct of exceeding the use of, improperly using and or illegally using Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan and other accounts where Hunt had no knowledge of this and never ratified this conduct - BBT has subjected Hunt, an attorney, to financial ruin, criminal prosecution for mortgage loan application fraud, violations of the SC Professional Rules of Conduct to include disbarment, the inability to earn a living (Hunt has been unable to sit for the Patent Bar), Hunt did not get a job, and public humiliation, all of which continues each day.

356. At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts.

357. Hunt seeks damages under 62-7-1002 thru 62-7-1004 and 62-7-1001(b); and

358. **See below for relief sought.**

Fifth Cause of Action: Violations of SC Probate Code Ann. sections 62-6-101 thru 62-6-106 against BBT.

359. Each previous paragraph and exhibits are repeated herein as if verbatim.

360. This cause of action includes paragraphs 53-69 and 124-127.

361. Exhibit # 4 shows the special designation of the trust account as a individual POD account.

362. **Hunt did not authorize the POD account at exhibit # 4 to be a joint account with Davis.**

363. Hunt named herself trustee of the POD and named Davis the beneficiary-payee at her death.

364. Hunt is still alive.

365. BBT had notice that the POD account was a special trust account that was intended to be kept separate or constituted a specific intact fund.

366. At exhibit # 15 Teal states that a beneficiary profile was created for Davis in May 2000 at the time that the Hunt opened the account.

367. Hunt did not authorize the beneficiary profile for Davis.

368. Davis never made a contribution to the POD account;

369. The borrowers of the loans in the Hunt's customer profile: transfer management and portfolio, never made a contribution to the POD account;

370. The borrowers of the loans in the Hunt's customer profile with the POD account: Davis mortgage, transfer management and portfolio, were unauthorized.

371. At exhibit #s 5 and 16 two setoffs were made against the POD account.

372. **This** cause of action includes paragraphs 39-48 and 96-102.

373. BB&T through setoff,[61] etc made the Hunts' IOLTA, POD and other accounts accessible by persons that were not employed in Hunt's law firm.

374. BBT gave Davis the POD payee at death, a non attorney and a person that has never been employed by Hunt, an Attorney access to POD account during the life of the Hunt and access to the IOLTA (and other accounts).

375. Also, when the at least two unauthorized mortgage loans were placed into the Hunt's customer profile these loans (transfer management and portfolio) gave those unknown borrowers, whom have never been employed by the Hunt-Attorney access to the POD account and IOLTA (and other accounts).

376. The unauthorized Davis mortgage, an unauthorized beneficiary profile for Davis, two improper setoffs and at least two unauthorized loans: transfer management and portfolio were in violation of SCACR 412 and SC Code Ann. section 62-6-103(b) and against public policy.

377. Hunt, an attorney, is required to avoid even the appearance of impropriety.

378. BB&T used the Hunts' IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts, customer profile and profits to show regulatory authorities that the Defendant BBT's exposure due to default on the unauthorized beneficiary profile (Davis mortgage) and the at least two unauthorized loans was replaced by the value of monies/assets held by the Bank that belonged to the Hunt.

379. BBT made unauthorized pledge payments to Davis and the borrowers of the loans transfer management and portfolio where it pledged the sums of Hunt's monies on deposit for the Davis mortgage and the at least two unauthorized loans that was in Hunt's customer profile along with the IOLTA, CD, mortgages, POD account and other accounts.

380. Any and all pledges by BBT against the IOLTA, POD account, CD, Savings and all of Hunt's other accounts were not authorized by Hunt and or were not in accordance with any agreement between Hunt and BBT.

381. The POD account was setoff twice.

382. Both of the setoffs were for checks written to the Hunt's business for legal services.

383. The setoffs occurred against the non business POD account.

384. Hunt still lives.

385. Any and all setoffs by Defendant BBT against the IOLTA, POD account, CD, Savings and all of Hunt's other accounts were not authorized by Hunt and or

[61] See the BSA at exhibit # 44 at page 10 at paragraph 13; and exhibit # 45 at page 8 at paragraph 15.

were not in accordance with any agreement between the Hunt and BBT.

386. Hunt did not authorize that her monies be deposited into the unauthorized POD account described by Teal at exhibit # 15 of the Complaint. The Hunt argues that all monies deposited into the account referred to as a POD account at BBT were for the account as per exhibit # 4 and as described at exhibit # 44 paragraph B.3. of the BSA where that account never existed. Such that,

387. Any and all payments (withdrawals, payments on checks or other directives, pledge of sums on deposit, setoffs and reductions or other dispositions of all or part of an account pursuant to a pledge) by BBT against the IOLTA, POD account, CD, Savings and all of Hunt's other accounts were not authorized by Hunt and or were not in accordance with any agreement between Hunt and BBT.

388. BBT has never made a single payment to or for Hunt.

389. Hunt had at least five depositary accounts with BBT: regular checking, IOLTA, POD account, CD and savings account.

390. The regular checking account (1995-2000) had coastal gold benefits in excess of $150,000.00. (exhibit #s 10 & 3)

391. Hunt converted the regular checking account to the POD account in May 2000. (exhibit # 3)

392. "P.O.D. account" means an account payable on request to one person during his lifetime and on his death to one or more P.O.D. payees.

393. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee.

394. "Proof of death" includes a death certificate or record or report.

395. BBT did a setoff against the POD trust in 4/2004 for a check written to Hunt as a legal fee. (exhibit #s 5 & 4, 15, 6, 12, 10 & 28-29)

396. BBT did a setoff against the POD trust in 4/2008 for a check written to Hunt as a legal fee. (exhibit #s 16 & 4, 15, 6, 12, 10 & 28-29)

397. BBT did a disclosure against the POD account in 1/2008 to Davis. (exhibit #s 4 & 15, 6, 12, 17-18)

398. On 1/19/2008 BBT did not ask Davis for any identification.

399. At no time has BBT had proof of death of Hunt.

400. BBT did an unauthorized beneficiary profile against the POD account for Davis. (exhibit #s 4 & 15, 6, 12)

401. The FDIC made a finding of violation of the Gramm Leach-Bliley Act in May 2008 for the disclosure to Davis. (exhibit #s 17/18)

402. Hunt closed the POD account on May 19, 2008. (exhibit # 36)

403. The 7/19/2007 printout of Hunt's customer profile shows two unauthorized loans called: transfer management and portfolio. (exhibit #s 10 & 28-29)

404. BBT website on Identity Fraud refers its customers to the FTC website. (exhibit # 33)

405. Closure of an account is recommended by the Federal Trade Commission's (FTC) website if identity theft is suspected. Exhibit # 33)

406. BBT yearly (2003-2008) mailed Hunt statements of compliance with the GLBA.

407. Hunt has made numerous transactions involving her POD account.

408. Davis made numerous transactions while the unauthorized beneficial profile was attached to the POD account. (exhibit #s 4 & 15, 6, 12)

409. BBT through exhibit #s 44-45 (BSAs) and exhibit # 66 is engaged in businesses that affect public interest.

410. BBT misconduct was made for an improper purpose to include harassing Hunt and to cause unnecessary delay and needless increase in the cost of litigation and to divert Hunt, the FDIC and the police away from the at least two unauthorized loans in Hunt's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts.

411. BBT did through its conduct caused improper access and improper use of Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and Hunt's customer profile; and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans.

412. Hunt suffered monetary or property loss as a result of BBT's unfair or deceptive act(s) to include all monies deposited, setoff monies, coastal gold benefits, all money paid on loans, job loss, attorney fees and costs.

413. At all times pertinent hereto, the conduct of BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts.

414. **See below for relief sought.**

Sixth Cause of Action: Violation of UNFAIR TRADE PRACTICES Act: SC Code § 39-5-10 thru 39-5-170 against BBT.

415. Each previous paragraph and exhibits are repeated herein as if verbatim.

416. This cause of action includes paragraphs 17-20, 53-69 and 124-127.

417. BBT as described herein at paragraphs 1-178 has avoided the procedure of the FDIC to deal with most of the alleged unfair or deceptive acts or practices that are being asserted by Hunt.

418. Hunt wrote to BBT disputing the 2007 mortgage at exhibit # 37.

419. BBT through exhibit #s 44-45 is engaged in businesses that affect public interest.

420. At exhibit # 44 at page 25 of 28 (accuracy of credit information and notice of furnishing of negative information) BBT was required to give notice of the disputed 2007 mortgage.

421. BBT through exhibit # 66 is engaged in businesses that affect public interest.

422. BBT through its membership in the FDIC is engaged in businesses that affect public interest.

423. BBT has reported Hunt to the credit reporting agency as delinquent on the 2007 mortgage.

424. Hunt wrote to BBT at exhibit # 37 disputing the 2007 mortgage.

425. Hunt has sued BBT from 2008-present over the treatment of her accounts and loans at BBT.

426. In its report to the credit reporting agency at exhibit # 46 (last page) BBT did not indicate that the 2007 mortgage was being disputed by Hunt.

427. While Hunt had her IOLTA, POD and other accounts at BBT at least three unauthorized loans (Davis mortgage and the loans: transfer management and portfolio) were placed into Hunt's customer profile. (See exhibit #s 15,28-29 and 10).

428. BBT at exhibit #s 6 and 12 disclosed Hunt's POD account balance to Davis.

429. BBT did engage in two unauthorized setoffs to Hunt's POD account at exhibit #s 5 and 16.

430. In this matter Hunt reported BBT to the FDIC twice (see exhibit #s 14 and

20) for conduct involving the treatment of Hunt's accounts and loans at BBT.

431. At exhibit # 13 BBT failed to disclose the at least two unauthorized loans in the Hunt's customer profile as stated at exhibit #28-29.

432. Judy Teal in her April 11, 2008 (exhibit # 15) letter to the FDIC also sent Craven's letter at exhibit # 13 to the FDIC.

433. Mark Booz in his letter (exhibit # 19) to the FDIC did not disclose the at least two unauthorized loans in Hunt's customer profile along with Hunt's IOLTA.

434. The deception and other actions by BBT as described herein have been repeated multiple times and have caused injury to the public to include Hunt, Davis and other borrowers.

435. Hunt had at least five depositary accounts with BBT: regular checking, IOLTA, POD account, CD and savings account.

436. "Proof of death" includes a death certificate or record or report.

437. At no time has BBT had proof of death of Hunt.

438. BBT did an unauthorized beneficiary profile against the POD account for Davis. (exhibit # 4 and 15)

439. The FDIC made a finding of violation of the Gramm Leach-Bliley Act in May 2008 against BBT. (exhibit #s 17-18)

440. Hunt closed the savings account in March 2008.

441. Hunt closed the IOLTA on May 19, 2008. (exhibit # 36)

442. Hunt closed the POD account on May 19, 2008. (exhibit # 36)

443. Hunt's 2007 mortgage remains at BBT.

444. The 7/19/2007 printout of Hunt's customer profile shows two unauthorized loans called: transfer management and portfolio. (exhibit # 10 & 28-29)

445. BBT website on Identity Fraud refers its customers to the FTC website. (exhibit # 33)

446. Closure of an account is recommended by the Federal Trade Commission's (FTC) website if identity theft is suspected. (exhibit # 33)

447. BBT yearly (2003-2008) mailed Hunt statements of compliance with the GLBA.

448. Hunt has made numerous transactions involving her IOLTA. (exhibit # 3 at para d)

449. Davis made numerous transactions while the unauthorized beneficial

profile was attached to the POD account. (exhibit #s 6 & 12)

450. BBT misconduct was made for an improper purpose to include harassing Hunt and to cause unnecessary delay and needless increase in the cost of litigation and to divert Hunt, the FDIC and the police away from the at least two unauthorized loans in Hunt's customer profile along with her IOLTA, POD, CD, mortgages, car loan and other accounts. (exhibit #s 13-15, 17-25, 28-32)

451. BBT did through its conduct caused improper access and improper use of Hunt's IOLTA, POD trust, savings account, mortgages, CD, car loan, other accounts and Hunt's customer profile; and with held profits when it did the following: two improper setoffs, improper disclosure to Davis, creation, use and deletion of the unauthorized beneficiary profile and the creation, use and deletion of the at least two unauthorized loans. (exhibit #s 5, 16, 10, 14, 15,28-29, 32, 36)

452. Hunt suffered monetary or property loss as a result of BBT's unfair or deceptive act(s) to include setoff monies, costs, attorney fees, coastal gold banker benefits, monies paid on 2007 mortgage, possible foreclosure, job loss, all monies deposited at BBT since 2000.

453. At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts.

454. Hunt seeks damages under: SC Code § 39-5-140(a) of three times actual damages, punitive damages, cost, attorney fees, such other relief as Court deems necessary or proper; and

455. **See below for other relief sought.**

Seventh Cause of Action: Breach of contract(s) against BBT.

456. Each previous paragraph and exhibits are repeated herein as if verbatim.

457. This cause of action includes paragraphs 53-69 and 124-127.

458. Hunt's 2000 POD account signature card is at exhibit # 4.

459. Hunt's 2006 CD is at exhibit # 9.

460. Hunt's 2007 mortgage application is at exhibit # 7.

461. Hunt's customer profile with the coastal gold benefits is at exhibit # 10.

462. On July 19, 2007 BBT provided Hunt a copy of her customer profile.

463. The July 19, 2007 customer profile at exhibit # 10 included the loans: transfer management and portfolio. (See exhibit #28-29)

464. Hunt did not authorize the loans: transfer management and portfolio.

465. Most of Hunt's accounts and loans at BBT are shown at exhibit # 10.

466. BBT is required to keep records of all of Hunt's accounts and loans, etc.

467. Hunt never signed BBT's banking service agreements (BSA) that are shown at exhibit #s 44 and 45.

468. At exhibit # 4 in May 2000 Hunt authorized an individual POD account at BBT with Hunt as the trustee and Davis as the beneficiary at Hunt's death.

469. Hunt did not authorize a joint POD account with Davis.

470. At exhibit # 11 page 8 of 10 and exhibit #15 - BBT states that it set up Hunt's POD account as a joint account with Davis in 2000.

471. The setoffs to Hunt's POD account at exhibit #s 5 and 16 were not authorized by Hunt.

472. The name on the account of the POD at exhibit # 4 is: Cindy B. Hunt trustee Costella H Davis beneficiary.

473. The checks that resulted in the setoffs to the POD account were not in the name of: Cindy B. Hunt trustee Costella H Davis beneficiary.

474. BBT completed the 2007 mortgage application prior to Hunt's arrival on May 18, 2007.

475. BBT presented the 2007 application to Hunt for her signature only.

476. Hunt's 2007 mortgage application did not list the two unauthorized loans (transfer management and portfolio) that was in Hunt's customer profile along with her IOLTA, POD account, CD, savings, mortgage and other accounts. (exhibit #s 7 and 10)

477. Hunt's 2007 mortgage application at exhibit # 7 did not list the POD account. (exhibit # 7 at page 3 of 6)

478. The only account listed on Hunt's 2007 mortgage application is Hunt's savings account with a one dollar balance. (exhibit # 7 at page 3 of 6)

479. On 1/19/2008 while in the mortgage portion of the system at exhibit # 15 and exhibit # 12 BBT told Davis that she was the owner of Hunt's POD account.

480. On 1/19/2008 while in the mortgage portion of the system as stated at exhibit # 15 and exhibit # 12 BBT told Davis that she was the beneficiary of Hunt's POD account.

481. On 1/19/2008 while in the mortgage portion of the system at exhibit # 15 and exhibit # 12 BBT told Davis what the dollar account balance was in Hunt's POD account.

482. On 1/19/2008 while in the mortgage portion of the system as per exhibit # 15 and exhibit # 12 BBT was unable to find the Davis mortgage under Davis' name.

483. Davis' mortgage was placed into Hunt's customer profile by BBT.

484. Hunt notified BBT of the disclosure to Ms. Davis on 1/22/2008 and requested that their legal department call Hunt. (exhibit # 14 at para 7)

485. At exhibit 36, at the time Hunt closed the IOLTA and POD trust account, on 5/19/2008, BBT indicated on the exit interview form that it had not saved the account histories of the POD and IOLTA.

486. BBT deleted the at least two unauthorized loans in Hunt customer profile. (exhibit #28-29 and 32)

487. Hunt notified BBT of the disclosure to Ms. Davis on 1/22/2008 and requested that their legal department call Hunt.

488. BBT in its April 11, 2008 letter (exhibit # 15) to the FDIC states from Feb 1, 2008 through March 17, 2008: "I have had numerous conversations with Ms. Hunt."

489. BBT in its April 11, 2008 letter to the FDIC stated that beneficiary profile for Davis had been deleted.

490. BB&T wrote to the HCPD at exhibit # 32 on page 2 that they had no records of the at least two unauthorized loans in Hunt customer profile.

491. At exhibit #s 28 (page 3) – 29 (page 2) BBT refused to provide Hunt with an updated copy of her customer profile.

492. Hunt put BBT on notice of legal action by her on 1/21/2008.

493. Hunt requested that BBT preserve evidence at exhibit # 26.

494. At exhibit # 32 page 2 BBT responds to the HCPD search warrant stating: Subject: **Criminal Subpoena** – Cindy B Hunt, Transfer Management, Portfolio BBT has received Subpoena requesting information regarding the above referenced client(s) and responds as follows:
We are unable to produce documents as requested. We have no record of accounts with BBT in reference to the account numbers listed on subpoena. [...]."

495. Hunt financed her 2003 mortgage with BBT. (exhibit # 3 para 3.c.)

496. In May 2007 the balance of the 2003 mortgage was about $91,000.00.

497. In May 2007 the property appraised for $195,000.00.

498. Hunt refinanced her 2003 mortgage on May 18, 2007 with BBT.

499. BBT recorded the 2007 mortgage with the register of deeds for Horry County.

500. At exhibit # 1 the current balance of the 2007 mortgage is about $140, 000.00.

501. BBT has not issued a satisfaction of the 2007 mortgage to Hunt.

502. Hunt's interest rate on the 2007 mortgage is 6.375%. (exhibit # 7)

503. Hunt must discharge the 2007 mortgage before she can complete refinancing.

504. Hunt was forced to close and or stop paying the following accounts and loans at BBT: savings, POD trust, IOLTA and 2007 mortgage.

505. At all times pertinent hereto, the conduct of Trustee BBT, as well as that of its agents, servants and/or employees, was malicious, intentional, and willful and in reckless disregard for the rights and safety of the IOLTA, Hunt and her other accounts. (exhibit #s 14, 15, 10 & 28-29, 32, 36)

506. **See below for relief sought.**

Hunt prays for the following relief:

1) Default Judgment; Summary Judgment, negative inference against BBT and

2) The Court removes BBT and its employees, appoints a special fiduciary and require an accounting; and

3) Pending a final decision on Hunt's request to remove BBT and its employees that the Court orders relief under Sections 62-7-1002(a), 62-7-1001(b), etc. to protect the trust property and the interests of the beneficiaries, etc; and

4) In its final order that the Court removes BBT and its employees, appoints a special fiduciary, require an accounting and orders relief under Sections 62-7-1002(a), 62-7-1001(b), etc. to protect the trust property and the interests of the beneficiaries, etc; and

5) All of the following:

a. Hunt makes a demand for fifty million dollars in actual damages;

d. An accounting of all authorized and unauthorized accounts of Hunt customer profile including the Davis mortgage and the CD.

e. The appointment of a special fiduciary; Impose a lien on BBT.

f. BBT pays a surcharge for mismanagement of Hunt accounts.

g. Strike all pleadings of BBT: past, present and future.

h. Actual and compensatory damages, disgorgement of profits and restitution damages; Legal interest, Prejudgment interest, Post Judgment

interest.

i. BBT pay face value of the Coastal Banker Gold benefits and inconvenience in relocating accounts.

j. Statutory damages, consequential damages, general damages, special damages, actual damages and punitive damages.

k. Constructive and Resulting trusts with tracing.

l. Damages for mental anguish and emotional distress.

m. BBT to pay to Hunt all monies paid on the current mortgage with legal, prejudgment and post judgment interest; punitive damages.

n. BBT to pay to Hunt the amount of the 2006 CD with legal, prejudgment and post judgment interest.

o. BBT to pay to Hunt the life amount of monies deposited in the regular checking account, savings account and POD trust with legal prejudgment and post judgment interest.

p. BBT to pay to the SC Bar the life amount of monies deposited in the IOLTA with statutory damages, legal, prejudgment and post judgment interest and punitive damages, etc.

q. BBT to pay to Davis and the other borrowers pursuant to agreement for each plus loan amount, amount paid on loan with statutory damages, legal, prejudgment and post judgment interest and punitive damages, etc.

r. BBT to pay to Hunt the original loan amount of all of Hunt's authorized loans with legal, prejudgment and post judgment interest.

s. BBT to pay to Hunt the original loan amount of all of the unauthorized loans in Hunt customer profile, including the Davis mortgage with legal, prejudgment and post judgment interest.

r. Hunt is to be allowed to amend the counterclaims to include more causes of actions damages and add parties, etc.

t. BB&T to immediately provide in a readable and understandable format the documents that were requested in the Oct 18, 2010 search warrant by the HCPD and any other documents that the HCPD may request.

u. BBT to pay all costs and expenses, including all attorney fees (past, present and future) to include Hunt, an attorney, and other attorneys pursuant to SC Ann. 62-7-1001(b); SC Ann. 62-7-1004; unclean hands (unauthorized practice of law (two accounts), aiding and abetting the unauthorized practice of law (two accounts)), etc. for this entire matter including the FDIC proceeding.

v. BBT to pay all costs and expenses, including all attorney fees (past, present and future) to include Hunt, an attorney, and other attorneys for

this entire matter including the FDIC proceeding.

w. The attorney fees as of March 6, 2013 were $2,665,500 where Hunt has already paid $8,000.00 of these fees; and costs as of March 2013 are $ 3405.00.

x. BBT to remove all negative status from the credit reporting agencies on Hunt, Davis and others.

y. BBT to remove all mortgages and liens from the property of Hunt, Davis and others.

z. Any other relief that this Court deems just and proper.

Respectfully submitted,

C B Hunt

Cindy B. Hunt
Pro Se
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

DATE: June 06, 2014

CERTIFICATE OF SERVICE BY MAIL

Civil Action # 2013-CP-26-2528

I, the undersigned Pro Se Defendant and attorney, do hereby certify that I have served a copy of the below listed document by US Mail, postage prepaid, on 06 June 2014, at the following addresses:

FILED
14 JUN -6 PM 3:34
BERNADINE BROOKS-WARD
CLERK OF COURT

Document(s) Served: **Motion for Sanctions; and**

First Amended Counterclaims and Defenses

To: Rogers Townsend & Thomas, PC
PO Box 100200
Columbia, SC 29202

Thank You,

C B Hunt

Cindy B. Hunt, Pro Se.
195 D Willow Green Dr
Conway, SC 29526
843 488-1131

Blank

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Cindy B. Hunt Plaintiff v. Branch Banking and Trust Company, Danny Fogle, Cathy Lambert, Judy Teal, Mark Booz, and Kaci Sansbury, Defendants	Civil Action No. 4:09-cv-02151-TLW

MOTION TO DISMISS

Pursuant to Rule 12(b) (2), and (6), FRCP, Branch Banking and Trust Company ("BB&T), Danny Fogle ("Fogle"), Cathy Lambert ("Lambert"), Judy Teal ("Teal"), Mark Booz ("Booz") and Kaci Sansbury ("Sansbury") (collectively the "Defendants") hereby move that this matter be dismissed on the following grounds:

1. The Complaint fails to allege sufficient facts to establish jurisdiction of this Court over Mark Booz, a citizen and resident of the State of North Carolina whose only activity regarding the Plaintiff was the sending of correspondence in response to a complaint made to the FDIC which correspondence was sent in the course of his legal representation of his client, BB&T, and which was sent to the FDIC at a location outside of the State of South Carolina.
2. The First Cause of Action fails to set forth a claim for relief under the Graham-Leach Bliley Act ("15 U.S.C. 6801-6809;6821-6827 etc." as pled by the Plaintiff) as

the conduct complained of is specifically allowed by the Act and/or no private cause of action exists under the Act;

3. The Second and Third Causes of Action fail to set forth a claim for relief as they seek relief under federal criminal statutes as to which no private right of action exists and/or the relief requested requires a showing of fraud which has not been pled with the specificity required by Rule 9(b), FRCP;
4. The Fourth Cause of Action fails to set forth a claim for relief for "Fraud" as said cause of action has not been pled with the particularity required by Rule 9(b);
5. The Fifth Cause of Action fails to set forth a claim for relief for "Negligent Misrepresentation" as the complaint fails to allege facts sufficient to establish a plausible claim for such relief.
6. The Sixth Cause of Action fails to set forth a claim for relief for "Conversion" as a bank account (a contractual right) cannot be the subject of a conversion action.
7. The Seventh Cause of Action fails to set forth a claim for relief for "Breach of Fiduciary Duty" as the facts alleged in the Complaint establish a debtor/creditor relationship between the Plaintiff and BB&T which does not give rise to a fiduciary duty;
8. The Eighth Cause of Action fails to set forth a claim for relief for "Violation of the Probate Code" as the sections referred to therein do not create a right of action;
9. The Ninth Cause of Action fails to set forth a claim for relief for "Anti-Tying" as the complaint fails to allege facts sufficient to establish a plausible claim for such relief as the Complaint fails to allege any prohibited tying of products;

Wherefore, the Defendants request that this Court dismiss the Complaint in this action and for such other and further relief as the Court may deem appropriate.

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Cindy B. Hunt Plaintiff v. Branch Banking and Trust Company, Danny Fogle, Cathy Lambert, Judy Teal, Mark Booz, and Kaci Sansbury, Defendants	Civil Action No. 4:09-cv-02151-TLW

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

This matter is before the Court upon the motion of Branch Banking and Trust Company ("BB&T), Danny Fogle ("Fogle"), Cathy Lambert ("Lambert"), Judy Teal ("Teal"), Mark Booz ("Booz") and Kaci Sansbury ("Sansbury") (collectively the "Defendants") to Dismiss the Complaint in this action pursuant to Rule 12(b) (2) and (6), FRCP.

GENERAL FACTS AND BACKGROUND

For the purposes of this Motion, the Court is presented with a claim based upon two separate occurrences:

1. The disclosure of information related to a payable on death account which the Plaintiff opened with Coastal Federal Bank and which was acquired through merger by BB&T. The disclosure complained of in the complaint was the disclosure of information related to the account to the beneficiary of the account, the Plaintiffs cousin.

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2. The Plaintiff's presentation of a check to BB&T on which a stop payment had been issued and BB&T's subsequent set-off of the amount of the check against the account maintained at BB&T.

APPLICABLE STANDARD

The Supreme Court, in two recent cases, has provided the trial courts with guidance as to the application of Rule 8(a) to pleadings and determining the sufficiency thereof. These cases clearly raise the standard to which pleadings must rise to be sufficient and clearly renounced the old standard that a complaint should not be dismissed unless there is "no set of facts" which would support it. Indeed, in setting forth its new standard the Court stated as to the "no set of facts" standard: "The phrase is best forgotten as an incomplete, negative gloss on an accepted pleading standard."[1]

The standard to now be applied by this Court in addressing a Motion to Dismiss were most recently stated by the Supreme Court:

> Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." As the Court held in Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929, the pleading standard Rule 8 announces does not require "detailed factual allegations," **but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.** Id., at 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (citing Papasan v. Allain, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986)). **A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do.**" 550 U.S., at 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929. **Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement.**" Id., at 557, 127 S. Ct. 1955, 167 L. Ed. 2d 929.
>
> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." Id., at 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929. A claim has facial plausibility when the plaintiff pleads **factual content** that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Id., at 556, 127 S. Ct. 1955, 167 L. Ed. 2d 929. The plausibility standard is not akin to a "probability requirement," **but it**

1 Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1969 (U.S. 2007)

> **asks for more than a sheer possibility that a defendant has acted unlawfully.** Ibid. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" Id., at 557, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (brackets omitted).
>
> Two working principles underlie our decision in Twombly. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. **Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.** Id., at 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, **we "are not bound to accept as true a legal conclusion couched as a factual allegation"** (internal quotation marks omitted)). Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, **but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.** Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Id., at 556, 127 S. Ct. 1955, 167 L. Ed. 2d 929. Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. 490 F.3d at 157-158. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged -- but it has not "show[n]" -- "that the pleader is entitled to relief." Fed. Rule Civ. Proc. 8(a)(2).[2]

The Supreme Court, in adopting these new pleading standards, has clearly set the trial court as a gatekeeper to further access to the courts and has raised the bar to the opening of that gate. The Complaint before the Court is a perfect example of a Complaint to which this gatekeeper function should be applied.

