

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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APPEAL FROM HORRY COUNTY

S.C. SUPREME COURT

Court of Common Pleas

Cynthia Graham Howe, Master-in-Equity Judge

Case No. 2013-CP-26-02528

Unpublished Opinion No. 2019-UP-389 (S.C. Ct. App. Filed December 18, 2019)

Appellate Case No.: 2016-001550

Branch Banking and Trust Company .....Respondent

v.

Cindy B. Hunt; Willow Greens

Homeowners Association, Inc.;

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

Of Whom Cindy B. Hunt is .....Petitioner

**Appellant's Reply to Return To Petition For Writ of Certiorari**

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**A. The Court of Appeals erred in affirming the Master's denial of Hunt's motion to alter, amend, or vacate the order that denied Hunt's motion for attorney's fees and costs and damages, etc.**

BBT has never objected to Hunt being pro se; and BBT did not object to attorney fees and costs to motions under FAC, Rule 55(b)(1-3), SCRCF nor under Rule 41, SCRCF in the lower court. See the FBOTA pp. 40-45.

Hunt argues that BBT was served the affidavit at exhibit # 46 and the motion under Rule 55(a) and (b), SCRCF on 9/30/2014 and BBT chose not to respond to the affidavit for attorney fees and costs under Rule 55(b)(3), SCRCF; and BBT chose to make an early exit from the 10/14/2014 hearing before Hunt's motion under Rule 55, SCRCF could be orally argued. See pp. 1577-1586, pp. 533-546, Rule 5(a), SCRCF and p. 1220; pp. 829-958; pp. 1119-1224 and the FBOTA at pp. 9-12. Nonetheless the Master ruled against Hunt. See the 10/28/2014 Order at pp. 85-90 and see the motion at pp. 1083-1086. The hearing was held on 11/10/2015.

And BBT was served the motion under Rule 41, SCRCF on 5/27/2015 where Hunt did not request a hearing. BBT chose not to respond to the motion. See pp. 1087-1094, Rule 5(a), SCRCF and p. 1105 at paragraph 7. Nonetheless the Master ruled against Hunt.<sup>1</sup> See the 6/3/2015 order at pp. 136-138;<sup>2</sup> and see the motion at pp. 1101-1106. The hearing was held on 11/10/2015.

The **11/10/2015** hearing included three motions<sup>3</sup> where at the hearing BBT made no objections pursuant to the motion and affidavit under Rule 55, SCRCF; and where at the hearing BBT and the Master reiterated the assertions made by the Master in the 6/3/2015 Order as to the motion under Rule 41(d), SCRCF. ("A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.") *Hickman v. Hickman*, 392 S.E.2d 481, 301

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<sup>1</sup> *Mortgage Electronic Registration Systems, Inc. v. Parrott*, Opinion No. 2006-UP-00402 (S.C. App. 12/11/2006) (S.C. App. 2006) at page 1.

<sup>2</sup> Hunt had to write to the Clerk for a copy of this order. See p. 1887-1891.

<sup>3</sup> The third motion that was heard on 11/10/2015 was the 1/13/2015 Order at pp. 98-112; the Master lacked all jurisdiction to enter this Order. See the motion at pp. 1095-1100 that was heard on 11/10/2015 at pp. 1225-1244 & pp. 959-1072. The 6/15/2016 Order is at pp. 141-143. See pp. 1906-1928 and FBOTA at pp. 34-35. See FN 48 herein.

S.C. 455, 456 (S.C. App. 1990); and see pp. 1225-1270; and see pp. 136-138 cf. pp. 959-1072.

On appeal Hunt argued for attorney fees and costs under the FAC, Rule 55(b)(1-3), and Rule 41(d), SCRCP. See the FBOTA at pp. 39-49.

BBT did not object to attorney fees and costs to Hunt under the FAC nor Rule 55(b)(1-3), SCRCP on appeal in its 7/5/2017 FBOTR at pp. 8-10. The Court of Appeals affirmed the Master' Order only as to attorney fees and costs under Rule 41(d), SCRCP. See the 12/18/2019 Order of the Court of Appeals at paragraph 4.<sup>4</sup>

On Rehearing Hunt argued for attorney fees and costs under the FAC, Rule 55(b)(1-3), and Rule 41(d), SCRCP. See the 1/2/2020 APFR at p. 39. BBT did not object to attorney fees and costs to Hunt under the FAC nor Rule 55(b)(1-3), SCRCP on Rehearing in its 1/23/2020 RRT at pp. 6-7. The Court of Appeals affirmed the Master' Order only as to attorney fees and costs under Rule 41(d), SCRCP. See the 2/20/2020 Order of the Court of Appeals.<sup>5</sup>

**On 4/3/2020 Hunt wrote – "CONCLUSION:** As such, pursuant to Rule 11, SCRCP Hunt requests attorney fees and costs, loss of wages, defamation damages, satisfaction of the Hunt and Sherman<sup>6</sup> mortgages, and termination of all lis pendens; punitive damages, and pre-judgment interest. See the affidavit at pp. 1577-1586; see the FBOTA at pp. 46-49; and See the 1/2/2020 APFR at pp. 44-51 (letter to SLED) and pp. 54-65 (affidavit); see the 4/3/2020 Petition at pp. 27-32 (three lis pendens) and pp. 24-26 (affidavit from Donna Brown) and pp. 33-36 (updated affidavit of attorney fees and costs)." See the 4/3/2020 Petition at page after cover page and pp. 15, 20 & 22.

Thereafter, on **5/20/2020** in the Return to Petition at pp. 8-10: BBT makes arguments under Rule 41(d) that BBT did not make in the lower

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<sup>4</sup> Where no objection was made to the motion thereafter the Court can not consider an objection on appeal. *Southeastern Mobile Homes, Inc. v. Walicki*, 317 S.E.2d 773, 775, 282 S.C. 298, 303 (S.C. App. 1984).

<sup>5</sup> Where no objection was made to the motion thereafter the Court can not consider an objection on appeal. *Southeastern Mobile Homes, Inc. v. Walicki*, 317 S.E.2d 773, 775, 282 S.C. 298, 303 (S.C. App. 1984).

