

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

S. Jackson Kimball, Special Circuit Judge

Case No. 2007 – CP- 46- 04305

SunTrust Mortgage Inc.,.....Respondent,

v.

Mark Ostendorff , ...Petitioner,

APPENDIX

Mark Ostendorff
Post Office 14846
Greenville, SC 29610
(864) 360-1834
Pro Se

Brian S. Tatum
Tatum Law Firm
2101 Rexford Road , Suite 165W
Charlotte, NC 28211
(704) 307-4197
Attorney for Respondent

INDEX

1. Copy of Record on Appeal and Final Brief
2. Copy of the decision of the Court of Appeals
3. Copy of Petition for Rehearing and Court's Ruling

RECEIVED

JAN 22 2013

S.C. Supreme Court

INDEX

- 1. Copy of Record on Appeal and Final Brief**
- 2. Copy of the decision of the Court of Appeals**
- 3. Copy of Petition for Rehearing and Court's Ruling**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

S. Jackson Kimball, Special Circuit Judge

Case No. 2007 – CP- 46- 04305

SunTrust Mortgage Inc.,.....Respondent,

v.

Mark Ostendorff , ...Appellant.

RECORD ON APPEAL

**Mark Ostendorff
Post Office 14846
Greenville, SC 29610
(864) 360-1834
Appellant, Pro Se**

**Brian S. Tatum
Tatum Law Firm
2101 Rexford Road , Suite 165W
Charlotte, NC 28211
(704) 307-4197
Attorney for Respondent**

INDEX

Order of December 18, 2009	3
Complaint	7
Answer	13
Counterclaim.....	15
Transcript of Proceedings.....	17
Plaintiff's Motion for Summary judgment.....	44
Brief in support of Plaintiff's Motion for Summary Judgment.....	46
Brian Tatum's affidavit.....	51
Susan Walker's affidavit.....	54
Defendant's Opposition to Motion.....	104
Mark Ostendorff's affidavit.....	109
Mark Ostendorff's second affidavit.....	113
Note and Mortgage with payment date attachments.....	129
Construction Loan Agreement.....	146
Loan application debt list.....	152
Motion to Compel.....	156
Order of Reference.....	158
Certificate of Appellant.....	160

TATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF YORK

CASE NO: 2007CP4604305

IN THE COURT OF COMMON PLEAS

Sun Trust Mortgage Inc vs. Mark Ostendorff

HECK ONE:

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

IS ORDERED AND ADJUDGED:

☒ See attached order;

☐ Statement of Judgment by the Court:

Order For Summary Judgment

Dated at York, South Carolina, this 18th day of December, 2009.

Court Reporter: _____

s/S. Jackson Kimball

PRESIDING JUDGE - S. JACKSON KIMBALL

This judgment was entered on the 7th day of January, 2010, and a copy mailed first class this 7th day of January, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Brian Steed Tatum Johnson & Freedman, LLC
2101 Rexford Road, Suite 165W Charlotte, NC
28211

Mark Ostendorff PO Box 14846 Greenville,
SC 29610

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

CRCP APP-24/FORM 4

David Hamilton - Clerk of Court

3

STATE OF SOUTH CAROLINA

COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2007CP4604305

FILED-RECEIVED
2010 JAN 27 PM 2:29
DAVID HAMILTON
CLERK, P. & GS
YORK COUNTY, SC

ORDER FOR SUMMARY JUDGMENT

This matter came before me on December 10, 2009, upon Plaintiff's Motion for Summary Judgment as to Defendant's counterclaim. Present and representing the parties at the hearing were: Brian Tatum for Plaintiff; and, Mark Ostendorff appearing *pro se*. Based on the record before the Court, the applicable law, and the arguments presented, I find and conclude as follows.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999); Rule 56(c), S.C.R.C.P. In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct.App. 1997). In ruling on summary judgment, the Court should consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial. See *Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659 (Ct.App. 1994). "If the evidence favoring the nonmoving party is merely colorable . . . or is not significantly probative, . . . summary judgment may be granted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S., 242, 249-250 (1986).

Summary judgment is appropriate when facts exist on which reasonable minds cannot differ, and it is not appropriate where further inquiry into the facts is desirable to clarify the application of law. It is not, however, sufficient that the nonmoving party seeks to create an inference that is not reasonable, or an issue of fact that is not genuine, in order to avoid summary

mk
#1 (4)

judgment. *Rothrock v. Copeland*, 305 S.C. 402, 409 S.E.2d 366 (1991). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. In that way, "[a] motion for summary judgment is akin to a motion for a directed verdict" because "[i]n each instance, one party must lose as a matter of law." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001); *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984); *see, also, Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

FINDINGS OF FACT

Taking into consideration the standard for viewing the evidence recited above, I find and conclude that there is no genuine issue of fact as to the facts hereinafter recited.

Plaintiff and Defendant entered into a construction loan agreement for Defendant to build a house. In furtherance of their agreement, Defendant executed a note and mortgage in favor of Plaintiff. Both parties admit that Plaintiff was to disburse money based on construction loan draw requests from Defendant as construction on the property progressed. However, Defendant went in to default by failing to make timely payments under the parties' agreement. Ultimately, Plaintiff refused to honor Defendant's construction draw requests based on Defendant's default, and notified Defendant that it was accelerating the debt. It thereafter initiated this foreclosure action.

Defendant answered and counterclaimed, denying default and alleging breach of contract by Plaintiff. The fundamental act of breach asserted by Defendant and articulated at the motion hearing was the failure of Plaintiff to continue to disburse loan proceeds when requested. Defendant admitted at the hearing that he owed suppliers and subcontractors for work performed on the house, and estimated that it would take \$50,000 to complete the house. There was less than \$7,000 remaining in the construction loan when Plaintiff declared a default, plainly not enough to complete the house. Defendant's explanations of how he would complete the house under these circumstances were not consistent with the facts, and essentially assumed that his creditors would be paid when the house was sold.

20
21

As to Plaintiff's claim for foreclosure, I find, and Defendant did not refute, that as of September 2, 2009, Defendant is indebted to SunTrust for the total amount of \$455,115.83, consisting of principal in the amount of \$393,042.10, and interest in the amount of \$62,073.73. Interest continues to accrue on the Note at \$72.68 per day.

CONCLUSIONS OF LAW

Plaintiff has presented a prima facie case showing that Defendant defaulted under the Note

M
2
5

and the Mortgage. Under the parties' agreement, Plaintiff was entitled to stop construction draws as a matter of law, and I conclude that it properly did so.

Under the standard for considering summary judgment, Defendant was required to come forward with factual evidence that supported his counterclaim that Plaintiff wrongfully withheld draws, causing Defendant damage. ~~I conclude that he has not presented any such rebuttal evidence~~ that would create an issue of fact on that sole basis for his counterclaim.

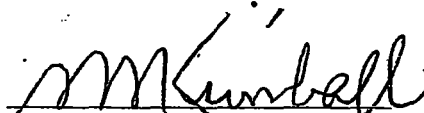
Thus, there is no genuine issue of fact concerning Plaintiff's assertion of Defendant's default under the note and mortgage. Nor is there any genuine issue of fact to sustain Defendant's claim that Plaintiff is liable to him due to its denying him construction draws. For this reason, Plaintiff is entitled to summary judgment on Defendant's counterclaim. Plaintiff is further entitled to proceed with foreclosure of its mortgage. The foreclosure will be based on the amounts established to be due as set forth in the findings of fact herein.

ORDER

Therefore, based on the findings and conclusions herein, it is ordered that Plaintiff's motion for summary judgment as to Defendant's counterclaim be granted, and Defendant's counterclaim is dismissed with prejudice. It is further ordered that Plaintiff's foreclosure action is no longer stayed pending disposition of Defendant's counterclaim, and Plaintiff may proceed with a hearing to complete its foreclosure action at the earliest practicable time.

AND IT IS SO ORDERED.

December 18, 2009


S. Jackson Kimball
Special Circuit Judge
York County

43

⑥

STATE OF SOUTH CAROLINA

COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s).

FILED - RECEIVED
2007 NOV 30 AM 11:06
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS

CASE NO.:

07-CP-16-4305

**COMPLAINT
NON-JURY FORECLOSURE
DEFICIENCY DEMANDED**

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

1. The Plaintiff is a corporation or other legal entity organized and existing under the laws of one of the states of the United States and claims an interest in the real estate which is described hereafter.

2. The Defendant(s) claim(s) an interest in the real estate which is the subject of this action.

3. The Defendant(s), Mark Ostendorff (hereinafter called the "Mortgagor(s)"), reside at 1207 Cabin Creek Court Fort Mill, SC 29715.

4. Concurrently with the filing of this Complaint the Plaintiff has filed with the Office of the Clerk of Court for York County a Lis Pendens giving notice of the pendency of this lawsuit.

5. On or about March 29, 2006, Mark Ostendorff made, executed and delivered unto SunTrust Mortgage, Inc. a certain Note ("Note") in the principal sum of \$400,000.00.

6. To secure payment of the Note according to the terms and conditions thereof, the Mortgagor(s) made, executed and delivered unto SunTrust Mortgage, Inc. a certain real estate Mortgage ("Mortgage") covering the following described property:

All that certain piece, parcel or lot of land with the improvements thereon, if any, situate, lying and being in the County of York, State of South Carolina, being shown and delineated as Lot 86 on a plat of Oxford Subdivision, Phase V, drawn by Precision Surveying, Inc., dated April 23, 2001 and recorded in the Office of the R.M.C. for York County in Plat Book B-229, Page 6 reference being made to the same for a more complete and accurate description; all measurements being a little more or less.

Being the same property conveyed to Mark Douglas Ostendorff by Deed from Penton Group, Inc., dated September 27, 2001, recorded October 2, 2001 in Book 3890, Page 190, York County, South Carolina Records.

7

1207 Cabin Creek Court, Fort Mill, SC 29715
TAX MAP NUMBER: 776-00-00-107

7. The Mortgage was signed, witnessed, probated and thereafter recorded in the office of the Register of Deeds/Clerk of Court for York County on April 28, 2006 in Mortgage Book 07985 at Page 302.

8. The title holders of record of the subject property as of the filing of the Lis Pendens in this action were the Mortgagors.

9. The Mortgage evidences and secures the repayment of money advanced by the Plaintiff to, or on behalf of, the Mortgagor(s) and constitutes a purchase money first lien on the mortgaged premises.

10. The Note and Mortgage provide for the following:

a. The Plaintiff shall be entitled to receive on the first day of each and every month installment payments which are amortized over a period of time which is set forth therein and in the event of a default in payment of any monthly installment the Plaintiff is entitled, after first giving thirty (30) days prior notice, to accelerate the entire indebtedness and to demand payment thereof without further notice.

b. The Plaintiff shall be entitled to receive late charges for any monthly installment payment which is overdue.

c. The Mortgagor(s) shall be required to provide insurance to protect against loss to the property and that certain minimal escrow funds shall be established and maintained with the Plaintiff for the purpose of paying for such insurance.

d. The Mortgagor(s) shall be required to pay for all costs of property taxes assessed by governmental authorities and that certain minimal escrow funds shall be established and maintained with the Plaintiff for the purpose of paying such taxes.

e. The Mortgagor(s) shall, at the Plaintiff's option, be required to provide mortgage insurance to protect the Plaintiff's interest in securing repayment of the mortgage loan and certain

⑧

minimal escrow funds shall be established and maintained with the Plaintiff for the purpose of paying for such insurance.

f. The Plaintiff is entitled to be reimbursed for all expenses which it shall incur in pursuing the remedies to which it is entitled in the event of a default by the Mortgagor(s), including reimbursement of its reasonable attorney's fees and costs of title evidence.

11. The Mortgagor(s) failed to make the payment on the Note and Mortgage which was due monthly for the July 1, 2007 and the Plaintiff's prospects for repayment have been significantly impaired.

12. All notices and rights to cure which are required by the terms of the Mortgage, or by State or Federal statute, have been given to the Mortgagor(s) prior to the commencement of this action and the said Mortgagor(s) have failed to cure their default.

13. As a result of the Mortgagor('s') default in payment the conditions of the Note and Mortgage have been broken and the Plaintiff elects to and does declare the entire unpaid principal balance of the mortgage indebtedness, together with all accrued and unpaid interest thereon and the other sums set forth hereafter, now due and payable.

14. There is now due and payable to the Plaintiff due on the Note and Mortgage as of October 14, 2007 the sum of \$405,107.95 encompassing unpaid principal, interest thereon at the rate of 6.750% per annum thereon, late fees, taxes, insurance premiums, other advancements, reasonable attorney's fees as well as the costs and disbursements of this action.

15. As a further result of the Mortgagor('s') default the Plaintiffs are informed and believe that they are entitled to an order foreclosing the Mortgagor('s') equity of redemption in the subject property in the usual manner, the appointment of a receiver to enter upon and take full possession and control of the subject property, to eject the Mortgagor(s) and any personal belongings from the subject property and to perform all acts necessary or appropriate for the operation and maintenance of the subject real estate, including making repairs, the execution or cancellation of leases, on such terms as are best to protect the security of the aforementioned mortgage loan. (9)

16. Upon information and belief no Defendant is serving, or has served, in the military service of the United States of America as contemplated under the Servicemembers' Civil Relief Act.

17. The Plaintiff demands a personal and deficiency judgment against the Mortgagor(s).

WHEREFORE, the Plaintiff asks this Honorable Court to enquire into the matters alleged herein and:

A. Determine the amount due Plaintiff under the Note and Mortgage including all principal, any advancements made thereon by the Plaintiff, interest which has accrued on the principal indebtedness through the date of judgment, reasonable attorney's fees, all costs of inspecting and securing the property incurred by the Plaintiff as a result of the Mortgagor('s') default, other amounts which are found to be due under the terms of the Note and Mortgage, together with the costs and disbursements of this action, together with interest at the legal rate on the judgment;

B. Award the Plaintiff judgment against the Mortgagor(s) for the amount which this Court determines to be due and owing;

C. Declare the amount found due and owing to be a first lien upon the subject property, subject only to unpaid real estate taxes, if any;

D. Foreclose the Mortgagor('s') equity of redemption for the amount found to be due and owing;

E. Appoint a receiver to enter upon and take full possession and control of the subject property, to collect the rents, issues, profits or other 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 subject premises, and/or to eject the Mortgagor, or others occupying the subject property, as well as personal belongings, from the subject property and to perform all acts necessary or appropriate for the operation and maintenance of the subject real estate, including making repairs, the execution or cancellation of leases, on such terms as are best to protect the security of the aforementioned mortgage loan;

10

F. Under the direction of this Court, sell the mortgaged premises at public sale, bar the Mortgagor('s') equity of redemption, and apply the proceeds of the sale as follows:

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

Second, to the payment and discharge of the amount found to be due to the Plaintiff; and

Third, to the distribution of any surplus pursuant to Rule 71, SCRCP.

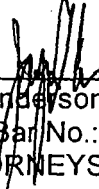
G. Award the Plaintiff a personal judgment against the Mortgagor(s) for any deficiency which remains owing to the Plaintiff after applying the proceeds from the sale of the mortgaged premises.

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

I. Order such other and further relief as may be just and proper.

Date: 11-27-07

Morris, Schneider, Prior, Johnson & Freedman, LLC



Jay Anderson
S.C. Bar No.: 014295
ATTORNEYS FOR THE PLAINTIFF

1587 Northeast Expressway
Atlanta, GA 30329
(770) 234-9181, ext. 1121 (Telephone)
(770) 234-9192 (Facsimile)
JGAnderson@msplaw.com (Email)
0720934SC

11

**NOTICE
REQUIRED BY
THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. §1601, et seq, as amended**

1. The amount of the debt is set forth in the attached Complaint.
2. The Plaintiff named in the attached Summons and Complaint is the creditor to whom the debt is owed.
3. The debt described in the attached Complaint will be assumed to be valid by this firm unless you dispute the validity of the debt or some portion thereof in writing, within thirty (30) days after the receipt of this notice.
4. If you notify this firm in writing; within thirty (30) days after the receipt of this notice that the debt or some portion thereof is disputed, this firm will obtain verification of the debt and will mail verification to you.
5. If the Plaintiff in the attached Summons and Complaint is not the original creditor, and if you make a written request to this firm within thirty (30) days after the receipt of this notice, we will mail you the name and address of the original creditor.
6. Written requests should be made to:

Morris, Schneider, Prior, Johnson & Freedman, LLC
1587 Northeast Expressway
Atlanta, GA 30329

7. This notice does **not** relieve you from your duty to serve a written answer to the Complaint within the thirty (30) day period required by the Summons. The relief sought by the Plaintiff will be strictly enforced.

**THIS IS AN ATTEMPT BY A DEBT COLLECTOR TO COLLECT A DEBT.
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

STATE OF SOUTH CAROLINA
COUNTY OF YORK

SUNTRUST MORTGAGE, INC.

PLAINTIFF(S)

VS.

MARK OSTENDORFF

DEFENDANT(S)

IN THE COURT
OF
COMMON PLEAS

CASE NO:

07-CP46-4305

ANSWER TO
COMPLAINT

THE DEFENDANT, OSTENDORFF ANSWERS PLAINTIFF(S) COMPLAINT:

OSTENDORFF DENIES ALL ITEMS OF COMPLAINT UNLESS
STATED BELOW:

1, 4, 5, 6, 7, 8, 9, 10 a THRU 10 e, 12, 14 - NOT OF INFORMATION
TO ADMIT OR DENY.

10 f, 13, 15, 17 - DENIES DUE TO PLAINTIFF(S) BREACH OF
CONTRACT

2, 3, 16 - ADMITS

11 - ADMITS AND CAUSE WAS PLAINTIFF(S)'S BREACH OF
CONTRACT.

JURY TRIAL DEMANDED AS A BREACH OF
CONTRACT.

(13)

AS A DEFENSE, PLAINTIFF(S)'S BREACH
OF CONTRACT, OSTENDORFF WAS PREVENTED FROM
COMPLETION OF SAID PROPERTY AND REALIZATION
OF GAIN FROM EQUITY IN SAID PROPERTY

COUNTERCLAIM IS ON SEPARATE PAPER

JANUARY 3, 2008



MARK D. OSTENDORFF
PO BOX 772
FORT MILL, SC 29716
(803) 367-7425
PRO SE

STATE OF SOUTH CAROLINA
COUNTY OF YORK

SUNTRUST MORTGAGE, INC.

PLAINTIFF(S)

VS.

Mark OSTENDORFF

DEFENDANT(S)

IN THE COURT
OF
COMMON PLEAS

CASE NO:

07-CP46-4305

COUNTERCLAIM

DEFENDANT, OSTENDORFF, COUNTERCLAIMS

PLAINTIFF AS FOLLOWS:

1. JURY TRIAL FOR COUNTERCLAIM DEMANDED
2. FOR SUM OF \$ 1,125,000⁰⁰ (ONE MILLION, ONE-HUNDRED TWENTY-FIVE THOUSAND DOLLARS)
FOR LOSS OF EQUITY ON SAID PROPERTY
AND PREVENTION OF GAINS ON FUTURE PROPERTIES.
3. PLAINTIFF DID NOT PROVIDE FUNDING TO COMPLETE IMPROVEMENTS ON SAID PROPERTY AS ORIGINALLY AGREED TO.
4. PLAINTIFF SYSTEMATICALLY DENIED FUNDING TO OSTENDORFF ALTHOUGH OSTENDORFF REPEATEDLY REQUESTED FUNDING.

(15)

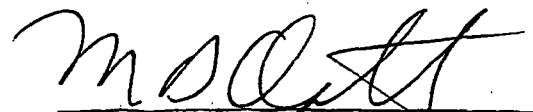
5. OSTENDORFF WAS READY, WILLING, AND ABLE TO COMPLETE IMPROVEMENTS BUT WAS PREVENTED DUE TO PLAINTIFF'S BREACH OF CONTRACT TO PROVIDE FUNDING AS ORIGINALLY AGREED TO.

6. TOTAL BALANCE REMAINING WAS ADEQUATE TO COMPLETE IMPROVEMENTS BUT PLAINTIFF REFUSED TO DISBURSE FUNDING TO COMPLETE WORK.

7. STOPPAGE OF FUNDING WAS DONE WITHOUT WARNING TO OSTENDORFF.

OSTENDORFF ASKS FOR SAID SUM PLUS ATTORNEY'S FEES, COURT COSTS, PUNITIVE DAMAGES AND ANY OTHER AS COURT SEES FIT.

JANUARY 3, 2008


MARK D OSTENDORFF
PO Box 772
FORT MILL SC 29716
(803) 367-7425
Pro SE

2/2

(16)

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
07-CP-46-4305

SUN TRUST MORTGAGE, INC.,)

VS.)

MARK OSTENDORFF)

TRANSCRIPT OF RECORD

DECEMBER 10, 2009
YORK, SOUTH CAROLINA

B E F O R E:

THE HONORABLE S. JACKSON KIMBALL

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

BRIAN TATUM, ESQUIRE
CHARLOTTE, NORTH CAROLINA

ATTORNEY FOR THE PLAINTIFF

MARK OSTENDORFF
GREENVILLE, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY G. BROOM
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

17

I N D E X

WITNESS

DIRECT

CROSS

RE-DIRECT

RE-CROSS

(NO TESTIMONY TAKEN)

EXHIBITS

EXHIBIT NO.	DESCRIPTION	ID	EV
-------------	-------------	----	----

(NO EXHIBITS)

19

1 THE COURT - ALL RIGHT. WHAT I HAVE IS SUN TRUST
2 MORTGAGE AGAINST MARK OSTENDORFF. THIS WILL BE THE
3 PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

4 MR. TATUM - YES, YOUR HONOR.

5 THE COURT - PROCEED.

6 MR. TATUM - GOOD MORNING, YOUR HONOR. BRIAN
7 TATUM HERE ON BEHALF OF SUN TRUST MORTGAGE INCORPORATED.
8 LET ME GIVE YOU A BRIEF OVERVIEW OF THIS CASE.

9 THE COURT - I DON'T NEED MUCH. THIS IS ABOUT
10 THE THIRD TIME WE'VE HEARD IT.

11 MR. TATUM - OKAY.

12 THE COURT - GO AHEAD.

13 MR. TATUM - WELL, WE ARE HERE TODAY ON OUR
14 MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO MR.
15 OSTENDORFF'S COUNTERCLAIM. AND I GOT A COPY OF THE
16 COUNTERCLAIM AND THE AFFIDAVITS HERE IF YOU NEED COPIES OF
17 THESE SO YOU DON'T HAVE TO THUMB THROUGH THE COURT'S FILE
18 TO FIND EVERYTHING. I KNOW MR. OSTENDORFF JUST SERVED
19 SOME DOCUMENTS THIS WEEK, AND THEY MAY NOT BE IN THE
20 COURT'S FILE YET.

21 THE COURT - WELL, HE FAXED A LOT OF STUFF. OF
22 COURSE, I DON'T KNOW WHAT I DON'T HAVE.

23 MR. TATUM - MAY I APPROACH THE BENCH? I JUST --

24 -

25 THE COURT - YES, SIR.

(20)

1 MR. TATUM - THIS MAY BE EASIER TO FOLLOW.

2 (DOCUMENTS PROVIDED TO MR. OSTENDORFF AND HANDED
3 UP TO THE COURT)

4 MR. OSTENDORFF - YES, I ---

5 THE COURT - WHAT I'M LOOKING FOR IS I THOUGHT I
6 HAD A COPY OF THE COUNTERCLAIM HANDY, BUT THIS WOULD BE
7 GOOD.

8 MR. TATUM - I GOT --- THE COUNTERCLAIM IS
9 EXHIBIT A.

10 THE COURT - ALL RIGHT.

11 MR. TATUM - YOUR HONOR --- I'LL GIVE YOU TIME TO
12 FLIP TO EXHIBIT A.

13 THE COURT - GO AHEAD.

14 MR. TATUM - IF YOU LOOK AT EXHIBIT A, THIS IS
15 DEFENDANT'S COUNTERCLAIM, AND YOU LOOK AT ALL THE
16 PARAGRAPHS EXCEPT THE FIRST TWO. THE FIRST TWO ARE JUST -
17 -- APPEAR TO BE SOME SORT OF JURY TRIAL DEMAND AND ---

18 THE COURT - MR. TATUM, I --- YOU KNOW, I WAS A
19 LITTLE FLIPPANT I GUESS ABOUT --- ABOUT THE FACT THING.
20 MY RECOLLECTION IS THAT --- AND FROM READING ALL THIS
21 AGAIN, THE ISSUE HERE IS THIS WAS A HOUSE THAT HE WAS ---
22 MR. OSTEN --- IS IT OSTENDORFF OR OSTENDORFF?

23 MR. OSTENDORFF - OSTENDORFF, BUT ---

24 THE COURT - OSTENDORFF ---

25 MR. OSTENDORFF - --- AUSTIN, TEXAS. EITHER WAY.

1 THAT'S CLOSE ENOUGH.

2 THE COURT - THAT MR. OSTENDORFF WAS BUILDING,
3 AND FOR WHICH HE HAD A FOUR HUNDRED THOUSAND DOLLAR LOAN,
4 A CONSTRUCTION LOAN WITH THE BANK THAT WAS FUNDED UP TO
5 ABOUT SOMEWHERE BETWEEN THREE HUNDRED AND EIGHTY-FIVE AND
6 THREE HUNDRED AND NINETY THOUSAND DOLLARS, PAID OUT THAT
7 IS, DISBURSED, AND THE BANK WOULDN'T DISBURSE ANYMORE AND
8 OF COURSE BROUGHT THE FORECLOSURE AND THAT PRECIPITATED
9 THE COUNTERCLAIM.

10 MR. TATUM - AND THE COUNTERCLAIM --- THE BASIS -
11 -- THE WHOLE BASIS OF THE COUNTERCLAIM IS THAT SUN TRUST
12 WRONGFULLY REFUSED TO DISBURSE PURSUANT TO CONSTRUCTION
13 DRAW REQUEST.

14 THE COURT - ALL RIGHT, LET ME --- LET ME REVIEW
15 THAT AGAIN THEN. OKAY. (PAUSE) GO AHEAD.

16 MR. TATUM - YOUR HONOR, IF YOU'D LOOK AT AFFIDAV
17 --- THE AFFIDAVIT OF SUSAN WALKER, WHICH SHOULD BE UNDER
18 TAB NUMBER 2 OF THE DOCUMENTS I JUST HANDED YOU, IN
19 PARAGRAPH 14 OF THAT AFFIDAVIT IT SHOWS THE CONSTRUCTION
20 DRAW DISBURSEMENTS THAT WERE MADE --- I MEAN NOT
21 CONSTRUCTION DRAW DISBURSEMENTS, THE PAYMENTS THAT WERE
22 MADE PURSUANT TO THE FIRST YEAR DURING THE CONSTRUCTION
23 PERIOD, AND AS YOU CAN SEE, IF YOU LOOK AT THE DATES DUE
24 ALL THE WAY FROM THE BEGINNING, THE FIRST PAYMENT WAS DUE
25 MAY THE 1ST. IT LOOKS LIKE MR. OSTENDORFF PAID IT A DAY

1 LATE, AND THEN HE STARTS GETTING A LITTLE BIT FURTHER
2 BEHIND. THE JUNE 1ST PAYMENT WAS MADE JUNE 16TH. THE
3 JULY 1ST PAYMENT WAS MADE JULY THE 21ST. SO HE STARTED
4 OFF HAVING SOME DIFFICULTY MAKING HIS PAYMENTS FROM THE
5 BEGINNING OF THIS LOAN. AND IF YOU LOOK DOWN NEAR THE
6 BOTTOM YOU'LL SEE THAT ON THE DATES PAID, IT LOOKS LIKE
7 AROUND FEBRUARY AND APRIL AND MAY IT LOOKS LIKE THERE WAS
8 NO PAYMENTS MADE AT ALL. AND IF YOU LOOK AT MR.
9 OSTENDORFF'S FIRST AFFIDAVIT, ---

10 THE COURT - I MAY HAVE SOME TROUBLE IDENTIFYING
11 WHICH IS THE FIRST AFFIDAVIT SINCE I'VE GOT A BUNCH OF
12 THEM.

13 MR. TATUM - WHICH IS THE --- NUMBER 3, THE TAB
14 DOCUMENTS I GAVE YOU.

15 THE COURT - OH, OKAY. WELL, I'LL JUST FOLLOW
16 YOUR TAB. OKAY. GO AHEAD.

17 MR. TATUM - NO, PARAGRAPH 14, I'M SORRY.

18 THE COURT - PARAGRAPH --- YOU TALKING ABOUT MS.

19 --- THE BANK OFFICER'S AFFIDAVIT?