In a number of instances, the Plaintiff's complaint relies upon allegations of fraud. As to these allegations, in addition to meeting the general pleadings requirements, the pleading standards are even higher. Rule 9(a), FRCP, provides: "In all averments of fraud or mistake, the circumstances constituting fraud or mistake **shall be stated with particularity.**" The Fourth Circuit has clearly stated that Rule 9(a) requires specificity as to the time place and contents of the fraud and an identification of the person alleged to have made the statements:

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2 Ashcroft v. Iqbal, 129 S. Ct. 1937; 173 L. Ed. 2d 868 (2009)

> Since Appellant in this case alleges fraud, his claim is subject to Federal Rule of Civil Procedure 9(b), which requires that claimants plead fraud with particularity. According to two noted scholars, **the "circumstances" required to be pled with particularity under Rule 9(b) are "the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby."** 5 Charles Alan Wright and Arthur R. Miller, Federal Practice and Procedure: Civil § 1297, at 590 (2d ed. 1990). See also Lasercomb America, Inc. v. Reynolds, 911 F.2d 970, 980 (4th Cir. 1990); In re Cryomedical Sciences, Inc. Securities Litigation, 884 F. Supp. 1001, 1012-13 (D. Md. 1995); In re Medimmune, Inc. Securities Litigation, 873 F. Supp. 953, 964-69 (D. Md. 1995). **Mere allegations of "fraud by hindsight" will not satisfy the requirements of Rule 9(b).** Hillson Partners Ltd. Partnership v. Adage, Inc., 42 F.3d 204, 209 (4th Cir. 1994). The second sentence of Rule 9(b) allows conclusory allegations of defendant's knowledge as to the true facts and of defendant's intent to deceive. See 5 Wright and Miller § 1297, at 612.[3]

Additionally, where fraud claims are made as to multiple defendants, the allegations must be sufficient to allow each of the defendants to ascertain the allegations being made as to each of them:

> Plaintiffs have lumped all Defendants together in a manner that is impermissible for purposes of *Rule 9(b). See Vicom Inc. v. Harbridge Merch. Servs., Inc., 20 F.3d 771, 778 (7th Cir. 1994)*; *Zaremski v. Keystone Title Assocs., Inc., 884 F.2d 1391, at *2 (4th Cir. 1989)* (unpublished table decision) ("Thus, [HN11] 'where multiple defendants are asked to respond to allegations of fraud, the complaint should inform each defendant of the nature of his alleged participation in the fraud.'" (quoting *DiVittorio v. Equidyne Extractive Indus., 822 F.2d 1242, 1247 (2d Cir. 1987))*; *Adams, 193 F.R.D. at 250*; *Goldstein v. Malcolm G. Fries & Assocs., Inc., 72 F. Supp. 2d 620, 627 (E.D. Va. 1999)* ("A plaintiff may not group all wrongdoers together in a single set of allegations.").[4]

ARGUMENT AND CITATION OF AUTHORITY

The Graham Leach Bliley Act (financial institution privacy) does not support a private cause of action and, even if it did, the action complained of , disclosure to a beneficiary of the account, is not prohibited.

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3 Harrison v. Westinghouse Savannah River Co., 176 F.3d 776, 783-784 (4th Cir. 1999)
4 Mincey v. World Savings Bank 614 F. Supp 2d 610 D.S.C. 2008)

The First Cause of Action purports to assert a claim under the Graham Leach Bliley Act regulating the privacy of financial matters. Initially, BB&T would point out that the entire theory of this portion of the Plaintiff's case relies on an erroneous presumption, that BB&T was prohibited from disclosing information regarding the Payable on Death Account to the beneficiary of that account[5], her cousin, Costella Hunt Davis. This assumption is erroneous. The prohibition of disclosure of nonpublic personal information established by Graham Leach Bliley does not apply to disclosure to "persons holding a legal or beneficial interest relating to the consumer"[6]

15 U.S.C. §6802 provides the right of privacy upon which the Plaintiff relies in her Complaint. 15 U.S.C. §6802(a) provides:

> (a) Notice requirements. **Except as otherwise provided in this subtitle,** a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 503

15 U.S.C. 6802(e) specifically provides that "Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information" ... "(3)(D)... to persons holding a legal or beneficial interest relating to the consumer." The disclosure of information to a "beneficiary of the POD account" is clearly a disclosure allowed by and contemplated by the statute.

Secondly, it has been **universally** held that "no private right of action exists for an alleged violation of Graham-Leach Bliley."[7]

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5 The Complaint admits that the complained of disclosure was to a "beneficiary of the POD account." See Complaint at paragraph 58: "This violation first became clear in January 2008 when the bank revealed private account information to the beneficiary of the POD account.

6 15 U.S.C. 6802(e)(3)(D).

7 Dunmire v. Morgan Stanley DW, Inc., 475 F.3d 956, 960 (8th Cir. 2007)(collecting cases); See, e.g. C.S. v. United Bank, Inc., 2009 U.S. Dist. LEXIS 23024 (S.D. W. Va. Mar. 20, 2009) ("every court to consider the issue has found that "[n]o private right of action exists for an alleged violation of the GLBA." Dunmire v. Morgan Stanley DW, Inc., 475 F.3d 956, 960 (8th Cir. 2007) (collecting cases); see also Kathleen A. Hardee, The Gramm-Leach-Bliley Act: Five Years After Implementation, Does the Emperor Wear Clothes?, 39 CREIGHTON L. REV. 915, 934 (2006) ("One by one, the courts addressing the issue relied upon this provision [§ 6805(a)] to determine that the GLBA did not allow for a private right of action.")).

statements" which the Supreme Court rejected as insufficient in setting forth the new standards to be applied in allowing complaints to proceed.

The Fifth Cause of Action for Negligent Misrepresentation fails to allege any facts supporting the cause of action in a manner sufficient to satisfy Rules 8 and 9, FRCP.

The Fifth Cause of Action purports to assert a claim for negligent misrepresentation against BB&T, Fogle and Teal. "The elements of a negligent misrepresentation claim in South Carolina are:(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation."[11]

In addressing the allegations of the Complaint in this cause of action alleging negligent misrepresentation, the requirements of Rule 9(b) must be met. As stated by the District Court in South Carolina:

> Plaintiffs' common law claims rest upon the same allegations as their 10b-5 claims. Because the federal claims fail to satisfy Rule 9(b), the common law claims likewise fail and should be dismissed.
>
> This conclusion applies not only to the fraud claim, but to the negligent misrepresentation count as well. Although the language of Rule 9(b) confines its requirements to claims of mistake and fraud, the requirements of the rule apply to all cases where the gravamen of the claim is fraud even though the theory supporting the claim is not technically termed fraud. Toner v. Allstate Ins. Co., 821 F. Supp. 276, 283 (D. Del. 1993) (applying 9(b) requirement to breach of good faith claim; citing cases applying 9(b) to misrepresentation and negligent misrepresentation); see also Lubin v. Sybedon Corp., 688 F. Supp. 1425, 1453-54 (S.D. Cal. 1988) (dismissing fraud and negligent misrepresentation claims under Rule 9(b)).[12]

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11 Pitten v. Jacobs, 903 F. Supp. 937, 951 (D.S.C. 1995)(citing Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 439 S.E.2d 283, 285 (S.C. App. 1993).

When the allegations of the Fifth Cause of Action are reviewed under these standards, they fail. Initially, as with the prior fraud claim, the Fifth Cause of Action contains nothing more than **"threadbare recitals of the elements of a cause of action, supported by mere conclusory statements."** There clearly are no allegations as to time, place and contents of the alleged misrepresentations. The allegations of this cause of action also fail to state any facts to support the existence of a pecuniary interest to BB&T in making statements to the FDIC or the Plaintiff. Neither BB&T nor its employees were being compensated for the explanations given to the FDIC or to the Plaintiff in response to the Plaintiff's complaints.

A bank account is a contract right; not tangible personal property and will not support a claim for relief conversion

The Plaintiff attempts to assert a cause of action for conversion in the Sixth Cause of Action. A bank account and the right to the funds therein is not tangible personal property but, instead, is a contractual right which will not support a claim for conversion. As explained by the Ninth Circuit Court of Appeals:

> It is doubtful whether the money in the bank account was a chattel that could be the subject of a conversion. It is of course a mere metaphor to speak of "the money in the bank account." In fact, the bank received a wire transfer from the government, and entered a notation in its books acknowledging a debt from itself to the contractor for the amount of the transfer. The "money in the bank account" was nothing but an acknowledgment of indebtedness from the bank to its depositor. Though money or a check could in some circumstances be the subject of conversion, ..., for example if someone wrongfully took a check from another's desk, the tort traditionally involves wrongful taking and carrying away of something tangible. Except for special kinds of accounts in some jurisdictions, bank accounts generally cannot be the subject of conversion, because they are not specific money, but only an acknowledgment by the bank of a debt to its depositor.[13]

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12 Pitten v. Jacobs, 903 F. Supp. 937, 951 (D.S.C. 1995)
13 Reliance Ins. Co. v. U.S. Bank, N.A., 143 F.3d 502, 506 (9th Cir. Wash. 1998)(citations omitted)

The inability of a customer to assert a conversion claim based upon allegedly improper activity in its accounts was clearly set forth in *Tevdorachvili v. Chase Manhattan Bank*[14],

> Plaintiff alleges that Chase "by making, authorizing, inducing and/or permitting the improper transfer to third person(s)" committed acts constituting conversion of property belonging to plaintiff. As a matter of law, plaintiff as a depositor cannot assert such a conversion cause of action against his bank.
>
> It is well settled that an action will lie for the conversion of money where there is a specific, identifiable fund and an obligation to return or otherwise treat in a particular manner the specific fund in question. By its terms, this principle does not apply to the bank-depositor relationship, because funds deposited with a bank do not constitute a specific and identifiable fund.
>
> This result follows from the principle already noted, that the relationship between a bank and a depositor is the strictly contractual one of debtor and creditor. A necessary incident of the debtor-creditor relationship between the creditor-depositor and the debtor-bank is that any funds deposited by the creditor-depositor into an account with the debtor-bank become the bank's property. The bank at the same time becomes contractually indebted to the depositor in the amount of the funds deposited. ("Money deposited in a general account at a bank does not remain the property of the depositor. Upon deposit of funds at a bank, the money deposited becomes the property of the depositary bank; the property of the depositor is the indebtedness of the bank to it, a mere chose in action."). It follows that the plaintiff cannot allege that Chase took or retained "specific and identifiable property" belonging to him, and it also follows that a conversion claim cannot be stated. ("customer's bank account is merely a debt owed to it by the bank, and there is no identifiable property which could have been taken by defendant."); (dismissing cause of action for conversion by account holder who could not allege that bank took "specific and identifiable property" belonging to plaintiff and who was in substance seeking damages for breach of contract). Accordingly, the plaintiff's cause of action for conversion must be dismissed.[15]

South Carolina, similarly, follows the theory that upon deposit into an account, the funds on deposit are the property of the bank, subject to a contractual obligation to pay the funds out of the account as directed:

> As a matter of law, Palmetto Bank is not liable for conversion of the insurance proceeds because its use of the funds was not an unauthorized taking as Palmetto Bank had a legal right to the funds. In fact, the case of Richardson's Rests., Inc. v. The Nat'l Bank of South Carolina, 304 S.C. 289, 294, 403 S.E.2d 669, 672 (Ct. App.

14 103 F. Supp. 2d 632, 643 (E.D.N.Y. 2000)
15 Id. Citations omitted.

> 1991), states that a bank cannot be liable for conversion of funds deposited into a payroll account because the deposits "become part of the [b]ank's general account against which [the depositor's] account received a credit." This Court went on the say this is true, "even though [the depositor] intended to use the account for a particular purpose." Id. at 295, 304 S.E.2d at 672. This position is only bolstered by the right of set-off pursuant to the deposit agreement, as discussed above. Accordingly, the trial court erred in failing to direct a verdict in favor of Palmetto Bank on the issue of conversion. [16]

The relationship of a bank to its depositor in South Carolina is a Debtor/Creditor relationship which does not give rise to a fiduciary duty.

The Seventh Cause of action alleges a breach of fiduciary duty on the part of BB&T. In South Carolina, "[t]he normal bank-depositor arrangement creates a creditor-debtor relationship rather than a fiduciary one."[17] The Plaintiff has not alleged or shown any facts which would take the situation before the Court out of this "normal" relationship.

The South Carolina Probate Code does not create a private cause of action relating to payment of accounts as described therein.

The Eighth Cause of Action alleges a violation of S. C. Code Ann. § 62-6-103 which deals with the ownership of accounts during the lifetime of the depositor and provides:

> (a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.
> (b) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees; if two or more parties are named as original payees, during their lifetimes rights as between them are governed by subsection (a) of this section.
> (c) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if two or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by subsection (a) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

16 Brannon v. Palmetto Bank, 371 S.C. 357, 364 638 S.E.2d 105 (S.C. Ct. App. 2006)
17 Burwell v. South Carolina National Bank 288 S.C. 34, 340 S.E.2d 786 (S.C. 1986)

There is nothing within Title 62 of the South Carolina Code, the Probate Code, which purports to or has ever been interpreted as creating a cause of action for dealing with an account in a manner other than as outlined therein. Additionally, there is no allegation in the Complaint that BB&T made any payment to or at the direction of anyone other than the Plaintiff in regard to the account at issue in this action.

The mere mention of separate accounts in connection with a potential dispute does not arise to a illegal or improper tying of accounts

The Ninth Cause of Action alleges a violation of 12 U.S.C. §1972. The Complaint alleges that BB&T "used this account to justify extending credit to third parties" and that this "tying of two accounts together was an unusual banking practice that benefitted BB&T." 12 U.S.C. §1972 provides:

> 12 USC § 1972. Certain tying arrangements prohibited; correspondent accounts
>
> (1) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, **on the condition or requirement** -
>
> (A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;
>
> (B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;
>
> (C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;
>
> (D) that the customer provide some additional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or
>
> (E) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank, or any subsidiary of such bank holding company, other than a condition or requirement

> that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

The Plaintiff's conclusory claims in this area are unsupported by the facts. In order to prove a case under 12 U.S.C. §1972 the Plaintiff must prove three distinct elements:

(1) An anti-competitive tying arrangement;

(2) That the banking practice at issue was unusual in the banking industry; and

(3) That the practice benefits the Bank.[18]

There is no allegation in the Complaint that BB&T made the obtaining of any product a condition or requirement of any other product offered by BB&T (a tying arrangement) . As a result, there is no allegation of a violation of the Anti-Tying statute.

This Court lacks personal jurisdiction over Mark Booz, an attorney for BB&T.

> When a court's personal jurisdiction is properly challenged by motion under Federal Rule of Civil Procedure 12(b)(2), the jurisdictional question thereby raised is one for the judge, with the burden on the plaintiff ultimately to prove grounds for jurisdiction by a preponderance of the evidence. Combs v. Bakker, 886 F.2d 673, 676 (4th Cir. 1989); Dowless v. Warren-Rupp Houdailles, Inc., 800 F.2d 1305, 1307 (4th Cir. 1986); 2A James W. Moore, Moore's Federal Practice P 12.07[2.-2] (1985 & Supp. 1992-93).
>
> To prove that the district court may assert personal jurisdiction over [the Defendant] must show (1) that a statute or rule authorizes service of process on [the Defendant] in the [forum state] and (2) that service on [the Defendant] comports with the requirements of the Due Process Clause of the Fourteenth Amendment.[19]

As established in the Affidavit Mark Booz filed with this Motion to Dismiss, Mr. Bose is an in-house attorney for BB&T employed in the State of North Carolina who had a single involvement in matters related to the Plaintiff of responding to an FDIC inquiry related to the Plaintiff made from

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18 See, e.g. Pappas v. NCNB National Bank of North Carolina, 653 F.Supp. 699 (M.D.N.C. 1984)

19 Mylan Labs., Inc. v. Akzo, N.V., 2 F.3d 56, 59-60 (4th Cir. Md. 1993)

an FDIC office outside of the State of South Carolina. An exercise of jurisdiction under these facts is neither supported by any statutory basis nor constitutionally proper.

CONCLUSION

The Plaintiff complains of BB&T's alleged disclosure of private information related to an account held by her with BB&T and of BB&T's responses thereto. As indicated, there was no improper disclosure as her cousin to whom disclosure was made was a beneficiary of the payable on death account which the Plaintiff established. Disclosure of information to a beneficiary of an account is specifically authorized by the federal statute upon which the Plaintiff bases her right to recover. Even if the disclosure was somehow wrongful, the Plaintiff has shown no damage from the disclosure. No money was improperly paid. The cousin has not stolen her money or her identity.

Beyond the facts related to disclosure of her account information, the Complaint contains a series of recitals of legal assertions for which no legal or factual basis exists. This Complaint simply cannot be allowed to pass the "gatekeeper" function of the District Court on a Motion to Dismiss as established by the Supreme Court and must be dismissed.

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Cindy B. Hunt Plaintiff v. Branch Banking and Trust Company, Danny Fogle, Cathy Lambert, Judy Teal, Mark Booz, David Craven and Kaci Sansbury, Defendants	Civil Action No. 4:09-cv-02151-TLW

MOTION TO DISMISS SECOND AMENDED COMPLAINT

Pursuant to Rule 12(b) (2), and (6), FRCP, Branch Banking and Trust Company ("BB&T), Danny Fogle ("Fogle"), Cathy Lambert ("Lambert"), Judy Teal ("Teal"), Mark Booz ("Booz") and Kaci Sansbury ("Sansbury") (collectively the "Defendants") hereby move that the Second Amended Complaint (the "Complaint") be dismissed on the following grounds:

1. The Complaint fails to allege sufficient facts to establish jurisdiction of this Court over Mark Booz, a citizen and resident of the State of North Carolina, whose only activity regarding the Plaintiff was the sending of correspondence in response to a complaint made to the FDIC which correspondence was sent in the course of his legal representation of his client, BB&T, and which was sent to the FDIC at a location outside of the State of South Carolina[1].
2. The First Cause of Action fails to set forth a claim for relief under the Graham-Leach Bliley Act ("15 U.S.C. 6801-6809;6821-6827 etc." as pled by the Plaintiff) as

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the conduct complained of is specifically allowed by the Act and/or no private cause of action exists under the Act;

3. The First Cause of Action fails to set for a claim for relief under S.C. Code Ann. §37-20-110 as the Complaint fails to state facts which fall under said statute as the matters complained of do not involve a "consumer reporting agency" within the coverage of S.C. Code Ann. §37-20-110 or involve the subject matter of that statute.
4. The Second and Third Causes of Action fail to set forth a claim for relief as they seek relief under federal criminal statutes as to which no private right of action exists and/or the relief requested requires a showing of fraud which has not been pled with the specificity required by Rule 9(b), FRCP;
5. The Fourth Cause of Action fails to set forth a claim for relief for "Fraud" as said cause of action has not been pled with the particularity required by Rule 9(b) and the complaint fails to allege facts sufficient to establish a plausible claim for such relief;
6. The Fifth Cause of Action fails to set forth a claim for relief for "Negligent Misrepresentation" as the complaint fails to allege facts sufficient to establish a plausible claim for such relief.
7. The Sixth Cause of Action fails to set forth a claim for relief for "Conversion" as a bank account (a contractual right) cannot be the subject of a conversion action.
8. The Seventh Cause of Action fails to set forth a claim for relief for "Breach of Fiduciary Duty" as the facts alleged in the Complaint establish a debtor/creditor

[1] The Affidavit of Mark Booz was previously filed in this matter in support of the original Motion to Dismiss filed on October 27, 2009 and is relied upon in support of this Motion. The Affidavit is Docket No. 20-2.

relationship between the Plaintiff and BB&T which does not give rise to a fiduciary duty;

9. The Eighth Cause of Action fails to set forth a claim for relief for "Violation of the Probate Code" as the sections referred to therein do not create a right of action;
10. The Ninth Cause of Action fails to set forth a claim for relief for "Anti-Tying" as the complaint fails to allege facts sufficient to establish a plausible claim for such relief as the Complaint fails to allege any prohibited tying of products;
11. The Complaint fails to allege facts sufficient to support any plausible claim against any of the individual defendants;
12. The Complaint fails to allege any factual or legal basis for any claim for punitive damages;
13. The Complaint fails to allege any basis for an award of attorneys' fees or costs.

Should it be successful in the prosecution of this Motion, the Defendant BB&T, pursuant to the rights granted to it in the applicable Bank Services Agreement governing the accounts of the Plaintiff will seek a reimbursement of all attorneys' fees incurred in connection with the defense of this action. The Defendants further give notice that they are of the opinion that one or more of the claims made in the Complaint are not warranted based on existing law or by a non-frivolous argument for extending, modifying or reversing existing law or for the establishment of new law and, as to these claims, should they be determined favorable to the Defendants, relief under Rule 11, FRCP, will be sought as to counsel for the Plaintiff and/or the Plaintiff. The Defendants further give notice that they are of the opinion that one or more of the factual contentions made in the Complaint lack evidentiary support and/or are not likely to have evidentiary support after a reasonable

opportunity for further investigation or discovery and, as to these claims, should they be determined favorable to the Defendants, relief under Rule 11, FRCP, will be sought as to counsel for the Plaintiff and/or the Plaintiff.

Wherefore, the Defendants request that this Court dismiss the Complaint in this action and for such other and further relief as the Court may deem appropriate.

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Cindy B. Hunt Plaintiff v. Branch Banking and Trust Company, Danny Fogle, Cathy Lambert, Judy Teal, Mark Booz, David Craven and Kaci Sansbury, Defendants	Civil Action No. 4:09-cv-02151-TLW

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS SECOND AMENDED COMPLAINT

This matter is before the Court upon the motion of Branch Banking and Trust Company ("BB&T), Danny Fogle ("Fogle"), Cathy Lambert ("Lambert"), Judy Teal ("Teal"), Mark Booz ("Booz") and Kaci Sansbury ("Sansbury") (collectively the "Defendants") to Dismiss the Second Amended Complaint[1] in this action pursuant to Rule 12(b) (2) and (6), FRCP.

GENERAL FACTS AND BACKGROUND

For the purposes of this Motion, the Court is presented with a claim based upon what can be stated as three separate occurrences:

1. The allegedly improper set up of a payable on death account as a joint account and the subsequent maintenance of that joint account and information related thereto over the years;

[1] In reviewing the substance of the Second Amended Complaint, the Defendants would stress to the Court that the Second Amended Complaint was filed after the Defendants had filed and served its Motion to Dismiss which Motion had been fully briefed. Many, if not all, of the deficiencies discussed herein are the identical deficiencies found in the Amended Complaint which have not been cured even though the opportunity for amendment was given.

2. The alleged disclosure of information related to a payable on death account which the Plaintiff opened with Coastal Federal Bank and which was acquired through merger by BB&T. The disclosure complained of in the complaint was the disclosure of information related to the account to the beneficiary of the account, the Plaintiffs cousin.
3. The Plaintiff's presentation of a check to BB&T on which a stop payment had been issued and BB&T's subsequent set-off of the amount of the check against the account maintained at BB&T.

APPLICABLE STANDARD

The Supreme Court, in two recent cases, has provided the trial courts with guidance as to the application of Rule 8(a) to pleadings and determining the sufficiency thereof. These cases clearly raise the standard to which pleadings must rise to be sufficient and clearly renounced the old standard that a complaint should not be dismissed unless there is "no set of facts" which would support it. Indeed, in setting forth its new standard the Court stated as to the "no set of facts" standard: "The phrase is best forgotten as an incomplete, negative gloss on an accepted pleading standard."[2]

The standards to now be applied by this Court in addressing a Motion to Dismiss were most recently stated by the Supreme Court:

> Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." As the Court held in Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929, the pleading standard Rule 8 announces does not require "detailed factual allegations," **but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation**. Id., at 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (citing Papasan v. Allain, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986)). **A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a**

[2] Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1969 (U.S. 2007)

cause of action will not do." 550 U.S., at 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929. **Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement**." Id., at 557, 127 S. Ct. 1955, 167 L. Ed. 2d 929.

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." Id., at 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929. A claim has facial plausibility when the plaintiff pleads **factual content** that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Id., at 556, 127 S. Ct. 1955, 167 L. Ed. 2d 929. The plausibility standard is not akin to a "probability requirement," **but it asks for more than a sheer possibility that a defendant has acted unlawfully**. Ibid. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" Id., at 557, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (brackets omitted).

Two working principles underlie our decision in Twombly. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. **Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice**. Id., at 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, **we "are not bound to accept as true a legal conclusion couched as a factual allegation"** (internal quotation marks omitted)). Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, **but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions**. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Id., at 556, 127 S. Ct. 1955, 167 L. Ed. 2d 929. Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. 490 F.3d at 157-158. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged -- but it has not "show[n]" -- "that the pleader is entitled to relief." Fed. Rule Civ. Proc. 8(a)(2).[3]

The Supreme Court, in adopting these new pleading standards, has clearly set the trial court as a gatekeeper to further access to the courts and has raised the bar to the opening of that gate. The Complaint before the Court is a perfect example of a Complaint to which this gatekeeper function should be applied.

[3] Ashcroft v. Iqbal, 129 S. Ct. 1937; 173 L. Ed. 2d 868 (2009)

In a number of instances, the Plaintiff's complaint relies upon allegations of fraud. As to these allegations, in addition to meeting the general pleadings requirements, the pleading standards are even higher. Rule 9(a), FRCP, provides: "In all averments of fraud or mistake, the circumstances constituting fraud or mistake **shall be stated with particularity.**" The Fourth Circuit has clearly stated that Rule 9(a) requires specificity as to the time, place and contents of the fraud and an identification of the person alleged to have made the statements:

> Since Appellant in this case alleges fraud, his claim is subject to Federal Rule of Civil Procedure 9(b), which requires that claimants plead fraud with particularity. According to two noted scholars, **the "circumstances" required to be pled with particularity under Rule 9(b) are "the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby.**" 5 Charles Alan Wright and Arthur R. Miller, Federal Practice and Procedure: Civil § 1297, at 590 (2d ed. 1990). See also Lasercomb America, Inc. v. Reynolds, 911 F.2d 970, 980 (4th Cir. 1990); In re Cryomedical Sciences, Inc. Securities Litigation, 884 F. Supp. 1001, 1012-13 (D. Md. 1995); In re Medimmune, Inc. Securities Litigation, 873 F. Supp. 953, 964-69 (D. Md. 1995). **Mere allegations of "fraud by hindsight" will not satisfy the requirements of Rule 9(b).** Hillson Partners Ltd. Partnership v. Adage, Inc., 42 F.3d 204, 209 (4th Cir. 1994). The second sentence of Rule 9(b) allows conclusory allegations of defendant's knowledge as to the true facts and of defendant's intent to deceive. See 5 Wright and Miller § 1297, at 612.[4]

Additionally, where fraud claims are made as to multiple defendants, the allegations must be sufficient to allow each of the defendants to ascertain the allegations being made as to each of them:

> Plaintiffs have lumped all Defendants together in a manner that is impermissible for purposes of *Rule 9(b). See Vicom Inc. v. Harbridge Merch. Servs., Inc., 20 F.3d 771, 778 (7th Cir. 1994); Zaremski v. Keystone Title Assocs., Inc., 884 F.2d 1391, at *2 (4th Cir. 1989)* (unpublished table decision) ("Thus, 'where multiple defendants are asked to respond to allegations of fraud, the complaint should inform each defendant of the nature of his alleged participation in the fraud.'" (quoting *DiVittorio v. Equidyne Extractive Indus., 822 F.2d 1242, 1247 (2d Cir. 1987)); Adams, 193 F.R.D. at 250; Goldstein v. Malcolm G. Fries & Assocs., Inc., 72 F. Supp. 2d 620, 627 (E.D.*

[4] Harrison v. Westinghouse Savannah River Co., 176 F.3d 776, 783-784 (4th Cir. 1999)

Va. 1999) ("A plaintiff may not group all wrongdoers together in a single set of allegations.").[5]

ARGUMENT AND CITATION OF AUTHORITY

FIRST CAUSE OF ACTION – SC CODE ANN. §37-20-110 – THE "CONSUMER IDENTITY THEFT PROTECTION ACT" COVERS THE ACTIONS OF DEFINED "CONSUMER CREDIT REPORTING AGENC[IES]" AND ACTIVITIES RELATED TO IDENTITY THEFT. THE COMPLAINT FIALS TO ALLEGE ANY VIOLATION OF THIS ACT.

