

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

The Honorable Dale E. Van Slambrook, Master In Equity

Appellate Case No.: 2018-000539

Federal National Mortgage Association (“Fannie Mae”), .....Respondent,

v.

Richard C. Ivey a/k/a Richard Curtis Ivey; Crowfield Plantation Community Services Association, Inc.; Unifund CCR Partners Assignee of Palisades, a General Partnership; and CIT Bank, National Association, Defendants,

Of whom Richard C. Ivey a/k/a Richard Curtis Ivey is the .....Appellant.

RECORD ON APPEAL

**RECEIVED**  
JAN 24 2019  
SC Court of Appeals

J. Derrick Jackson  
Tobias G. Ward, Jr. PA  
Post Office Box 50124  
Columbia, SC 29250  
(803) 708-4200

John R. Cantrell, Jr.  
Cantrell Legal, PC  
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Goose Creek, SC 29445-1276  
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*Attorney for Appellant*

Louise M. Johnson  
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Post Office Box 2065  
Columbia, South Carolina 29202  
(803) 252-3340  
*Attorneys for Respondent*

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STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Federal National Mortgage Association ("Fannie Mae"),

PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey; Crowfield Plantation Community Services Association, Inc.; Unifund CCR Partners Assignee of Palisades, a General Partnership; and CIT Bank, National Association

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-08-00591

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

**SUBMITTING PARTY: PLAINTIFF**

**Name, SC Bar No. and Address of Plaintiff's Attorney**

Ronald C. Scott, SC Bar #4996  
Reginald P. Corley, SC Bar #69453  
Angelia J. Grant, SC Bar #78334  
Vance L. Brabham, III, SC Bar #71250  
Andrew M. Sullivan, SC Bar #100464  
ATTORNEYS FOR PLAINTIFF  
2712 Middleburg Drive, Suite 200  
(P.O. Box 2065)  
Columbia, SC 29204 (29202)  
Telephone: (803) 252-3340  
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Email: rons@scottandcorley.com  
vanceb@scottandcorley.com  
jamiew@scottandcorley.com  
matthewr@scottandcorley.com

**Name, SC Bar No. and Address of Defendant's Attorney**

Jessica S. Corley, SC Bar #80470  
James L. Williams, SC Bar #102408  
Allison E. Heffeman, SC Bar #68530  
Matthew E. Rupert, SC Bar #100740  
reggiec@scottandcorley.com  
andrews@scottandcorley.com  
allisonh@scottandcorley.com

angig@scottandcorley.com  
jessicac@scottandcorley.com

CLERK OF COURT  
BERKELEY COUNTY, S.C.

16 MAY - 3 PM 2:41

FILED

- 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: \_\_\_\_\_ Court Reporter Needed: Yes/No  
Estimated Time Needed: \_\_\_\_\_

**SECTION II: MOTION TYPE**

- Written Motion attached
  - Form Motion -
- I hereby move for relief of action by the court as set forth in the attached proposed order.

*[Signature]*  
Signature of Attorney for Plaintiff/Defendant

4/22 2016  
Date Submitted

**SECTION III: MOTION FEE**

- PAID - AMOUNT: \$25.00
- EXEMPT:
  - Rule to Show Cause in Child or Spousal Support
  - Domestic Abuse or Abuse and Neglect
  - Indigent Status
  - Sexually Violent Predator Act
  - Motion for Stay in Bankruptcy
  - Motion for Publication
- Stage Agency v. Indigent Party
- Post-Conviction Relief
- Motion for Execution (Rule 69, etc.)

SCRCP)

Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter: \_\_\_\_\_

Other

**JUDGE'S SECTION**

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

JUDGE CODE: \_\_\_\_\_ DATE: \_\_\_\_\_

Judge Signature \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_  
MOTION FEE COLLECTED: \$ \_\_\_\_\_  
CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

DATE FILED: \_\_\_\_\_

SCCA 233 (12/2009)

25-00  
MIE

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Federal National Mortgage Association  
("Fannie Mae"),

PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey;  
Crowfield Plantation Community Services  
Association, Inc.; Unifund CCR Partners  
Assignee of Palisades, a General Partnership;  
and CIT Bank, National Association ,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-08-00591

MOTION AND ORDER OF REFERENCE

(Mortgage Foreclosure Action)

CLERK OF COURT  
BERKELEY COUNTY, S.C.

16 MAY -3 PM 2:4

*Handwritten initials*

(151083.00327)

On motion of the undersigned counsel for the Plaintiff and after review of the pleadings in the Office of the Clerk of Court and pursuant to Rules 53 and 71, SCRCP, this matter involves a mortgage foreclosure action which may be mandatorily referred for a Hearing to the Honorable Dale Van Slambrook, Master in Equity for the within identified county with authority to enter a final judgment in the cause. Any appeal therefrom shall be directed to the South Carolina Court of Appeals.

IT IS THEREFORE ORDERED that this action be, and the same hereby is, referred to the Master in Equity for the within county to take the testimony arising under the pleadings and to make his/her findings of fact and conclusions of law, with authority to rule on all matters related to this action, including but not limited to, the authority to enter a final judgment in the cause and said Master in Equity shall and must specifically retain jurisdiction to hear and shall and must hear on the merits any issues after sale or judgment, including but not limited to issues involving appraisal proceedings under Section 29-3-680, et. seq., and evictions as well as Rule 60 or Rule 61 Motions and/or similar matters including but not limited to the sufficiency of the successful bid as well as the marketability of title and/or matters relating to omitted lienholders or claimants; and with the further authority to sell the subject property at public auction on some convenient sales day hereafter as ordered with any appeal therefrom being directed and mandated to the South Carolina Court of Appeals.

*Mary P. Brown-Tson*  
Clerk of Court/Presiding Judge  
Berkeley County

Moncks Corner, South Carolina

*MAY 3*, 2016

I SO MOVE:

SCOTT AND CORLEY, P.A.

By: *ASL*

Ronald C. Scott, SC Bar #4996  
Reginald P. Corley, SC Bar #69453  
Angelia J. Grant, SC Bar #78334  
Vance L. Brabham, III, SC Bar #71250  
Andrew M. Sullivan, SC Bar #100464

Jessica S. Corley, SC Bar #80470  
James L. Williams, SC Bar #102408  
Allison E. Heffeman, SC Bar #68530  
Matthew E. Rupert, SC Bar #100740

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

*TBM*

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

Federal National Mortgage Association  
("Fannie Mae"),

PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey;  
Crowfield Plantation Community Services  
Association, Inc.; Unifund CCR Partners  
Assignee of Palisades, a General Partnership;  
and CIT Bank, National Association ,

DEFENDANT(S).

(151083.00327)

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-08-00591

CERTIFICATION OF  
SERVICE AND DEFAULT


CLERK OF COURT  
BERKELEY COUNTY, S.C.

16 MAY -3 PM 2:41

FILED  
MAY

PERSONALLY appeared before me the undersigned attorney for Plaintiff, who acknowledged that (s)he is the attorney for the Plaintiff in the above entitled action; that, upon information and belief, the Defendants were duly served with the Summons and Complaint as indicated by the proofs of service filed herein and/or attached hereto. That more than thirty (30) days, exclusive of the day of service, have elapsed since the service aforesaid, and no Answer, Demurrer or Notice of Appearance has been received by or served upon the Plaintiff or its attorneys by or on behalf of Defendant, to wit: Richard C. Ivey a/k/a Richard Curtis Ivey; Crowfield Plantation Community Services Association, Inc.; Unifund CCR Partners Assignee of Palisades, a General Partnership; and CIT Bank, National Association ; and that said Defendants are now in default. This certification is submitted primarily in reliance on the business records of the Plaintiff and the filed records in the court, wherein this action is pending.

SCOTT AND CORLEY, P.A.

By: 

Ronald C. Scott, SC Bar #4996  
Reginald P. Corley, SC Bar #69453  
Angelia J. Grant, SC Bar #78334  
Vance L. Brabham, III, SC Bar #71250  
Andrew M. Sullivan, SC Bar #100464  
Jessica S. Corley, SC Bar #80470  
James L. Williams, SC Bar #102408  
Allison E. Heffeman, SC Bar #68530  
Matthew E. Rupert, SC Bar #100740

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

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

The foregoing instrument was acknowledged before me this 4.22.16 by Andrew Sullivan

  
Notary Public for South Carolina  
My Commission Expires: 04/25/17

Tom

Affidavit of Service



DOCKET NUMBER: 16-CP-08-00591  
COURT OF COMMON PLEAS FOR BERKELEY COUNTY, SC

FILE NUMBER: 151083.00327

CASE STYLE: PLAINTIFF FEDERAL NATIONAL MORTGAGE ASSOCIATION ("FANNIE MAE"), et seq.

vs. DEFENDANT RICHARD C. IVEY A/K/A RICHARD CURTIS IVEY; et al.

SERVICE OF PROCESS ON: RICHARD C. IVEY A/K/A RICHARD CURTIS IVEY

METHOD OF SERVICE: A true and correct copy of the above-described papers were served on the below-named party in the following manner:

(x) (SUBSTITUTE) By leaving a copy at dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

PLACE OF SERVICE: 108 WINDING ROCK ROAD  
GOOSE CREEK, SC 29445

Is the place of service the dwelling house or usual place of abode for the party being served? (x) Yes ( ) No

DATE OF SERVICE: 03/12/2016 TIME OF SERVICE: 12:10 PM

TYPE OF DOCUMENTS: Summons & Complaint, Lis Pendens, NOTICE OF DEBT, NOTICE OF RIGHT TO FORECLOSURE INTERVENTION, LIS PENDENS

DESCRIPTION OF PARTY RECEIVING DOCUMENTS: The person receiving the documents is described as follows:

Name AMY IVEY; Relationship/Title SPOUSE  
Sex FEMALE; Race WHITE; Facial Hair NO; Hair Color RED;  
Age (prox.) 26-30; Height (prox.) 5FT 4IN - 5FT 7IN; Weight (prox.) 111 LBS - 130 LBS

MARITAL STATUS:  Single  Married  Separated  Unknown

MILITARY STATUS: PER MY INVESTIGATION, SAID PERSON  
 WAS  WAS NOT ENGAGED IN THE U.S. MILITARY AT THE TIME OF SERVICE  UNKNOWN  
MILITARY BRANCH, IF APPLICABLE:

IS THE SUBJECT PROPERTY A MOBILE HOME?  YES  NO  MOBILE HOME VIN NOT VISIBLE  
VIN #:

COMMENTS: Married To Richard Ivey

FILED  
2016 MAR 14 AM 11:28  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: J.A. COX

J.A. Cox  
Signature of Process Server / ProVest Case id # 4523180

Date

3/14/16

STATE OF South Carolina

COUNTY OF Charleston

I swore and subscribed before me this 12 day of March in the year of 2016

Personally known to me or  identified by the following document:  
Type: \_\_\_\_\_ Number/Reference: \_\_\_\_\_

[Signature]  
Notary Public for South Carolina  
Notary Public (Legal Signature)  
Commission Expires 1/27/2022

Affidavit of Service



DOCKET NUMBER: 16-CP-08-00591

FILE NUMBER: 151083.00327

COURT OF COMMON PLEAS FOR BERKELEY COUNTY, SC

CASE STYLE:

PLAINTIFF

FEDERAL NATIONAL MORTGAGE ASSOCIATION ("FANNIE MAE"); et seq.

vs.

DEFENDANT

RICHARD C. IVEY A/K/A RICHARD CURTIS IVEY; et al.

SERVICE OF PROCESS ON:

UNIFUND CCR PARTNERS ASSIGNEE OF PALISADES, A GENERAL PARTNERSHIP

METHOD OF SERVICE:

A true and correct copy of the above-described papers were served on the below-named party in the following manner:

(x) (CORPORATION/PARTNERSHIP) By leaving a copy with an officer, a managing or general agent, or with any other agent authorized by appointment or by law to receive service of process.

PLACE OF SERVICE:

C/O PAUL A. MEDING, ESQ.  
1415 RICHLAND STREET  
COLUMBIA, SC 29201

Is the place of service the dwelling house or usual place of abode for the party being served? ( ) Yes ( ) No

DATE OF SERVICE:

03/11/2016 TIME OF SERVICE: 1:27 PM

TYPE OF DOCUMENTS:

Summons & Complaint, NOTICE OF MORTGAGOR'S RIGHT TO FORECLOSURE INTERVENTION; LIS PENDENS; NOTICE OF DEBT

DESCRIPTION OF PARTY RECEIVING DOCUMENTS:

The person receiving the documents is described as follows:

Name PAUL MEDING; Relationship/Title ATTORNEY  
Sex MALE; Race WHITE; Facial Hair NO; Hair Color GRAY;  
Age (prox.) 46-50; Height (prox.) 5FT 4IN - 5FT 7IN; Weight (prox.) 151 LBS - 170 LBS

COMMENTS:

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: CRAIG ADAMS

[Signature]  
Signature of Process Server / ProVest Case id # 4538380

3-14-16  
Date

STATE OF SC

COUNTY OF Richland

Sworn and subscribed before me this 14 day of mar in the year of 2016.

Personally known to me or identified by the following document:

Type: \_\_\_\_\_

Number/Reference: \_\_\_\_\_

[Signature] Notary Public for South Carolina  
Notary Public (Legal Signature)

Commission Expiration: 01/29/2023

TSM  
2016 MAR 15 AM 11:18  
FILED  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

Affidavit of Service



DOCKET NUMBER: 2016-CP-08-591  
COURT OF COMMON PLEAS FOR BERKELEY COUNTY, SC  
CASE STYLE:

FILE NUMBER: 151083.00327

PLAINTIFF: FEDERAL NATIONAL MORTGAGE ASSOCIATION ("FANNIE MAE"); et seq.

vs.  
DEFENDANT: RICHARD C. IVEY A/K/A RICHARD CURTIS IVEY; et al.

SERVICE OF PROCESS ON: CROWFIELD PLANTATION COMMUNITY SERVICES ASSOCIATION, INC.

METHOD OF SERVICE: A true and correct copy of the above-described papers were served on the below-named party in the following manner:

(1) (CORPORATION/PARTNERSHIP) By leaving a copy with an officer, a managing or general agent, or with any other agent authorized by appointment or by law to receive service of process.

PLACE OF SERVICE: JOHN K. CAUSEY  
101 HUNTERS LANE  
GOOSE CREEK, SC 29445

Is the place of service the dwelling house or usual place of abode for the party being served? ( ) Yes (x) No

DATE OF SERVICE: 03/10/2016 TIME OF SERVICE: 10:10 AM

TYPE OF DOCUMENTS: Summons & Complaint, Lis Pendens, notice of mortgagor's right to foreclosure intervention, request for foreclosure intervention and notice of debt

DESCRIPTION OF PARTY RECEIVING DOCUMENTS: The person receiving the documents is described as follows:

Name DEANNA CALLICOAT; Relationship/Title AUTHORIZED AGENT  
Sex FEMALE; Race WHITE; Facial Hair NO; Hair Color BROWN;  
Age (prox.) 51-55; Height (prox.) 5'5"; Weight (prox.) 150

COMMENTS:

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: J.A. COX

J.A. Cox  
Signature of Process Server: 7 Pro Vest Case id # 4538380

Date

3/10/16

STATE OF South Carolina  
COUNTY OF Charleston

Sworn and subscribed before me this 10 day of March in the year of 2016  
 Personally knows to me or \_\_\_\_\_ identified by the following document:  
Type: \_\_\_\_\_ Number/Reference: \_\_\_\_\_

[Signature]  
Notary Public for South Carolina  
Notary Public (Legal Signature)  
Commission Expiration 1/27/2022

TSM  
2016 MAR 10 PM 2:31  
FILED  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

Affidavit of Service



DOCKET NUMBER: 16-CP-08-00591  
COURT OF COMMON PLEAS FOR BERKELEY COUNTY, SC  
CASE STYLE:

FILE NUMBER: 151083.00327

PLAINTIFF FEDERAL NATIONAL MORTGAGE ASSOCIATION ("FANNIE MAE"); et seq.

vs.

DEFENDANT RICHARD C. IVEY A/K/A RICHARD CURTIS IVEY; et al.

SERVICE OF PROCESS ON: CIT BANK NATIONAL ASSOCIATION

METHOD OF SERVICE: A true and correct copy of the above-described papers were served on the below-named party in the following manner:

(s) (CORPORATION/PARTNERSHIP) By leaving a copy with an officer, a managing or general agent, or with any other agent authorized by appointment or by law to receive service of process.

PLACE OF SERVICE: 888 E. WALNUT ST.  
PASADENA, CA 91101

Is the place of service the dwelling house or usual place of abode for the party being served? ( ) Yes ( ) No

DATE OF SERVICE: 03/18/2016 TIME OF SERVICE: 11:24 AM

TYPE OF DOCUMENTS: Summons & Complaint, Lis Pendens, NOTICE OF MORTGAGOR'S RIGHT TO FORECLOSURE INTERVENTION, NOTICE OF DEBT

DESCRIPTION OF PARTY RECEIVING DOCUMENTS: The person receiving the documents is described as follows:

Name LORNA LUALHATI; Relationship/Title LEGAL SPECIALIST  
Sex FEMALE; Race ASIAN; Facial Hair \_\_\_\_\_; Hair Color BROWN;  
Age(prox.) 46-50; Height(prox.) 5'6"; Weight(prox.) 160

COMMENTS: LORNA LUALHATI IS AUTHORIZED TO ACCEPT SERVICE

MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

2016 MAR 28 AM 11:43

FILED

KDC



CASE NO. 16-CP-08-00591

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: JON HABER

[Signature]  
Signature of Process Server / ProVest Case id # 4538380

3-22-16  
Date

State of California, County of Riverside  
 Subscribed and sworn to (or affirmed) before me on this 29 day of March, 2016  
 by Jon Haber, proved to me on the basis of satisfactory evidence to be the person(s) before me.  
 (Seal) Frances Fuentes  
 Notary Commission #: 2023618  
 Notary Commission Expiration Date: 05/18/2017  
 Notary Commission #: 2023618  
 Notary Commission Expiration Date: 05/18/2017  
 (Signature) Frances Fuentes



[Signature]  
 2016 MAR 28 AM 11:43  
 MARY P. BROWN  
 CLERK OF COURT  
 BERKELEY COUNTY, SC  
 FILED

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Federal National Mortgage Association  
("Fannie Mae"),

PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey;  
Crowfield Plantation Community Services  
Association, Inc.; Unifund CCR Partners  
Assignee of Palisades, a General Partnership;  
and CIT Bank, National Association ,

DEFENDANT(S).

(151083.00327)

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-08-00591

AFFIDAVIT OF  
NON-MILITARY SERVICE

CLERK OF COURT  
BERKELEY COUNTY, S.C.

16 MAY -3 PM 2:41

*Handwritten initials/signature*

PERSONALLY appeared before me the undersigned attorney for Plaintiff, who, after being duly sworn, says that (s)he is familiar with the provisions of 50 U.S.C.A. App. § 501, Servicemembers Civil Relief Act (SCRA), and to the best of his/her knowledge as to the Defendant, Richard C. Ivey a/k/a Richard Curtis Ivey, Affiant reports to the Court that from his/her file in this matter, and specifically on information and belief, that the Defendant above mentioned is not entitled to the protection of the Servicemembers Civil Relief Act (SCRA) nor any amendments thereto. Additionally, I am unable to determine the military status of any unnamed or unknown occupants as I do not have sufficient information to determine their military status.

The source of the information on which I base my belief as to SCRA eligibility is as follows: Information furnished to me by Plaintiff and others to this office do not indicate mortgagor is currently in the active duty of the military service of the United States; or that the mortgagor was not eligible for protection of the SCRA as the mortgagor was on active duty at the time the subject mortgage was originated. Defense Manpower Data Center (DMDC) searches are attached hereto and incorporated by reference.