20 MR. TATUM - NO, I'M SORRY, PARAGRAPH ---

21 THE COURT - THAT'S SUSAN WALKER. PARAGRAPH 14?

22 MR. TATUM - PARAGRAPH 4, YES, I WAS REFERRING TO
23 THE WRONG AFFIDAVIT. IF YOU LOOK AT PARAGRAPH 4 OF MR.
24 OSTENDORFF'S FIRST AFFIDAVIT, HE ADMITTED THAT HE WAS
25 HAVING CASH FLOW PROBLEMS.

1 THE COURT - YES.

2 MR. TATUM - WELL, WHAT HAPPENED WAS AT SOME
3 POINT MR. OSTENDORFF STARTED USING CONSTRUCTION DRAWS TO
4 PAY HIS MORTGAGE PAYMENTS. AND IF YOU LOOK AT ---

5 THE COURT - HE SAYS THAT WAS WITH THE KNOWLEDGE
6 AND CONSENT OF THE BANK SOMEWHERE.

7 MR. TATUM - WELL, IF YOU LOOK AT THE FIRST
8 AFFIDAVIT, WHICH IS UNDER TAB NUMBER 3, PARAGRAPH 10, ---

9 THE COURT - ALL RIGHT.

10 MR. TATUM - --- AND YOU ALSO LOOK AT THIS SECOND
11 AFFIDAVIT WHICH IS TAB NUMBER 4 IN PARAGRAPH 20, IT
12 APPEARS THAT SOME PAYMENTS WERE MADE BUT HE ADMITS IN
13 PARAGRAPH 20 OF THE SECOND AFFIDAVIT THAT THE PERSON WHO
14 ALLOWED HIM TO DO THAT AT SUN TRUST WHEN THE SUPERVISOR
15 FOUND OUT ABOUT IT GOT --- HE GOT IN TROUBLE FOR IT AND
16 WAS TOLD NOT TO DO IT AGAIN. AND IF YOU THINK ABOUT IT,
17 YOUR HONOR, IT DOESN'T REALLY MAKE SENSE TO DO THAT
18 BECAUSE TYPICALLY WHEN YOU HAVE A CONSTRUCTION LOAN, YOU
19 HAVE THE LOAN ON ONE HAND AND YOU HAVE THE COLLATERAL ON
20 THE OTHER HAND. AS YOU MAKE A CONSTRUCTION DRAW PAYMENT,
21 THAT MONEY IS PUT BACK INTO THE COLLATERAL SO THE
22 COLLATERAL IS INCREASING IN VALUE AT THE SAME TIME THE
23 DEBT IS INCREASING, BUT IF YOU'RE USING THE MONEY, THE
24 CONSTRUCTION DRAWS, TO PAY DOWN YOUR PAST-DUE MORTGAGE
25 PAYMENTS, THE VALUE OF THE LOAN, THE AMOUNT OF THE LOAN

1 AMOUNT'S GOING UP, BUT THE VALUE OF THE COLLATERAL IS
2 STAYING THE SAME, SO THE BANK IS GETTING --- PUTTING
3 ITSELF IN AN EVEN WORSE POSITION THAN IT WOULD BE
4 OTHERWISE. SO OF COURSE AT SOME POINT SUN TRUST SAID, YOU
5 KNOW, ONCE THEY REALIZED WHAT WAS GOING ON, SUN TRUST ---
6 YOU LOOK AT THE AFFIDAVIT OF SUSAN WALKER UNDER TAB NUMBER
7 2, PARAGRAPH 17, SUN TRUST MERELY REQUIRED THAT HE BRING
8 ALL HIS PAYMENTS CURRENT BEFORE THEY MADE ANYMORE
9 CONSTRUCTION DRAW REQUEST, AND THAT'S PRETTY MUCH THE CRUX
10 OF WHY THE CONSTRUCTION DRAW PAYMENTS WERE NOT MADE. HE
11 JUST GOT BEHIND ON HIS PAYMENTS AND SUN TRUST DID NOT WANT
12 HIM TO USE CONSTRUCTION DRAW PAYMENTS TO PAY DOWN HIS
13 MORTGAGE. THEY WANTED THE CONSTRUCTION DRAW PAYMENTS TO
14 BE USED FOR THE COLLATERAL.

15 THE COURT - ALL RIGHT, LOOK AT HER --- PARAGRAPH
16 19 OF HER AFFIDAVIT.

17 MR. TATUM - YES.

18 THE COURT - I WAS TRYING TO --- IN ONE OF THE
19 AFFIDAVITS OF MR. OSTENDORFF --- I CAN'T REMEMBER WHICH
20 ONE --- HE TALKS ABOUT WHAT IT WOULD COST TO FINISH THE
21 PROPERTY, BEING IN THE OVER A HUNDRED THOUSAND DOLLARS.
22 I CAN'T REMEMBER THE NUMBER, BUT THE --- IN MS. WALKER'S
23 AFFIDAVIT SHE SAYS THAT THE PRINCIPAL AMOUNT DUE WAS THREE
24 HUNDRED AND NINETY THREE THOUSAND FORTY-TWO DOLLARS AND
25 TEN CENTS AND THE LOAN WAS ONLY FOUR HUNDRED THOUSAND

1 DOLLARS. WAS THERE ANY MODIFICATION OF THE LOAN?

2 MR. TATUM - NOT --- NOT THAT I'M AWARE OF, YOUR
3 HONOR.

4 THE COURT - OKAY.

5 MR. TATUM - ACTUALLY THEY DENIED TO DO SOME SORT
6 OF WORK-OUT AND THAT'S ANOTHER POINT THAT I HAVE HERE THAT
7 I WAS GOING TO MAKE. IF YOU LOOK AT THE --- SOME OF THE
8 OTHER ALLEGATIONS THAT MR. OSTENDORFF MADE THAT'S NOT
9 NECESSARILY IN HIS COUNTERCLAIM BUT HE'S MADE SOME
10 ALLEGATIONS IN SOME OF THE AFFIDAVITS THAT HE SUBMITTED, -
11 --

12 THE COURT - RIGHT.

13 MR. TATUM - --- FIRST HE SAYS THAT HE LOST ---
14 THAT SUN TRUST WAS GOING TO PROFIT FROM THE FORECLOSURE IN
15 THIS MATTER, AND HE SAYS THAT IN HIS FIRST AFFIDAVIT,
16 WHICH IS UNDER TAB NUMBER 3 IN PARAGRAPH 13, THAT SUN
17 TRUST STANDS TO MAKE TWO HUNDRED THOUSAND DOLLARS IF THEY
18 FORECLOSE ON THIS PROPERTY. HOWEVER, IF YOU LOOK AT HIS
19 SECOND AFFIDAVIT UNDER TAB NUMBER 4 --- I'LL GIVE YOU A
20 MOMENT.

21 THE COURT - ALL RIGHT.

22 MR. TATUM - THAT'S WHY I TRIED TO TAB IT, MAKE
23 IT A LITTLE BIT EASIER.

24 THE COURT - YES.

25 MR. TATUM - THERE IS A LETTER THAT HE

1 INCORPORATED INTO HIS AFFIDAVIT THAT HE SENT TO SUN TRUST.
2 I BELIEVE IT'S DATED JANUARY THE 24TH, 2008. IN PAGE 2 --

3 -

4 THE COURT - HOLD ON ONE SECOND. JANUARY THE
5 24TH? I SEE A ---

6 MR. TATUM - OF JANUARY ---

7 THE COURT - --- DATED --- NO, THAT'S FROM SUN
8 TRUST.

9 MR. TATUM - IT'S A HANDWRITTEN LETTER. IT'S
10 NEAR THE BACK OF THE EXHIBITS. PROBABLY SHOULD'VE BATE
11 STAMPED THESE TO MAKE IT A LITTLE BIT EASIER TO FOLLOW.

12 THE COURT - YOU TALKING ABOUT TAB 4. RIGHT?

13 MR. TATUM - IT'S TAB 4. IT'S A LETTER THAT MR.
14 OSTENDORFF SENT TO SUN TRUST, A HANDWRITTEN LETTER. IT'S
15 NEAR --- NEAR THE BACK OF THE --- HIS EXHIBITS THAT HE
16 INCORPORATED INTO HIS AFFIDAVIT.

17 THE COURT - I'M SORRY, I DON'T SEE THAT. NOW,
18 I HAVE SEEN THE LETTER --- A LETTER, THOUGH. HOLD ON A
19 MINUTE. MAYBE IT'S IN THIS MATERIAL. (PAUSE)

20 MR. TATUM - YOU CAN LOOK AT MY COPY.

21 THE COURT - I PROBABLY NEED TO.

22 MR. TATUM - MAYBE IT DIDN'T ---

23 MR. OSTENDORFF - I WAS THINKING I MIGHT HAVE A
24 COUPLE EXTRA IN HERE SOMEWHERE.

25 MR. TATUM - I MIGHT HAVE AN EXTRA ONE IN THE

1 FILE SOMEWHERE.

2 THE COURT - I'VE READ THIS LETTER. I JUST CAN'T
3 FIND IT RIGHT NOW. GO AHEAD.

4 MR. TATUM - IF YOU LOOK AT THAT LETTER, I
5 BELIEVE IT'S ON PAGE 2, HE SENT A LETTER TO SUN TRUST
6 STATING THAT THEY WOULD LOSE A LOT OF MONEY IF THEY
7 FORECLOSED ON THE PROPERTY. ALSO, IN MR. OSTENDORFF'S
8 AFFIDAVITS HE SAID THAT HE WAS NOT ABLE TO COMPLETE THE
9 CONSTRUCTION, AND BECAUSE HE WAS NOT ABLE TO COMPLETE THE
10 CONSTRUCTION HE WAS NOT ABLE TO REFINANCE THE PROPERTY,
11 BUT IF YOU LOOK AT THAT VERY SAME LETTER ON THE --- I
12 BELIEVE IT'S THE THIRD PAGE NEAR THE BOTTOM --- HE SAYS
13 THAT HE DOESN'T NEED ANYMORE CONSTRUCTION DRAWS TO
14 COMPLETE THE PROJECT. ALSO, MR. OSTENDORFF ALLEGES THAT
15 SUN TRUST, YOU KNOW, WRONGFULLY REFUSED TO WORK OUT SOME
16 SORT OF PLAN WITH HIM, BUT IF YOU LOOK AT THAT SAME LETTER
17 AT THE VERY FIRST PAGE, HE'S THREATENING TO FILE
18 BANKRUPTCY. OF COURSE WHEN YOU SEND A LETTER TO THE BANK
19 SAYING IF YOU DON'T DO WHAT I TELL YOU TO DO I'M GOING TO
20 FILE A CHAPTER 7 OR A CHAPTER 13 BANKRUPTCY, OF COURSE
21 THAT'S GOING TO LIMIT YOUR OPTIONS AS FAR AS THE BANK'S
22 CONCERNED. THEREFORE, YOUR HONOR, WE FEEL THAT THERE IS
23 NO ISSUE OF MATERIAL FACT WITH RESPECT TO MR. OSTENDORFF'S
24 COUNTERCLAIM, AND WE'D ASK THAT THE COURT GO AHEAD AND
25 ENTER SUMMARY JUDGMENT IN OUR FAVOR. THANK YOU, YOUR

1 HONOR.

2 THE COURT - ALL RIGHT. ALL RIGHT, MR.
3 OSTENDORFF?

4 MR. OSTENDORFF - YES, SIR.

5 THE COURT - LET ME ASK YOU FIRST ---

6 MR. OSTENDORFF - YES, SIR.

7 THE COURT - --- IN READING THIS MATERIAL
8 YESTERDAY, SOMEWHERE IN IT YOU --- YOU STATED HOW MUCH IT
9 WOULD COST TO COMPLETE THE HOUSE.

10 MR. OSTENDORFF - YES, SIR.

11 THE COURT - WHERE IS THAT?

12 MR. OSTENDORFF - IT'S --- IT'LL BE IN MY ---
13 IT'S PROBABLY --- IT'LL HAVE TO BE IN ONE OF THOSE
14 AFFIDAVITS. LET ME TAKE A QUICK LOOK. IT GAVE OPINION OF
15 WHAT I THOUGHT THEY COULD ACTUALLY FINISH THE HOUSE.
16 BASICALLY, ANYBODY WHO WATCHED FLIP THIS HOUSE KNOWS HOW
17 TO GET ON THE TELEPHONE AND CALL PEOPLE AND GET STUFF
18 DONE, AND IT GIVES THEM A WINDFALL, AND THAT'S --- MUST BE
19 IN MY FIRST AFFIDAVITS. LOOK ON --- ON MY --- PAGE 4 OF
20 MY FIRST AFFIDAVIT WHICH JUST SAYS AFFIDAVIT --- I DIDN'T
21 PLAN ON DOING TWO. BUT I'M THINKING IT WAS --- I ROUGHLY
22 SAID FIFTY THOUSAND DOLLARS, YOUR HONOR, IF IT'S ---
23 ANYBODY COULD. I COULD PROBABLY DO IT FOR TWENTY, BUT
24 ANYBODY WHO KNOWS HOW TO PICK UP A TELEPHONE AND
25 UNDERSTANDS A LITTLE ABOUT CONSTRUCTION COULD DO IT, BUT

1 THERE'S --- THERE'S A LOT OF EQUITY IN THAT HOUSE, YOUR
2 HONOR. POTENTIAL EQUITY. LET ME PUT THAT IN PERSPECTIVE.
3 VERY LARGE HOUSE. IT'S IN FORT MILL.

4 THE COURT - POINT ME TO WHERE YOU SAID WHAT IT
5 WOULD TAKE TO FINISH THE WORK.

6 MR. OSTENDORFF - WELL, MAYBE --- GO BACK --- IT
7 COULD'VE BEEN IN MY OPPOSITION. LET ME RUN THROUGH MY
8 OPPOSITION. DO YOU REMEMBER WHEN YOU READ IT? JUST
9 RECENTLY OR ---

10 THE COURT - YESTERDAY. DIDN'T HAVE IT UNTIL
11 YESTERDAY.

12 MR. OSTENDORFF - YESTERDAY. THAT WOULD ---
13 OKAY. (PAUSE) YES, I --- IT'S --- I KNOW THAT I DID PUT
14 SOMETHING IN SOMEWHERE THAT IT WAS FIFTY THOUSAND.

15 THE COURT - IT DOESN'T MATTER. GO AHEAD.

16 MR. OSTENDORFF - OKAY. YES, SIR, I'M SORRY. I
17 THINK JUST TO GET TO THE QUICK GIST OF THE GENUINE ISSUE
18 OF MATERIAL FACT, I'VE LOST A LOT OF EQUITY IN THAT HOUSE.
19 I MEAN I ---

20 THE COURT - THAT'S NOT --- THAT'S NOT AN ISSUE
21 OF MATERIAL FACT ---

22 MR. OSTENDORFF - YES, SIR.

23 THE COURT - --- IN THE FORECLOSURE.

24 MR. OSTENDORFF - OKAY.

25 THE COURT - AND WHERE IS IT --- LET --- WELL,

1 BEAR WITH ME. HOLD ON. LET ME SAY IT THIS WAY. WHETHER
2 OR NOT YOU --- THE AMOUNT OF MONEY --- ANY AMOUNT OF MONEY
3 YOU MAY HAVE LOST BY NOT BEING ABLE TO COMPLETE THE ---
4 COMPLETE THE HOUSE IS NOT --- HAS NOTHING TO DO WITH THE
5 MOTION THAT THE PLAINTIFF IS MAKING TODAY. THEIR MOTION
6 IS DIRECTED TO THE BASIS OF LIABILITY THAT YOU ASSERT
7 UNDER THE COUNTERCLAIM. IN OTHER WORDS, ASSUME FOR THE
8 MOMENT THE DAMAGES MAY BE ANYTHING.

9 MR. OSTENDORFF - YES, SIR, I UNDERSTAND.

10 THE COURT - THEY'RE SAYING THAT YOU HAVE NOT ---
11 THAT YOUR COUNTERCLAIM IS INSUFFICIENT BECAUSE IT DOESN'T
12 STATE A BASIS FOR HOLDING THEM LIABLE TO YOU.

13 MR. OSTENDORFF - I'M SORRY, I DON'T HAVE MY
14 COUNTERCLAIM WITH ME, BUT ---

15 THE COURT - HERE YOU GO.

16 MR. OSTENDORFF - I THINK --- OKAY. I BELIEVE I
17 WOULD PUT IT THAT THEY HELD BACK MY CONSTRUCTION DRAWS.
18 THAT'S WHY I COULDN'T COMPLETE THE CONTRACT, COULDN'T
19 COMPLETE THE HOUSE. AND I WAS --- I WAS CURRENT ON MY
20 PAYMENTS. THEY CUT MY MONEY OFF IN DECEMBER.

21 THE COURT - NO, SIR. I'M LOOKING AT A --- HAVE
22 YOU FILED AN AFFIDAVIT ABOUT YOUR --- ABOUT YOUR PAYMENTS?

23 MR. OSTENDORFF - I THINK THAT IN THE AFFIDAVIT
24 WE TALK --- TALKED ABOUT ---

25 THE COURT - BECAUSE THE AFFIDAVIT OF --- THAT

1 THE BANK HAS FILED CLEARLY SHOWS THAT YOU WERE DELINQUENT.

2 MR. OSTENDORFF - CAN WE GO TO HER AFFIDAVIT ---

3 THE COURT - WE ARE.

4 MR. OSTENDORFF - OKAY. THERE --- IF YOU'LL SEE
5 ON --- THIS ONE RIGHT HERE ON THE 3/16 STATEMENT, YOUR
6 HONOR. WHOOPS, I'M SORRY. LET ME BACK UP. NOT 3/16.

7 THE COURT - MR. OSTENDORFF, ---

8 MR. OSTENDORFF - YES, SIR.

9 THE COURT - --- DID YOU --- DO YOU HAVE --- ARE
10 YOU TRYING TO SHOW ME SOMETHING THAT IS PART OF AN
11 AFFIDAVIT?

12 MR. OSTENDORFF - SUSAN WALKER'S AFFIDAVIT. THIS
13 SHOWS THAT I WAS CURRENT.

14 THE COURT - ALL RIGHT, I'VE GOT HER AFFIDAVIT IN
15 FRONT OF ME.

16 MR. OSTENDORFF - YES, SIR. AND THAT'S WHAT I
17 WANT TO YOU SHOW. THE --- THEY CUT MY MONEY OFF IN
18 DECEMBER.

19 THE COURT - TELL ME WHAT IS INCORRECT ABOUT THE
20 STATE --- ABOUT --- IN HER --- LOOK AT PARAGRAPH 14 OF HER
21 AFFIDAVIT.

22 MR. OSTENDORFF - YES, SIR.

23 THE COURT - IS THERE ANY ERROR IN THAT
24 ITEMIZATION OF PAYMENTS SHOWING THE PAYMENTS YOU MADE AND
25 THE DATES THAT YOU MADE THEM?

1 MR. OSTENDORFF - I'M NOT GOING TO ARGUE THOSE --

2 -

3 COURT REPORTER - I DIDN'T UNDERSTAND WHAT HE
4 SAID.

5 MR. OSTENDORFF - I SAID NO, SIR, I WON'T ARGUE
6 THAT --- THAT AFFIDAVIT.

7 THE COURT - WELL, THEN YOU WERE IN DEFAULT.

8 MR. OSTENDORFF - WELL, MY REASON FOR DEFAULT WAS
9 THEY CUT MY MONEY OFF FOR CONSTRUCTION.

10 THE COURT - WELL, MR. OSTENDORFF, YOU SAID, YOU
11 TELLING ME IT'LL TAKE FIFTY THOUSAND DOLLARS TO COMPLETE
12 THE HOUSE. RIGHT?

13 MR. OSTENDORFF - (INDICATING YES)

14 THE COURT - IN THE COUNTERCLAIM, MY COUNTER ---
15 COPY WHICH I WANT YOU TO GIVE BACK TO ME ---

16 MR. OSTENDORFF - OH, SORRY.

17 THE COURT - --- YOU SAY THAT YOU COULD COMPLETE
18 IT FOR WHAT WAS LEFT IN THE LOAN.

19 MR. OSTENDORFF - YES, SIR, I COULD.

20 THE COURT - AT THE TIME --- LISTEN TO MR.

21 MR. OSTENDORFF - YES, SIR.

22 THE COURT - AT THE TIME YOU DEFAULTED, THERE WAS
23 ONLY A FEW THOUSAND DOLLARS LEFT IN THE LOAN.

24 MR. OSTENDORFF - SIR, I NEEDED FOUR THOUSAND
25 DOLLARS CASH. AND I WORKED MY --- ALL MY CONSTRUCTION AND

1 ALL SCHEDULE BASED ON CASH. I HAD ACCOUNTS WITH
2 EVERYBODY. IF I HAD ACCOUNTS WITH THE ELECTRICAL, THE
3 PAINT, I COULD'VE FINISHED THAT HOUSE, AND I HAD LOANS
4 WAITING ON ME.

5 THE COURT - WELL, TELL ME HOW THEY ARE --- HOW
6 THEY ARE REQUIRED UNDER THE LOAN --- UNDER THE NOTE AND
7 MORTGAGE TO ADVANCE YOU MONEY WHEN YOU ARE IN DEFAULT?

8 MR. OSTENDORFF - I'M NOT DEFAULT, YOUR HONOR.
9 I'M ---

10 THE COURT - YOU ARE IN DEFAULT ACCORDING TO THIS
11 AFFIDAVIT, AND YOU HADN'T SUBMITTED ANYTHING TO THE
12 CONTRARY AND YOU TOLD ME IT WAS CORRECT.

13 MR. OSTENDORFF - I SAID THAT SCHEDULE OF THE
14 PAYMENTS.

15 THE COURT - WELL, THAT SHOWS THAT YOU'RE IN
16 DEFAULT. YOU WERE CLEARLY IN DEFAULT.

17 MR. OSTENDORFF - WELL, CAN --- I'LL ASK THE
18 COURT. CAN THEY DENY ME ANY --- AS CONSTRUCTION DRAW AT
19 ANY TIME JUST BECAUSE THEY FEEL LIKE IT? DON'T THEY HAVE
20 AN OBLIGATION TO FUND THE CONSTRUCTION?

21 THE COURT - ONE OF THE FEW PRIVILEGES I HAVE
22 SITTING UP HERE IS THAT I DON'T HAVE TO ANSWER QUESTIONS.

23 MR. OSTENDORFF - OKAY. OH, OKAY, THAT'S
24 RHETORICAL. I MEAN ---

25 THE COURT - YOU CAN ARGUE ALL YOU WANT TO.

1 MR. OSTENDORFF - YES, SIR. BUT UM THE DEFAULT
2 FOR ME WHEN THEY SAY HAPPENED IN JULY OF 2007. THEY CUT
3 MY MONEY OFF IN DECEMBER OF 2006. THEY PREVENTED ME FROM
4 FINISHING THE HOUSE. AND IF YOU LOOK ON SUSAN WALKER'S
5 AFFIDAVIT ON THAT DECEMBER STATEMENT, THE --- THOSE UH ---

6 THE COURT - YOU WERE IN DEFAULT AS EARLY AS JUNE
7 OF 2006, ACCORDING TO THE STATEMENT THAT YOU SAY IS
8 CORRECT.

9 MR. OSTENDORFF - OKAY, THAT SCHEDULE WHAT SUSAN
10 WALKER'S GOT?

11 THE COURT - PARAGRAPH 14.

12 MR. OSTENDORFF - OKAY, UH --- NOW, WHEN --- DEF
13 --- IS --- I GUESS IF I'M GOING TO PAY THE LOAN THAT DAY
14 IT'S DUE, MAYBE, I DON'T KNOW. IF --- MAYBE I AM IN
15 DEFAULT. MAY HAVE BEEN IN DEFAULT ALL ALONG, THEN WHY'D
16 THEY CONTINUE TO LET ME WORK ON THE HOUSE.

17 THE COURT - I DON'T KNOW THE ANSWER --- I DON'T
18 ---

19 MR. OSTENDORFF - I DON'T KNOW. I DON'T ---

20 THE COURT - I'M NOT OBLIGED TO ANSWER THAT
21 QUESTION.

22 MR. OSTENDORFF - I'M NOT SAYING ---

23 COURT REPORTER - I'M SORRY, YOU'RE TALKING AT
24 THE SAME TIME. I CAN'T GET A CLEAR RECORD.

25 MR. OSTENDORFF - I'M SORRY.

1 THE COURT - GO AHEAD, MR. OSTENDORFF.

2 MR. OSTENDORFF - I'M NOT IN DEFAULT. I MADE
3 THOSE PAYMENTS. AND THEY --- AND THEY ACCEPTED THOSE
4 PAYMENTS, AND THEY CONTINUED TO FUND THE CONSTRUCTION, BUT
5 FOR NO REASON THEY CUT ME OFF IN DECEMBER FOR ABSOLUTELY
6 NO REASON. AND THEY --- THEY WERE MAKING --- I WAS MAKING
7 TREMENDOUS AMOUNT OF IMPROVEMENTS ON THE HOUSE AND TO
8 RECAP SOMETHING FOR INSTANCE, THAT HOUSE WAS EXISTING ---

9 THE COURT - WHEN IS THE LAST --- WHEN IS THE
10 LAST DISBURSEMENT THEY MADE TO YOU?

11 MR. OSTENDORFF - DECEMBER OF 2006.

12 THE COURT - OKAY, SO YOUR TESTI --- YOUR
13 POSITION IS THAT THAT'S THE LAST DISBURSEMENT THEY MADE TO
14 YOU?

15 MR. OSTENDORFF - YES, SIR. AND I HAD ---

16 THE COURT - THEN --- AND THE PRINCIPAL DUE THEN
17 ON OR ABOUT THAT DATE WAS IN EXCESS OF THREE HUNDRED AND
18 NINETY THOUSAND DOLLARS OUT OF A FOUR HUNDRED THOUSAND
19 DOLLAR LOAN.

20 MR. OSTENDORFF - YES, SIR.

21 THE COURT - AND YOU'RE TELLING ME IT'D TAKE
22 FIFTY THOUSAND DOLLARS TO FINISH THE HOUSE.

23 MR. OSTENDORFF - IT WOULD TAKE THEM. ANYBODY
24 ELSE. NOT ME. BUT, YOUR HONOR --- I KNOW --- WHAT I'M
25 TRYING TO SAY IS THAT THEY WERE --- THEY HAD THE

1 OPPORTUNITY TO MAKE A WINDFALL AND THAT'S WHAT THEIR
2 MOTIVE WAS. AND THEN I'M ENTITLED --- THEY'RE NOT
3 ENTITLED TO MAKE A WINDFALL BY HANGING ME OUT ON A
4 CONSTRUCTION LOAN BY DENYING ME ANY --- YOU KNOW, A DRAW
5 WITH NO REASON.