The First Cause of Action stated in the Second Amended Complaint began with the identical stated allegations and a claim that the same activity amounted a violation of the Graham Leach Bliley Act[6] regulating the privacy of financial matters. After reviewing the law applicable to this area as set forth by the Defendants in their initial Motion to Dismiss, the Plaintiff conceded that a private cause of action is not available for violation of the Graham Leach Bliley Act and alleged that the same activity was "more properly asserted under several South Carolina Code sections such as SC Code 16-13-510 (Personal Financial Security Act) and SC Code 37-20-110 (Consumer Identity Theft Protection)"[7]. In ruling on the Plaintiff's Motion to Amend, the Court has previously held that SC Code 16-13-510 (Personal Financial Security Act) does not provide a private cause of action[8].

In her Complaint the Plaintiff retains the identical allegations of violation of Graham Leach Bliley and simply adds an allegation that the disclosure was "prohibited by South Carolina Law."

[5] Mincey v. World Savings Bank 614 F. Supp 2d 610 D.S.C. 2008).
[6] "15 U.S.C. 6801-6809;6821-6827 etc." as originally pled by the Plaintiff.
[7] Memorandum of Plaintiff filed November 18, 2009 (Docket No. 30) at page 4.
[8] Order entered May 7, 2010 at pages 2 and 3 (Docket No. 37).

The latter reference appears to have been intended to incorporate "SC Code 16-13-510 (Personal Financial Security Act)" as stated in the caption to this cause of action.

Initially, BB&T would point out that the entire theory of this portion of the Complaint relies on an erroneous presumption, that BB&T was prohibited by the Graham Leach Bliley Act from disclosing information regarding the Payable on Death Account to the beneficiary of that account[9], her cousin, Costella Hunt Davis. This assumption is erroneous. The prohibition of disclosure of nonpublic personal information established by Graham Leach Bliley does not apply to disclosure to "persons holding a legal or beneficial interest relating to the consumer"[10]

15 U.S.C. §6802 provides the right of privacy upon which the Plaintiff relies in her Complaint. 15 U.S.C. §6802(a) provides:

> (a) Notice requirements. **Except as otherwise provided in this subtitle**, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 503

15 U.S.C. 6802(e) specifically provides that "Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information"…."(3)(D)… to persons holding a legal or beneficial interest relating to the consumer." The disclosure of information to a "beneficiary of the POD account" is clearly a disclosure allowed by and contemplated by the statute.

As a result of the above, the basic premise of the first cause of action, that information which was protected from disclosure by Graham Leach Bliley was disclosed, fails from a legal perspective. The disclosure was not improper. The First Cause of Action contains no other factual assertions of wrongful conduct or any reference to activity which would be wrongful under South Carolina law.

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[9] The Complaint admits that the complained of disclosure was to a "beneficiary of the POD account." See Complaint at paragraph 58: "This violation first became clear in January 2008 when the bank revealed private account information to the beneficiary of the POD account.

[10] 15 U.S.C. 6802(e)(3)(D).

As it has been **universally** held that "no private right of action exists for an alleged violation of Graham-Leach Bliley"[11] the amendment contained in the Complaint attempts to redirect this cause of action originally pled as a violation of Graham Leach Bliley to an equally inapplicable state statute, S.C. Code Ann. §37-20-110.

S.C. Code Ann. §37-20-110, et seq. deals with "Identity Theft Protection" as reflected by its title and governs the activities of "Consumer credit-reporting agenc[ies]" or "consumer reporting agenc[ies]" as defined in S.C. Code Ann. 37-20-110(2). Those agencies are defined as "a person that, for monetary fees or dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information about consumers for the purpose of furnishing consumer reports to third parties."[12] Neither BB&T nor any of the other Defendants, are not alleged to be a "Consumer credit-reporting agency" or "consumer reporting agency" under this section and there are no allegations of the Complaint which would make them such an entity.

As the Complaint contains no reference to which portion of S.C. Code Ann. §37-20-110, et seq. the Defendants are alleged to have violated a discussion of the alleged violation is difficult. A brief review of the Identity Theft Protection Act[13] shows the following:

1. S.C. Code Ann. §37-20-110 is simply definitional and contains no prohibited activity;

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[11] Dunmire v. Morgan Stanley DW, Inc., 475 F.3d 956, 960 (8th Cir. 2007)(collecting cases); See, e.g. C.S. v. United Bank, Inc., 2009 U.S. Dist. LEXIS 23024 (S.D. W. Va. Mar. 20, 2009) ("every court to consider the issue has found that "[n]o private right of action exists for an alleged violation of the GLBA." Dunmire v. Morgan Stanley DW, Inc., 475 F.3d 956, 960 (8th Cir. 2007) (collecting cases); see also Kathleen A. Hardee, The Gramm-Leach-Bliley Act: Five Years After Implementation, Does the Emperor Wear Clothes?, 39 CREIGHTON L. REV. 915, 934 (2006) ("One by one, the courts addressing the issue relied upon this provision [§ 6805(a)] to determine that the GLBA did not allow for a private right of action.")).

[12] S.C. Code Ann. §37-20-110.

[13] S.C. Code Ann. §37-20-110 - §37-20-200.

2. S.C. Code Ann. §37-20-120 covers requirements upon "consumer credit reporting agencies" and "seller or lender credit card issuer" to verify addresses. There is no allegation in the Complaint which would trigger the requirements of this section. or implicate this section in this case.
3. S.C. Code Ann. §37-20-130 relates to reporting and initiating investigations as to identity theft. There is no allegation in the Complaint which would trigger the requirements of this section or implicate this section in this case..
4. S.C. Code Ann. §37-20-140 relates to treatment of identity theft victims and required reporting in court records. There is no allegation in the Complaint which would trigger the requirements of this section or implicate this section in this case.
5. S.C. Code Ann. §37-20-150 relates to maintenance by SLED of records of identity theft. There is no allegation in the Complaint which would trigger the requirements of this section or implicate this section in this case.
6. S.C. Code Ann. §37-20-160 relates to security freezes. There is no allegation in the Complaint which would trigger the requirements of this section or implicate this section in this case.
7. S.C. Code Ann. §37-20-170 relates to matters within records of a "consumer reporting agency" and provides remedies as to a consumer reporting agency for a violation of the Chapter. As previously indicated, neither BB&T nor any of the individual defendants are alleged to be a "consumer reporting agency." It further provides remedies for violation of the Chapter by "other person[s]" but as set out above, there is no provision of Chapter 20 of Title 37 that is implicated under the facts of this case.

8. S.C. Code Ann. §37-20-180 relates to publication and use of social security numbers. There is no allegation in the Complaint which would trigger the requirements of this section or implicate this section in this case.
9. S.C. Code Ann. §37-20-190 relates to disposition of business records. There is no allegation in the Complaint which would trigger the requirements of this section or implicate this section in this case.
10. S.C. Code Ann. §37-20-200 contains additional remedies against a "consumer reporting agency" and/or "other person[s]" that violates Chapter 20 of Title 37 but as set out above, there is no provision of Chapter 20 of Title 37 that is implicated under the facts of this case.

SECOND AND THIRD CAUSES OF ACTION – THERE IS NO PRIVATE RIGHT OF ACTION UNDER THE FEDERAL CRIMINAL STATUTES PLED

The Second and Third Causes of Action purport to be based on the violation of two federal criminal statutes. The general rule is that a private right of action is not maintainable under a criminal statute.[14] Neither 18 U.S.C.§1005[15] or 18 U.S.C. §1030[16] have ever been held to support a private cause of action. Additionally, each of these criminal statutes require a showing of fraud. Even assuming a cause of action was available under these federal criminal statutes, the allegations of these causes of action do not detail the "circumstances" required to be pled with particularity under Rule 9(b). There is no allegation of the "the time, place, and contents of the false

[14] American Postal Workers Union v. Independent Postal System, Inc., 481 F.2d 90, 93 (6th Cir. Mich. 1973)
[15] "Whoever makes any false entry in any book, report, or statement of such bank, company, branch, agency, or organization **with intent to injure or defraud** such bank, company, branch, agency, or organization, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such bank, company, branch, agency, or organization, or the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, or any agent or examiner appointed to examine the affairs of such bank, company, branch, agency, or organization, or the Board of Governors of the Federal Reserve System"
[16] "**Fraud** and related activity in connection with computers"

representations, as well as the identity of the person making the misrepresentation and what he obtained thereby."

Second Cause of Action – 18. U.S.C. §1005 – Despite the failure to make the allegation in the Complaint, the Plaintiff has attempted to assert that the Second Cause of Action is alleged pursuant to 12 U.S.C. §503 which provides that a director or officer of a member bank of the Federal Reserve System is liable for knowingly violating certain provisions of title 18 including 18 U.S.C. 1005. An action under §503 requires the Plaintiff to establish each of the underlined facts above (none of which are alleged in the complaint) and, in addition, detrimental reliance by the Plaintiff.[17] Additionally, the plaintiff must plead the requisite violation of 18 U.S.C. 1005 which requires entries to be made "with an intent to injure or defraud." There are no allegations in the Complaint which would support recovery under these statutes as **facts** supporting both detrimental reliance and intent to defraud are absent.

Third Cause of Action – The attempted claim under 18 U.S.C. §1030 is not an action allowed under 12 U.S.C. §503. It must, therefore, stand on its own under the provisions of 18 U.S.C. 1030(g). This Complaint fails to meet these requirements as it fails to allege facts that would support a violation of 18 U.S.C. §1030 which prevents knowingly accessing a computer without authorization (subsections (a)(1)-(4)), infecting a computer system with an intent to defraud (subsection (a)(5), trafficking in passwords or similar information (subsection 6) or making threats (subsection 7). None of these activities are alleged or implicated in the **facts** set forth in the Complaint. Particularly, there is no allegation that the Bank's computers were accessed by anyone but employees of the Bank with appropriate authority to do so. That the employees may have made inputs that the Plaintiff did not authorize (as is alleged in the Third Cause of Action) does not

[17] Brown Leasing Co. v Cosmopolitan Bancorp 42 F3d 1112 (7th Cir. 1994)

implicate 18 U.S.C. §1030. In addition, a cause of action under 18 U.S.C. 1030(g) requires "loss to 1 or more persons during any 1-year period ... aggregating at least $ 5,000 in value." There are no specific **factual** allegations that the Plaintiff suffered any loss at all as a result of the alleged activity relating to the Bank's computers. The Plaintiff's conclusory allegations of an amount of loss that is nothing but a **"naked assertion[s]" devoid of "further factual enhancement"** clearly belied by the facts actually alleged in the Complaint and is not sufficient under *Twombly*.

FOURTH CAUSE OF ACTION – THE FOURTH CAUSE OF ACTION FOR FRAUD FAILS TO ALLEGE ANY FACTS SUPPORTING THE CAUSE OF ACTION IN A MANNER SUFFICIENT TO SATISFY RULES 8 AND 9, FRCP.

The allegations of the Fourth Cause of Action for "fraud" also fail to comply with Rule 9(b). The allegations of this cause of action do not detail the "circumstances" required to be pled with particularity under Rule 9(b). There is no allegation of the "the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby."[18] Indeed, the allegations of the Fourth Cause of Action are nothing more that the **"threadbare recitals of the elements of a cause of action, supported by mere conclusory statements"** which the Supreme Court rejected as insufficient in setting forth the new standards to be applied in allowing complaints to proceed.

FIFTH CAUSE OF ACTION – THE FIFTH CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION FAILS TO ALLEGE ANY FACTS SUPPORTING THE CAUSE OF ACTION IN A MANNER SUFFICIENT TO SATISFY RULES 8 AND 9, FRCP.

The Fifth Cause of Action purports to assert a claim for negligent misrepresentation against BB&T, Fogle and Lambert. "The elements of a negligent misrepresentation claim in South Carolina

[18] See, e.g. Harrison v. Westinghouse Savannah River Co., 176 F.3d 776, 783-784 (4th Cir. 1999)

are:(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation."[19]

In addressing the allegations of the Complaint in this cause of action alleging negligent misrepresentation, the requirements of Rule 9(b) must be met. As stated by the District Court in South Carolina:

> Plaintiffs' common law claims rest upon the same allegations as their 10b-5 claims. Because the federal claims fail to satisfy Rule 9(b), the common law claims likewise fail and should be dismissed.
>
> This conclusion applies not only to the fraud claim, but to the negligent misrepresentation count as well. Although the language of Rule 9(b) confines its requirements to claims of mistake and fraud, the requirements of the rule apply to all cases where the gravamen of the claim is fraud even though the theory supporting the claim is not technically termed fraud. Toner v. Allstate Ins. Co., 821 F. Supp. 276, 283 (D. Del. 1993) (applying 9(b) requirement to breach of good faith claim; citing cases applying 9(b) to misrepresentation and negligent misrepresentation); see also Lubin v. Sybedon Corp., 688 F. Supp. 1425, 1453-54 (S.D. Cal. 1988) (dismissing fraud and negligent misrepresentation claims under Rule 9(b)).[20]

When the allegations of the Fifth Cause of Action are reviewed under these standards, they fail. Initially, as with the prior fraud claim, the Fifth Cause of Action contains nothing more than **"threadbare recitals of the elements of a cause of action, supported by mere conclusory statements."** There clearly are no allegations as to time, place and contents of the alleged misrepresentations. The allegations of this cause of action also fail to state any facts to support the existence of a pecuniary interest to BB&T in making statements to the FDIC or the Plaintiff. Neither

[19] Pitten v. Jacobs, 903 F. Supp. 937, 951 (D.S.C. 1995)(citing Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 439 S.E.2d 283, 285 (S.C. App. 1993).

BB&T nor its employees were being compensated for the explanations given to the FDIC or to the Plaintiff in response to the Plaintiff's complaints.

FOURTH AND FIFTH CAUSES OF ACTION FOR FRAUD

In her prior responses to the Defendants Motion to Dismiss, the Plaintiff states in her response that "Much of the fraud in question began with the disclosures to Costella Hunt Davis about Plaintiff's bank account (January 19,2008) and continued with misleading communication to the FDIC."[21] This very statement demonstrates the deficiency of the Plaintiff's claims. In context, the statements on which she bases her fraud claims were statements made to the FDIC after the Plaintiff had initiated inquiries regarding these matters and as to which she disagreed at the time and continues to disagree. The fallacy of the Plaintiff's argument is that she could not possibly have relied or had a right to rely upon statements which she herself believed to be incorrect. Reliance is an element of each of the fraud causes of action.

SIXTH CAUSE OF ACTION – A BANK ACCOUNT IS A CONTRACT RIGHT; NOT TANGIBLE PERSONAL PROPERTY AND WILL NOT SUPPORT A CLAIM FOR RELIEF CONVERSION

The Plaintiff attempts to assert a cause of action for conversion in the Sixth Cause of Action. This cause of action appears to allege some type of continuing conversion at the time of each transaction within the account which was alleged to have been improperly set up and than alleges a specific conversion at the time of the set-off for the deposited "stop payment" checks. Regardless of the factual allegations and the nature of the conversion alleged, this cause of action fails. A bank account and the right to the funds therein are a contractual right which will not support a claim for conversion not tangible personal property which can be converted.

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[20] Pitten v. Jacobs, 903 F. Supp. 937, 951 (D.S.C. 1995)

As explained by the Ninth Circuit Court of Appeals:

> It is doubtful whether the money in the bank account was a chattel that could be the subject of a conversion. It is of course a mere metaphor to speak of "the money in the bank account." In fact, the bank received a wire transfer from the government, and entered a notation in its books acknowledging a debt from itself to the contractor for the amount of the transfer. The "money in the bank account" was nothing but an acknowledgment of indebtedness from the bank to its depositor. Though money or a check could in some circumstances be the subject of conversion, ..., for example if someone wrongfully took a check from another's desk, the tort traditionally involves wrongful taking and carrying away of something tangible. Except for special kinds of accounts in some jurisdictions, bank accounts generally cannot be the subject of conversion, because they are not specific money, but only an acknowledgment by the bank of a debt to its depositor.[22]

The inability of a customer to assert a conversion claim based upon allegedly improper activity in its accounts was clearly set forth in *Tevdorachvili v. Chase Manhattan Bank*[23],

> Plaintiff alleges that Chase "by making, authorizing, inducing and/or permitting the improper transfer to third person(s)" committed acts constituting conversion of property belonging to plaintiff. As a matter of law, plaintiff as a depositor cannot assert such a conversion cause of action against his bank.
>
> It is well settled that an action will lie for the conversion of money where there is a specific, identifiable fund and an obligation to return or otherwise treat in a particular manner the specific fund in question. By its terms, this principle does not apply to the bank-depositor relationship, because funds deposited with a bank do not constitute a specific and identifiable fund.
>
> This result follows from the principle already noted, that the relationship between a bank and a depositor is the strictly contractual one of debtor and creditor. A necessary incident of the debtor-creditor relationship between the creditor-depositor and the debtor-bank is that any funds deposited by the creditor-depositor into an account with the debtor-bank become the bank's property. The bank at the same time becomes contractually indebted to the depositor in the amount of the funds deposited. ("Money deposited in a general account at a bank does not remain the property of the depositor. Upon deposit of funds at a bank, the money deposited becomes the property of the depositary bank; the property of the depositor is the indebtedness of the bank to it, a mere chose in action."). It follows that the plaintiff cannot allege that Chase took or retained "specific and identifiable property" belonging to him, and it also follows that a conversion claim cannot be stated. ("customer's bank account is merely a debt owed to it by the bank, and there is no identifiable property which could have been taken by defendant."); (dismissing cause of action for conversion by account holder who could not allege that bank took

[21] Memorandum of Plaintiff filed November 18, 2009 (Docket No. 30) at page 4.
[22] Reliance Ins. Co. v. U.S. Bank, N.A., 143 F.3d 502, 506 (9th Cir. Wash. 1998)(citations omitted)
[23] 103 F. Supp. 2d 632, 643 (E.D.N.Y. 2000)

> "specific and identifiable property" belonging to plaintiff and who was in substance seeking damages for breach of contract). Accordingly, the plaintiff's cause of action for conversion must be dismissed.[24]

South Carolina, similarly, follows the theory that, upon deposit into an account, the funds on deposit are the property of the bank, subject to a contractual obligation to pay the funds out of the account as directed:

> As a matter of law, Palmetto Bank is not liable for conversion of the insurance proceeds because its use of the funds was not an unauthorized taking as Palmetto Bank had a legal right to the funds. In fact, the case of Richardson's Rests., Inc. v. The Nat'l Bank of South Carolina, 304 S.C. 289, 294, 403 S.E.2d 669, 672 (Ct. App. 1991), states that a bank cannot be liable for conversion of funds deposited into a payroll account because the deposits "become part of the [b]ank's general account against which [the depositor's] account received a credit." This Court went on the say this is true, "even though [the depositor] intended to use the account for a particular purpose." Id. at 295, 304 S.E.2d at 672. This position is only bolstered by the right of set-off pursuant to the deposit agreement, as discussed above. Accordingly, the trial court erred in failing to direct a verdict in favor of Palmetto Bank on the issue of conversion. [25]

SEVENTH CAUSE OF ACTION – THE RELATIONSHIP OF A BANK TO ITS DEPOSITOR IN SOUTH CAROLINA IS A DEBTOR/CREDITOR RELATIONSHIP WHICH DOES NOT GIVE RISE TO A FIDUCIARY DUTY.

The Seventh Cause of action alleges a breach of fiduciary duty on the part of BB&T. In South Carolina, "[t]he normal bank-depositor arrangement creates a creditor-debtor relationship rather than a fiduciary one."[26] The Plaintiff has not alleged or shown any facts which would take the situation before the Court out of this "normal" relationship.

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[24] Id. Citations omitted.
[25] Brannon v. Palmetto Bank, 371 S.C. 357, 364 638 S.E.2d 105 (S.C. Ct. App. 2006)
[26] Burwell v. South Carolina National Bank 288 S.C. 34, 340 S.E.2d 786 (S.C. 1986)

EIGHTH CAUSE OF ACTION – THE SOUTH CAROLINA PROBATE CODE DOES NOT CREATE A PRIVATE CAUSE OF ACTION RELATING TO PAYMENT OF ACCOUNTS AS DESCRIBED THEREIN.

The Eighth Cause of Action alleges a violation of S. C. Code Ann. § 62-6-103 which deals with the ownership of accounts during the lifetime of the depositor and provides:

> (a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.
> (b) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees; if two or more parties are named as original payees, during their lifetimes rights as between them are governed by subsection (a) of this section.
> (c) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if two or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by subsection (a) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

There is nothing within Title 62 of the South Carolina Code, the Probate Code, which purports to or has ever been interpreted as creating a cause of action for dealing with an account in a manner other than as outlined therein. Additionally, there is no allegation in the Complaint that BB&T made any payment to or at the direction of anyone other than the Plaintiff in regard to the account at issue in this action.

NINTH CAUSE OF ACTION – THE MERE MENTION OF SEPARATE ACCOUNTS IN CONNECTION WITH A POTENTIAL DISPUTE DOES NOT ARISE TO A ILLEGAL OR IMPROPER TYING OF ACCOUNTS

The Ninth Cause of Action alleges a violation of 12 U.S.C. §1972. The Complaint alleges that BB&T "used this account to justify extending credit to third parties" and that this "tying of two accounts together was an unusual banking practice that benefitted BB&T." 12 U.S.C. §1972 provides:

12 USC § 1972. Certain tying arrangements prohibited; correspondent accounts

(1) A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, **on the condition or requirement -**

(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

(B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

(C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(D) that the customer provide some additional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or

(E) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank, or any subsidiary of such bank holding company, other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

The Plaintiff's conclusory claims in this cause of action that an improper "tying" occurred are not supported by the facts alleged . In order to prove a case under 12 U.S.C. §1972 the Plaintiff must prove three distinct elements:

(1) An anti-competitive tying arrangement;

(2) That the banking practice at issue was unusual in the banking industry; and

(3) That the practice benefits the Bank.[27]

[27] See, e.g. Pappas v. NCNB National Bank of North Carolina, 653 F.Supp. 699 (M.D.N.C. 1984)

There is no allegation in the Complaint that BB&T made the obtaining of any product a condition or requirement of any other product offered by BB&T (a tying arrangement) . As a result, there is no allegation of a violation of the Anti-Tying statute.

JURISDICTION AS TO MARK BOOZ – THIS COURT LACKS PERSONAL JURISDICTION OVER MARK BOOZ, AN ATTORNEY FOR BB&T.

> When a court's personal jurisdiction is properly challenged by motion under Federal Rule of Civil Procedure 12(b)(2), the jurisdictional question thereby raised is one for the judge, with the burden on the plaintiff ultimately to prove grounds for jurisdiction by a preponderance of the evidence. Combs v. Bakker, 886 F.2d 673, 676 (4th Cir. 1989); Dowless v. Warren-Rupp Houdailles, Inc., 800 F.2d 1305, 1307 (4th Cir. 1986); 2A James W. Moore, Moore's Federal Practice P 12.07[2.-2] (1985 & Supp. 1992-93).
>
> To prove that the district court may assert personal jurisdiction over [the Defendant] must show (1) that a statute or rule authorizes service of process on [the Defendant] in the [forum state] and (2) that service on [the Defendant] comports with the requirements of the Due Process Clause of the Fourteenth Amendment.[28]

As established in the Affidavit Mark Booz filed with this Motion to Dismiss, Mr. Bose is an in-house attorney for BB&T employed in the State of North Carolina who had a single involvement in matters related to the Plaintiff of responding to an FDIC inquiry related to the Plaintiff made from an FDIC office outside of the State of South Carolina. An exercise of jurisdiction under these facts is neither supported by any statutory basis nor constitutionally proper.

DAMAGES

Each and every cause of action pled by the Plaintiff requires damage to have been incurred by the Plaintiff. The Complaint is interesting from this perspective in what it does not allege. It does not allege that any funds were withdrawn from the account in question. It does not allege that the Plaintiff suffered any actual damage from any of the statements alleged to have been fraudulently

[28] Mylan Labs., Inc. v. Akzo, N.V., 2 F.3d 56, 59-60 (4th Cir. Md. 1993)

made. In looking at the issue of damages, the Court must be mindful of the insufficiency of "**naked assertion[s]" devoid of "further factual enhancement.**[29]" In terms of **facts** as it relates to damages, the Complaint merely alleges that the Plaintiff voluntarily "withdrew her bank accounts from BB&T, thus losing benefits." There is no indication or allegation that this withdrawal of funds was anything but a voluntary act of the Plaintiff in response to what she saw as the wrongful acts of BB&T: Acts which were, in fact, not wrongful at all. As indicated in the Complaint, the disclosure of information of which she complains was to a person with a beneficial interest in the account, a person to whom disclosure of information is allowed under the applicable federal statute. The set-off of which she complains (applying existing account balances to offset the Plaintiff's obligation arising out of two checks as to which payment had been stopped) is insufficient to bring this Court's jurisdiction into play.

CONCLUSION

The Basic Case – The Plaintiff, in her third attempt to state a claim in this case, continues to attempt to make something out of nothing. The Complaint alleges that an account was improperly set up at its inception. At best, this act would give rise to a breach of contract action which is not made. A failure to allege such a breach of contract, presumably, is a result of the fact that no damage was sustained as a result of the breach of contract since no funds were improperly paid out. The next act is the supposedly improper disclosure of the existence of the account to the Plaintiff's cousin. This disclosure, as previously set forth, was an authorized disclosure under the applicable federal statutes. The next set of facts as to which the Plaintiff complains are statements made to various regulators after the Plaintiff determined to truly make a "federal case" out of an innocuous and legal disclosure of information. As to these communications on which the Plaintiff bases various fraud and

misrepresentation claims, there is no factual indication of either reliance, a right to rely or damages. Indeed, the Plaintiff disagreed with the statements and, in her mind, knew they were not true. How could she have relied thereon? As to the last set of facts complained of, the offset of an unstated amount of funds as a result of the Plaintiff's deposit of two checks as to which she admits a stop payment had been issued, the mere statement of the facts, the deposit by the Plaintiff of two checks that were dishonored when presented due to the stop payment, gives rise to the legally proper act of BB&T in applying its common law right of set-off against other funds on deposit with it.

The Plaintiff essentially complains of BB&T's alleged disclosure of private information related to an account held by her with BB&T and of BB&T's responses thereto. As indicated, there was no improper disclosure as her cousin to whom disclosure was made was a beneficiary of the payable on death account which the Plaintiff established. Disclosure of information to a beneficiary of an account is specifically authorized by the federal statute upon which the Plaintiff initially based bases her right to recover. Even if the disclosure was somehow wrongful, the Plaintiff has shown no damage from the disclosure. No money was improperly paid. The cousin has not stolen her money or her identity.

Beyond the facts related to disclosure of her account information, the Complaint contains a series of recitals of legal assertions for which no legal or factual basis exists. This Complaint simply cannot be allowed to pass the "gatekeeper" function of the District Court on a Motion to Dismiss as established by the Supreme Court and must be dismissed.

[29] Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1969 (U.S. 2007)

The Defendants respectfully request that the Complaint be dismissed.

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Cindy B. Hunt Plaintiff v. Branch Banking and Trust Company, Danny Fogle, David Craven, Mark Booz, Judy Teal, Christopher Okay, Cathy Lambert, Kaci Sansbury, Karen Butcher, Steven Licata, Lisa Heywood and Tamara Cannon Defendants	Civil Action No. 4:11-cv-00870-JMC-TER

MOTION TO DISMISS AMENDED COMPLAINT[1]

Without, in any way, waiving and fully reserving all rights that each of the below named defendants have to insist on proper service in this matter, pursuant to Rule 12(b) (2) and (b)(5), FRCP, Branch Banking and Trust Company ("BB&T"), Danny Fogle ("Fogle"), David Craven ("Craven"), Mark Booz ("Booz"), Judy Teal ("Teal"), Christopher Okay ("Okay"), Cathy Lambert ("Lambert"), Kaci Sansbury ("Sansbury"), Karen Butcher ("Butcher"), Steven Licata ("Licata"), Lisa Heywood ("Heyward") and Tamara Cannon ("Cannon") (collectively the "Defendants")[2] hereby move that the Amended Complaint filed on May 10, 2011 (the "Complaint") be dismissed on the following grounds:

[1] BB&T will separately file a Rule 12(b)(6) Motion to Dismiss addressing the substantive defects in the Amended Complaint. As the matters raised in this Motion would negate the need for further proceedings in this matter, this Motion is being filed separately.