<sup>6</sup> BBT did not object to Sherman in the lower court. [And see pp. 1220-1223, pp. 85-90 and p. 141] See *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 311, 698 S.E.2d 773, 779 (2010) ("In order for an issue to be properly preserved for appeal, it must have been both raised to and ruled on by the trial court."). *HSBC Bank of USA v. Ryba* (S.C. App. 2019) at pp. 8-9.

court in response to the 5/27/2015 motion;<sup>7</sup> and see 1/2/2020 APFR at pp. 29-41 and 1/23/2020 RRT at pp. 6-7.

And BBT makes arguments under Rule 53(b)(3), SCRCF and not Rule 55(b)(3), SCRCF where BBT did not make arguments under Rule 53(b)(3), SCRCF in the lower court nor on appeal. See 5/20/2020 Return To Petition at p. ii and Cf. 7/5/2017 FBOTR at p. iii.<sup>8</sup>

Hunt argues that neither Rule 41(d), or Rule 53(b)(3), or Rule 55(b)(3), SCRCF require the precondition of a prevailing party. See Rule 41(d), Rule 53(b)(3), and Rule 55(b)(3), SCRCF.<sup>9</sup>

BBT at p. 8-10 of its **5/20/2020** Return to Petition refers only to attorney fees and cost. The attorney fees and costs are **\$5,187,246.36**. See p. 335 and p. 1220; and see the 4/3/2020 Petition at pp. 33-36.

Hunt argues that based on the above and the FBOTA at pp. 7-15 that BBT received the two notices and chose not to make an objection in the lower court to the motions under Rule 55(b)(3) nor Rule 41(d), SCRCF. Hunt continues to argue that as to the motion under Rule 55, SCRCF that BBT was in default<sup>10</sup> and that thereafter this Court can not consider objections on appeal to the two motions with or without citations. *Southeastern Mobile Homes, Inc. v. Walicki*, 317 S.E.2d 773, 775, 282 S.C. 298, 303 (S.C. App. 1984).

Next, BBT at p. 8-10 of its Return to Petition refers only to attorney fees and cost. However, Hunt in her 4/3/2020 Petition also requested the following: Ongoing loss of wages / defamation damages are **\$7,866,670**. Hunt went back to school and took the classes so that she could sit for the patent bar exam. See pp. 1583-1585 (classes at USC & Patent Bar application); pp. 1822-1824 (USPTO Summer of

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<sup>7</sup> See p. 1105 at paragraph 7; see *Hickman*, Id. Where no objection was made to the motion thereafter the Court can not consider an objection on appeal. *Southeastern Mobile Homes, Inc. v. Walicki*, 317 S.E.2d 773, 775, 282 S.C. 298, 303 (S.C. App. 1984).

<sup>8</sup> See *Kennedy v. RETIREMENT SYSTEM*, 349 S.C. 531, 532, 564 S.E.2d 322 (S.C. 2001)(The argument [in the 5/20/2020 Return to Petition should not be] considered because it was never presented to the [lower court or] Court [of Appeals]).

<sup>9</sup> Hunt continues to seek entry of default and default judgment. See Rule 55(a) and (b), SCRCF; and see the 4/3/2020 Petition at p. 11 FN 29: In this matter Hunt reasserts the entire record on appeal; and the FBOTA; and 1/2/2020 APFR.

<sup>10</sup> See the FBOTA at pp. 15-33.

2013 Externship), p. 1221<sup>11</sup>, pp. 1260-1264, see the 1/2/2020 APFR at pp. 11-15; FBOTA at p. 48 and see 4/3/2020 Petition at pp. 6-8; and Hunt requested satisfaction of the Hunt<sup>12</sup> and Sherman<sup>13</sup> mortgages; and termination of all lis pendens – see the 4/3/2020 Petition at pp. 27-32 (three lis pendens); and punitive damages<sup>14</sup>:  $1.5 \times 7,866,670 = \$11,800,005$ ; and pre-judgment interest from 7/15/2014<sup>15</sup>:  $8.75\% \times 7,866.670 \times 6 \text{ years} = \$ 4,130,002$ .

**Conclusion:** As such, Hunt continues to argue that the Court of Appeals did err in affirming the Master's denial of Hunt's motions to alter, amend, or vacate the orders that denied Hunt's motions for attorney's fees and costs and the other damages, etc. as stated in the FBOTA at pp. 1-49 and the 4/3/2020 Petition at page after cover page & pp. 15, 20, 22 & 33-35.

**B. Hunt's motion under Rule 11, SCRPC is properly before this Court.**

BBT in its 5/20/2020 Return to Petition states that "a motion is not permitted within a petition for a writ of certiorari, see Rule 242, SCACR (setting forth the permitted contents of a petition)."

BBT does not state that Hunt has failed to include a required component of Rule 242(d)(1-4), SCACR. And Hunt has not received a complaint from the staff of this Court.

BBT does not cite to any case law as "good ground to support"<sup>16</sup> BBT's interpretation of Rule 242, SCACR.

And Rule 242(d), SCACR does not state: The petition for writ of certiorari shall only contain ...

Thus, Hunt argues that her motion is not prohibited under Rule 242(d), SCACR.

As such, Hunt argues that her Petition satisfies Rule 242(d), SCACR where [t]he Supreme Court, or any two (2) justices thereof, may in its discretion, on motion of any party to the case or on its own motion,

<sup>11</sup> No objection to pp. 1119-1224, early exit and BBT refused to return. See FBOTA at pp. 9-12.

<sup>12</sup> See p. 1223, pp. 1691-1704, FBOTA at p. 48.

<sup>13</sup> See p. 1223, pp. 1759-1771, FBOTA at p. 47.

<sup>14</sup> See p. 1222, FBOTA at pp. 46-49.

<sup>15</sup> See p. 1222, FBOTA at pp. 46-49.

<sup>16</sup> See Rule 11(a), SCRPC.

issue a writ of certiorari to review a final decision of the Court of Appeals. See Rule 242(a), SCACR.