SCOTT AND CORLEY, P.A.

By:

*Signature of Ronald C. Scott*  
Ronald C. Scott, SC Bar #4996  
Reginald P. Corley, SC Bar #69453  
Angelia J. Grant, SC Bar #78334  
Vance L. Brabham, III, SC Bar #71250  
Andrew M. Sullivan, SC Bar #100464  
Jessica S. Corley, SC Bar #80470  
James L. Williams, SC Bar #102408  
Allison E. Heffernan, SC Bar #68530  
Matthew E. Rupert, SC Bar #100740

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

SWORN TO before me this 4-22-16

*Signature of Notary Public*  
Notary Public for South Carolina  
My Commission Expires: 04/25/17

*Handwritten mark*



**Status Report  
Pursuant to Servicemembers Civil Relief Act**

Last Name: IVEY

First Name: RICHARD

Middle Name:

Active Duty Status As Of: Apr-22-2016

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty.

*Mary M. Snavelly-Dixon*

Mary M. Snavelly-Dixon, Director  
 Department of Defense - Manpower Data Center  
 4800 Mark Center Drive, Suite 04E25  
 Arlington, VA 22350

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense (DoD) that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. § 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via this URL: [https://kb.defense.gov/PublicQueries/publicQuestions/FaqsAnswers.jsp?Subject=Locating Service Members or Getting a Mailing Address](https://kb.defense.gov/PublicQueries/publicQuestions/FaqsAnswers.jsp?Subject=Locating%20Service%20Members%20or%20Getting%20a%20Mailing%20Address). If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. § 521(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

### More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

### Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by SCRA, as defined in accordance with 10 USC § 101(d)(1).

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

**WARNING:** This certificate was provided based on a last name, SSN/date of birth, and active duty status date provided by the requester. Providing erroneous information will cause an erroneous certificate to be provided.

Certificate ID: WEE5R9E5D276MA0

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-08-00591

Federal National Mortgage Association ("Fannie Mae")

Richard C. Ivey a/k/a Richard Curtis Ivey;  
Crowfield Plantation Community Services  
Association, Inc.; and Unifund CCR Partners  
Assignee of Palisades, a General Partnership

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Scott and Corley, P.A.	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
--------------------------------------	--

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41, 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
- STAYED FOR BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

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

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

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

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

If applicable, describe the property, including tax map information and address, referenced in the order:  
TMS No. 243-02-09-031

2017 OCT 31 PM 3:05  
 FILED  
 MARY P. BROWN  
 CLERK OF COURT  
 BERKELEY COUNTY SC

ME

DW

Property address: 108 Winding Rock, Goose Creek, SC 29445

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

E-Filing/Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

  
Dale Van Slambrook, Master in Equity

3079  
Judge Code

10/31/17  
Date

### For Clerk of Court Office Use Only

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

Scott and Corley, P.A.  
P.O. Box 2065  
Columbia, SC 29204

Marion K. Ivey  
108 Winding Rock  
Goose Creek, SC 29445

CIT Bank, National Association  
888 East Walnut Street  
Pasadena, CA 91101

John R. Cantrell (Attorney for Richard C. Ivey)  
Post Office Box 1276  
Charleston, SC 29445-1276

Paul A. James (Attorney for Crowfield Plantation  
Community Services Association, Inc.)  
1134 Waterfront Drive  
Mt. Pleasant, SC 29464

Unifund CCR Partners Assignee of Palisades, a  
General Partnership  
Paul A. Meding, Esq.  
1415 Richland Street  
Columbia, SC 29201

Frank R. Ivey  
108 Winding Rock  
Goose Creek, SC 29445

Attorney for Plaintiff

Attorney for Defendant(s)



STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-08-00591

Federal National Mortgage Association ("Fannie Mae"),  
PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey; Crowfield Plantation  
Community Services Association, Inc.; and Unifund CCR Partners  
Assignee of Palisades, a General Partnership

MOTION AND ORDER INFORMATION FORM  
AND COVER SHEET

DEFENDANT(S).

**SUBMITTING PARTY: PLAINTIFF**

Name, SC Bar No. and Address of Plaintiff's Attorney

Name, SC Bar No. and Address of Defendant's

**Attorney**  
Ronald C. Scott, SC Bar #4996  
Reginald P. Corley, SC Bar #69453  
Angelia J. Grant, SC Bar #78334  
Jessica S. Corley, SC Bar #80470  
Allison E. Heffernan, SC Bar #68530

Matthew E. Rupert, SC Bar #100740  
William P. Stork, SC Bar #100242  
Louise M. Johnson, SC Bar #16586  
Tasha B. Thompson, SC Bar #76415

ATTORNEYS FOR PLAINTIFF  
2712 Middleburg Drive, Suite 200  
(P.O. Box 2065)  
Columbia, SC 29204 (29202)  
Telephone: (803) 252-3340  
Fax: (855) 601-4921

Email: rons@scottandcorley.com  
allisonh@scottandcorley.com  
tashat@scottandcorley.com

reggiec@scottandcorley.com  
matthewr@scottandcorley.com

angie@scottandcorley.com  
williams@scottandcorley.com

jessicac@scottandcorley.com  
ceasiej@scottandcorley.com

2017 OCT 31 PM 3:05  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY S.C.

FILED

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: \_\_\_\_\_

Estimated Time Needed: \_\_\_\_\_

Court Reporter Needed: Yes/No \_\_\_\_\_

**SECTION II: MOTION TYPE**

Written Motion attached

Form Motion -

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

Signature of Attorney for Plaintiff/Defendant

10/30/2017  
Date Submitted

**SECTION III: MOTION FEE**

PAID - AMOUNT: \$25.00

EXEMPT: \_\_\_\_\_ Rule to Show Cause in Child or Spousal Support  
\_\_\_\_\_ Domestic Abuse or Abuse and Neglect  
\_\_\_\_\_ Indigent Status

Indigent Party

\_\_\_\_\_ Stage Agency v.

Relief

\_\_\_\_\_ Sexually Violent Predator Act

\_\_\_\_\_ Post-Conviction

\_\_\_\_\_ Motion for Stay in Bankruptcy

\_\_\_\_\_ Motion for Publication

\_\_\_\_\_ Motion for Execution (Rule 69, SCRCP)

\_\_\_\_\_ Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: \_\_\_\_\_

\_\_\_\_\_ Other

**JUDGE'S SECTION**

\_\_\_\_\_ Motion Fee to be paid upon filing of the attached order.

JUDGE CODE: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_ Other

\_\_\_\_\_  
Judge Signature

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_

DATE FILED: \_\_\_\_\_

\_\_\_\_\_ MOTION FEE COLLECTED: \$ \_\_\_\_\_

\_\_\_\_\_ CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

Federal National Mortgage Association ("Fannie  
Mae"),

PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey;  
Crowfield Plantation Community Services  
Association, Inc.; Unifund CCR Partners  
Assignee of Palisades, a General Partnership; and  
CIT Bank, National Association ,

DEFENDANT(S).

(151083.00327)

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-08-00591

**RULE 40(j) MOTION TO STRIKE FROM ACTIVE  
DOCKET  
WITH LEAVE TO RESTORE**

2017 OCT 31 PM 3:05  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY S.C.

FILED

2017

Upon motion of the undersigned attorney of Scott and Corley, P.A., Attorney for the Plaintiff, and with consent of all appearing parties of record, it appears that the parties are currently undergoing settlement negotiations such that it would be premature to proceed to hearing at this time. Therefore, Plaintiff hereby respectfully requests, with the consent of all parties of record, that this case be stricken from the active roster with leave to restore within one year in accordance with Rule 40(j), South Carolina Rules of Civil Procedure.

Pursuant to Rule 11, SCRCP, the undersigned hereby certifies that prior to filing this Motion, opposing counsel was contacted in good faith to resolve this matter and that it appears that a hearing will be required.

**SIGNATURE BLOCK ON FOLLOWING PAGE**

By: 

Ronald C. Scott (rons@scottandcorley.com), SC Bar #4996  
Reginald P. Corley (reggiec@scottandcorley.com), SC Bar #69453  
Angelia J. Grant (angig@scottandcorley.com), SC Bar #78334  
Jessica S. Corley (jessiac@scottandcorley.com), SC Bar #80470  
Allison E. Heffernan (allisonh@scottandcorley.com), SC Bar #68530  
Matthew E. Rupert (matthewr@scottandcorley.com), SC Bar #100740  
William P. Stork (williams@scottandcorley.com), SC Bar #100242  
Louise M. Johnson (ceasiej@scottandcorley.com), SC Bar #16586  
Tasha B. Thompson (tashat@scottandcorley.com), SC Bar #76415  
Jane S. Ruschky (janer@scottandcorley.com), SC Bar #70472  
ATTORNEYS FOR THE PLAINTIFF  
2712 Middleburg Drive, Suite 200  
Columbia, SC 29204  
803-252-3340

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

Federal National Mortgage Association ("Fannie  
Mae"),

PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey;  
Crowfield Plantation Community Services  
Association, Inc.; and Unifund CCR Partners  
Assignee of Palisades, a General Partnership,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-08-00591

CERTIFICATE OF SERVICE BY MAIL

OCT 31 PM 3:05  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY S.C.

FILED

AD

(151083.00327)

I, Caroline Laster, an employee of the law office of Scott and Corley, P.A., attorneys for Plaintiff, do hereby certify that I have mailed a copy of the Rule 40(j) Motion to Strike with Leave to Restore, which is attached hereto and incorporated herein by reference, dated October 20, 2017, and in connection with the above-referenced case, by mailing a copy of the same by United States mail, postage prepaid, to each of the Addresses, listed on the Rule 40(j) Motion and Order to Dismiss with Leave to Restore and in separate envelopes, at each of their respective addresses shown thereon, this October 20, 2017.

Marion K. Ivey  
108 Winding Rock  
Goose Creek, SC 29445

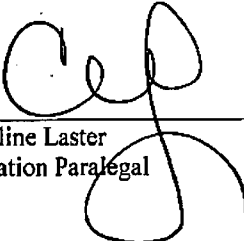
CIT Bank, National Association  
888 East Walnut Street  
Pasadena, CA 91101

John R. Cantrell  
Attorney for Richard C. Ivey  
Post Office Box 1276  
Charleston, SC 29445-1276

Paul A. James  
Attorney for Crowfield Plantation Community Services Association, Inc.  
1134 Waterfront Drive  
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Unifund CCR Partners Assignee of Palisades, a General Partnership  
Paul A. Meding, Esq.  
1415 Richland Street  
Columbia, SC 29201

Frank R. Ivey  
108 Winding Rock  
Goose Creek, SC 29445



---

Caroline Laster  
Litigation Paralegal

Common Pleas

Clerk : Mary P. Brown  
300 B California Avenue  
Moncks Corner, SC 29461

Phone:(843) 719-4400 Fax:(843) 719-4509

Received From: Williams, James Lloyd  
1330 Lady Street  
Columbia, SC 29201

Date: 11/ 1/2017  
Receipt #: 6077261  
Clerk: c08dwilson

Paying for: Federal National Mortgage Assoc

Transaction Type: Payment

Payment Type: Check \$25.00

Total Paid: \$25.00

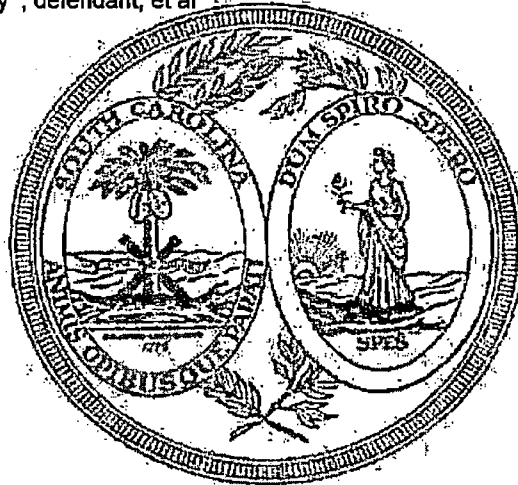
Reference #: 152804

Comment: Motion 40J  
Non-Refundable

You may check the status of your Berkeley case at:

<http://www.sccourts.org/caseSearch/>

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2016CP0800591	Federal National Mortgage Association VS Richard C. Ivey , defendant, et al	\$25.00	\$25.00	\$0.00



Total Cases: 1 \$25.00 \$25.00 \$0.00

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

JUDGMENT IN A CIVIL CASE  
CASE NO. 2016 CP-08-00591

Federal National Mortgage Association ("Fannie Mae")

Richard C. Ivey a/k/a Richard Curtis Ivey et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: John R. Cantrell, Jr.	Attorney for : <input type="checkbox"/> Plaintiff	<input checked="" type="checkbox"/> Defendant
	or	
<input type="checkbox"/> Self-Represented Litigant		

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 12(c), 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
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  Affirmed;  Reversed;  Remanded;  Other

MARY E. BROWN  
 CLERK OF COURT  
 BERKELEY COUNTY, S.C.  
 17 DEC -1 PM 4:14  
 FILED

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

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court: The Rule 40(j) Order striking the case from the active docket filed with this Court on October 31, 2017 is hereby vacated as improvidently granted due to the fact that the Defendant Richard C. Ivey did not consent to the entry of that order.

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk : \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

*MLC*



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )  
 )  
Federal National Mortgage Association )  
 ("Fannie Mae") )

Plaintiff, )

vs. )

Richard C. Ivey a/k/a Richard Curtis )  
Ivey; Crowfield Plantation Community )  
Services Association, Inc.; Unifund CCR )  
Partners Assignee of Palisades, a General )  
Partnership; and CIT Bank, National )  
Association, )

Defendants. )

151083.00327

IN THE COURT OF COMMON PLEAS

CASE No. 2016-CP-08-00591

**ORDER DENYING DEFENDANT'S  
MOTION FOR SANCTIONS  
AND  
DISMISSING CASE WITHOUT PREJUDICE**

MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

2018 FEB 22 AM 9:15

FILED

AD

This matter comes before the Court pursuant to the Motion to Dismiss Case and for Sanctions ("Motion") filed by Defendant Richard C. Ivey a/k/a Richard Curtis Ivey ("Defendant") against Federal National Mortgage Association ("Plaintiff"). A hearing was held before this Court on January 9, 2018. Present and participating at the hearing were William P. Stork, attorney for Plaintiff, and John R. Cantrell, Jr., attorney for Defendant. Based upon a review of the file, evidence presented and admitted in the record, arguments of counsel, and applicable South Carolina statutory and case law, I hereby find that the relief sought in Defendant's Motion for sanctions against Plaintiff and/or Plaintiff's counsel is hereby DENIED. I further find that the portion of Defendant's Motion seeking dismissal of the case, is hereby granted without prejudice based upon consent of the parties.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- I. I hereby find and conclude as a matter of law that the South Carolina Supreme Court's 2011 Administrative Order does not apply to the Defendant nor the subject property in this matter.

In Defendant's Motion, he alleges that Plaintiff is in contempt of the South Carolina Supreme court's May 2, 2011 Administrative Order ("Administrative Order"), and, thus, Defendant is entitled to sanctions against the Plaintiff and/or Plaintiff's counsel. This argument is without merit, however, because Defendant nor the subject property is entitled to the protection afforded by the Administrative Order.

The Administrative Order expressly and solely applies to the "Mortgagor," which is defined in the Administrative Order as, "every owner, mortgagor, and debtor under the note and mortgage at issue." [emphasis added]. In this case, Defendant was not a party to the original, underlying "note and mortgage at issue." Rather, Marion K. Ivey and Frank R. Ivey (the Defendant's deceased parents) (collectively, "Mortgagors") were the only "owners, mortgagors, and debtors" who executed and delivered the note and mortgage to Plaintiff's predecessor in interest. Defendant did not acquire his inherited interest in the subject property until well after his parents, the Mortgagors, closed on the underlying note and mortgage transaction. Accordingly, a plain reading of the Administrative Order dictates that this Court find that Defendant was not in privity of contract with Plaintiff nor its predecessor with regard to the note and mortgage at issue, and, therefore, any protections afforded by the Administrative Order do not apply to Defendant.

To further bolster this Court's finding and conclusion that the Administrative Order does not apply to Defendant in this case, this Court specifically takes judicial notice, pursuant to Rule 201 of the South Carolina Rules of Evidence, of the South Carolina Court Administration's formal letter dated June 7, 2011 ("Admin Explanation Letter"), which interprets and explains the intent, scope, and application of the Administrative Order.

Pursuant to the Admin Explanation Letter;

In paragraph A(1), concerning who is entitled to participate in foreclosure intervention, the definition of "Mortgagor," read in context includes only parties involved in the mortgage transaction in question." [emphasis added].

Admin Explanation Letter, Page 2.

In this case, Defendant is not a "party involved in the mortgage transaction in question," as the mortgage transaction was between and among the Mortgagors and Plaintiff's predecessor in interest, only. As stated above, Defendant merely obtained an inherited interest in the mortgaged property, subject to Plaintiff's first priority mortgage lien, *after* the note and mortgage transaction/closing was completed between the Borrowers and Plaintiff's predecessor.

I hereby find and conclude that, because the Defendant is not entitled to the protections afforded by the Administrative Order, neither Plaintiff nor Plaintiff's counsel can be sanctioned for any alleged violation of said Administrative Order. Neither Plaintiff nor Plaintiff's counsel is, nor ever was, required to comply with any of the terms of the Administrative Order with respect to Defendant in this case; therefore, it is axiomatic that Plaintiff or Plaintiff's counsel can not be sanctioned for failing to do that which is not required by law.

Based on the foregoing, I hereby find and conclude that Defendant's Motion for sanctions based upon an alleged violation of the Administrative Order fails as a matter of law and is denied.

II. In the alternative, even in the event that this Court were to assume that the Administrative Order applies to Defendant, I hereby find and conclude as a matter of law that Plaintiff fully complied with the terms of the Administrative Order.

Subsequent to the filing of this action, Plaintiff actually, and in good faith, participated in loss mitigation efforts with the Defendant which resulted in the Defendant entering into a trial modification with Plaintiff on or about July 2017 ("Trial Mod"). The Administrative Order does not impose any specific requirements on the Mortgagee when the parties have merely entered into a temporary or trial work-out solution. Instead, the Administrative Order only sets forth certain required procedures in the event that the parties agree to a formal and final loan modification or loss mitigation plan as follows:

In the event that the Mortgagor and Mortgagee agree on any loan modification or other loss mitigation plan ("Agreement"), such Agreement shall be reduced to writing, executed by the Mortgagor and Mortgagee, and served on all parties in the case. Any pending case shall be stayed, and no hearing or foreclosure sale held for 90 days following the entry of any Agreement, unless the Mortgagor shall not comply with the terms of the Agreement. [emphasis added].

...

If the Mortgagor shall be in compliance with the terms of the Agreement after 90 days, the Mortgagee's attorney shall promptly file a notice of dismissal of the action without prejudice, and the case will be dismissed. (emphasis added).

In this case, the Parties did not agree to any final "loan modification or loss mitigation plan" as contemplated by the Administrative Order. Rather, Plaintiff allowed Defendant to participate in a tentative work-out solution in the form of the Trial Mod. The Trial Mod entered into by Defendant and Plaintiff in this case was merely temporary, with the express provision that if Defendant were to default under the Trial Mod, Defendant would be denied a permanent loan modification. I, therefore, find and conclude that the Trial Mod does not constitute an "Agreement" as defined in the

W

Administrative Order, and, thus, Plaintiff did not violate any provision of the Administrative Order with respect to the Trial Mod.

III. Plaintiff and its counsel complied with Rule 11, SCRPC, at all times throughout the case, and, therefore, any alleged violation thereof cannot support a basis for sanctions against Plaintiff and/or Plaintiff's counsel.