[2] Although it is possible that other service has recently taken place or was made and not brought to the attention of counsel, to the best of the undersigned counsel's knowledge, actual service in this matter has been made only upon BB&T, Booz and Okay. No proofs of service have been filed with the Court.

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1. The Complaint fails to allege sufficient facts to establish jurisdiction of this Court over Mark Booz, a citizen and resident of the State of North Carolina, whose only activity regarding the Plaintiff was the sending of correspondence in response to a complaint made to the FDIC which correspondence was sent in the course of his legal representation of his client, BB&T, and which was sent to the FDIC at a location outside of the State of South Carolina[3].
2. The Complaint was not filed within the time required by Rule 4(m) FRCP which period has not been extended.

Wherefore, the Defendants request that this Court dismiss the Complaint in this action and for such other and further relief as the Court may deem appropriate.

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[3] Filed contemporaneous with this motion is the Affidavit of Mark Booz which is relied on in support thereof as it relates to the matters set forth in Paragraph 1 herein.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Cindy B. Hunt Plaintiff v. Branch Banking and Trust Company, Danny Fogle, David Craven, Mark Booz, Judy Teal, Christopher Okay, Cathy Lambert, Kaci Sansbury, Karen Butcher, Steven Licata, Lisa Heywood and Tamara Cannon Defendants	Civil Action No. 4:11-cv-00870-JMC-TER

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT PURSUANT TO RULES 12(b)(2) AND 12(b)(5)

This matter is before the Court upon the Motion to Dismiss the Amended Complaint of Branch Banking and Trust Company ("BB&T"), Danny Fogle ("Fogle"), David Craven ("Craven"), Mark Booz ("Booz"), Judy Teal ("Teal"), Christopher Okay ("Okay"), Cathy Lambert ("Lambert"), Kaci Sansbury ("Sansbury"), Karen Butcher ("Butcher"), Steven Licata ("Licata"), Lisa Heywood ("Heyward") and Tamara Cannon ("Cannon") (collectively the "Defendants") pursuant to Rule 12(b) (2) and (b)(5), FRCP,[1] (the "Motion").

[1] Although it is possible that other service has recently taken place or was made and not brought to the attention of counsel, to the best of the undersigned counsel's knowledge, actual service in this matter has been made only upon BB&T, Booz and Okay. No proofs of service have been filed with the Court.

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PROCEDURAL HISTORY

Prior Action

The Plaintiff in this action has previously pursued an action in this Court against many, but not all, of the Defendants, Civil Action No. 4:09-cv-02151-TLW (the "Prior Action") for the same facts as form the basis for the Complaint in this action. After numerous attempts to state a cause of action through various amendments to the Complaint, the Prior Action was dismissed by this Court by Order entered on March 23, 2011[2] (the "Dismissal Order") and the dismissal of the Prior Action was affirmed by the Fourth Circuit Court of Appeals on May 16, 2012.[3] This Court expressly addressed the question of personal jurisdiction over Booz in the Dismissal Order in the Prior Action, finding that this Court lacked personal jurisdiction over Booz.

The Present Action

A review of the docket maintained in this Court indicates that the present action was initiated through the filing of a Complaint on April 12, 2011. The April 12, 2011 Complaint was virtually identical to the Complaint dismissed in the Prior Action. The docket demonstrates that none of the required documents necessary to be filed with the Complaint were filed at that time.[4] The timing of the dismissal of the Prior Action with this new filing strongly suggests that the filing of this action was done to attempt to protect the Plaintiff's claims against the expiration of various statutes of limitations that either had run or were in the process of running as to the Plaintiff's claims.

On May 5, 2011, the Plaintiff filed the current Amended Complaint which added additional parties and additional causes of action. This Amended Complaint was also filed without any attempt

[2] See, Civil Action No. 4:09-cv-02151-TLW, Docket No. 110.
[3] See, Civil Action No. 4:09-cv-02151-TLW, Docket No. 137 (Appellate decision); Docket No. 138 (Order denying rehearing en banc) and Docket No. 139 (Mandate).
[4] The Plaintiff failed to file either the Court's required Local Rule 26.01 Interrogatories or the required summons to

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to comply with the Court's local rule requirements as no summons was filed and no Local Rule 26.01 Interrogatory Responses were filed.

In response to the deficient filing this Court entered a "Proper Form" Order on May 12, 2011requiring the Plaintiff to file the appropriate summons and Rule 26.01 Interrogatory Responses by no later than 21 days from the date of the Order (by June 2, 2011). The Plaintiff submitted the required materials and summons were issued by this Court on June 10, 2011. At the time of the issuance of the summons, this Court issued its Order dated June 10, 2011[5] with the following direction to the Plaintiff:

> Plaintiff's attention is directed to Rule 4(m) of the Federal Rules of Civil Procedure, which provides that "[i]f a defendant is not served within 120 days after the complaint it filed, the court-on motion or on its own after notice to the plaintiff-must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period."

Despite the above admonition from the Court, the Amended Complaint was not served during the 120 days required by Rule 4(m) as recited in the June 10, 2011 Order and no motion was made to extend the time allowed for service.

On October 13, 2011, this Court entered a second Order directed to the Plaintiff requiring that the Plaintiff either file proof of service or show good cause for the failure to serve[6]. By letter purported to be dated October 22, 2011 (which was not mailed until October 24, 2011)[7] the Plaintiff through letter/pleading filed with the Court indicated to the Court the following:

> "1. As a result of the Defendants conduct in this matter including the threat of a FRCP 11 against the Plaintiff, the Plaintiff has been unable to sit for the Paten(sic) Bar exam resulting in the Plaintiff having not worked since 2008.

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accompany the Complaint.

[5] See Order entered June 10, 2011, Docket No. 20.

[6] See Order entered October 13, 2011, Docket No. 24.

[7] See Docket entry 28-1

> 2. High Cost: This pro se Plaintiff finds the high cost of Service of Process on twelve Defendants to be unduly burdensome under the FRCP. As such, the Plaintiff is unable to effect service of process on the Twelve Defendants.
>
> 3. The Plaintiff requests that the Court allow Service of Process in this matter on these twelve defendants through the U.S. Marshall's office."

Other than as quoted above, the letter/pleading contained no showing why as to why the pleadings had not been timely served, contained no factual or evidentiary support for the statements made in the letter and contained no support or basis for the request that the Marshall's Office serve the pleadings.

The docket reflects no action by the Plaintiff subsequent to October 22, 2011 related to service in this matter.[8]

ARGUMENT AND CITATION OF AUTHORITY

Jurisdiction as to Mark Booz

> When a court's personal jurisdiction is properly challenged by motion under Federal Rule of Civil Procedure 12(b)(2), the jurisdictional question thereby raised is one for the judge, with the burden on the plaintiff ultimately to prove grounds for jurisdiction by a preponderance of the evidence. Combs v. Bakker, 886 F.2d 673, 676 (4th Cir. 1989); Dowless v. Warren-Rupp Houdailles, Inc., 800 F.2d 1305, 1307 (4th Cir. 1986); 2A James W. Moore, Moore's Federal Practice P 12.07[2.-2] (1985 & Supp. 1992-93).
>
> To prove that the district court may assert personal jurisdiction over [the Defendant] must show (1) that a statute or rule authorizes service of process on [the Defendant] in the [forum state] and (2) that service on [the Defendant] comports with the requirements of the Due Process Clause of the Fourteenth Amendment.[9]

The allegations against Booz in the Amended Complaint in this action are identical with the allegations made in the Prior Action. As to Booz, the Plaintiff's factual complaints are limited to

[8] The Defendants would inform the Court that efforts to effect service on the Defendants BB&T, Okay and Booz were undertaken in late May, 2012 (service was effected on Okay and Booz on May 31, 2012 and on BB&T on June 4, 2012).

[9] Mylan Labs., Inc. v. Akzo, N.V., 2 F.3d 56, 59-60 (4th Cir. Md. 1993)

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addressing a letter written by Booz on May 15, 2008 to a representative of the FDIC in Kansas City, Missouri. The Court fully addressed these very matters in its dismissal Order in the Prior Action. That analysis continues to be applicable and requires the dismissal of this action as to Booz.

Insufficiency of service

Rule 4(m), FRCP clearly provides:

> (m) Time Limit for Service. If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

There is absolutely no question that service of the Amended Complaint was not made within the 120 day period required by Rule 4(m).

Rule 6(b), FRCP, governs the ability of the Court to grant an extension of the time periods allowed by the Rules, including the period covered by Rule 4(m). Rule 6(b) provides:

> (b) Extending Time:
>
> (1) *In General.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:
>
> (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or
>
> (B) on motion made after the time has expired if the party **failed to act because of excusable neglect**.

Clearly subdivision (1)(A) is not applicable in this case as the time for service passed without service being accomplished. Despite the fact that over a year has passed since the filing of the Amended Complaint and the fact that she has now begun attempts to obtain service, the Plaintiff has never made a motion for extension of time under Rule 6(b)(1)(B). As a result, the Court is faced with a very simple situation: Rule 4(m) unequivocally requires service within 120 days; the Court no

longer has the power to extend the time on its own motion; despite clear knowledge of the 120 day period (provided to the Plaintiff by the Court when the summons were issued)[10] and knowledge that the 120 days had expired (provided to the Plaintiff by the Court after the expiration of time)[11], the Plaintiff never made a motion for extension of time[12]. These facts require dismissal of the Amended Complaint for failure to accomplish service within the time periods required by the rules.

As an additional matter, the timing of the filing of this action (immediately after this Court had dismissed the Prior Action) and the timing of the Plaintiff finally attempting service (immediately after the 4th Circuit's affirmance of this Court's dismissal on May 16, 2012) leads to the obvious conclusion that the Complaint in this action (and the subsequent Amended Complaint) were intended to be nothing but place-holders for the purpose of attempting to prevent the running of the various statutes of limitations applicable to the matters pled by the Plaintiff. Such a blatant attempt to skirt the applicable rules and requirements of prompt service after commencement of a claim[13] to protect against statute of limitations claims should not be allowed and is not contemplated by the applicable rules.

CONCLUSION

This action should be dismissed in its entirety, without prejudice, due to the failure to timely serve the Amended Complaint after repeated notice to the Plaintiff of the time limits and the effect

[10] See Order entered June 10, 2011, Docket No. 20.
[11] See Order entered October 13, 2011, Docket No. 24.
[12] The Court is reminded that the Plaintiff is an attorney (Amended Complaint at Paragraph 12) and would be presumed to be able to read and understand the rules or procedure governing this action and the orders of this Court.
[13] See. e.g., Rule 3, SCRCP requiring service within 120 days after filing for the filing date to be the date of commencement of the action. The combination of Rule 3 and 4(m), FRCP, similarly allow a 120 day period for service as to matters under direct federal jurisdiction. See, e.g. Rule 3 of the Federal Rules of Civil Procedure provides that a civil action is commenced by filing a complaint with the court, and HN5Rule 4 governs the procedure for effecting service and the period within which service must be made. The clerk of the district court must "forthwith issue a [*39] summons and deliver the summons to the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint." Fed. Rule Civ. Proc. 4(a). Service must

of the failure to meet those time limits. Additionally, for the reasons previously set forth by this Court when it dealt with the identical issue, this action should be dismissed as to Booz.

Wherefore, the Defendants request that this Court dismiss the Complaint in this action and for such other and further relief as the Court may deem appropriate.

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normally be made within 120 days. See Rule 4(j). West v. CONRAIL, 481 U.S. 35; 107 S. Ct. 1538; 95 L. Ed. 2d 32 (U.S. 1987).

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Exhibit #88

Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 49 entry # 9

BBT's motion to dismiss from lawsuit #3

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Cindy B. Hunt Plaintiff v. Branch Banking and Trust Company, Defendants	Civil Action No. 4:12-cv-02216-JMC-TER

MOTION TO DISMISS[1]

Pursuant to Rule 12(b) (6), FRCP, Branch Banking and Trust Company ("BB&T), hereby moves that the Complaint ("Complaint") be dismissed on the following grounds:

1. The Complaint and each and every cause of action stated therein is barred by the applicable statute of limitations, the operative facts having occurred and been discovered (or discoverable) by the Plaintiff prior to July 8, 2009.

[1] This Motion to Dismiss is being filed to protect the rights of BB&T. I doing so BB&T would inform this Court of the following: The Petition for Removal was filed with this Court through the electronic CM/ECF system on Saturday, August 4, 2011 and notice thereof mailed to both the Plaintiff and the Clerk of Court of Horry County on that date as set forth in the certificates contained in that filing. The removal petition was docketed with this Court on Tuesday, August 7, 2012. The records of the Clerk of Court of Horry County, a copy of which is attached hereto as Exhibit A, reflect that on Monday August 6, 2012, at 10:46 a.m., the Plaintiff filed with the Clerk of the Circuit Court of Horry a pleading entitled "Withdrawal" which the Clerk of Court in Horry County has accepted as ending the State Court case. A copy of the "Withdrawal" is attached as Exhibit "B". The Notice of Removal was subsequently filed with the state court on August 6, 2012 at 1:49 p.m. 28 U.S.C. §1446(d) provides: "Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall **file a copy of the notice with the clerk of such State court, which shall effect removal** and the State court shall proceed no further unless and until the case is remanded." **It would, therefore, appear that the State Court Action was terminated by the filing of the Withdrawal prior to the effectiveness of the Petition for Removal and that this case should be terminated as a result thereof.** This Motion is being filed to avoid any claim of default should the Plaintiff or the Court not agree with the above analysis of the effect of the filing of the Withdrawal.

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2. The First Cause of Action fails to set for a claim for relief under S.C. Code Ann. §37-20-110 as the Complaint fails to state facts which fall under said statute as the factual allegations of the Complaint (and the exhibits thereto) clearly establish that the matters complained of do not involve a "consumer reporting agency" within the coverage of S.C. Code Ann. §37-20-110 or involve the subject matter of that statute.
3. The Second Cause of Action fails to set forth a claim for relief for "Fraud" as said cause of action has not been pled with the particularity required by Rule 9(b) and the complaint fails to allege facts sufficient to establish a plausible claim for such relief, including the failure to allege any facts which would establish either the right to rely or actual reliance on the allegedly fraudulent statements;
4. The Third Cause of Action fails to set forth a claim for relief for "Negligent Misrepresentation" as the complaint fails to allege facts sufficient to establish a plausible claim for such relief. Said cause of action further fails to allege facts supporting recovery in negligence as any duty which might have existed is a duty based in contract which will not support recovery in negligence.
5. The Fourth Cause of Action fails to set forth a claim for relief for "Conversion" as a bank account (a contractual right) cannot be the subject of a conversion action.
6. The Fifth Cause of Action fails to set forth a claim for relief for "Breach of Fiduciary Duty" as the facts alleged in the Complaint establish a debtor/creditor relationship between the Plaintiff and BB&T which does not give rise to a fiduciary duty;
7. The Sixth Cause of Action fails to set forth a claim for relief for "Violation of the Probate Code" as the sections referred to therein do not create a right of action

and/or the facts alleged in the Complaint establish that no actionable violation occurred;

8. The Seventh Cause of Action for "Unfair Trade Practices" fails to state facts sufficient to state a claim against BB&T for "Violation of S.C. Code Ann. §39-5-10 et seq." as the actions of BB&T, (a federally insured state banking institution[2]) are not covered by or subject to the provisions of S.C. Code Ann. §39-5-10, et seq. as the actions of federally insured financial institutions are not subject thereto and/or are exempt from the provisions thereof pursuant to S.C. Code Ann. §39-5-40. Additionally, the Complaint fails to set forth a claim for relief under S.C. Code Ann. §39-5-10 as the facts alleged in the Complaint establish only a private dispute between the parties that has no impact upon the public interest of the State of South Carolina.

9. The Eighth Cause of Action for "Mortgage Loan Fraud" fails to state facts sufficient to state a claim against BB&T under S.C. Code Ann. §37-22-190 as BB&T, a federally insured financial institution, is not subject to S.C. Code Ann. §37-22-190 and the mortgage loan which is the subject of the Complaint, a first mortgage on real estate is not a "consumer loan" subject to SC Code Ann. §37-5-108.

10. The Ninth Cause of Action for "Defamation" fails to state facts sufficient to state a claim against BB&T as the Complaint fails to allege any false statement or message about the Plaintiff causing harm to the plaintiff's reputation.

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[2] A fact which is established in the Complaint in this action as shown by the numerous complaints made by the Plaintiff to the FDIC and/or as to which BB&T will request that the Court take judicial notice under Rule 201, SCRE.

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11. The Tenth Cause of Action for "Intentional Destruction of Evidence" fails to state facts sufficient to state a claim against BB&T as South Carolina does not recognize an independent cause of action for spoliation of evidence.

12. The Eleventh Cause of Action for "Slander of Title" fails to state facts sufficient to state a claim against BB&T as the Complaint fails to allege facts which would support the elements of said cause of action.

13. The Complaint fails to allege any factual or legal basis for any claim for punitive damages;

14. The Complaint fails to allege any basis for an award of attorneys' fees or costs.

Should it be successful in the prosecution of this Motion, the Defendant BB&T, pursuant to the rights granted to it in the applicable Bank Services Agreement governing the accounts of the Plaintiff will seek a reimbursement of all attorneys' fees incurred in connection with the defense of this action.

NOTICE PURSUANT TO S.C. CODE ANN. §15-36-10(D) – BB&T further gives notice that they are of the opinion, for the reasons and on the basis set forth in this Motion and the accompanying memorandum, that one or more of the claims made in the Complaint are not warranted based on existing law or by a non-frivolous argument for extending, modifying or reversing existing law or for the establishment of new law and, as to these claims, should they be determined favorable to the Defendants, relief under S.C. Code Ann. §15-36-10, will be sought against the Plaintiff and/or the Plaintiff. BB&T further gives notice that they are of the opinion that one or more of the factual contentions made in the Complaint lack evidentiary support and/or are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery

and, as to these claims, should they be determined favorable to the Defendants, relief under S.C. Code Ann. §15-36-10, will be sought as to the Plaintiff.

As the Complaint in this action was originally filed in the state court of the State of South Carolina, BB&T contends that Rule 11, SCRCP are applicable thereto. BB&T hereby gives notice, to the extent necessary that it contends, for the reasons and on the basis set forth in this Motion and the accompanying memorandum, that the Complaint was filed, in whole or in part, in violation of the requirements of Rule 11, SCRCP and intends to seek relief thereunder.

Wherefore, the Defendants request that this Court dismiss the Complaint in this action and for such other and further relief as the Court may deem appropriate, including appropriate sanctions under S.C. Code Ann. §15-36-10 and Rule 11 SCRCP.

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Attorney for Branch Banking and Trust Company,

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Cindy B. Hunt Plaintiff v. Branch Banking and Trust Company, Defendants	Civil Action No. 4:12-cv-02216-JMC-TER

CERTIFICATE OF SERVICE

This is to certify that the undersigned attorneys for BB&T, on this August 9, 2012, did cause the foregoing Motion to Dismiss and Memorandum in Support thereof to be served upon the Plaintiff by mailing a copy of same in an envelope addressed as follows and deposited in the United States Mail, proper postage affixed thereto:

Cindy B. Hunt 195-D Willow Creek Drive Conway, SC 29526	

/s/ Steven B. Licata

Steven B. Licata

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Branch Banking v. Cindy B. Hunt, et. al.

Case No.: 2013-CP-26-2528

Exhibit # 49 entry # 9-3

Memorandum in support of motion to dismiss

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Cindy B. Hunt Plaintiff v. Branch Banking and Trust Company, Defendants	Civil Action No. 4:12-cv-02216-JMC-TER

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

This matter is before the Court upon the motion of Branch Banking and Trust Company ("BB&T") to Dismiss the Complaint in this action pursuant to Rule 12(b)(6), FRCP.

GENERAL FACTS AND BACKGROUND

The Complaint in this action is the third separate lawsuit which the Plaintiff has filed arising out of the relationship between BB&T and the Plaintiff.[1] Although described in the Complaint as "an action to recover for a massive fraud, fraudulent concealment and conversion of Plaintiff", leaving the conclusory statements aside, this case is nothing more than the Plaintiff attempting to make a "massive" case out of her dissatisfaction with BB&T's response to a very simple event from which she suffered no damage whatsoever, the inadvertent disclosure of the existence and amount contained in a payable on death account established at BB&T's predecessor to the beneficiary of that account.

[1] See, Civil Action No. 4:09-cv-02151 originally filed in this Court on August 13, 2009 which Complaint (as amended) was dismissed by this Court by Order dated March 23, 2011 (Docket no. 110 in Civil Action No. 4:09-cv-02151) which dismissal was upheld on appeal to the Fourth Circuit Court of Appeals; See, also, Civil Action No. 4:11-cv-00870 which remains pending in this Court subject to a pending Motion to Dismiss.

The Plaintiff's obvious dissatisfaction with BB&T's response to this event[2] has led to an evolving set of complaints:

1. The allegedly improper set up of a payable on death account in 2000 as a joint account and the subsequent maintenance of that joint account and information related thereto over the years[3];
2. Complaints related to 2 alleged "unauthorized loans" which the Plaintiff makes based upon a March 19, 2007 "Customer Relationship Profile" which contained two entries which the Plaintiff has chosen to interpret as "unauthorized loans." The Plaintiff has attached an Exhibit to the Complaint (Exhibit 3) which is her sworn affidavit in which she states: "The Plaintiff's customer profile from Defendant BB&T Bank was given to her by Tamara Cannon, a branch manager of BB&T, on 7/19/2007."[4]
3. The alleged disclosure of information related to a payable on death account which the Plaintiff opened with Coastal Federal Bank and which was acquired through merger by BB&T. The disclosure complained of in the complaint occurred on January 19, 2008 and was the disclosure of information related to the account to the beneficiary of the account, the Plaintiffs cousin. The Plaintiff learned of this disclosure on the date it occurred and began "complaining to [BB&T] about the disclosure" on January 22, 2008.[5]

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[2] This dissatisfaction was clearly pled and demonstrated by Exhibit 27 to the Complaint, the March 17, 2008 letter and draft complaint seeking $750,000.00.

[3] This aspect of the Complaint as to the payable on death account has evolved from the initial complaint as to the disclosure of the account to the beneficiary and was stated as a separate complaint later in the evolving process. The exhibits to the Complaint itself (Exhibits 4 and 10) actually clearly show that the account was properly set up and maintained through July of 2007

[4] See Docket entry 2-3.

[5] See Docket Entry 2-3 at Page 5, Paragraph o.

4. The Plaintiff's presentation of a check to BB&T on which a stop payment had been issued and BB&T's subsequent set-off of the amount of the check against the account maintained at BB&T in May, 2008[6].
5. Plaintiff's general dissatisfaction with and complaints regarding the content of any and every response given by BB&T, its attorneys and anyone acting on its behalf in regard to the various complaints made by the Plaintiff, including communications with the FDIC in response to complaints made to that entity, pleadings filed in this Court and various others matters. Theessence of these complaints is that any filing that does not 100% concede and agree with the Plaintiff's position is fraudulent and actionable.
6. Newly added to this Complaint are allegations of wrongful conducted related to a mortgage loan made to the Plaintiff in May 2007 and a mortgage loan to the Plaintiff's cousin in September, 2004. The exact nature of these complaints is difficult to ascertain from the pleading filed.

APPLICABLE STANDARD

The Supreme Court, in two recent cases, has provided the trial courts with guidance as to the application of Rule 8(a) to pleadings and determining the sufficiency thereof. These cases clearly raise the standard to which pleadings must rise to be sufficient and clearly renounced the old standard that a complaint should not be dismissed unless there is "no set of facts" which would support it. Indeed, in setting forth its new standard the Court stated as to the "no set of facts" standard: "The phrase is best forgotten as an incomplete, negative gloss on an accepted pleading standard."[7]

[6] See Exhibit 16 to Complaint, Docket 3-3.
[7] Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1969 (U.S. 2007)

The standards to now be applied by this Court in addressing a Motion to Dismiss were most recently stated by the Supreme Court:

> Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." As the Court held in Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929, the pleading standard Rule 8 announces does not require "detailed factual allegations," **but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.** Id., at 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (citing Papasan v. Allain, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986)). **A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do."** 550 U.S., at 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929. **Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement."** Id., at 557, 127 S. Ct. 1955, 167 L. Ed. 2d 929.
>
> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." Id., at 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929. A claim has facial plausibility when the plaintiff pleads **factual content** that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Id., at 556, 127 S. Ct. 1955, 167 L. Ed. 2d 929. The plausibility standard is not akin to a "probability requirement," **but it asks for more than a sheer possibility that a defendant has acted unlawfully.** Ibid. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" Id., at 557, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (brackets omitted).
>
> Two working principles underlie our decision in Twombly. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. **Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.** Id., at 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, **we "are not bound to accept as true a legal conclusion couched as a factual allegation"** (internal quotation marks omitted)). Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, **but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.** Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Id., at 556, 127 S. Ct. 1955, 167 L. Ed. 2d 929. Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. 490 F.3d at 157-158. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged -- but it has not "show[n]" -- "that the pleader is entitled to relief." Fed. Rule Civ. Proc. 8(a)(2).[8]

[8] Ashcroft v. Iqbal, 129 S. Ct. 1937; 173 L. Ed. 2d 868 (2009)

The Supreme Court, in adopting these new pleading standards, has clearly set the trial court as a gatekeeper to further access to the courts and has raised the bar to the opening of that gate. The Complaint before the Court is a perfect example of a Complaint to which this gatekeeper function should be applied.

In a number of instances, the Plaintiff's complaint relies upon allegations of fraud. As to these allegations, in addition to meeting the general pleadings requirements, the pleading standards are even higher. Rule 9(a), FRCP, provides: "In all averments of fraud or mistake, the circumstances constituting fraud or mistake **shall be stated with particularity**." The Fourth Circuit has clearly stated that Rule 9(a) requires specificity as to the time, place and contents of the fraud and an identification of the person alleged to have made the statements:

> Since Appellant in this case alleges fraud, his claim is subject to Federal Rule of Civil Procedure 9(b), which requires that claimants plead fraud with particularity. According to two noted scholars, **the "circumstances" required to be pled with particularity under Rule 9(b) are "the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby**." 5 Charles Alan Wright and Arthur R. Miller, Federal Practice and Procedure: Civil § 1297, at 590 (2d ed. 1990). See also Lasercomb America, Inc. v. Reynolds, 911 F.2d 970, 980 (4th Cir. 1990); In re Cryomedical Sciences, Inc. Securities Litigation, 884 F. Supp. 1001, 1012-13 (D. Md. 1995); In re Medimmune, Inc. Securities Litigation, 873 F. Supp. 953, 964-69 (D. Md. 1995). **Mere allegations of "fraud by hindsight" will not satisfy the requirements of Rule 9(b).** Hillson Partners Ltd. Partnership v. Adage, Inc., 42 F.3d 204, 209 (4th Cir. 1994). The second sentence of Rule 9(b) allows conclusory allegations of defendant's knowledge as to the true facts and of defendant's intent to deceive. See 5 Wright and Miller § 1297, at 612.[9]

ARGUMENT AND CITATION OF AUTHORITY

STATUTE OF LIMITATIONS

"The raising of the statute of limitations as a bar to plaintiffs' cause of action constitutes an affirmative defense and may be raised by motion pursuant to Fed. R. Civ. P. 12(b)(6), if the time bar

[9] Harrison v. Westinghouse Savannah River Co., 176 F.3d 776, 783-784 (4th Cir. 1999)

is apparent on the face of the complaint."[10] This Court will rarely, if ever, see a case more blatantly filed beyond the applicable statute of limitations than the case before this Court and where that fact appears directly from the face of the complaint.

South Carolina's general statute of limitations is found in S.C. Code Ann. §15-30-530 and provides that the period for the commencement of an action for "liability created by statute"[11], "injury to the person or rights of another"[12] and "fraud"[13] is three years. The Complaint in this action was filed with the Circuit Court in Horry County, South Carolina on July 9, 2012. As a result, this action is barred if it could have been discovered prior to July 10, 2009.