Next, in its Return to Petition - BBT states at p. 10 "Hunt's motion is made pursuant to the [SCRCP], which only apply in the lower courts of civil jurisdiction, see Rule 81, SCRCP ..."

Rule 1, SCRCP state: "These rules govern the procedure in all South Carolina courts in all suits of a civil nature whether cognizable as cases at law or in equity, **with the exceptions stated in Rule 81**. They shall be construed to secure the just, speedy, and inexpensive determination of every action." Hunt argues that the SC Supreme Court is not listed as an exception in Rule 81. See Rule 81, SCRCP.

The purpose of Rule 13(a) is "to prevent multiplicity of actions and to achieve resolution in a single lawsuit of all disputes arising out of common matters." S. Constr. Co. v. Pickard, 371 U.S. 57, 60, 83 S.Ct. 108, 9 L.Ed.2d 31 (1962) (interpreting the federal counterpart to South Carolina's Rule 13(a)). **Beach Co. v. Twillman, Ltd., 351 S.C. 56, 62, 566 S.E.2d 863 (S.C. App. 2002)**. Hunt argues that the purpose of Rule 13(a), and Rule 1, SCRCP have been ignored by BBT where BBT commenced this fourth lawsuit. See pp. 261-272; and this matter has been in litigation since 8/13/2009. See p. 1588 and see the Orders at pp. 1-58.

Nonetheless, BBT in its argument accuses Hunt of violating Rule 81, SCRCP where BBT underlines the words trial court but makes no effort to cite case law to show "good ground to support"<sup>17</sup> its position. Thus, Hunt argues that - BBT's argument re Rule 81, SCRCP is not applicable as follows:

"If a petition for writ of certiorari is filed, the Court of Appeals shall not send the remittitur until notified that the petition has been denied. If the writ is granted by the Supreme Court, the Court of Appeals shall not send the remittitur." See Rule 221(b), SCACR.

Hunt argues that on 12/18/2019 the SC Court of Appeals wrote to Hunt and the attorney for BBT: The remittitur **will be sent** as provided by Rule 221(b) of the South Carolina Appellate Court Rules. See the 12/18/2019 Order. Hunt argues that the Motion / Petition for

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<sup>17</sup> See Rule 11(a), SCRCP.

Writ of Certiorari was timely submitted to the SC Court of Appeals, BBT and this Court on 3/31/2020.

Hunt argues that Hunt has not been notified that the petition for writ of certiorari has been denied. As such, the South Carolina Rules of Civil Procedure are applicable in motions and Petitions, etc. for interpretation by this Court. See *Stogsdill v. S.C. Dep't of Health & Human Servs.*, 415 S.C. 568-569, 784 S.E.2d 669(Mem) (S.C. 2016); and Rule 1, SCRPC.

Hunt argues that there is no good ground to support BBT's objections to "Hunt's motion pursuant to Rule 11, SCRPC" where BBT's objections are meant to distract and delay this Court from the substance of the matter in the motion under Rule 11, SCRPC to include that the preemption doctrine<sup>18</sup> applies to the Federal Order from lawsuit #3 at pp. 45-58<sup>19</sup> that gives rise to the barred foreclosure complaint.

**Conclusion:** As such, Hunt respectfully request that this Court grant the Motion / Petition for Writ of Certiorari.

C. Special and important reasons exist for the Court to issue a Writ of Certiorari.

**BBT's 5/20/2020 Return to the Petition at pp. 1-2 at FN 1 falsely states:** " ... Hunt v. Branch Banking and Trust Company, C/A # 4:12-cv-02216-MGL (D.S.C. filed Aug. 6, 2012)(filed in state court by Hunt, removed to federal court by BBT, and then ultimately withdrawn by Hunt after BBT filed a motion to dismiss)."<sup>20</sup>

Hunt filed the 7/9/2012 Complaint in lawsuit #3 in state court and shortly thereafter Hunt filed a motion to withdraw in state court; thereafter BBT removed lawsuit #3 from state court to the USDC on

<sup>18</sup> See the USDC Orders at pp. 1-58; and pp. 954 line 13 -line 21; & pp. 113-135.

<sup>19</sup> The preemption doctrine is rooted in the Supremacy Clause of the United States Constitution and provides that any state law that conflicts with federal law is "without effect." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992). *Priester v. Cromer*, 736 S.E.2d 249, 401 S.C. 38, 43 (S.C. 2012).

<sup>20</sup> In this matter Hunt reasserts the entire record on appeal; and the FBOTA; and 1/2/2020 APFR. See the 4/3/2020 Petition at p. 11 FN 29.

As such, Hunt directs this Court to the 4/3/2020 Petition at pp. 1-3; and the FBOTA at pp. 1-15.

8/6/2012. See pp. 233-260, p. 1935, p. 1938 and pp. 1107-1109. Thereafter, BBT filed the 8/9/2012 MTD the Complaint in the USDC. See pp. 391-422;<sup>21</sup> and pp. 45-58.

Thus, the USDC on **3/13/2013** in lawsuit #3 (4:12-cv-02216-MGL) states: "Opinion and Order: The Court adopts.... Accordingly, Defendant [BBT's] Motion to Dismiss is GRANTED and this case is DISMISSED without prejudice...." See p. 51.

"[...] Hunt argues that after BBT received the 3/13/2013 Orders (pp. 29-58) granting its requested dismissals of lawsuit #s 2-3 that BBT went in search of attorneys that were willing to violate Rule 11, SCRPC by filing the barred 4/16/2013 foreclosure complaint at pp. 261-272 to commence lawsuit # 4, as part of BBT's effort to improperly bury the evidence at pp. 165-232."<sup>22</sup> Thus, Hunt argues that the underlined portion of the above statement by BBT is false. See p. 51. And that there is no good ground to support BBT making a false statement to this Court; and that it has been interposed for delay. See Rule 11(a), SCRPC.

Hunt argues that the false statement by BBT is special, important and a very good reason for this Court to issue a Writ of Certiorari.