Under Rule 11(a), SCRPC, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it. *Ex parte Gregory*, 378 S.C. 430, 663 S.E.2d 46 (2008). "Rule 11 requires '[a]ll motions filed shall contain an affirmation that the movant's counsel prior to filing the motion has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter ... unless the movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held.' The penalty for noncompliance is to strike the motion unless the attorney promptly amends the document to comply with the rule." *Jackson v. Speed*, 326 S.C. 289, 310, 486 S.E.2d 750, 761 (1997). The determination whether to impose sanctions is at the discretion of the Judge and "sounds in equity rather than at law." *Holmes v. Haynsworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 641, 760 S.E.2d 399, 410 (2014), *reh'g denied* (Aug. 5, 2014).

Counsel for Plaintiff filed its Motion to Strike pursuant to Rule 40(j) on or about October 31, 2017 ("Motion to Strike"), seeking a hearing and Order Striking the case from the active docket to allow the parties sufficient time to resolve the matter. In accordance with the requirements of Rule 11, SCRPC, *prior to filing its Motion to Strike*, counsel for Plaintiff discussed Plaintiff's desire to strike the case with leave to restore with counsel for Defendant and respectfully requested Defendant's consent to Plaintiff's Motion to Strike. Plaintiff concedes that counsel for Defendant advised Plaintiff that Defendant

N

would not consent to the Motion to Strike. The Motion erroneously asserts that Defendant consented to the entry of the motion pursuant to Rule 40(j).

Counsel for Defendant asserts that Plaintiff "willfully" filed the Motion to Strike under Rule 40(j) without Defendant's consent, and as such, Plaintiff violated Rule 11, SCRPC. Defendant's assertion is correct that the Motion was factually incorrect regarding consent. Further, the citation to Rule 40(j) is incorrect as a dismissal under that Rule requires consent of which there was none. However, the Motion to Strike expressly provided that the parties did not reach an agreement as to the Motion to Strike, and that a hearing was necessary. The filed Motion to Strike clearly stated that a hearing on the matter would be required which would here allowed Defendant a full and fair opportunity to dispute and/or argue against the Motion to Strike. Unfortunately, the Court erroneously executed the proposed Order. However, such Order was rescinded and the parties were allowed an opportunity to be heard as to the Motion to Strike.

It is well settled that "The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." Rule 61, SCRPC. Any defect in Plaintiff's Motion to Strike was a harmless error which did not affect the substantial rights of the parties. Defendant completed his loan modification review, was approved, and is now current. Whether the case was stricken from the docket, or whether it was dismissed, is now irrelevant since the loan is current and Plaintiff consents to the matter being dismissed.

Lastly, Defendant claims that Plaintiff filed the Motion to Strike merely for the purposes of delay and that such alleged improper motive is improper under Rule 11, SCRPC. Defendant has provided no evidence whatsoever that supports this contention. Defendant failed to show any prejudice to him resulting from the Motion to Strike, and Plaintiff established good grounds to file such Motion to Strike.



For the foregoing reasons, Defendant's claim that Plaintiff's counsel and/or Plaintiff violated Rule 11 SCRPC is insufficient to support an award of sanctions against Plaintiff as a matter of law.

IV. Dismissal

The parties agree that the Trial Loan Modification was successful and subsequently a permanent Loan Modification was entered into and executed by the parties. Therefore both parties agree and consent this action should be dismissed with out prejudice.

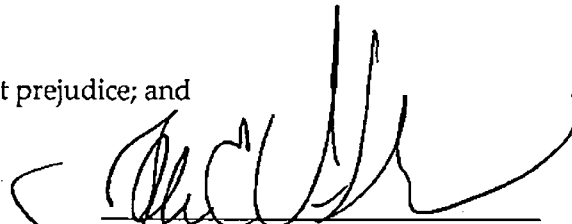
ORDER

Based on the foregoing, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. The South Carolina Supreme Court's 2011 Administrative Order does not apply to the Defendant nor the subject property in this matter.
2. Defendant's Motion for Sanctions against Plaintiff and/or Plaintiff's counsel based upon an alleged violation of the Administrative Order is denied;
3. Defendant's Motion for Sanctions against Plaintiff and/or Plaintiff's counsel based upon an alleged violation of Rule 11 of the South Carolina Rules of Civil Procedure is denied;
4. The case is dismissed without prejudice; and

IT IS SO ORDERED.

2/15 2018

  
Dale Edward Van Slambrook  
Berkeley County Master in Equity

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Federal National Mortgage Association  
("Fannie Mae"),

PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey;  
Crowfield Plantation Community Services  
Association, Inc.; Unifund CCR Partners, a  
General Partnership; and CIT Bank, National  
Association,

DEFENDANT(S).

(151083.00327)

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-08 **591**

LIS PENDENS

**FILED**  
2016 MAR -9 PM 12:38  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

NOTICE IS HEREBY GIVEN that an action has been commenced by the Plaintiff above named against the Defendants above named for the foreclosure of a certain mortgage given by Marion K. Ivey and Frank R. Ivey to Mortgage Electronic Registration Systems, Inc., as nominee for IndyMac Bank, F.S.B, dated August 18, 2006, recorded August 29, 2006, in the office of the Clerk of Court/Register of Deeds for Berkeley County, in Book 5913, at Page 159; thereafter, said Mortgage was assigned to OneWest Bank, FSB by assignment instrument dated August 1, 2013 and recorded August 9, 2013 in Book 10304 at Page 283.

The description of the premises is as follows:

All that certain piece, parcel of lot of land, situate, lying and being in Piedmonte Place Subdivision, Community of Crowfield Plantation, City of Goose Creek, Berkeley County, South Carolina, being shown and designated as Lot 5, Block B on "Plat Showing Piedmonte Place, Phase III, Property of Westvaco Development Corporation, Located on Crowfield Plantation in the City of Goose Creek, Berkeley County, South Carolina", dated October 1, 1991, in the RMC Office for Berkeley County in Plat File Cabinet J, page 49. Said lot has such size, shape, metes, bounds, location and dimensions as shown on said plat.

This being the same property conveyed to Frank R. Ivey and Marion K. Ivey by Deed of Stephen M. Vaughn Construction Co., Inc., dated January 13, 1994 and recorded January 14, 1994 in Book 436 at 190 in the ROD Office for Berkeley County. Subsequently, Frank R. Ivey and Marion K. Ivey conveyed the subject property to Marion K. Ivey and Richard Curtis Ivey by Deed dated August 18, 2006 and recorded August 30, 2006 in Book 5917 at Page 299 in the ROD Office for Berkeley County. Thereafter, Marion K. Ivey and Richard Curtis Ivey conveyed the subject property to Marion K. Ivey and Richard Curtis Ivey, as joint tenants, with the right of survivorship, and not as

*MZC*  
*0-25*

tenants in common, dated October 23, 2008 and recorded November 13, 2008 in Book 7646 at Page 269 in the ROD Office for Berkeley County. Subsequently, Marion K. Ivey a/k/a Marion Kuehmstedt Ivey (Probate Estate Matter Number 2009-ES-08-00148), died on January 13, 2009, and by operation of law her interest in the subject property went to Richard C. Ivey.

TMS No. 243-02-09-031

Property address: 108 Winding Rock  
Goose Creek, SC 29445

SCOTT AND CORLEY, P.A.

By: 

Ronald C. Scott, SC Bar #4996

Reginald P. Corley, SC Bar #69453

Angelia J. Grant, SC Bar #78334

J. Harrison Rushton, SC Bar  
#100406

Vance L. Brabham, III, SC Bar #71250

Andrew M. Sullivan, SC Bar #100464

Jessica S. Corley, SC Bar #80470

James L. Williams, SC Bar #102408

ATTORNEYS FOR PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

803-252-3340

3/8, 2016

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Federal National Mortgage Association  
("Fannie Mae"),

PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey;  
Crowfield Plantation Community Services  
Association, Inc.; Unifund CCR Partners, a  
General Partnership; and CIT Bank, National  
Association,

DEFENDANT(S).

(151083.00327)

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-08 591

SUMMONS

FILED  
2016 MAR -9 PM 12:38  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2712 Middleburg Drive, Suite 200, Post Office Box 2065, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

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

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

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code § 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the mortgage

identified in the Complaint is hereby perfected and Plaintiff hereby gives further notice that all rents shall be payable directly to it by delivery of the same to its undersigned attorneys from the date of default forward. In the alternative, the Plaintiff will move a Judge of this Circuit Court on the tenth (10th) day after service hereof, or as soon as counsel for Plaintiff may be heard, for an Order enforcing the assignment of rents, if any, and/or profits, if any, compelling payments of all such funds covered by the mortgage and/or by status and/or by common law directly to the undersigned attorneys for the Plaintiff, which Motion is based upon the original Note and Mortgage identified in the Complaint therein and attached hereto as well as any applicable laws, statutes or regulations.

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

SCOTT AND CORLEY, P.A.

By: 

Ronald C. Scott, SC Bar #4996

Reginald P. Corley, SC Bar #69453

Angela J. Grant, SC Bar #78334

J. Harrison Rushton, SC Bar  
#100406

Vance L. Brabham, III, SC Bar #71250

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James L. Williams, SC Bar #102408

ATTORNEYS FOR PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

803-252-3340

3/8, 2016

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Federal National Mortgage Association  
("Fannie Mae"),

PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey;  
Crowfield Plantation Community Services  
Association, Inc.; Unifund CCR Partners, a  
General Partnership; and CIT Bank, National  
Association,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-08 591

COMPLAINT  
Foreclosure – Non-Jury

(Deficiency Waiver)

TSM  
2016 MAR -9 PM 12:38  
FILED  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

(151083.00327)

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

1. This is an action for foreclosure of a mortgage upon certain real estate in Berkeley County, South Carolina.
2. Plaintiff is a corporation or other legal entity securing or collecting debts or enforcing mortgages, security interests or other rights in property securing debts in the State of South Carolina pursuant to § 33-15-101(B)(8) and is the real party in interest under SCRCP 17(a) to enforce the Note and Mortgage described herein.
3. Plaintiff or its counsel has reviewed this mortgage loan for compliance with the Home Affordable Modification Program (HMP), as required by the Administrative Order of the South Carolina Supreme Court issued by Chief Justice Jean H. Toal on May 22, 2009. The servicer for the mortgage loan described in this foreclosure action is participating in the HMP, but the HMP process as specified by U.S. Treasury Department's Supplemental Directive 09-01 has been completed without resulting in a modification by virtue of the property not being owner occupied, as contemplated by the South Carolina Administrative Order 2009-05-22-01.
4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
5. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of Section 15-35-840 of the Code of Laws of South Carolina (1976).
6. Heretofore, under date of August 18, 2006, Marion K. Ivey made, executed and delivered to IndyMac Bank, F.S.B. a certain mortgage note ("Note") in writing wherein and whereby

Marion K. Ivey promised to pay to IndyMac Bank, F.S.B., its successors and assigns, the principal sum of \$172,000.00.

7. In order to secure the payment of said Note, the said Marion K. Ivey and Frank R. Ivey did on the same date, to-wit, August 18, 2006, make, execute and deliver to Mortgage Electronic Registration Systems, Inc., as nominee for IndyMac Bank, F.S.B, its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of Deeds for Berkeley County, on August 29, 2006, in Book 5913, at Page 159; thereafter, said Mortgage was assigned to OneWest Bank, FSB by assignment instrument dated August 1, 2013 and recorded August 9, 2013 in Book 10304 at Page 283.

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

All that certain piece, parcel of lot of land, situate, lying and being in Piedmonte Place Subdivision, Community of Crowfield Plantation, City of Goose Creek, Berkeley County, South Carolina, being shown and designated as Lot 5, Block B on "Plat Showing Piedmonte Place, Phase III, Property of Westvaco Development Corporation, Located on Crowfield Plantation in the City of Goose Creek, Berkeley County, South Carolina", dated October 1, 1991, in the RMC Office for Berkeley County in Plat File Cabinet J, page 49. Said lot has such size, shape, metes, bounds, location and dimensions as shown on said plat.

This being the same property conveyed to Frank R. Ivey and Marion K. Ivey by Deed of Stephen M. Vaughn Construction Co., Inc., dated January 13, 1994 and recorded January 14, 1994 in Book 436 at 190 in the ROD Office for Berkeley County. Subsequently, Frank R. Ivey and Marion K. Ivey conveyed the subject property to Marion K. Ivey and Richard Curtis Ivey by Deed dated August 18, 2006 and recorded August 30, 2006 in Book 5917 at Page 299 in the ROD Office for Berkeley County. Thereafter, Marion K. Ivey and Richard Curtis Ivey conveyed the subject property to Marion K. Ivey and Richard Curtis Ivey, as joint tenants, with the right of survivorship, and not as tenants in common, dated October 23, 2008 and recorded November 13, 2008 in Book 7646 at Page 269 in the ROD Office for Berkeley County. Subsequently, Marion K. Ivey a/k/a Marion Kuehmstedt Ivey (Probate Estate Matter Number 2009-ES-08-00148), died on January 13, 2009, and by operation of law her interest in the subject property went to Richard C. Ivey.

TMS No. 243-02-09-031

Property address: 108 Winding Rock  
Goose Creek, SC 29445

**FOR A FIRST CAUSE OF ACTION**  
**(Ratification of Assignments of Mortgage)**

8. The preceding paragraphs are realleged as if repeated here verbatim.
9. This cause of action is brought pursuant to the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 et seq., and involves an actual justiciable controversy between the parties as described herein.

10. As mortgagee, the Plaintiff holds an equitable interest in the real estate which is the subject of this action and, therefore, has standing to bring this cause of action.

11. Heretofore, under date of August 18, 2006, Marion K. Ivey and Frank R. Ivey made, executed and delivered to IndyMac Bank, F.S.B, a certain mortgage note ("Note") in writing wherein and whereby Marion K. Ivey promised to pay to IndyMac Bank, F.S.B, the principal sum of \$172,000.00, a copy of Note which is attached hereto as Exhibit "A" and made a part hereof by reference.

12. In order to secure the payment of said note, the said Marion K. Ivey and Frank R. Ivey did on the same date, to-wit, August 18, 2006, make execute and deliver to Mortgage Electronic Registration Systems, Inc., as nominee for IndyMac Bank, F.S.B, its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Register of Deeds for Berkeley County, on August 29, 2006, in Book 5913, at Page 159, a copy of Mortgage which is attached hereto as Exhibit "B" and made a part hereof by reference.

13. Thereafter, Mortgage Electronic Registration Systems, Inc., as nominee for IndyMac Bank, F.S.B, assigned said Mortgage to OneWest Bank, FSB by assignment instrument dated August 1, 2013 and recorded August 9, 2013 in Book 10304 at Page 283. Thereafter, OneWest Bank, FSB was renamed to OneWest Bank, National Association with OneWest Bank, National Association being the surviving entity. Thereafter, OneWest Bank, National Association was renamed to CIT Bank, National Association with CIT Bank, National Association being the surviving entity.

14. The Mortgage has not been further assigned, pledged, hypothecated or otherwise disposed of.

15. Plaintiff is informed and believes that it is entitled to an order ratifying ownership of the Mortgage in the name of the Plaintiff.

16. The Defendant, CIT Bank, National Association is named herein to assert their interests, if any, in the subject property and/or Mortgage, or be forever barred of all right, title or interest in said property or Mortgage.

**FOR A SECOND CAUSE OF ACTION**  
**(Foreclosure of Mortgage)**

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

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

19. Subsequently, Marion K. Ivey a/k/a Marion Kuehmstedt Ivey (Probate Estate Matter Number 2009-ES-08-00148), died on January 13, 2009, and by operation of law her interest in the subject property went to Richard C. Ivey.

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

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

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

23. According to the business records of Plaintiff, which have been made available to its Counsel and upon information and belief, neither Plaintiff nor its counsel is aware of any party to this action currently being in active bankruptcy and under the protection of the United States Bankruptcy Court ("USBK"). In addition, Counsel for Plaintiff has caused and/or has conducted a search of the PACER website for which Counsel, upon information and belief, reports no party, who executed the Note and/or Mortgage, and, to the best of his/her knowledge, is currently eligible for protection of the USBK. If any party has any information or record of a defendant currently being under the bankruptcy protections, it is requested that you notify counsel for Plaintiff immediately. Any demand for a deficiency is not applicable if a party has received a discharge in bankruptcy during the life of the mortgage, or is currently under the active protection of the bankruptcy courts. Moreover, any party to this action who is a discharged borrower to the debt of the Plaintiff shall not be subject to and is specifically excluded from both the calculation and collection of any amounts due and owing to the Plaintiff, as required by Rule 71(a) of the South Carolina Rules of Civil Procedure.

24. In and by the terms of the Note and the Mortgage, it is provided, among other things, that on failure to pay any installment of either principal and interest or any portion thereof

when due, or if any of the conditions and requirements in the Mortgage be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

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

26. The installments of principal and interest falling due from and after December 1, 2014 have not been paid although demand for the payment thereof has been made and Plaintiff has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the Note and Mortgage the full and just principal sum of \$144,613.50, together with interest thereon at an adjustable rate per annum from November 1, 2014, together with reasonable attorney's fees for the collection thereof, escrow advances, late charges, and all other costs and expenses of this action allowable by law, equity, or contract, including but not limited to the costs or charges in reporting to this Honorable Court and/or as may be permitted under Rules 54 and 71, South Carolina Rules of Civil Procedure. Pursuant thereto, Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees, charges and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage.

27. Upon information and belief, the Defendant(s) below-named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, including but not limited to the subordinate lien or junior interests specifically described below, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant(s) is/are further made a party due to the similarity in name(s) to the primary defendant(s) against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Crowfield Plantation Community Services Association, Inc., by virtue of any lien or enforceable assessments against the subject property and the following:

I. A Lien against Richard C. Ivey in the original amount of \$621.00, dated April 28, 2014, and recorded on May 09, 2014, in the Office of the Berkeley Clerk of Court/Register of Deeds, in Book 10742 at Page 33.

(b) The Defendant, Unifund CCR Partners, a General Partnership, by virtue of that certain judgment against Richard C. Ivey in the original amount of \$2,388.86, recorded on February 13, 2008, in the Office of the Berkeley Clerk of Court/Register of Deeds as Case No. 2007-

CP-08-02534.

(c) The Defendant, CIT Bank, National Association is named herein to assert their interests, if any, in the subject property and/or Mortgage, or be forever barred of all right, title or interest in said property or Mortgage.

28. Plaintiff demands no personal or deficiency judgment and any right to the same is specifically waived.

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

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

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

**As to the Second Cause of Action (Ratification of Assignment of Mortgage):**

1. The Court issues its order ratifying sole ownership of Mortgage described herein in the name of the Plaintiff.

2. Order that the Defendant, CIT Bank, National Association be forever barred of all right, title, and interest to the subject property and Mortgage.

**As to the Third Cause of Action (Foreclosure of Mortgage):**

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

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

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

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

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

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

6. Appoint a Receiver to collect the rents, issues, profits or designated sums

from the mortgagor(s) and/or the grantee(s) of the mortgagor(s) and/or tenants occupying or exercising control over the mortgaged premises and hold said assets or the same subject to further Order of this Court.

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

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

SCOTT AND CORLEY, P.A.

