

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Daniel W. Stacy, Jr., Special Referee

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SC Court of Appeals

Appellate Case No.: 2019-000983

The Bank of New York Respondent
Mellon, f/k/a The Bank of
New York, as trustee for
The Certificateholders of
the CWABS, Inc., Asset-Backed
Certificates, Series 2005-16

v.

Janet M. Smith, Portfolio Appellant.
Recovery Associates, LLC
and James E. Byrdic

Of whom Janet M. Smith is the Appellant.

APPENDIX TO THE RECORD ON APPEAL

B. LINDSAY CRAWFORD, III SC BAR # 6510
THEODORE VON KELLER SC BAR # 5718
SARA C. HUTCHINS SC BAR # 72879
B. LINDSAY CRAWFORD, IV SC BAR # 101707
CRAWFORD & VON KELLER, LLC
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ATTORNEYS FOR RESPONDENT

November 21, 2019
Columbia, South Carolina

Jon A. Ozolins
SC Legal Services
1201-B Creel Street, Wing A-1
Conway, SC 29527

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STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

The Bank of New York Mellon FKA the Bank of New York, as trustee for the Certificateholders of the CWABS Inc., Asset-Backed Certificates, Series 2005-16,

Plaintiff,

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2014-CP-45-445

SUMMONS
(NON-JURY)
FORECLOSURE OF REAL ESTATE
MORTGAGE

Deficiency Judgment Waived

v.

Janet M. Smith;

Defendant(s).

(015262-01682)

FILED
2014 SEP -8 AM 10:46
SHARON W. S. JENNINGS
CLERK OF COURT
KINGSTREE, S.C.

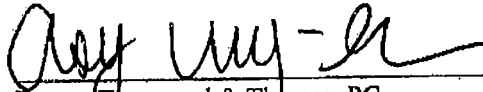
TO THE DEFENDANT(S) ABOVE NAMED:

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 The Bank of New York Mellon FKA the Bank of New York, as trustee for the Certificateholders of the CWABS Inc., Asset-Backed Certificates, Series 2005-16.



Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Robert P. Davis (SC Bar #74030)	Vance L. Brabham, III (SC Bar #71250)
Andrew W. Montgomery (SC Bar #79893)	Andrew A. Powell (SC Bar #100210)
J. Pamela Price (SC Bar # 014336)	Laura R. Baer (SC Bar # 101076)
II. Guyton Murrell (SC Bar # 064134)	John J. Hearn (SC Bar # 6635)
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Columbia, South Carolina
September 2, 2014

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

The Bank of New York Mellon FKA the Bank of New York, as trustee for the Certificateholders of the CWABS Inc., Asset-Backed Certificates, Series 2005-16,

Plaintiff,

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2014-cp-45-445

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE
MORTGAGE

Deficiency Judgment Waived

v.

Janet M. Smith;

Defendant(s).

(015262-01682)

24H SEP -8 AM 10:46
SHARON W. GAGGERS
CLERK OF COURT
KINGSTREE, S.C.

FILED

Plaintiff alleges:

GENERAL ALLEGATIONS

1. This is an action for the foreclosure of a mortgage upon certain real estate in Williamsburg 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 borrower did not provide all necessary documents after those documents had been requested.
5. The premises covered and affected by the said mortgage and by the foreclosure thereof is described as follows:

All that certain piece, parcel or lot of land situated, lying and being in Tax District No. 2. Georgetown County, South Carolina, north of the Town of Andrews, which is shown and delineated as Lot No. 3 on that certain plat made by Samuel M. Harper, R.L.S. dated December 15, 1971 and recorded in the Office of the Clerk of Court for Georgetown County in Plat Book W at Page 64, said lot No. 3 is bounded and measured as follows: On the Northeast by a 50-foot street as shown on said plat separating said lot from land now or formerly of Ethridge and measuring on said street 149 feet;

On the Southeast by Lot No. 4 as shown on said plat and measuring thereon 197 feet;

On the Southwest by land of International Paper Company and measuring thereon 149 feet; and

On the Northwest by Lot No. 2 as shown on said plat and measuring thereon 198 feet, be all measurements a little more or less.