6 THE COURT - WELL, LET'S JUST ASSUME THEY HAD
7 ADVANCED YOU ALL THE MONEY.

8 MR. OSTENDORFF - YES, SIR.

9 THE COURT - WHAT WOULD YOU DO?

10 MR. OSTENDORFF - WE WOULDN'T BE HERE. I'D HAD -
11 -- I HAD --- NUMEROUS BANKS WANTED TO DO A REFINANCE. IF
12 THEY HAD GIVEN ME THE MONEY, WE'D ALREADY HAD IT
13 REFINANCED WITH THEM. THE WHOLE IDEA WHEN I'D WENT WITH
14 MIKE WATTS, I WAS GOING TO DO A CASH-OUT REFINANCE. I HAD
15 A WHOLE BUNCH OF OTHER DEBT ON THE SIDE THAT THEY KNEW
16 ABOUT AT THE TIME THEY MADE ME THE LOAN. AND A LOT OF
17 TIMES PEOPLE WILL TAKE A MORTGAGE TO PAY OFF SHORT-TERM
18 DEBT. I HAD LOTS OF SHORT-TERM DEBT. AND THAT WAS WHAT
19 I WAS GOING TO DO --- THAT --- THE EQUITY IN THERE, GOOD
20 GOSH. LOOK AT THE AMOUNT OF EQUI --- I HAD A --- I HAD A
21 SIX HUNDRED AND FIFTY THOUSAND DOLLAR LOAN WAITING ME
22 (SIC) FROM STERLING BANK IN NEW YORK. I HAD TWO HUNDRED
23 AND FIFTY THOUSAND DOLLARS I'M GOING TO PUT IN MY POCKET.
24 THE HOUSE --- I COULD SELL THE HOUSE RIGHT AFTER I GOT
25 FINISHED, TAX FREE, YOUR HONOR. I --- TWO HUNDRED AND

1 FIFTY THOUSAND DOLLARS CASH, NO TAX. I COULD'VE SOLD THAT
2 HOUSE, START ON ANOTHER ONE. TWO YEARS I CAN DO THE SAME
3 THING. IT AIN'T THAT HARD, BUT YOU GOT TO HAVE FINANCE,
4 AND THEY HUNG ME OUT IN DECEMBER AND I'D STILL MADE THOSE
5 PAYMENTS, THOSE INTEREST PAYMENTS. AND ALL I NEEDED WAS
6 FOUR THOUSAND DOLLARS CASH AT THAT TIME. I DIDN'T HAVE
7 ACCOUNTS FOR ELECTRICAL, WIRING, SWITCHES AND PAINT, BUT
8 I HAD ACCOUNTS FOR EVERYTHING. ALL I NEEDED WAS THAT
9 SMALL AMOUNT OF MONEY AND THEY STILL DIDN'T DO IT.

10 THE COURT - HOW MUCH DID YOU OWE ON THOSE
11 ACCOUNTS THAT WASN'T PAID?

12 MR. OSTENDORFF - I DON'T KNOW. GO BACK --- I
13 DON'T REALLY KNOW ---

14 THE COURT - SO YOU WERE TAKING DRAWS AND NOT
15 PAYING THE ACCOUNTS?

16 MR. OSTENDORFF - I WAS BEHIND, BUT I WAS KEEPING
17 EVERYBODY HAPPY, AND THEY UNDERSTAND. THEY UNDERSTAND.

18 THE COURT - WASN'T THE PURPOSE OF THE
19 DISBURSEMENTS TO ENABLE YOU TO PAY THE ACCOUNTS, AND
20 DIDN'T YOU HAVE AN OBLIGATION TO DO THAT?

21 MR. OSTENDORFF - YES, SIR. I WAS KEEPING ---
22 EVERYBODY WAS --- EVERYBODY WAS FINE; EVERYBODY
23 UNDERSTOOD. WE WERE GETTING EVERYONE --- PAID AND IT WAS
24 IN ORDERLY TIME AND THERE WOULD BEEN NO PROBLEM,
25 ABSOLUTELY NO PROBLEM. I HAD A LOT --- I HAD A LOT OF

1 OTHER DEBT AND THEY --- SUN TRUST KNEW AT THE TIME.
2 THEY'RE VERY FAMILIAR WITH THE HOUSE.

3 THE COURT - ALL RIGHT.

4 MR. OSTENDORFF - YES, SIR. AND WE WOULD NOT BE
5 HERE --- IF ALL THEY HAD TO DO WAS GIVE ME THAT DRAW ---
6 JUST ONE OR TWO MORE DRAWS, EASY LITTLE DRAWS WITHIN THE
7 FOUR HUNDRED THOUSAND DOLLAR GUIDELINE. AND, YOUR HONOR,
8 WE CAN GO BACK TO --- IF THEY SAY THERE'S NOT ENOUGH
9 MONEY, WHATEVER, TO PAY SOMETHING, THEN THEY SHOULD ---

10 THE COURT - APPARENTLY YOU WEREN'T PAYING THE
11 BILLS WITH THE MONEY THEY GAVE YOU.

12 MR. OSTENDORFF - OH, I PAYING (SIC) BILLS.

13 THE COURT - NOT IF YOU OWED PEOPLE FOR THE ---
14 FOR THE --- WHAT WAS IN THE HOUSE.

15 MR. OSTENDORFF - I OWE SUM, BUT ---

16 THE COURT - ALL RIGHT.

17 MR. OSTENDORFF - BUT I --- THERE --- THE THING
18 IS, I HAD --- I OWED A LOT OF OTHER DEBT THAT WENT ---
19 THAT WAS IN THE HOUSE ORIGINALLY THAT I USED, LIKE CITY
20 AND COUPLE OF --- THAT WAS IN THE HOUSE THAT WAS BROUGHT -
21 -- THAT'S WHY THE HOUSE WAS AT THE VALUE THAT IT WAS. AND
22 I'M JUST SAYING I'M ENTITLED TO SOMETHING IN THIS, AND
23 THERE AGAIN, THE TRIERS OF FACT AS TO MUCH, HOW MUCH, BUT
24 THEY --- THEY BREACHED IN DECEMBER ---

25 THE COURT - ALL RIGHT, YOU'VE SAID THAT ALREADY.

1 ANYTHING NEW?

2 (WHEREUPON MR. OSTENDORFF IS MUMBLING)

3 COURT REPORTER - I CAN'T UNDERSTAND WHAT YOU'RE
4 SAYING.

5 MR. OSTENDORFF - OH, I'M JUST MUMBLING, I'M
6 SORRY. NOTHING THAT I COULD GO ON FOR A GOOD BIT FOR WHAT
7 HE WAS TALKING ABOUT. LOT OF IT I DON'T THINK IS --- IS
8 IMMATERIAL.

9 THE COURT - ALL RIGHT, THANK YOU.

10 MR. OSTENDORFF - OH, AND WELL, YES, I DO WANT TO
11 --- I GOT NO DISCOVERY OF WHY THEY CUT MY MONEY OFF. I
12 GOT NO DISCOVERY EXCEPT FOR SUSAN ---

13 THE COURT - THAT'S NOT WHAT WE'RE HERE ABOUT.

14 MR. OSTENDORFF - OKAY.

15 THE COURT - ANYTHING ELSE ABOUT WHAT WE'RE HERE
16 ABOUT?

17 MR. OSTENDORFF - I THOUGHT WE'RE HERE JUST
18 WHETHER THEY WERE ---

19 THE COURT - WHAT WE'RE HERE ABOUT IS WHETHER
20 YOUR CLAIM THAT THEIR FAILURE TO ADVANCE YOU ANYMORE
21 MONEY, OF WHETHER THEY'RE LIABLE FOR THAT AS A MATTER OF
22 LAW.

23 MR. OSTENDORFF - YES, SIR, I THINK --- I THINK
24 THEY ARE.

25 THE COURT - OKAY. ANYTHING ELSE?

1 MR. OSTENDORFF - I THINK THAT'D BE IT.

2 THE COURT - ALL RIGHT, ANYTHING IN REPLY
3 BRIEFLY?

4 MR. TATUM - YOUR HONOR, AS FAR AS THE
5 DISCOVERY'S CONCERNED, WE'D JUST GOTTEN THAT ABOUT TWO
6 WEEKS ---

7 THE COURT - I'M NOT INTERESTED IN THE DISCOVERY.

8 MR. TATUM - --- TWO WEEKS AGO, SO THE TIME FOR
9 RESPONDING HASN'T CAME YET.

10 THE COURT - ALL RIGHT. ALL RIGHT, I'VE BEEN
11 THROUGH THIS FILE. I THINK THIS IS THE THIRD MATTER WE'VE
12 HEARD. THIS IS AT LEAST THE SECOND. AND I FIND THERE'S
13 NO GENUINE ISSUE OF FACT THAT WOULD ENTITLE MR. OSTENDORFF
14 TO GO FORWARD WITH HIS COUNTERCLAIM, AS BY HIS OWN
15 ADMISSION THE SCHEDULE OF PAYMENTS AND --- IS CORRECT AS
16 SET FORTH IN THE AFFIDAVIT OF MS. WALKER. HE, THEREFORE,
17 WAS IN DEFAULT AND UNDER THE TERMS OF THE LOAN DOCUMENTS
18 THE BANK HAD A RIGHT TO DENY HIM ANY FURTHER DRAWS, AND
19 FURTHERMORE, IT LOOKS LIKE, BASED ON EVERYTHING I'VE
20 HEARD, THAT THE LOAN WAS ALMOST EXHAUSTED ANYWAY, AND BY
21 HIS OWN ADMISSION IT WOULD TAKE MORE THAN SEVEN THOUSAND
22 DOLLARS TO FINISH THE HOUSE. SO I GRANT YOUR MOTION. IF
23 YOU WILL E-MAIL ME AN ORDER, PLEASE.

24 MR. TATUM - CAN I GET THE E-MAIL ADDRESS, YOUR
25 HONOR?

(41)

1 THE COURT - RIGHT HERE ON THIS CARD.

2 MR. TATUM - OKAY.

3 (END OF TRANSCRIPT)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

42

CERTIFICATE

I, SHIRLEY G. BROOM, THE UNDERSIGNED COURT REPORTER,
HEREBY CERTIFY THAT THE FOREGOING 27 PAGES CONSTITUTE A TRUE RECORD
OF PROCEEDINGS TAKEN IN THE CASE OF SUN TRUST MORTGAGE INCORPORATED
VS. MARK OSTENDORFF, AS TAKEN BY ME AT THE TIME AND PLACE STATED.

I DO FURTHER CERTIFY THAT THE PERSONS WERE PRESENT
AS STATED, THAT I AM NOT OF COUNSEL FOR, RELATED TO, OR IN THE
EMPLOYEE OF ANY OF THE PARTIES TO THIS ACTION AND THAT I HAVE NO
INTEREST WHATSOEVER IN THE OUTCOME OF THIS CASE.

THIS THE 4th DAY OF March, 2010.


SHIRLEY G. BROOM
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 07-CP-46-4305

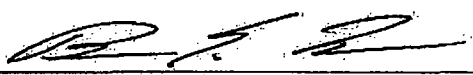
**PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

COMES NOW SunTrust Mortgage, Inc. ("SunTrust"), Plaintiff in the above-styled civil action, and moves this Court for Summary Judgment against Mark Ostendorff, Defendant in the above-styled civil action, on the grounds that there are no genuine issues of material fact and SunTrust is entitled to summary judgment as a matter of law. SunTrust respectfully refers the Court to its Brief in Support of Plaintiff's Motion for Summary Judgment, the Affidavit of Susan Walker, the Affidavit of Brian S. Tatum, and Plaintiff's Statement Of Material Facts Of Which There Exists No Genuine Issues To Be Tried filed herewith.

WHEREFORE, Plaintiff SunTrust respectfully requests that the Court grant its motion for summary judgment, dismiss the Counterclaim filed by the Defendant with prejudice, and grant Plaintiff SunTrust such other and further relief as it deems just and proper.

Respectfully submitted this 30th day of October, 2009.

TATUM LAW FIRM, PLLC

By: 

BRIAN S. TATUM
South Carolina Bar No. 73975
Attorney for Plaintiff

2101 Rexford Road, Suite 165W
Charlotte, South Carolina 28211
Phone: (704) 307-4350
Efax: (704) 754-4140
Email: BStatum@tatumlegal.com
0720934sc\A6023203

STATE OF SOUTH CAROLINA
COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 07-CP-46-4305

**BRIEF IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT**

COMES NOW SunTrust Mortgage, Inc. ("SunTrust"), Plaintiff in the above-styled civil action, and files its Brief In Support Of Plaintiff's Motion For Summary Judgment and shows this honorable Court as follows:

I. STATEMENT OF FACTS.

Plaintiff SunTrust instituted foreclosure proceedings against the Defendant as a result of Defendant's default under the terms of a Note and Mortgage. Defendant's loan was a construction loan and SunTrust was to disburse draws as construction on the subject property progressed. Due to Defendant's default under the Note, SunTrust stopped the disbursement of the construction draws, notified the Defendant that it was accelerating the debt, and initiated foreclosure. The Foreclosure Complaint was filed on November 30, 2007, and the Defendant was personally served on December 4, 2007. Defendant filed an Answer and Counterclaim denying default and alleging breach of contract by SunTrust.

As of the date of the filing of Plaintiff's Motion for Summary Judgment, the Defendant has failed to provide proof that the loan was current when SunTrust stopped disbursement of the construction draws and began foreclosure proceedings.

II. ARGUMENT AND CITATIONS OF AUTHORITY.

A. The Standard Required for Granting a Summary Judgment Motion.

In order for this Court to grant a motion for summary judgment, there must be no genuine issue as to any material fact and the moving party must be entitled to judgment as a matter of law. S.C.R.C.P., Rule 56; Brandt v. Gooding, 368 S.C. 618, 630 S.E.2d 259 (2006); Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). An adverse party may not rely on the mere allegations in his pleadings to withstand a motion for summary judgment, but must set forth specific facts showing that there is a genuine issue for trial. Strickland v. Madden, 323 S.C. 63, 448 S.E.2d 581 (1994).

B. SunTrust has presented a prima facie case regarding Defendant's default under the Note and the Mortgage.

SunTrust has presented a prima facie case showing that Defendant defaulted under the Note and the Mortgage and therefore SunTrust properly stopped the disbursement of construction funds and began foreclosure proceedings.

Summary judgment may be granted when the pleadings and admissions show that there is no genuine issue of material fact and that the moving party is entitled to summary judgment as a

matter of law. Hatchell v. Jackson, 290 S.C. 256, 349 S.E.2d 407 (1986). Therefore, unless Defendant can come forward with copies of the front and back of his monthly payments to SunTrust under the Note and the Mortgage showing the loan was current at the time SunTrust initiated foreclosure, there are no genuine issue of material fact regarding Defendant's default under the terms of the Note and Mortgage, and SunTrust is entitled to summary judgment as a matter of law.

C. Defendant has failed to present any evidence to support the allegations in his Counterclaim.

In his Counterclaim, Defendant alleges that SunTrust breached the contract with him by failing to disburse construction draws. While SunTrust admits that it stopped the draws, SunTrust was entitled to stop the disbursements due to Defendant's default. Furthermore, on August 21, 2007, SunTrust advised Defendant that it could not make the final draw unless the loan was current. Defendant was fully aware that the construction draws could not and would not be made unless and until he brought his loan current, which he failed and/or refused to do.

Allegations contained in a complaint are mere statements of legal conclusions unless accompanied by supporting facts. Tompkins v. Railroad Co., 33 S.C. 216, 11 S.E. 692 (1890). A party opposing a motion for summary judgment cannot rely solely on the contents of the complaint or counter-claim. John Doe v. Batson, 345 S.C 316, 548 S.E.2d 854 (2001).

As shown by the Affidavit of Susan Walker, filed herewith, it is clear that the Defendant defaulted in his payments and that by failing to make the payments when due in the amount due, the Defendant breached the contract, not SunTrust. Unless the Defendant can come forward with copies of the front and back of his payments under the Note showing that he complied with the terms of the Note, SunTrust is entitled to summary judgment.

The Defendant has failed to provide any specific facts to support the allegations contained in his Counterclaim. Unless the Defendant can come forward with facts proving that SunTrust breached the terms of the contract, providing specific details of each and every breach, including proving that SunTrust failed and/or refused to disburse construction draws when Defendant was current with his payments under the Note and Mortgage, the Court must find that Defendant's Counterclaim fails to state a claim upon which relief can be granted and dismiss the Counterclaim with prejudice.

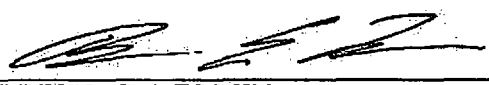
III. CONCLUSION.

The above evidence and legal citations show that Plaintiff SunTrust has made a prima facie case for judgment against Defendant and that Defendant has failed to come forth with any facts to support the allegations contained in his Counterclaim;

therefore, summary judgment should be granted to Plaintiff SunTrust and Defendant's Counterclaim should be dismissed with prejudice.

Respectfully submitted this 30th day of October, 2009.

TATUM LAW FIRM, PLLC

By: 

BRIAN S. TATUM
South Carolina Bar No. 73975
Attorney for Plaintiff

2101 Rexford Road, Suite 165W
Charlotte, South Carolina 28211
Phone: (704) 307-4350
Efax: (704) 754-4140
Email: BSTatum@tatumlegal.com
0720934SC\A6023816

50

STATE OF SOUTH CAROLINA

COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 07-CP-46-4305

AFFIDAVIT OF BRIAN S. TATUM

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

Personally appeared before the undersigned officer, duly authorized to administer oaths, Brian S. Tatum, who after first being duly sworn, states under oath as follows:

1.

That I am counsel for SunTrust Mortgage, Inc. ("SunTrust"), Plaintiff in the above-styled civil action, that this Affidavit is based on my own knowledge, that I am competent to testify regarding those things about which I have knowledge, and that I am over 18 years of age.

2.

That I am "Of Counsel" with the law firm of Johnson & Freedman, LLC ("Johnson & Freedman") f/k/a Morris, Schneider & Prior, LLC ("MSP") and as such I am familiar with certain

(51)

business records of Johnson & Freedman, which include the records of the foreclosure proceedings instituted by Johnson & Freedman (the "Foreclosure Records") regarding Defendant Mark Ostendorff and the property commonly known as 1207 Cabin Creek Court, Fort Mill, South Carolina (the "Property").

1.

That it is the regular practice of Johnson & Freedman to make the Foreclosure Records regarding the Defendant and the Property and those records were made as part of and kept in the course of a regularly conducted business activity of Johnson & Freedman.

4.

That the Foreclosure Records reflect that on October 8, 2007, a letter (the "Acceleration Letter") was sent to the Defendant via certified mail, notifying him that he was in default and that without further demand, SunTrust was entitled to accelerate the debt and bring a lawsuit for foreclosure.

5.

That the Foreclosure Records reflect that the Complaint for Foreclosure was filed on November 30, 2007 (the "Foreclosure Complaint").

6.

That the Foreclosure Records reflect that the Defendant was personally served with the Foreclosure Complaint on December 4,

52

2007 and that the Affidavit of Service was filed on December 7, 2007.

7.

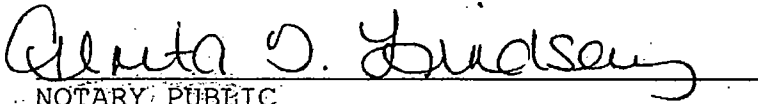
That this Affidavit is made in support of Plaintiff's Motion for Summary Judgment.

FURTHER AFFIANT SAITH NOT.



BRIAN S. TATUM

Sworn to and subscribed before me
this 30th day of October, 2009.



NOTARY PUBLIC

(NOTARY SEAL)

My Commission Expires:

9/07/2014

0720934SC\A6023462

53

STATE OF SOUTH CAROLINA

COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 07-CP-46-4305

AFFIDAVIT OF SUSAN WALKER

STATE OF Virginia

CITY OF Richmond

Personally appeared before the undersigned duly authorized to administer oaths, Susan Walker, who, after being duly sworn, deposes and states on oath as follows:

1.

That I am a First Vice President at SunTrust Mortgage, Inc. ("SunTrust"), that I based this Affidavit on my own personal knowledge of the accounts of SunTrust, that I am competent to testify regarding those accounts about which I have personal knowledge, and that I am over 18 years of age.

2.

That I am the custodian of and familiar with the business records of SunTrust, which include the loan documents and account statements of Mark Ostendorff ("Defendant").

54

3.

That SunTrust maintained the Defendant's loan history records at the office of which I am employed.

4.

That the entries were made to the Defendant's loan history in the regular course of business at or near the time that the events occurred, and the entries were subsequently reviewed for accuracy.

5.

That it is the regular practice of SunTrust to make the business records of the Defendant's loan history and those records were made as part of and kept in the course of a regularly conducted business activity of SunTrust.

6.

That to secure the indebtedness evidenced by a Note in the original principal amount of \$400,000.00, on or about March 29, 2006, Defendant executed a Mortgage (the "Mortgage") in favor of SunTrust conveying a first priority security interest in certain real property commonly known as 1207 Cabin Creek Court, Fort Mill, South Carolina 29715, and more particularly described therein (the "Property").

7.

That the Mortgage was recorded in the Office of the Register of Deeds for York County, South Carolina, on or about April 28, 2006, at Book 07985, Page 00302.

55

8.

That a true and correct copy of the Mortgage is attached hereto as Exhibit "A" and incorporated herein by reference.

9.

That SunTrust is the owner and holder of the Note and the Mortgage and that the Note and Mortgage have not been securitized.

10.

That the Defendant failed to make scheduled payments under the Note and Mortgage as required by their terms; consequently, Defendant defaulted and remains in default on the payments due under and pursuant to the Note and the Mortgage.

11.

That as of October 14, 2007, the Defendant was due for the July 1, 2007 payment.

12.

That on October 14, 2007, the Defendant's arrearage on the Note was \$12,065.85.

13.

That in accordance with the terms of the Note and Mortgage, SunTrust accelerated maturity and declared the entire unpaid balance immediately due and payable.

56

14.

That the Defendant's payment history under the Note and the Mortgage from May 1, 2006 through September 1, 2007 is as follows:

<u>Date Due</u>	<u>Amt. Due</u>	<u>Date Pd.</u>	<u>Amt. Pd.</u>
05/01/06	\$ 2,000.48	05/02/06	\$ 2,000.48
06/01/06	1,879.24	06/16/06	1,879.24
07/01/06	1,875.57	07/21/06	1,875.57
08/01/06	1,959.50	08/25/06	1,959.50
09/01/06	1,993.90	09/29/06	2,018.36
10/01/06	2,012.79	10/30/06	2,006.08
11/01/06	2,079.89	11/30/06	2,079.89
12/01/06	2,069.75	12/18/06	2,069.75
01/01/07	2,201.20	01/30/07	2,201.20
02/01/07	2,228.95	03/15/07	4,242.18
03/01/07	2,013.23	06/28/07	2,241.50
04/01/07	2,241.50	07/30/07	2,180.58
05/01/07	2,180.58		\$ 26,754.33
06/01/07	2,253.26		
07/01/07	2,180.57		
08/01/07	2,253.27		
09/01/07	2,253.26		
	\$ 35,676.94		

15.

That true and correct copies of the Defendant's monthly statements from May 1, 2006 to September 1, 2007 are collectively attached hereto as Exhibit "B" and incorporated herein by reference.

16.

That the Note and the Mortgage are still in default for, among other possible events of default, failure to pay the sums due under the Note and the Mortgage.

57

17.

That on August 21, 2007, SunTrust advised the Defendant that the final construction draw could not be disbursed and the construction loan made permanent until Defendant's payments were current.

18.

That the Defendant did not bring the loan current; therefore, SunTrust did not disburse the final construction draw and began foreclosure proceedings.

19.

That as of September 2, 2009, Defendant is indebted to SunTrust for the total amount of \$455,115.83, consisting of principal in the amount of \$393,042.10 and interest in the amount of \$62,073.73.

20.

That interest continues to accrue on the Note at \$72.68 per day and other charges continue to accrue.

58

That this Affidavit is made in support of Plaintiff
SunTrust's Motion for Summary Judgment.

FURTHER AFFIANT SAITH NOT.

AFFIANT:



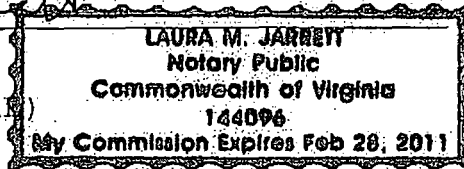
SUSAN WALKER

Sworn to and subscribed before me
this 14th day of October, 2009.