South Carolina follows the "discovery rule". As stated by the South Carolina Court of Appeals:

> According to the discovery rule, the three-year statute of limitations found in section 15-3-350 begins to run when the underlying cause of action reasonably ought to have been discovered. Dean v. Ruscon Corp., 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). Thus, the three-year clock starts ticking on the "date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." [*576] Bayle v. S.C. Dep't. of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). This determination is objective, rather than subjective. Id. As such, the question is not whether the particular plaintiff in this case actually knew she had a claim. Instead, we approach this inquiry by deciding [***8] "whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist." Young v. S.C. Dep't of Corr., 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999)[14]

The Court need only look to a couple of facts that appear from the filed Complaint (and its exhibits) to determine conclusively that the Plaintiff had "discovered" the existence of the claims made in this case prior to July 10, 2009;

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[10] Dean v. Pilgrim's Pride Corp., 395 F.3d 471, 474 (4th Cir. W. Va. 2005)
[11] S.C. Code Ann. §15-3-530(2).
[12] S.C. Code Ann. §15-3-530(5)
[13] S.C. Code Ann. §15-3-530(7)
[14] Martin v. Companion Healthcare Corp., 593 S.E.2d 624, 627 (S.C. Ct. App. 2004)

1. On **March 17, 2008**, the Plaintiff wrote to David Craven, then employed as in-house counsel for BB&T (Exhibit 27 to the Complaint), and stated:

   "However, my view of damages, just to point out a few are: 1) Mrs. Davis tells me that my name and financial information was released to her 2) damages that result from conversion 3 damages that result from violating (39-5-10)/UTPA, 4)damages from violating 62-6-110 5) damages that result from gross negligence 6) damages from misappropriation 7) breach of fiduciary duty damages and 8) damages from the breach of your in-house banking rules. As such, based upon my interpretation of the applicable law I value this case at a minimum of $750,000.00 and that is my offer to settle."

2. The March 17, 2008 letter also indicated that the Plaintiff intended to "make some new law" and stated that she enclosed a "copy of the un-clocked complaint." A copy of a proposed Complaint was attached to the March 17, 2008 letter.

3. On March 12, 2008, the Plaintiff wrote to the FDIC and requested an investigation of BB&T's disclosure of information to Costella Hunt Davis, the same activity complained of in the Complaint in this action; (Exhibit 14 to Complaint)

4. On May 8, 2008, the Plaintiff received the notice of the set-off as to which she complains in this action (Exhibit 16 to Complaint);

5. On June 6, 2008, Ms. Hunt writes again to the FDIC complaining as to the disclosure of information to Costella Davis in which she asserts that BB&T had committed "mail fraud, FDIC fraud, and conspiracy" based upon statements of Judy Teal, an employee of BB&T, that are the subject of the Complaint in this action and further stated that BB&T had "violated federal and state laws" and accusing BB&T of "lying [and] covering up";

6. The Plaintiff closed her accounts which are the subject of the Complaint (both the POD and the IOLTA on May 19, 2008 (See Exhibits 36 and 26 – Exhibit 26 is a sworn affidavit outlining the facts purported to underlie her complaints).

7. On September 2, 2008, the FDIC Proceedings which are the subject of the Complaint in this matter were closed (See Paragraph 3(h)(vii) of Exhibit 26 – Affidavit of C.B. Hunt);
8. The Plaintiff received the "customer profile" which is the basis of her claim to "unauthorized loans" described in the Complaint on July 19, 2007 (Exhibit 3 to Complaint, Affidavit of C.B. Hunt at Paragraph 3(k) and 3(m) (setting out that this document is the basis of these claims))

What is blatantly obvious from the above allegations of the Complaint (or exhibits thereto) is that in 2008 the Plaintiff had actual knowledge of the facts on which she bases the Complaint in this matter that was not filed until July, 2012 and had sufficient appreciation of those facts to prepare a draft complaint that was utilized to attempt to force a $750,000 settlement out of BB&T and to make written complaints to the FDIC about the same activity.

This Complaint was clearly filed outside of the applicable statute of limitations and should be dismissed as a result thereof, **with prejudice**.

FIRST CAUSE OF ACTION – SC CODE ANN. §37-20-110 – THE "CONSUMER IDENTITY THEFT PROTECTION ACT" COVERS THE ACTIONS OF DEFINED "CONSUMER CREDIT REPORTING AGENC[IES]" AND ACTIVITIES RELATED TO IDENTITY THEFT. THE COMPLAINT FAILS TO ALLEGE ANY FACTS ESTABLISHING A VIOLATION OF THIS ACT.

S.C. Code Ann. §37-20-110, et seq. deals with "Identity Theft Protection" as reflected by its title and governs the activities of "Consumer credit-reporting agenc[ies]" or "consumer reporting agenc[ies]" as defined in S.C. Code Ann. 37-20-110(2). Those agencies are defined as "a person that, for monetary fees or dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information about

consumers for the purpose of furnishing consumer reports to third parties."[15] Although the Complaint asserts a conclusion that BB&T is "Consumer credit-reporting agency" or "consumer reporting agency" under this section there are no factual allegations of the Complaint which would support this legal conclusion. There is no factual allegation that BB&T "regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information about consumers for the purpose of furnishing consumer reports to third parties." It is obvious from the allegations of the Complaint in this matter that BB&T's complained of actions were in its capacity as a commercial bank and in connection with accounts maintained at BB&T. These activities are not the subject of or actionable under S.C. Code Ann. §37-20-110, et seq.

As the Complaint contains no reference to which portion of S.C. Code Ann. §37-20-110, et seq. the Defendants are alleged to have violated a discussion of the alleged violation is difficult. A brief review of the Identity Theft Protection Act[16] shows the following:

1. S.C. Code Ann. §37-20-110 is simply definitional and contains no prohibited activity;
2. S.C. Code Ann. §37-20-120 covers requirements upon "consumer credit reporting agencies" and "seller or lender credit card issuer" to verify addresses. There is no allegation in the Complaint which would trigger the requirements of this section or implicate this section in this case.
3. S.C. Code Ann. §37-20-130 relates to reporting and initiating investigations as to identity theft. There is no allegation in the Complaint which would trigger the requirements of this section or implicate this section in this case.

[15] S.C. Code Ann. §37-20-110.
[16] S.C. Code Ann. §37-20-110 - §37-20-200.

4. S.C. Code Ann. §37-20-140 relates to treatment of identity theft victims and required reporting in court records. There is no allegation in the Complaint which would trigger the requirements of this section or implicate this section in this case.

5. S.C. Code Ann. §37-20-150 relates to maintenance by SLED of records of identity theft. There is no allegation in the Complaint which would trigger the requirements of this section or implicate this section in this case.

6. S.C. Code Ann. §37-20-160 relates to security freezes. There is no allegation in the Complaint which would trigger the requirements of this section or implicate this section in this case.

7. S.C. Code Ann. §37-20-170 relates to matters within records of a "consumer reporting agency" and provides remedies as to a consumer reporting agency for a violation of the Chapter. As previously indicated, neither BB&T nor any of the individual defendants are alleged to be a "consumer reporting agency." It further provides remedies for violation of the Chapter by "other person[s]" but as set out above, there is no provision of Chapter 20 of Title 37 that is implicated under the facts of this case.

8. S.C. Code Ann. §37-20-180 relates to publication and use of social security numbers. There is no allegation in the Complaint which would trigger the requirements of this section or implicate this section in this case.

9. S.C. Code Ann. §37-20-190 relates to disposition of business records. There is no allegation in the Complaint which would trigger the requirements of this section or implicate this section in this case.

10. S.C. Code Ann. §37-20-200 contains additional remedies against a "consumer reporting agency" and/or "other person[s]" that violates Chapter 20 of Title 37 but as

set out above, there is no provision of Chapter 20 of Title 37 that is implicated under the facts of this case.

THE SECOND CAUSE OF ACTION FOR FRAUD FAILS TO ALLEGE ANY FACTS SUPPORTING THE CAUSE OF ACTION IN A MANNER SUFFICIENT TO SATISFY RULES 8 AND 9, FRCP.

The allegations of the Fourth Cause of Action for "fraud" fail to comply with Rule 9(b). The allegations of this cause of action do not detail the "circumstances" required to be pled with particularity under Rule 9(b). There is no allegation of the "the time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he obtained thereby." [17] Indeed, the allegations of the Fourth Cause of Action are nothing more that the **"threadbare recitals of the elements of a cause of action, supported by mere conclusory statements"** which the Supreme Court rejected as insufficient in setting forth the new standards to be applied in allowing complaints to proceed.

THIRD CAUSE OF ACTION – THE THIRD CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION FAILS TO ALLEGE ANY FACTS SUPPORTING THE CAUSE OF ACTION IN A MANNER SUFFICIENT TO SATISFY RULES 8 AND 9, FRCP.

The Third Cause of Action purports to assert a claim for negligent misrepresentation against BB&T. "The elements of a negligent misrepresentation claim in South Carolina are:(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff

[17] See, e.g. Harrison v. Westinghouse Savannah River Co., 176 F.3d 776, 783-784 (4th Cir. 1999)

justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation."[18]

In addressing the allegations of the Complaint in this cause of action alleging negligent misrepresentation, the requirements of Rule 9(b) must be met. As stated by the District Court in South Carolina:

> Plaintiffs' common law claims rest upon the same allegations as their 10b-5 claims. Because the federal claims fail to satisfy Rule 9(b), the common law claims likewise fail and should be dismissed.
>
> This conclusion applies not only to the fraud claim, but to the negligent misrepresentation count as well. Although the language of Rule 9(b) confines its requirements to claims of mistake and fraud, the requirements of the rule apply to all cases where the gravamen of the claim is fraud even though the theory supporting the claim is not technically termed fraud. Toner v. Allstate Ins. Co., 821 F. Supp. 276, 283 (D. Del. 1993) (applying 9(b) requirement to breach of good faith claim; citing cases applying 9(b) to misrepresentation and negligent misrepresentation); see also Lubin v. Sybedon Corp., 688 F. Supp. 1425, 1453-54 (S.D. Cal. 1988) (dismissing fraud and negligent misrepresentation claims under Rule 9(b)).[19]

When the allegations of the Third Cause of Action are reviewed under these standards, they fail. Initially, as with the prior fraud claim, the Third Cause of Action contains nothing more than **"threadbare recitals of the elements of a cause of action, supported by mere conclusory statements."** There clearly are no allegations as to time, place and contents of the alleged misrepresentations. The allegations of this cause of action also fail to state any facts to support the existence of a pecuniary interest to BB&T in making statements to the FDIC or the Plaintiff. Neither BB&T nor its employees were being compensated for the explanations given to the FDIC or to the Plaintiff in response to the Plaintiff's complaints.

SECOND AND THIRD CAUSES OF ACTION FOR FRAUD

[18] Pitten v. Jacobs, 903 F. Supp. 937, 951 (D.S.C. 1995)(citing Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 439 S.E.2d 283, 285 (S.C. App. 1993).
[19] Pitten v. Jacobs, 903 F. Supp. 937, 951 (D.S.C. 1995)

In her prior responses to the Defendants Motion to Dismiss, the Plaintiff states in her response that "Much of the fraud in question began with the disclosures to Costella Hunt Davis about Plaintiff's bank account (January 19,2008) and continued with misleading communication to the FDIC."[20] This very statement demonstrates the deficiency of the Plaintiff's claims. In context, the statements on which she bases her fraud claims were statements made to the FDIC after the Plaintiff had initiated inquiries regarding these matters and as to which she disagreed at the time and continues to disagree. The fallacy of the Plaintiff's argument is that she could not possibly have relied or had a right to rely upon statements which she herself believed to be incorrect. Reliance is an element of each of the fraud causes of action.

FOURTH CAUSE OF ACTION – A BANK ACCOUNT IS A CONTRACT RIGHT, NOT TANGIBLE PERSONAL PROPERTY AND WILL NOT SUPPORT A CLAIM FOR RELIEF CONVERSION

The Plaintiff attempts to assert a cause of action for conversion in the Fourth Cause of Action. This cause of action appears to allege some type of continuing conversion at the time of each transaction within the account which was alleged to have been improperly set up and than alleges a specific conversion at the time of the set-off for the deposited "stop payment" checks. Regardless of the factual allegations and the nature of the conversion alleged, this cause of action fails. A bank account and the right to the funds therein are a contractual right which will not support a claim for conversion not tangible personal property which can be converted.

As explained by the Ninth Circuit Court of Appeals:

> It is doubtful whether the money in the bank account was a chattel that could be the subject of a conversion. It is of course a mere metaphor to speak of "the money in the bank account." In fact, the bank received a wire transfer from the government, and entered a notation in its books acknowledging a debt from itself to the contractor for the amount of the transfer. The "money in the bank account" was nothing but an acknowledgment of indebtedness from the bank to its depositor. Though money or a

[20] Civil Action No. 4:09-cv-02151: Memorandum of Plaintiff filed November 18, 2009 (Docket No. 30) at page 4.

> check could in some circumstances be the subject of conversion, ..., for example if someone wrongfully took a check from another's desk, the tort traditionally involves wrongful taking and carrying away of something tangible. Except for special kinds of accounts in some jurisdictions, bank accounts generally cannot be the subject of conversion, because they are not specific money, but only an acknowledgment by the bank of a debt to its depositor.[21]

The inability of a customer to assert a conversion claim based upon allegedly improper activity in its accounts was clearly set forth in *Tevdorachvili v. Chase Manhattan Bank*[22],

> Plaintiff alleges that Chase "by making, authorizing, inducing and/or permitting the improper transfer to third person(s)" committed acts constituting conversion of property belonging to plaintiff. As a matter of law, plaintiff as a depositor cannot assert such a conversion cause of action against his bank.
>
> It is well settled that an action will lie for the conversion of money where there is a specific, identifiable fund and an obligation to return or otherwise treat in a particular manner the specific fund in question. By its terms, this principle does not apply to the bank-depositor relationship, because funds deposited with a bank do not constitute a specific and identifiable fund.
>
> This result follows from the principle already noted, that the relationship between a bank and a depositor is the strictly contractual one of debtor and creditor. A necessary incident of the debtor-creditor relationship between the creditor-depositor and the debtor-bank is that any funds deposited by the creditor-depositor into an account with the debtor-bank become the bank's property. The bank at the same time becomes contractually indebted to the depositor in the amount of the funds deposited. ("Money deposited in a general account at a bank does not remain the property of the depositor. Upon deposit of funds at a bank, the money deposited becomes the property of the depositary bank; the property of the depositor is the indebtedness of the bank to it, a mere chose in action."). It follows that the plaintiff cannot allege that Chase took or retained "specific and identifiable property" belonging to him, and it also follows that a conversion claim cannot be stated. ("customer's bank account is merely a debt owed to it by the bank, and there is no identifiable property which could have been taken by defendant."); (dismissing cause of action for conversion by account holder who could not allege that bank took "specific and identifiable property" belonging to plaintiff and who was in substance seeking damages for breach of contract). Accordingly, the plaintiff's cause of action for conversion must be dismissed.[23]

South Carolina, similarly, follows the theory that, upon deposit into an account, the funds on deposit are the property of the bank, subject to a contractual obligation to pay the funds out of the account as directed:

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[21] Reliance Ins. Co. v. U.S. Bank, N.A., 143 F.3d 502, 506 (9th Cir. Wash. 1998)(citations omitted)

[22] 103 F. Supp. 2d 632, 643 (E.D.N.Y. 2000)

> As a matter of law, Palmetto Bank is not liable for conversion of the insurance proceeds because its use of the funds was not an unauthorized taking as Palmetto Bank had a legal right to the funds. In fact, the case of Richardson's Rests., Inc. v. The Nat'l Bank of South Carolina, 304 S.C. 289, 294, 403 S.E.2d 669, 672 (Ct. App. 1991), states that a bank cannot be liable for conversion of funds deposited into a payroll account because the deposits "become part of the [b]ank's general account against which [the depositor's] account received a credit." This Court went on the say this is true, "even though [the depositor] intended to use the account for a particular purpose." Id. at 295, 304 S.E.2d at 672. This position is only bolstered by the right of set-off pursuant to the deposit agreement, as discussed above. Accordingly, the trial court erred in failing to direct a verdict in favor of Palmetto Bank on the issue of conversion. [24]

FIFTH CAUSE OF ACTION – THE RELATIONSHIP OF A BANK TO ITS DEPOSITOR IN SOUTH CAROLINA IS A DEBTOR/CREDITOR RELATIONSHIP WHICH DOES NOT GIVE RISE TO A FIDUCIARY DUTY.

The Seventh Cause of action alleges a breach of fiduciary duty on the part of BB&T. In South Carolina, "[t]he normal bank-depositor arrangement creates a creditor-debtor relationship rather than a fiduciary one."[25] The Plaintiff has not alleged or shown any facts which would take the situation before the Court out of this "normal" relationship.

SIXTH CAUSE OF ACTION – THE SOUTH CAROLINA PROBATE CODE DOES NOT CREATE A PRIVATE CAUSE OF ACTION RELATING TO PAYMENT OF ACCOUNTS AS DESCRIBED THEREIN.

The Sixth Cause of Action alleges a violation of S. C. Code Ann. § 62-6-103 which deals with the ownership of accounts during the lifetime of the depositor and provides:

> (a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.
> (b) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees; if two or more parties are named as original payees, during their lifetimes rights as between them are governed by subsection (a) of this section.

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[23] Id. Citations omitted.
[24] Brannon v. Palmetto Bank, 371 S.C. 357, 364 638 S.E.2d 105 (S.C. Ct. App. 2006)
[25] Burwell v. South Carolina National Bank 288 S.C. 34, 340 S.E.2d 786 (S.C. 1986)

> (c) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if two or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by subsection (a) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

There is nothing within Title 62 of the South Carolina Code, the Probate Code, which purports to or has ever been interpreted as creating a cause of action for dealing with an account in a manner other than as outlined therein. Additionally, there is no allegation in the Complaint that BB&T made any payment to or at the direction of anyone other than the Plaintiff in regard to the account at issue in this action.

SEVENTH CAUSE OF ACTION – UNFAIR TRADE PRACTICES

The Seventh Cause alleges violation of S.C. Code Ann. §39-5-20. This Cause of Action fails as the activities of the Plaintiff as a federally insured banking institution do not fall within the coverage of S.C. Code Ann. §39-5-20.

S.C. Code Ann. §39-5-20 has been held to be inapplicable to actions involving the federally regulated banking industry. In *Anderson v. Citizens Bank,*[26] the Court of Appeals, relying on *McLeod v. Rhoades,*[27] which had held securities transactions were exempt from UTPA, **and upon an interpretation of the Federal Trade Commission Act,** held that the UTPA did not apply to the actions of a lender in failing to give a loan to which it was claimed to have committed. The Court stated:

> The State Board of Financial Institutions regulates the banking practices of Citizens Bank pursuant to Section 34-1-10 to -130, Code of Laws of South Carolina, 1976. The Board has extensive regulatory authority over banking practices, including the power to initiate criminal prosecutions against banks that violate a statute or regulation. Sections 34-1-60, 34-1-90, 34-1-100, Code of Laws of South Carolina, 1976. Therefore, under the "general activity" test of *State ex rel. McLeod v. Rhoades,* 275, S.C. 104, 267 S.E.2d 539 (1980), the actions of Citizens bank in connection

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26 294 S.C. 387, 365 S.E.2d 26 (S.C.App. 1987)

27 275 S.C. 104, 267 S.E.2d 539 (1980)

> with the Graham loan are exempt from the provisions of the Unfair Trade Practices Act pursuant to Section 39-5-40(a), Code of Laws of South Carolina, 1976. *See NCNB Nat'l Bank of North Carolina v. Tiller*, 814 F.2d (4th Cir.1987). [FN1] Accordingly, we affirm the ruling of the trial judge.

The Court further noted in its footnote:

> FN1. Cf. 15 U.S.C. 57a(f)(1) (1985), which provides that unfair and deceptive practices by banks are regulated under rules of the Federal Reserve System, not under the Federal Trade Commission Act. *See also Fed. Trade Comm'n v. Winters Nat'l Bank & Trust Co.*, 601 F.2d 395 (6th Cir. 1979). The South Carolina Unfair Trade Practices Act states that the legislature intends the courts to be guided by federal interpretations of the Federal Trade Commission Act in construing Section 39-5-20(a). See Section 39-5-20(b), Code of Laws of South Carolina, 1976.

S.C. Code Ann. §39-5-20 (b) specifically provides: "It is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to § 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended."

This Court need go no further than the actual language of the Federal Trade Commission Act to determine its applicability against banking institutions. In 15 U.S.C. 45(a) (2), the Federal Trade Commission Act specifically sets forth the extent of the ability of the Federal Trade Commission to regulate banking institutions as follows:

> (2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, **except banks, savings and loan institutions described in section 18(f)(3),** credit unions described in section 18(f)(4), common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958 , and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in section 406(b) of said Act, from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

In 1990, the Supreme Court in *Ward v. Dick Dyer and Associates, Inc.*,[28] rejected the "general activity" test of *Rhoades* and overruled *Anderson* but **only** to the extent that the result was based upon the "general activity" test of *Rhoades*. The separate finding that banks were not subject to the coverage of S.C. Code Ann. §39-5-20 was not disturbed. Subsequent to *Anderson* and *Ward*, lower courts across the State (including the United States District Court for the District of South Carolina) have continued to find that S.C. Code Ann. §39-5-20 is inapplicable to activities of banking institutions.[29]

EIGHTH CAUSE OF ACTION – MORTGAGE LOAN FRAUD

This cause of action purports to state a cause of action under three state statutes: SC Code Ann. §37-22-190, SC Code Ann. §37-5-108 and SC Code Ann. §29-3-310.

S.C. Code Ann. §37-22-190

BB&T, a federally insured and regulated financial institution is not subject to S.C. Code Ann. §37-22-190. S.C. Code Ann. §37-22-190 provides that "it is unlawful for **a person licensed pursuant to this chapter**, in the course of a mortgage loan origination." The licensing requirements of Title 37, Chapter 22 are set out in S.C. Code Ann. §37-22-112 where it is clearly set forth that the licensing requirements do not apply to an "exempt person".[30] S.C. Code Ann. §37-22-110 defines

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[28] 304 S.C. 152, 403 S.E.2d 310 (S.C. 1991)

[29] See, e.g. *Lands Inn v. Southern National Bank of South Carolina,* case no. 2:98:158-23 (D.S.C. 1999) dated April 12, 1999 and cases cited therein where Judge Norton examined *Anderson* and *Ward* and determined that *Anderson's* alternate ruling survived *Ward.*

[30] § 37-22-120. Licensing requirements.: (A) Without first obtaining a license pursuant to this chapter it is unlawful for a person, **other than an exempt person**, doing business in this State to: (1) act as a mortgage lender or, directly or indirectly, engage in the business of a mortgage lender under any name or title; or (2) circulate or use advertising, including electronic means, make a representation or give information to a person which indicates or reasonably implies activity within the scope of this chapter. (B) It is unlawful for a person to employ, compensate, or appoint as its agent a loan originator unless the loan originator is licensed as a loan originator pursuant to this chapter. **An exempt person is not subject to this subsection.** (C) The license of a loan originator is not effective during a period that the person is not employed by a mortgage lender licensed pursuant to this chapter. (D) If a loan originator ceases to be employed by a mortgage lender licensed pursuant to this chapter, the loan originator and the mortgage lender by whom that person is employed promptly shall notify the commissioner in writing. The mortgage lender's notice must include a statement of the specific reason or reasons for the termination of the loan originator's employment.

"exempt person" to include a "depository institution ...regulated be a federal banking agency..." and specifically states that "this chapter does not apply to the exempt persons described in this subitem."[31] "Federal banking agency" is defined specifically to include the Federal Deposit Insurance Corporation.[32] Although this Court could clearly take judicial notice under Rule 201, FRE, the allegations of the Complaint (which include extensive descriptions of "proceedings" resulting from the Plaintiff's own complaints to the FDIC regarding the subject matter of this action, make it clear that BB&T is regulated by the FDIC. BB&T is, therefore, an "exempt person" as to which S.C. Code Ann. §37-22-190 does not apply. Additionally, Chapter 22 of Title 37 entitled "Mortgage Lending" was adopted in 2009, effective January 1, 2010, which is subsequent to the operative events alleged in the Complaint in this matter.

SC Code Ann. §37-5-108

Leaving aside the fact that the Complaint fails to allege any facts which fall within the prohibitions of SC Code Ann. §37-5-108, the Plaintiff's mortgage loan with BB&T, the only alleged loan, is a "loan secured by a first lien or equivalent security interest in real estate." As such, it is excluded from the coverage of Title 37 regulating "consumer loans", except as to enumerated sections (which do not include SC Code Ann. §37-5-108)[33].

S.C. Code Ann. §29-3-310

S.C. Code Ann. §29-3-310 provides:

The reason for termination is confidential information and must not be released to the public. (E) A loan originator must not be employed simultaneously by more than one mortgage lender licensed pursuant to this chapter. (F) Independent contractors, **except for exempt persons**, must be licensed separately. Processors and underwriters who are independent contractors must be licensed as provided in Section 37-22-110(34)(c).

[31] S.C. Code Ann. §37-22-110(18)(b).

[32] S.C. Code Ann. §37-22-110(19).

[33] See, S.C. Code Ann. §37-3-105. By expressly including first mortgage loans as subject to S.C. Code Ann. §37-5-203, this section makes it clear that the remaining remedies of Chapter 5 of Title 37 are applicable to first mortgage loans.

> Any holder of record of a mortgage who has received full payment or satisfaction or to whom a legal tender has been made of his debts, damages, costs, and charges secured by mortgage of real estate shall, at the request by certified mail or other form of delivery with a proof of delivery of the mortgagor or of his legal representative or any other person being a creditor of the debtor or a purchaser under him or having an interest in any estate bound by the mortgage and on tender of the fees of office for entering satisfaction, within three months after the certified mail, or other form of delivery, with a proof of delivery, request is made, enter satisfaction in the proper office on the mortgage which shall forever thereafter discharge and satisfy the mortgage.

There is no allegation in the Complaint that BB&T has received full payment or satisfaction of the Plaintiff's mortgage loan or that a tender of full satisfaction has been made. As a result, no cause of action under the satisfaction statute is alleged.

NINTH CAUSE OF ACTION – DEFAMATION

In describing the tort of defamation, the South Carolina Court of Appeals has stated:

> The tort of defamation permits a plaintiff to recover for injury to her reputation as the result of the defendant's communications to others of a false message **about the plaintiff**. To prove defamation, the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. The publication of a statement is defamatory if it tends to **harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.** [34]

The deficiency of the allegations of the Complaint in this cause of action are clear from the emphasized language. There is no allegation of a "false message about the plaintiff." The only allegations contained in this cause of action relate to computer entries which the Plaintiff alleges are incorrect or inaccurate. There is no allegation of any statement made by BB&T or any of its employees that harms the reputation of the Plaintiff, lowers her reputation in the community or

[34] McBride v. Sch. Dist. of Greenville County, 389 S.C. 546, 559-560 (S.C. Ct. App. 2010)(citations omitted)

would deter third persons from associating with her. In other words, there is simply no "defamatory" statement alleged.

TENTH CAUSE OF ACTION -- INTENTIONAL DESTRUCTION OF EVIDENCE

This cause of action is a claimed of alleged spoliation of evidence. The South Carolina Supreme Court has expressly declined to adopt an independent cause of action for spoliation of evidence[35].

ELEVENTH CAUSE OF ACTION – SLANDER OF TITLE

The elements of a cause of action for defamation are: "(1) the publication of (2) a false statement (3) derogatory to plaintiff's title (4) with malice (5) causing special damages (6) as a result of diminished value in the eyes of third parties."[36]

The Complaint, in the eleventh cause of action clearly alleges that the Plaintiff refinanced her mortgage with BB&T in May, 2007 and that, as a result thereof , BB&T recorded a mortgage as to the property. There is no explanation or factual pleading as to how this mortgage filing is either "false" (she positively alleges the refinance and the new loan) or otherwise wrongful. The only facts alleged that seem intended to support this contention are that "the Plaintiff (sic) 2007 mortgage application did not list the two unauthorized loans in the Plaintiff's customer profile along with her IOLTA, POD account, CD, savings, mortgage and other accounts." This argument is nonsensical. The 2007 mortgage loan application is an exhibit to the Complaint (Exhibit 7) and is clearly an application signed by the Plaintiff herself under a certification that its contents are "true and correct." It defies logic to argue that an omission made by the borrower in the application for a loan presented by the borrower can be the basis to invalidate the loan in favor of the borrower. It is also nonsensical

[35] 394 S.C. 144; 714 S.E.2d 537 (S.C. 2011).
[36] Huff v Jennings 319 S.C. 142; 459 S.E.2d 886 (S.C. App. 1995).

to argue that loans and entries which the Plaintiff herself alleges were "unauthorized" should be included within a loan application or considered in connection therewith.