Property Address: 5301 County Line Road
Andrews, SC 29510

TMS# 45-435-009

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

7. 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.

8. 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.

9. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth below, or some part thereof, but that such interests or liens are junior and subsequent to the lien of the 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. None

FOR A FIRST CAUSE OF ACTION
(Reformation)

10. The Plaintiff incorporates the allegations of Paragraphs 1-9 herein.

11. Heretofore, on or about November 15, 2005, Janet M. Smith made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of \$73,000.00, payable in monthly installments.

12. In order to secure the payment of the Note according to the terms and conditions thereof, Janet M. Smith made, executed and delivered unto Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc., its successors and assigns (MIN 1000157-0005955688-2) a certain real estate Mortgage covering the previously described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

~~13. The Mortgage was signed, witnessed and probated November 15, 2005; thereafter the~~ Mortgage was recorded in the Office of the Clerk Of Court for Williamsburg County on December 28, 2005, in Mortgage Book 2836 at Page 109. This Mortgage was assigned to the Plaintiff herein by assignment dated May 25, 2012 and recorded June 4, 2012 in Book 1911 at Page 270 in Georgetown County. This loan is subject to a loan modification agreement.

14. ~~The legal description as shown on said Mortgage and described in Paragraph 5, is~~ incorrect in its identification of lot reference. Upon review of the recorded documents related to the subject property, Plaintiff is informed and believes that the legal description should read as follows:

All that certain piece, parcel or lot of land lying, with improvements thereon, being situate in Mingo Township, County of Williamsburg, State of South Carolina, containing one and one thousandths (1.001) acres, more or less, and being shown on a plat of two parcels of land prepared by J.B. Ellis, Jr., R.L.S. on May 11, 1998 and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 46 at page 121, and being bounded on the northwest by lot of Janet T. Smith, being the lot below described, measuring thereon Two Hundred Sixteen and 86/100ths (216.86') feet; on the northeast by lands of Haskell B. Benton, measuring thereon Seventy Five and 32/100ths (75.32') feet, and by lands of James R. Fulton, measuring thereon One Hundred Twenty Five and 62/100ths (125.62') feet; on the southeast by South Carolina Highway #41, measuring thereon Two Hundred Sixteen and 31/100ths (216.31') feet; and, on the southwest by lot of Janet T. Smith, being the lot below described, and measuring thereon Two Hundred Two and 49/100ths (202.49') feet; all of which will more fully and in detail appear by reference to the plat hereinabove referred to.

This being a portion of the same property conveyed to Janet M. Smith by deed of Charles L. Mobley, dated May 29, 1998 and recorded June 1, 1998 in Book A409 at Page 268.

15. Plaintiff is informed and believes it is entitled to reformation of its Mortgage so as to correct the lot reference in the legal description on the Mortgage to read as described in Paragraph 14.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

16. The Plaintiff incorporates the allegations of Paragraphs 1 - 15 herein.

17. Heretofore, on or about November 15, 2005, Janet M. Smith made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of \$73,000.00, payable in monthly installments.

18. In order to secure the payment of the Note according to the terms and conditions thereof, Janet M. Smith made, executed and delivered unto Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc., its successors and assigns (MIN 1000157-0005955688-2) a certain real estate mortgage ("Mortgage") covering the previously described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

19. Plaintiff's closing agent intended to have the Mortgage filed in Williamsburg County, but through inadvertence or mistake, the Mortgage in the real estate records for Georgetown County on December 28, 2005 in Book 2836 at Page 109. This Mortgage was assigned to the Plaintiff herein by assignment dated May 25, 2012 and recorded June 4, 2012 in Book 1911 at Page 270 in Georgetown County. This loan is subject to a loan modification agreement.

20. Plaintiff has searched the public records of Williamsburg County, and asserts that there are no other liens against the Mortgagors or the subject real estate through the filing date of the Lis Pendens except the above listed liens.