NOTARY PUBLIC

(NOTARY SEAL)



My Commission Expires: _____
0720934SC\A6023273

59

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202
RICHMOND, VA 23260-6202

6666

2332231313222333121323301321013

MARK OSTENDORFF
1207 CABIN CREEK CT
FORT HILL SC 29715-5812

1

04-14-2006 8002586 83-80500

80013 BI

0030671762 0610057405

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 03-29-2006 04-30-2006 327,800.00 6.75 2,000.48 INTEREST
36371904 2,000.48 TOTAL

MARK OSTENDORFF
1207 CABIN CREEK CT
FORT HILL SC 29715-5812

05-01-2006 8002586 83-80500
PRINCIPAL DUE 00
INTEREST DUE 200048
FEES DUE 00

TOTAL AMOUNT DUE 200048

TO AVOID ADDITIONAL CHARGES,
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0610057405 00000000200048 3

60

0 SUNTRUST BANK
0 COMMERCIAL CREDIT SERVICES
3
0 PO BOX 26202
0 RICHMOND, VA 23260-6202
3

6666 6666

6666

2 2332231313222333121323301321013

7 MARK OSTENDORFF
9 1207 CABIN CREEK CT
9 FORT HILL SC 29715-5812

1

05-17-2006 8002586 83-80500

80013 81

0030671762 0610074365

4 THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

4 26 05-01-2006 05-31-2006 327,800.00 6.75 1,879.24 INTEREST
4 36371904 1,879.24 TOTAL

MARK OSTENDORFF
1207 CABIN CREEK CT
FORT HILL SC 29715-5812

06-01-2006 8002586 83-80500
PRINCIPAL DUE 00
INTEREST DUE 187924
FEES DUE 00

TOTAL AMOUNT DUE 187924

TO AVOID ADDITIONAL CHARGES,
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0610074365 00000000187924 7

61

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202
RICHMOND, VA 23260-6202

6666

2332231313222333121323301321013

MARK OSTENDORFF
1207 CABIN CREEK CT
FORT HILL SC 29715-5812

1

06-16-2006 8002586 83-80500

80013 81

0030671762 0610091656

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 06-01-2006 06-08-2006	327,800.00	6.75	484.96 INTEREST
06-09-2006 06-30-2006	341,800.00	6.75	1,390.61 INTEREST
36371904			1,875.57 TOTAL

MARK OSTENDORFF
1207 CABIN CREEK CT
FORT HILL SC 29715-5812

07-01-2006 8002586 83-80500
PRINCIPAL DUE 00
INTEREST DUE 187557
FEES DUE 00

TOTAL AMOUNT DUE 187557

TO AVOID ADDITIONAL CHARGES,
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0610091656 00000000187557 6

62



SUNTRUST BANK
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202
RICHMOND, VA 23260-6202

6666

2332231313222333121323301321013

MARK OSTENDORFF
1207 CABIN CREEK CT
FORT HILL SC 29715-5812

07-17-2006 8002586 83-80500

80013 BI

0030671762 0610108200

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 PAST DUE			1,875.57 INTEREST
07-01-2006 07-31-2006	341,800.00	6.75	1,959.50 INTEREST
36371906			3,835.07 TOTAL

MARK OSTENDORFF
1207 CABIN CREEK CT
FORT HILL SC 29715-5812

08-01-2006 8002586 83-80500
PRINCIPAL DUE 00
INTEREST DUE 383507
FEES DUE 00

TOTAL AMOUNT DUE 383507

TO AVOID ADDITIONAL CHARGES,
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0610108200 00000000383507 1

63

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202
RICHMOND, VA 23260-6202

6666

2332731313222333121323301521013

MARK OSTENDORFF
1207 CABIN CREEK CT
FORT HILL SC 29715-5812

1

08-17-2006 8002586 83-80580

80013 B1

0030671762 0610125137

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 ADJUST			12.28 INTEREST
PAST DUE			1,959.50 INTEREST
08-01-2006 08-31-2006	347,800.00	6.75	1,993.90 INTEREST
36371984			3,945.60 TOTAL

MARK OSTENDORFF
1207 CABIN CREEK CT
FORT HILL SC 29715-5812

09-01-2006 8002586 83-80580
PRINCIPAL DUE 00
INTEREST DUE 396560
FEES DUE 00

TOTAL AMOUNT DUE 396560

TO AVOID ADDITIONAL CHARGES,
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 83 4580 0030671762 00026 0610125137 00000000396560 8

64

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202
RICHMOND, VA 23260-6202

6666

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

1

09-15-2006 8002586 83-80500

80013 BI

0030671762 0610142120

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 ADJUST			5.55 INTEREST
PAST DUE			2,006.10 INTEREST
09-01-2006 09-30-2006	362,800.00	6.75	2,012.79 INTEREST
36371904			4,024.44 TOTAL

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

10-01-2006 8002586 83-80500
PRINCIPAL DUE 00
INTEREST DUE 402444
FEES DUE 00

TOTAL AMOUNT DUE 402444

TO AVOID ADDITIONAL CHARGES,
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0610142120 00000000402444 2

65

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202
RICHMOND, VA 23260-6202

6666

MARK OSTENDORFF
PO BOX 772
FORT HILL SC 29716

1

10-17-2006 8002586 83-80500

80013 81

8030671762 0610159231

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 PAST DUE				2,006.88 INTEREST
10-01-2006 10-31-2006	362,800.00	6.75		2,879.89 INTEREST
36371904				4,885.97 TOTAL

MARK OSTENDORFF
PO BOX 772
FORT HILL SC 29716

11-01-2006 8002586 83-80500
PRINCIPAL DUE 00
INTEREST DUE 408597
FEES DUE 00

TOTAL AMOUNT DUE 408597

TO AVOID ADDITIONAL CHARGES,
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 83 4500 8030671762 80026 0610159231 00000000408597 6

66

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES

PO BOX 26202
RICHMOND, VA 23260-6202

6666 6666

6666

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

1

11-16-2006 8002586 83-80500

80013 81

0030671762 0610176324

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 PAST DUE			2,079.89 INTEREST
11-01-2006 11-02-2006	362,800.00	6.75	134.18 INTEREST
11-03-2006 11-30-2006	373,800.00	6.75	1,935.57 INTEREST
36371984			4,149.64 TOTAL

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

12-01-2006 8002586 83-80500
PRINCIPAL DUE 00
INTEREST DUE 414964
FEES DUE 00

TOTAL AMOUNT DUE 414964

TO AVOID ADDITIONAL CHARGES,
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0610176324 00000000414964 2

67

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES

PO BOX 26202
RICHMOND, VA 23260-6202

6666 6666

6666

MARK OSTENDORFF
P O BOX 772
FORT MILL SC 29716

1

12-15-2006 8002586 83-80500

80013 81

0030671762 0610193331

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 PAST DUE			2,049.75 INTEREST
12-01-2006 12-10-2006	373,800.00	6.75	691.28 INTEREST
12-11-2006 12-31-2006	388,800.00	6.75	1,509.92 INTEREST
36371904			4,270.95 TOTAL



MARK OSTENDORFF
P O BOX 772
FORT MILL SC 29716

01-01-2007 8002586 83-80500
PRINCIPAL DUE 00
INTEREST DUE 427095
FEES DUE 00

TOTAL AMOUNT DUE 427095

TO AVOID ADDITIONAL CHARGES,
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0610193331 00000000427095 4

68

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202
RICHMOND, VA 23260-6202

6666

MARK OSTENDORFF
P O BOX 772
FORT MILL SC 29716

1

01-17-2007 8002586 83-80500

80013 BT

0030671762 0710007555

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 PAST DUE			2,201.20 INTEREST
01-01-2007 01-31-2007	388,800.00	6.75	2,228.95 INTEREST
36371904			4,430.15 TOTAL

MARK OSTENDORFF
P O BOX 772
FORT MILL SC 29716

02-01-2007 8002586 83-80500
PRINCIPAL DUE 00
INTEREST DUE 443015
FEES DUE 00

TOTAL AMOUNT DUE 443015

TO AVOID ADDITIONAL CHARGES,
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0710007555 00000000443015 0

69

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES

PO 26202
RICHMOND, VA 23260-6202

6666 6666

6666

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

1

02-14-2007 8002586 83-80500

80013 81

0030671762 0710024159

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 PAST DUE			2,228.95 INTEREST
02-01-2007 02-28-2007	388,800.00	6.75	2,013.23 INTEREST
36371904			4,242.18 TOTAL

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

03-01-2007 8002586 83-80500
PRINCIPAL DUE 00
INTEREST DUE 424218
FEES DUE 00

TOTAL AMOUNT DUE 424218

TO AVOID ADDITIONAL CHARGES,
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0710024159 00000000424218 3

70

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202
RICHMOND, VA 23260-6202

6666

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

03-16-2007 8802586 83-80500

80013 81

0030671762 0710041291

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 04-01-2007	393,042.18	393,042.18 PRIN
03-01-2007 83-15-2007	388,800.00 6.75	1,078.53 INTEREST
03-16-2007 03-31-2007	393,042.18 6.75	1,162.97 INTEREST
36371904		395,283.68 TOTAL

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

04-01-2007 8802586 83-80500
PRINCIPAL DUE 39304218
INTEREST DUE 224159
FEES DUE 00

TOTAL AMOUNT DUE 39528368

TO AVOID ADDITIONAL CHARGES.
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0710041291 00000039528368 9

71

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES

PO BOX 26202
RICHMOND, VA 23260-6202

6666 6666

6666

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

1

04-16-2007 8002586 83-80500

80013 81

0030671762 0710057754

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 PAST DUE			2,241.50 INTEREST
04-01-2007 04-30-2007	393,042.18	6.75	2,180.68 INTEREST
36371904			4,422.08 TOTAL

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

05-01-2007 8002586 83-80500
PRINCIPAL DUE 00
INTEREST DUE 442208
FEES DUE 00

TOTAL AMOUNT DUE 442208

TO AVOID ADDITIONAL CHARGES,
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0710057754 00000000442208 0

72

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES

PO BOX 26202
RICHMOND, VA 23260-6202

6666 6666

6666

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

1

05-17-2007 8002586 83-80500

80013 BI

0030671762 0710074563

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 PAST DUE			4,422.08 INTEREST
05-01-2007 05-31-2007	393,042.18	6.75	2,253.26 INTEREST
36371906			6,675.34 TOTAL

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

06-01-2007 8002586 83-80500
PRINCIPAL DUE 80
INTEREST DUE 667534
FEES DUE 80

TOTAL AMOUNT DUE 667534

TO AVOID ADDITIONAL CHARGES,
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0710074563 00000000667534 1

73

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202
RICHMOND, VA 23260-6202

6666

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

06-15-2007 8002586 83-80500

80013 81

0030671762 0710091201

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 07-01-2007	393,042.18	393,042.18 PRIN
PAST DUE		6,675.34 INTEREST
06-01-2007 06-30-2007	393,042.18 6.75	2,180.57 INTEREST
36371904		401,898.09 TOTAL

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

07-01-2007 8002586 83-80500
PRINCIPAL DUE 39304218
INTEREST DUE 885591
FEES DUE 00

TOTAL AMOUNT DUE 40189809

TO AVOID ADDITIONAL CHARGES,
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0710091201 00000040189809 8

74

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES

6666 6666

PO BOX 26202
RICHMOND, VA 23260-6202

6666

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

1

07-17-2007 8002586 83-80500

80013 BI

0030671762 0710107727

THANK YOU FOR YOUR BUSINESS. FOR QUESTIONS, PLEASE CALL 1-866-476-1460.

26 PAST DUE			393,042.18 PRIN
08-01-2007	393,042.18		.00 PRIN
PAST DUE			6,614.41 INTEREST
07-01-2007 07-31-2007	393,042.18 6.75		2,253.27 INTEREST
36371904			401,909.86 TOTAL

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

08-01-2007 8002586 83-80500
PRINCIPAL DUE 39304218
INTEREST DUE 886768
FEES DUE 00

TOTAL AMOUNT DUE 40190986

TO AVOID ADDITIONAL CHARGES,
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST BANK
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 83 4500 0030671762 00026 0710107727 00000040190986 7

75

SUNTRUST MORTGAGE
COMMERCIAL CREDIT SERVICES

PO BOX 26202
RICHMOND, VA 23260-6202

6666 6666

6666

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

1

08-17-2007 0002609 68-80500

80013 81

0680085932 0710308707

THANK YOU FOR YOUR BUSINESS. ANY QUESTIONS PLEASE CALL 1-866-476-1460.

26 PAST DUE		393,042.10	PRIN
09-01-2007	393,042.10		.00 PRIN
PAST DUE		6,687.10	INTEREST
08-01-2007 08-31-2007	393,042.10 6.75	2,253.26	INTEREST
36371904		401,982.46	TOTAL

MARK OSTENDORFF
P O BOX 772
FORT HILL SC 29716

09-01-2007 0002609 68-80500
PRINCIPAL DUE 39304210
INTEREST DUE 894036
FEES DUE 00
LATE CHARGES DUE 00

TOTAL AMOUNT DUE 40198246

TO AVOID ADDITIONAL CHARGES,
PAYMENT MUST BE MADE BY THE DUE DATE.

SUNTRUST MORTGAGE
COMMERCIAL CREDIT SERVICES
PO BOX 26202
RICHMOND, VA 23260-6202

13 68 4500 0680085932 00026 0710308707 00000040198246 7

76

LNAX REQ: 0104 MSG CURRENT OBLIGATION 10/09/09 PAGE 1 OF 0014
BANK: 68 AP: 1 OBGOR: 0680085932 OBGAT: 0000000026 OSTENDORFF MARK
DATE: CHG CODE: INVOICE/ITEM: PAGE:
PROC TYPE: 5155 CURRENT BASIC OBLGN TAKEDOWN

----- BALANCE INFORMATION -----
EFFECTIVE DT : 03-29-06 MATURITY DT : 07-01-07 EST MATUR DT:
POSTED DT : 04-05-06 LAST ACT DT : 07-27-07 LAST CHG DT : 04-08-09
ORIG BAL : 327,800.00 CURRENT AMT : 393,042.10
GUAR AMOUNT : CHRG OFF AMT :
COLLAT VALUE : PAID TO PRIN :
USER BALANCE : BOOK VALUE : 393,042.10
SCHD BAL : PART AMOUNT :
 NET BOOK VALUE: 393,042.10
PROCEEDS : AVAILABILITY :
----- BALANCE ACTIVITY -----
NET PRIN TDY : NET PARTS TDY :
NET COLL ACTY:
INTERNAL COMM: 0 NORMAL
TKDWN OBGR : 0680085932 TKDWN OBLN : 0000000018
----- POOL INFORMATION -----
POOL NUMBER : SEC STATUS :

77

LNAX REQ: 0112 MSG CURRENT FINANCIAL/PAYOFF 10/09/09 PAGE 0001 OF 0001
BANK: 68 AP: 1 OBGOR: 0680085932 OBGAT: 0000000026 OSTENDORFF MARK
DATE: 101407 CHG CD: INCLUDE ESCROW AMOUNT(Y/N): Y PAGE:
RATE BASIS DAILY EARNINGS AMOUNT DUE
INT 100 6.75000000 6 ACT 366 72.68587 12,065.85

PROC TYPE: 5155 CURRENT BASIC OBLGN TAKEDOWN
OBLN TYPE: 400 COLL TYPE: 811 SECURED : 2 SECURED
EFF DATE : 03-29-06 MAT DATE : 07-01-07 DISC CODE : 0 NOT ENTERED
SVC UNIT : 80500 ASSN UNIT: 0002609 :
CONT OFF : 037781 GL CODE : 1331000 :
TKDWN OBR: 0680085932 STAT CD: 7 PRIN RECAP :
TKDWN OBN: 0000000018 NOT SUBJECT-PP FEE :
LC FRMULA: 351 :
PN FRMULA: 000 :
CURR BAL : 393,042.10
INT EARNED : 12,065.85
AMT TO BE CURR: 457,223.72 :
PAYOFF AS OF 10-14-07 : 405,107.95

78

CERTIFICATE OF SERVICE

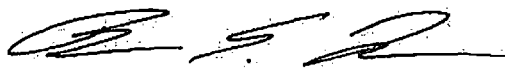
The undersigned certifies that a true and correct copy of the foregoing **AFFIDAVIT OF SUSAN WALKER** was served upon the following by mailing same by United States First Class Mail in a properly addressed envelope with adequate postage affixed thereon to insure delivery, addressed as follows:

Mark Ostendorff
P.O. Box 772
Fort Mill, SC 29716

Mark Ostendorff
P.O. Box 14846
Greenville, SC 29610

This 30th day of October, 2009.

TATUM LAW FIRM, PLLC

By: 

BRIAN S. TATUM
South Carolina Bar No. 31974
Attorney for Plaintiff

2101 Rexford Road, Suite 165W
Charlotte, North Carolina 28211
Phone: (704) 307-4350
Efax: (704) 754-4140
Email: BSTatum@tatumlegal.com

Return To:

THE LAW OFFICES OF LISA F JARVIS
7825 BALLANTYNE COMMONS PKWY
CHARLOTTE, NC 28277

FILED FOR RECORD 04/28/2006
AT 10:20:01AM BOOK 07985 PAGE 00302
David Hamilton - Clerk of Court
York County Courthouse
Instrument Number: 000290143

Prepared By:

JOSEPH BRIDGES
SUNTRUST MORTGAGE, INC.
770 Pelham Rd. Suite 101
Greenville, SC 29615
AP# OSTEN0036371904
LN# 0036371904

[Space Above This Line For Recording Data]

14293

MORTGAGE

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated together with all Riders to this document.

March 29, 2006

(B) "Borrower" is Mark Ostendorff, an Individual

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is SUNTRUST MORTGAGE, INC.

Lender is a Virginia Corporation
organized and existing under the laws of the State of Virginia

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3041 - 1/01

VMP-6(SC) (0409)

Page 1 of 15

LAW 04/08/01

Initials: *MD*

VMP Mortgage Solutions, Inc. (800)521-7291



80



BK 07985 PG 0302

Lender's address is 901 Semmes Avenue, Richmond, VA 23224

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated March 29, 2006
The Note states that Borrower owes Lender Four Hundred Thousand and no/100

(U.S. \$ 400,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than April 1, 2036

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

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

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

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

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

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

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

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

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

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

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

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

81

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

County
(Type of Recording Jurisdiction)

of

York
(Name of Recording Jurisdiction)

Parcel ID Number:
1207 Cabin Creek Ct
Ft Mill
("Property Address"):

which currently has the address of

[Street]
(City) , South Carolina 29715 (Zip Code)

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

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

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

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

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this

82

Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

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

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts

83

due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

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

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

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

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

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

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

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

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

85

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

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

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

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

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

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

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

86

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

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

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

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

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

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

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

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

87

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

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

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

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

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

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

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

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

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

88

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

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

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

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

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

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

89

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

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

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

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

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

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

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

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

90

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

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

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

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

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

91

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

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

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

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

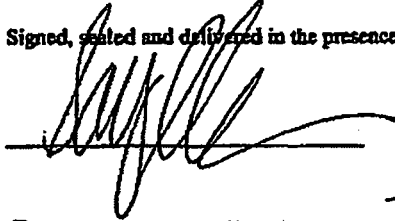
25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal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

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

92

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

Signed, sealed and delivered in the presence of:



Debby Simpson

 (Seal)
Mark Ostendorf -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

93

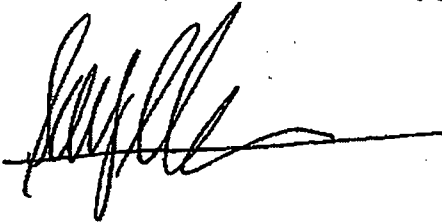
STATE OF SOUTH CAROLINA,

Yock County ss:
do hereby certify that

1. Debbie Simpson
Mark Ostendoeff

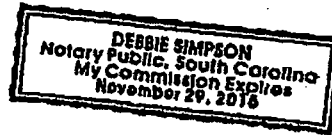
personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 29 day of March ..2006



Debbie Simpson
Notary Public for South Carolina

My Commission Expires:



94

LEGAL DESCRIPTION

All that certain piece, parcel or lot of land, with the improvements thereon, if any, situate, lying and being in the County of York, State of South Carolina, being shown and delineated as Lot 86 on a plat of Oxford Subdivision, Phase V, drawn by Precision Surveying, Inc., dated April 23, 2001 and recorded in the Office of the R. M. C. for York County in Plat Book B-339, Page 6; reference being made to the same for a more complete and accurate description; all measurements being a little more or less. ✓

TMS #: 776-00-00-107

BEING the same property conveyed to Mark Douglas Ostendorff by Deed from Penton Group, Inc., dated September 27, 2001, recorded October 02, 2001, in Book 3890, Page 190, York County, South Carolina Records.

BK07985PG0317

95

ADJUSTABLE RATE RIDER

THIS ADJUSTABLE RATE RIDER is made this 29th day of March, 2006 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to

SUNTRUST MORTGAGE, INC. ,

a Virginia Corporation
(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

1207 Cabin Creek Ct

, Ft Mill, SC 29715

[Property Address]

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. INCREASES IN THE INTEREST RATE WILL RESULT IN HIGHER PAYMENTS. DECREASES IN THE INTEREST RATE WILL RESULT IN LOWER PAYMENTS.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 6.7500 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the 1st day of April, 2011 and on that day every 12th month thereafter. Each date on which my interest rate could change is called a "Change Date."

MULTISTATE ADJUSTABLE RATE RIDER - Single Family

2-899R (0402)

Page 1 of 5

VMP Mortgage Solutions, Inc.

(800)521-7291

1/01
Initials: *MW*



96

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is:
THE AVERAGE OF INTERBANK OFFERED RATES FOR ONE YEAR U. S. DOLLAR DENOMINATED DEPOSITS IN THE LONDON MARKET (LIBOR) AS PUBLISHED IN THE WALL STREET JOURNAL.

The most recent Index figure available as of the date: ☒ 45 days ☐ _____ before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new Index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and One / Quarter percentage points (2.2500 %) to the Current Index. The Note Holder will then round the result of this addition to the ☒ Nearest ☐ Next Highest ☐ Next Lowest One/Eighth percentage point (0.125 %). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal I am expected to owe at the Change Date in full on the maturity date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

☐ **Interest-Only Period**

The "Interest-only Period" is the period from the date of this Note through . For the interest-only period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to pay the interest which accrues on the unpaid principal of my loan. The result of this calculation will be the new amount of my monthly payment.

The "Amortization Period" is the period after the interest-only period. For the amortization period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

97

(D) Limits on Interest Rate Changes

(Please check appropriate boxes; if no box is checked, there will be no maximum limit on changes.)

- ☐ (1) There will be no maximum limit on interest rate changes.
- ☐ (2) The interest rate I am required to pay at the first Change Date will not be greater than _____ % or less than _____ %.
- ☐ (3) My interest rate will never be increased or decreased on any single Change Date by more than _____ percentage points (_____ %) from the rate of interest I have been paying for the preceding period.
- ☒ (4) My interest rate will never be greater than 12.7500 %, which is called the "Maximum Rate."
- ☒ (5) My interest rate will never be less than 2.2500 %, which is called the "Minimum Rate."
- ☐ (6) My interest rate will never be less than the initial interest rate.
- ☒ (7) The interest rate I am required to pay at the first Change Date will not be greater than 8.7500 % or less than 4.7500 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than Two percentage points (2.0000 %) from the rate of interest I have been paying for the preceding period.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

899R (0402)

Page 3 of 5

Initials: MD

98

BK07985PG0320

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER
Uniform Covenant 16 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 16, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if a Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

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

99

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.



Mark Ostendorf

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

100

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 29th day of March, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to
SUNTRUST MORTGAGE, INC.,
a Virginia Corporation
(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

1207 Cabin Creek Ct, Ft Mill, SC 29715
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

(the "Declaration"). The Property is a part of a planned unit development known as OXFORD PLACE

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

MULTISTATE PUD RIDER- Single Family - FannieMae/FreddieMac UNIFORM INSTRUMENT
Form 3150 1/01

7R (0411)

Page 1 of 3

Initials: *MOO*

VMP Mortgage Solutions, Inc. (800)521-7291



101

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

102

AP# OSTEN0036371904
LN# 0036371904

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

_____(Seal) Mark Ostendorff (Seal)
-Borrower Mark Ostendorff -Borrower

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

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

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

7R (0411)

Page 3 of 3

Form 3150 1/01

103

BK07985P00325

STATE OF SOUTH CAROLINA

COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 07-CP-46-4305

OPPOSITION TO PLAINTIFF S

MOTION FOR SUMMARY

JUDGEMENT

Defendant , Ostendorff , opposes Plaintiff's Motion for Summary Judgement.

My opposition is based on the following genuine issues of material fact and supported by:

- 1) I have been damaged , past and future, due to Suntrust's breach
- 2) Plaintiff has refused to provide any discovery whatsoever (with the exception of the payment records in Susan Walker's affidavit).
- 3) Susan Walker's affidavit is one of convenient and selective record search and review. Thus, the affidavit is self-serving and does not address the issue of breach. The credibility of Susan Walker is in doubt.
- 4) No reasonable jury is going to accept Suntrust's justification for breach as Suntrust has not given any reason for stopping construction draws.
- 5) The U.S. Supreme Court has stated a dispute is genuine " if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."

(Anderson v. Liberty ,Inc.477 U.S. 242 , 251 , 106 S. Ct. 2505, 2511 , 91 L.

Ed. 2d 202 (1986).

104

The Court cautioned that summary judgement not become a trial by affidavit and that "[c]redibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge ... The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." (ditto case reference)

6) Where trial courts granted summary judgement because they did too much weighing of the weighing of the evidence, appellate courts have tended to to remember the admonition that assessments of credibility are for the jury and have denied or reversed summary judgement. (Gulden v. Crown Zellerbach Corp., 890 F.2d 195 (9th Cir.1989))

7) Rule 56(c) SCRCP. The movant must "show that there is no genuine issue as to any material fact..." The burden is upon Suntrust.

1)

Ostendorff will be stripped of approximately \$288,000.00 of equity in this house. My credit rating is destroyed as a direct result of Suntrust's breach. I may not be able to get a mortgage for the rest of my life. I can no longer get a construction loan which can easily net \$ 200,000.00 every two years if reliable financing is available

I can no longer get loans for my 3 daughters' college. They are in undergraduate school now and plan to go to graduate school.

I am entitled to at least to restitution, quantum meruit, lost equity, and / or prospective damages as I cannot start anew.

2

105

Summary Judgement should not be granted if discovery has not been made by moving party. Plaintiff has refused to provide any discovery.

I have made written requests for discovery Their response to production of documents is trade secrets and attorney – client privilege. There are no trade secrets for a note that is in the public domain. Their attorney answered the interrogatories himself but Rule 33(a) requires the answers to be in writing under oath (by the Plaintiff and not by their attorney). I have brought this to the attention of their attorney 3 times and still no answers to interrogatories.

I verbally asked each of the 3 attorneys (past and present) for discovery . The answer has been same- Suntrust won't send them much. I asked each of the 3 to send me what they had and maybe that would suffice. I have received only stonewalling.

In general, if pleadings and evidentiary matter in support of summary judgement do not establish the absence of a genuine issue of material fact, summary judgement must be denied , even if no opposing evidentiary matter is presented. (Baird v. Charleston County ,333 S.C.519,511 S.E.2d 69 (1999)).

Summary judgement must not granted until the opposing party has had full and fair opportunity to complete discovery. (Baird v. Charleston County , 333 S.C.519,511 S.E. 2d 69 (1999)).

Once discovery is made by Suntrust , Ostendorff will amend answer and counter-claim as to :

Suntrust is not real party in interest nor in standing to sue

Unfair trade practices as other cases show Suntrust is engaged in equity stripping

Unconscionability as the agreement was only to benefit Suntrust and to take away from Ostendorff

3

106

3)

Susan Walker's affidavit is evasive .It does not state reason for stopping construction draws, only that "the final draw could not be disbursed ..." .The issue is not the final draw but ones that finance the construction process.

The case is 2 years old, Susan Walker's affidavit is very late in the process.

Susan Walker obviously had little to do with preparing the affidavit as it has some very precise legal terminology. If she did not prepare it , she probably did not know what she signed unless she has legal experience , in which she did not state as having. No statement made as to being real party in interest.

Susan Walker never stated that Ostendorff's loan did not have a cusip number which indicates if a loan has been securitized. A simple misspelling of qusit got a response of vague and ambiguous on interrogatories .It is odd that a person familiar with loan records would also be familiar with securitization records since it usually top management that decides when it sells its assets. No statement was made if the loan was pledged , lent, assigned,etc. No statement was made as to weather Suntrust has ever received tender for the note.

Susan Walker never stated that Suntrust was entitled to Ostendorff's revenue Stream.

Susan Walker never stated that Suntrust was ready ,willing, and able to make the construction loan permanent.

Susan Walker does not explain why she has withheld records from Ostendorff or either they are woefully incomplete.

Susan Walker will not satisfy any jury as to her first hand knowledge of the loan draws circumstances nor her knowledge of securitization.

4

107

Questions of credibility make summary judgement inappropriate .(Hansen v. DHL Laboratories, Inc. 316 S.C. 505, 450 S.E. 2d 624 (Ct.App. 1994) , cert. granted, Decision aff'd , 319 S.C. 79 , 459 S.E. 2d 850 (1995).).

Ostendorff has requested through discovery Susan Walker's address so she can be subpoenaed and put under cross examination.

4)

No reasonable jury is going to let Suntrust stop construction draws and as result unjustly enrich themselves at Ostendorff's unrewarded effort.

6
7

DECEMBER 9, 2009



MARK OSTENDORFF
DEFENDANT

PMSE

PO Box 14846
GREENVILLE, SC 29610
(864) 360-1834

5

108

STATE OF SOUTH CAROLINA

COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 07-CP-46-4305

AFFIDAVIT OF
MARK OSTENDORFF
OPPOSING PLAINTIFF'S
MOTION FOR
SUMMARY JUDGEMENT

STATE OF SOUTH CAROLINA

CITY OF PICKENS

COUNTY OF PICKENS

I, Mark Ostendorff, have personally prepared this affidavit and swear as to its accuracy and truthfulness to the best of my personal knowledge. I am over eighteen years old and I am competent to testify to the matters stated therein.

1.

I entered a rehab (construction) loan with Suntrust Mortgage, Inc. for my existing home located at 1207 Cabin Creek Court, Fort Mill, SC.

2.

I was promised by Suntrust that I could receive a construction draw as I desired. I felt that once per week would be adequate enough to facilitate a good cash flow to complete the work within the one year loan agreement.

109

3.

Within only a couple of months Steve Burmiester (Suntrust) informed me that I could only get one draw per month.

4.

With great cash flow difficulties I continued to make substantial improvements with only occasional help from my 3 daughters.

5.

In December 2006, Suntrust stopped all construction draws to me. This is shown on Susan Walker's affidavit attachment.

6.

I made attempts in January 2006 to obtain more construction draws from Suntrust but Steve Burmiester refused. He refused to give any reason why except to the statement that "he just couldn't". There was a balance of \$11,200.00 available still remaining to be disbursed. I was current on my interest payments at that time.

8

9

7.

Suntrust was in breach of contract at that time and I told Steve Burmiester so. Their breach prevented me from completing the improvements on the house, thus preventing a cash-out refinance and paying off suppliers, credit cards, etc.

8.

I had numerous cash-out mortgage offers waiting on my completion. The appraised value was approximately \$ 688,000.00. Financing was available up to 95%. Suntrust would have been paid off well before the April maturity date had they not breached.

110

2

9.

The appraised value was at \$ 688,000.00. The equity would have been \$288,000.00 had Suntrust not breached.

10.

My requests for draws after Suntrust's last draw is evidenced by the 3/15/07 interest payment of \$ 4242.18 . This interest payment was made by Steve Burmiester after I asked that if no draws weren't going to be made, at least pay the monthly interest so I could have a good VOM to refinance with someone else . This was only enough through the April maturity date.

3
4
5
6
7

11.

I made numerous attempts for another bank to pick up the loan but no one wanted it uncompleted . I probably had 20 banks who wanted to cash-out refinance after I completed it.