CONCLUSION

The Basic Case – The Plaintiff, in her third attempt to file a Complaint to state a claim against BB&T, continues to attempt to make something out of nothing and now does so in an untimely manner.

As to the Statute of Limitations, it is difficult to find a clearer case of knowledge of the operative facts, appreciation of the nature of the facts and the existence of a claim, than the situation before this Court where the Plaintiff, an attorney licensed to practice in South Carolina, drafted a complaint and delivered it to BB&T with a demand for payment of $750,000.00 in March 2008.

As to the merits of the primary complaint, matters related to the payable on death account, the Complaint alleges that an account was improperly set up at its inception. At best, this act would give rise to a breach of contract action which is not made. A failure to allege such a breach of contract, presumably, is a result of the fact that no damage was sustained as a result of the breach of contract since no funds were improperly paid out. The next act is the supposedly improper disclosure of the existence of the account to the Plaintiff's cousin. This disclosure, as previously set forth, was an authorized disclosure under the applicable federal statutes. The next set of facts as to which the Plaintiff complains are statements made to various regulators after the Plaintiff determined to truly make a "federal case" out of an innocuous and legal disclosure of information. As to these communications on which the Plaintiff bases various fraud and misrepresentation claims, there is no factual indication of either reliance, a right to rely or damages. Indeed, the Plaintiff disagreed with the statements and, in her mind, knew they were not true. How could she have relied thereon? As to the last set of facts complained of, the offset of an unstated amount of funds as a result of the

Plaintiff's deposit of two checks as to which she admits a stop payment had been issued, the mere statement of the facts, the deposit by the Plaintiff of two checks that were dishonored when presented due to the stop payment, gives rise to the legally proper act of BB&T in applying its common law right of set-off against other funds on deposit with it.

The Plaintiff essentially complains of BB&T's alleged disclosure of private information related to an account held by her with BB&T and of BB&T's responses thereto. As indicated, there was no improper disclosure as her cousin to whom disclosure was made was a beneficiary of the payable on death account which the Plaintiff established. Disclosure of information to a beneficiary of an account is specifically authorized by the federal statute upon which the Plaintiff initially based bases her right to recover. Even if the disclosure was somehow wrongful, the Plaintiff has shown no damage from the disclosure. No money was improperly paid. The cousin has not stolen her money or her identity.

Beyond the facts related to disclosure of her account information, the Complaint contains a series of recitals of legal assertions for which no legal or factual basis exists. This Complaint simply cannot be allowed to pass the "gatekeeper" function of the District Court on a Motion to Dismiss as established by the Supreme Court and must be dismissed.

BB&T respectfully request that the Complaint be dismissed.

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Case No.: 2013-CP-26-2528

Exhibit # 89

BBT's 9/05/2013 Motion to Dismiss

STATE OF SOUTH CAROLINA COUNTY OF HORRY Branch Banking and Trust Company, Plaintiff, vs. Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC, Defendant,	IN THE COURT OF COMMON PLEAS OF THE FIFTEENTH JUDICIAL CIRCUIT DOCKET NO.: 2013-CP-26-2528 PLAINTIFF'S MOTION TO DISMISS COUNTERCLAIMS OF CINDY B. HUNT

(504335 – 03166)

Pursuant to Rule 12(b)(6), SCRCP, Branch Banking and Trust Company ("BB&T), hereby moves that Defendant Cindy B. Hunt's Counterclaims ("Counterclaims") be dismissed on the following grounds:

1. The Counterclaims and each and every cause of action stated therein is barred by the applicable statute of limitations, the operative facts having occurred and been discovered (or discoverable) by Defendant Cindy B. Hunt ("Hunt") prior to July 8, 2009.
2. The First Cause of Action fails to set forth a claim for relief under S.C. Code Ann. §37-20-110 as the Counterclaims fail to state facts which fall under said statute as the factual allegations of the Counterclaims (and the exhibits thereto) clearly establish that the matters complained of do not involve a "consumer reporting agency" within the coverage of S.C. Code Ann. §37-20-110 or involve the subject matter of that statute.

3. The Second Cause of Action fails to set forth a claim for relief for fraud. as said cause of action has not been pled with the particularity required by Rule 9(b), SCRCP and the Counterclaims fail to allege facts sufficient to establish a plausible claim for such relief, including the failure to allege any facts which would establish either the right to rely or actual reliance on the allegedly fraudulent statements;
4. The Third Cause of Action fails to set forth a claim for relief for negligent misrepresentation as the Counterclaims fail to allege facts sufficient to establish a plausible claim for such relief. Said cause of action further fails to allege facts supporting recovery in negligence as any duty which might have existed is a duty based in contract which will not support recovery in negligence.
5. The Fourth Cause of Action in the Counterclaims fails to set forth a claim for relief for conversion as a bank account (a contractual right) cannot be the subject of a conversion action.
6. The Fifth Cause of Action fails to set forth a claim for relief for breach of fiduciary duty as the facts alleged in the Counterclaims establish a debtor/creditor relationship between Hunt and BB&T which does not give rise to a fiduciary duty;
7. The Sixth Cause of Action fails to set forth a claim for relief for violation of the probate code as the sections referred to therein do not create a right of action and/or the facts alleged in the Counterclaims establish that no actionable violation occurred;
8. The Seventh Cause of Action for unfair trade practices fails to state facts sufficient to state a claim against BB&T for "Violation of S.C. Code Ann. §39-5-10 et seq." as

the actions of BB&T, (a federally insured state banking institution[1]), are not covered by or subject to the provisions of S.C. Code Ann. §39-5-10, et seq. as the actions of federally insured financial institutions are not subject thereto and/or are exempt from the provisions thereof pursuant to S.C. Code Ann. §39-5-40. Additionally, the Counterclaims fail to set forth a claim for relief under S.C. Code Ann. §39-5-10 as the facts alleged in the Counterclaims establish only a private dispute between the parties that has no impact upon the public interest of the State of South Carolina.

9. The Eighth Cause of Action for mortgage loan fraud fails to state facts sufficient to state a claim against BB&T under S.C. Code Ann. §37-22-190 as BB&T, a federally insured financial institution, is not subject to S.C. Code Ann. §37-22-190 and the mortgage loan which is the subject of the Complaint, a first mortgage on real estate is not a "consumer loan" subject to SC Code Ann. §37-5-108.

10. The Ninth Cause of Action for defamation fails to state facts sufficient to state a claim against BB&T as the Counterclaims fail to allege any false statement or message about BB&T causing harm to Hunt's reputation.

11. The Tenth Cause of Action for intentional destruction of evidence fails to state facts sufficient to state a claim against BB&T as South Carolina does not recognize an independent cause of action for spoliation of evidence.

[1] A fact which is established in the Counterclaims in this action as shown by the numerous complaints made by the Plaintiff to the FDIC and/or as to which BB&T will request that the Court take judicial notice under Rule 201, SCRE.

12. The Eleventh Cause of Action for slander of title fails to state facts sufficient to state a claim against BB&T as the Counterclaims fail to allege facts which would support the elements of said cause of action.

13. The Counterclaims fail to allege any factual or legal basis for any claim for punitive damages;

14. The Counterclaims fail to allege any basis for an award of attorneys' fees or costs.

Should it be successful in the prosecution of this Motion, BB&T, pursuant to the rights granted to it in the applicable Bank Services Agreement governing the accounts of Hunt, may seek a reimbursement of all attorneys' fees incurred in connection with the defense of this action.

NOTICE PURSUANT TO S.C. CODE ANN. §15-36-10(D) – BB&T further gives notice that they are of the opinion, for the reasons and on the basis set forth in this Motion and the accompanying memorandum, that one or more of the claims made in the Counterclaims are not warranted based on existing law or by a non-frivolous argument for extending, modifying or reversing existing law or for the establishment of new law and, as to these claims, should they be determined favorable to BB&T, relief under S.C. Code Ann. §15-36-10, will be sought against Hunt. BB&T further gives notice that they are of the opinion that one or more of the factual contentions made in the Counterclaims lack evidentiary support and/or are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery and, as to these claims, should they be determined favorable to BB&T, relief under S.C. Code Ann. §15-36-10, will be sought as to Hunt.

Moreover, BB&T contends that Rule 11, SCRCP is applicable to these Counterclaims. BB&T hereby gives notice, to the extent necessary that it contends, for the reasons and on the basis set forth in this Motion, that the Counterclaims were filed, in whole or in part, in violation of the requirements of Rule 11, SCRCP and intends to seek relief thereunder.

Wherefore, BB&T requests that this Court dismiss the Counterclaims in this action and for such other and further relief as the Court may deem appropriate, including appropriate sanctions under S.C. Code Ann. §15-36-10 and Rule 11 SCRCP.

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Rogers Townsend & Thomas, PC and its staff are debt collectors.

Sept. 5, 2013

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Case No.: 2013-CP-26-2528

Exhibit # 90

BBT's 6/25/2014 Motion To Dismiss

STATE OF SOUTH CAROLINA COUNTY OF HORRY Branch Banking and Trust Company, Plaintiff, vs. Cindy B. Hunt; Willow Greens Homeowners Association, Inc.; CJ Developers, LLC, Defendants. (504335.3166 SMF)	IN THE COURT OF COMMON PLEAS DOCKET NO.: 2013-CP-26-2528 PLAINTIFF'S NOTICE OF MOTION AND MOTION TO DISMISS THE FIRST AMENDED COUNTERCLAIMS OF DEFENDANT CINDY B. HUNT

FILED
HORRY COUNTY
2014 JUN 25 PM 5
MELANIE HUGGINS-WADD
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that at such time and place as is set by this Honorable Court, Plaintiff Branch Banking and Trust Company ("BB&T") will move the Court for an Order pursuant to Rule 12(b)(6), SCRCP, dismissing all of the counterclaims set forth in the First Amended Counterclaims and Defenses of Defendant Cindy B. Hunt ("Hunt") on the following grounds:

1. Hunt has failed to assert these counterclaims within a pleading as required by the South Carolina Rules of Civil Procedure;
2. The counterclaims are all barred by their applicable statutes of limitation;
3. The First Cause of Action fails to plead with particularity the elements of constructive fraud as required by Rule 9(b), SCRCP, because it fails to state facts which establish that BB&T knew or should have known that their statements were false;
4. The Second Cause of Action fails to set forth a claim for relief for negligence *per se* because it fails to allege any facts that establish that BB&T owes Hunt a duty of care pursuant to statute, or that BB&T violated that statute;
5. The Third Cause of Action fails to set forth a claim for relief for conversion because a bank account is a contract right, not tangible personal property, and as such, will not support a claim for relief for conversion;
6. The Fourth Cause of Action fails to set forth a claim for relief for breach of fiduciary duty because the facts alleged establish nothing more than a typical debtor/creditor relationship between Hunt and BB&T, which, as a matter of law, does not give rise to a fiduciary duty;
7. The Fifth Cause of Action fails to set forth a claim for relief for violation of S.C. Code Ann. §§ 62-6-101 to 62-6-106 because there is no private right of action for violation of those statutes;
8. The Sixth Cause of Action fails to state facts sufficient to state a claim against BB&T for

violation of the South Carolina Unfair Trade Practices Act because the actions of BB&T, a federally-insured state banking institution, are not subject thereto and/or are exempt from its provisions pursuant to S.C. Code Ann. § 39-5-40. Additionally, the counterclaim fails to set forth a claim for relief as the facts alleged establish only a private dispute between the parties that has no impact upon the public interest of the State of South Carolina;

9. The Seventh of Action fails to set forth a claim for relief for breach of contract because it fails to allege facts sufficient to plausibly establish the elements of causation and/or damages; and
10. The Counterclaims fail to allege any factual or legal basis for any claim for punitive damages; and
11. The Counterclaims fail to allege any basis for an award of attorneys' fees or costs.

Should it be successful in the prosecution of this motion, BB&T, pursuant to its rights under the Note and Mortgage, will seek all attorneys' fees incurred in connection with the defense of these counterclaims.

WHEREFORE, BB&T respectfully moves the Court for an Order dismissing the counterclaims set forth in the First Amended Counterclaims and Defenses of Defendant Cindy B. Hunt with prejudice. This motion is excluded from the duty to consult. This motion is based on the pleadings, the South Carolina Rules of Civil Procedure, the laws of the State of South Carolina, and such other and further matters as may be properly presented to the Court.

Respectfully submitted,

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Attorneys for Plaintiff Branch Banking & Trust Company
Rogers Townsend & Thomas, PC and its staff are debt collectors

June 23, 2014

Blank

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
County of Horry	)	FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO: 2013-CP-26-2528
Branch Banking and	)	
Trust Company	)	
Plaintiff,	)	
	)	AFFIDAVIT OF DEFAULT
vs.	)	
Cindy B. Hunt; Willow Greens	)	
Homeowners Association, Inc.;	)	
CJ Developers, LLC.	)	
Defendant(s)	)	
_____	)	

FILED
HORRY COUNTY
2014 JUL 15 PM 3:51
MELANIE HUGGINS-WARD
CLERK OF COURT

This affidavit of default is supported by the exhibits[1] currently in the file and the prior pleadings at c/a 4:09-cv-2151-JMC-TER;[2] c/a 4:11-cv-00870-MGL-TER;[3] Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL[4] and all the pleadings in the present matter at Case No: 2013-CP-26-2528[5] where this matter has been in dispute/litigation for six years (1/2008 – 12/2013 plus).

PERSONALLY APPEARED BEFORE ME, Cindy B. Hunt, who after being duly sworn and deposed, states as follows:

That she knows the facts stated to be true are of her own knowledge, except as to those matters stated on information and belief and as to those matters that she believes them to be true.

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[1] See Hunt's affidavits at exhibit #s 3, 26 and 46; and exhibit #s 13-15, 17-22, 25 and 34-35 where Hunt reported BBT to the FDIC in March 2008 and where the FDIC made a finding at exhibit #s 17-18 that BBT violated the Gramm Leach Bliley Act; and see exhibit #s 28-33 where Hunt reported BBT to the Horry County Police Department (HCPD) in Sept. 2010 and at exhibit # 32 BBT refused to cooperated with the HCPD. Exhibits 1-52 were submitted in the USDC without objection by BBT and in five affidavits.

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[5] Here in after referred to as Lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

1. I am an attorney and the Pro Se Defendant in the above-entitled action and I am familiar with the file, records and pleadings in this matter.

2. On April 16, 2013 Plaintiff BBT filed a summons, complaint, lis pendens and intervention against Hunt.

3. The answer, defenses, original counterclaims and motion for summary judgment of Hunt were filed on August 2, 2013 where Hunt had not been served the summons, complaint, lis pendens and intervention by the Plaintiff.

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5. Plaintiff BBT via a priority motion requested and was granted a scheduling order in this matter.

6. On May 20, 2014 this court ruled on BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6).

7. Thereafter, Hunt filed the 6/6/2014 first amended counterclaims.

8. Plaintiff BBT was served with a copy of the first amended counterclaims and motion for sanctions via first class mail on June 6, 2013 as reflected by the certificate of service in the record.

9. Pursuant to SCRCP 12(g), 12(h)(2) and 7(a) a **reply** to the first amended counterclaims was due on or before June 25, 2013.

10. Instead of filing a **reply** Plaintiff BBT has filed a **second motion to dismiss under SCRCP 12 (b)(6)** that is dated June 23, 2014. The second motion to dismiss was not designated as a **reply**.

11. After receiving the second motion to dismiss under SCRCP 12 (b)(6) Hunt contacted the attorney for BBT three times where he did not return her two calls and one email.

12. Plaintiff BBT has failed to appear, plead and or otherwise defend the **first cause of action** in the counterclaims within the time allowed and, therefore, is now in default.

13. Plaintiff BBT has not shown any good cause under SCRCP 6 (b)(2) as to why BBT has not **replied** to the counterclaims.

14. On Nov. 5, 2013 the attorney for WGHOA filed a request to withdraw the answer of WGHOA to the complaint. CJ Developers has never made an appearance in this matter. Branch Banking and Trust Company (BBT), Willow Green Home Owners Association (WGHOA) and CJ Developers are not a minor or incompetent person.

15. This Pro Se Defendant requests that the clerk of court enter default against the Plaintiff BBT for failure to appear, plead and or defend the **first cause of action in the first amended counterclaims**.

Cindy B. Hunt

195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

Cindy B. Hunt

Signature: Cindy B. Hunt, Pro Se
Sworn to and subscribed before me this
14th Day of July, 2014

Notary Public State of South Carolina
My Commission expires My Commission Expires August 2, 2020

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
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5. Plaintiff BBT via a priority motion requested and was granted a scheduling order in this matter.

6. On May 20, 2014 this court ruled on BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6).

7. Thereafter, Hunt filed the 6/6/2014 first amended counterclaims.

8. Plaintiff BBT was served with a copy of the first amended counterclaims and motion for sanctions via first class mail on June 6, 2013 as reflected by the certificate of service in the record.

9. Pursuant to SCRCP 12(g), 12(h)(2) and 7(a) a **reply** to the first amended counterclaims was due on or before June 25, 2013.

10. Instead of filing a **reply** Plaintiff BBT has filed a **second motion to dismiss under SCRCP 12 (b)(6)** that is dated June 23, 2014. The second motion to dismiss was not designated as a **reply**.

11. After receiving the second motion to dismiss under SCRCP 12 (b)(6) Hunt contacted the attorney for BBT three times where he did not return her two calls and one email.

12. Plaintiff BBT has failed to appear, plead and or otherwise defend the **second cause of action** in the counterclaims within the time allowed and, therefore, is now in default.

13. Plaintiff BBT has not shown any good cause under SCRCP 6 (b)(2) as to why BBT has not **replied** to the counterclaims.

14. On Nov. 5, 2013 the attorney for WGHOA filed a request to withdraw the answer of WGHOA to the complaint. CJ Developers has never made an appearance in this matter. Branch Banking and Trust Company (BBT), Willow Green Home Owners Association (WGHOA) and CJ Developers are not a minor or incompetent person.

15. This Pro Se Defendant requests that the clerk of court enter default against the Plaintiff BBT for failure to appear, plead and or defend the **second cause of action in the first amended counterclaims**.

Cindy B. Hunt

195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

Cindy B. Hunt

Signature: Cindy B. Hunt, Pro Se
Sworn to and subscribed before me this
14th Day of July, 2014

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My Commission expires My Commission Expires August 2, 2020

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5. Plaintiff BBT via a priority motion requested and was granted a scheduling order in this matter.

6. On May 20, 2014 this court ruled on BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6).

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9. Pursuant to SCRCP 12(g), 12(h)(2) and 7(a) a **reply** to the first amended counterclaims was due on or before June 25, 2013.

10. Instead of filing a **reply** Plaintiff BBT has filed a **second motion to dismiss under SCRCP 12 (b)(6)** that is dated June 23, 2014. The second motion to dismiss was not designated as a **reply**.

11. After receiving the second motion to dismiss under SCRCP 12 (b)(6) Hunt contacted the attorney for BBT three times where he did not return her two calls and one email.

12. Plaintiff BBT has failed to appear, plead and or otherwise defend the **third cause of action** in the counterclaims within the time allowed and, therefore, is now in default.

13. Plaintiff BBT has not shown any good cause under SCRCP 6 (b)(2) as to why BBT has not **replied** to the counterclaims.

14. On Nov. 5, 2013 the attorney for WGHOA filed a request to withdraw the answer of WGHOA to the complaint. CJ Developers has never made an appearance in this matter. Branch Banking and Trust Company (BBT), Willow Green Home Owners Association (WGHOA) and CJ Developers are not a minor or incompetent person.

15. This Pro Se Defendant requests that the clerk of court enter default against the Plaintiff BBT for failure to appear, plead and or defend the **third cause of action in the first amended counterclaims**.

Cindy B. Hunt

195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

Cindy B. Hunt

Signature: Cindy B. Hunt, Pro Se
Sworn to and subscribed before me this
14th Day of July, 2014

Notary Public State of South Carolina
My Commission expires

My Commission Expires
August 2, 2020

State of South Carolina) IN THE COURT OF COMMON PLEAS

County of Horry) FIFTEENTH JUDICIAL CIRCUIT

) CASE NO: 2013-CP-26-2528

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Trust Company)

Plaintiff,)

) AFFIDAVIT OF DEFAULT

vs.)

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Homeowners Association, Inc.;)

CJ Developers, LLC.)

Defendant(s))

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14. On Nov. 5, 2013 the attorney for WGHOA filed a request to withdraw the answer of WGHOA to the complaint. CJ Developers has never made an appearance in this matter. Branch Banking and Trust Company (BBT), Willow Green Home Owners Association (WGHOA) and CJ Developers are not a minor or incompetent person.

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Cindy B. Hunt

195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

Cindy B. Hunt

Signature Cindy B. Hunt, Pro Se
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12. Plaintiff BBT has failed to appear, plead and or otherwise defend the **fifth cause of action** in the counterclaims within the time allowed and, therefore, is now in default.

13. Plaintiff BBT has not shown any good cause under SCRCP 6 (b)(2) as to why BBT has not **replied** to the counterclaims.

14. On Nov. 5, 2013 the attorney for WGHOA filed a request to withdraw the answer of WGHOA to the complaint. CJ Developers has never made an appearance in this matter. Branch Banking and Trust Company (BBT), Willow Green Home Owners Association (WGHOA) and CJ Developers are not a minor or incompetent person.

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Cindy B. Hunt

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6. On May 20, 2014 this court ruled on BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6).

7. Thereafter, Hunt filed the 6/6/2014 first amended counterclaims.

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9. Pursuant to SCRCP 12(g), 12(h)(2) and 7(a) a **reply** to the first amended counterclaims was due on or before June 25, 2013.

10. Instead of filing a **reply** Plaintiff BBT has filed a **second motion to dismiss under SCRCP 12 (b)(6)** that is dated June 23, 2014. The second motion to dismiss was not designated as a **reply**.

11. After receiving the second motion to dismiss under SCRCP 12 (b)(6) Hunt contacted the attorney for BBT three times where he did not return her two calls and one email.

12. Plaintiff BBT has failed to appear, plead and or otherwise defend the **sixth cause of action** in the counterclaims within the time allowed and, therefore, is now in default.

13. Plaintiff BBT has not shown any good cause under SCRCP 6 (b)(2) as to why BBT has not **replied** to the counterclaims.

14. On Nov. 5, 2013 the attorney for WGHOA filed a request to withdraw the answer of WGHOA to the complaint. CJ Developers has never made an appearance in this matter. Branch Banking and Trust Company (BBT), Willow Green Home Owners Association (WGHOA) and CJ Developers are not a minor or incompetent person.

15. This Pro Se Defendant requests that the clerk of court enter default against the Plaintiff BBT for failure to appear, plead and or defend the **sixth cause of action in the first amended counterclaims**.

Cindy B. Hunt

195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

Cindy B. Hunt

Signature: Cindy B. Hunt, Pro Se
Sworn to and subscribed before me this
14th Day of July, 2014

Notary Public State of South Carolina
My Commission expires My Commission Expires August 2, 2020

State of South Carolina) IN THE COURT OF COMMON PLEAS

County of Horry) FIFTEENTH JUDICIAL CIRCUIT

) CASE NO: 2013-CP-26-2528

Branch Banking and)

Trust Company)

Plaintiff,)

) AFFIDAVIT OF DEFAULT

vs.)

Cindy B. Hunt; Willow Greens)

Homeowners Association, Inc.;)

CJ Developers, LLC.)

Defendant(s))

_____)

FILED
HORRY COUNTY
2014 JUL 15 PM 3:51
MELANIE HUGGINS-WARD
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PERSONALLY APPEARED BEFORE ME, Cindy B. Hunt, who after being duly sworn and deposed, states as follows:

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[5] Here in after referred to as Lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

1. I am an attorney and the Pro Se Defendant in the above-entitled action and I am familiar with the file, records and pleadings in this matter.

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11. After receiving the second motion to dismiss under SCRCP 12 (b)(6) Hunt contacted the attorney for BBT three times where he did not return her two calls and one email.

12. Plaintiff BBT has failed to appear, plead and or otherwise defend the **seventh cause of action** in the counterclaims within the time allowed and, therefore, is now in default.

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14. On Nov. 5, 2013 the attorney for WGHOA filed a request to withdraw the answer of WGHOA to the complaint. CJ Developers has never made an appearance in this matter. Branch Banking and Trust Company (BBT), Willow Green Home Owners Association (WGHOA) and CJ Developers are not a minor or incompetent person.

15. This Pro Se Defendant requests that the clerk of court enter default against the Plaintiff BBT for failure to appear, plead and or defend the **seventh cause of action in the first amended counterclaims**.

Cindy B. Hunt

195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

Cindy B. Hunt

Signature: Cindy B. Hunt, Pro Se
Sworn to and subscribed before me this
14th Day of July, 2014

Notary Public State of South Carolina
My Commission expires My Commission Expires August 2, 2020

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County of Horry	)	FIFTEENTH JUDICIAL CIRCUIT
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Plaintiff,	)	
	)	AFFIDAVIT OF DEFAULT
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CJ Developers, LLC.	)	
Defendant(s)	)	
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MELANIE HUGGINS-WARD
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15. This Pro Se Defendant requests that the clerk of court enter default against the Plaintiff BBT for failure to appear, plead and or defend the **following in the first amended counterclaims and prayer for relief**:

BBT pays a surcharge for mismanagement of Hunt accounts.

Actual and compensatory damages, disgorgement of profits and restitution damages; Legal interest, Prejudgment interest, Post Judgment interest.

Statutory damages, consequential damages, general damages, special damages, actual damages and punitive damages.

Constructive and Resulting trusts with tracing.

Damages for mental anguish and emotional distress.

Cindy B. Hunt
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

Cindy B. Hunt

Signature Cindy B. Hunt, Pro Se
Sworn to and subscribed before me this
14 Day of July, 2014

Notary Public State of South Carolina
My Commission expires My Commission Expires August 2, 2020

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
County of Horry	)	FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO: 2013-CP-26-2528
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Trust Company	)	
Plaintiff,	)	
	)	AFFIDAVIT OF DEFAULT
vs.	)	
Cindy B. Hunt; Willow Greens	)	
Homeowners Association, Inc.;	)	
CJ Developers, LLC.	)	
Defendant(s)	)	
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15. This Pro Se Defendant requests that the clerk of court enter default against the Plaintiff BBT for failure to appear, plead and or defend the **following in the first amended counterclaims and prayer for relief**:

The Court removes BBT and its employees, appoints a special fiduciary and require an accounting; and

Pending a final decision on Hunt's request to remove BBT and its employees that the Court orders relief under Sections 62-7-1002(a), 62-7-1001(b), etc. to protect the trust property and the interests of the beneficiaries, etc; and

In its final order that the Court removes BBT and its employees, appoints a special fiduciary, require an accounting and orders relief under Sections 62-7-1002(a), 62-7-1001(b), etc. to protect the trust property and the interests of the beneficiaries, etc.

An accounting of all authorized and unauthorized accounts of Hunt customer profile including the Davis mortgage and the CD.

The appointment of a special fiduciary; Impose a lien on BBT.

Cindy B. Hunt
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

Cindy B. Hunt

Signature: Cindy B. Hunt, Pro Se
Sworn to and subscribed before me this
14 Day of July, 2014

Laurinda Williams

Notary Public State of South Carolina
My Commission expires ~~My Commission Expires~~ **August 2, 2020**

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
County of Horry	)	FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO: 2013-CP-26-2528
Branch Banking and	)	
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15. This Pro Se Defendant requests that the clerk of court enter default against the Plaintiff BBT for failure to appear, plead and or defend the **following in the first amended counterclaims and prayer for relief**:

Hunt makes a demand for fifty million dollars in actual damages;

BBT pay face value of the Coastal Banker Gold benefits and inconvenience in relocating accounts.

BBT to pay to Hunt all monies paid on the current mortgage with legal, prejudgment and post judgment interest; punitive damages.

BBT to pay to Hunt the amount of the 2006 CD with legal, prejudgment and post judgment interest.

BBT to pay to Hunt the life amount of monies deposited in the regular checking account, savings account and POD trust with legal prejudgment and post judgment interest.

BBT to pay to the SC Bar the life amount of monies deposited in the IOLTA with statutory damages, legal, prejudgment and post judgment interest and punitive damages, etc.

BBT to pay to Davis and the other borrowers pursuant to agreement for each plus loan amount, amount paid on loan with statutory damages, legal, prejudgment and post judgment interest and punitive damages, etc.

BBT to pay to Hunt the original loan amount of all of Hunt's authorized loans with legal, prejudgment and post judgment interest.