21. Plaintiff is informed and believes that it is entitled to a declaratory judgment that its mortgage described above constitutes a first lien on the subject property.

FOR A THIRD CAUSE OF ACTION
(Foreclosure of Mortgage)

22. The Plaintiff incorporates the allegations of Paragraphs 1-23 herein.

23. This cause of action is for the foreclosure of the Mortgage described above.

24. Heretofore, on or about November 15, 2005, Janet M. Smith made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of \$73,000.00, payable in monthly installments.

25. In order to secure the payment of the Note according to the terms and conditions thereof, Janet M. Smith made, executed and delivered unto Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc., its successors and assigns (MIN 1000157-0005955688-2) a certain real estate Mortgage covering the previously described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

26. The Mortgage was signed, witnessed and probated November 15, 2005. This Mortgage was assigned to the Plaintiff herein by assignment dated May 25, 2012 and recorded June 4, 2012 in Book 1911 at Page 270 in Georgetown County. This loan is subject to a loan modification agreement.

27. 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.

28. Any notice required by the terms of the Note and Mortgage or by state or federal laws has been given to the applicable Defendant(s).

29. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for March 1, 2014, 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 March 1, 2014, the principal sum of \$67,257.73, with interest from February 1, 2014, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

~~30. 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 such sum as the Court may find appropriate.~~

31. 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.

32. 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.

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

- (1) Under the direction of this Court, grant reformation of the Plaintiff's Mortgage.
- (2) Grant a declaratory judgment to the Plaintiff pursuant to S. C. Code Ann. § 15-53-20, et seq., that the Mortgage is a valid first lien on the property described herein (supra).
- (3) Order the Clerk of Court for Williamsburg County to file and index a copy of the Mortgage and the assignment of Mortgage as though it were the original.
- (4) Award sole ownership of the Note and Mortgage described herein to the Plaintiff.
- (5) Direct the Clerk Of Court to annotate the public records to reflect ownership of the Mortgage in the Plaintiff.
- (6) Ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.
- (7) 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 which may be due and have been advanced by the Plaintiff, with reasonable attorney's fees, and for the costs of this action.
- (8) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

incurred by the Plaintiff as a result of the delinquency.

(9) 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.

(10) 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, SCRPC.

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

(12) Order such other and further relief as may be just and proper.



Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Robert P. Davis (SC Bar #74030)
Andrew W. Montgomery (SC Bar #79893)
J. Pamela Price (SC Bar # 014336)
H. Guyton Murrell (SC Bar # 064134)
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Laura R. Baer (SC Bar # 101076)
John J. Hearn (SC Bar # 6635)

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Columbia, South Carolina
September 2, 2014

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG)	THIRD JUDICIAL CIRCUIT
)	
The Bank of New York Mellon, f/k/a The)	
Bank of New York, as trustee for the)	
certificateholders of the CWABS, Inc.,)	
Asset-Backed Certificates, Series 2005-)	
16,)	
)	
Plaintiff(s))	
)	
vs.)	ANSWER AND COUNTERCLAIM
)	
Janet M. Smith,)	
)	
Defendant(s))	C.A. NO.: 2018-CP-45-00472

As an answer to the Plaintiff's allegations, Defendant Janet M. Smith would respectfully show the following unto the Court:

FOR A FIRST DEFENSE

1. Each and every allegation in the Plaintiff's Complaint not herein admitted or qualified is denied.
2. The Defendant admits the allegations of the following paragraphs of the Plaintiff's Complaint: 1, 4, 5, 8, and 17.
3. The Defendant denies the allegations of the following paragraphs of the Plaintiff's Complaint: 3, 10, 13, 14, 15, and 16.
4. The Defendant lacks sufficient knowledge to admit or deny the allegations of the following paragraphs of the Plaintiff's complaint, and therefore denies same and demands strict proof thereof: 2 and 9.
5. Responding to paragraphs 6, 7, and 12, Defendant admits that she signed a Note and Mortgage on or about November 15, 2005, denies that the The Bank of New York Mellon (in any

capacity) was a party to the transaction or that the mortgage originally covered the property described in paragraph 7, and would state that the original documents speak for themselves with regards to the terms of said documents. To the extent that they are inconsistent with the terms of the original documents, the Defendant denies the remainder of the allegations and demands strict proof thereof.