**BBT's 5/20/2020 Return to the Petition at pp. 1 falsely states:**  
"At a hearing on May 20, 2014, the Master granted Respondent's Motion to Dismiss as to all of Hunt's counterclaims without prejudice, but gave Hunt leave to amend them. (App. pp. 557-828.)"

Hunt argues that the above underlined phrase is false<sup>23</sup> where at the hearing on May 20, 2014 for BBT's 9/5/2013 MTD the Master did not orally rule on three of BBT's 9/5/2013 objections / defenses: statute of limitations, breach of fiduciary duty and violation of SC Probate

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<sup>21</sup> See FN 1 at p. 392. Hunt argues that FN 1 at p. 392 resulted in the 3/13/2013 Order. See pp. 45-58.

<sup>22</sup> See the 4/3/2020 Petition at p. 11. Again, Hunt argues that BBT requested and was granted dismissals in lawsuit #s 2-3 on 3/13/2013. Yet seven years later BBT continues to harass Hunt involving issues that were clearly present in lawsuit #3 and not addressed by BBT in lawsuit #3 where the country is now in the middle of the Covid-19 pandemic. See pp. 29-58, pp. 261-272.

<sup>23</sup> That there is no good ground to support making a false statement to this Court; and that it has been interposed for delay. See Rule 11(a), SCRPC. Hunt argues that BBT's 5/20/2020 "Statement of the Case" at pp. 1-7 is filled with numerous additional false statements. Cf. the FBOTA at pp. 2-15.

Code;<sup>24</sup> and the Master never made a written order from the 5/20/2014 hearing. See pp. 423-428 and cf. pp. 557-828<sup>25</sup>, cf. p. 1903 and see the FBOTA at pp. 6-12.

Thereafter, on 6/6/2014 Hunt filed an amended pleading / FAC with 70+ exhibits where Hunt was asserting all of the claims contained therein. See Rule 7(a), SCRCF; and see pp. 299-338 and exhibit #s 1-79.<sup>26</sup> Hunt argues that BBT's statement of the case in the Return to Petition at pp. 1-2: "asserting seven counterclaims against Respondent based on three main factual allegations: ...." is false and apart of BBT's effort to bury pp. 165-232 where BBT's reputation should not be treated as being more important than Hunt's reputation and IOLTA.

The pleadings (6/6/2014 FAC) show that Hunt made numerous averments / allegations in the complaint at pp. 299-338 and at p. 312 through exhibit #s 47-49 including exhibit # 49 entry # 15-8; for actual and punitive damages, and attorney fees and costs in the complaint at p. 300 through the affidavits at exhibit # 26 (p. 1467) and exhibit # 46 (p. 1582); and at pp. 317, 321, 331, 334-336.<sup>27</sup> On 6/25/2014 BBT filed a second motion to dismiss (MTD) in lawsuit #4. See pp. 423-428 and cf. pp. 429-432 and see Rule 12, SCRCF. Hunt argues that the 6/25/2014 MTD is not a pleading. See Rule 7(a), SCRCF & p. 1188 at FN 24.<sup>28</sup>

**Default #1 – late and not a Reply:** Hunt argues that the 6/25/2014 MTD was more than 15 days after the 6/6/2014 FAC was served;<sup>29</sup> and BBT had no time remaining for response to the original 9/5/2013 pleading. "A Reply to the counterclaims was due on June 21, 2014. ..." See p. 1219<sup>30</sup>, see the certificate of mailing at p. 337; and Rule 15(a), SCRCF<sup>31</sup> cf. pp. 429-432, p. 277 (original counterclaim filed on

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<sup>24</sup> See pp. 479-480; pp.484-486 where these pages were written on July 15, 2014.

<sup>25</sup> In particular see pp. 824 line 8 – pp. 825 line 9.

<sup>26</sup> Cf. BBT's statement of the case in the Return to Petition at pp. 1-2: asserting seven counterclaims against Respondent based on three main factual allegations: ....

<sup>27</sup> Also, see the 4/3/2020 Petition at pp. 20-23; and see below at **Rule 41, SCRCF**.

<sup>28</sup> BBT did not object to the two briefs at pp. 1119-1224. See the FBOTA at pp. 9-11.

<sup>29</sup> See Rule 5(b)(1), SCRCF (service by mail complete upon mailing). Bakala v. Bakala, 352 S.C. 612, 576 S.E.2d 156 (S.C. 2003). See p. 337 cf. p. 430-431 and **see where the attached certificate of service for the 6/25/2014 MTD shows that the MTD was deposited on 6/23/2014 which was 17 days after the amended counterclaims were served. Rule 15(a), SCRCF.**

<sup>30</sup> BBT did not object to this page at the 10/14/2014 hearing and refused to return so that Hunt could make oral arguments on her MFDJ, etc. See FBOTA at pp. 9-12.

<sup>31</sup> Cf. BBT's statement of the case at "June 25, 2014" in the Return to Petition at pp. 2.

8/2/2013); and original 9/5/2013 MTD is at p. 428. "The decision of whether to allow a reply to be made after the time allowed by the rules is one committed to the sound discretion of the trial court upon a showing of good cause. S.C.R.CIV.P. 6(b)(2)." Mauro v. Clabaugh, 299 S.C. 184, 191, 383 S.E.2d 244 (S.C. App. 1989). BBT did not request that BBT be allowed more time to make a reply. See the affidavits of default at pp. 433-474 at paragraph 13; and Rule 55(a), SCRC.P.

As such, Hunt on 7/15/2014 and 9/30/2014<sup>32</sup> filed affidavits of default, Response, Entries of Default and Motion for Default Judgment (MFDJ, etc.). See pp. 433-546. In the affidavits, the Response at pp. 433-532 and the MFDJ at pp. 533-546 Hunt made different and numerous arguments to include under Rule 12(g, h) and Rule 6(b)(2) and 7(a), SCRC.P and a motion to strike the 6/25/2014 MTD, etc.<sup>33</sup> and see the FBOTA at p. 15 at: 6/17/2016; and see pp. 1906-1928.

On 10/14/2014 a hearing was held on two motions: BBT's 6/25/2014 MTD and Hunt's 9/30/2014 MFDJ, etc. See p. 831 at lines 11-16.