BBT to pay to Hunt the original loan amount of all of the unauthorized loans in Hunt customer profile, including the Davis mortgage with legal, prejudgment and post judgment interest.

Cindy B. Hunt
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

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14. On Nov. 5, 2013 the attorney for WGHOA filed a request to withdraw the answer of WGHOA to the complaint. CJ Developers has never made an appearance in this matter. Branch Banking and Trust Company (BBT), Willow Green Home Owners Association (WGHOA) and CJ Developers are not a minor or incompetent person.

15. This Pro Se Defendant requests that the clerk of court enter default against the Plaintiff BBT for failure to appear, plead and or defend the **following in the first amended counterclaims and prayer for relief**:

Hunt is to be allowed to amend the counterclaims to include more causes of actions damages and add parties, etc.

BB&T to immediately provide in a readable and understandable format the documents that were requested in the Oct 18, 2010 search warrant by the HCPD and any other documents that the HCPD may request.

BBT to remove all negative status from the credit reporting agencies on Hunt, Davis and others.

BBT to remove all mortgages and liens from the property of Hunt, Davis and others.

Cindy B. Hunt
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

Cindy B. Hunt

Signature: Cindy B. Hunt, Pro Se
Sworn to and subscribed before me this
14 Day of July, 2014

Notary Public State of South Carolina
My Commission expires My Commission Expires August 2, 2020

State of South Carolina) IN THE COURT OF COMMON PLEAS

County of Horry) FIFTEENTH JUDICIAL CIRCUIT

) CASE NO: 2013-CP-26-2528

Branch Banking and)

Trust Company)

Plaintiff,)

) AFFIDAVIT OF DEFAULT

vs.)

Cindy B. Hunt; Willow Greens)

Homeowners Association, Inc.;)

CJ Developers, LLC.)

Defendant(s))

_____)

FILED
HORRY COUNTY
2014 JUL 15 PM 3:51
MELANIE HUGGINS-WARD
CLERK OF COURT

This affidavit of default is supported by the exhibits[1] currently in the file and the prior pleadings at c/a 4:09-cv-2151-JMC-TER;[2] c/a 4:11-cv-00870-MGL-TER;[3] Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL[4] and all the pleadings in the present matter at Case No: 2013-CP-26-2528[5] where this matter has been in dispute/litigation for six years (1/2008 – 12/2013 plus).

PERSONALLY APPEARED BEFORE ME, Cindy B. Hunt, who after being duly sworn and deposed, states as follows:

That she knows the facts stated to be true are of her own knowledge, except as to those matters stated on information and belief and as to those matters that she believes them to be true.

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[1] See Hunt's affidavits at exhibit #s 3, 26 and 46; and exhibit #s 13-15, 17-22, 25 and 34-35 where Hunt reported BBT to the FDIC in March 2008 and where the FDIC made a finding at exhibit #s 17-18 that BBT violated the Gramm Leach Bliley Act; and see exhibit #s 28-33 where Hunt reported BBT to the Horry County Police Department (HCPD) in Sept. 2010 and at exhibit # 32 BBT refused to cooperated with the HCPD. Exhibits 1-52 were submitted in the USDC without objection by BBT and in five affidavits.

[2] Here in after referred to as Lawsuit # 1 - was filed in the USDC by Hunt in 8/2009 – see exhibit # 47.

[3] Here in after referred to as Lawsuit # 2 - was filed in the USDC by Hunt in 4/2011 – see exhibit # 48.

[4] Here in after referred to as Lawsuit # 3 where the verified complaint in this civil action was filed by Hunt in this court in 7/2012 and removed by BBT based on diversity to the United States District Court (USDC) in Florence, SC in 8/2013 – see exhibit # 49.

[5] Here in after referred to as Lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

1. I am an attorney and the Pro Se Defendant in the above-entitled action and I am familiar with the file, records and pleadings in this matter.

2. On April 16, 2013 Plaintiff BBT filed a summons, complaint, lis pendens and intervention against Hunt.

3. The answer, defenses, original counterclaims and motion for summary judgment of Hunt were filed on August 2, 2013 where Hunt had not been served the summons, complaint, lis pendens and intervention by the Plaintiff.

4. Plaintiff BBT was served with a copy of the answer, defenses, counterclaims and motion for summary judgment on August 6, 2013 as reflected by the proof of service in the file. Plaintiff BBT responded to the original counterclaims with the 9/5/2013 motion to dismiss under SCRCP 12(b)(6).

5. Plaintiff BBT via a priority motion requested and was granted a scheduling order in this matter.

6. On May 20, 2014 this court ruled on BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6).

7. Thereafter, Hunt filed the 6/6/2014 first amended counterclaims.

8. Plaintiff BBT was served with a copy of the first amended counterclaims and motion for sanctions via first class mail on June 6, 2013 as reflected by the certificate of service in the record.

9. Pursuant to SCRCP 12(g), 12(h)(2) and 7(a) a **reply** to the first amended counterclaims was due on or before June 25, 2013.

10. Instead of filing a **reply** Plaintiff BBT has filed a **second motion to dismiss under SCRCP 12 (b)(6)** that is dated June 23, 2014. The second motion to dismiss was not designated as a **reply**.

11. After receiving the second motion to dismiss under SCRCP 12 (b)(6) Hunt contacted the attorney for BBT three times where he did not return her two calls and one email.

12. Plaintiff BBT has failed to appear, plead and or otherwise defend the first amended counterclaims within the time allowed and, therefore, is now in default.

13. Plaintiff BBT has not shown any good cause under SCRCP 6 (b)(2) as to why BBT has not **replied** to the counterclaims.

14. On Nov. 5, 2013 the attorney for WGHOA filed a request to withdraw the answer of WGHOA to the complaint. CJ Developers has never made an appearance in this matter. Branch Banking and Trust Company (BBT), Willow Green Home Owners Association (WGHOA) and CJ Developers are not a minor or incompetent person.

15. This Pro Se Defendant requests that the clerk of court enter default against the Plaintiff BBT for failure to appear, plead and or defend the **following in the first amended counterclaims and prayer for relief**:

BBT to pay all costs and expenses, including all attorney fees (past, present and future) to include Hunt, an attorney, and other attorneys pursuant to SC Ann. 62-7-1001(b); SC Ann. 62-7-1004; unclean hands (unauthorized practice of law (two accounts), aiding and abetting the unauthorized practice of law (two accounts)), etc. for this entire matter including the FDIC proceeding.

BBT to pay all costs and expenses, including all attorney fees (past, present and future) to include Hunt, an attorney, and other attorneys for this entire matter including the FDIC proceeding.

The attorney fees as of March 6, 2013 were $2,665,500 where Hunt has already paid $8,000.00 of these fees; and costs as of March 2013 are $ 3405.00.

Cindy B. Hunt
195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

Cindy B. Hunt

Signature: Cindy B. Hunt, Pro Se
Sworn to and subscribed before me this
14 Day of July, 2014

Notary Public State of South Carolina
My Commission expires ~~My Commission Expires~~ August 2, 2020

State of South Carolina) IN THE COURT OF COMMON PLEAS

County of Horry) FIFTEENTH JUDICIAL CIRCUIT

) CASE NO: 2013-CP-26-2528

Branch Banking and)

Trust Company)

Plaintiff,)

) AFFIDAVIT OF DEFAULT

vs.)

Cindy B. Hunt; Willow Greens)

Homeowners Association, Inc.;)

CJ Developers, LLC.)

Defendant(s))

_____)

FILED
HORRY COUNTY
2014 JUL 15 PM 3:51
MELANIE HUGGINS-WARD
CLERK OF COURT

This affidavit of default is supported by the exhibits[1] currently in the file and the prior pleadings at c/a 4:09-cv-2151-JMC-TER;[2] c/a 4:11-cv-00870-MGL-TER;[3] Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL[4] and all the pleadings in the present matter at Case No: 2013-CP-26-2528[5] where this matter has been in dispute/litigation for six years (1/2008 – 12/2013 plus).

PERSONALLY APPEARED BEFORE ME, Cindy B. Hunt, who after being duly sworn and deposed, states as follows:

That she knows the facts stated to be true are of her own knowledge, except as to those matters stated on information and belief and as to those matters that she believes them to be true.

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[1] See Hunt's affidavits at exhibit #s 3, 26 and 46; and exhibit #s 13-15, 17-22, 25 and 34-35 where Hunt reported BBT to the FDIC in March 2008 and where the FDIC made a finding at exhibit #s 17-18 that BBT violated the Gramm Leach Bliley Act; and see exhibit #s 28-33 where Hunt reported BBT to the Horry County Police Department (HCPD) in Sept. 2010 and at exhibit # 32 BBT refused to cooperated with the HCPD. Exhibits 1-52 were submitted in the USDC without objection by BBT and in five affidavits.

[2] Here in after referred to as Lawsuit # 1 - was filed in the USDC by Hunt in 8/2009 – see exhibit # 47.

[3] Here in after referred to as Lawsuit # 2 - was filed in the USDC by Hunt in 4/2011 – see exhibit # 48.

[4] Here in after referred to as Lawsuit # 3 where the verified complaint in this civil action was filed by Hunt in this court in 7/2012 and removed by BBT based on diversity to the United States District Court (USDC) in Florence, SC in 8/2013 – see exhibit # 49.

[5] Here in after referred to as Lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

1. I am an attorney and the Pro Se Defendant in the above-entitled action and I am familiar with the file, records and pleadings in this matter.

2. On April 16, 2013 Plaintiff BBT filed a summons, complaint, lis pendens and intervention against Hunt.

3. The answer, defenses, original counterclaims and motion for summary judgment of Hunt were filed on August 2, 2013 where Hunt had not been served the summons, complaint, lis pendens and intervention by the Plaintiff.

4. Plaintiff BBT was served with a copy of the answer, defenses, counterclaims and motion for summary judgment on August 6, 2013 as reflected by the proof of service in the file. Plaintiff BBT responded to the original counterclaims with the 9/5/2013 motion to dismiss under SCRCP 12(b)(6).

5. Plaintiff BBT via a priority motion requested and was granted a scheduling order in this matter.

6. On May 20, 2014 this court ruled on BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6).

7. Thereafter, Hunt filed the 6/6/2014 first amended counterclaims.

8. Plaintiff BBT was served with a copy of the first amended counterclaims and motion for sanctions via first class mail on June 6, 2013 as reflected by the certificate of service in the record.

9. Pursuant to SCRCP 12(g), 12(h)(2) and 7(a) a **reply** to the first amended counterclaims was due on or before June 25, 2013.

10. Instead of filing a **reply** Plaintiff BBT has filed a **second motion to dismiss under SCRCP 12 (b)(6)** that is dated June 23, 2014. The second motion to dismiss was not designated as a **reply**.

11. After receiving the second motion to dismiss under SCRCP 12 (b)(6) Hunt contacted the attorney for BBT three times where he did not return her two calls and one email.

12. Plaintiff BBT has failed to appear, plead and or otherwise defend the **Default Judgment; negative inference against BBT** in this matter within the time allowed and, therefore, is now in default.

13. Plaintiff BBT has not shown any good cause under SCRCP 6 (b)(2) as to why BBT has not **replied** to the counterclaims.

14. On Nov. 5, 2013 the attorney for WGHOA filed a request to withdraw the answer of WGHOA to the complaint. CJ Developers has never made an appearance in this matter. Branch Banking and Trust Company (BBT), Willow Green Home Owners Association (WGHOA) and CJ Developers are not a minor or incompetent person.

15. This Pro Se Defendant requests that the clerk of court enter default against the Plaintiff BBT for failure to appear, plead and or defend the **Default Judgment; negative inference against BBT - in this matter**.

Cindy B. Hunt

195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

Cindy B. Hunt

Signature: Cindy B. Hunt, Pro Se
Sworn to and subscribed before me this
14th Day of July, 2014

Notary Public State of South Carolina
My Commission expires

My Commission Expires
August 2, 2020

State of South Carolina) IN THE COURT OF COMMON PLEAS

County of Horry) FIFTEENTH JUDICIAL CIRCUIT

) CASE NO: 2013-CP-26-2528

Branch Banking and)

Trust Company)

Plaintiff,)

) AFFIDAVIT OF DEFAULT

vs.)

Cindy B. Hunt; Willow Greens)

Homeowners Association, Inc.;)

CJ Developers, LLC.)

Defendant(s))

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FILED
HORRY COUNTY
2014 JUL 15 PM 3:51
MELANIE HUGGINS-WARD
CLERK OF COURT

This affidavit of default is supported by the exhibits[1] currently in the file and the prior pleadings at c/a 4:09-cv-2151-JMC-TER;[2] c/a 4:11-cv-00870-MGL-TER;[3] Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL[4] and all the pleadings in the present matter at Case No: 2013-CP-26-2528[5] where this matter has been in dispute/litigation for six years (1/2008 – 12/2013 plus).

PERSONALLY APPEARED BEFORE ME, Cindy B. Hunt, who after being duly sworn and deposed, states as follows:

That she knows the facts stated to be true are of her own knowledge, except as to those matters stated on information and belief and as to those matters that she believes them to be true.

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[3] Here in after referred to as Lawsuit # 2 - was filed in the USDC by Hunt in 4/2011 – see exhibit # 48.

[4] Here in after referred to as Lawsuit # 3 where the verified complaint in this civil action was filed by Hunt in this court in 7/2012 and removed by BBT based on diversity to the United States District Court (USDC) in Florence, SC in 8/2013 – see exhibit # 49.

[5] Here in after referred to as Lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

1. I am an attorney and the Pro Se Defendant in the above-entitled action and I am familiar with the file, records and pleadings in this matter.

2. On April 16, 2013 Plaintiff BBT filed a summons, complaint, lis pendens and intervention against Hunt.

3. The answer, defenses, original counterclaims and motion for summary judgment of Hunt were filed on August 2, 2013 where Hunt had not been served the summons, complaint, lis pendens and intervention by the Plaintiff.

4. Plaintiff BBT was served with a copy of the answer, defenses, counterclaims and motion for summary judgment on August 6, 2013 as reflected by the proof of service in the file. Plaintiff BBT responded to the original counterclaims with the 9/5/2013 motion to dismiss under SCRCP 12(b)(6).

5. Plaintiff BBT via a priority motion requested and was granted a scheduling order in this matter.

6. On May 20, 2014 this court ruled on BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6).

7. Thereafter, Hunt filed the 6/6/2014 first amended counterclaims.

8. Plaintiff BBT was served with a copy of the first amended counterclaims and motion for sanctions via first class mail on June 6, 2013 as reflected by the certificate of service in the record.

9. Pursuant to SCRCP 12(g), 12(h)(2) and 7(a) a **reply** to the first amended counterclaims was due on or before June 25, 2013.

10. Instead of filing a **reply** Plaintiff BBT has filed a **second motion to dismiss under SCRCP 12 (b)(6)** that is dated June 23, 2014. The second motion to dismiss was not designated as a **reply**.

11. After receiving the second motion to dismiss under SCRCP 12 (b)(6) Hunt contacted the attorney for BBT three times where he did not return her two calls and one email.

12. Plaintiff BBT has failed to appear, plead and or otherwise defend the **strike all pleadings of BBT: past present and future** in this matter within the time allowed and, therefore, is now in default.

13. Plaintiff BBT has not shown any good cause under SCRCP 6 (b)(2) as to why BBT has not **replied** to the counterclaims.

14. On Nov. 5, 2013 the attorney for WGHOA filed a request to withdraw the answer of WGHOA to the complaint. CJ Developers has never made an appearance in this matter. Branch Banking and Trust Company (BBT), Willow Green Home Owners Association (WGHOA) and CJ Developers are not a minor or incompetent person.

15. This Pro Se Defendant requests that the clerk of court enter default against the Plaintiff BBT for failure to appear, plead and or defend the **strike all pleadings of BBT: past present and future - in this matter**.

Cindy B. Hunt

195 D Willow Green Drive
Conway, SC 29526
(843) 488-1131/(843) 347-7230

Cindy B. Hunt

Signature: Cindy B. Hunt, Pro Se
Sworn to and subscribed before me this
14th day of July, 2014

Notary Public State of South Carolina
My Commission expires My Commission Expires August 2, 2020

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
County of Horry	)	FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO: 2013-CP-26-2528
Branch Banking and	)	
Trust Company	)	
Plaintiff,	)	
	)	Affidavits of Default and
vs.	)	Response to
Cindy B. Hunt; Willow Greens	)	Plaintiff's motion to dismiss
Homeowners Association, Inc.;	)	the first amended counterclaims
CJ Developers, LLC.	)	
Defendant(s)	)	
_____	)	

FILED
HORRY COUNTY
2014 JUL 15 PM 3:50
MELANIE HUGGINS-WARD
CLERK OF COURT

These affidavits of default and response to BBT's motion to dismiss the first amended counterclaims are supported affidavits of default and all the exhibits[1] in this matter and the prior pleadings at c/a 4:09-cv-2151-JMC-TER; c/a 4:11-cv-00870-MGL-TER;[2] Case No: 2012-CP-26-5264 aka c/a 4:12-cv-02216-MGL[3] and all the pleadings and documents in the present matter at Case No: 2013-CP-26-2528[4] where this matter has been in dispute/litigation for six years (1/2008 – 5/2014).

---

[1] See Hunt's affidavits at exhibit #s 3, 26, 46 and 70; and exhibit #s 13-15, 17-22, 25 and 34-35 where Hunt reported BBT to the FDIC in March 2008 and where the FDIC made a finding at exhibit #s 17-18 that BBT violated the Gramm Leach Bliley Act (GLBA); and see exhibit #s 28-33 where Hunt reported BBT to the Horry County Police Department (HCPD) in Sept. 2010 and at exhibit # 32 BBT refused to cooperated with the HCPD. Exhibit #s 1-52 were submitted in the USDC without objection by BBT and included five affidavits from Hunt and Davis. Here in after referred to as lawsuit # 1 - was filed in the USDC by Hunt in 8/2009 – see exhibit # 47. Hunt argues that the USDC dismissed lawsuit # 1 to save the then Defendant BBT and employees from the allegations in the TAC at exhibit # 47 entry # 105-1.

[2] Here in after referred to as lawsuit # 2 - was filed in the USDC by Hunt in 4/2011 – see exhibit # 48. Hunt argues that the USDC dismissed lawsuit # 2 to save the then Defendant BBT and employees from the allegations in the FAC at exhibit # 49 entry # 15-8.

[3] Here in after referred to as lawsuit # 3 where the verified complaint in this civil action was filed by Hunt in this court in 7/2012 and removed by BBT to the United States District Court (USDC) in Florence, SC in 8/2013 where BBT was looking for additional help – see exhibit # 49. Lawsuit # 3 was not appealed to the USCA. However, Hunt argues that after the **USCA** reviewed the pleadings (see bottom right corner of most documents in exhibit # 49) in lawsuit # 3 that the USDC dismissed lawsuit # 3 to help the then Defendant BBT bury its misconduct in state court where BBT thereafter filed lawsuit # 4 in state court.

[4] Here in after referred to as lawsuit # 4 - was filed in this circuit court by BBT on 4/16/2013; the counterclaims are verified.

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Seven affidavits of default – one for each of the causes of action and seven affidavits of default for the relief prayed for and the affidavit of Hunt (exhibit # 46) are being submitted with this RESPONSE to Plaintiff's 6/23/2014 second motion to dismiss under SCRCP 12(b)(6).

BBT filed its mortgage foreclosure action in this matter on April 16, 2013.

Thereafter, Hunt filed the original counterclaims in this matter with her answer on 8/2/2013 where Hunt has never been served the summons, complaint, lis pendens and intervention.

Instead of filing a responsive pleading to the counterclaims BBT filed the **9/5/2013 motion to dismiss under SCRCP 12(b)(6).**

In February 2014 the court granted BBT's motion for a scheduling order.

On May 20, 2014 this court held a hearing on BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6) where the motion to dismiss was granted in part.

Thereafter, Hunt filed the 6/6/2014 first amended counterclaims.

BBT responded to the first amended counterclaims with the **6/23/2014 second motion to dismiss under SCRCP 12(b)(6).**

Over the life of this dispute BBT has filed a total of seven[5] motions to dismiss in response to these causes of action that have resulted in this matter dragging on for almost seven years. Hunt reminds the court that BBT requested and was granted a scheduling order in this matter.

SCRCP ignored: Hunt argues that BBT in its 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6), as to the entire motion, that BBT has failed to follow the procedure provided in the SCRCP for asserting a second defense of failure to state a cause of action upon which relief can be granted under SCRCP 12(b)(6) where -

Hunt argues SCRCP 12(g) and 12(h)(2) are applicable to BBT's entire second motion to dismiss under SCRCP 12(b)(6) such that BBT's defense of failure to state a cause of action upon which relief can be granted was <u>required</u> to be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits. As such,

> Hunt argues that the second motion to dismiss under SCRCP 12(b)(6) is not any pleading permitted or ordered under Rule 7(a).[6]

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[5] In lawsuit # 1 BBT filed 3 motions to dismiss. In lawsuit # 2 BBT filed 1 motion to dismiss. In lawsuit # 3 BBT filed 1 motion to dismiss. In lawsuit # 4 BBT filed 2 motions to dismiss.

[6] SCRCP 7**(a) Pleadings.** There shall be a complaint and an answer; and a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under Rule 14, and there shall be a third-party answer, if a third-party complaint is served. No other pleadings shall be allowed, except that the court may order a reply to an answer or a third-party answer; and there may be a reply to affirmative defenses as provided in Rule 8(c).

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Hunt argues that the second motion to dismiss under SCRCP 12(b)(6) is not a motion for judgment on the pleadings.

Hunt argues that the second motion to dismiss under SCRCP 12(b)(6) is not being presented at the trial on the merits.

Hunt argues that the second motion to dismiss under SCRCP 12(b)(6) is not a reply and it was not designated as a reply.

Hunt argues that the second motion to dismiss under SCRCP 12(b)(6) is not a Rule 12 (c) motion and that the pleadings are not closed.

Taken together, Rules 12(g) and 12(h)(2) prohibit [BBT] from filing a successive Rule 12(b)(6) motion unless it is included in their [reply] or in a Rule 12(c) motion after pleadings are closed. These rules are "intended to eliminate unnecessary delays at the pleading stage of a case by avoiding the piecemeal consideration of pretrial motions." *Rauch v. Day & Night Mfg. Corp.*, 576 F.2d 697, 701 (6th Cir. 1978).

Hunt argues that BBT has failed to file a reply and has failed to appear, plead or otherwise defend all thirty eight pages of the first amended counterclaims within the time allowed that.

Admissions: SCRCP 15(a) states in part: **Amendments.** [] A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within **fifteen days** after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders; and where

The certificate of service in the file shows that BBT was mailed the first amended counterclaims on 6/6/2013 where during the past 36 days BBT has not made the responsive pleading of a **reply** to the amended counterclaims as argued above at **SCRCP ignored; and where**

The averments[7] in this matter consist of all thirty eight pages of the document labeled the first amended counterclaims, as such, pursuant to SCRCP 8 Hunt argues that BBT has admitted to all of the averments that make up the first amended counterclaims where those averments were not denied in a required **reply** responsive pleading that was labeled as a reply.

Affidavit at exhibit # 46: BBT made no objection in law suit # 3 to Hunt being pro se and no objection to the affidavit at exhibit # 46 in law suit # 3.[8]

No appearance by Plaintiff BBT: Strike all pleadings of BBT: past present and future is included in the prayer for relief. Hunt argues that BBT has admitted to

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[7] SCRCP 8(**d**) **states - Effect of Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

[8] This affidavit was submitted in law suit # 3 where BBT did not object to the affidavit. This affidavit from law suit # 3 - can not be re-litigated and requires affirmance as per the order of the USDC in law suit # 3 at exhibit # 43.

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"strike all pleadings of BBT: past present and future". Hunt argues that the averment "strike all pleadings of BBT: past, present and future" is not an amount of damages.

As such, after the application of "strike all pleadings of BBT: past present and future" the result is that there is no evidence of a general appearance by BBT, the corporation, in this lawsuit initiated by BBT.[9]

Judgment by Default: Default Judgment is included in the prayer for relief. Hunt argues that BBT has admitted to "default judgment". Hunt argues that the averment "default judgment" is not an amount of damages.

As such, Hunt argues that after the application of the admitted "default judgment" the result is that judgment by default may be entered as per SCRCP 55(b).

Entry of Default: Hunt has filed fourteen affidavits of defaults based on her position that BBT has failed to file a **reply** responsive pleading as required pursuant to SCRCP 12(g), 12(h)(2) and 7(a) in response to the first amended counterclaims.

Hunt respectfully moves the Court/clerk of court for an **ENTRY OF DEFAULT**[10] as to each cause of action, attorney fees, punitive damages and prayer for relief of the first amended counterclaims where BBT has failed to appear, plead and otherwise defend all thirty eight pages of the first amended counterclaims within the time allowed and, therefore, is now in default.

Trial on the Damages: Based on an entry of default Hunt request that this case be set for trial on the issue of damages.

If entry of default is denied then Hunt also argues that -

1. At the May 20, 2014 hearing on the 9/5/2013 motion to dismiss under SCRCP 12(b)(6) Judge Howe directed Hunt to replead the counterclaims without a motion.

   As such, Hunt argues that the first amended counterclaims were not submitted within a pleading as per the instructions of Judge Howe in the hearings on May 20, 2014 where BBT did not object to these instructions by the court on May 20, 2014. Also, BBT did not object to Hunt's email stating the same.

   Hunt argues that BBT's failure to object in open court is binding such that BBT can not change its mind at this time by asserting an objection under SCRCP 12(b)(6).

   In the 6/23/2014 second motion to dismiss BBT states: **Hunt has failed to assert these [first amended] counterclaims within a pleading as required by the SCRCP.**

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[9] Fleet Capital Leasing-Technology Finance v. Seal Jet of Carolinas, Inc., 358 S.C. 240, 594 S.E.2d 538, 541 (S.C.App. 2004)

[10] Hunt submits three entries of defaults and several affidavits of default.

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SCRCP 15(a) states: **Amendments.** A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading[11] is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster,[12] he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fifteen days after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders.

In the 6/23/2014 second motion to dismiss BBT does not argue that it was prejudiced by Hunt's filing of the first amended counterclaims without a motion.

As such, Hunt argues that the 6/6/2014 first amended counterclaims satisfy SCRCP 15 where Hunt has made no other amendments to the pleading.

Also, Hunt argues that the objection that is currently being asserted by BBT was available to BBT at the time of the 9/5/2013 motion to dismiss under SCRCP 12(b)(6) and at the hearing for the same on May 20, 2014 and the emails to the Judge thereafter on the same motion and that BBT is engaging in piecemeal consideration of pretrial motions.

Hunt reminds this court that over the six year life of this dispute that BBT has filed six motions to dismiss. Also, Hunt reminds the court that BBT requested and was granted a priority scheduling order in this matter.

Hunt asks that the court deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to the paragraph numbered 1.

2. In the 9/5/2013 motion to dismiss BBT stated: **"the counterclaims and each and every cause of action stated therein is barred by the applicable statute of limitations, the operative facts having occurred and been discovered (or discoverable) by Defendant Cindy B. Hunt ("Hunt") prior to July 8, 2009."**

   This court on May 20, 2014 did **not rule** on BBT's 9/5/2013 first motion to dismiss under SCRCP 12(b)(6) to include where Hunt and BBT submitted additional arguments to the court re the original counterclaims on statute of limitations, breach of fiduciary duty, etc. and violations of the SC Probate Code.

   Thereafter, Hunt on 6/6/2014 filed the first amended counterclaims.

   UNPRESERVED: Instead of BBT filing a Rule 59(e), SCRCP, motion to preserve the statute of limitations, breach of fiduciary duty, etc. and violations of the SC Probate Code arguments that had not been ruled on by the court BBT **responded** to the first amended counterclaims with the 6/23/2014 second motion to dismiss under SCRCP 12(b)(6).

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[11] To date BBT has not provided a responsive pleading in this matter to Hunt's counterclaims.

[12] Hunt argues that a responsive pleading of a reply is required; and that the matter has not yet been placed on the trial roster.

In the 6/23/2014 motion to dismiss BBT states: **the counterclaims are all barred by their applicable statutes of limitations.**

Thus, the objection that is currently being asserted was available to BBT at the time of the 9/5/2013 motion to dismiss under SCRCP 12(b)(6), at the May 20, 2014 hearing for the same and at the time that arguments were made by BBT in its email to the court on the same motion and that BBT is trying to do through piecemeal pretrial motion that which must be done through a motion to preserve under SCRCP 59(e).