FOR A SECOND DEFENSE
(Res Judicata)

6. Each and every allegation herein above is repeated herein as if repeated verbatim.

7. The Defendant at one time owned two pieces of real property relevant to the present action. The first piece was located in Georgetown County, and has a property address of 72 Grape Drive, Andrews, SC 29510. This was the property originally identified by the property description listed on the mortgage. For the sake of clarity, this property will be hereafter referred to as the "Georgetown Property." The property description for the Georgetown Property is attached hereto as Defendant's Exhibit A.

8. The second property was located in Williamsburg County, and has a property address of 5301 County Line Road, Andrews, SC 29510. This is the property identified in the mortgage after it was reformed by order of the Williamsburg County Court of Common Pleas in case number 2014CP4500445. For the sake of clarity, this property will be hereafter referred to as the "Williamsburg Property." The property description for the Williamsburg Property is attached hereto as Defendant's Exhibit B.

9. On or about September 20, 2016, the Plaintiff filed a foreclosure action against Defendant in Georgetown County Court of Common Pleas, case number 2016CP2200334.

10. The pleadings in that case referred to the same mortgage between the parties as the present action. However, the Plaintiff ignored its prior judgment reforming the mortgage, and sought to foreclose on the Georgetown Property.

11. The Defendant, being unrepresented, did not understand the need to file a written response to those pleadings. She intended to inform the court about the incorrect property description at the foreclosure hearing, but due to problems with the mail, she did not receive that notice until after the date of the hearing.

12. The Defendant advised Plaintiff's attorney by email that they were foreclosing on the incorrect property, but the Plaintiff proceeded with that foreclosure.

13. The Georgetown property was subsequently sold at foreclosure sale on November 7, 2016 for \$2,500.00, and Plaintiff expressly waived any right to deficiency judgment. A copy of the Special Referee's Report on Sale and Order Confirming Sale is attached hereto as Defendant's Exhibit C.

14. A Satisfaction of Mortgage by Foreclosure was filed on November 28, 2016 in Deed Book 2925 at Page 301 in the office of the Georgetown County Register of Deeds. A copy of the Satisfaction is attached hereto as Defendant's Exhibit D.

15. This action arises under the same mortgage and facts as the prior case, 2016CP2200334, between the same parties. The prior action resulted in a finally adjudicated judgment and foreclosure of the property selected by Plaintiff.

16. The Defendant is therefore informed and believes that the present action should be barred by the doctrine of *res judicata*.

FOR A THIRD DEFENSE
(Waiver)

17. Each and every allegation herein above is repeated herein as if repeated verbatim.

18. The Plaintiff waived any right to deficiency against the Defendant as part of the prior foreclosure case, 2016CP2200334.

19. As a result of this waiver, the Plaintiff canceled any remaining debt owed under the Note.

20. Without a mortgage debt, the Plaintiff lacks any authority to foreclose on the mortgage.

21. The Defendant is informed and believes that Plaintiff's action should be dismissed.

FOR A FOURTH DEFENSE
(Unclean Hands)

22. Each and every allegation herein above is repeated herein as if repeated verbatim.

23. The Defendant is informed and believes that the Plaintiff should be barred from the equitable remedy of foreclosure by the doctrine of unclean hands.

FOR A FIFTH DEFENSE
(Judicial Estoppel)

24. Each and every allegation herein above is repeated herein as if repeated verbatim.

25. The Plaintiff, after successfully suing in case number 2014CP4500445 to reform the mortgage to change the secured property to be the Williamsburg Property, subsequently sued in case number 2016CP2200334 to foreclose on the Georgetown Property.

26. While there may have been an honest scrivener's error in the initial mortgage paperwork that misidentified the property that the parties intended to secure the mortgage, the Defendant only agreed to pledge a single property to secure the mortgage.