12.

I have been damaged at least in the following :

\$ 288,000.00 from loss of equity

My credit is destroyed and may not be able to borrow money for a house ,
muchless for construction for the rest of my life. This precludes any
opportunity to make \$ 250,000.00 every two years which is very easy
if one has reliable financing.(this is after tax).

I can no longer get education loans for my 3 daughters.

Employment opportunities may be impaired due to now having bad credit.

Insurance companies can deny coverage due to bad credit.

Banks can deny checking accounts due to bad credit

III

3

13.

I believe that Suntrust could easily make \$ 200,000.00 if they foreclose then complete the house and sell it. The house has a Certificate of Occupancy.

1
2

14.

I tried to resolve the foreclosure issue with Kia Tarry. She sent me an E-mail stating that they could only do a short sale . My research shows that a short sale means that someone else owns the note .The requested financial information on the forms sent for me to fill out is for other parties to review to approve the short sale.Suntrust already had information for my construction-permanent loan.

15.

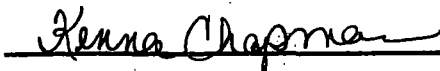
This affidavit is for my opposition to Summary Judgment by Suntrust.

AFFIANT:



Mark Ostendorff

Sworn to and subscribed before me
This 4th day of December, 2009



NOTARY PUBLIC

(NOTARY SEAL)

My Commission Expires: 3/6/2012

4

112

STATE OF SOUTH CAROLINA

COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 07-CP-46-4305

SECOND AFFIDAVIT
OF MARK OSTENDORFF
OPPOSING PLAINTIFF'S
MOTION FOR
SUMMARY JUDGEMENT

STATE OF SOUTH CAROLINA

COUNTY OF _____

I, Mark Ostendorff, have personally prepared this affidavit and swear as to its accuracy and truthfulness to the best of my personal knowledge. I am over eighteen years old and I am competent to testify to the matters stated therein.

This second affidavit is to attach supporting statements of my first affidavit and additional statements.

The supporting documents are for :

Number 14 – Kia Tarry's e-mail sent via their attorney – 6 pages

Number 12- credit score now at 474 – 1 page

- denial of college loan for daughter -1 page

Number 8 - alternative financing attempt

The additional items will continue from first affidavit which ended in 16.

113

17.

I asked Mike "Mikey" Watts (The Suntrust loan originator) for help around December 2006 in getting the construction draws . He told me there was no reason for any draw to be denied as there was plenty of money set aside for inspections . I told him I thought that his bank was having cash flow or cash reserve problems. He assured me that was not a problem. He called me back and was very defensive and said Steve Burmeister e-mailed him some inspector's photos and the house looked like a double-wide. He refused to continue our previous discussion of money to me.

18.

I called Mike Watts around February or March 2007 in an attempt to have him use his influence to at least modify the note to make it work for Suntrust and give me time to try to find outside funding before the note became due . Mike never called me back after this last conversation. He had always answered my calls or returned them. He usually called me every two to three weeks to ask the status of construction. He knew I would want to do future loans with him in which we discussed on numerous occasions. This about-face behavior occurred after our discussion of his help to get the loan modified.

19.

I called Steve Burmeister just after Suntrust served me with foreclosure lawsuit. He called me back and said it was out of his hands. He gave me Kia Tarry's telephone and told me not to let anyone know that he gave me her number.

2

114

20.

In that same conversation , I asked Steve why that he did not modify the note to fit their needs, he replied that they used to be able to modify the notes but they could not modify them anymore. In that same conversation, Steve said he got into trouble for paying the interest(to carry me through the maturity date) and told by his supervisor not to do it again.

21.

I called Kia Tarry and asked her to hold off the foreclosure as I had a loan pomised by Sterling Bank . I also asked her to provide me a good WOM. She refused to cooperate.

22.

! then wrote to Suntrust's attorney trying to resolve the foreclosure issue (see attached proposal dated 1/24/08). I later received ,via Suntrust's attorney, Kia Tarry's e-mail to only a short sale was acceptable (earlier attached).

3

115

23.

This affidavit is for my opposition to Summary Judgement by Suntrust.

AFFIANT:

Mark Ostendorff

Sworn to and subscribed before me

This ____ day of _____, 2009

NOTARY PUBLIC

(NOTARY SEAL)

My Commission Expires : _____

4 (116)



FAX

To: FW: Ostendorff 0680085932-26- **Pages:** 6

Fax Delivery from 803

From: Shervon J. Hogsett

Date: 2/5/2008

• **Comments:**

NUMBER 14
1 OF 6

THE INFORMATION CONTAINED IN THIS COMMUNICATION IS CONFIDENTIAL, MAY BE ATTORNEY-CLIENT PRIVILEGED, MAY CONSTITUTE INSIDE INFORMATION, AND IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE. UNAUTHORIZED USE, DISCLOSURE OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED AND MAY BE UNLAWFUL. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ADDRESS ABOVE VIA THE UNITED STATES POSTAL SERVICE. THANK YOU.

117

Shervon J. Hogsett
SC Foreclosure Team Lead
(404) 417-3557 - Direct Dial
(866) 279-6839 - Fax

From: Tarry.Kia [mailto:Kia.Tarry@SunTrust.com]
Sent: Thursday, January 31, 2008 12:36 PM
To: Shervon J. Hogsett
Subject: FW: Ostendorff 0680085932-26-Fax Delivery from 803 802 2485

Hello Shervon,
Please have the customer complete the loss mitigation documents, and return to me. The only option we would have for him is to, consider a short sale offer.
Thanks,

Kia Tarry
Construction Perm Default
SunTrust Mortgage, Inc.
1001 Semmes Avenue
4th Floor-RVW 3024
Richmond, VA 23224
804-319-1319 Office
877-657-8433 Toll Free
804-675-7483 Fax

LEGAL DISCLAIMER

The information transmitted is intended solely for the individual or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of or taking action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you have received this email in error please contact the sender and delete the material from any computer.

SunTrust and Seeing beyond money are federally registered service marks of SunTrust Banks, Inc.
[ST:XCL]

Number 14
2 of 6

118



Construction Perm Default

SunTrust Mortgage, Inc.
1001 Semmes Avenue
4th Floor
Richmond, Virginia 23224
Tel 877.657.8433
Fax 804.291.0137

Date 1/31/08

Mark Ostendorff
1207 Cabin Creek Court
Fort Mill, SC 29715

RE: Loan # 0680085932-26

Dear Mr. Ostendorff;

SunTrust Mortgage, Inc. realizes that you may be going through a difficult time, and we want to explore every means possible to aid you in paying your construction obligation. Some alternatives to foreclosure may include a short term repayment plan, short payoff, or a forbearance plan. In order to assist you, we must gather crucial information for our decision-making process. Please provide us with the following:

1. Permission to discuss your account with third parties, such as realtors, attorneys, contractors, or anyone with an interest in your property.
2. Permission to have independent price opinions of your home prepared by licensed realtors in your area.
3. Permission to have title checked, a credit report updated and an asset check done, if necessary.
4. Completed financial form (attached)
5. Copies of 2 most recent pay stubs.
6. Copies of 2 most recent bank statements.
7. Copies of last 2 years income tax returns with all schedules and W-2's
8. A statement describing your financial situation and the reason why you are requesting help.

By signing this release and returning it to me, you are acknowledging SunTrust Mortgage, Inc. is attempting to assist you. A decision will be made on whether to stop any foreclosure action pending while the alternative to foreclosure request is being considered. You are aware, if attempts are unsuccessful, foreclosure may be necessary.

Should you have questions or concerns regarding this matter, please feel free to contact the Construction Perm Default area at 1-877-657-8433.

Sincerely,
Construction Perm Default

Enclosure

NUMBER 14
3 OF 6

119

Do you expect future income? (ie. Insurance, disability claims, lawsuits, alimony, child support, rent, etc.)

Persons to receive added income	When ?	From what source ?	Lump sum	Monthly amount \$

Assets

How much money do you have in?

Savings Account	Cash or Money Orders	Checking Account	Savings Bonds	Life Insurance (Cash Value)

List any real estate you own besides your house

Description of Property	Purchase Price	Monthly Payments	Monthly Income

Describe any emergency repairs necessary on you house? (ie. Heat, plumbing, electrical, roof, etc.)

List the amount of each special deduction taken from your gross:

Federal Income Tax	State/Local Income Tax	FICA and Retirement	Health Insurance
Life Insurance	Union Dues	Savings (Bank, Credit union, etc.)	Other (specify)

List below how much you spend monthly for the following items:

Electricity, gas, oil	Water, Sewage	Home Maintenance	Telephone	Food (include Food Stamps)
Clothing	Other Household	Transportation Expenses	Auto Insurance	Medical/Dental
Life Insurance	Tuition & Books	Alimony & Child Support	Child Care	Other (specify)

List all your debts below. Include doctor bills, charge accounts, payments due on cars and appliances, second mortgages, and liens against your property.

To Whom Owed	Account Number	Date Opened	For What Purpose	Present Balance	Monthly Payment	Date of last Payment	Number of payments past due

Explain in your own words why you got behind in your mortgage payments. How do you plan to catch up on your payment?

NUMBER 14
4 of 6

(you may extend remarks on separate page)

Certification

I, (We), certify that the information I (we) have given is true and complete to the best of my (our) knowledge and belief

Signature	Date	Signature	Date

120

Financial Information

Loan number _____

Borrowers: List all persons whose names appear on your mortgage or note

Name	Mailing Address	Social Security Number	Telephone day/evening
1.		- -	
2.		- -	

Do you collect rent for any part of this house? ☐ Yes ☐ No
If yes, how much rent per month do you collect?

Property Address

Person(s) whose income(s) will be used to meet family obligations

Name				Income (note weekly, bi-weekly, or monthly)	
				Gross	Net
Present Employer(s)/Type of work	Address of Employer(s)	Telephone #	Date Employed		
1.					
2.					
Previous Employer	Address of Employer(s)	Telephone #	Date From/To		
Name				Income (note weekly, bi-weekly, or monthly)	
				Gross	Net
Present Employer(s)/Type of work	Address of Employer(s)	Telephone #	Date Employed		
1.					
2.					
Previous Employer	Address of Employer(s)	Telephone #	Date From/To		

List all other income which is available to meet mortgage payments and other expenses. Identify sources of income (ie. VA benefits, rent, social security, disability, alimony, welfare, child support, other benefits, etc.)

Person Receiving Income	Type of Income	Name and Address of Source of Income	Monthly Income

Name, relationship, and age of dependents living with you

Name and relationship of other persons you support (former spouse, children, ect.)

Is the property listed for sale? ☐ Yes ☐ No If no, are you interested in selling the property? ☐ Yes ☐ No

If yes, what is the list price? \$ _____ How long at this price? _____
Original list price and date _____ Price reductions and date _____
How long has the property been listed? _____
What is the Realtor's name and phone number? _____

Do you have a second mortgage? ☐ Yes ☐ No

Mortgage Holder _____
Address and Phone Number _____
Principal Balance of 2nd \$ _____ Payment Amount \$ _____ Due date of 2nd _____

Are there other liens or judgements against the property? ☐ Yes ☐ No

Mortgage Holder _____
If yes, who holds the lien? _____ What is the amount of the lien? \$ _____

Are you living in the property? ☐ Yes ☐ No

2/05/2008 Created on 1/24/2008 7:05:00 AM

121

NUMBER 14
50F6

LOSS MITIGATION RELEASE FORM

Loan # 0680085932-26

Name: Mark Ostendorff

I/We acknowledge that I/we have read the enclosed and request the assistance of SunTrust Mortgage, Inc. By signing below I/we give SunTrust Permission to discuss my/our account with third parties, have independent price opinions of my/our home prepared, check title, pull a credit report, and have an asset check done, if necessary.

Mortgagor	Date
Mortgagor	Date
Mortgagor	Date
Mortgagor	Date

Number 14
6 of 6

122

YAHOO! MAIL
Classic

Search

WEB SEARCH

FREE when you take our survey.

Mail

Contacts

Calendar

Notepad

What's New? Mobile Mail Options

Check Mail

Compose

Search Mail

Search the Web

See your credit
score - free

Previous | Next | Back to Messages

Mark as Unread | Print

Delete

Reply

Forward

Spam

Move...

Folders

[Add - Edit]

Inbox (202)

Drafts

Sent

Spam

[Empty]

Trash

[Empty]

Search Shortcuts

My Photos

My Attachments

ADVERTISEMENT

Get choice for TV, Internet and Phone
On the Verizon Blackboard

As low as

\$39.99
a month
for 1 yearSave \$120 with 1 year agreement
Hurry! Limited Time Only.

verizon

PLUS PRE-APPLICATION

Tuesday, June 17, 2008 1:53 PM

From: "SC Student Loan Corp" <PLUS_PRE@SCSTUDENTLOAN.ORG>

To: MARKOSTENDORFF@YAHOO.COM

RE: OSTENDORFF, MARK D.

I regret to inform you that we are unable to approve your request for Federal PLUS loan assistance. Eligibility for Federal PLUS loan assistance includes demonstration of credit worthiness, ability to take on additional debt, a satisfactory employment record, etc.

A review of your credit history indicates that you do not meet Federal eligibility requirements for a Federal PLUS loan. This information was obtained from TRANS UNION, 2 Baldwin Place PO Box 1000 Chester, PA 19022, Phone 800-888-4213.

<http://www.transunion.com/direct>

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicants income derived from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

The Federal Agency which administers compliance with this law concerning the South Carolina Student Loan Corporation is: The Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington DC 20580.

If you have any questions regarding this matter, please call me at (803) 798-0916 or toll free at (800) 347-2752.

Delete

Reply

Forward

Spam

Move...

Previous | Next | Back to Messages

Select Message Encoding

Full Headers

Check Mail

Compose

Search Mail

Search the Web

Copyright © 1994-2008 Yahoo! Inc. All rights reserved. Terms of Service - Copyright/VP Policy - Guidelines

NOTICE: We collect personal information on this site.

To learn more about how we use your information, see our Privacy Policy

123

NUMBER 12
10 F 1
7/18/08 (8)

myFICO®
division of Equifax

Search

Products

Credit Education

FICO® Forums

Support

Get a Loan

Get a Credit Card

Score Watch®

What it means to you

FICO® score history

Credit alerts

Settings

View details of other recent alerts:

July 16, 2008

7/16/2008

Alert: Applying for new credit has added an inquiry to your credit report**Score Watch alert/Changes to your FICO® Score**

Your FICO® score is 474 and has not changed since July 14, 2008.

Changes to your credit report**1 new inquiry was added to your credit report****CITIFINANCIAL**

Inquiry date: 7/15/2008

What is an inquiry?

Score Watch® sends you an alert of a new inquiry when there has been an application for a new credit account in your name.

How inquiries impact your score:

New inquiries on your credit report may lower your FICO® score by a modest amount. Multiple inquiries can lower your score a little more than a single inquiry. But note that multiple inquiries within a two-week period that are associated with home or auto loans are treated as a single inquiry.

Multiple inquiries may indicate that you are in desperate search of credit. Typically, the more badly you need credit, the greater the chances that you cannot pay debts. This is why inquiries can cause a modest drop in your FICO® score.

You only receive inquiry alerts as the result of applying for new credit accounts or opening a new account with a lender. These are the only types of inquiries that affects your FICO® score. Other kinds of inquiries, such as promotional inquiries made by credit card companies to pre-approve you for an offer, have no effect. Similarly, inquiries resulting from you accessing your own credit report, have no effect.

Equifax Credit Report™ is a trademark of Equifax, Inc. and its affiliated companies

NUMBER 12
1 OF 1

7/16/08

16

124

Contacts Calendar Notepad

Mail For Mobile - Mail Plus - Options

Check Mail

Compose

Search Mail

Search the Web

See your credit
score - free

Folders

[Add - Edit]

Inbox (200)

Draft

Sent

Bulk

[Empty]

Trash

[Empty]

Search Shortcuts

My Photos

My Attachments

Free Phone
+ Bluetooth®Cheapest
hybrid car30 yr mortgage
rates still lowTop Schools for
Online Degrees

Previous | Next | Back to Messages

Delete

Reply

Forward

Spam

Move...

This message is not flagged. [Flag Message - Mark as Unread]

Printable View

Date: Tue, 03 Apr 2007 14:26:47 -0400

From: "Paul Link" <nplink@guardianfidelity.com>
Alert

Add to Address Book Add Mobile

Subject: loan app

To: markostendorff@yahoo.com

sorry for the delay on this Mark. Trying to catch up from Friday off.

At this time, we are unable to approve your request. I did not pull your credit.

Because of the loan program parameters, it is simply not our policy to do secondary
liens once a construction project has begun.Once the project is completed we would be able to offer you terms for your final loan
should you so desire.

thanks

Paul

— Original Message —

From: Paul Link
To: markostendorff@yahoo.com
Sent: Monday, April 02, 2007 1:53 PM
Subject: received the fax

I'll do my best to get caught up and run this through today and let you know.

thanks

N Paul Link
Manager, Mortgage Banking
www.guardianfidelity.com
1-888-638-1912 ext. 226
(fax) 803-329-2187

Delete

Reply

Forward

Spam

Move...

Previous | Next | Back to Messages

Save Message Text | Full Headers

1/24/08

To : MORRIS, SCHNEIDER FREEMAN LLC
ATTORNEY FOR SUNTRUST BANK
ATTN:
FAX (770) 234-9192

From : MARK OSTERDORFF
1207 CABIN CREEK CT
FORT MILL, SC 29715
TEL (803) 367-7425
FAX (803) 802-2485

GENTLEMEN:

I AM WRITING (+ FAXING) YOU TO CONSIDER A
POSSIBLE ALTERNATIVE TO THE CURRENT FORECLOSURE.

I AM LOOKING FOR AN INCENTIVE TO COMPLETE
THE HOUSE. I AM READY, WILLING, AND ABLE
TO DO SO,

I PROPOSE :

A) SUNTRUST CONSIDER ITS ABSOLUTE ROCK
BOTTOM AMOUNT IT WOULD TAKE IF THE HOUSE
IS TO BE SOLD,
AND/OR

B) A REDUCED MONTHLY PAYMENT UNTIL THE
HOUSE IS SOLD, SUCH AS SUNTRUST'S COST
OF MONEY (AVERAGE DEPOSIT RATE *etc*)

NUMBER 22

1 of 3

1/3 (126)

MY FILING FOR BANKRUPTCY (CHP 7 or CHP 13) IS INEVITABLE, DUE TO SUNTRUST AND OTHER CREDITORS RELATED TO THE HOUSE REHAB WORK.

UNDER CHAPTER 7, THE TRUSTEE WILL HAVE ABOUT 6 mos TO SELL. UNDER CHAPTER 13, I COULD PAY ON THIS LOAN UNTIL I SELL IT FOR WHAT THE MARKET WOULD BRING.

UNDER PROPOSAL A) CHAPTER 7 MAY BE QUICKER BUT LESS MONEY FOR SUNTRUST. UNDER PROPOSAL B) CHAPTER 13 MAY OR MAY NOT BE LONGER, BUT SUNTRUST MAY BREAK EVEN UNTIL THE HOUSE IS SOLD. I WOULD SELL THE HOUSE AS SOON AS POSSIBLE.

THE CONDITION OF THE HOUSE IS AS FOLLOWS:

1ST FLOOR - DAYWALL IS UNFINISHED
NO CARPET
NO PAINT
NO TRIM

2ND FLOOR - DAYWALL STARTED - BUT FAR FROM COMPLETE
ELECTRICAL -
PLUMBING -
INSULATION -



AS IT STANDS NOW, THE HOUSE PROBABLY WOULD NOT SELL FOR ANYMORE THAN \$300,000²⁰⁰. THIS MEANS SUNTRUST WOULD LOOSE QUITE A LOT OF MONEY, NOT TO MENTION COST TO FORECLOSE AND COST AND TIME TO SELL IT.

THE HOUSE WOULD HAVE TO BE SOLD TO A PERSON THAT HAS CASH, SINCE NO BANK

2/3 (127) NUMBER 22
2013

WILL LOAN ANY MONEY ON A HOUSE THAT IS UNDER CONSTRUCTION. THIS MEANS THE NUMBER OF POTENTIAL BUYERS WOULD BE VERY FEW EVEN IN THE CHARLOTTE MARKET. ALSO, THOSE WHO HAVE CASH ARE VERY MUCH AWARE OF THE SCARCITY OF BUYERS FOR A HOUSE UNDER CONSTRUCTION.

LAST SPRING, THE "SUBJECT TO" APPRAISAL WAS \$ 688,000⁰⁰, BUT REMEMBER I MUST COMPLETE THE HOUSE. AS IT STANDS NOW, I DO NOT NEED ANY CASH FROM SUNTRUST TO COMPLETE THE HOUSE, JUST TIME AND AN INCENTIVE (A AND/OR B).

PLEASE FORWARD THIS PROPOSAL TO A KNOWLEDGEABLE PERSON AT SUNTRUST, AS I CANNOT FIND ANYONE AT SUNTRUST WHO HAS SHOWN ANY INTEREST IN MINIMIZING ANY LOSSES FOR THEIR EMPLOYER.

SINCERELY


MARK OSTENDORP

NUMBER 22
3 of 3

3/3

128

Return To:

THE LAW OFFICES OF LISA F JARVIS
7825 BALLANTYNE COMMONS PKWY
CHARLOTTE, NC 28277

Prepared By:

JOSEPH BRIDGES
SUNTRUST MORTGAGE, INC.
770 Pelham Rd. Suite 101
Greenville, SC 29615
AP# OSTEN0036371904
LN# 0036371904

[Space Above This Line For Recording Data]

MORTGAGE

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated together with all Riders to this document.

March 29, 2006

(B) "Borrower" is Mark Ostendorff, an Individual

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is SUNTRUST MORTGAGE, INC.

Lender is a Virginia Corporation
organized and existing under the laws of the State of Virginia

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3041 1/01

VMP -6(SC) (0409)

Page 1 of 15

MW 04/99.01

Initials: *mdo*

129

VMP Mortgage Solutions, Inc. (800)521-7291



Lender's address is 901 Semmes Avenue, Richmond, VA 23224

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated March 29, 2006

The Note states that Borrower owes Lender Four Hundred Thousand and no/100

Dollars

(U.S. \$ 400,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than April 1, 2036

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

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

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

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

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

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

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

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

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

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

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

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

AP# OSTEN0036371904
LN# 0036371904

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

County
[Type of Recording Jurisdiction]

of

York
[Name of Recording Jurisdiction]

Parcel ID Number:

1207 Cabin Creek Ct
Ft Mill

which currently has the address of

[Street]

[City] , South Carolina 29715 [Zip Code]

("Property Address"):

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

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

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

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

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this

Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

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

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts

due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Initials: MD

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

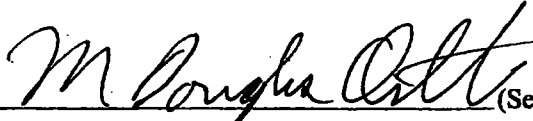
25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal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

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

AP# OSTEN0036371904
LN# 0036371904

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

Signed, sealed and delivered in the presence of:

_____	 (Seal) Mark Ostendorff -Borrower
_____	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower
_____ (Seal) -Borrower	_____ (Seal) -Borrower

AP# OSTEN0036371904
LN# 0036371904

STATE OF SOUTH CAROLINA,

County ss:

I,

do hereby certify that

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this day of

Notary Public for South Carolina

My Commission Expires:



Automatic Mortgage Payment Plan Agreement

This form hereby authorizes, until further written notice, SunTrust Mortgage, Inc., its successors and/or assigns, to debit the account listed below and the financial institution named below for the monthly payment owed for mortgage payments. It herewith authorizes the financial institution named below to accept any debit entries initiated by SunTrust Mortgage, Inc. and to apply those entries to my/our account.

NOTICE: UNTIL YOU HAVE RECEIVED WRITTEN CONFIRMATION THAT YOUR AUTO-DRAFT HAS BEEN SET UP, YOU MUST CONTINUE TO SEND YOUR PAYMENTS BY MAIL AS DUE.

Name(s) Mark Ostendorff

STM Loan # 0036371904

Deduct the payment 0 1 2 3 4 days after the due date. (Please circle one.)
(If any of these days fall on a weekend or holiday, the account will be debited on the following business day.)

Optional: Deduct \$ _____ as extra principal each month.

ATTACH HERE

Attach a voided check or a voided deposit slip if the withdrawal will be from your savings account.

****Your request cannot be processed without the necessary attachment.**

It is understood that this agreement may be canceled at any time by notifying SunTrust Mortgage, Inc. in writing 15 days in advance. Any such cancellation shall be effective only with respect to debit entries initiated by SunTrust Mortgage, Inc. 15 days after receipt of such notification. It is realized that there are additional options for stopping the automatic mortgage deduction. It is also understood that if the choice is made to stop the automatic deductions then I/we, am/are responsible for paying the mortgage payment by check directly to SunTrust Mortgage, Inc. on or before the due date of the mortgage payment. **PAYMENT SHOULD CONTINUE TO BE SENT BY MAIL UNTIL A CONFIRMATION HAS BEEN RECEIVED STATING THAT AUTOMATIC DRAFTING IS IN EFFECT.**

Signature(s) _____

Date _____

Date _____

Mail OR Fax form to: SunTrust Mortgage, Inc.
Attn: SurePay
P.O. Box 26149
Richmond, VA 23260-6149
FAX #: 804 - 675 - 9769

144

IF ADEQUATE FUNDS ARE NOT AVAILABLE ON 3 OCCASIONS, YOU WILL BE DISCONTINUED FROM THE AUTOMATIC PAYMENT PROGRAM.

RETAIN ONE COPY OF THIS FORM FOR YOUR RECORDS

CUSTOMER SERVICE TOLL FREE NUMBER (1-800-634-7928)

Quick Answers to FAQs About Mortgages

CUSTOMER QUESTIONS	SOLUTION
How do I obtain information regarding my mortgage loan?	Call the Toll Free number 1-800-634-7928, Monday through Friday, 8AM to 6PM EST or visit us at www.suntrustmortgage.com .
Where do I mail my monthly payment?	Please include your SunTrust Mortgage loan number on your check and mail to : SunTrust Mortgage, Inc. P. O. Box 79041 Baltimore, MD 21279-0041
Can I make my payments at a SunTrust Bank branch?	Yes, you can make your payments at any SunTrust branch. However, it will be posted to your mortgage account the next day.
What is the address for correspondence?	Please include your SunTrust Mortgage loan number on all correspondence and mail to: SunTrust Mortgage, Inc. P. O. Box 26149 Richmond, VA 23260-6149 Mail Code RWV 3003
I need a monthly billing statement.	Call the Customer Service Toll Free number 1-800-634-7928, Monday through Friday, 8AM to 6PM EST or visit us at www.suntrustmortgage.com and sign up for e-Bill.
Can I set up an automatic payment each month for my mortgage payment?	Yes, you can have your payment deducted from your checking or savings account on the 1 st through the 5 th of each month with our SurePay Plan or our pay online, e-Pay Plan. Visit our website at www.suntrustmortgage.com and sign up.
Can I access my mortgage account online?	Yes, go to www.suntrust.com and click on Mortgages and Home Equity and select Mortgage Account Access or go to www.suntrustmortgage.com and click LOGON TO MY ACCOUNT. Once you have registered as a new user, you will have access to your mortgage balance, tax and insurance information, payment and escrow information.
My mailing address has changed.	Call the Customer Service Toll Free number 1-800-634-7928, Monday through Friday, 8AM to 6PM EST go to www.suntrustmortgage.com and click LOGON TO MY ACCOUNT to access and update your records.
I have a question about my escrow payment.	Call the Customer Service Toll Free number 1-800-634-7928, Monday through Friday, 8AM to 6PM EST or log on to www.suntrustmortgage.com to view your escrow account.
Why did I receive a past due notice?	Call 1-800-443-1032, Monday through Friday, 8AM to 6PM EST.