Also, Hunt argues above at **SCRCP ignored** that BBT in its 6/23/2014 second motion to dismiss under SCRCP 12 (b)(6) has failed to follow the procedure provided in the SCRCP 12(g), 12(h)(2) and 7(a) for asserting a second defense of failure to state a cause of action upon which relief can be granted.

Over the life of this dispute BBT has filed a total of seven[13] motions to dismiss in response to these causes of action that have resulted in this matter dragging on for almost seven years. Hunt reminds the court that BBT requested and was granted a scheduling order in this matter where neither party has made a SCRCP 59(e) motion as to the scheduling order.

Hunt asks that the court find as unpreserved BBT's 9/5/2013 motion to dismiss under SCRCP 12 (b)(6) re **statute of limitations, breach of fiduciary duty, etc. and violations of the SC Probate Code.**

Hunt asks that the court deny BBT's 6/23/2014 second motion to dismiss under SCRCP 12 (b)(6) as to the paragraph numbered 2 re **statute of limitations**.

3. The original counterclaims stated causes of action of fraud, constructive fraud and fraud in the inducement against BBT.

In its 9/5/2013 motion to dismiss BBT stated: **The second cause of action fails to set forth a claim for relief for fraud. As said cause of action has not been pled with particularity required by SCRCP 9(b) and the counterclaims fail to allege facts sufficient to establish a plausible claim for such relief, including the failure to allege any facts which would establish either the right to rely or actual reliance on the allegedly fraudulent statements.**

This court on May 20, 2014 granted BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6) re **fraud**. BBT did not assert in its 9/5/2013 motion to dismiss that the causes of action for constructive fraud and fraud in the inducement should be dismissed. With the result that the grant of dismissal does not apply to constructive fraud and fraud in the inducement.

Thereafter, Hunt submitted the first amended counterclaims on 6/6/2014. The first amended counterclaims state: constructive fraud against BBT.

[13] In lawsuit # 1 BBT filed 3 motions to dismiss. In lawsuit # 2 BBT filed 1 motion to dismiss. In lawsuit # 3 BBT filed 1 motion to dismiss. In lawsuit # 4 BBT filed 2 motions to dismiss.

In the 6/23/2014 motion to dismiss BBT states: **the first cause of action fails to plead with particularity the elements of constructive fraud as required by SCRCP 9(b), because it fails to state facts which establish that BBT knew or should have known that their statements were false.**[14]

UNPRESERVED: Instead of BBT filing a Rule 59(e), SCRCP, motion to preserve its arguments re the constructive fraud and or fraud in the inducement causes of action that had not been ruled on by the court BBT **responded** to the first amended counterclaims with the 6/23/2014 second motion to dismiss under SCRCP 12(b)(6).

Hunt argues that the objection that is currently being asserted by BBT was available to BBT at the time of the 9/5/2013 motion to dismiss under SCRCP 12(b)(6) and at the May 20, 2014 hearing for the same and that BBT is engaging in piecemeal consideration of pretrial motions of that which must be done through a motion to preserve under SCRCP 59(e).

Also, Hunt argues above at **SCRCP ignored** that BBT in its 6/23/2014 second motion to dismiss under SCRCP 12 (b)(6) has failed to follow the procedure provided in the SCRCP 12(g), 12(h)(2) and 7(a) for asserting a second defense of failure to state a cause of action upon which relief can be granted.

Over the life of this dispute BBT has filed a total of seven[15] motions to dismiss in response to these causes of action that have resulted in this matter dragging on for almost seven years. Hunt reminds the court that BBT requested and was granted a scheduling order in this matter where neither party has made a SCRCP 59(e) motion as to the scheduling order.

Hunt asks that the court find as unpreserved BBT's 9/5/2013 motion to dismiss under SCRCP 12 (b)(6) re constructive fraud.

As such, Hunt asks that the court deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to the paragraph numbered 3.

4. The original counterclaims stated causes of action for negligent misrepresentation, negligence, negligence per se and gross negligence against BBT.

In its 9/5/2013 motion to dismiss BBT stated: **the third cause of action fails to set forth a claim for relief for negligent misrepresentation as the counterclaims fail to allege facts sufficient to establish a plausible claim for such relief. Said cause of action further fails to allege facts supporting**

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[14] **Knew or should have known:** Hunt argues that the counterclaims show BBT knew or should have known where Hunt directs the court to paragraphs 1- 234 of the first amended counterclaims where these paragraphs state the specific conduct of BBT that shows that BBT had knowledge or should have known of the misconduct that Hunt complains of; and on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

[15] In lawsuit # 1 BBT filed 3 motions to dismiss. In lawsuit # 2 BBT filed 1 motion to dismiss. In lawsuit # 3 BBT filed 1 motion to dismiss. In lawsuit # 4 BBT filed 2 motions to dismiss.

recovery in negligence as any duty which might have existed ia a duty based in contract which will not support recovery in negligence.

This court on May 20, 2014 granted BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6) re **negligent misrepresentation**. BBT did not argue dismissal as to negligence, negligence per se and gross negligence as such the court did not rule on these causes of action. Thereafter, Hunt has submitted the first amended counterclaims. The first amended counterclaims state: negligence per se against BBT.

In the 6/23/2014 motion to dismiss BBT states: **the second cause of action fails to set forth a claim for relief for negligence per se because it fails to allege any facts that establish that BBT owes Hunt a duty of care pursuant to statute, or that BBT violated the statute.**[16]

UNPRESERVED: Instead of BBT filing a Rule 59(e), SCRCP, motion to preserve its arguments re the negligence, negligence per se and gross causes of action that had not been ruled on by the court BBT **responded** to the first amended counterclaims with the 6/23/2014 second motion to dismiss under SCRCP 12(b)(6).

The objection that is currently being asserted was available to BBT at the time of the 9/5/2013 motion to dismiss under SCRCP 12(b)(6) and at the hearing for the same such that BBT is engaging in piecemeal consideration of pretrial motions of that which must be done through a motion to preserve under SCRCP 59(e).

Also, Hunt argues above at **SCRCP ignored** that BBT in its 6/23/2014 second motion to dismiss under SCRCP 12 (b)(6) has failed to follow the procedure provided in the SCRCP 12(g), 12(h)(2) and 7(a) for asserting a second defense of failure to state a cause of action upon which relief can be granted.

Over the life of this dispute BBT has filed a total of seven[17] motions to dismiss in response to these causes of action that have resulted in this matter dragging on for almost seven years. Hunt reminds the court that BBT requested and was granted a scheduling order in this matter where neither party has made a SCRCP 59(e) motion as to the scheduling order.

Hunt asks that the court find as unpreserved BBT's 9/5/2013 motion to dismiss under SCRCP 12 (b)(6) re negligence pre se.

Hunt asks that the court deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to the paragraph numbered 4.

5. The original counterclaims stated: conversion against BBT.

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[16] **Duty:** Hunt argues that the counterclaims show BBT owes Hunt a duty of care where Hunt directs the court to paragraphs 1- 177 and exhibit #s 17/18 and 44/45; and on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

[17] In lawsuit # 1 BBT filed 3 motions to dismiss. In lawsuit # 2 BBT filed 1 motion to dismiss. In lawsuit # 3 BBT filed 1 motion to dismiss. In lawsuit # 4 BBT filed 2 motions to dismiss.

In its 9/5/2013 motion to dismiss BBT stated: **the fourth cause of action fails to set forth a claim for relief for conversion as a bank account (a contractual right) cannot be the subject of a conversion action.**

This court on May 20, 2014 granted BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6) re conversion as stated in the 9/5/2013 motion to dismiss. BBT did not argue dismissal based on **not tangible personal property as such the ruling of the court should not include "not tangible personal property"** Thereafter, Hunt has submitted the first amended counterclaims. The first amended counterclaims state: conversion against BBT.

BBT responded to the first amended counterclaims with the 6/23/2014 motion to dismiss under SCRCP 12(b)(6).

In the 6/23/2014 motion to dismiss BBT states: **the third cause of action fails to set forth a claim for relief for conversion because a bank account is a contractual right, not tangible personal property, and as such, will not support a claim for relief for conversion.** [18]

The objection that is currently being asserted was available to BBT at the time of the 9/5/2013 motion to dismiss under SCRCP 12(b)(6) and at the hearing for the same such that BBT is engaging in piecemeal consideration of pretrial motions where the 9/5/2013 motion to dismiss was silent as to not tangible personal property.

Also, Hunt argues above at **SCRCP ignored** that BBT in its 6/23/2014 second motion to dismiss under SCRCP 12 (b)(6) has failed to follow the procedure provided in the SCRCP 12(g), 12(h)(2) and 7(a) for asserting a second defense of failure to state a cause of action upon which relief can be granted.

Over the life of this dispute BBT has filed a total of seven[19] motions to dismiss in response to these causes of action that have resulted in this matter dragging on for almost seven years. Hunt reminds the court that BBT requested and was granted a scheduling order in this matter where neither party has made a SCRCP 59(e) motion as to the scheduling order.

Hunt asks that the court deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to the paragraph numbered 5.

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[18] **Tangible Property:** Hunt argues that the counterclaims show that her bank accounts are tangible property where Hunt directs the court to paragraphs 1- 178 and exhibit #s 44/45; and on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

[19] In lawsuit # 1 BBT filed 3 motions to dismiss. In lawsuit # 2 BBT filed 1 motion to dismiss. In lawsuit # 3 BBT filed 1 motion to dismiss. In lawsuit # 4 BBT filed 2 motions to dismiss.

6. The original counterclaims state: Breach of Fiduciary Duty / Breaches of Trust for Violations of SC Common Law and SC Code Ann. section 62-7-1001(a) by engaging in conduct that is prohibited at 62-7-801 thru 62-7-817 against BBT.

In its 9/5/2013 motion to dismiss BBT stated: **the fifth cause of action fails to set forth a claim for relief for breach of fiduciary duty as the facts alleged in the counterclaims establish a debtor/creditor relationship between Hunt and BBT which does not give rise to a fiduciary duty.**

This court on May 20, 2014 reserved its ruling on this counterclaim of BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6). Thereafter, Hunt has submitted the first amended counterclaims.

The first amended counterclaims state: Breach of Fiduciary Duty against BBT.

UNPRESERVED: Instead of BBT filing a Rule 59(e), SCRCP, motion to preserve the statute of limitations, breach of fiduciary duty, etc. and violations of the SC Probate Code arguments that had not been ruled on by the court BBT **responded** to the first amended counterclaims with the 6/23/2014 second motion to dismiss under SCRCP 12(b)(6).

In the 6/23/2014 motion to dismiss BBT states: **the fourth cause of action fails to set forth a claim for relief for breach of fiduciary duty because the facts alleged establish nothing more than a typical debtor/creditor relationship between Hunt and BBT, which, as a matter of law, does not give rise to a fiduciary duty.** [20]

Thus, the objection that is currently being asserted was available to BBT at the time of the 9/5/2013 motion to dismiss under SCRCP 12(b)(6), at the May 20, 2014 hearing for the same and at the time that arguments were made by BBT in its email to the court on the same motion and that BBT is trying to do through piecemeal pretrial motion that which must be done through a motion to preserve under SCRCP 59(e).

Also, Hunt argues above at **SCRCP ignored** that BBT in its 6/23/2014 second motion to dismiss under SCRCP 12 (b)(6) has failed to follow the procedure provided in the SCRCP 12(g), 12(h)(2) and 7(a) for asserting a second defense of failure to state a cause of action upon which relief can be granted.

Over the life of this dispute BBT has filed a total of seven[21] motions to dismiss in response to these causes of action that have resulted in this matter dragging on for almost seven years. Hunt reminds the court that BBT requested and was granted a scheduling order in this matter where neither party has made a SCRCP 59(e) motion as to the scheduling order.

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[20] **Debtor/creditor relationship:** Hunt argues that the counterclaims show a fiduciary duty where Hunt directs the court to paragraphs 1- 178 and 288-358; and exhibit #s 44/45; also on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

[21] In lawsuit # 1 BBT filed 3 motions to dismiss. In lawsuit # 2 BBT filed 1 motion to dismiss. In lawsuit # 3 BBT filed 1 motion to dismiss. In the current lawsuit # 4 BBT filed 2 motions to dismiss.

Hunt asks that the court find as unpreserved BBT's 9/5/2013 motion to dismiss under SCRCP 12 (b)(6) re **statute of limitations, breach of fiduciary duty, etc. and violations of the SC Probate Code.**

As such, Hunt asks that the court deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to the paragraph numbered 6 - **breach of fiduciary duty.**

7. The original counterclaims state: **violations of the SC Probate Code Ann. sections 62-6-101 thru 62-6-106 against BBT.**

   In its 9/5/2013 motion to dismiss BBT stated: **the sixth cause of action fails to set forth a claim for relief for as the sections referred to therein do not create a right of action and/or the facts alleged in the counterclaims establish that no actionable violation occurred.**

   This court on May 20, 2014 **did not rule** on this counterclaim as to BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6). Thereafter, Hunt has submitted the first amended counterclaims.

   The first amended counterclaims state: **violations of the SC Probate Code Ann. sections 62-6-101 thru 62-6-106 against BBT.**

   UNPRESERVED: Instead of BBT filing a Rule 59(e), SCRCP, motion to preserve the statute of limitations, breach of fiduciary duty, etc. and violations of the SC Probate Code arguments that had not been ruled on by the court BBT **responded** to the first amended counterclaims with the 6/23/2014 second motion to dismiss under SCRCP 12(b)(6).

   In the 6/23/2014 motion to dismiss BBT states: **the fifth cause of action fails to set forth a claim for relief for violation of SC Code Ann. sections 62-6-101 thru 62-6-106 because there is no private right of action for violation of those statutes.** [22]

   Thus, the objection that is currently being asserted was available to BBT at the time of the 9/5/2013 motion to dismiss under SCRCP 12(b)(6), at the May 20, 2014 hearing for the same and at the time that arguments were made by BBT in its email to the court on the same motion and that BBT is trying to do through piecemeal pretrial motion that which must be done through a motion to preserve under SCRCP 59(e).

   Also, Hunt argues above at **SCRCP ignored** that BBT in its 6/23/2014 second motion to dismiss under SCRCP 12 (b)(6) has failed to follow the procedure provided in the SCRCP 12(g), 12(h)(2) and 7(a) for asserting a second defense of failure to state a cause of action upon which relief can be granted.

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[22] **Private Right:** Hunt argues that the counterclaims show a private right of action where Hunt directs the court to paragraphs 1- 178 and 359-414; and exhibit #s 44/45; also on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

Over the life of this dispute BBT has filed a total of seven[23] motions to dismiss in response to these causes of action that have resulted in this matter dragging on for almost seven years. Hunt reminds the court that BBT requested and was granted a scheduling order in this matter where neither party has made a SCRCP 59(e) motion as to the scheduling order.

Hunt asks that the court find as unpreserved BBT's 9/5/2013 motion to dismiss under SCRCP 12 (b)(6) re **statute of limitations, breach of fiduciary duty, etc. and violations of the SC Probate Code.**

As such, Hunt asks that the court deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to the paragraph numbered 7 - **violations of the SC Probate Code Ann. sections 62-6-101 thru 62-6-106.**

8. The original counterclaims state: **violation of the SC Unfair Trade Practices Act: SC Code sections 39-5-10 thru 39-5-170 against BBT.**

In its 9/5/2013 motion to dismiss BBT stated: **the seventh cause of action for unfair trade practices fails to state facts sufficient to state a claim against BBT for "violation of SC Code Ann. sections 39-5-10 et seq." as the actions of BBT, (a federally insured state banking institution), are not covered by or subject to the provisions of SC Code Ann. sections 39-5-10 et seq. as the actions of federally insured financial institutions are not subject thereto and/or exempt from the provisions thereof pursuant to SC Code Ann. sections 39-5-40. Additionally, the counterclaims fail to set forth a claim for relief under SC Code Ann section 39-5-10 as the facts alleged in the counterclaims establish only a private dispute between the parties that has no impact upon the public interest of the State of SC.**

This court on May 20, 2014 granted BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6) re violation of the SC Unfair Trade Practices Act: SC Code sections 39-5-10 thru 39-5-170.

Thereafter, Hunt has submitted the first amended counterclaims where the currents facts show that BBT is not exempt from **SC Code Ann. sections 39-5-40, etc.**

The first amended counterclaims state: **violation of the SC Unfair Trade Practices Act: SC Code sections 39-5-10 thru 39-5-170 against BBT.**

BBT responded to the first amended counterclaims with the 6/23/2014 motion to dismiss under SCRCP 12(b)(6).

In the 6/23/2014 motion to dismiss BBT states: **the sixth cause of action fails to state facts[24] sufficient to state a claim against BBT for violation of the SC Unfair Trade Practices Act because the actions of BBT, a federally-insured state banking institution, are not subject thereto and/or are exempt from its provisions pursuant to SC Code**

[23] In lawsuit # 1 BBT filed 3 motions to dismiss. In lawsuit # 2 BBT filed 1 motion to dismiss. In lawsuit # 3 BBT filed 1 motion to dismiss. In lawsuit # 4 BBT filed 2 motions to dismiss.

[24] Hunt as included additional facts in the 6/6/2014 first amended counterclaims.

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Ann. section 39-5-40. Additionally, the counterclaim fails to set forth a claim for relief as the facts alleged establish only a private dispute between the parties that has no impact upon the public interest of the State of SC.

Public Interest: Hunt argues that the counterclaims show a public interest where Hunt directs the court to paragraphs 1- 178 and 415-455; and exhibit #s 44/45; also on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

Hunt also argues that the current argument was available to BBT at the time of the 9/5/2013 motion to dismiss under SCRCP 12(b)(6) and or hearing of the same and that BBT is engaging in piecemeal consideration of pretrial motions.

Also, Hunt argues above at **SCRCP ignored** that BBT in its 6/23/2014 second motion to dismiss under SCRCP 12 (b)(6) has failed to follow the procedure provided in the SCRCP 12(g), 12(h)(2) and 7(a) for asserting a second defense of failure to state a cause of action upon which relief can be granted.

Over the life of this dispute BBT has filed a total of seven[25] motions to dismiss in response to these causes of action that have resulted in this matter dragging on for almost seven years. Hunt reminds the court that BBT requested and was granted a scheduling order in this matter where neither party has made a SCRCP 59(e) motion as to the scheduling order.

Hunt asks that the court deny BBT's 6/23/2014 second motion to dismiss under SCRCP 12 (b)(6) as to the paragraph numbered 8 - **violation of the SC Unfair Trade Practices Act**.

9. The evidence of the original counterclaims included a cause of action for **breach of contract(s).**

Also, this court in the hearings on May 20, 2014 stated that the allegations asserted by Hunt were a breach of contract.

BBT did not argue lack of causation or a non breach of contract or lack of damages or statute of limitations re breach of contract at the hearing. Hunt argues that BBT's failure to object in open court is binding such that BBT can not change its mind at this time by asserting an objection under SCRCP 12(b)(6). As such, Hunt argues that BBT has admitted to breach of contract.

In order to conform to the evidence - included in the 6/6/2014 first amended counterclaims is a cause of action for breach of contract.

Thereafter, in its 6/23/2014 motion to dismiss BBT states: **the seventh cause of action fails to set forth a claim for relief for breach of contract because it**

[25] In lawsuit # 1 BBT filed 3 motions to dismiss. In lawsuit # 2 BBT filed 1 motion to dismiss. In lawsuit # 3 BBT filed 1 motion to dismiss. In lawsuit # 4 BBT filed 2 motions to dismiss.

fails to allege facts sufficient to plausibly establish the elements of causation and/or damages.

The objection that is currently being asserted re breach of contract was available to BBT at the time of the 9/5/2013 motion to dismiss under SCRCP 12(b)(6), at the time of the May 20, 2014 hearing for the same and the emails to the Judge as to the same hearing motion.

Next, to recover for a breach of contract, the [party] must prove: (1) a binding contract; (2) a breach of contract; and (3) damages proximately resulting from the breach. *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962).

Hunt argues that based on Fuller, supra that there is not an element of causation needed to recover for a breach of contract.

The first amended counterclaims show a breach of contract and damages as follows –

BBT does not argue that the contracts are not binding.

Breach of contract: Hunt argues that the counterclaims show a breach of contract where Hunt directs the court to paragraphs 1- 177 and 456 – 506 of the first amended counterclaims where these paragraphs state the specific conduct of BBT that resulted in a breach of contract(s) and on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

Damages: Hunt argue that the counterclaims show damages from the breach of contract(s) where Hunt directs the court to paragraphs 1-177, paragraphs 456 -506 and pages 36-38 of the first amended counterclaims and the affidavits of Hunt at exhibit #s 3, 26 and 46[26] where these paragraphs, etc. state the damages as a result of the breach of contract(s) where on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

Hunt argues that the current argument was available to BBT at the time of the 9/5/2013 motion to dismiss under SCRCP 12(b)(6) and or hearing of the same and that BBT is engaging in piecemeal consideration of pretrial motions.

As such, Hunt asks that the court deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to the paragraph numbered 9 – **breach of contracts.**

[26] These affidavits where also submitted in the USDC court proceedings where BBT did not object or appeal the rulings of the USDC.

10. In the original counterclaims Hunt requested **punitive damages** at paragraphs 245, 283 and 296; and at paragraphs j, m, p and q on page 21.

In its 9/5/2013 motion to dismiss BBT stated: **"the counterclaims fail to allege any factual or legal basis for any claim for punitive damages."**

This court on May 20, 2014 ruled on BBT's 9/5/2013 motion to dismiss under SCRCP 12(b)(6). Thereafter, Hunt has submitted the first amended counterclaims.

BBT responded to the first amended counterclaims with the 6/23/2014 motion to dismiss under SCRCP 12(b)(6).

In the 6/23/2014 motion to dismiss BBT states: **"the counterclaims fail to allege any factual or legal basis for any claim for punitive damages."** [27]

The first amended counterclaims states at paragraph 454: [Hunt] seeks damages under: SC Code § 39-5-140(a) actual damages, punitive damages, cost, attorney fees, such other relief as Court deems necessary or proper.

The first amended counterclaims states at paragraph j on page 21: Statutory damages, consequential damages, general damages, special damages, actual damages and punitive damages.

The first amended counterclaims states at paragraph m on page 21: BBT to pay to Hunt all monies paid on the current mortgage with legal, prejudgment and post judgment interest; punitive damages.

The first amended counterclaims states at paragraph p on page 21: BBT to pay to the SC Bar the life amount of monies deposited in the IOLTA with statutory damages, legal, prejudgment and post judgment interest and punitive damages, etc.

The first amended counterclaims states at paragraph q on page 21: BBT to pay to Davis and the other borrowers pursuant to agreement for each plus loan amount, amount paid on loan with statutory damages, legal, prejudgment and post judgment interest and punitive damages, etc.

Hunt argues that the current argument was available to BBT at the time of the 9/5/2013 motion to dismiss under SCRCP 12(b)(6) and or hearing of the same and that BBT is engaging in piecemeal consideration of pretrial motions.

Hunt also argues that the counterclaims at paragraphs 1- 506 to include all of the exhibits show a factual and legal basis for punitive damages where on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

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[27] **Punitive Damages:** Hunt argues that the counterclaims show a factual and legal basis for punitive damages where Hunt directs the court to paragraphs 1- 506; and exhibit #s 44/45; also on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

As such, Hunt asks that the court deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to the paragraph numbered 10 re punitive damages.

11. In the original counterclaims Hunt requested **attorney fees and costs** at paragraphs 88, 245 and 296; and at paragraphs u, v and w on page 22.

In the 9/5/2013 motion to dismiss BBT stated: **"the counterclaims fail to allege any basis for any claim for an award of attorneys' fees or costs."**[28]

This court in the hearings on May 20, 2014 granted to Hunt attorney fees and costs in the amount of $ 2, 668, 905.00 million dollars under Hunt's motion for **default and default judgment**. BBT did not object and BBT is not currently making a motion under SCRCP 59(e).

In the first amended counterclaims Hunt requested attorney fees at paragraphs 168, 232, 308, 412, 452 and 454; and at paragraphs u, v and w on pages 37-38.

In the 6/23/2014 motion to dismiss BBT states: **"the counterclaims fail to allege any basis for any claim for an award of attorneys' fees or costs."** [29]

As such, Hunt argues that the current argument was available to BBT at the time of the 9/5/2013 motion to dismiss under SCRCP 12(b)(6) and or hearing of the same and that BBT is engaging in piecemeal consideration of pretrial motions.

Additional attorney fees:

Hunt argues that the basis for an award of additional attorney fees and costs includes - in this complex and protracted matter involving Hunt's IOLTA Hunt has put in thousands of hours of work to uncover BBT's misconduct and to provide this Court with legal support for all admissions made by BBT.

Hunt argues that the counterclaims show a basis **for attorney fees and costs**[30] where Hunt directs the court to paragraphs 1- 506; and exhibit #s 44/45; also on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

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[28] On May 20, 2014 the court awarded Hunt the attorney fees that she requested under her motion for default/default judgment.

[29] **Attorney fees and costs:** Hunt argues that the counterclaims show a basis **for attorney fees and costs** where Hunt directs the court to paragraphs 1- 506; and exhibit #s 44/45; also on this motion at this stage the court is required to accept these allegations in the counterclaims as true.

[30] Of these fees $8,000.00 was paid to attorneys Valtorta and Ballard; and the remaining fees are for services provided by Hunt an attorney where these matters involved the IOLTA. Hunt can find no case law re these unique set of facts. As such, Hunt would request that if this Court is inclined to deny the requested attorney fees in part or total that they Court submit this issue to the SC Supreme Court. Hunt would request a damages hearings.

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All seven of the causes of action in this matter involve Hunt's IOLTA. Pursuant to oath, statute[31] and responsibility Hunt is required to protect and defend the IOLTA. The breach of fiduciary duty, UTPA and violations of SC Probate Code causes of action provide for attorney fees.

Hunt asks that the court deny BBT's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to the paragraph numbered 11 - **attorney fees and costs to Hunt.**

12. In the 9/5/2013 motion to dismiss - **BBT requested attorney fees to itself under its BSA.**

In its 6/23/2014 motion to dismiss has **requested attorney fees to itself under the Note/Mortgage.**[32] However, the 6/23/2014 argument as per paragraph 11 of the 4/16/2013 foreclosure complaint was available to BBT at the time of the 9/5/2013 motion to dismiss under SCRCP 12(b)(6). As such, Hunt argues that BBT is engaging in piecemeal consideration of pretrial motions.

Hunt asks that the court deny **attorney fees to BBT under the Note/Mortgage** as requested by BBT in it's 6/23/3014 second motion to dismiss under SCRCP 12 (b)(6) as to the unnumbered paragraph after the paragraph numbered 11 re **attorney fees to BBT under the Note/Mortgage where the BSA and Note/Mortgage should be read together such that -**

Hunt argues that BBT has engaged in unclean hands during the FDIC proceeding involving Teal and the unauthorized practice of law as stated at exhibit # 47 entry # 105-1 on pages 22 - 25.

Hunt also argues that the unclean hands include where BBT has violated its own BSA/Note/Mortgage at least a dozen times where BBT is currently engaging in a violation of its BSA as follows:

Hunt wrote to BBT as stated at paragraph 176 of the counterclaims and exhibit # 37 where Hunt disputed the 2007 mortgage and Hunt requested satisfaction of the mortgage.

BBT's banking service agreement (BSA) at exhibit # 44 page 27 of 28 (your rights and our responsibilities after we receive your written notice) states: "after we receive your letter, we can not try to collect any amount you question or report you as delinquent.

... However, if our explanation does not satisfy you ..., we must tell anyone that we report you to that you have a question about your statement. And we must tell you the name of anyone we report you to."

BBT at the last page of exhibit # 56 has completed its threat from exhibit # 49 entry #14-2 where BBT has reported Hunt to the credit reporting agency (CRA) as being delinquent on her 2007 mortgage. As such, not only has BBT reported Hunt as delinquent - BBT also did not include notice that the debt was disputed.

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[31] See SC Code Ann. § 62-7-811.

[32] See above argument **No appearance by Plaintiff BBT.**

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Hunt spent the summer of 2013 at the United States Patent and Trademark Office (USPTO) doing an internship. In the fall of 2013 Hunt was denied employment at the USPTO because BBT did not indicate that the mortgage was disputed.

As such, Hunt respectfully moves the Court for an **Order denying** each argument of BBT's second motion under SCRCP 12 (b)(6) to dismiss the first amended counterclaims with prejudice.

Respectfully submitted,

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DATE: July 15, 2014

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