27. The Plaintiff falsely represented to the Court in that action that its mortgage was secured by the Georgetown Property. The Plaintiff further ignored the Defendant's email informing them that they were foreclosing on the incorrect property, and proceeded to obtain a foreclosure judgment and sell the Georgetown Property in a foreclosure sale.

28. Having successfully asserted the factual position that the mortgage secures the Georgetown Property in 2016CP2200334, the Plaintiff should be judicially estopped from asserting that the mortgage instead secures the Williamsburg Property.

FOR A SIXTH DEFENSE AND COUNTERCLAIM
(Release and Satisfaction)

29. Each and every allegation herein above is repeated herein as if repeated verbatim.

30. A Satisfaction of Mortgage by Foreclosure was filed on November 28, 2016 in Deed Book 2925 at Page 301 in the office of the Georgetown County Register of Deeds.

31. The Plaintiff further waived any right to deficiency against the Defendant as part of the prior foreclosure case, 2016CP2200334, canceling any remaining debt owed under the Note.

32. Therefore, the Defendant owes no debt to the Plaintiff, and the Plaintiff no longer retains any secured interest in the Defendant's remaining property.

33. However, the recorded judgment from case number 2014CP4500445 reforming the mortgage creates a cloud on the title of the Williamsburg Property.

34. The Defendant is informed and believes that she is entitled to an order of this court releasing the mortgage from the Williamsburg Property.

FOR A SEVENTH DEFENSE AND COUNTERCLAIM
(SC Frivolous Proceedings Act)

35. Each and every allegation herein above is repeated herein as if repeated verbatim.

36. Based on the Plaintiff's prior completed foreclosure, Plaintiff, and its attorneys, knew or should have known that it had no right to seek foreclosure of a second property on the same mortgage that secured only a single property.

37. Defendant is informed and believes that this action therefore constitutes a frivolous action that is not reasonably founded in fact and is not warranted under existing law.

38. Defendant reserves all rights afforded to her under the South Carolina Frivolous Civil Proceedings Sanctions Act, §15-36-10, for sanctions against the Plaintiff, including but not limited to an award of costs and attorney's fees in defending this action.

WHEREFORE, the Defendant prays that an order be issued, that:

- a. Dismisses the Plaintiff's action;
- b. Bars the Plaintiff from obtaining the equitable remedy of foreclosure;
- c. Determines that the mortgage debt in question is waived or satisfied;
- d. Releases the mortgage lien on the Williamsburg Property;
- e. Awards sanctions against the Plaintiff; and
- f. Award such additional relief as appropriate.

Respectfully Submitted,

South Carolina Legal Services

Conway, SC

Date: December 17, 2018

/s Jon A. Ozolins

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STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS

CASE NO. 2018-CP-45-00472

The Bank of New York Mellon, f/k/a
The Bank of New York, as trustee for
the certificateholders of the CWABS,
Inc., Asset-Backed Certificates, Series
2005-16

Plaintiff,

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

-vs-

Janet M. Smith,

Defendant(s).

The Plaintiff replying to the Answer and Counterclaim of Defendant would respectfully show as follows:

AS TO THE FIRST DEFENSE

1. Responding to the allegations of paragraphs 1 through 5 of the Answer and Counterclaim, Plaintiff repeats and realleges the allegations of the Complaint, denies the allegations inconsistent there with and demand strict proof thereof.

AS TO THE SECOND DEFENSE

2. Responding to the allegations of paragraph 6 of the Answer and Counterclaim, Plaintiff repeats and realleges the allegations of paragraph one above.
3. Plaintiff admits on information and belief the allegations of paragraphs 7, 8 and 9.
4. Plaintiff admits so much of the allegations of paragraph 10 that alleges that in civil action number 2016-CP-22-00334 the pleadings referred to the same mortgage as set forth in the present action. Plaintiff denies the remaining allegations of paragraph 10.
5. Plaintiff lacks information and knowledge as to the allegations of paragraph 11, denies same and demand strict proof thereof.
6. Plaintiff denies allegations of paragraph 12.