On 10/14/2014 Hunt submitted briefs to BBT and the Master. See the FBOTA at pp. 9-10 & pp. 1119-1224. Thereafter, BBT made an early unexcused exit from the 10/14/2014 hearing before Hunt could orally argue her MFDJ, etc. See FBOTA at pp. 9-12, pp. 23-25; and see the 10/28/2014 9:04 am Order at pp. 85-90 where there was no Order in the record on and prior to 10/28/2014 9:04 am that prohibited the motion for default judgment.<sup>34</sup> BBT did not get the proposed Order to the Master as directed. See p. 954 line 24-p. 955 line 17; cf. pp. 1904-1905 at 9:38 pm.<sup>35</sup>

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<sup>32</sup> After the clerk of court did not act on the 7/15/2014 affidavits of default - Hunt on 9/30/2014 filed entries of default and a motion for default judgment. The clerk of court refused to clock in the 9/30/2014 MFDJ, etc. The clerk did mark the motion as paid. See p. 533.

<sup>33</sup> Cf. BBT's statement of the case at "Sept 30, 2014" in the Return to Petition at pp. 2. Hunt argues that BBT is intentionally trying to confuse and distract the Court from the motion under Rule 11, SCRC.P.

<sup>34</sup> Cf. BBT's statement of the case at "Oct 14, 2014" in the Return to Petition at pp. 2-3 and cf. where the 10/28/2014 Order at p. 87 states: entry of default judgment.

<sup>35</sup> Cf. BBT's statement of the case at "Oct 14, 2014" in the Return to Petition at pp. 2-3.

Also, on and about 10/14/2014 BBT did not object that the 4/16/2013 foreclosure complaint is a compulsory counterclaim from lawsuit #3 – c/a 4:12-cv-02216-MGL. See p. 1160 at “... operative events...”. BBT did not object to these pages in the two briefs. See FBOTA at pp. 9-12 & 23-25. See *Mendelsohn v. Whitfield*, 430 S.E.2d 524, 530, 312 S.C. 17 (S.C. App. 1993).

BBT argued applicable SOL and no private right of action at the **10/14/2014** hearing on its late MTD. See pp. 829-938 & pp. 429-432 and the attached certificate of service & p 1219; cf. pp. 98-112. Hunt argues that the allegations of the 6/6/2014 FAC at pp. 299-338, with their three-year period before the SOL runs, spans a time period that includes after the 4/16/2013 foreclosure complaint was filed. See the FAC at pp. 308 at paragraph # 130 – 338.

The Master states for the first time on 10/23/2014 that “Rule 12(a)(1), SCRCF stayed the time to respond to your amended counterclaims until after the Court ruled on BBT’s MTD your counterclaims. ... I did not grant the motion until last week.” See p. 1903.

Rule 12(a)(1), SCRCF states: “...The responsive pleading **shall**<sup>36</sup> be served within 15 days after notice of the Court’s action.”

Hunt argues that BBT received notice of the Master’ action on BBT’s MTD **1)** on 5/20/2014 and 10/14/2014 at the hearings. See pp. 557-958; **2)** on 10/23/2014 where the email was also sent to the attorney for BBT. See p. 1903; and **3)** on 10/28/2014 when the Order re Hunt’s 9/30/2014 MFDJ was signed and filed. See pp. 85-90; and Rule 77(d), SCRCF.

Hunt argues that BBT did not at any time thereafter or during lawsuit # 4 file the required responsive pleading of a Reply. *Mauro v. Clabaugh*, 299 S.C. 184, 191, 383 S.E.2d 244 (S.C. App. 1989), see Rule 7(a), SCRCF; Rule 12(a)(1), SCRCF; pp. 299-338 and the motion under Rule 59(e), SCRCF at pp. 1083-1086 and pp. 1250-1251 and pp. 1260-1264; see cf. p. 1903, the MTD at pp. 423-432.

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<sup>36</sup> The use of the word “shall” in a statutory provision indicates the provision is mandatory. See p. 1262 at b.ii; and ***Calhoun v. Calhoun*, 339 S.C. 96, 102, 529 S.E.2d 14 (S.C. 2000)**. Hunt argues that the South Carolina Rules of Civil Procedure are statutory provisions.

The averments / allegations in the FAC with the 70+ exhibits included claims, attorney fees, costs, damages, and punitive damages, etc. to Hunt and Sherman where BBT did not at any time during lawsuit # 4 file the required responsive pleading. See Rule 7(a) and 8(d), SCRCP; pp. 299-338 and exhibit #s 1-79; & see p. 1189 & p. 1086; and see pp. 229-231 & 334-336 & the FBOTA at pp. 46-49; Mauro v. Clabaugh, 299 S.C. 184, 191, 383 S.E.2d 244 (S.C. App. 1989). and see the FBOTA at p. 15 at: 6/17/2016; and see pp. 1906-1928.

**Effect of Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided. See Rule 8(d), SCRCP & p. 1189 of the two briefs that were submitted on 10/14/2014 without objection by BBT and filed on 10/16/2014; and see the 10/30/2014 motion to alter or amend (which was filed more than 15 days after the 10/14/2014 notice of the motion) at pp. 1083-1086 where Hunt argues that Rule 7(a) and 8(d), SCRCP applies to the 6/6/2014 FAC at pp. 299-338. See p. 1086 and cf. p. 1903.

**Continuing default or default #2:** As such, during lawsuit #4 at the 10/14/2014 hearing BBT only objected to the seven causes of actions in its MTD where BBT argued **applicable SOL and no private right of action**. See pp. 429-432; pp. 829-938; cf. pp. 98-112. Hunt argues that thereafter as shown above BBT admitted to all the averments / allegations in the FAC with the 70+ exhibits where BBT did not file the responsive pleading within 15 days after notice of the Court's 10/14/2014 action; and the 6/25/2014 MTD was late. See p. 1903, see Rule 15(a), 12(a)(1), SCRCP, pp. 1083-1086.