By: 

Ronald C. Scott, SC Bar #4996

Reginald P. Corley, SC Bar #69453

Angella J. Grant, SC Bar #78334

J. Harrison Rushton, SC Bar

#100406

Vance L. Brabham, III, SC Bar #71250

Andrew M. Sullivan, SC Bar #100464

Jessica S. Corley, SC Bar #80470

James L. Williams, SC Bar #102408

ATTORNEYS FOR PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

803-252-3340

3/8

2016

## NOTICE OF DEBT

1. As of March 8, 2016, the amount of the debt is \$155,849.73. The debt amount is made up of principal, interest, late charges, and may include other amounts, such as payment for taxes and insurance. Because many of these items may vary from day to day, the amount due on any given day may be greater. Therefore, if you wish to receive figures to reinstate (bring the loan current) or pay off the loan through a specific date, please contact Scott and Corley, P.A., attorneys for Federal National Mortgage Association ("Fannie Mae"), by calling (803) 252-3340 or via email at [lossmit@scottandcorley.com](mailto:lossmit@scottandcorley.com).
2. Federal National Mortgage Association ("Fannie Mae") is the creditor ("Creditor") to whom the debt is owed.
3. Unless you, within thirty (30) days after receipt of this notice (the "Thirty Day Period"), dispute the validity of the debt or any portion of it, the debt will be assumed to be valid by the debt collector, which is Scott and Corley, P.A., the attorneys for the Creditor.
4. If you notify debt collector, Scott and Corley, P.A., in writing within the Thirty Day Period that the debt or any portion thereof is disputed, Scott and Corley, P.A. will obtain a verification of the debt, and Scott and Corley, P.A. will mail a copy of that verification to you.
5. If the Creditor named in this notice is different from the original creditor, and if you make a written request to Scott and Corley, P.A. within the Thirty Day Period, the debt collector, Scott and Corley, P.A. will mail to you the name and address of the original creditor.
6. Written requests should be addressed to the attorneys for the Creditor, the debt collector, as follows:

Scott and Corley, P.A.  
Attention: Loss Mitigation  
P.O. Box 2065  
Columbia, SC 29202
7. This notice pertains to your dealings with the Scott and Corley, P.A. as the debt collector. It does not affect your dealings with the court, and in particular it does not change the time by which you must answer the summons and complaint. Please understand that the summons is a command from the court, not from the Scott and Corley, P.A., and you must follow the instructions on the summons even if you dispute the validity or any portion of the debt. This notice also does not affect Scott and Corley, P.A.'s relations with the court. Scott and Corley, P.A. may file additional legal papers in the court according to the court's rules and the judge's instructions.

**THIS FIRM COLLECTS DEBTS FOR MORTGAGE LENDERS AND OTHER CREDITORS. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. HOWEVER, IF YOU HAVE PREVIOUSLY RECEIVED A DISCHARGE IN BANKRUPTCY, THIS MESSAGE IS NOT AND SHOULD NOT BE CONSTRUED AS AN ATTEMPT TO COLLECT A DEBT, BUT ONLY AS AN ATTEMPT TO ENFORCE A LIEN.**

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Federal National Mortgage Association ("Fannie Mae"),

PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey; Crowfield Plantation Community Services Association, Inc.; Unifund CCR Partners, a General Partnership; and CIT Bank, National Association,

DEFENDANT(S).

(151083.00327)

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-08

591

NOTICE OF MORTGAGOR'S RIGHT TO FORECLOSURE INTERVENTION

2016 MAR -9 PM 12: 38  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

FILED

TO THE DEFENDANT(S):

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

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

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

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

SCOTT AND CORLEY, P.A.

By:

Ronald C. Scott, SC Bar #4996  
Reginald P. Corley, SC Bar #69453  
Angella J. Grant, SC Bar #78334  
Harrison Rushton, SC Bar #100406

Vance L. Brabham, III, SC Bar #71250  
Andrew M. Sullivan, SC Bar #100464  
Jessica S. Corley, SC Bar #80470  
James L. Williams, SC Bar #102408

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

3/8, 2016

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Federal National Mortgage Association ("Fannie Mae"),

PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey; Crowfield Plantation Community Services Association, Inc.; Unifund CCR Partners, a General Partnership; and CIT Bank, National Association,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-08

591

CERTIFICATE OF EXEMPTION/WITHDRAWAL FROM ARBITRATION

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION BECAUSE:

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

this action is appellate in nature;

this is a post-conviction relief matter;

this is a contempt of court proceeding;

this is forfeiture proceeding brought by the State; or

this is a mortgage foreclosure action.

Date: 3/8, 2016

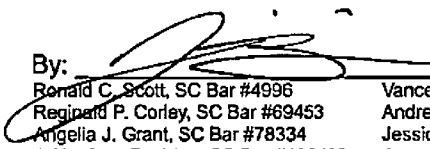
2016 MAR -9 PM 12:38  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

TSM

FILED

SCOTT AND CORLEY, P.A.

By:

  
Ronald C. Scott, SC Bar #4996  
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Vance L. Brabham, III, SC Bar #71250  
Andrew M. Sullivan, SC Bar #100464  
Jessica S. Corley, SC Bar #80470  
James L. Williams, SC Bar #102408

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

**FOR MANDATED ADR COUNTIES ONLY**

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals;
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Federal National Mortgage Association ("Fannie Mae"),

PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey; Crowfield Plantation Community Services Association, Inc.; Unifund CCR Partners, a General Partnership; and CIT Bank, National Association,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVER SHEET

Case No. 2016-CP-08

591

Submitted By:

Ronald C. Scott (rons@scottandcorley.com), SC Bar #4996 Vance L. Brabham, III (vanceb@scottandcorley.com), SC Bar #71250
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Columbia, SC 29202 Fax #: (855) 601-4921

Note: The cover sheet and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this Cover Sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete.

- JURY TRIAL demanded in Complaint.
This case is subject to ARBITRATION pursuant to Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to Court Annexed Alternative Dispute Resolution Rules.
XX This case is exempt from ADR (Proof of ADR/Exemption attached).

NATURE OF ACTION (check one box below)

- Contracts: Construction (100), Debt Collection (110), General (130), Breach of Contract (140), Fraud/Bad Faith (150), Failure to Deliver/Warranty (160), Employment Discrim (170), Employment (180), Other (199)
Torts-Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20\_\_ - NI - \_\_\_\_, Notice/File Med Mal (230), Other (299)
Torts-Personal Injury: Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Assault/Battery (370), Slander/Libel (380), Other (399)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture - Petition (840), Forfeiture - Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement (760), Confession of Judgment (770), Petition for Workers Compensation (780), Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Commission(990), Employment Security Comm(991), Other (999)
Special/Complex/Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Sexual Predator (510), Pharmaceuticals (630), Unfair Trade Practices (640), Foreign Subpoenas (650), Motion to Quash Subpoena in Out-of-County Action (660), Pre-Suit Discovery (670)

2016 MAR -9 PM 1:38
FILED
MARY P. BRADLEY
CLERK OF COURT
BERKELEY COUNTY

Submitting Party Signature:

Date: 3/8, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Proceedings Sanctions Act, S.C. Code Ann. '15-36-10 et. seq. SCCA/234 (06/2015)

**Common Pleas**  
**Clerk : Mary P. Brown**  
**300 B California Avenue**  
**Moncks Corner, SC 29461**  
**(843) 719-4400**

Received From: Williams, James Lloyd  
 2712 Middleburg Drive  
 Columbia, SC 29204

Date: 3/ 9/2016  
 Receipt #: 6066848  
 Clerk: c08tmurphy

Paying for: Federaln National Mortgage Assc

Transaction Type: Payment

Reference #: 133895

Payment Type: Check \$150.00

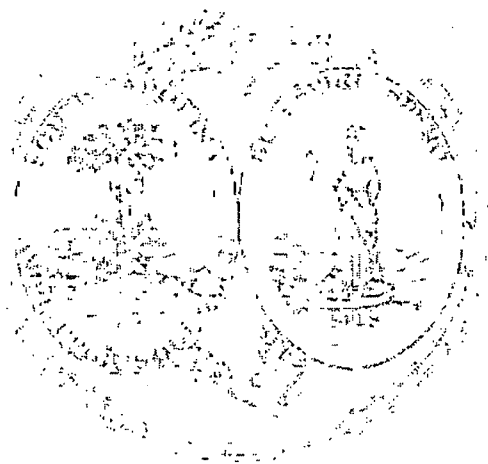
Comment:

Total Paid: \$150.00

Non-Refundable

Total Received: \$150.00  
 Change Due: \$0.00

Case #	Caption	Previous Balance	Amount Paid	Balance Due	S/T
2016CP0800591	Federaln National Mortgage Association VS Richard C. Ivey	\$150.00	\$150.00	\$0.00	420



**Total Cases: 1** **\$150.00** **\$150.00** **\$0.00**

STATE OF SOUTH CAROLINA

) COURT OF COMMON PLEAS

COUNTY OF BERKELEY

) C/A No. 2016-CP-08-00591

Federal National Mortgage Association, )

Plaintiff, )

v. )

Richard C. Ivey, )

Defendant. )

**HEARING**

\*\*\*\*\*

**Wednesday, November 15, 2017**

9:40 a.m. - 10:11 a.m.

The hearing before the Honorable Dale E. Van Slambrook, Master-In-Equity for Berkeley County, was taken at 300 California Avenue #B, Moncks Corner, South Carolina, 29461 on the 15th day of November, 2017 before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

**William P. Stork, Esquire**  
SCOTT & CORLEY, P.A.  
2712 Middleburg Drive, Suite 200  
Columbia, South Carolina 29204  
Attorney for the Plaintiff

**John R. Cantrell, Jr., Esquire**  
CANTRELL LEGAL, PC  
Post Office Box 1276  
Goose Creek, South Carolina 29445-1276  
Attorney for the Defendant

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EXHIBITS

(No exhibits were marked during this hearing.)



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1 CALL TO ORDER:

2 **THE COURT:** Tell me who everybody is, who they're  
3 representing, if there's anybody that should be  
4 here that's not here, and what we're doing here  
5 and why.

6 **MR. STORK:** May it please the court, Your Honor.  
7 Will Stork with Scott and Corley. We're  
8 representing the plaintiff, Federal National  
9 Mortgage Association. We are here today on  
10 Plaintiff's motion to strike pursuant to Rule  
11 40(j), and opposing counsel's motion to dismiss  
12 and for Rule 11 sanctions.

13 **THE COURT:** Okay.

14 **MR. CANTRELL:** Your Honor, I'm here ---

15 **THE COURT:** This is -- okay. Go ahead, I'm sorry.

16 **MR. CANTRELL:** I'm going to state my appearance,  
17 Your Honor. I'm John Cantrell for the  
18 defendant, Richard Ivey, who's also here  
19 present in the courtroom with me today. And  
20 Mr. Stork correctly stated the reasons we're  
21 here before you today.

22 **THE COURT:** Okay. Which one do we want to take up  
23 first?

24 **MR. CANTRELL:** His motion was filed first, his 40(j)  
25 motion, and I think it makes sense to take care



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1 of that one first as well.

2 **THE COURT:** They're intertwined, obviously.

3 **MR. CANTRELL:** Yes, Your Honor.

4 **THE COURT:** I'll here from you on the motion to  
5 strike.

6 **MOTION BY MR. STORK:**

7 **MR. STORK:** All right. Thank you, Your Honor. And  
8 you are correct, these motions are intertwined.  
9 And we have a joint stipulation as to facts  
10 that John and I agreed to yesterday which we  
11 got filed this morning. John, do we have a  
12 copy for the judge?

13 **MR. CANTRELL:** This is a courtesy copy I believe.  
14 Let me double check. Yes, it's a courtesy  
15 copy.

16 **MR. STORK:** Okay, great. Your Honor, may I  
17 approach?

18 **THE COURT:** Yes.

19 **MR. STORK:** Thank you. I think this does a  
20 relatively good job of kind of laying out the  
21 ground work for what led us here today. This  
22 is, as he states, an action for the foreclosure  
23 of real property here in Berkeley County, South  
24 Carolina, involving a promissory note which was  
25 signed by Marion K. Ivey, and a mortgage which



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1 was executed by Marion K. Ivey and Frank R.  
2 Ivey. Both Marion and Frank have passed away,  
3 and the defendant, Richard Ivey, is the owner  
4 of this property through inheritance at this  
5 time. We were previously here on a default  
6 foreclosure hearing, however Mr. Cantrell was  
7 retained as counsel prior to that default  
8 foreclosure hearing and indicated that his  
9 client would be interested in some form of loss  
10 mitigation. Talks ensued back and forth and  
11 his client was approved for a trial payment  
12 plan which would end in a permanent  
13 modification. So trial payment plan was sent  
14 to counsel, who gave it to his client. Mr.  
15 Ivey signed it, returned it, made his three  
16 payments and a permanent modification was being  
17 generated. Now it takes a little bit for a  
18 permanent modification to be generated, so  
19 while that was being generated we approached  
20 Mr. Cantrell to see if he would consent to  
21 striking the matter while the current  
22 modification is being generated and sent to his  
23 client, just to give us a little bit of time,  
24 get it off of your docket. As is stipulated in  
25 the facts here, Mr. Cantrell would not consent



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1 to 40(j)-ing it so really our only recourse at  
2 that point would be to file a motion to have  
3 this struck from the active docket for the  
4 pendency -- or until the permanent modification  
5 was generated and sent, could be signed and  
6 docketed and thereby the loan would be modified.  
7 Now that permanent modification has since been  
8 generated, it actually was generated yesterday,  
9 and emailed a copy over to Mr. Cantrell, which  
10 I believe that he has since shared with his  
11 client. So really, Judge, the whole I guess  
12 crux of our motion was that we wanted to strike  
13 it to get it off the active docket so that we  
14 could have time to finish up the loss  
15 mitigation that we were undergoing with Mr.  
16 Ivey at this time. Which really, as of this  
17 point, the second he signs and sends it back,  
18 should be good to go. So there was no bad  
19 faith or malice in attempting to do this. What  
20 this was was just we were trying to facilitate  
21 settlement discussions. We were trying to  
22 facilitate loss mitigation to give us time to  
23 do that. So that's why we have the motion  
24 before the court today to end up having this  
25 thing struck off of the active docket, to get



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1 that little bit of time so that Mr. Ivey can  
2 peruse the permanent modification that was sent  
3 over to him. Hopefully sign it and send it  
4 back. At that point we'll file a dismissal  
5 without -- like a formal dismissal without  
6 prejudice, then everybody can walk away happy.

7 **THE COURT:** Okay. Mr. Cantrell?

8 **REPLY BY MR. CANTRELL:**

9 **MR. CANTRELL:** Your Honor, the reason we're here  
10 today is because the plaintiff and their law  
11 firm have acted in contempt of Supreme Court  
12 orders and in violation of the Rules of Civil  
13 Procedure. That's the only reason we're here  
14 today. I can prove that, Your Honor. And --  
15 otherwise we wouldn't be here. If Your Honor's  
16 staff had had their way this case would have  
17 been dismissed October 31st. I'm going to  
18 prove that to you. It was only not dismissed  
19 because of improper actions that were taken.  
20 Both by Mr. Stork's law firm and by the  
21 Plaintiff in refusing to dismiss this case as  
22 is required by applicable law. Your Honor, I  
23 want to start with the joint stipulation that  
24 has been -- that you have a courtesy copy of  
25 which has just been filed this morning. I



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1 would ask that that be marked as Exhibit -- for  
2 identification, Defendant's Exhibit Number One.  
3 I would also ---

4 **THE COURT:** Any objection to that Mr. Stork?

5 **MR. STORK:** No, Your Honor.

6 **MR. CANTRELL:** I would also ask that it be admitted  
7 into evidence as Defendant's Exhibit Number  
8 One.

9 **MR. STORK:** Your Honor, I don't believe there's any  
10 sort of evidentiary hearing today. This is  
11 merely a motion hearing. So ---

12 **MR. CANTRELL:** I don't understand why I can't  
13 introduce evidence at a motion hearing, Your  
14 Honor. I'm going to need evidence ---

15 **THE COURT:** All right. All right. I'll take that  
16 under consideration as to whether it's admitted  
17 into evidence or not. But it is a joint  
18 stipulation of facts and it's filed so it's  
19 part of the record. I don't know that it makes  
20 any substantial difference, but go ahead.

21 **MR. CANTRELL:** Okay. Thank you, Your Honor. I  
22 don't know why it wouldn't be admissible but I  
23 appreciate Your Honor considering that;  
24 hopefully admitting that if it's proper to do  
25 so. We did this in an attempt to narrow the



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1 issues and decrease the time we have before you  
2 today. And I do appreciate Mr. Stork's  
3 cooperation in that. We worked on it late  
4 yesterday and we got it done, but that's why we  
5 did that, Your Honor, to try and reduce the  
6 amount of time before you today. That being  
7 said, I want you to remember what type of  
8 motion is before the court. It's a Rule 40(j)  
9 motion to strike, and that is governed by the  
10 Rules of Civil Procedure. Now let's reference  
11 those rules briefly, Your Honor, so that we can  
12 understand what they require in this matter.  
13 The title of 40(j) is, Case Stricken From  
14 Docket by Agreement. I know the titles don't  
15 have -- the captions don't have a whole lot of  
16 authority, but you look in that itself it says,  
17 a party may strike its complaint -- and I'm  
18 omitting irrelevant stuff. A party may strike  
19 its complaint one time as a matter of right  
20 provided that all parties adverse to that claim  
21 agree in writing that it may be stricken. Now  
22 there's some other stuff that doesn't apply.  
23 So the only way you can get a 40(j) motion,  
24 according to the rules, is by consent of all  
25 parties in writing. Now we're not the only



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1 defendant in this case. There's another two or  
2 three, I don't know exactly how many. There  
3 had been several of them. You will notice ---

4 **THE COURT:** I don't mean to interrupt.

5 **MR. CANTRELL:** Yes, Your Honor.

6 **THE COURT:** I just want to make sure I understand.  
7 There was an order striking the case that was  
8 signed, right?

9 **MR. CANTRELL:** And that was improper, Your Honor.  
10 Because -- because -- and let me tell you why.

11 **THE COURT:** Let me finish.

12 **MR. CANTRELL:** Go ahead, Your Honor.

13 **THE COURT:** So there was a motion and a proposed  
14 order that were submitted that indicated that  
15 there was consent from all the parties.

16 **MR. CANTRELL:** That is correct.

17 **THE COURT:** Okay. And ---

18 **MR. CANTRELL:** That is false.

19 **THE COURT:** Well, whether it's false or not, that  
20 was what was submitted.

21 **MR. CANTRELL:** Yes, Your Honor.

22 **THE COURT:** Right?

23 **MR. CANTRELL:** Yes, Your Honor.

24 **THE COURT:** And then on the basis of that there was  
25 a Form 4 order action stricken and -- and Rule



1 -- and under Rule 40(j). And you're telling me  
2 that there was no consent of all the parties?

3 **MR. CANTRELL:** I can tell you better than that.  
4 Look in your joint stipulation of facts in  
5 paragraphs eleven and twelve, Your Honor, and  
6 look what they have agreed to. They have  
7 agreed, in paragraph eleven, neither defendant  
8 nor his counsel have ever consented in writing  
9 or otherwise to the filing of the Rule 40(j)  
10 motion. Also, no other defendant in this case  
11 has provided Plaintiff with written consent to  
12 the filing of the Rule 40(j) motion. And then  
13 number twelve: before filing the pend- -- Rule  
14 40(j) motion, Plaintiff's counsel was aware  
15 that Defendant had not consented to the filing  
16 of that motion. These are joint stipulations.  
17 But if you -- you're correct. If you go back  
18 to the motion itself, if you look at the cover  
19 sheet, it says, no hearing requested, proposed  
20 form order. And then you go back to the motion  
21 itself and it says twice, with consent of all  
22 appearing parties of record, with the consent  
23 of all parties of record. So, Your Honor's,  
24 clerk had no reason not to enter this order  
25 because it was just simply false. That's one



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1 of the reasons we're here today.

2 **THE COURT:** So tell me, what is it you want me to do  
3 with the order granting that relief?

4 **MR. CANTRELL:** Okay. It's an improper order. I  
5 want it vacated, Your Honor.

6 **THE COURT:** Okay.

7 **MR. CANTRELL:** And I want ---

8 **THE COURT:** So ---

9 **MR. CANTRELL:** I want that motion denied.