7. Plaintiff admits the allegations paragraph 13.
8. Plaintiff admits the allegations of paragraph 14.
9. Plaintiff denies the allegations paragraph 15 as set forth more fully herein.
10. Plaintiff denies the allegations of paragraph 16 as set forth more fully herein.

AS TO THE THIRD DEFENSE

11. Responding to the allegations of paragraph 17 of the Answer and Counterclaim,

Plaintiff repeats and realleges the allegations of paragraph 1-10 above.

12. Plaintiff denies the allegations of paragraph 18 as set forth more fully herein.
13. Plaintiff denies allegations paragraph 19 as set forth more fully herein.
14. Plaintiff denies the allegations paragraph 20 as set forth more fully herein.
15. Plaintiff denies allegations of paragraph 21 as set forth more fully herein.

AS TO THE FOURTH DEFENSE

16. Responding to the allegations of paragraph 22 of the Answer and Counterclaim,

Plaintiff repeats and realleges the allegations of paragraph 1-15 above.

17. Plaintiff denies allegations of paragraph 23 as set forth more fully herein.

AS TO THE FIFTH DEFENSE

18. Responding to the allegations of paragraph 24 of the Answer and Counterclaim,

Plaintiff repeats and realleges the allegations of paragraph 1-17 above.

19. Plaintiff admits on information and belief the allegations of paragraph 25.

20. Responding the allegations of paragraph 26 of the Answer and Counterclaim, Plaintiff

would show that at all times relevant herein its intent was only to foreclose on the property identified by tax map number 45-435-0009. Except as otherwise stated,

Plaintiff denies the allegations of paragraph 26.

21. Responding to the allegations of paragraph 27, Plaintiff would show that any actions taken in case civil action number 2016-CP-22-00334 were done in good faith after diligent inquiry and that any misidentification of the property was the result of errors by third parties over whom Plaintiff had no control or right to control. Except as otherwise stated Plaintiff denies the allegations of paragraph 27.

22. Plaintiff denies allegations of paragraph 28 as set forth more fully herein.

AS TO THE SIXTH DEFENSE AND FIRST COUNTERCLAIM

23. Responding to the allegations of paragraph 29 of the Answer and Counterclaim, Plaintiff repeats and realleges the allegations of paragraph 1-22 above.

24. Plaintiff admits the allegations of paragraph 30.

25. Responding to the allegations of paragraph 31, Plaintiff admits that it waived any right to deficiency in case 2016-CP-22-00334. The remaining allegations of paragraph 31 are denied as set forth more fully herein.

26. Plaintiff denies the allegations of paragraph 32 as set forth more fully herein.

27. Plaintiff denies the allegations of paragraph 33 as set forth more fully herein.

28. Plaintiff denies the allegations of paragraph 34 as set forth more fully herein.

AS TO THE SEVENTH DEFENSE AND SECOND COUNTERCLAIM

29. Responding to the allegations of paragraph 35 of the Answer and Counterclaim, Plaintiff repeats and realleges the allegations of paragraph 1-28 above.

30. Plaintiff denies the allegations of paragraph 36 as set forth more fully herein

31. Plaintiff denies the allegations of paragraph 37 as set forth more fully herein.

32. Plaintiff denies the allegations of paragraph 38 as set forth more fully herein.

AS ADDITIONAL DEFENSES TO ALL COUNTERCLAIMS

33. Plaintiff pleads the applicable statute of limitations is a complete bar to all of Defendant's counterclaims.
34. Plaintiff pleads the equitable defenses of estoppel, waiver, laches and unclean hands as complete bars to all of Defendant's counterclaims.
35. On or about December 10, 2018, the Special Referee in case number 2016-CP-22-00334 executed the attached order Setting Aside Sale, Vacating Judgment and Dismissing Case Nunc Pro Tunc.
36. By the express terms of such order, the judgment of foreclosure and sale in previous action number 2016-CP-22-00334 was vacated nunc pro tunc; the judicial sale conducted on November 7, 2016 was set aside and vacated nunc pro tunc; the release of lien recorded in the Georgetown Registry of Deeds was canceled and declared void nunc pro tunc; the deed from the Special Referee recorded in the Georgetown County Registry of Deeds on November 20, 2016 was canceled and declared void and of no effect nunc pro tunc and the note and mortgage were reinstated as if judgment had never been rendered.
37. That Plaintiff pleads the express term of such order as a complete bar to all of Defendant's counterclaims.