MDO

145

LN# 0036371904

AP# OSTEN0036371904

CONSTRUCTION LOAN AGREEMENT



THIS AGREEMENT is made this 29th day of March 2006, by and between Mark Ostendorff ("Borrower") and SUNTRUST MORTGAGE, INC. ("Lender").

WITNESSETH

WHEREAS, the Lender may have issued a loan commitment letter to the Borrower, ("Commitment"); and

WHEREAS, the Borrower has executed and delivered to the Lender a promissory note.

X of the same date ("Note")
dated (the "Original Note"), and Renewal Note dated as
of the date hereof ("Note")

and mortgage, deed to secure debt, or deed of trust

X of the same date ("Security Instrument"); and
dated, as modified by a Mortgage Modification
Agreement dated as of the date hereof (as modified, the "Security Instrument"); and

WHEREAS, the proceeds of the Note will be used to construct improvements ("Improvements") on the property described in the Security Instrument ("Property"); and

WHEREAS, Borrower may or has entered into a contract with a general contractor ("Contractor") to construct the improvements; and

WHEREAS, the construction of the Improvements will be subject to the Mechanics' and Materialmen's Lien Laws or the Construction Lien Laws of the state in which the Property is located; and

WHEREAS, the Borrower has requested Lender to disburse the proceeds of the Note in installments as the Improvements are constructed and Bank has agreed to do so based upon certain terms and conditions.

NOW THEREFORE, in consideration of the execution and delivery of the Note and Security Instrument by the Borrower, and the covenants, representations, and warranties contained herein, the parties agree as follows:

1. Required Documents and Reports - Borrower shall provide all of the documents, instruments, reports, surveys, permits, insurance policies, bonds, or other representations at the time or times and in the appropriate form, content, and amount as requested by Lender.

2. Loan Documents - Borrower agrees to execute instruments or documents as required by Lender to comply with and accomplish all of Borrower's representations, proposals, and commitments contained in this Agreement and the other loan documents.

3. Contractor and Contracts - If Borrower is not the Contractor, Lender reserves the right to approve of the Contractor chosen by the Borrower. Borrower will furnish to Lender a copy of the written contract between Borrower and Contractor and obtain Lender's consent to any modifications to the contract. If there are any conflicts between the contract and this Agreement, the terms of the Agreement shall control. Borrower assigns to Lender all its rights in any contracts which have been entered into regarding the design or construction of the Improvements.

4. Costs of Construction - Lender may request a breakdown of the construction costs at any time prior to or during the construction period. If it appears that the construction costs will exceed the net amount available under the Note, Lender may require the Borrower to deposit with Bank sufficient funds to cover the deficiency. In the event Lender expends any funds in excess of the funds held and/or the net loan proceeds, they shall be considered as future advances and shall be secured by the lien of the Security Instrument.

5. Commencing Construction - Borrower warrants that no materials have or shall be placed on the Property, construction of the Improvements has not and shall not commence, there shall be no visible commencement of operations, and/or no payment shall be made by Borrower to the Contractor or any other person for labor, services, or materials for the Improvements until after execution of this Agreement, the filing of the Security Instrument, and the filing and posting of the Notice of Commencement. A breach of this covenant shall entitle Lender, at its option, to exercise the remedies provided herein or to cancel Borrower's construction loan.

6. Mechanics' and Materialmen's or Construction Lien Law Documents - Lender's name and address will be listed on the Notice of Commencement or Notice of Completion as a person to receive all notices from lienors. Borrower shall post the Notice of Commencement or Notice of Completion as required by law and shall deliver to Lender copies of all notices from lienors received by Borrower within 24 hours of receipt.

30
31
32
33
34

146

dated
of the date hereof ("Note")

(the "Original Note"), and Renewal Note dated as

and mortgage, deed to secure debt, or deed of trust

X of the same date ("Security Instrument"); and

dated as modified by a Mortgage Modification
Agreement dated as of the date hereof (as modified, the "Security Instrument"); and

WHEREAS, the proceeds of the Note will be used to construct improvements ("Improvements") on the property described in the Security Instrument ("Property"); and

WHEREAS, Borrower may or has entered into a contract with a general contractor ("Contractor") to construct the improvements; and

WHEREAS, the construction of the Improvements will be subject to the Mechanics' and Materialmen's Lien Laws or the Construction Lien Laws of the state in which the Property is located; and

WHEREAS, the Borrower has requested Lender to disburse the proceeds of the Note in installments as the Improvements are constructed and Bank has agreed to do so based upon certain terms and conditions.

NOW THEREFORE, in consideration of the execution and delivery of the Note and Security Instrument by the Borrower, and the covenants, representations, and warranties contained herein, the parties agree as follows:

1. Required Documents and Reports - Borrower shall provide all of the documents, instruments, reports, surveys, permits, insurance policies, bonds, or other representations at the time or times and in the appropriate form, content, and amount as requested by Lender.

2. Loan Documents - Borrower agrees to execute instruments or documents as required by Lender to comply with and accomplish all of Borrower's representations, proposals, and commitments contained in this Agreement and the other loan documents.

3. Contractor and Contracts - If Borrower is not the Contractor, Lender reserves the right to approve of the Contractor chosen by the Borrower. Borrower will furnish to Lender a copy of the written contract between Borrower and Contractor and obtain Lender's consent to any modifications to the contract. If there are any conflicts between the contract and this Agreement, the terms of the Agreement shall control. Borrower assigns to Lender all its rights in any contracts which have been entered into regarding the design or construction of the Improvements.

4. Costs of Construction - Lender may request a breakdown of the construction costs at any time prior to or during the construction period. If it appears that the construction costs will exceed the net amount available under the Note, Lender may require the Borrower to deposit with Bank sufficient funds to cover the deficiency. In the event Lender expends any funds in excess of the funds held and/or the net loan proceeds, they shall be considered as future advances and shall be secured by the lien of the Security Instrument.

5. Commencing Construction - Borrower warrants that no materials have or shall be placed on the Property, construction of the Improvements has not and shall not commence, there shall be no visible commencement of operations, and/or no payment shall be made by Borrower to the Contractor or any other person for labor, services, or materials for the Improvements until after execution of this Agreement, the filing of the Security Instrument, and the filing and posting of the Notice of Commencement. A breach of this covenant shall entitle Lender, at its option, to exercise the remedies provided herein or to cancel Borrower's construction loan.

6. Mechanics' and Materialmen's or Construction Lien Law Documents - Lender's name and address will be listed on the Notice of Commencement or Notice of Completion as a person to receive all notices from lienors. Borrower shall post the Notice of Commencement or Notice of Completion as required by law and shall deliver to Lender copies of all notices from lienors served on Borrower within 24 hours of receipt. If Contractor defaults or construction is abandoned or ceased for any reason, Borrower shall promptly record any documents required by the Mechanics' and Materialmen's or the Construction Lien Law and take all other steps required to eliminate any liens against the Property.

7. Construction Period - Borrower and Contractor agree that construction of the Improvements shall commence within _____ days after the recording of the Security Instrument and/or the Notice of Commencement or Notice of Completion and shall proceed continuously and diligently. Construction of the Improvements shall be completed by April 1, 2007 ("Construction Period").

8. Use of Funds - Borrower warrants that all monies disbursed under this Agreement and the Note shall be used solely on account of construction costs for the Improvements on the Property and expenses for the construction loan according to the plans and specs approved by the Lender, and no monies shall be diverted to any other purpose.

MD
147

9. Plans and Specifications - Borrower agrees to provide and pay for all materials, labor, and services and shall construct the Improvements in a first class and workmanlike manner, in full and strict compliance with the plans and specifications approved by Lender. Lender and its representatives are not responsible for the quantity or quality of workmanship and material incorporated in the construction. The Borrower agrees to not make any changes or modifications to the plans and specifications except with the written consent of the Lender.

10. Responsibility for Liens - Lender shall not be liable to the Contractor, materialmen, other contractors, subcontractors, laborers, professional service providers, or any other person, firm, or corporation for goods delivered or for services performed by them in, upon, or for the benefit of the Property, or employed in construction, or for any debts or claims accruing in favor of any such parties or against the Property. The Borrower assumes sole responsibility for compliance with applicable Mechanics' and Materialmen's or Construction Lien Laws, all laws governing the construction of improvements, the American with Disabilities Act, environmental laws, building codes, and any and all other laws, rules, or regulations affecting the Property or the Improvements. It is not the responsibility of the Lender and/or its inspector or consultant to determine the applicable building requirements and the Lender's review does not imply same. If permanent financing is obtained through the FHA or VA lending programs, the Borrower shall comply with all FHA and VA regulations. Any claim or liability arising in any way from a failure to comply with said laws, rules, or regulations, including without limitation, Borrower's failure to make proper payments or obtain proper lien releases, satisfactions, or waivers, shall be Borrower's sole liability and responsibility. Lender assumes absolutely no liability or responsibility for (a) complying with applicable Mechanics' and Materialmen's or Construction Lien Laws, except as such laws specifically apply to Lenders, (b) making proper payments thereunder, or (c) obtaining lien releases, waivers or satisfactions. To the extent Lender does obtain any lien releases, waivers or satisfactions, they are obtained solely to protect Lender's security interest in the Property and Lender shall have no duty to obtain same for the benefit of Borrower or to continue to obtain future lien releases, waivers or satisfactions.

11. Liens - Borrower shall take the necessary actions, satisfactory to the Lender, to have the Property released from any liens or encumbrances filed against the Property within 10 days of the recording of the lien or encumbrance.

12. Inspections - All inspections made by any person or firm are for the sole benefit of the Lender, and not the Borrower, the Contractor, any lienor, or any other person or firm. By conducting inspections, Lender is not assuming any liability or responsibility for the accuracy of the inspection or the quantity, quality, or acceptability of the Improvements. The inspector's or consultant's representations shall not be binding upon the Lender.

13. Disbursements - Borrower's equity deposit, if any is required, must be paid at the loan closing, will be retained by the Lender in an appropriate account, and will be disbursed as the initial funds. The equity deposit and loan proceeds will be disbursed according to the draw schedule attached, upon Borrower's request and upon Bank's approval. Lender will only fund draws for completed work; no deposits or funds for stored materials will be paid. All disbursements or draw requests are subject to the Lender's receipt of the appropriate documentation and are made at the Lender's discretion. Specifically, without limitation, Lender may withhold disbursements or draws (a) prior to the recording of the Security Instrument and/or Notice of Commencement or Notice of Completion and proof that no visible commencement of operations or construction has taken place and that no claims of lien were recorded prior to the Security Instrument, (b) in the event the Borrower has breached any agreement, covenant, warranty, or condition contained herein, in the Note, Security Instrument, or other loan documents, (c) if Borrower fails to comply with, perform, and abide by any requirement or regulation of the agency or Lender which issued the loan commitment, or which is to guarantee the payment of the permanent Security Instrument loan within the required time limits.

Notwithstanding the foregoing and not in Tennessee, Lender may in its discretion, withhold the greater of (a) the last payment provided for in the contract between the Borrower and the Contractor, (b) 10 percent of the total contract price, as defined in the Construction Lien Law, or (c) additional funds as provided for in this Agreement. Lender is not required to withhold funds pursuant to this or any other paragraph for Borrower's benefit and Bank shall incur no liability for deciding not to withhold funds.

Lender may commingle the proceeds of this loan with any other loans made to Borrower by Lender and shall have the right to withhold any sums due Borrower hereunder in the event of any default in any such other loans. The withheld sums may be credited by Lender to such other loans.

14. Fees and Interest - Borrower shall pay all the fees, costs, and expenses associated with the loan, including, but not limited to, fees provided for in the Commitment, Lender's closing agent's fees, recording costs, Security Instrument title insurance premiums, endorsement premiums, surveys, engineering expenses, inspection fees, documentation preparation fees, appraisals, underwriting fees, review fees, tax service fees, insurance fees and costs, consultants' expenses, disbursement fees, and all other taxes or costs imposed by governmental authorities on this transaction, the Property, the documents, or the construction of the Improvements.

Borrower shall pay all costs and reasonable attorney's fees, including costs, expenses, fees incurred in collection, through cancellation of the loan, on appeals, or incurred in Bankruptcy or insolvency proceedings, incurred by Lender in any legal proceedings or by the use of an attorney at law.

Notwithstanding the terms of the Note, the Note shall be payable on demand during the Construction Period and interest will be charged and billed monthly until the final disbursement is made by the Lender to Borrower and Borrower pays Contractor and satisfies all liens and claims against the Property. Borrower shall pay interest charges promptly upon receipt of a monthly statement.

15. Hazardous/Toxic Waste - To the best of Borrower's knowledge the Property and Improvements have not and will not be used for the handling, storage, transportation or disposal of hazardous or toxic materials.

16. Default - The following acts by Borrower shall be events of default under the terms of this Agreement which shall allow Lender to, at its option, exercise its remedies as specified below (a) failure to execute or provide any required documents, reports, or certificates in form, content and an amount acceptable to Lender, (b) failure to complete the construction of the Improvements in compliance with the plans and specifications approved by the Bank and in accordance with existing codes and regulations, (c) failure to complete the construction of the Improvements by the stated completion date. (d) the cessation of

CONTRACTOR. TO THE EXTENT LENDER DOES OBTAIN ANY LIEN RELEASES, WAIVERS OR SATISFACTIONS, THEY ARE OBTAINED SOLELY TO PROTECT Lender's security interest in the Property and Lender shall have no duty to obtain same for the benefit of Borrower or to continue to obtain future lien releases, waivers or satisfactions.

11. Liens - Borrower shall take the necessary actions, satisfactory to the Lender, to have the Property released from any liens or encumbrances filed against the Property within 10 days of the recording of the lien or encumbrance.

12. Inspections - All inspections made by any person or firm are for the sole benefit of the Lender, and not the Borrower, the Contractor, any lienor, or any other person or firm. By conducting inspections, Lender is not assuming any liability or responsibility for the accuracy of the inspection or the quantity, quality, or acceptability of the Improvements. The inspector's or consultant's representations shall not be binding upon the Lender.

13. Disbursements - Borrower's equity deposit, if any is required, must be paid at the loan closing, will be retained by the Lender in an appropriate account, and will be disbursed as the initial funds. The equity deposit and loan proceeds will be disbursed according to the draw schedule attached, upon Borrower's request and upon Bank's approval. Lender will only fund draws for completed work; no deposits or funds for stored materials will be paid. All disbursements or draw requests are subject to the Lender's receipt of the appropriate documentation and are made at the Lender's discretion. Specifically, without limitation, Lender may withhold disbursements or draws (a) prior to the recording of the Security Instrument and/or Notice of Commencement or Notice of Completion and proof that no visible commencement of operations or construction has taken place and that no claims of lien were recorded prior to the Security Instrument, (b) in the event the Borrower has breached any agreement, covenant, warranty, or condition contained herein, in the Note, Security Instrument, or other loan documents, (c) if Borrower fails to comply with, perform, and abide by any requirement or regulation of the agency or Lender which issued the loan commitment, or which is to guarantee the payment of the permanent Security Instrument loan within the required time limits.

Notwithstanding the foregoing and not in Tennessee, Lender may in its discretion, withhold the greater of (a) the last payment provided for in the contract between the Borrower and the Contractor, (b) 5 percent of the total contract price, as defined in the Construction Lien Law, or (c) additional funds as provided for in this Agreement. Lender is not required to withhold funds pursuant to this or any other paragraph for Borrower's benefit and Bank shall incur no liability for deciding not to withhold funds.

Lender may commingle the proceeds of this loan with any other loans made to Borrower by Lender and shall have the right to withhold any sums due Borrower hereunder in the event of any default in any such other loans. The withheld sums may be credited by Lender to such other loans.

14. Fees and Interest - Borrower shall pay all the fees, costs, and expenses associated with the loan, including, but not limited to, fees provided for in the Commitment, Lender's closing agent's fees, recording costs, Security Instrument title insurance premiums, endorsement premiums, surveys, engineering expenses, inspection fees, documentation preparation fees, appraisals, underwriting fees, review fees, tax service fees, insurance fees and costs, consultants' expenses, disbursement fees, and all other taxes or costs imposed by governmental authorities on this transaction, the Property, the documents, or the construction of the Improvements.

Borrower shall pay all costs and reasonable attorney's fees, including costs, expenses, fees incurred in collection, through cancellation of the loan, on appeals, or incurred in Bankruptcy or insolvency proceedings, incurred by Lender in any legal proceedings or by the use of an attorney at law.

Notwithstanding the terms of the Note, the Note shall be payable on demand during the Construction Period and interest will be charged and billed monthly until the final disbursement is made by the Lender to Borrower and Borrower pays Contractor and satisfies all liens and claims against the Property. Borrower shall pay interest charges promptly upon receipt of a monthly statement.

15. Hazardous/Toxic Waste - To the best of Borrower's knowledge the Property and Improvements have not and will not be used for the handling, storage, transportation or disposal of hazardous or toxic materials.

16. Default - The following acts by Borrower shall be events of default under the terms of this Agreement which shall allow Lender to, at its option, exercise its remedies as specified below (a) failure to execute or provide any required documents, reports, or certificates in form, content and an amount acceptable to Lender, (b) failure to complete the construction of the Improvements in compliance with the plans and specifications approved by the Bank and in accordance with existing codes and regulations, (c) failure to complete the construction of the Improvements by the stated completion date, (d) the ceasing of construction for a period of N/A days, (e) failure to pay the Contractor and all providers of services, materials, or labor, (f) failure to satisfy all liens, claims or encumbrances against the Property as provided herein, (g) failure to pay any fees, costs, expenses, interest payments, (h) any adverse change in Borrower's or Guarantor's, if any, financial circumstances or the impairment of the collateral for the loan, (i) the assignment of this Agreement without the prior written consent of the Lender, (j) failure to comply with all the provisions of the Agreement, or (k) failure to comply with any agreement, warranty, or condition contained in this Agreement, (l) failure to comply with the agreements, warranties, or conditions set forth in other agreements or instruments entered into by the Borrower and the Lender, (m) failure of the Borrower or any guarantor to pay when due any amount due another creditor under a written agreement calling for the payment of money. This Agreement shall automatically be in default if Borrower or any Guarantor seeks relief under any Bankruptcy or insolvency proceeding or makes any general assignment for the benefit of creditors. Any default under the terms of the Note and/or Security Instrument shall constitute a default under this Agreement and a default under this Agreement shall be a default under the Note and/or Security Instrument.

45
46

51

60

MD 149

17. **Remedies** - In the event Lender declares the Borrower to be in default, or an automatic default has occurred, the Lender may (a) cancel the loan, for violations of covenants, prior to the initial disbursement, (b) cease disbursement, (c) use any remaining loan proceeds to satisfy any liens or encumbrances on the Property, (d) credit to the Note all funds of the Borrower then in Bank's control, (e) demand the balance due, thereby declaring the Note to be due and payable, (f) direct the construction effort to complete the Improvements and enter into contracts and/or disburse the remaining loan proceeds as needed, (g) demand any funds expended by the Lender to finish completion of the Improvements which exceed the amount of the funds held by Lender and the balance of the loan proceeds, (h) sue upon the Note and/or foreclosure the Security Instrument, (i) deposit or implead any funds held by Lender with the appropriate Clerk of the Circuit Court. Any such deposit shall be charged against Borrower's account and Lender shall have no further liability to Borrower, Contractor, or any other party, and (j) any and all other rights and remedies Lender may have under the law.

Bank may exercise any single remedy or any combination of remedies, without waiving its right to invoke additional remedies in the future. No delay by Lender in exercising any right or remedy shall operate as a waiver of or consent to subsequent defaults.

18. **Dispute Resolution** - Should any dispute arise between the Borrower and the Contractor, any subcontractor, materialman, laborer, supplier, or professional service provider, with respect to the plans and specifications, or the construction or design of the Improvements, and if following the good faith negotiation of the dispute, it cannot be resolved, it may be submitted to mediation. If the dispute is not resolved by mediation, it may be submitted to an appropriate decision maker; an architect, arbitrator, or FHA/VA representative, as chosen by the Lender. All mediation and arbitration shall be governed by the American Arbitration Association rules, or the services provided by the local bar association in the county in which the Property is located.

19. **Indemnification** - Borrower understands that Lender is unwilling to fund Borrower's construction loan and assumes responsibility for performing this Agreement unless Borrower releases Lender, its officers, directors, and agents and holds them harmless from any liability, claim, damages, loss, penalty, charge, expense or fee, including attorneys' fees as provided herein, arising from, (a) Borrower's selection of the Contractor, any subcontractor, materialman, architect, or laborer, (b) the quality or acceptability to Borrower of the Improvements, (c) Lender's failure to obtain releases, waivers, or satisfactions of liens, (d) the accuracy or authenticity of any releases, waivers, or satisfactions, (e) any damage to the Property or liability imposed on Borrower, arising directly or indirectly from the construction of the Improvements, or (f) any damage to the Property or liability imposed on Borrower, arising directly or indirectly from environmental contamination or use of the Property as a result of past, present, or future placement on the Property or in the Improvements of hazardous or toxic materials and for the use of the Property or Improvements in a manner contrary to applicable laws and regulations. This paragraph shall survive the termination of the Note and Security Instrument.

20. **Miscellaneous** - The Borrower and the Lender shall not be considered joint venturers, partners or agents of the other with respect to the construction of the Improvements. This Agreement shall not be construed as a third party beneficiary contract and does not create any fiduciary relationship. This Agreement shall be governed by the law of the state in which the Property is located.

This Agreement shall be binding upon and shall inure to the benefit of the parties, their heirs, successors, personal representatives, and assigns, except that Borrower may neither assign its rights, nor be released from the obligations under this Agreement, without the written consent of the Bank. All references to Borrower or any other party as singular shall include all Borrowers or parties to the Agreement.

This Agreement represents the entire agreement of the parties and supersedes any other discussions or agreements. There are no additional terms, conditions, or contemporaneous agreements that are not reflected in this Agreement. This Agreement may not be modified, amended, supplemented, or rescinded except in a writing signed by the parties.

21. **Jury Trial Waiver** - ALL PARTIES TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVE THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER DOCUMENT OR INSTRUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER ENTERING THIS AGREEMENT. FURTHER, BORROWER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF THE LENDER, NOR THE LENDER'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. NO REPRESENTATIVE OR AGENT OF THE LENDER, NOR LENDER'S COUNSEL HAS THE AUTHORITY TO WAIVE, CONDITION, OR MODIFY THIS PROVISION.

IN WITNESS WHEREOF, the parties have set their hands and seals, the day first above written.

Signed and sealed in the presence of

Borrower

Mark Ostendorff

Lender

SUNTRUST MORTGAGE, INC.

By

Title

19. Indemnification - Borrower understands that Lender is unwilling to fund Borrower's construction loan and assumes responsibility for performing this Agreement unless Borrower releases Lender, its officers, directors, and agents and holds them harmless from any liability, claim, damages, loss, penalty, charge, expense or fee, including attorneys' fees as provided herein, arising from, (a) Borrower's selection of the Contractor, any subcontractor, materialman, architect, or laborer, (b) the quality or acceptability to Borrower of the Improvements, (c) Lender's failure to obtain releases, waivers, or satisfactions of liens, (d) the accuracy or authenticity of any releases, waivers, or satisfactions, (e) any damage to the Property or liability imposed on Borrower, arising directly or indirectly from the construction of the Improvements, or (f) any damage to the Property or liability imposed on Borrower, arising directly or indirectly from environmental contamination or use of the Property as a result of past, present, or future placement on the Property or in the Improvements of hazardous or toxic materials and for the use of the Property or Improvements in a manner contrary to applicable laws and regulations. This paragraph shall survive the termination of the Note and Security Instrument.

20. Miscellaneous - The Borrower and the Lender shall not be considered joint venturers, partners or agents of the other with respect to the construction of the Improvements. This Agreement shall not be construed as a third party beneficiary contract and does not create any fiduciary relationship. This Agreement shall be governed by the law of the state in which the Property is located.

This Agreement shall be binding upon and shall inure to the benefit of the parties, their heirs, successors, personal representatives, and assigns, except that Borrower may neither assign its rights, nor be released from the obligations under this Agreement, without the written consent of the Bank. All references to Borrower or any other party as singular shall include all Borrowers or parties to the Agreement.

This Agreement represents the entire agreement of the parties and supersedes any other discussions or agreements. There are no additional terms, conditions, or contingencies in this Agreement that are not reflected in this Agreement. This Agreement may not be modified, amended, supplemented, or rescinded except in a writing signed by the parties.

21. Jury Trial Waiver - ALL PARTIES TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVE THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER DOCUMENT OR INSTRUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER ENTERING THIS AGREEMENT. FURTHER, BORROWER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF THE LENDER, NOR THE LENDER'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT LENDER WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. NO REPRESENTATIVE OR AGENT OF THE LENDER, NOR LENDER'S COUNSEL HAS THE AUTHORITY TO WAIVE, CONDITION, OR MODIFY THIS PROVISION.

IN WITNESS WHEREOF, the parties have set their hands and seals, the day first above written.

Signed and sealed in the presence of

Borrower

x 

Mark Ostendorff

Lender

SUNTRUST MORTGAGE, INC.

By

Title

ASSENT OF CONTRACTOR

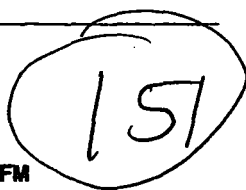
The undersigned certifies that he is the General Contractor for the Borrower and in consideration of Lender making the construction loan provided in the above Agreement, Contractor agrees to be bound by the terms, conditions, and warranties of said Agreement and to perform for Lender under the construction agreement between the Contractor and the Borrower, if such agreement is assumed by Lender. Contractor acknowledges that it is not a third party beneficiary under this Agreement.

Signed and sealed in the presence of

Contractor

By

Title



Continuation Sheet/Residential Loan Application

this continuation sheet if you
more space to complete the
lental Loan Application.
B for Borrower or C for
orrower.

Borrower:

Mark Ostendorff

Agency Case Number:

Co-Borrower:

Lender Case Number:

0036371904

SCHEDULE OF LIABILITIES AND PLEDGED ASSETS

CREDITORS' NAME, ADDRESS AND ACCOUNT NUMBER		ACCT. NUMBER, NAME IF NOT BORROWER'S	MO. PMT AND MOS. LEFT TO PAY	UNPAID BALANCE
INSTALLMENT DEBTS			\$ PMT/MOS.	\$
CO. FOUNDERS FEDERAL CREDI		ACCT. NO. 25002396220		
ADDR.		ACCT. NAME	349.00	
CITY			/48	9086.00
CO. FOUNDERS FEDERAL CREDI		ACCT. NO. 25002396217		
ADDR.		ACCT. NAME	40.00	*
CITY			/102 *	4075.00
CO. FOUNDERS FEDERAL CREDI		ACCT. NO. 25002396216		
ADDR.		ACCT. NAME	225.00	
CITY			/29	6431.00
CO. CITIFINANC		ACCT. NO. 6074006215343574		
ADDR.		ACCT. NAME	220.00	*
CITY			/60 *	11672.00
CO. UNIV FIN SER		ACCT. NO. 43780		
ADDR.		ACCT. NAME	153.00	
CITY			/15	2141.00
CO. ACS/NEXTSTUDENT		ACCT. NO. 2500239621		
ADDR.		ACCT. NAME	129.00	
CITY			/120	11040.00
CO. ROCK HILL		ACCT. NO. 40058		
ADDR.		ACCT. NAME	166.00	
CITY			/18	2658.00
REVOLVING DEBTS				
CO. AMEX		ACCT. NO. -075108866015307262		
ADDR.		ACCT. NAME	59.00	
CITY			/34	1998.00
CO. DIRECT MERCHANTS BANK		ACCT. NO. 5458004608049175		
ADDR.		ACCT. NAME	271.00	
CITY			/28	7484.00
CO. GEME/LOWES		ACCT. NO. 7981924340166933		
ADDR.		ACCT. NAME	15.00	
CITY			/25	372.00
CO. MENA AMERICA		ACCT. NO. 6905		
ADDR.		ACCT. NAME	606.00	*
CITY			/28 *	16971.00

152

CO. FOUNDERS FEDERAL CREDI	ACCT. NO. 25002396217		
ADDR.	ACCT. NAME	40.00	*
CITY		/102 *	4075.00
CO. FOUNDERS FEDERAL CREDI	ACCT. NO. 25002396216		
ADDR.	ACCT. NAME	225.00	
CITY		/29	6431.00
CO. CITIFINANC	ACCT. NO. 6074006215343574		
ADDR.	ACCT. NAME	220.00	*
CITY		/60 *	11672.00
CO. UNIV FIN SER	ACCT. NO. 43780		
ADDR.	ACCT. NAME	153.00	
CITY		/15	2141.00
CO. ACS/NEXTSTUDENT	ACCT. NO. 2500239621		
ADDR.	ACCT. NAME	129.00	
CITY		/120	11040.00
CO. ROCK HILL	ACCT. NO. 40058		
ADDR.	ACCT. NAME	166.00	
CITY		/18	2658.00

REVOLVING DEBTS

CO. AMEX	ACCT. NO. -075108866015307262		
ADDR.	ACCT. NAME	59.00	
CITY		/34	1998.00
CO. DIRECT MERCHANTS BANK	ACCT. NO. 5458004608049175		
ADDR.	ACCT. NAME	271.00	
CITY		/28	7484.00
CO. GEMB/LOWES	ACCT. NO. 7981924340166933		
ADDR.	ACCT. NAME	15.00	
CITY		/25	372.00
CO. MENA AMERICA	ACCT. NO. 6905		
ADDR.	ACCT. NAME	606.00	*
CITY		/28 *	16971.00
CO. CAPITAL 1 BK	ACCT. NO. 412174139990		
ADDR.	ACCT. NAME	10.00	
CITY		/4	39.00

153

I hereby understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature

Date

Co-Borrower's Signature

Date

X

Continuation Sheet/Residential Loan Application

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower.