10 **THE COURT:** So number one, the -- what you're  
11 describing as the improperly entered order, you  
12 want it vacated?

13 **MR. CANTRELL:** Yes, Your Honor.

14 **THE COURT:** Because as stipulated to, there was no  
15 consent pursuant to the rule.

16 **MR. CANTRELL:** That is correct, Your Honor.

17 **THE COURT:** Okay. All right. What else are you  
18 seeking? What other ruling?

19 **MR. CANTRELL:** Okay. And I will note for the  
20 record, a few minutes ago Mr. Stork stated his  
21 reasons for filing that. He said it would give  
22 us time to do that. In other words, it would  
23 give us time to get this case resolved. So ---

24 **THE COURT:** No. What I'm asking is, what -- beyond  
25 that ---



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1 **MR. CANTRELL:** Well, you're skipping to the  
2 conclusion, Your Honor. You're skipping all  
3 the way to my end, what I want to ask you for,  
4 and I haven't told you why I want it. But I'll  
5 tell you if you want exactly what I want from  
6 you. And it's not going to make as much sense  
7 in context because we're not at the end, but if  
8 you want what I want from you, I want -- I have  
9 that all written down. Actually I have that in  
10 my prayer in my motion, which we haven't gotten  
11 to yet, my motion to dismiss and for sanctions.  
12 And I will find that and give you what I want,  
13 Your Honor. In total, at the end of the day,  
14 if that's the question that you're asking as I  
15 understand it.

16 **THE COURT:** Yes.

17 **MR. CANTRELL:** Okay. Very good, Your Honor. I want  
18 you to find that both the Plaintiff, Fannie  
19 Mae, and Scott and Corley, are in contempt of  
20 the 2011 administrative order for reasons which  
21 I haven't yet been able to present to you. I  
22 want you to find that both the plaintiff,  
23 Fannie Mae, and Scott and Corley have violated  
24 Rule 11 of the South Carolina Rules of Civil  
25 Procedure for reasons that are somewhat



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1           apparent at this point but not completely  
2           fleshed out. I want you to require the  
3           plaintiff to comply with the 2011 order by  
4           providing us with a signed copy of the TPP  
5           agreement. I would ask you to reference that  
6           copy, this part of the stipulation, you'll see  
7           it's only been signed by my client, not by  
8           them, in spite of provisions otherwise  
9           requiring that in the 2011 order. And if they  
10          don't do that within a reasonable time I want  
11          you to issue per diem sanctions to require --  
12          to coerce them to do that, because I believe  
13          they are required and we're entitled to a copy  
14          of that signed contract. We don't have it. I  
15          want you to find that the allegations in the  
16          Rule 40(j) motion that they filed, that there  
17          was consent, are false. And, I want you to  
18          find that the plaintiff, Fannie Mae, and its  
19          attorneys knew that those were false when they  
20          were made. I want you to dismiss the pending  
21          foreclosure case either without prejudice,  
22          under the terms of the 2011 order because he's  
23          complied and made all his payments under the  
24          TPP, or with prejudice as a sanction for their  
25          actions, both in contempt of the 2011 order and



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1 in violation of Rule 11, which Your Honor has  
2 the authority to do under South Carolina  
3 Appellate authority I'll give you later.  
4 That's certainly an option for you, that's  
5 whatever you prefer on that. I want you to  
6 award actual damages that have been incurred by  
7 my client as a result of this improper motion  
8 and the contempt of the 2011 order including my  
9 attorney's fees, his lost wages, some mileage  
10 for him to attend today, and I think that's  
11 basically it on the damages. I have those  
12 itemized. I have attorney's time and all that  
13 stuff ready to present as exhibits -- as  
14 evidence to you. And I also -- I was informed  
15 last night by Mr. Stork that he -- you know,  
16 that if we didn't just continue this, he was  
17 going to try to bill these fees against my  
18 client for appearing today. So, I want you to  
19 order that the fees that have been incurred in  
20 filing the improper Rule 40(j) motion and in us  
21 having to bring this motion to dismiss are  
22 unreasonable and shouldn't be added to my  
23 client's account under the mortgage. That is,  
24 at the end of the day, Your Honor, the relief  
25 that I'm seeking from you.



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1 **THE COURT:** Well I appreciate you kind of going out  
2 of order, because I wanted to see where the end  
3 was, and so I could kind of focus on what might  
4 be important as we went along.

5 **MR. CANTRELL:** Yes, Your Honor.

6 **THE COURT:** So, vacate it. Tell me about the signed  
7 document that y'all have not received a copy  
8 of, or indicated -- though I'm not sure if  
9 that's disputed or not, whether that's -- what  
10 the story is on that.

11 **MR. CANTRELL:** Okay. I tried to get a stipulation  
12 about that in the record. Mr. Stork said it  
13 was irrelevant. But it's -- but I can prove  
14 that, Your Honor. If you'll look at the end of  
15 the joint stipulation you will see the trial  
16 mod offer. Basically my client got this in the  
17 mail. Seterus, which is apparently the  
18 servicer ---

19 **THE COURT:** Let me jump around a little bit.

20 **MR. CANTRELL:** Okay.

21 **THE COURT:** Number six says he signed the key, Mr.  
22 Ivey signed it.

23 **MR. CANTRELL:** He did, and you can see his  
24 signature, it's right here in this exhibit.  
25 This is the signed -- the copy that he signed,



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1 and on this third or so page of eight you'll  
2 see an e-sign.

3 **THE COURT:** And pursuant to that he made payments.

4 **MR. CANTRELL:** He did, Your Honor.

5 **THE COURT:** Okay.

6 **MR. CANTRELL:** And they've all been received.

7 **THE COURT:** And successful payments.

8 **MR. CANTRELL:** Yes, Your Honor.

9 **THE COURT:** Timely?

10 **MR. CANTRELL:** Yes, Your Honor.

11 **THE COURT:** Which then presumably entitled him to  
12 the loan modification.

13 **MR. CANTRELL:** Yes, Your Honor.

14 **THE COURT:** Is that right?

15 **MR. CANTRELL:** Which they just sent last night, so  
16 apparently they believe that as well. And  
17 they've actually admitted that. If you'll look  
18 there at the end of that it says, Scott and  
19 Corley confirmed via email on September 18th  
20 that those payments had been successful.

21 **THE COURT:** What's the normal course after the TPP  
22 agreement has been successfully concluded and  
23 loan modification has been accepted and signed?  
24 What is the normal result after that?

25 **MR. CANTRELL:** Well, according to the South Carolina



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1 Supreme Court and the administrative order,  
2 there is something that is supposed to happen,  
3 Your Honor. If you would look in that ---

4 **THE COURT:** And what is that?

5 **MR. CANTRELL:** --- order it says that once that pla-  
6 -- once those payments have been made, which  
7 occurred September 1st -- by September 1st, and  
8 which they confirmed on -- their law firm  
9 confirmed on September 18th. There is a duty  
10 on the mortgage company's attorney to file a  
11 motion to dismiss the case without prejudice.  
12 That duty arose September 1st -- or a little  
13 later than September 18th when they became  
14 aware of that and checked with their client to  
15 find those payments had been made. That is not  
16 what they've done. This is now the middle of  
17 November and they haven't done that. So that  
18 Supreme Court order places that duty directly  
19 on them, which is why we're asking the court to  
20 find -- Scott and Corley, not -- not Mr. Stork,  
21 but Scott and Corley in contempt of the 2011  
22 order because they never did that. Either  
23 because -- we don't know, because their client  
24 wouldn't let them or they chose not to, we  
25 don't know why, but we do know they have an



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1 affirmative duty to do that under the 2011  
2 order once that has ---

3 **THE COURT:** Does the 201 order have a time line  
4 that's anticipated? Is there a deadline, a  
5 drop-dead date on what would be considered a  
6 reasonable amount of time following the  
7 successful payments of the trial -- the  
8 successful trial payments?

9 **MR. CANTRELL:** I wish I could say that it did, Your  
10 Honor. I'm still trying to find my copy of  
11 that. I don't believe it does. Do you know if  
12 it does, Mr. Stork?

13 **MR. STORK:** Your Honor, the language in regards to  
14 that -- and look, I hope I'll have a chance to  
15 address all of those once Mr. Cantrell ---

16 **THE COURT:** Sure.

17 **MR. STORK:** --- is finished. Okay, very good. But  
18 the language which he's referring to in the  
19 2011 admin order states if the mortgagor shall  
20 be in compliance with the terms of the  
21 agreement after 90 days, the mortgagee's  
22 attorney shall promptly file a notice of  
23 dismissal of the action without prejudice and  
24 the case will be dismissed. So ---

25 **THE COURT:** Subsequent to the September payments,



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1           what was the -- what were the payments that  
2           were supposed to be made and had those been  
3           paid?

4       **MR. CANTRELL:** I would proffer -- that's back to me.  
5           I would proffer testimony from my client on  
6           that, Your Honor. What we were told by Mr.  
7           Stork's firm, his paralegal, was continue  
8           making your trial mod payments. So my client  
9           will testify that he tried to do that and they  
10          says [sic] no, we won't accept your payment for  
11          October. So he made them July through  
12          September, but they said we won't take it for  
13          October. And I don't remember all the reasons  
14          for that, he would -- I just heard it second  
15          hand, so he's have to tell you that. But they  
16          wouldn't take his payment for October. And I  
17          believe he called them back and had the same  
18          problem in November, and he said, look, you  
19          know, I ---

20       **THE COURT:** Did October get made?

21       **MR. CANTRELL:** They would not accept it. These  
22          payments are being made by bank draft, Your  
23          Honor. All these payments are made by bank  
24          draft and they would not accept it.

25       **THE COURT:** So for whatever reason, no October



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1 payment, no November payment.

2 **MR. CANTRELL:** Well, that's not exactly true. In  
3 November he was able to convince them finally  
4 to start taking his money again. And they did.  
5 I think they took it for November 1st ---

6 **MR. STORK:** And they put a draft for December and --  
7 -

8 **MR. CANTRELL:** --- and they've already got a draft  
9 set up for December and January. So he was  
10 able to get them to start taking it again. Now  
11 that's not exactly the same amount as the  
12 proposed final mod but we're probably within  
13 thirty to forty dollars. It's close. So, he's  
14 not in too bad a shape because of that but  
15 that's more action by the servicer that simply  
16 shows bad faith. He completed everything ---

17 **THE COURT:** So there's an unpaid October payment?

18 **MR. CANTRELL:** There is but I don't know if it's  
19 significant because under the terms of the  
20 final mod, he's not supposed to start those  
21 payments until December the 1st I think. So it  
22 may be that this November payment he's made has  
23 kind of got him ahead of the game. That's kind  
24 of my way of looking at it. So maybe -- maybe  
25 no huge deal there, you know. But it is



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1           upsetting that they wouldn't take his payments  
2           and treated him like this after he did  
3           everything he agreed to do and they didn't. So  
4           that's where we're at on that, Your Honor. If  
5           Your Honor wants me to continue I'll be glad  
6           to. I've got ---

7   **THE COURT:** I just want to make sure I understand  
8           the basic situation.

9   **MR. CANTRELL:** Okay.

10   **THE COURT:** The trial payments were made,  
11           successfully accepted.

12   **MR. CANTRELL:** Yes, Your Honor.

13   **THE COURT:** The permanent solution which would have  
14           allowed for payments in close to the same  
15           amounts, they were supposed to start in  
16           December, were tendered in October and not  
17           accepted but accepted in November and in  
18           December.

19   **MR. CANTRELL:** Not exactly, Your Honor. They didn't  
20           offer us a current mod until two days -- well,  
21           I guess the letter's two days ago. I got it  
22           yesterday. So they didn't even have the  
23           permanent mod back then, but that was -- they  
24           were going to continue him in another trial  
25           mod. They were basically saying well we'll do



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1           this trial mod period again, this three months.  
2           They didn't let him do that in October.

3   **THE COURT:**   So was that a clear situation where the  
4           payments -- where there is a specific directive  
5           that he was supposed to make those October and  
6           November, December payments, or was it kind of  
7           up in the air?

8   **MR. CANTRELL:**   He was told by Scott and Corley keep  
9           making your payments.  He tried to do that and  
10          they said no, we're not going to accept your  
11          payments.  So ---

12   **THE COURT:**   Okay.

13   **MR. CANTRELL:**   You know.

14   **THE COURT:**   They were different from what the trial  
15          payments ---

16   **MR. CANTRELL:**   No.    Same payments.    The same  
17          payments.

18   **THE COURT:**    Different on the dates, because the  
19          trial payments would have been included with  
20          the September one.

21   **MR. CANTRELL:**   Correct.    And there's really no  
22          provision, as I understand it under these loan  
23          modification rules, for there to be two trial  
24          payments.  He did everything he was supposed,  
25          completed that September 1st.  They should have



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1 offered him the permanent mod. They didn't do  
2 that til two days ago. I don't know why.

3 **THE COURT:** So, Mr. Stork, the current modification  
4 has been offered, is that right?

5 **MR. STORK:** Yes, Your Honor. Permanent modification  
6 has been offered.

7 **THE COURT:** And does that need to be executed by  
8 either the defendant or anybody else associated  
9 with the claim?

10 **MR. STORK:** It needs to be -- and we just received a  
11 copy last night at our firm. I forwarded it  
12 over to counsel as soon as I got it. Would  
13 need to be signed by Mr. Ivey. There's a --  
14 it's a -- yeah, loan modification modifies the  
15 terms. Then there's a non-recourse assumption  
16 in there as well whereby, you know, he would be  
17 able to modify the debt but would not be held  
18 personally responsible for said debt, so.

19 **THE COURT:** Okay. All right. So what about the  
20 request for the executed trial payment plan  
21 agreement that was signed by the defendant but  
22 not signed by the plaintiff, what's the story  
23 on that?

24 **MR. STORK:** Your Honor, honestly, we just never got  
25 a copy of the one that was signed by Seterus.



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1 I don't really know exactly what the hold up is  
2 with that. I wish that I could give you some  
3 sort of guidance as to that. However, when I  
4 was speaking with John about it yesterday and  
5 he said that he wanted me to stipulate as to  
6 that, I said I really think that's kind of  
7 irrelevant. The fact of the matter is the  
8 trial payment plan called for three trial  
9 payments, which were made, and then at the end  
10 of that there would be a permanent  
11 modification, which was offered.

12 **THE COURT:** Mr. Cantrell, what's the necessity of  
13 you obtaining an executed copy of the trial  
14 payment plan?

15 **MR. CANTRELL:** As Your Honor is aware, these loans  
16 are often transferred, assigned from one  
17 servicer company to another. What happens if  
18 tomorrow this gets assigned and they say -- and  
19 we say, we've got a modification. No you  
20 don't, where's your proof of that. You know,  
21 we don't have -- we don't have a signed copy of  
22 the agreement and that's a problem for two  
23 reasons. First of all, the 2011 order requires  
24 it. It says, and I will quote, in the event  
25 that the mortgagor and the mortgagee agree on



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1 any loan modification or other loss mitigation  
2 plan agreement, such agreement shall be reduced  
3 to writing, executed by the mortgagor and the  
4 mortgagee, and served on all parties in the  
5 case. That is the requirement of the Supreme  
6 Court. And they didn't follow that. But the  
7 reason is clear, if this thing gets transferred  
8 tomorrow, I've heard people say, well my loan  
9 got transferred and it was in a loan  
10 modification plan and then the next servicer  
11 did not recognize it. Well first of all you  
12 should do it because Justice Toal told you to.  
13 They should -- I'm sorry, they should because  
14 Justice Toal told them to. And second of all,  
15 you should do it because -- well, for two  
16 reasons. Look at the language of the agreement  
17 itself. Look right over this -- in this  
18 attachment to this stipulation. Look right  
19 above -- right below his signature. He signed  
20 up here (indicating), they're supposed to sign  
21 the bottom. And it says, Seterus will sign and  
22 return a copy of this document once you have  
23 received your first trial period plan payment  
24 as shown above. That was July 1st. So they  
25 said they would do this July 1st of 2017, and



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1 they haven't. They have broken their  
2 agreement. That's bad faith, Your Honor. And  
3 there's reasons that we want that. Both  
4 because our law in South Carolina requires it,  
5 and their contract, which we've kept faithfully  
6 but they've broken, requires it. We think we  
7 should be entitled to that and we think that  
8 until they do provide that you should order per  
9 diem sanctions to coerce them, because they  
10 aren't going to do it.

11 **THE COURT:** Mr. Stork?

12 **RESPONSE BY MR. STORK:**

13 **MR. STORK:** Your Honor, if I may respond real quick.  
14 There's been a whole bunch of discussion about  
15 what is required under the 2011 administrative  
16 order.

17 **THE COURT:** Let me skip right to the nub of it.  
18 Your folks, your clients, providing an executed  
19 copy of the trial payment plan agreement, can  
20 you secure that?

21 **MR. STORK:** Your Honor, I believe that we can secure  
22 that. I emailed my client yesterday for an  
23 update on an executed copy of the trial payment  
24 plan just in preparation for the hearing today.  
25 I haven't heard back from them. I'm not in my



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1 office to check and see if there's -- it might  
2 be waiting in my inbox when I get there.

3 **THE COURT:** Has the loan modification agreement as  
4 just recently submitted to Mr. Cantrell, does  
5 that have to be executed as well?

6 **MR. STORK:** The loan modification agreement -- the  
7 permanent modification would have to be  
8 executed by Mr. Ivey, and then would be  
9 counter-signed by my client.

10 **THE COURT:** The same ones that signed the trial  
11 payment plan?

12 **MR. STORK:** Yes, Your Honor.

13 **THE COURT:** Okay.

14 **MR. STORK:** But it will be -- and it will be docketed  
15 and so if ---

16 **RULING OF THE COURT:**

17 **THE COURT:** Well, what we're going to do today is  
18 we're going to continue today. We're going to  
19 reschedule it about thirty days from now.  
20 We'll notify y'all of the date and time. Upon  
21 the return, y'all will hopefully have the  
22 signed trial payment plan executed by all the  
23 necessary parties, an executed permanent loan  
24 modification executed by all of the necessary  
25 parties, and that would be of course copies



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1 provided to Mr. Cantrell in advance of the  
2 hearing so that he can take a look at it. I  
3 will know then what I need to do as far as  
4 getting the appropriate documents out of the  
5 plaintiff and what sanctions, punishments or  
6 otherwise that would be necessary in order to  
7 entice them into doing what's necessary. Okay?

8 **MR. STORK:** Understood.

9 **THE COURT:** At that point in time I think I'll have  
10 a clearer picture. Mr. Cantrell and his client  
11 will have the assurances -- because I certainly  
12 understand the position regarding wanting  
13 everything tidied up in case there is a  
14 subsequent assignment going into the future so  
15 it doesn't have to come back in here under  
16 similar dispute. I'll then take under  
17 consideration the rest of the requests on the  
18 case -- I'm vacating the order as to striking  
19 it under the 40(j) as being improvidently  
20 granted based on the stipulations that there's  
21 no consent. And like I said, I'll hold in  
22 abeyance all other matters. I mean I'm not  
23 going to request it be reduced to writing by  
24 way of an order for it to be provided, I'll  
25 just know at the next hearing if it's here or



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1 not.

2 **MR. CANTRELL:** Will the next hearing be an  
3 evidentiary hearing? My client took off work  
4 today and incurred about \$700 in lost wages to  
5 be able to testify to his experience in this  
6 situation and his reasons why he's asking you  
7 for his damages. Obviously we're going to be  
8 in a bad position ---

9 **THE COURT:** If we go forward then it will be up to  
10 you if you want to call him or not. So, I'm  
11 not ---

12 **MR. CANTRELL:** But I will have the ability to do so  
13 and you will allow me to enter evidence at that  
14 hearing, Your Honor?

15 **THE COURT:** Yes.