**Thus, Hunt continues to argue that BBT is in default.** See Rule 7(a) and 8(d), SCRCP; Rule 55(a), SCRCP; and p. 1189 & p. 1086; & pp. 1244-1270; & pp. 433-546; and see the amended counterclaims at pp. 299-338 and the 70+ exhibits in the index to the ROA at pp. v-x; and see pp. 1119-1224. "It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." Roche v. Young Bros., Inc., 332 S.C. 75, 81, 504 S.E.2d 311 (S.C. 1998). Hunt argues that the allegations show numerous claims to include but is not limited to mortgage loan fraud, defamation and slander. See pp. 299-338 and the 70+ exhibits in the index to the ROA at pp. v-x; pp. 1158-1179 and pp. 1244-1264.

As such, Hunt argues that notwithstanding the words used in the 10/28/2014 Order or the 1/13/2015 Order that the Orders did not dismiss any of the amended counterclaims based **on applicable SOL and no private right of action**<sup>37</sup> and where several claims occurred within the **three years** just prior to the barred foreclosure complaint being filed on 4/16/2013 and thereafter where those claims remain in the FAC. See pp. 261-272, 85-90, 98-112, 829-958 cf. pp. 429-432; cf. pp. 1130-1135 and pp. 1158-1176 for fraud, mortgage loan fraud, defamation, slander of titles,<sup>38</sup> cf. **pp. 317, 321, 331, 334-336 for actual and punitive damages, and attorney fees and costs in the FAC**; and cf. punitive damages, and attorney fees and costs where BBT did not object to these pages in the three briefs at pp. 1174-1176 and pp. 1214-1217 and pp. 1260-1262; and cf. pp. 212-214 for 15 USC 1681 n/o where BBT reported Hunt to the CRA on 2/17/2013 (p. 1586) on the admitted and barred foreclosure complaint. See FBOTA at pp. 23-25, 46-49.

Hunt filed a motion to alter or amend on 10/30/2014 re her 9/30/2014 MFDJ where Hunt asserted the same and different grounds from those asserted in the MFDJ. See pp. 533-538 cf. pp. 1083-1086.<sup>39</sup>

**REMOVAL TO THE USDC:** On 11/10/2014 Hunt filed a Notice of Removal (NOR) to the USDC. During Removal the Master filed an Order on 1/13/2015 from the 10/14/2014 hearing. The case was remanded to State Court on 5/11/2015. See pp. 1110-1118; pp. 98-112<sup>40</sup>; pp. 130-135.

**Rule 41, SCRC:** On 5/27/2015 Hunt made a motion under Rule 41, SCRC for attorney fees and costs and argued res judicata, etc. BBT received notice of the motion. See Rule 5(a), SCRC; pp. 1087-1094.

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<sup>37</sup> Hunt continues to argue that BBT was in default; and that the arguments asserted by BBT in the MTD at pp. 429-432 and as argued at pp. 829-958 are unpreserved and res judicata applied based on lawsuit #3. See the 4/3/2020 Petition at p. 4-5. Also, see the motions at pp. 1083-1086 and 1095-1100.

<sup>38</sup> BBT reported Hunt to the CRA on 2/17/2013 at pp. 1586. The foreclosure complaint was filed on 4/16/2013. On and about 10/14/2014 BBT was in default; and BBT admitted that the foreclosure complaint was a compulsory counterclaim from lawsuit #3 at p. 1160; BBT made improper lis pendens on 4/16/2013, 10/10/2013 and 4/12/2018 - see the Petition at pp. 27-32; and sent three thug like visitors from 9/2015-3/2019 - see APFR at p. 44-51. As such, Hunt argues that the lis pendens, the visitors and reporting Hunt to the CRA show fraud, mortgage loan fraud, defamation, slander of titles and violation of 15 USC 1681 n/o.

<sup>39</sup> Cf. BBT's statement of the case at "Oct 30, 2014" in the Return to Petition at pp. 3.

<sup>40</sup> Hunt filed a motion to alter or amend or vacate on 8/11/2015 re BBT's 1/13/2015 MTD. See pp. pp. 1887-1891 & pp. 1095-1100.

BBT chose not to respond to the motion. Nonetheless, the Master denied Hunt's motion for attorney fees and costs while making assertions about pro se litigants without making a finding that Hunt was pro se. The Master declined to rule on res judicata, etc. Hunt filed a motion to alter or amend or vacate on 8/11/2015 re Hunt's 5/27/2015 motion. See p. 32 at FN 1 & see pp. 1887-1891 & pp. 136-138 & pp. 143-146.

Hunt argues that this matter involved the misuse of Hunt's IOLTA and other accounts where BBT used Hunt's accounts as the basis for granting loans to others and placing those loans into Hunt's customer profile with the IOLTA; and thereafter BBT refused to cooperate with the HCPD. See pp. 1479-1499.

Hunt argues that the Master and the Court of Appeals have ignored the fact that this matter involves Hunt's IOLTA,<sup>41</sup> Hunt and Sherman; and have thrown Hunt under the bus where **1**) in 6/2012 BBT refused improperly or failed to issue a satisfaction of Hunt's mortgage pursuant to Section 29-3-310. See p. 1521 & pp. 1158-1161;<sup>42</sup>

From the rulings of this Court in matters involving the IOLTA - Hunt has learned that any and all misuse of the IOLTA is unacceptable. Hunt argues that it is her position that the employees of BBT have engaged in conduct that is similar to that described in IN RE WELCH, 355 S.C. 93, 584 S.E.2d 369 (S.C. 2003). See pp. 1479-1499.

Rule 8(f), SCRCP states: "All pleadings shall be so construed as to do substantial justice to all parties."

Hunt argues that pursuant to Rule 7(a), SCRCP that Hunt is the only party in this matter involving the Orders that are being appealed that has filed a pleading. See pp. 299-338 with exhibits; cf. the MTD at pp. 429-432 is not a pleading. See Rule 7(a), SCRCP.