Borrower:

Mark Ostendorff

Agency Case Number:

Co-Borrower:

Lender Case Number:

0036371904

SCHEDULE OF LIABILITIES AND PLEDGED ASSETS

CREDITORS' NAME, ADDRESS AND ACCOUNT NUMBER	ACCT. NUMBER, NAME IF NOT BORROWER'S	MO. PMT AND MOS. LEFT TO PAY	UNPAID BALANCE
REVOLVING DEBTS		\$ PMT/MOS.	\$
CO. CAPITAL 1 BK ADDR. CITY	ACCT. NO. 529107261161 ACCT. NAME	10.00 /4	36.00
CO. CAPITAL 1 BK ADDR. CITY	ACCT. NO. 412174131956 ACCT. NAME	10.00 /5	44.00
CO. DELL FINANCIAL SVCS/CI ADDR. CITY	ACCT. NO. 79450119034537120 ACCT. NAME	50.00 /34	1676.00
REAL ESTATE LOANS			
CO. Indy Mac ADDR. CITY	Acct. No.	1400.00 /350 *	* 275000.00
TOTAL MONTHLY PAYMENTS		3713.00	
		TOTAL	
		LIABILITIES	350723.00

154

CAPITAL 1 BK

ACCT. NO. 412174131956

ACCT. NAME

10.00

/5

44.00

R

TY

DELL FINANCIAL SVCS/CI

ACCT. NO. 79450119034537120

ACCT. NAME

50.00

/34

1676.00

DR

ITY

REAL ESTATE LOANS

Indy Mac

Acct. No.

1400.00

*

DR

/350 *

275000.00

TY

TOTAL MONTHLY PAYMENTS

3713.00

TOTAL

LIABILITIES 350723.00

155

I fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature

Date

Co-Borrower's Signature

Date

[Signature]

X

STATE OF SOUTH CAROLINA

COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s)

IN THE COURT OF COMMON PLEAS

CASE NO.: 07-CP-46-4305

MOTION
TO
COMPEL

COMES NOW Defendant, Ostendorff, hereby moves this court to compel Plaintiff, Suntrust, to produce discovery pursuant to Rule 37 (a)2 and 9 (d).

WHEREFORE, Ostendorff moves this court to compel Suntrust to:

(a) produce documents as requested under Defendants Request for Production of Documents dated 4/15/09.

(b) answer Defendants First Interrogatories to Plaintiff Suntrust

Plaintiff has stone walled and provided absolutely no discovery whatsoever.

The first two attorneys promised cooperation but did not. The third and present attorney has claimed attorney-client privilege and trade secrets.

There are no trade secrets for a document and a house that are in the public domain. (the note is at the courthouse, the house can be seen from the public roads) Information that is the public domain cannot, as a matter of law, constitute a trade secret. (Restatement (Second) of Torts 757 cmt. B (1939), applied in Smith v. Bic Corp., 809 F. 2d 194, 200 (3d Cir. 1989)).

156

The attorney- client privilege protects only the confidential communication
itself , not the disclosure of underlying facts by those who communicated with the
attorney. It is the process rather than the factual content that is protected.

December 9 ,2009



Mark Ostendorff

Defendant, Pro Se

PO Box 14846

GREENVILLE SC 29610

(864) 360-1834

157

2

STATE OF SOUTH CAROLINA
COUNTY OF YORK
COMMON PLEAS COURT

CASE NO. 07 -CP-46- 4305

Sum Inset Mortgage Inc.

VS

Mark Osterdorff

Plaintiff(s)

Defendant(s)

I find that this case should be referred to a master-in-equity or special referee because:

- ☐ All of the parties not in default consent to the reference.
- ☐ None of the parties have made a timely demand for a jury trial.
- ☐ This is an equitable matter.
- ☒ SEE ATTACHED ORDER

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

2008 APR -4 AM 9:37

FILED-RECEIVED

Accordingly, this matter is referred to the master-in-equity or _____
_____ as a special referee to:

- ☐ Hold a hearing(s) and file a report. Any review of this report shall be in the manner prescribed by Rule 53(e)(2), SCRCP.
- ☒ Hold a hearing(s) and enter final judgment in this matter. Any appeal from an order of judgment of the master-in-equity or special referee shall be directly to the Supreme Court. See S.C. Code Ann. S 14-11-85 (Supp. 1994).

IT IS SO ORDERED.

David Hamilton
CLERK OF COURT

Jay Anderson

(158)

The Supreme Court of South Carolina**FILED-RECEIVED****ORDER****2008 JAN 16 AM 8:46****DAVID HAMILTON
C.C.C.P. & G.S.**

Pursuant to the provisions of S.C. CONST. Art. V, §4,
YORK COUNTY, SC IS ORDERED that the Honorable S. Jackson Kimball, Master-in-Equity for York County, is assigned as a Circuit Judge for York County to assist with the docket and perform the following:

1. In civil jury matters from the date of filing, unless otherwise directed by the Chief Judge for Administrative Purposes for the Circuit, to hear and dispose of any or all motions and pretrial proceedings, including damages hearings, and to perform all administrative duties necessary to prepare these cases for trial or other disposition, including sounding the trial roster and docket, but excepting those matters and/or proceedings reserved to the Chief Judge for Administrative Purposes; and
2. In civil nonjury matters from the date of filing, unless otherwise directed by the Chief Judge for Administrative Purposes for the Circuit, to hear and dispose of any or all motions and pretrial proceedings, and to perform all administrative duties necessary to prepare these cases for trial or other disposition, including sounding the trial roster and docket, and to try these matters to conclusion, but excepting those matters and/or proceedings reserved to the Chief Judge for Administrative Purposes; and
3. Hear appeals from Magistrate, Municipal and Probate Courts, as well as cases involving judicial review and/or appeal of decisions of administrative agencies or commissions; and
4. Accept Grand Jury returns when needed; and
5. Hear and approve or disapprove settlements of minor's interest and all other people with an incapacity, and wrongful death and survivor actions settlements; and
6. Perform such other duties as to effectuate the intent of this Order.

The purpose of this assignment is to allow Judge Kimball to assist with the docket and perform these additional duties in accordance with his schedule and taking into consideration his judicial duties as Master-in-Equity. Regular Circuit Judges shall also continue to hear these matters.

IT IS FURTHER ORDERED that the clerk of the circuit court, at the expiration of 120 days from the date of filing, will refer all non-jury cases to Judge Kimball, as Master-in-Equity. At the time of the reference, the equity court clerk will bill the plaintiff's attorney the cost of the reference according to the schedule of costs in effect, and this bill must be paid prior to the matter being set for hearing. Judge Kimball may, in his discretion, remand any case referred to him back to the circuit court for disposition by a Circuit Judge.

This order is effective January 1, 2008 and shall remain in effect until January 1, 2009.

S/Jean Hofer Toal

Jean Hofer Toal
Chief Justice

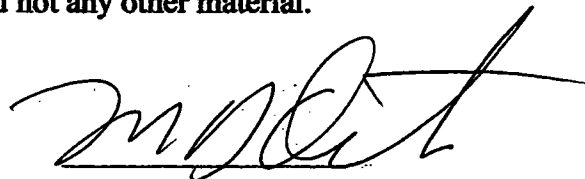
December 11, 2007
Columbia, South Carolina

159

Certificate of Counsel

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

June 9 2010



**Mark Ostendorff
Post Office 14846
Greenville, SC 29610
(864) 360-1834
Appellant, Pro Se**

160

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

S. Jackson Kimball, Special Circuit Judge

Case No. 2007-CP-46-04305

SunTrust Mortgage' Inc,.....Respondent,

v.

Mark Ostendorff,.....Appellant.

FINAL BRIEF OF APPELLANT

Mark Ostendorff
PO Box 14846
Greenville, SC 29610
(864) 360-1834
ProSe , Appellant

TABLE OF CONTENTS

Table of Authorities.....	iii
Statement of Issues on Appeal	1
Statement of the case	2
Facts (They will be set out in the discussion of each argument)	
Arguments	
1. BECAUSE APPELLANT (DEFENDANT) OSTENDORFF DID MAKE INTEREST PAYMENTS WITHIN THE REQUIREMENTS OF THE MORTGAGE AND NOTE (CONSTRUCTION LOAN AGREEMENT), THIS ISSUE IS ONE OF FACT AND NOT LAW.....	4
2. BECAUSE THERE WAS ENOUGH MONEY REMAINING IN THE LOAN BALANCE TO COMPLETE THE HOUSE, THIS ISSUE IS ONE OF FACT AND NOT LAW.....	12
3. BECAUSE SUNTRUST DID NOT SHOW THE ABSENCE OF A GENUINE ISSUE OF MATERIAL FACT, SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED.....	20
4. BECAUSE THE PLAINTIFF REFUSED TO PROVIDE DISCOVERY, SUMMARY JUDGMENT SHOULD NOT BEEN GRANTED.....	22
. BECAUSE THE CASE WAS IN COMMON PLEAS , MASTER-IN-EQUITY DID NOT HAE JURISDICTION TO DETERMINE INDEBTEDNESS.....	23

6. BECAUSE THE CASE WAS IN COMMON PLEAS , MASTER-IN-EQUITY DID NOT HAVE JURISDICTION FOR CASE TO PROCEED INTO FORECLOSURE.....	23
--	----

Conclusion	24
------------------	----

TABLE OF AUTHORITIES

<u>Anderson v. Liberty Lobby, Inc.</u> , 477 U.S. 242, 251, 106 S.Ct. 2505, 2511, 91 L.Ed. 2d 202 (1986).....	20, 20,
<u>Baird v. Charleston County</u> , 333 S.C. 519, 511 S.E. 2d 69 (1999).....	21
<u>Columbia East Associates v. Bi-Lo, Inc.</u> , 386 S.E. 2d 259, 299 S.C. 515.....	9, 16
<u>Ellie, Inc. v. Miccichi</u> 594 S.E. 2d 485, 358, S.C. 78.....	5, 9, 14, 16
<u>Friarsgate, Inc. v. First Federal Sav. and Loan Ass'n of South Carolina</u> 454 S.E. 2d 901, 317 S.C. 452.....	8, 16
<u>Hawkins v. Greenwood Development Corp</u> 493 S.E. 2d 875, 328 S.C. 585...6, 14	
<u>Lacke v. Lacke</u> 608 S.E. 2d 147, 362 S.C. 302.....	6, 14
<u>Richland – Lexington Airport Dist. v. American Airlines, Inc</u> 306 F.Supp. 2d 548.....	5, 13

STATEMENT OF ISSUES ON APPEAL

- 1. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT THE TIMLINESS OF INTEREST PAYMENTS MADE BY APPELLANT (DEFENDANT) OSTENDORFF WAS AN ISSUE OF FACT , AND NOT LAW ?**
- 2. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT THE COST TO COMPLETE THE HOUSE WAS AN ISSUE OF FACT , AND NOT LAW ?**
- 3. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT THERE WAS A GENUINE ISSUE OF MATERIAL FACT ?**
- 4. DID THE TRIAL COURT ERR IN GRANTING A SUMMARY JUDGMENT IN FAVOR OF THE PLAINTIFF WHO HAD REFUSED TO PROVIDE DISCOVERY ?**
- 5. DID THE TRIAL COURT ERR IN FINDING THE INDEBTEDNESS OF DEFENDANT OSTENDORFF TO PLAINTIFF SUNTRUST ?**
- 6. DID THE TRIAL COURT ERR IN ORDERING PERMISSION FOR THE PLAINTIFF SUNTRUST TO PROCEED WITH FORECLOSURE ?**

STATEMENT OF CASE

On December 9, 2007 SunTrust Mortgage brought a foreclosure suit against Mark Ostendorff on a construction rehab loan. Ostendorff had been living in the house at the time the loan was originated and was making substantial improvements at the time when the foreclosure action started. Date of commencement of action was November 30, 2007.

Nature of action or matter: Foreclosure by SunTrust Mortgage, Inc.

Nature of the defense : Defendant Ostendorff denied any indebtedness and filed a compulsory counterclaim.

Action of Court: Summary Judgment in favor of SunTrust to dismiss Ostendorff's counterclaim under reason of no genuine issue of material fact.

Date of trial: December 10, 2009

Mode of trial: Ostendorff's counterclaim was in Common Pleas with jury trial.

Summary Judgment on Ostendorff's was by Special Circuit Court judge (Master-In-Equity).

The amount of appeal: Ostendorff's counterclaim was for \$1, 125,000.00

The date and nature of order or decision appealed from: December 18, 2009.

Received written notice on January 15, 2010

Judgment appealed from: Special Circuit Court (Master-In-Equity) on order from motion for summary judgment.

Date of service of notice of appeal: January 18,2010.

ARGUMENTS

1. BECAUSE APPELLANT (DEFENDANT) OSTENDORFF DID MAKE INTEREST PAYMENTS WITHIN THE REQUIREMENTS OF THE MORTGAGE AND NOTE (CONSTRUCTION LOAN AGREEMENT) , THIS ISSUE IS ONE OF FACT AND NOT LAW.

Mortgage

Paragraph 22 (in bold print) states : “ ... Lender shall give notice to Borrower (R. P. 141, lines 2-5) prior to acceleration following Borrower’s breach of any covenant or agreement...The notice shall specify: (a) the default...”

Ostendorff never received any such notice that he was in was in breach for untimely payments. Ostendorff did not receive any verbal notice of breach. Ostendorff talked with Mike “ Mikey” Watts (SunTrust loan originator) on a two to three week basis (Ostendorff’s 2nd affidavit, pg 2) and never was ever informed of any breach or (R. P. 114, lines 11-15) problem. Ostendorff contacted Mike Watts (Ostendorff’s 2nd affidavit, pg 2) around (R. P. 114, lines 1-7) December 2006 for help in getting construction draws after being denied a draw by Steve Burmeister (SunTrust construction administrator).Mike Watts did not inform Ostendorff of any breach. Steve Burmeister (Ostendorff’s affidavit (first), pg 2) (R. P. 110, lines 8-9) never gave a reason for discontinuing the draws nor any notice of breach.

Construction Loan Agreement

Paragraph 16 states... “ The following acts by Borrower (R. P. 144, lines 46, 47, 51-60) shall be events of default under the terms of this Agreement ...(g) failure to pay any

... interest payments, (h)...” . There is no reference requiring the interest payments be paid by a specific date of the month. Ostendorff had paid the monthly interest payments within each month when due (Susan Walker’s affidavit pg 4) prior to being cut off by SunTrust.
(R. P. 57, lines 1-12)

No where in either the Mortgage or The Construction Loan Agreement that borrower is in breach by not making an interest payment by a certain day of the month.

Ambiguity

The day that the interest payment must be paid in which not to be in breach is ambiguous. Only an unambiguous contract is one of law and thus decided by a lone judge. This contract is ambiguous and thus one of fact. It should be heard by the triers of fact, a jury.

West’s South Carolina Digest 2d , Contracts – 143(2). Existence of ambiguity.

D.S.C. 2002. Under South Carolina law, an “ambiguous contract” is one capable of being understood in more ways than one, or obscure in meaning through indefiniteness of expression.

Richland-Lexington Airport Dist.v. American Airlines, Inc.,

306 F.Supp.2d 548, affirmed 61 Fed.Appx. 67.

S. C. App. 2004. A contract is “ambiguous” when it is capable of more than one meaning or when its meaning is unclear.

Ellie, Inc. v. Miccichi, 94 S.E. 2d 485, 358 S.C. 78, rehearing denied.

S.C. App. 1997. Contract is “ambiguous” when terms on their face , or are

reasonably susceptible of more than one interpretation when viewed objectively by reasonably intelligent person who has examined context of entire integrated agreement and who is cognizant of customs , practices, usages , and terminology as generally understood in particular trade or business.

Hawkins v. Greenwood Development Corp., 493 S.E. 2d 875,

328 S.C. 585 , rehearing denied , and certiorari denied.

Bkrtcy. D. S.C. 2004. A contract is “ ambiguous” under South Carolina law when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.—

In re Georgetown Steel Co., LLC, 318 B.R. 313.

S.C. App.200 . A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear.

Lacke v. Lacke., 608 S.E. 2d 147 , 362 S.C. 302, certiorari dismissed.

Intent

If SunTrust intended to have the monthly interest payments by a certain day of the month, then SunTrust could have easily done so on the Mortgage and the Construction Loan Agreement (i.e. “ if you do not make the monthly interest payment by day (x) of each month, you are in breach and will not receive anymore construction draws”).

Obviously , it was to the advantage of SunTrust for a construction loan to be completed. Thus, reasonable flexibility is understood for a cash flow that will support any construction project.

SunTrust made two months' interest payments for Ostendorff on 3/15/07 .

(Ostendorff's affidavit (1st) pg. 3 , item 10. and Susan Walker's affidavit (R. P. 111, lines 3-7) pg. 4 , item 14). The two months' payments came out of the balance remaining (R. P. 57, lines 13) out of the original loan amount. Had it been the intent of the Mortgage and Construction Loan Agreement for Ostendorff to be in breach by not paying interest payments by a specific day each month, then SunTrust would not have made the payments for Ostendorff. They were acting in their best interest to keep any chances of getting the house built without having to give Ostendorff anymore draws.

Had SunTrust considered Ostendorff in breach for late interest payments, they would not have waited one and a half years to bring forth the foreclosure suit. This is illustrated by SunTrust sending Ostendorff an "Acceleration Letter" on approximately October 8 , 2007, shortly after the 90 day period when Ostendorff stopped making monthly interest payments. (Brian Tatum's affidavit pg 2, item4). (R. P. 52, lines 10-14)

The two best individuals who understood the intent of the agreement are:

SunTrust – Mike "Mikey" Watts

Mark Ostendorff , Defendant and Appellant

because these are the two main individuals who negotiated and carried out the origination of this contract.

SunTrust's attorney has refused to provide an address or telephone number for Mike Watts even though requested through discovery.

No affidavit has been provided by Mike Watts.

The Trial Court never asked any questions from Ostendorff or of SunTrust of the intent of the Mortgage , Construction Loan Agreement, or any ancillary agreements. This Trial Court is not a place of opportunity to explain one's position or facts unless specifically asked. Numerous facts regarding the intention of this loan still have not been heard. Ostendorff's affidavits do not include the interest payment date issue, as it had never been raised before until the motion hearing.

West's South Carolina Digest 2d, Contracts -147 (1)

S.C. App. 1995 . Cardinal rule of contracts interpretation is to ascertain and give effect to intention of parties.

Friarsgate, Inc. v. First Federal Sav. And Loan Ass'n of South Carolina, 454 S.E. 2d 901 , 317 S.C. 452 , rehearing denied and certiorari denied.

S.C. App. 2004. In construing a contract, the primary objective is to ascertain and give effect to the intention of parties.

Ellie, Inc. v. Miccichi, 94 S.E. 2d 485, 38 S.C. 78,
rehearing denied.

S.C. App. 1989. Once contract is before court for interpretation, main concern is to give effect to intention of parties by determining situation of parties, as well as their purposes, at time contract was entered.

Columbia East Associates v. Bi-Lo, Inc.,

386 S.E. 2d 259, 299 S.C. 515.

Surprise Issue

SunTrust has never brought up the issue of Ostendorff making untimely interest payments. This issue is a surprise issue. It is not in Suntrust's pleadings, nor is it in Susan Walker's affidavit. The first time it was ever brought up was at the hearing (Transcript pg 6, lines 21-25, lines 1-8). (R.p. 22, lines 21-25; R.p. 23, lines 1-8)

The issue all along in SunTrust's pleadings and Susan Walker's affidavit was that Ostendorff quit paying interest payments in July 2007, not late in paying interest payments May 2006 through 2006 (Transcript pg 9, lines 6-12). (R.p. 25, lines 6-12)

In Susan Walker's affidavit, pg 5, item 17, states "That on August 21, 2007, SunTrust advised the Defendant that the final construction draw could not be (R.p. 38, lines 1-3)

disbursed and the construction loan made permanent until Defendant's payments were current."

Ostendorff's payments had been current for 7 months since the last draw.

Ostendorff had explained to each of SunTrust's three subsequent attorneys that SunTrust had breached by stopping construction draws. Each attorney insisted the reason for stopping construction draws was because Ostendorff stopped making interest payments altogether. SunTrust's attorney Brian Tatum's Brief In Support Of Plaintiff's Motion For Summary Judgment (R. p. 47, lines 1-4) pg 2, top paragraph states "...the Defendant has failed to provide proof that the loan was current when SunTrust stopped disbursements of the construction draws..."

A change in the story occurred only after SunTrust's attorney realized, after reviewing Susan Walker's affidavit, that SunTrust had stopped the construction draws approximately 7 months before Ostendorff stopped making any more interest payments.

Ostendorff was current for 7 months after the construction draws stopped.

That change in the story was never uttered or written until during the motion hearing.

Rule 8 (a) SCRCPP. This Rule requires the litigant to plead the ultimate facts that will be proved at trial. "Ultimate facts" have been defined as "such facts as form the basis for the legal conclusions necessary for the pleader to prevail." (H. Lightsey, Jr. & J. Flanagan, South Carolina Civil Procedure 106 (2nd ed. 1985)).

Had Ostendorff had the opportunity to be prepared for this position by SunTrust of untimely payments, then Ostendorff could have time to recollect the discussions with Mike Watts just days after the loan origination (closing). Those discussions included required payment dates and Credit Bureau reporting . Those discussions were quickly discussed 3 ½ years ago before the hearing.

As it stands, since Ostendorff did not bring up these issues in the hearing, Ostendorff is barred from bringing up these discussions for argument in this appeal.

Acquiescence

SunTrust accepted interest payments at different days during each month (Susan Walker's affidavit pg 4, item 14) and continued to make draws with no objections (R. p. 57, lines 1-10)
To anything on Ostendorff's performance in carrying out his contract obligations (transcript pg 19, entire page and pg 20, lines 1-14).
(R. p. 35, lines 1-25 ; p. 36, lines 1-14)

2. BECAUSE THERE WAS ENOUGH MONEY REMAINING IN THE LOAN
BALANCE TO COMPLETE THE HOUSE , THIS ISSUE IS ONE OF FACT
AND NOT LAW.

Construction Loan Agreement

Paragraph 4 –“ Lender may request a breakdown of the construction costs at anytime
(R.P. 146, lines 30-34)
prior to or during the construction period. If it appears that the construction costs will
exceed the net amount available under the Note, Lender may require the Borrower to
deposit with Bank sufficient to cover the deficiency. In the event Lender expends any
funds in excess of the funds held and / or the net loan proceeds , they shall be
considered as futures advances and shall be secured by the lien of the Security
Instrument.”

No where else in the Construction Loan Agreement or Mortgage is the issue of not
enough money in the loan balance to complete construction.

SunTrust never questioned Ostendorff on remaining costs to complete the construction.
(Transcript pg 23 , lines 8-9) (R.P. 39, lines 8-9)

Mortgage

Paragraph 22 (in bold print) states “ Lender shall give notice to Borrower prior to
(R.P. 141, lines 2-5)
acceleration following Borrower’s breach of any covenant or agreement ... The
notice shall specify: (a) the default...”

Ostendorff never received any such notice that he was in breach for not enough money remaining to complete the house. Ostendorff did not receive verbal notice of breach . Ostendorff talked with Mike Watts on a two to three week basis (Ostendorff's 2nd affidavit, pg 2) and never was informed of any breach or (R. p. 114, lines 11-15) problem. Ostendorff contacted Mike Watts (Ostendorff's 2nd affidavit, pg 2) (R. p. 114, lines 1-7) around December 2006 for help in getting construction draws after being denied a draw by Steve Burmeister . Mike Watts never informed Ostendorff of any breach. Steve Burmeister (Ostendorff's affidavit (first), pg 2) never gave a reason for (R. p. 110, lines 8-9) discontinuing the draws nor any notice of breach.

Ambiguity

The amount of money remaining in the loan balance to complete the construction in which not to be in breach is ambiguous. Only an unambiguous contract is one of law and thus decided by a lone judge. This contract is ambiguous and thus one of fact. It should be heard by the triers of fact, a jury.

West's South Carolina digest 2nd, Contracts- 143(2). Existence of ambiguity.

D.S.C. 2002. Under South Carolina law , an "ambiguous contract" is one capable of being understood in more ways than one, or obscure in meaning through indefiniteness of expression.

Richland – Lexington Airport Dist. v. American Airlines, Inc.,

306 F. Supp. 2d 548, affirmed 61 Fed. Appx.67

S. C. 2004. A contract is "ambiguous" when it is capable of more than one

meaning or when its meaning is unclear.

Ellie, Inc., v. Miccichi, 594 S.E. 2d 485, 358 S.C. 78,

S.C. App. 1997. Contract is "ambiguous" when terms on their face, or are reasonably susceptible of more than one interpretation when viewed objectively by reasonably intelligent person who has examined context of entire integrated agreement and who is cognizant of customs, practices, usages, and terminology as generally understood in particular trade or business.

Hawkins v. Greenwood Development Corp.,

493 S.E. 2d 875, 328 S.C. 585.

S.C. App. 200 . A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear.

Lacke v. Lacke

608 S. E. 2d 147 , 362 S.C. S.C. 302

Intent

SunTrust could have easily put in the Construction Loan Agreement "if Borrower cannot complete the construction within the remaining loan balance then you are in breach and will not receive any more construction draws". It did not do so and did not consider Ostendorff in breach.

Obviously, it was to SunTrust's advantage for a construction project to be completed

Cost overruns are common in the construction industry and no one has control of commodity prices over a year's length.

Had SunTrust considered Ostendorff in breach of not enough money in the loan balance, they would not have waited one and a half years to bring forth the foreclosure suit. This is illustrated by SunTrust sending Ostendorff an "Acceleration Letter" on approximately October 8, 2007, shortly after the 90 day period when Ostendorff stopped making monthly interest payments. (Brian Tatum's affidavit pg 2, item 4).
(R.p. 52, lines 10-14)

The two best individuals who understood the intent of the agreement are:

Suntrust- Mike Watts

Mark Ostendorff- Appellant and Defendant

because these are the two main individuals who negotiated and carried out the origination of this contract.

SunTrust's attorney has refused to provide an address or telephone number for Mike Watts even though requested through discovery.

No affidavit has been provided by Mike Watts.