16 **MR. CANTRELL:** Thank you, Your Honor.

17 **THE COURT:** All right. So, we clear as far as what  
18 your folks need ---

19 **MR. STORK:** Crystal clear, Judge. We'll get a copy  
20 of the countersigned trial payment plan over to  
21 Mr. Cantrell. I'm hoping it's in my inbox when  
22 I get back to my office. And then as soon as  
23 Mr. Cantrell gets his client to execute the  
24 permanent modification and send that in, if I  
25 could just get him to shoot me an email with a



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1 heads up so that I can notify my client to be  
2 on the lookout for that. Since we're only  
3 talking about a 30-day window here, that's  
4 going to be a really, really tight turnaround  
5 time frame to get something signed by Fannie  
6 Mae.

7 **THE COURT:** You will need to be attentive to it as  
8 well, Mr. Cantrell, as I'm sure he will be, if  
9 there's something that has to be signed by your  
10 fellow to get back to them. So make sure that  
11 that's taken care of ---

12 **MR. CANTRELL:** I'm sure we will. We signed this --  
13 we've been waiting since July 1st for their  
14 signature so I don't think they've them here  
15 thirty days.

16 **THE COURT:** I knew it was probably unnecessary to  
17 tell you to ---

18 **MR. CANTRELL:** Correct, Your Honor.

19 **THE COURT:** --- be attentive to it because I knew  
20 you would be. Okay. All right. I will have  
21 one of my administrative assistants let y'all  
22 know when this thing has been reset. Okay?

23 **MR. CANTRELL:** Will it possibly be during the  
24 Christmas holiday period, Your Honor? I don't  
25 know -- hopefully not. I will be out of town



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1           some during that time if it's close to  
2           Christmas. Do you -- you don't know yet.

3     **THE COURT:**   We'll send -- we'll circulate it by  
4           email, and if there's a date that you're either  
5           protected or have family plans, we certainly  
6           will respect that and work around it.

7     **MR. CANTRELL:** Thank you, Your Honor.

8     **THE COURT:** All right. Thank y'all.

9           **(There being nothing further, the hearing concluded**  
10          **at 10:11 a.m.)**

11  
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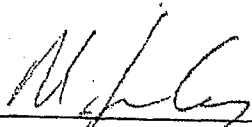
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**CERTIFICATE**

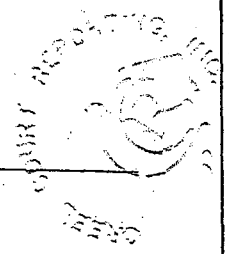
This is to certify that the within hearing consisting of thirty two (32) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on July 6, 2018.



M. Sean Cary  
Court Reporter



Notary Public for South Carolina  
My Commission Expires: January 29, 2023



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STATE OF SOUTH CAROLINA

) COURT OF COMMON PLEAS  
) C/A No. 2016-CP-08-00591

COUNTY OF BERKELEY

Federal National Mortgage Association )  
("Fannie Mae"), )

Plaintiff, )

v. )

Richard C. Ivey a/k/a Richard Curtis )  
Ivey; Crowfield Plantation Community )  
Association, Inc.; and Unifund CCR )  
Partners Assignee of Palisades, )  
a General Partnership, )

Defendants. )

**HEARING**

\*\*\*\*\*

**Tuesday, January 9, 2018**  
10:48 a.m. - 12:48 p.m.

The hearing before the Honorable Dale Van Slambrook, Master-In-Equity for Berkeley County, was taken at 300 B California Avenue, Courtroom B, Moncks Corner, South Carolina on the 9th day of January, 2018, before Cortney N. Glover, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

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Columbia, South Carolina 29204  
Attorney for the Plaintiff

**John R. Cantrell, Jr., Esquire**  
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Attorney for Richard C. Ivey

Also Present:  
Richard C. Ivey

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EXHIBITS

(Defendant's Exhibit Numbers 2 through 5 were marked prior to the hearing and introduced as follows:)

- Defendant's Exhibit Number 2 . . . . . 4, 9, 10  
(E-mail Re: Richard Ivey Foreclosure Case)
- Defendant's Exhibit Number 3 . . . . . 4, 32  
(Lender Letter LL-2013-04)
- Defendant's Exhibit Number 4 . . . . . 4, 36  
(Servicing Guide Announcement SVC-2013-17)
- Defendant's Exhibit Number 5 . . . . . 4, 38  
(D1-4.1-02: Allowable Exemptions Due to  
the Type of Transfer)

(Exhibits were retained.)



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1 (Defendant's Exhibit Numbers 2 through 5 were marked  
2 prior to the hearing.)

3 CALL TO ORDER:

4 **THE COURT:** Tell me what you have for me this  
5 morning.

6 **MR. CANTRELL:** Your Honor, I believe it's my motion  
7 this morning. Previously, we had two matters  
8 that were going to be heard. One was there's  
9 continued motion to get the Rule 40(j)  
10 approved. But as your Honor may be aware,  
11 you've vacated that prior motion. And it's my  
12 understanding their current position is they're  
13 not going to pursue still trying to get that  
14 40(j) motion approved.

15 Is that correct?

16 **MR. STORK:** That's correct, Judge.

17 **THE COURT:** Okay.

18 **MR. CANTRELL:** So that motion is out of the way.  
19 That only leaves my pending motion to dismiss  
20 the case and for sanctions, which is my  
21 understanding as to what we're going to be  
22 handling here today.

23 **THE COURT:** All right. I will be happy to hear from  
24 you.

25 DEFENDANT'S POSITION:



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1 **MR. CANTRELL:** Very good, your Honor. Your Honor,  
2 let's start with the matter from the last  
3 hearing. The first thing we had tried to  
4 introduce was a joint stipulation with a copy  
5 of the temporary payment plan attached to it.  
6 Your Honor had allowed that to be marked for  
7 identification as Defendant's Exhibit Number 1,  
8 but there was a question about whether or not  
9 there was an objection about it being admitted  
10 as evidence and your Honor had indicated you  
11 might take that under advisement. If it's  
12 proper at this time, I would ask that that be  
13 marked as Defendant's Exhibit Number 1 and  
14 admitted into evidence for that purpose. It's  
15 a joint stipulation of undisputed facts,  
16 including a copy of the agreement the, TPP  
17 agreement that we had attached to that as well.

18 **THE COURT:** Any objection to that?

19 **MR. STORK:** No, your Honor.

20 **THE COURT:** So we'll admit it without objection.

21 **MR. CANTRELL:** I don't know if the court reporter  
22 needs to mark that. I know -- I think the  
23 courtesy copy we gave you is in your file. You  
24 would have the original in your file as well  
25 now. It was filed the same day as the last



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1 hearing. I don't know if that needs to be  
2 marked or if it's sufficient that we know what  
3 it is. I don't know how the Court prefers to  
4 do that.

5 **THE COURT:** I've got the joint stipulation of facts,  
6 a filed copy so I think that probably speaks  
7 for itself because that does the modification  
8 attached.

9 **MR. CANTRELL:** Okay. Very good, your Honor, and we  
10 will go with that.

11 Okay. So I guess the Court could take judicial  
12 notice of the will since it's in the file, but  
13 it's been admitted, in any event, especially  
14 because it contains some things like the TPP  
15 agreement, which are evidence in this case.

16 Okay. Now, let's take a look at that  
17 agreement, the TPP agreement attached to the  
18 joint stipulation because that's gonna relate  
19 to one of the issues in the case regarding the  
20 failure of Fannie Mae to approve -- to sign  
21 that in a timely matter. The copy that's  
22 attached to the joint stipulation, you will  
23 notice, has been signed by my client, Mr. Ivey,  
24 who's here in court with me today. And it had  
25 not been signed by Seterus, which apparently is



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1 the servicer for Fannie Mae on this case.  
2 If you'll look at the bottom of page 3 of 8,  
3 that's the one where his signatures are on it.  
4 You will see that there is a place at the  
5 bottom for Seterus to sign. And you'll notice  
6 the language right above that it says Seterus  
7 will sign and return a copy of this document  
8 once we have received your first trial period  
9 plan payments -- that's the TPP I'm going to be  
10 referring to -- as shown above.

11 If you go above, you'll see that first payment  
12 was due on July 1st, and we've actually  
13 stipulated to that in the undisputed facts. So  
14 basically it was due on the 1st. And the  
15 stipulation, if you'll go back to Item Number  
16 6, paragraph 6 of the stipulation, it says on  
17 June 26, the defendant, Mr. Ivey, signed and  
18 returned the TPP agreement to plaintiff by  
19 overnight mail. And then an authentic copy of  
20 that is attached.

21 So he did what she was supposed to. And you'll  
22 notice in 7 it says, Pursuant to the TPP, the  
23 defendant made three trial payments of 1,018.11  
24 to Plaintiff on or before July 1st, August 1st,  
25 and September 1st. So that first payment that



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1 they're talking about down there that was --  
2 after which they were supposed to sign and  
3 return this would have been received by them on  
4 June the 26th.

5 Now, as of date of the last hearing, your Honor  
6 may remember we had still not received this,  
7 and we expressed some concern because he  
8 wouldn't have had, you know, a contract signed  
9 that would have protected him in the event this  
10 case was transferred. At the time, we'd asked  
11 is one of our possible sanctions that your  
12 Honor order per diem sanctions. Your Honor  
13 didn't want to do that and set this additional  
14 time for that to be resolved.

15 What actually happened about two weeks, maybe  
16 12 days after the last hearing, they did  
17 finally sign and return this to us so it was  
18 done, but not until after we had to come to  
19 court and ask him to do it, not until after we  
20 had to file a motion for sanctions to get them  
21 to do it.

22 And so this was a breach really of their  
23 agreement. It didn't say after the second  
24 trial period, after the third. It says once we  
25 received your first payment, we're gonna -- and



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1 your Honor is going to see that we tried very  
2 hard to get this agreement as well. I'm going  
3 to produce a copy of e-mails between myself and  
4 Mr. Stork or other people at Scott & Corley in  
5 an attempt to do that. I want to submit for  
6 identification Defendant's Exhibit Number 2.

7 **(Defendant's Exhibit Number 2 was introduced into the**  
8 **record at this time.)**

9 **MR. CANTRELL:** I premarked them because I wasn't  
10 sure about that first one.

11 Your Honor, these are -- yes, you can pass that  
12 up.

13 You Honor, if there's no objection, I would  
14 also ask that these be admitted. These are  
15 e-mails between myself and either Mr. Stork or  
16 Louise Johnson, his associate attorney or  
17 Carolyn Lassiter, which is their paralegal, as  
18 I understand it. I would request that these  
19 copies of e-mails between me and them be  
20 admitted into evidence as Defendant's Exhibit  
21 Number 2.

22 **THE COURT:** Mr. Stork?

23 **MR. STORK:** One quick second, your Honor. May I  
24 have a minute to review the body of these  
25 e-mails just to see if there's any sort of



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1 settlement talks in there?

2 **MR. CANTRELL:** That's a fair statement, your Honor.  
3 And you'll notice I made it a little easier for  
4 everybody because I've highlighted everything I  
5 think is important. And the e-mails, of  
6 course, have to be read from back to front if  
7 you want them chronological. But in any event,  
8 this is what we have. So I'll let him look at  
9 that. If there's -- I don't have any problem  
10 with that. But I don't believe there are any  
11 settlement discussions at this point 'cause  
12 this was prior to the last hearing.

13 **MR. STORK:** Understood.

14 **MR. CANTRELL:** There were some settlement discussions  
15 after that point. Obviously, he's attempting  
16 to keep those protected. They were  
17 unsuccessful, your Honor. We weren't able to  
18 reach an agreement, but we did attempt to do  
19 that after the last hearing.

20 **MR. STORK:** Okay. No objection to this, your Honor.

21 **THE COURT:** All right. So we're entering it as  
22 Defendant's Exhibit 2 without objection.

23 **(Defendant's Exhibit Number 2 was admitted into**  
24 **evidence.)**

25 **MR. CANTRELL:** Very good, your Honor. Now, if



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1 you'll go into our motion to dismiss him for  
2 sanctions, you'll see that we allege very  
3 specifically the dates that we tried to get  
4 this TPP agreement signed. And this goes all  
5 the way back to the very last page of this on  
6 July 17th, stating from Scott & Corley's office  
7 that we've received confirmation that  
8 Mr. Ivey's been approved for the TPP and the  
9 first payment's been made for July 1st.

10 And so we go back there. And then on  
11 September 18th, it's been two months since my  
12 last e-mail. Have you got a signed copy of the  
13 TPP? And then, you know, a reply the same day.  
14 We're still waiting on receipt of the signed  
15 agreement.

16 And then another month or so goes by and, you  
17 know, basically they never produced it. And  
18 then finally if you'll look at the e-mail on  
19 October 24th, I simply said, look, you know,  
20 I'm concerned your client being in contempt of  
21 this 2011 Administrative Order.

22 And I guess we should stop there and talk a  
23 little bit about the Order. I know there's  
24 gonna be some disagreement as to whether or not  
25 that Order applies in this case. We're gonna,



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1 obviously, make our arguments to that effect;  
2 however, it is important that we know what the  
3 order says about this TPP agreement.

4 The Administrative Order here, this is the  
5 2011 -- a Supreme Court order. And on the --  
6 let's see. It talks about the agreement. It  
7 says on the last page of that Order and -- in  
8 the event that the mortgagor and the mortgagee  
9 agree on any loan modification or other loss  
10 mitigation plan agreement, such agreement shall  
11 be reduced to writing executed by the  
12 mortgagor, which was done, and the mortgagee,  
13 which was not done, and served on all parties  
14 in the case.

15 That's what the 2011 order says, you know.  
16 Like our concern last time, the don't want  
17 people like ourselves hanging out there with a  
18 "maybe we've got an agreement but it's not in  
19 writing." They said you got to put it in  
20 writing; it's got to be executed by both  
21 parties; and it's got to be served on  
22 everybody. That never happened before this  
23 motion was filed. I'm not sure if that ever  
24 happened. I mean, we got a copy of it. I  
25 don't know about the other party in the case,



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1 if they got it.

2 There was an admission in the joint stipulation  
3 that -- let's see -- well, that was about  
4 consent to the 40(j), so that doesn't apply.  
5 But in any event, we didn't get it. So  
6 obviously we were concerned about that. We had  
7 to bring this motion to get that to happen. It  
8 did end up happening. We did accomplish it but  
9 not without the Court's help. Now without my  
10 client having to spend significant time and  
11 effort in attorneys fees to get there.

12 So we believe that the Order does require that  
13 and that it wasn't done. Now, one thing you  
14 could say is, well, it says it's got to be  
15 done, but it doesn't exactly say when. It says  
16 it's got to be reduced to writing, executed,  
17 and served. But you get back into the  
18 agreement itself, and they provide that time  
19 frame. They say we're gonna do that after we  
20 get your first payment, not your second or your  
21 third. As soon as we get your first payment,  
22 which was back on June 26th. And still we here  
23 are at November 15th at this last hearing and  
24 we don't have it.

25 So I think there was certainly -- it was



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1 certainly untimely for them to say, well, we  
2 got this done on November 27th, I think, is  
3 when we finally got a copy of that. It  
4 wouldn't have happened without this hearing.  
5 It wouldn't have happened without this motion.  
6 And I believe my client was entitled to that,  
7 based on the 2011 Order. So that being said,  
8 that's what happened with the TPP agreement.  
9 Now, let's look at some other language in the  
10 2011 Order. It also -- there's also, I  
11 believe, something else that was violated. It  
12 also says if the mortgagor, my client, shall be  
13 in compliance with the terms of the agreement  
14 after 90 days, the mortgagee's attorney shall  
15 promptly file a notice of dismissal of the  
16 action without prejudice and the case will be  
17 dismissed. Such notice of dismissal shall be  
18 served on all parties to the action. Well,  
19 that didn't happen either, your Honor. And  
20 there is -- in the joint stipulation, you'll  
21 see that in paragraph 7 it says that my client  
22 made all three of those payments during those  
23 90 days on July 1st, August 1st, September 1st.  
24 And we got an e-mail in that list of e-mails  
25 you've seen confirming that my client had done



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1 that on September 18th.

2 So at least -- well, really by September 1st,  
3 what should have happened is Fannie Mae or  
4 Seterus should have told Mr. Scott's firm,  
5 look, we've gotten all these payments, you  
6 know. Or his office should have called them  
7 and said, look, you know, did you get the  
8 payments? If so, understand that this language  
9 in the Admin Order imposes duties on Scott &  
10 Corley, which is why we say they're also in  
11 contempt of this order. It says that the  
12 mortgagee's attorney shall promptly file a  
13 notice of dismissal without prejudice.

14 Now, that didn't happen. That should have  
15 happened back in September -- no later than  
16 September 18th when they confirmed that this  
17 had been done, they should -- we should have  
18 seen a motion dismissing this case without  
19 prejudice from their firm back in September of  
20 this -- of last year. It didn't happen. As a  
21 matter of fact, what did happen, if you'll look  
22 on the joint stipulation at paragraph 8, the  
23 Court apparently was getting a little tired of  
24 how long this case was taking to get resolved.  
25 And so on October 11th, Suzanne Albert, also



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1 known as Suzanne Burkhalter -- is her name  
2 properly Burkhalter, your Honor? I see e-mails  
3 with both. I don't really know.

4 **THE COURT:** It's Burkhalter.

5 **MR. CANTRELL:** I thought so. But for some reason,  
6 her e-mail says Albert. So I'll call her  
7 Ms. Burkhalter. But she wrote Scott & Corley,  
8 and I saw the e-mail chain, and we stipulated  
9 this so we didn't have to produce this to  
10 you -- that the pending case was gonna be  
11 dismissed for failure to prosecute if they  
12 didn't -- if they weren't able to proceed by  
13 October 31st. Okay.

14 So what should have happened on the Admin  
15 Order, well, they should have dismissed the  
16 case without prejudice once they got proof of  
17 all these payments back in September, right?  
18 They didn't do that. So along comes October  
19 and, for a different reason, the Court says,  
20 look, you've got to proceed with this thing, or  
21 we're gonna dismiss it without prejudice. Same  
22 result, right?

23 So what does Scott & Corley do in response to  
24 that? Well, by overnight mail, they ship in  
25 their Rule 40(j) Motion. Well, first, they



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1 contact me and say, will you consent to this?  
2 The e-mails that I produced to you show that  
3 there was no consent. We've stipulated that  
4 there was no consent to that Rule 40(j) motion.  
5 But the Court told them, look, if you don't  
6 have this in by the 31st, it's gonna get  
7 dismissed.

8 And so they overnight it in to the Court on the  
9 31st, their Rule 40(j) motion without consent,  
10 and they filed it. So what happened as the  
11 result of that? Well, their case didn't get  
12 dismissed. So their affirmative action  
13 prevented what they should have done back in  
14 September, the dismissal without prejudice.  
15 Their affirmative action prevented that from  
16 happening. All they bought here was delay  
17 against the will of the Court, against my  
18 consent. They just filed this unilateral 40(j)  
19 motion and thought that's gonna fix the  
20 problem. And it did because your Honor signed  
21 it the same day and filed it.