Hunt also argues that:

- 1) BBT (NOT Hunt) filed the 4/16/2013 harassing barred compulsory foreclosure complaint.<sup>43</sup> Subsequently BBT could not be bothered to comply with the SCRCP where BBT did not

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<sup>41</sup> See the FAC in lawsuit #4 at paragraph 1 at p. 300 & paragraph 21 at p. 301.

<sup>42</sup> See the FBOTA at pp. 23-25 (no objections).

<sup>43</sup> See pp. 261-272; see res judicata in the answer at pp. 275; and see res judicata at pp. 1850-1853, pp. 1087-1089, p. 1227 at exhibit #82; and the 4/3/2020 Petition at pp. 1-15 & pp. 24-32.

Reply to the FAC and BBT did not timely make the 6/25/2014 MTD;<sup>44</sup> and BBT did not Respond to either of the two notices for the motions under Rule 55(b)(3) nor Rule 41(d), SCRCF. See p. 1220 and p. 1105 at paragraph 7; see Rule 7(a), & Rule 15(a), SCRCF, etc.; and see no objection that the foreclosure complaint was a compulsory counterclaim from lawsuit # 3 at p. 1160;

- 2) No civility toward Hunt.<sup>45</sup> Hunt argues that through defamation that BBT has interfered with Hunt's ability to obtain employment;<sup>46</sup> and that BBT continues to engage in misconduct where BBT has not withdrawn the harassing foreclosure complaint.<sup>47</sup> See CRA at p. 1586, pp. 1161-1165, pp. 1260-1264 and see the 1/2/2020 APFR at pp. 11-15; and see the 4/3/2020 Petition at pp. 6-8.
- 3) Hunt argues that all the misconduct in this matter that has been heaped on Hunt has been ignored by the Master and the Court of Appeals.<sup>48</sup> Yet, the Court of Appeals affirmed the Orders of the Master<sup>49</sup> where the mortgage of the foreclosure complaint went into default on 7/1/2012,<sup>50</sup> which is during the same time period of the allegations of the FAC. See the FAC at pp. 308 at paragraph # 130 – pp. 338.
- 4) Instead, as shown above the Master and the Court of Appeals have allowed BBT and its attorneys to ignore the SCRCF and suffer no consequences for the failure to respond to motions with the result that Hunt is being bullied and deprived of due process in this matter involving the foreclosure of her home

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<sup>44</sup> See Rule 15(a), SCRCF; pp. 337 and the attached certificate of service from the 6/25/2014 MTD; and see p. 1219; "A reply to the counterclaims was due on June 21, 2014"; the affidavits of default at pp. 433-474 & Rule 7(a), SCRCF.

<sup>45</sup> For example: see early exit from hearing in the FBOTA at p. 24; see bullying visitors in the 1/2/2020 APFR at pp. 44-51 & more bullying, *lis pendens* in the 4/3/2020 Petition at pp. 24-32.

<sup>46</sup> See CRA at p. 1586 and see pp. 1158-1165.

<sup>47</sup> See herein and the Petition at all pages; see the *lis pendens* in the 4/3/2020 Petition at pp. 24-32; see the 1/2/2020 APFR at pp. 44-51 (letter to SLED) and Cf. where BBT did not object to the letter to SLED in the 1/23/2020 RRT.

<sup>48</sup> For example: this matter was removed to the USDC from 11/10/2014 thru 5/11/2015 (NOR: pp. 1110-1118; Remand: pp. 130-135). The Master filed an Order during removal on 1/13/2015 (pp. 98-112), see the scratch / strike out at p. 109. BBT got this Order in 1/2015 (p. 1065 line 2 – p. 1066 line 23). After writing (pp. 1887-1891) to the clerk of court Hunt received the 1/13/2015 Order on 8/10/2015. See pp. 1232-1237.

<sup>49</sup> See *Branch Banking & Tr. Co. v. Hunt* (S.C. App. 2019).

<sup>50</sup> See the foreclosure complaint at p. 265 at paragraph 11.


during the COVID-19 pandemic.<sup>51</sup> See pp. 1181<sup>52</sup> and see pp. 261-272.

- 5) Hunt argues that BBT's Return to the Petition at pp. 1-7 contains false and or omitted statements. Cf. FBOTA at pp. 1-15;<sup>53</sup>
- 6) Hunt argues that the appellate Court in the Orders of the Court of Appeals (12/18/2019 and 2/20/2020) erred in affirming the lower court's decision; and the Orders of the Master are an abuse of discretion involving errors of law and where the Orders are based on "factual conclusions that are without evidentiary support"<sup>54</sup> (10/28/2014 (pp. 85-90 ), 1/13/2015 (pp. 98-112), 6/3/2015 (pp. 136-138) and 6/15/2016 (pp. 139-146)); and are in conflict with the prior decisions of this Court when a party is in default.<sup>55</sup>

As such, Hunt argues that as shown above the pleadings have not been construed as to do substantial justice to all parties. With the result that Hunt is thrown under the bus where BBT and its attorneys have on four occasions sent people to Hunt's home to bully Hunt and have filed three lis pendens. See the 1/2/2020 APFR at pp. 44-51 and the 4/3/2020 Petition at pp. 24-32.

**Conclusion:** Thus, Hunt's Petition presents special and important reasons that justify this Court's review of the decision of the Court of Appeals.

Respectfully Submitted,

  
Cindy B. Hunt, Pro Se, SC Bar # 65408.  
195 D Willow Green Drive  
Conway, SC 29526  
843 488-1131

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<sup>51</sup> Hunt asks this Court to take Judicial Notice of the COVID-19 Pandemic. SCRE 201.

<sup>52</sup> BBT made no objections to two briefs, BBT made early exit and refused to return. See the FBOTA at pp. 9-12. See the les pendens in the 4/3/2020 Petition at pp. 24-32; see the 1/2/2020 APFR at pp. 44-51 (letter to SLED) and Cf. where BBT did not object to the letter to SLED in the 1/23/2020 RRT.

<sup>53</sup> In this matter Hunt reasserts the entire record on appeal; and the FBOTA; and 1/2/2020 APFR. See the 4/3/2020 Petition at p. 11 FN 29.

<sup>54</sup> See BB&T v. Taylor, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006); see herein and the Petition at all pages.