Respectfully Submitted,

Crawford & von Keller, LLC

s/Theodore von Keller

Theodore von Keller, SC Bar No. 5718

P. O. Box 4216

Columbia, SC 29240

ted@crawfordvk.com

Attorney for Plaintiff

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
C/A NO.: «2016-CP-22-0334

The Bank of New York Mellon, f/k/a The Bank of New York, as trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2005-16,

Plaintiff,

vs.

ORDER SETTING ASIDE SALE,
VACATING JUDGMENT, AND,
DISMISSING CASE NUNC PRO TUNC

Janet M. Smith, Portfolio Recovery Associates, LLC and James B. Brydie,

Defendant(s).

(File No. 2523.0281)

FILED
CLERK OF COURT
ALMA Y. WHIT
JAN 16 AM 11:42
GEORGETOWN COUNTY

It appears that this is an action to foreclose a mortgage given by Janet M. Smith to Mortgage Electronic Registration Systems, Inc. as nominee for Countrywide Home Loans, Inc. dated November 15, 2005, and recorded in the Office of the Register of Deeds for Georgetown County on December 28, 2005 at 10:14 am in Book 2836 at Page 109.

It further appears that a Special Referee's Order Report and Order of Judgment of Foreclosure and Sale Decree was entered on September 20, 2016. The property was sold at public auction on November 7, 2016. Subsequently, Plaintiff has determined that it no longer wishes to pursue this action. Therefore, the Plaintiff wishes to vacate the Judgment of Foreclosure and Sale without waiving any of its rights under the note, mortgage, or the property secured thereby. Now, therefore, on motion of Crawford & von Keller LLC, attorneys for the Plaintiff, it is

ORDERED, ADJUDGED AND DECREED as follows:

1. That the Judgment of Foreclosure and Sale previously entered on September 20, 2016 is hereby vacated nunc pro tunc;
2. That the Judicial Sale conducted by this Court on November 7, 2016 be set aside and vacated nunc pro tunc;
3. That the recorded Release of Lien heretofore executed by this Court and recorded in the Georgetown County Register of Deeds office on November 28, 2016 in Book 2925 at Page 301 be cancelled and be declared void nunc pro tunc and that the Georgetown County Register of Deeds be and is hereby ordered to make the necessary notation on the Georgetown County records to put the public on notice that said Release is cancelled and voided and to refer to this Order in the Judgment Roll of this case;

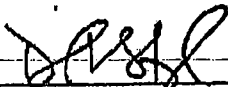
4. That the recorded Deed from the Special Referee for Georgetown County to The Bank of New York Mellon, fka The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2005-16, recorded in the Georgetown County Register of Deeds on November 28, 2016 in Book 2925 at Page 296 be cancelled and be declared void and of no effect nunc pro tunc and that the Georgetown County Register of Deeds be and is hereby ordered to make the necessary notation on the Georgetown County records to put the public on notice that said Deed is cancelled and voided and to refer to this Order in the Judgment Roll of this case;

5. That the Special Referee's Report on Sale be vacated nunc pro tunc;

6. That the within action be and the same is hereby dismissed and ended of record without prejudice and that the Lis Pendens pertaining thereto be marked canceled on the records of the Clerk of Court for Georgetown County, South Carolina; and

7. IT IS FURTHER ORDERED that the Note and Mortgage be reinstated as if judgment had never been rendered to April 19, 2016, and


IT IS SO ORDERED.


Daniel W. Stacy, Jr., Special Referee for
Georgetown County

October _____, 2018

Georgetown, South Carolina

WE SC MOVE:


B. Lindsay Crawford, IV
Theodore von Keller
Sara C. Hutchins
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