22 Now, why did that happen? Well, let's look at  
23 the -- their 40(j) motion and we'll see. You  
24 know, why would the Court have signed this  
25 without consent? First of all, why is consent



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1 required? Well, let's look at Rule 40(j).  
2 Okay. It's titled Case Stricken from Docket by  
3 Agreement. A party may strike its complaint  
4 one time as a matter of right provided that all  
5 parties adverse to that claim agree in writing  
6 that it may be stricken. I've eliminated some  
7 unnecessary language, but that is what it says.  
8 It doesn't say as apparent -- opposing counsel  
9 apparently still believes, that I can file a  
10 Rule 40(j) motion without consent and the Court  
11 can force the other side to agree to it. It's  
12 not in there. There is no good ground to  
13 believe that based on the South Carolina Rules  
14 of Civil Procedure. Not only did they believe  
15 that at that time, as is evidenced by these  
16 filings. They still believe it -- they still  
17 believe that was a proper motion. Aside from  
18 everything else, a Rule 40(j) motion filed  
19 without consent is improper. It is frivolous.  
20 There is no good basis in law for it at all.  
21 Never has been, never will be until the Supreme  
22 Court changes these rules. So understand that  
23 what they did was completely improper.  
24 And your Honor realized that the last hearing  
25 because your Honor entered an order vacating



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1 that because it was improvidently granted due  
2 to the fact that my client did not consent.  
3 Your Honor understands these rules. The  
4 opposing counsel does not still understand  
5 these rules. They still think that was a  
6 proper motion. They're gonna have to argue  
7 that to you today. It's preposterous, I  
8 understand. But it's what they believe.

9 Now, they claim that this Rule 40(j) motion was  
10 just fine. Why? Well, not because there was  
11 content. They agree in the stipulation. Let's  
12 look at the stipulation, Number 11 -- well,  
13 Number 10: The Rule 40(j) motion was signed by  
14 attorney, William P. Stork, as counsel for the  
15 Plaintiff as authorized agent for Scott &  
16 Corley and for the plaintiff as well because  
17 they're the Plaintiff's counsel. Number 11:  
18 Neither defendant nor his counsel has ever  
19 consented in writing or otherwise to the filing  
20 of the Rule 40(j) motion. Also, no other  
21 defendant in the case has provided Plaintiff  
22 with written consent to the filing of the  
23 Ruling 40(j) motion.

24 Remember, even if we had consented, the rule  
25 requires all defendants to do so. They did



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1 not. And, Number 12, this is important.  
2 Before filing the pending Rule 40(j) motion,  
3 Plaintiff's counsel was aware the defendant had  
4 not consented to the filing of the motion.

5 I mean, if you'll look at these e-mails that  
6 were sent out, you'll see what happened here is  
7 if you'll look at the -- on Defendant's 2, if  
8 you look at the second page, your Honor, on  
9 November 1st at 5:05 p.m., which is when I got  
10 notice of the filing of the Rule 40(j) motion,  
11 I said, Will, are you aware that a Rule 40(j)  
12 motion has been filed with the Court by your  
13 office in this case without by consent?

14 Flip to the first page. You'll see a response  
15 at 6:14 p.m. the same day from Louise Johnson,  
16 his associate attorney. Hi, John. Yes, we're  
17 aware of the motion we filed seeking a 40(j)  
18 order. As you may recall, we first asked you  
19 for your consent to a 40(j), but you advised us  
20 you would not consent. Accordingly, in  
21 accordance with the Rules of Civil Procedure,  
22 we filed the motion and requested a hearing for  
23 the relief sought. We complied with our  
24 obligation to try to resolve with you first, to  
25 no avail. Therefore we properly filed this



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1 motion.

2 That has been their position and remains their

3 position that it was properly filed because --

4 the next sentence says of course now that we've

5 filed this motion, you will be afforded notice

6 in a hearing for you to appear and dispute the

7 request to relief. So they think that this

8 40(j) motion was proper without consent because

9 I was supposed to get a hearing.

10 Did I get a hearing? No. Your Honor signed

11 the proposed order the same day. Now, how

12 could that have happened if I was supposed to

13 get a hearing? Now, they're going to claim

14 that this motion was very clearly affording me

15 a right to a hearing. Well, let's look at the

16 motion and see if that is actually the case.

17 Let's look at their Rule 40(j) motion that was

18 filed. Okay. And the Court should have a copy

19 of that in the file. There are three

20 particular things I want your Honor to pay

21 attention to on the 40(j) motion, which makes

22 it clear that there was no real opportunity

23 afforded me for a hearing. There was to intent

24 to afford me an opportunity for a hearing.

25 I'll let your Honor locate that first so that



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1 we can look at that together while I pour a  
2 little cup of water.

3 **THE COURT:** What am I looking at?

4 **MR. CANTRELL:** We're looking at the very first page  
5 of their Rule 40(j) motion, which is the cover  
6 sheet. Let's start there, your Honor.  
7 Now, as your Honor knows with these motion  
8 cover sheets, it's required to tell the Court  
9 how to process the motion. Notice what they  
10 checked on this motion cover sheet. It says  
11 proposed order consent order.  
12 Now, there's a place up above where you'd check  
13 for motion hearing requested. It's not  
14 checked. The section on hearing information  
15 one, it's not filled out. There was no intent,  
16 based on this cover sheet, for any hearing to  
17 be afforded.  
18 So the Court would -- I mean, the Court would  
19 have no reason to think a hearing was. So  
20 let's go to -- there's another reason why the  
21 Court might have signed that on the same day it  
22 came in. Look at the motion itself, the  
23 language on the next page. It says: On motion  
24 of the undersigned Scott & Corley, attorney  
25 with the consent of all appearing parties of



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1 record. That's in the second line of that  
2 motion. Then go down to the fourth line.  
3 Therefore Plaintiff requests with the consent  
4 of all parties of record. They have made a  
5 material misrepresentation of fact. I mean,  
6 what's more material to a Rule 40(j) motion  
7 than consent? And here they said twice, you've  
8 got consent. So, your Honor, if your were  
9 cursorily -- quickly reviewing this thing,  
10 you'd say, well, you know, no hearing  
11 requested, consent of all parties of record.  
12 Sure.

13 But then look at this language at the very  
14 bottom, which is what they're gonna hang their  
15 hat on to say that, you know, everybody knew  
16 that there was not gonna be -- there was gonna  
17 be a hearing and there was no consent.  
18 They're -- they say at the bottom, pursuant to  
19 Rule 11, the undersigned certifies that before  
20 filing the motion, opposing counsel was  
21 contacted in good faith to revolve this matter.  
22 It appears a hearing will be required.

23 Well, that doesn't really make a whole lot of  
24 sense 'cause on the front they've said we don't  
25 want a hearing. Here they say a hearing will



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1 be required. But why would a hearing be  
2 required if everybody consented? So it's a  
3 confusing mess. And it doesn't say they're  
4 gonna try to tell you that this says that it's  
5 obvious that there was no concept. So  
6 basically they're gonna say in the first  
7 paragraph, they said twice there was consent.  
8 In the bottom they said there was no consent.  
9 But they didn't say that at the bottom. They  
10 just said they contacted me to try to resolve  
11 it. They didn't say how that came out. They  
12 didn't say I didn't consent. What they're  
13 gonna try to tell you is it's obvious that  
14 there was -- that we were gonna get a hearing  
15 and there was no consent. If it's that  
16 obvious, why did a judge of your caliber and  
17 staff of your caliber sign this thing the same  
18 day if it was obvious a hearing was requested.  
19 Your Honor certainly didn't see that, and  
20 you're a smart judge. And you've got staff  
21 that are well trained, and they didn't see  
22 that. And you signed it the same day you got  
23 it.

24 So for him to prevail in his argument this it  
25 was obvious, he's got to explain to us why it



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1 wasn't obvious to you and the Court.  
2 Because -- and it wasn't obvious to me either.  
3 I didn't know what that weird language meant  
4 about a hearing being required when they've  
5 said one isn't gonna be required.

6 Now, your Honor, so that's what got signed.

7 And your Honor vacated that order, as your  
8 Honor should because there was no consent. And  
9 that's really the real issue in a 40(j).

10 They're gonna tell you these two allegations of  
11 consent are scrivener's errors. Your Honor,

12 those are material statements of fact. You

13 can't say twice that everybody consented and

14 then say, oh, that was just a scrivener's

15 error. I'm not buying that because what else

16 in anything they file with this Court is not a

17 scrivener's error? If they can back out of

18 this being a consent order, which they said it

19 was on the very first page, a proposed order,

20 consent order, then how can you believe

21 anything else they ever file?

22 I don't understand how that's a scrivener's

23 error if they can't prove it, and your Honor

24 certainly didn't believe it. Your Honor didn't

25 believe the hearing was requested, and your



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1 Honor signed that the same day. And I think  
2 that's what anybody would have done, looking at  
3 this proposed Order. In fact, they -- but the  
4 whole language -- even if your Honor buys their  
5 argument that this was a scrivener's error  
6 about the consent, they can't file a Rule 40(j)  
7 motion without consent, and they have  
8 stipulated that there was no consent and they  
9 knew that before they filed it.

10 So that being the case, let's look at the next  
11 matter. Okay. Okay. I think probably at this  
12 point -- oh, let's talk a little bit more about  
13 the 2011 Order. We got -- and your Honor may  
14 be aware an objection to my motion came in on  
15 Monday. I got it Monday of this week by  
16 e-mail. It hasn't yet come in by mail. It may  
17 be in the mailbox today. But with the roads  
18 and all, who knows? But they did file an  
19 objection to my motion for sanctions.

20 Now, they have claimed in there that the 2011  
21 Order doesn't apply to my client because  
22 understand my client wasn't on the note or the  
23 mortgage. My client's parents were on the loan  
24 documents. I think his mom was on both ---  
25 Or your dad was on both?



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1 MR. IVEY: My mother was on both.

2 MR. CANTRELL: His mother was on both the note and  
3 the mortgage. His dad had just signed the  
4 mortgage because they ---

5 MR. IVEY: It was just my mother. And then I was on  
6 the title with my mother.

7 MR. CANTRELL: Okay. They were on the title  
8 together. In any event, he didn't have the  
9 whole interest until she passed. And in the  
10 stipulation, it talks about when they passed  
11 and that he became the -- stipulation for is  
12 that he became the owner of the property by  
13 inheritance and it wasn't a signator but maybe  
14 he was on there. In any event, he got this by  
15 inheritance. And the complainant acknowledges  
16 that too. That's why he's listed as a  
17 defendant. The plaintiff was aware of all of  
18 that.

19 Now, their position is that the 2011 Order does  
20 not apply if you are -- if you receive it by  
21 inheritance. Unless you're on the loan  
22 documents, then it doesn't apply. And I don't  
23 think that's what the Order says at all. But  
24 let's look at it and see. It don't think there  
25 are any appellate cases on the issue. Your



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1 Honor, there is a case out of Greenville by a  
2 Judge Edward Welmaker. He's the 13th Circuit  
3 judge, and he interpreted it to be -- for an  
4 owner to be people, like my client, that  
5 inherited it and not just people there on the  
6 loan documents. If your Honor would, I'd like  
7 to pass up a copy of that trial court Order  
8 interpreting that. Unfortunately, we don't  
9 have a lot of authority on it.

10 **MR. STORK:** And, your Honor, I do object to the  
11 production of this document. It's not a  
12 reported case. I have no idea as to any sort  
13 of subsequent history of this. I'm not sure if  
14 this ended up being vacated or anything like  
15 that. I just -- I do not think that it's  
16 proper to consider this Order.

17 **THE COURT:** I'll accept a copy of it for what it's  
18 worth. You can may whatever argument relative  
19 to whether it has any control or precedential  
20 value.

21 **MR. STORK:** All right. Thank you, your Honor.

22 **MR. CANTRELL:** Thank you, your Honor. So let's look  
23 at the language of the Order ourselves, 'cause  
24 we're attorneys. We should be able to  
25 interrupt that. And let's see what it says.



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1 Let's go to very first page of the  
2 Administrative Order. Your Honor, I don't know  
3 if you have a copy of that in front of you. I  
4 don't think I have a courtesy copy. But I'll  
5 read right from the definition section of the  
6 Administrative Order that says -- the 2011 one  
7 entered by Justice Toal -- Chief Justice Toal.  
8 It says -- it defines the term "mortgagor." It  
9 basically says that this applies to mortgagors.  
10 And off the top of your head, you think, well,  
11 mortgagor means people that sign loan  
12 documents. Well, that's obviously a mortgagor.  
13 But it says more than that. And this is what  
14 the judge found in his other Order. It says  
15 mortgagor shall include every owner, mortgagor,  
16 and debtor under the note and mortgage at  
17 issue. So the very first word is "owner." It  
18 says you're a mortgagor if you're an owner, in  
19 addition to being a mortgagor -- or a debtor  
20 under the note and mortgage. So there's  
21 multiple ways you can bet there.  
22 So at face value looking at this order, it  
23 includes my client. There's a joint  
24 stipulation, remember, that says my client's  
25 the owner of the property by inheritance. The



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1 complaint makes the same allegation. So  
2 there's no question that he owns the property  
3 by inheritance. The question is whether that's  
4 enough to qualify him under the administrative  
5 order since he didn't sign the loan documents.  
6 And I think it's pretty clear.  
7 If you look at this, it says owner, mortgagor,  
8 and debtor under the note and mortgage at  
9 issue. So those are not mutually exclusive.  
10 You can qualify as any of those by the plain  
11 language of the order.  
12 Now, then it says owner occupied dwelling is  
13 mortgaged real property that's the principal  
14 residence of any mortgagor. Back to the  
15 definition. He's an owner, and he's living in  
16 this. It's his principle residence, so it's an  
17 owner-occupied dwelling. They're gonna say,  
18 no, you've not to sign the note and mortgage.  
19 But the order doesn't say that. And do we  
20 really want to do that to our widows and  
21 orphans that he's going to exclude from the  
22 protection of the administrative order. 'Cause  
23 that's the result of his argument, you  
24 understand, your Honor. If you're unfortunate  
25 enough for your parent to die, then you don't



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1 get foreclosure intervention. You just get  
2 thrown out like a commercial property, which  
3 doesn't have the same protections as  
4 owner-occupied dwellings.

5 It's a perverse argument. It's a greedy  
6 argument. And, frankly, even worse, it is  
7 contrary to Fannie Mae's accomplished policy.  
8 So what's happening here is there is a  
9 misrepresentation going on about how Fannie Mae  
10 views people like my client. And I'm gonna  
11 prove that to your Honor as well.

12 Now, we just found out about this this week, so  
13 we've had to do some additional work to get  
14 there. But we are gonna present to your Honor  
15 information about Fannie Mae's servicing guide.  
16 Fannie Mae has something called the Single  
17 Family Servicing Guide. I'll just call it the  
18 guide or the servicing guide. What it is, is  
19 it's their policy manual, which is quite thick,  
20 and it's published online. You can go to all  
21 regs and stuff and find it there. But they  
22 send out -- in addition to this very thick  
23 manual, they send out these periodic letters or  
24 instructions to their servicers what they're  
25 required to do in Fannie Mae loans. This is



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1 obviously a Fannie Mae loan since Fannie Mae's  
2 the plaintiff. Seterus is the servicer. They  
3 sent out these letters to them.

4 Now, the next document that I want to submit  
5 for identification is -- it's a letter from  
6 Fannie Mae Lender Letter -- LL-2013-04. I'm  
7 gonna ask that this be identified as  
8 Defendant's Exhibit Number 3.

9 **THE COURT:** Any objection, Mr. Stork?

10 **MR. STORK:** Your Honor, since none of these were  
11 provided prior to the hearing, I haven't had  
12 time to ascertain the validity of any of these  
13 documents or whether there were any sort of  
14 amendments since February 27, 2013, so ...

15 **MR. CANTRELL:** I just got an e-mail from him with  
16 his objection adding this ---

17 **THE COURT:** I'll allow the admission. And if need  
18 be, that we can make a provision to supplement  
19 it out after review by Mr. Stork.

20 **(Defendant's Exhibit Number 3 was admitted into**  
21 **evidence.)**

22 **MR. CANTRELL:** I'd be perfectly happy to give him --  
23 you know, I don't have -- I will consent his  
24 filing of supplemental brief, if necessary.  
25 That's certainly fair, your Honor. So I've



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1 asked that it be marked for ID as Plaintiff's  
2 Number 3 and then admitted into evidence as  
3 Plaintiff's [sic] Number 3 subject to your  
4 Honor's, you know, allowing him to counter it  
5 later if necessary.

6 Is that acceptable to everybody?

7 **THE COURT:** That's what we'll do.

8 **MR. CANTRELL:** Okay. So is it -- it's being  
9 admitted just -- but he -- I want to make sure  
10 I understand for the record. It is admitted?

11 **THE COURT:** It is admitted. And we'll address an  
12 assessment of any supplement to respond it or  
13 to review it as we proceed.

14 **MR. CANTRELL:** Very good, your Honor. I just want  
15 to make sure I understood that. Thank you for  
16 clarifying.

17 Let's look at this lender letter, a two  
18 thousand -- now, this was a 2013 letter.  
19 Remember this case was filed, I think -- was it  
20 2016? It's 2016. So this predates the filing  
21 of the case. And it says in that very first  
22 paragraph, which I've highlighted for you,  
23 Fannie Mae is clarifying the servicer's  
24 obligations in connection with the transfer of  
25 ownership of a property, securing a mortgage



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1 loan when the due on sale or due of transfer  
2 provision is not enforceable because the  
3 property transfer is considered an exempt  
4 transaction in the servicing guide.

5 An example of an exempt transaction is the  
6 transfer of ownership of a property to a widow  
7 or orphan of the deceased . So the situations  
8 where the borrower dies and somebody else gets  
9 it, normally the due-on-sale clause in the  
10 mortgage would say, hey, we can come in and  
11 foreclose. But obviously they realized that  
12 was draconian and they do don't that. So they  
13 come out here and they tell their servicers you  
14 can't do that. Even if this person's not a  
15 borrower, you know, they're -- this is an  
16 exempt transaction.

17 So it goes on down, and this middle of the  
18 page, it says these policies and procedures  
19 must allow the new owner to continue making  
20 mortgage payments and pursue an assumption of  
21 the mortgage loan as well as a foreclosure  
22 prevention alternative if applicable. This  
23 includes a widow, executor, or administrator of  
24 the borrower's estate or other authorized  
25 representative of the borrower upon



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1 notification of the borrower's death.  
2 Then go on down to the bottom, and it talks  
3 about what happens if the loan's delinquent.  
4 It says if the mortgage is delinquent and the  
5 new property owner is unable to bring the  
6 mortgage loan current but may be able to  
7 resolve the delinquency with a foreclosure  
8 prevention alternative -- for example HAMP,  
9 standard modification, mortgage release, or  
10 short sale -- and assume the mortgage loan, the  
11 servicer must collect a borrower response  
12 package from the new property owner and  
13 evaluate the request as if they were a  
14 borrower.

15 So Fannie Mae is telling their servicers, look,  
16 in these situations where somebody's  
17 unfortunate enough for their parent, who's a  
18 borrower, to die, you treat the heir as a  
19 borrower. Now, he's gonna try to tell us this  
20 person isn't an owner. This person says treat  
21 them like they were a borrower. This is his  
22 client. So why is he telling the Court one  
23 thing, and his client's saying we treat him as  
24 a borrower? Something isn't right, your Honor.  
25 Something isn't right.



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1 Well, they didn't just say it one time. For  
2 folks that didn't get it the first time, this  
3 was in early 2013. This went out in  
4 February 2013. I'm gonna submit for  
5 identification Number 4. This is a servicing  
6 guide announcement 2013-7.

7 **(Defendant's Exhibit Number 4 was introduced into the**  
8 **record at this time.)**

9 **MR. CANTRELL:** Same basic story as before.

10 **MR. STORK:** Your Honor, same objection to this  
11 document.

12 **THE COURT:** The same resolution as before ---

13 **MR. STORK:** Thank you, your Honor.

14 **THE COURT:** --- that it's subject to further  
15 review ---

16 **MR. CANTRELL:** Yes, your Honor.

17 **THE COURT:** --- as to a response, not as to the  
18 admissibility.

19 **MR. CANTRELL:** Yes, your Honor. Admitted as  
20 Defendant's 4, if I understand correctly?

21 **THE COURT:** Yes.