<sup>55</sup> See Roche v. Young Bros., Inc., 332 S.C. 75, 81, 504 S.E.2d 311 (S.C. 1998); and Calhoun v. Calhoun, 339 S.C. 96, 100, 529 S.E.2d 14 (S.C. 2000).

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF Horry

CASE NO. 2013-CP-26-2528

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Branch Banking and Trust Company,  Plaintiff v.

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

Check box above indicating submitting party

name, S.C. Bar no. and address of plaintiff's attorney
Sean M. Foerster (SC Bar# 77466)
220 Executive Center Drive, Suite 109, Columbia, SC 29210
telephone: 803-744-1855 fax: 803-343-7013

name, S.C. Bar no. and address of Defendant's attorney
telephone:
email: other:

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Motion to Dismiss the First Amended Counterclaims of Defendant Cindy B. Hunt

Estimated Time Needed: Matter referred to Master in Equity Court Reporter Needed: YES/NO

SECTION II: Motion Fee

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

FILED
Horry County
2014 JUN 25 PM 3:53
MELANIE HUGGINS-WARD
CLERK OF COURT

SECTION III: Motion Type

- Written motion attached
Form Motion

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff/Defendant

June 23, 2014
Date submitted

JUDGE'S SECTION

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

JUDGE CODE: Date:

CLERK'S VERIFICATION

Collected by: (Signature)
(print name)

DATE FILED

- MOTION FEE COLLECTED:
CONTESTED - AMOUNT DUE:

6/25/14

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Branch Banking and Trust Company,

Plaintiff,

vs.

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

Defendants.

(504335.3166 SMF)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2013-CP-26-2528

PLAINTIFF'S NOTICE OF MOTION AND MOTION TO DISMISS THE FIRST AMENDED COUNTERCLAIMS OF DEFENDANT CINDY B. HUNT

FILED  
HORRY COUNTY  
2014 JUN 25 PM 3:58  
MELANIE HUGGINSWARD  
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that at such time and place as is set by the Honorable Court, Plaintiff Branch Banking and Trust Company ("BB&T") will move the Court for an order pursuant to Rule 12(b)(6), SCRPC, dismissing all of the counterclaims set forth in the First Amended Counterclaims and Defenses of Defendant Cindy B. Hunt ("Hunt") on the following grounds:

1. Hunt has failed to assert these counterclaims within a pleading as required by the South Carolina Rules of Civil Procedure;
2. The counterclaims are all barred by their applicable statutes of limitation;
3. The First Cause of Action fails to plead with particularity the elements of constructive fraud as required by Rule 9(b), SCRPC, because it fails to state facts which establish that BB&T knew or should have known that their statements were false;
4. The Second Cause of Action fails to set forth a claim for relief for negligence *per se* because it fails to allege any facts that establish that BB&T owes Hunt a duty of care pursuant to statute, or that BB&T violated that statute;
5. The Third Cause of Action fails to set forth a claim for relief for conversion because a bank account is a contract right, not tangible personal property, and as such, will not support a claim for relief for conversion;
6. The Fourth Cause of Action fails to set forth a claim for relief for breach of fiduciary duty because the facts alleged establish nothing more than a typical debtor/creditor relationship between Hunt and BB&T, which, as a matter of law, does not give rise to a fiduciary duty;
7. The Fifth Cause of Action fails to set forth a claim for relief for violation of S.C. Code Ann. §§ 62-6-101 to 62-6-106 because there is no private right of action for violation of those statutes;
8. The Sixth Cause of Action fails to state facts sufficient to state a claim against BB&T for

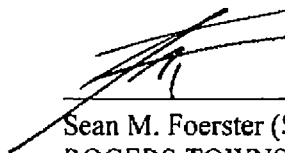
violation of the South Carolina Unfair Trade Practices Act because the actions of BB&T, a federally-insured state banking institution, are not subject thereto and/or are exempt from its provisions pursuant to S.C. Code Ann. § 39-5-40. Additionally, the counterclaim fails to set forth a claim for relief as the facts alleged establish only a private dispute between the parties that has no impact upon the public interest of the State of South Carolina;

9. The Seventh of Action fails to set forth a claim for relief for breach of contract because it fails to allege facts sufficient to plausibly establish the elements of causation and/or damages; and
10. The Counterclaims fail to allege any factual or legal basis for any claim for punitive damages; and
11. The Counterclaims fail to allege any basis for an award of attorneys' fees or costs.

Should it be successful in the prosecution of this motion, BB&T, pursuant to its rights under the Note and Mortgage, will seek all attorneys' fees incurred in connection with the defense of these counterclaims.

WHEREFORE, BB&T respectfully moves the Court for an Order dismissing the counterclaims set forth in the First Amended Counterclaims and Defenses of Defendant Cindy B. Hunt with prejudice. This motion is excluded from the duty to consult. This motion is based on the pleadings, the South Carolina Rules of Civil Procedure, the laws of the State of South Carolina, and such other and further matters as may be properly presented to the Court.

Respectfully submitted,



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Sean M. Foerster (SC Bar # 77466)  
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Attorneys for Plaintiff Branch Banking & Trust  
Company

*Rogers Townsend & Thomas, PC and its staff are debt collectors*

June 23, 2014

CERTIFICATE OF SERVICE  
C/A # 2013-CP-26-2528

I, Karissa Durkin, with the law offices of Rogers Townsend and Thomas, PC, attorneys for Plaintiff, do hereby certify that I have served a copy of the foregoing document on the parties by mailing a copy of the same by United States mail, postage prepaid, on June 23, 2014, to each of the following:

**Documents:** Plaintiff's Notice of Motion and Motion to Dismiss the First Amended Counterclaims of Defendant Cindy B. Hunt

**Parties served:**  
Cindy B. Hunt  
195 D Willow Green Drive  
Conway, SC 29526



Karissa Durkin  
Legal Assistant to Sean M. Foerster, Esquire

FILED  
Horry County  
2014 JUN 25 PM 3:58  
MELANIE HUGGINS-WARD  
CLERK OF COURT