The Trial Court never asked any from Ostendorff or of Suntrust of the intent of the Mortgage, Construction Loan Agreement, or any ancillary agreements. This Trial Court is not a place of opportunity to explain one's position or facts unless specifically asked. Numerous facts regarding the intention of this loan still have not been heard. Ostendorff's affidavits, nor Susan Walker's affidavit, or any of Suntrust's attorney mention anything about the total cost of construction within the loan balance.

Only did the Trial Court bring up the issue.

West's South Carolina Digest 2d , Contracts -147 (1)

S.C. App. 1995. Cardinal rule of contracts interpretation is to ascertain and give effect to intention of parties.

Friarsgate, Inc. v. First Federal Sav. And Loan Ass'n of South Carolina

454 S.E. 2d 901 , 317 S.C. 452 .

S.C. App. 2004 . In construing a contract , the primary objective is to ascertain ascertain and give effect to the intention of parties .

Ellie, Inc. v. Miccichi

394 S.E. 2d 485, 358, S.C. 78

S.C. App. 1989 . Once contract is before court for interpretation , main concern is give effect to intention of parties by determining situation of parties, as well as their purposes , at the time contract was entered.

Columbia East Associates v. Bi-Lo, Inc.,

386 S.E. 259 , 299 S.C. 515.

Surprise Issue

The Trial Court is the one who brought up this issue.

SunTrust never brought it up in the hearing or even commented on it.

Ostendorff had mentioned in his affidavit (1st) on item 13 that SunTrust
(R.p. 112, 1m3 1+2)

16

5

could easily make \$200,000.00 if they foreclosed and finished the construction themselves and sold it. This was just an illustration for item 4 pg five in Ostendorff's (R.p. 108, lines 6+7) Opposition to Plaintiff's Motion for Summary Judgment.

The issue all along in SunTrust's pleadings and Susan Walker's affidavit (R.p. 54-59) was that Ostendorff quit making interest payments in July 2007, not that there was not enough money in the loan balance to complete construction.

Ostendorff had explained to each of SunTrust's three subsequent attorneys That SunTrust had breached by stopping construction draws . Each attorney insisted the reason for stopping construction draws was because Ostendorff stopped making interest payments altogether. SunTrust's attorney Brian Tatum's Brief In Support Of plaintiff's Motion For Summary Judgment pg 2 (R.p. 47, lines 1-4) states "... the Defendant has failed to provide proof that the loan was current when SunTrust stopped disbursements of the construction draws ...".

No where was any issue of not enough money in the loan balance to complete the construction.

Rule 8 (a) SCRPC. This Rule requires the litigant to plead the ultimate facts that will be proved at trial . "Ultimate facts" have been defined as "such facts as form the basis for the legal conclusions necessary for the pleader to prevail." (H.Lightsy, Jr. & J. Flanagan, South Carolina Civil Procedure 106 (2nd ed. 1985).

Had Ostendorff had the opportunity to be prepared for this position by

The Court (and not SunTrust), then Ostendorff could have time to recollect more from the frequent discussions with Mike Watts that occurred before the loan origination and lasted 6 months into the loan. Those discussions were 3 to 3 ½ years ago before the hearing.

As it stands now , since Ostendorff did not bring up these discussions with Mike Watts in the hearing, Ostendorff is barred from bringing up these discussions for argument in this appeal.

Trial Court's misunderstanding of facts at Motion Hearing

Costs to complete- The Court in its findings of fact stated on about written line 20 (R.P. 5, lines 20+21) that " Defendant admitted at the hearing that he owed suppliers and subcontractors for work performed on the house, and estimated that it would \$50,000 to complete the house."

This was the amount Ostendorff thought SunTrust could finish the house and sell it, not the amount Ostendorff would need to complete it (Transcript pg 20, lines 21-24). (R. p. 36, lines 21-24)

Ostendorff thought he needed \$4, 000 cash (a construction draw) to complete (Transcript Pg 17 ,lines 24- 25, pg 18 ,lines 1-4).(R. p. 33, lines 24-25; p. 34, lines 1-4)

Subcontractors- In the Courts above statement- Ostendorff did not owe any subcontractors as Ostendorff did not use any subcontractors. Nor is the word "subcontractor" in any of Ostendorff's written papers. Nor is the word "subcontractor" ever mentioned in the hearing.

Ostendorff's need to sell the house- Ostendorff did plan on selling the house at a later date in order to build his next house. Ostendorff did not need to sell the house to pay creditors , credit cards, suppliers (if any still owed).(Transcript pg 21 , lines 24 and 25, pg 22 lines 1-2). (R. p 37, lines 24+25; p.38, lines 1-2)

Cash out refinance- Ostendorff and Mike Watts intended all along for Ostendorff to do a cash out refinance loan with Suntrust once the house was completed. This was intended to to pay my short term creditors (all were known by Suntrust and attached to the loan application) and any suppliers(if still owed). (Transcript pg 21 , lines 10- 23). (R. p. 152 - 155) (R.p. 37, lines 10-23)

Thus Ostendorff did not need to sell the house.

All houses are eventually sold due to death, moving, etc.

Indebtedness of Ostendorff to SunTrust- Ostendorff did not fail to refute the amount owed to SunTrust because The Court did not ask anything regarding the amount owed. The question by The Court was regarding the interest payments and dates that Ostendorff made to SunTrust. This was in regards to Susan Walker's affidavit , paragraph 14. (R. p. 57, lines 1-20) (Transcript pg 16 , lines 19 - 25). One cannot refute what one is not asked. (R. p. 32, lines 19-25)

Remaining loan balance- The Court stated there was less than \$7, 000 loan balance however, in Susan Walker's affidavit, the available money at last draw was \$ 11,200. (balance statement dated 12-15-2006).

The above misunderstandings show that the motion hearing did not flush out facts that can give a basis to any conclusion that there was an absence of material fact.

3. BECAUSE SUNTRUST DID NOT SHOW THE ABSENCE OF A GENUINE
ISSUE OF MATERIAL FACT , SUMMARY JUDGMENT SHOULD HAVE
BEEN DENIED.

The U. S. Supreme Court has stated a dispute is genuine "if the evidence is such
that a reasonable jury could return a verdict for the nonmoving party."

Anderson v. Liberty Lobby, Inc.,

477 U.S. 242 , 251, 106 S.Ct. 2505, 2511, 91 L. Ed. 2d . 202 (1986).

Arguments 1 and 2 showed that the issue is genuine .

The U. S. Supreme Court cautioned that summary judgment not become a trial by
affidavit and that "[c] redibility determinations, the weighing of evidence , and the
drawing of legitimate inferences from the facts are jury functions , not those of a
judge...The evidence of the non-movant is to be believed , and all justifiable
inferences are to be drawn in his favor."

Anderson v. Liberty Lobby , Inc.,

477 U.S. 242, 255 , 106 S.Ct. 2505, 2513, 91 L. Ed. 2d 202 (1986).

SunTrust's affidavits did not even support their claim. Ostendorff provided evidence
that should be heard by a jury.

Rule 6(c) " that there is no genuine issue as to any material fact the moving
party is entitled to a judgment as a matter of law."

SunTrust did not show an absence or material fact and thus summary judgment
should not have been granted.

In general, if pleadings and evidentiary matter in support of summary judgment do not establish the absence of a genuine issue of material fact, summary judgment must be denied, even if no opposing evidentiary matter is presented.

Baird v. Charleston County

333 S.C.519 ,511, S. E. 2d 69 (1999)

**4. BECAUSE THE PLAINTIFF REFUSED TO PROVIDE DISCOVERY,
SUMMARY JUDGMENT SHOULD NOT BEEN GRANTED**

⁷
Ostendorff informed The Court that SunTrust had been refused discovery
(Transcript pg 24, lines 10- 13)(R, p 40, lines 10-13)

There was a pending motion to compel filed by Ostendorff on December 9, 2009,
for discovery requests from 4/ 15/09. (R, p. 156 + 157)

Only admissions were received and an interrogatory was answered by the
attorney , and not the Plaintiff. The Plaintiff stonewalled by claiming trade
secrets and attorney-client privledges.

**5. BECAUSE THE CASE WAS IN COMMON PLEAS , MASTER-IN-EQUITY
DID NOT HAVE JURISDICTION TO DETERMINE INDEBTEDNESS.**

**The Master –In – Equity hears motions on jury trials. The Common Pleas had not
sent an Order of Reference to Master-In – Equity.**

The motion for summary was granted by the Master-In- Equity.

**6. BECAUSE THE CASE WAS IN COMMON PLEAS , MASTER-IN-EQUITY
DID NOT HAVE JURISDICTION FOR CASE TO PROCEED INTO
FORECLOSURE.**

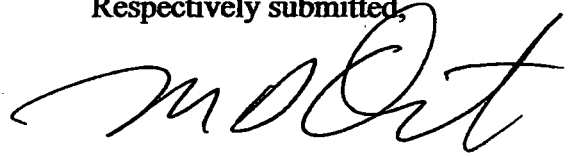
**The Master-In- Equity hears motions on jury trials. Common Pleas had not
sent an Order of Reference.**

The motion for summary judgment was granted by the Master-In-Equity.

CONCLUSION

For the reasons stated , this Court should reverse the judgment of the Circuit Court.

Respectively submitted,

A handwritten signature in black ink, appearing to read 'm d ost', is written over the typed name.

June 26, 2010

Mark D. Ostendorff
PO Box 14846
Greenville, SC 29610
(864) 360-1834
Appellant , Pro Se

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

SunTrust Mortgage, Inc., Respondent,

v.

Mark Ostendorff, Appellant.

Appellate Case No. 2010-150386

Appeal From York County
S. Jackson Kimball, Special Circuit Judge

Unpublished Opinion No. 2012-UP-608
Heard October 30, 2012 – Filed November 14, 2012

AFFIRMED

Mark Ostendorff, Appellant pro se.

Brian Steed Tatum, of Tatum Law Firm, PLLC, of
Charlotte, North Carolina, for Respondent SunTrust
Mortgage Inc.

PER CURIAM: In this mortgage foreclosure case, Appellant Mark Ostendorff seeks review of the circuit court's order granting summary judgment to Respondent SunTrust Mortgage, Inc. on Ostendorff's counterclaim for breach of contract. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to the circuit court's conclusion that SunTrust was entitled to suspend construction draws as a matter of law: Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003) ("The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous."); *Charles v. Canal Ins. Co.*, 238 S.C. 600, 608, 121 S.E.2d 200, 205 (1961) ("[T]he function of courts is to adjudge and enforce contracts as they are written and entered into by the parties.").
2. As to whether the issues of fact asserted by Ostendorff precluded summary judgment: Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); Rule 56(c), SCRPC (providing that summary judgment shall be granted when "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" (emphasis added)); *In re Walter M.*, 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review.").
3. As to whether SunTrust's failure to provide Ostendorff with certain discovery responses precluded summary judgment: *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) ("[T]he nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence.").
4. As to Ostendorff's challenge to the jurisdiction of the special circuit judge: *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review."); *State v. Colf*, 332 S.C. 313, 322, 504 S.E.2d 360, 364 (Ct. App. 1998), *aff'd as modified*, 337 S.C. 622, 525 S.E.2d 246 (2000) ("An issue is also deemed abandoned if the argument in the brief is merely conclusory.").

AFFIRMED.

HUFF, THOMAS, and GEATHERS, JJ., concur.

The South Carolina Court of Appeals

SunTrust Mortgage, Inc., Respondent,

v.

Mark Ostendorff, Appellant.

Appellate Case No. 2010-150386

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Luff

J.

Paul D. Hunter

J.

John D. Seaton

J.

Columbia, South Carolina

cc:

Mark Ostendorff

Brian Steed Tatum

FILED

18 Dec. 2012

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

S. Jackson Kimball, Special Circuit Judge

Case No.2007-CP-46-04305

SunTrust Mortgage,Inc., ...Respondent,

v.

Mark Ostendorff, ...Appellant.

PETITION FOR REHEARING AND

ACTION THEREON

**Mark Ostendorff
137 King Street
Central, SC 29630
(864) 640-3340
Appellant, Pro Se**

**Brian S. Tatum
Tatum Law Firm
P.O. Box 11250
Charlotte, NC 28220
(704) 307-4350
Attorney for Respondent**

COMES NOW Appellant ,Ostendorff, hereby petitions this Court to rehear the appeal pursuant to Rule 221 (a) and (c) , SCACR and Rule 224 (a) ,(c), and (i), SCACR.

The grounds are as the Court has overlooked or misapprehended the following points:

1- That Susan Walker's Affidavit ;

No where does Walker state that Ostendorff missed his due date and that was their reason for stopping construction draws

Only items 17 and 18 did she mention why a construction draw was not disbursed and that was the final draw, not why the draws were stopped during construction. Ostendorff was not ready for final draw to make permanent, nor did he request that final draw to make permanent.

Item 14, page 4 - is merely a payment history for interest payments made for what was owed from the previous month

Is not part of any contract document

Item 15, page 4 – referencing Exhibit "B"- none of the attached monthly statements indicate a due date ,pages 60 thru 69 of Record on Appeal

That Susan Walker never understood the issue that Ostendorff's draws were stopped even Ostendorff was current on his monthly interest payments.

The only information Susan Walker had was Ostendorff's interest payment history and that her affidavit lacked credibility

That Ostendorff paid construction interest payments for 7 months after SunTrust 's last construction draw (disbursement)to Ostendorff

That Susan Walker never explained why SunTrust only started action 7 months after denying Ostendorff his construction draw

That Susan Walker never addressed para 22 on Ostendorff's mortgage for any default prior to September 2007, when Ostendorff stopped interest payments

Questions of credibility make summary judgment inappropriate(Hansen v. DHL Laboratories, Inc., 316 S.C. 505 , 450 S.E. 2d 624 (Ct. Appl 1994))

Susan Walker was not present to defend or answer any questions from the court regarding her affidavit . Ostendorff had answer the court on his affidavits.

2- That SunTrust never raised the issue in their pleadings or evidence .

The only time the due date was ever brought up in litigation was by their attorney during the summary judgment hearing

The only time the total cost to complete the house was brought up in litigation was by their attorney during the summary judgment hearing. The attorney and the trial court got information from Ostendorff's motion to amend in which the attorney and the court made a complete misunderstanding of Ostendorff's pleadings in his motion

A trial court cannot grant judgment or relief on an issue not raised by the pleadings or evidence (Henry v. Chambrom, 304 S.C. 351, 404, S.E. 2d 518 (Ct. Appl. 1991))

The trial court could have instructed SunTrust's attorney to amend his pleadings or provide an affidavit stating that it contested Ostendorff's due dates

The trial court should have ordered a continuance to permit Ostendorff to permit affidavits under rule 56 (f)

The trial was a classic "Trial by Ambush".

- 3- Sun Trust never provided addresses of Steve Burnmeister, Mike Watts, Darrell Williams, Susan Walker, Kia Terry, although asked for by Ostendorff via discovery requests and a motion to compel.

Summary Judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery (Baird v. Charleston County, 333 S.C. 519, 511, S.E. 2d 69 (1999))

Granting Summary Judgment in favor of movant that has done nothing but "stonewall" on Discovery is not a fair opportunity to complete discovery, especially in light of a filed Motion to Compel.

- 4- Judge Kimball's findings of fact-

The court was totally confused on costs to complete the house:

The \$50,000 was what Ostendorff said that anyone could finish the house if he had only seen one episode of "Flip this house". This would also apply to SunTrust foreclosing and making a windfall from the fruits of Ostendorff's labor. Ostendorff clarified this the court but it still managed to make its erroneous presence on the order. Furthermore, the court tried to justify an unjust verdict with information from a Motion to Amend that it said was "... frivolous and without merit", and the court even still couldn't understand the issue of cost to complete the house. The \$50,000 was what Ostendorff thought SunTrust could complete to sell. This would include costs to market the house to sell. Ostendorff used the

\$20,000 number to only show the difference between himself and SunTrust to make the house marketable to sell. Ostendorff had no intention, nor ever given any indication that he was needing to sell the house.

There was over \$11,000 left in Ostendorff's account to be disbursed, not the court's statement of less than \$7,000. This was shown in Susan Walker's affidavit Exhibit "B" page 68 of Record on Appeal. This was adequate for Ostendorff to complete the house according to the contract. The court erred in failing to review a simple monthly statement and this particular note was pointed out to the court as to when SunTrust made its last draw to Ostendorff

Ostendorff did not need to sell the house This was an assumption made by the court

Ostendorff did not even have any subcontractors, not one. This again, was a fabrication of facts made by the court

Ostendorff did not fail to make timely payments under the parties agreement and is not why SunTrust refused to honor Ostendorff's construction draw request. This was again a fabrication of facts by the court

Even when there was no dispute, (but Ostendorff did dispute) as to the evidentiary facts, but only as to the conclusions or inferences drawn from them, summary judgment should not be granted (Rice v School Dist. Of Fairfield, 317 S.C. 87, 452 S.E. 2d 352, 96 Ed. Law Rep. 1210 (Ct. Appeal 1994))

5-Judge Kimball's Conclusions Of Law

Ostendorff did show that SunTrust wrongfully withheld construction draws. The court did not review the contract documents and would have seen that Suntrust was required to notify Ostendorff if he was in default within 30 days of default, per paragraph 22 of Mortgage. SunTrust never showed evidence that it claimed that Ostendorff was untimely in his monthly payments

6-That no where in any of Ostendorff's contract documents, Construction Loan Agreement or Mortgage, is a due date established or that a payment must be made by a particular date or be in default.

That SunTrust had the opportunity and obligation under paragraph 22 to notify Ostendorff that he was in default in payment of interest, if it felt that Ostendorff was in default. It was obvious that they did not consider Ostendorff in default.

That the Automatic Mortgage Payment Plan Agreement allows one put on an automatic draft past on one's due date, thus SunTrust does not consider missing a due date reason for default if payment is made by the end of the month (page 144 of Record on Appeal).

That Ostendorff paid an interest payment on 5/1/2006 but it was not shown paid until 5/2/2006. This was because if even there was a 1st day of the month due date, it cannot be paid on the first as they on show paid the next day

Paying past the due date , which impossible not to, was the surprise basis for SunTrust's motion for Summary Judgment and the Trial Court's decision.

That Ostendorff had an agreement with SunTrust (Mike Watts and other(s)) on when the interest payments were to be made in order to ensure continued construction draws and a satisfactory VOM (verification of mortgage) and also favorable credit reporting. Ostendorff's affidavit is attached.

Appellant Court item (1)

Unambiguous- The due date is not stated and thus if unambiguous , the court cannot rewrite Ostendorff's contract

The courts are not to supply omitted terms to an agreement(Cash v. Maddox, 265 S.C. 480, 220 S.E. 2d 121 (1975))

Ambiguous- The due date not being stated and thus if ambiguous, the parol evidence is for a jury, to which Ostendorff demanded.

Parol evidence may be admitted to ascertain the true meaning of a contract and to show the intent of the parties (Lindsay v Lindsay, 328 S.C. 329, 41 S.E. 2d 583 (Ct Appl (1997))
determination of the parties intent is then a question of fact for the jury(Hawkins v. Greenwood Development Corp., 328 S.C. 585 , 493 S.E. 2d 875 (Ct Appl 1997))

Where a contract is capable of more than one construction , the question of what the parties intended becomes one of fact to be submitted to the jury(Soil Remediation Co. v NuWay Environmental, Inc., 325 S.C. 231 , 482 S.E. 2d 554 (1997))

The interpretation of a contract is governed by the objective manifestation of the parties intent at the time the contract was made; it does not depend on a subjective , after-the- fact meaning one party assigns to it(Bannon v Knauss ,282 S.C. 589 , 320 S.E. 2d 470(Ct App 1984))

Oral modification- a written contract may be modified by oral agreement (King v PYA / Monarch Inc., 317 S.C., 385 , 453 S.E. 2d 885 (1995))Although the terms of a completely integrated agreement cannot be varied or contradicted by parol evidence of prior or contemporaneous agreements not included in the writing , this rule does not apply to subsequent modifications(Adamson v Marrienne Fabrics, Inc., 301 S.C. 204 , 391 S.E. 2d 249 (1990))

Either way, the trial court should not of granted summary judgment , but decided by a jury.

Appellant Court item (2)

That there is no genuine issue of material fact

Material fact as defined in Blacks Law Dictionary –

Material- important...Representation important to matter which so substantial and important as to influence party to whom made is "material".

Material fact- summary judgment – In what constitutes a genuine issue as to any material fact for purposes of summary judgment, an issue is "material" if the facts alleged are such as to constitute a legal defense or are of such nature as to affect the result of the action. (Austin v Wilder, 26 N.C. App 229, 215 S.E. 2d 794, 796.

A fact is "material" and precludes grant of summary judgment if proof of that fact would have effect of establishing or refuting one of essential elements of a cause of action or defense asserted by the parties, and would necessarily affect application of appropriate principle of law to the rights and obligations of the parties (Johnson v. Soulis, Wyo., 542 P. 2d 867, 872.

The fact that Ostendorff had agreements with SunTrust on paying interest payments the end of each month and did so, is material. The fact that SunTrust never claimed Ostendorff in default regarding the dates he paid his interest payments, although paragraph 22 of Mortgage required that they do so.

Rule 56(c) SunTrust did show that there was an absence of genuine issue of material fact.

An issue not raised-

Ostendorff did not raise the issue that he had discussions with Mike Watts and his discussions with Joseph Bridges, the originator of the mortgage and that Mike Watts informed Ostendorff that he and Bridges determined that there "there really is no due date".

Undivided attention must be maintained during one's presence at a Summary Judgment. Ostendorff has learned that Judge Kimball's court is not a place of free speech nor affords time to research contract documents for any issue, even if a surprise issue

Retrival- (memory recollection) – calling back the stored information in response to some cue for use in a process or activity.

One cannot be expected to recall a two-part conversation that lasted maybe 5 seconds that occurred over 3 and ½ years previously and never reinforced ever again and only one of many

discussions with SunTrust. That would be akin for one to expect Judge Kimball to remember an uneventful court item with Ostendorff that may have occurred 3 and ½ years ago while he is giving full attention to testimony and talking.

Appellant Court item (3)

Ostendorff ,through discovery, interrogatories and admissions that SunTrust never did ,nor still contests the due date issue.

That through discovery, Ostendorff could show that SunTrust securitized Ostendorff's note and thus no longer had a financial benefit to continue the construction draws. The note was never transferred to a trust and thus SunTrust would be able to make a windfall upon foreclosing on Ostendorff's property.

That through discovery,that Mike Watts and Ostendorff dicussed the interest payments and that Ostendorff met his obligations in paying his interest payment

That Steve Burmeister gave no reason for stopping construction draws. That Steve Burmeister knew that the loan could not be modified . SunTrust securitized the note and SunTrust could not modify the note because it no longer owned the note. That Steve Burmeister got into trouble with his supervisor for paying 2 months interest from Ostendorff's available account.

That Steve Burmeister's supervisor would confirm that the note had been securitized and Ostendorff's revenue stream had to be paid to holders of the securitized note. That is why Burmeister got into trouble,as the 2 months payments went to the note holders and not just internal accounts within SunTrust.

That through discovery, admissions, interrogatories, Ostendorff will show that SunTrust has not found anyone in default for paying a monthly payment by the end of that month but instead, by not paying the monthly payment at all

Appellant Court item (4)

That the case is to be heard by a jury and not a lone judge

Summary judgment will not lie if the dispute about a material fact is 'genuine' , that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.(Anderson v Liberty Lobby,Inc., 477 US 242, 106 S. Ct. Ct. 2505, 91 L. Ed. 2d. 202-Supreme Court,(1986)

No reasonable jury would expect that any person of sound mind would agree to a contract where the other party could arbitrarily claim an after-the-fact due date, placing themselves in default and thus lose the fruits of their labor and incur other damages. That person would have nothing to gain and possibly lose all of their worldly possessions.

No reasonable jury would give Susan Walker's affidavit any credibility as she does not address the due date issue, nor addressing why construction draws were stopped in December 2006, nor addressing why SunTrust did not notify Ostendorff if they thought Ostendorff was in default prior to September of 2007, when Ostendorff ceased payments.

No reasonable jury would accept SunTrust's attorney's after-the-fact position of due dates.

Ostendorff demanded a jury trial, a summary judgment is heard by a lone judge and circumvented Ostendorff's jury trial.

That Ostendorff asks the Appeal Court to Remand the case to :

Compel SunTrust to provide discovery as per Ostendorff's requests,

If not reverse, order the trial court to retry the case,

Issue a written order if the court has denied Ostendorff's motion to amend

Saying that it "...was frivolous and without merit"

-Ostendorff's motion to compel

Saying that "...it was untimely"

Ostendorff had no advance warning that SunTrust

that was going to file for a Motion for Summary Judgment. Ostendorff filed

both motions in short order after receiving notice of SunTrust's motion

An order is not an order if it is not written

If the Appeal Court requests, Ostendorff can file Motion for Remand

If the Appeal Court requests, Ostendorff can file Motion for Leave to Move for a New Trial

November 24, 2012

A handwritten signature in black ink, appearing to read 'M. Ostendorff', written over a horizontal line.

Mark Ostendorff
137 King Street
Central, SC 29630
(864) 640-3340
Appellant , Pro Se

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

S. Jackson Kimball, Special Circuit Judge

Case No. 2007-CP-46-04305

SunTrust Mortgage, Inc., ... Respondent,

V

Mark Ostendorff Appellant

AFFIDAVIT OF MARK OSTENDORFF

I, Mark Ostendorff, submit this affidavit to the court per Rule 224 (c) (3)

I, Mark Ostendorff, have personally prepared this affidavit and swear as to its accuracy and truthfulness to the best of my personal knowledge. I am over eighteen years old and I am competent to Testify to the matters stated therein.

1

I discussed with Mike Watts, and he verified with whom I understood was Joseph Bridges in Greenville, SC, the originator of the Mortgage, on when the interest payments must be made to be in agreement with my contract documents thus ensuring Ostendorff would continue to receive construction draws, a satisfactory VOM(verification of mortgage), and also a favorable credit reporting.

2

Mike Watts called me shortly after our discussion and told me he had talked to Greenville and that "...there really was no due date" and also " .. no reporting to credit bureau " . Mike Watts and I agreed that I would make interest payments by the end of the month. This would ensure a satisfactory VOM , just in case someone at SunTrust started reporting to the credit bureaus.

3

I made interest payments by the end of each month as we agreed

4

SunTrust stopped Ostendorff's construction draws even though Ostendorff made all interest payments by the end of each month.

5

SunTrust never gave any reason why it stopped my construction draws.

6

The issue of interest payment due dates never was discussed after the initial discussion between Ostendorff and Mike Watts

7

The only time the issue of Ostendorff being late on the interest payments was at the hearing for summary judgment

8

There was over \$11,000 remaining in Ostendorff's construction account. This adequate to complete the house.

9

SunTrust's Mike Watts and Darrell Williams assured Ostendorff that SunTrust would provide a "cash out" refinance after construction (rehab) was complete. The proceeds could then convert Ostendorff's high interest, short-term debt into a low interest, long term debt.

This intent was shown by SunTrust paying off Ostendorff's credit card debt to MBNA on or shortly after the construction loan closing. The debt is shown on page 152 of Record on Appeal

10

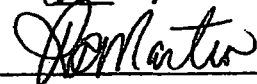
Steve Burmiester of SunTrust paid two months interest on Ostendorff's account with monies remaining, for the months of February and March 2007. The months paid are shown on Susan Walker's affidavit, item 14 page 4, page 57 of Record on Appeal. Burmiester (SunTrust) itself paid the interest payment for February 2007 and March 2007 late by paying on March 15, 2007 and thus was payment date is not an issue.

AFFIANT:

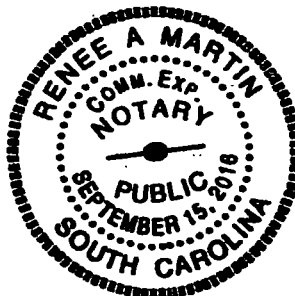


Mark Ostendorff

Sworn to and subscribed before me
This 20 day of November 2012



NOTARY PUBLIC



(NOTARY SEAL)

My Commission Expires:

9/5/2016