22 **(Defendant's Exhibit Number 4 was admitted into**  
23 **evidence.)**

24 **MR. CANTRELL:** Okay. Let's look at the highlighted  
25 language here. No real changes, your Honor.



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1 Just coming back saying the same thing again.  
2 This little announcement goes out to all their  
3 servicers. It says about exempt  
4 transactions -- these are the ones that qualify  
5 not to be effected with the due on sale clause.  
6 It says at the bottom this includes that these  
7 people that allow the new owner to continue  
8 making payments. This includes a widow,  
9 executor, administrator of the borrower's  
10 estate or other authorized representative upon  
11 notification of the borrower's death.  
12 And then it talks about delinquent mortgage  
13 loans and exempt transactions. It says if the  
14 mortgage loan is delinquent and the new  
15 property owner, like my client, is unable to  
16 bring the mortgage loan current, he or she must  
17 be evaluated for all available work-out  
18 options. So loss mitigation, foreclosure  
19 intervention applies to my client under the  
20 servicing guide that Fannie Mae has put out.  
21 Now, one thing that your Honor may be worried  
22 about is, well, you know, it doesn't actually  
23 talk about somebody that's parents died and an  
24 inheritance. It talks about executors,  
25 administrators, similar things, but not exactly



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1 the same thing. What is an exempt transaction?  
2 Fortunately, Fannie Mae has another section in  
3 their voluminous guide that defines that term.  
4 I'm submitting another Fannie Mae -- another  
5 part of the Fannie Mae servicing guide. And  
6 this is D1-4.1-02 on allowable exemptions from  
7 this due-on-sale clause. If your Honor would,  
8 I would -- I ask that this be admitted -- ID'd  
9 and admitted as Defendant's 5.

10 **THE COURT:** Admit that -- admit Number 5 under the  
11 same conditions as 3 and 4.

12 **(Defendant's Exhibit Number 5 was introduced into the**  
13 **record and admitted into evidence.)**

14 **MR. STORK:** Your Honor, if I may. This foreclosure  
15 was initiated on March 9th, 2016. On the face  
16 of the documents, which was submitted to the  
17 Courts as published October 19th, 2016. I  
18 would move to strike this document from  
19 evidence since it was generated after the  
20 proceedings began.

21 **MR. CANTRELL:** Okay.

22 **THE COURT:** You're looking at the servicing guide  
23 and below that where it says published October  
24 19 ---

25 **MR. STORK:** Published October 19, 2016. If you



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1 would please, you know, take a look at the  
2 filed summons and complaint that is from March  
3 9th, 2016. I believe that anything that is  
4 contained within this document is inapplicable  
5 to the current situation because of the dates.

6 **MR. CANTRELL:** And he's mistaken on that, your Honor  
7 because ---

8 **THE COURT:** Wait, wait, wait, wait.

9 **MR. CANTRELL:** Go ahead, your Honor.

10 **THE COURT:** And I'm looking at the allowable  
11 exemptions due to the title transfer loan,  
12 11/12/4. That may very well be the applicable  
13 date rather than the publication date, but I'll  
14 leave that up open as well to address the  
15 applicability of that because I may be  
16 misinterpreting that. And that was exactly, I  
17 think, what Mr. Cantrell is gonna indicate, the  
18 he thought that was applicable as of '14, not  
19 proactively or prospectively active as to  
20 October 19. So I'll accept it as an exhibit,  
21 with those same conditions as to 3 and 4, with  
22 the additional provision that if you wish to  
23 address that subsequent to today's hearing,  
24 then we'll also look and review that.

25 **MR. STORK:** All right. Thank you, your Honor.



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1 MR. CANTRELL: And your Honor is correct about that.  
2 These are effective as of the 14th. And  
3 remember, we've been referring to these  
4 exemptions since '13, so this is not news. But  
5 what happened is I printed this off on October  
6 25th, 2016, and stuck this in my file, which is  
7 why it has that date at the top as your Honor  
8 is probably familiar with printing things off  
9 the Internet. Oftentimes you can have the date  
10 and the web address at the bottom as well  
11 appear on there, and that's what I did. So  
12 that's why it shows the 2016 date.  
13 But your Honor is correct. These are effective  
14 as of the 14th, so I believe they do apply.  
15 And I think even if they didn't and your Honor  
16 looked at an earlier version, you'd find that  
17 it's still the same. But I think they do  
18 apply. But let's look at the language of this  
19 because -- and my client has asked me to  
20 clarify a point, your Honor. He was, in  
21 addition to receiving an interest from his  
22 mother, he was also apparently on the loan with  
23 joint survivorship. And I'll ask him to talk  
24 about that when he testifies in a little bit.  
25 But he wasn't -- it wasn't -- he didn't receive



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1 the sole interest in the property at the time  
2 of death. Apparently he had a joint -- he was  
3 a joint tenant with a right to survivorship  
4 even prior to that time. So I may have  
5 misunderstood some of those facts.

6 So he did get the property by inheritance, but  
7 he did also have an interest in the property  
8 before inheritance, at least a partial interest  
9 in the property. So he would have been in more  
10 than one way qualified on this loan even though  
11 he never signed the original loan documents.  
12 I believe those transfers would have occurred  
13 to him after the loan was created.

14 But let's look at this exceptions about the  
15 heirs of property and how they're protected  
16 under the Fannie Mae's servicing guide. The  
17 first sentence says unless the previous  
18 borrower requests release of liability, the  
19 servicer must process the following exempt  
20 transaction without reviewing or approving the  
21 terms of the transfer. And down here to the  
22 second bullet point, a transfer of the  
23 property; two, and then the second bullet point  
24 under that, the spouse, children, parents,  
25 brothers or sisters, grandparents, or



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1 grandchildren, of the borrower or in the case  
2 of an heir deemed as trust, which doesn't  
3 apply. As long as the transferee occupies the  
4 property. So it can be a child as long as they  
5 occupy the property. And it says that they are  
6 qualified as one of those exempt transactions  
7 that gives them the right to foreclosure  
8 intervention.

9 If you look at page 2, as a matter of fact,  
10 they don't want you to miss that, the very last  
11 paragraph. There's a highlighted section. If  
12 the mortgage loan is delinquent and the new  
13 property owner is unable to bring the mortgage  
14 loan current, the servicer must evaluate him or  
15 her for all available work-out options.

16 So it's clear that Fannie Mae, our plaintiff,  
17 treats my borrower for -- my client -- I  
18 apologize. Not borrower -- far differently  
19 than their attorney does. And I don't  
20 understand why there is this disconnect. I  
21 don't understand why he's protected under  
22 Fannie Mae's guidelines but their attorney  
23 doesn't know that or hasn't chosen to tell the  
24 Court about that. I don't know if they know it  
25 or not. I just know they haven't -- they made



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1 this argument and their objection ---

2 **THE COURT:** Mr. Cantrell, I want to make sure I'm  
3 following the argument.

4 **MR. CANTRELL:** Yes, your Honor.

5 **THE COURT:** The information you give me, the Fannie  
6 Mae, all of this is basically to allow me to  
7 come to the conclusion -- or that the  
8 Administrative Order applies to Mr. Ivey?

9 **MR. CANTRELL:** Yes.

10 **THE COURT:** And if applicable to Mr. Ivey, then that  
11 supports your argument that there was  
12 requirements or steps that should have been  
13 taken that were not taken by the plaintiff?

14 **MR. CANTRELL:** That is correct, your Honor.  
15 Remember that the Administrative Order's  
16 procedural only. It didn't attempt to modify  
17 any of my client's substantive rights. Those  
18 substantive rights are coming from the Fannie  
19 Mae guidelines and, you know, their policies  
20 regarding how he's treated. So the  
21 Administrative Order says all these people that  
22 qualify for these substantive rights we're  
23 gonna give them, if they're the primary -- if  
24 this is their primary residence, we're gonna  
25 give them, you know, protection -- procedural



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1           protections so that they can get this  
2           foreclosure intervention.

3           So we use the Administrative Order to show the  
4           procedural steps. We use the Fannie Mae  
5           language to show the substantive right to this  
6           treatment for foreclosure intervention.

7       **THE COURT:** Let me jump around a little bit to make  
8           sure I've got in my head -- and you've probably  
9           told me, but I'm not sure. The loan  
10          modification that was entered into, that was  
11          executed by your client at some point in a  
12          timely manner, not timely according to you but  
13          sometime thereafter executed by the plaintiff?

14       **MR. CANTRELL:** That was the temporary payment plan.  
15           Now, what happened ---

16       **THE COURT:** So the temporary payment.

17       **MR. CANTRELL:** --- after that some point in time ---

18       **THE COURT:** So the temporary payment plan was, at  
19           some point in time, executed?

20       **MR. CANTRELL:** On the 27th of November, about two  
21           weeks after our last hearing.

22       **THE COURT:** And since then, has there been a  
23           permanent agreement in place?

24       **MR. CANTRELL:** There has. And I should have  
25           mentioned that, your Honor.



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1 **THE COURT:** And that's been appropriately executed  
2 by Mr. Ivey? And by the plaintiff; is that  
3 right?

4 **MR. CANTRELL:** Yes, your Honor. That is completed.

5 **THE COURT:** Okay. And that -- and there isn't any  
6 question that the client's with that since that  
7 time?

8 **MR. STORK:** No, your Honor. So Mr. Ivey is current  
9 and I'll, of course, address that in my  
10 counter-argument.

11 **THE COURT:** Okay. All right. I thought that was  
12 the case.

13 **MR. CANTRELL:** It is.

14 **THE COURT:** I thought I would have heard something  
15 louder about it but, okay. I just want to make  
16 sure that I understand the framework with  
17 which -- in which we are working ---

18 **MR. CANTRELL:** Yes.

19 **THE COURT:** --- which my understanding is trying to  
20 boil it down for me that you want sanctions  
21 applied for the 40(j) motion, that you want  
22 sanctions as to the failure to have the --  
23 either the case dismissed in a timely fashion  
24 and sanctions as to the, I guess -- well, just  
25 those two things, right?



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1 **MR. CANTRELL:** Well, the failure to sign the TPP  
2 agreement as required by the administrative  
3 order and the language of the TPP agreement  
4 itself.

5 **THE COURT:** Okay.

6 **MR. CANTRELL:** Yes, your Honor. You're right on  
7 track.

8 **THE COURT:** And then thereafter dismiss the case?

9 **MR. CANTRELL:** Yes. And another question of the  
10 Court is: Do we dismiss the case with  
11 prejudice or without? And we're gonna take  
12 about that slightly as well. Ordinarily under  
13 the 2000 Administrative Order, it's dismissed  
14 without prejudice. But there are situations --  
15 and it is allowable, in my opinion -- and I  
16 will show you some case law -- that if there  
17 are violations of orders or rules, then the --  
18 your Honor has the option of dismissing it with  
19 prejudice. Remember what they sought by filing  
20 this improper 40(j) was not even to dismiss it  
21 with prejudice. They couldn't file that. They  
22 didn't -- they sought to get no prejudice.  
23 So basically they're unclean hands. Your Honor  
24 can say, you know, this is a court of equity.  
25 We're not gonna give somebody with unclean



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1 hands any advantage. They sought to get a  
2 dismissal without prejudice perhaps as a  
3 sanction your Honor should consider, and I  
4 believe your Honor has the authority to dismiss  
5 it with prejudice for violation of the rules  
6 and the order.

7 This is some egregious stuff. We believe, your  
8 Honor, that if your Honor feels the same way,  
9 we -- there is appellate authority to give you  
10 the right to dismiss this with prejudice.  
11 That's, of course, totally optional with you.  
12 We do want the case dismissed one way or the  
13 other, but we don't think they should be able  
14 to escape to get the same kind of relief they  
15 could have had if they had just listened to  
16 your Court and not filed this improper motion.  
17 They would have got a dismissal without  
18 prejudice. Maybe they shouldn't get that at  
19 this point. Maybe that's improper. Maybe  
20 there should be something stronger going out  
21 and saying, look, you can't do this in my  
22 court. This isn't proper. You can't file  
23 improper motions.

24 **THE COURT:** And what would the practical effect of  
25 with prejudice be?



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1 MR. CANTRELL: That's a very good question, your  
2 Honor. Probably my client ends up with a  
3 clouded title. Whether they can file a  
4 foreclosure in the future and not a res  
5 judicata is as yet unlitigated in this state.  
6 It wouldn't give him as much we might hope  
7 probably, but it would probably -- it might  
8 give them another lawsuit down the road if they  
9 ever tried to foreclose. I don't know, to tell  
10 you the honest truth, your Honor.

11 But it would give a fighting chance, and it  
12 might not make that much of a difference in the  
13 long run. Remember, he's assumed this without  
14 personal liability. The deficiency's been  
15 waived and this assumption is without recourse  
16 as to him. So it's just if he doesn't make  
17 these payments, obviously he stands to lose the  
18 property, which is significant. But if their  
19 ability to come back and do that were  
20 potentially removed, it would be a decedent  
21 sanction. Maybe not one at the end of the day  
22 that would carry a res judicata effect. I  
23 don't know. You know, does that mean he can  
24 never make a payment again and they can't  
25 foreclose? Maybe. But maybe not. It's a very



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1           unclear area of the law. So it might be a very  
2           appropriate sanction, given the fact that they  
3           certainly earned it, in my opinion, and we  
4           don't know if they'll have any real adverse  
5           effect on them or not. So that being said.

6           Okay. So that's where we're at the end of the  
7           day. So maybe it's time to hear a little bit  
8           from the client. Why don't we go ahead and ---

9           **THE COURT:** Why do we need to hear from Mr. Ivey?

10          **MR. CANTRELL:** Okay. Couple of issues, your Honor.

11           My client has incurred a lot of damages as a  
12           result of these improper actions of Fannie Mae  
13           and their -- and Scott & Corley, their  
14           attorney. And we're asking for sanctions  
15           against both, joint and several, if your Honor  
16           finds that appropriate. But he has his lost  
17           attorneys fees. I need to prove up those  
18           attorneys fees. I -- he has also lost work.  
19           Last time he lost a little over half a day's  
20           wages when he couldn't -- and we had to be here  
21           for the last hearing, which we were prepared to  
22           proceed at but your Honor continued it.

23           And your Honor did resolve the TPP issue, so  
24           there was some progress made, but he's losing  
25           work today. He's had -- he's incurred milage



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1 expenses to come back and forth. That's  
2 relatively small but it is a damage, which can  
3 be awarded in a case like this. But he's  
4 incurred damages because of their violations of  
5 this order and the Rules of Civil Procedure,  
6 and your Honor certainly has the authority and  
7 should make him whole because of these improper  
8 actions on their part. And he needs to testify  
9 as to those damages.

10 **MR. STORK:** Your Honor, this is a non-testimonial  
11 hearing. Any sort of testimony that we should  
12 be considering would be properly brought via  
13 affidavit testimony. And then at that point,  
14 the plaintiff would be allowed to attain a  
15 counter-affidavit. I would ask that if  
16 Mr. Ivey does seek to testify, that it would  
17 properly be in affidavit form with the  
18 plaintiff's ability to submit a  
19 counter-affidavit.

20 **MR. CANTRELL:** I object to that. I was told this  
21 would be an evidentiary hearing, and I expect  
22 all forms of evidence. I don't remember any  
23 restriction on the form of evidence. If that's  
24 the case, I didn't see it in the order, and I  
25 would be prejudiced by that. We're here for



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1 the second time with my client present, and  
2 he's not just coming here for fun and kicks,  
3 your Honor. He's here because he needs to  
4 testify as to these things to establish them if  
5 there is any objection, you know, to his  
6 request for these amounts of attorneys fees and  
7 other damages. Who else could establish his  
8 damages but him? I don't know why he thinks  
9 this is a non-testimonial hearing. If I missed  
10 something, please let me know.

11 **MR. STORK:** I completely agree that ---

12 **THE COURT:** Well, hang on. All right. Well, what I  
13 would prefer to do, Mr. Cantrell, is to make a  
14 decision first as to the necessity of any  
15 sanctions, if any, and whether damages would be  
16 appropriate.

17 **MR. CANTRELL:** Okay.

18 **THE COURT:** I am more inclined, especially in the  
19 motion setting as it is, to accept the  
20 information regarding the damages, attorneys  
21 fees, and so forth by way of affidavit.

22 **MR. CANTRELL:** Well, I can submit some of the --  
23 obviously, attorneys fees ---

24 **THE COURT:** Obviously, you do those by affidavit.  
25 And I think that the affidavit, rather than the



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1 testimony, is probably what I want to proceed  
2 with today.

3 **MR. CANTRELL:** Okay. I didn't consider that option,  
4 your Honor. I was prepared, you know, because  
5 I thought ---

6 **THE COURT:** I appreciate you being prepared on that,  
7 and I wouldn't -- and since you didn't bring  
8 it, I wouldn't somehow shut the door on you ---

9 **MR. CANTRELL:** Okay.

10 **THE COURT:** --- since you were prepared to proceed  
11 in that fashion.

12 **MR. CANTRELL:** Okay, your Honor.

13 **THE COURT:** So let's address it almost in a  
14 bifurcated-type manner that reserving the right  
15 to submit the attorneys fees and damages by way  
16 of affidavit. And then if there's a response,  
17 then that would appropriately be done. We  
18 would address that if that were the case.

19 **MR. CANTRELL:** Thank you, your Honor.

20 **THE COURT:** But it do want to -- I want to make sure  
21 before we go to all that time and additional  
22 expense ---

23 **MR. CANTRELL:** Yes, your Honor.

24 **THE COURT:** --- approving it. But, in fact, there  
25 would be some nature of recovery, or if there



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1 was, in fact, a sanctionable scenario.

2 **MR. CANTRELL:** Very good, your Honor.

3 **THE COURT:** So ---

4 **MR. CANTRELL:** I appreciate that. It's always nice  
5 to know -- you never know ahead of time if  
6 you're gonna have to put that on at the moment  
7 or not. But that's certainly a better option.

8 **THE COURT:** I understand as well. So as far as the  
9 substance of it, does that address everything,  
10 and have I capsulized your position  
11 sufficiently?

12 **MR. CANTRELL:** It gets most of the evidence, I  
13 think, and other than the stuff that'll come in  
14 by affidavit. I do have some more argument  
15 regarding the violations. And perhaps this  
16 would be an appropriate time. I haven't really  
17 spoken much about Rule 11, and that's impacted  
18 here as well.

19 So if your Honor wishes to hear argument about  
20 that at this point in time, then that's fine.  
21 If your Honor wants me to follow up with that  
22 at a later time, that's fine as well.

23 **THE COURT:** Yeah. Let's move on. And I understand  
24 where you're going with the Rule 11, certainly,  
25 as referenced. Okay. Let me hear from



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1 Mr. Stork.

2 Mr. Stork?

3 **PLAINTIFF'S POSITION:**

4 **MR. STORK:** Thank you, your Honor. May it please  
5 the Court. Will Stork with Scott & Corley for  
6 the plaintiff Fannie Mae. I'll kind of take  
7 this, I guess, in chunks here. First, going  
8 with the Admin Order. Opposing counsel  
9 indicated that he believes that his client is  
10 considered a mortgagor under the terms of the  
11 Administrative Order. And it ---

12 **THE COURT:** Let me jump around on you a little bit,  
13 Mr. Stork. I want -- there's -- I understand  
14 that there's a request for either sanctions  
15 and/or fees for the Rule 41 -- 40(j), rather,  
16 motion.

17 **MR. STORK:** Address that one first?

18 **THE COURT:** Address that one first for me, and then  
19 we'll jump over at -- to the other.

20 **MR. STORK:** Okay. Absolutely, your Honor.

21 **THE COURT:** If y'all -- y'all filed a motion that  
22 appeared to be, on its face, a consent to  
23 dismiss, calling it under 40(j). And it --  
24 obviously, it wasn't consented to. You  
25 stipulated to that, and I appreciate that.



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1 MR. STORK: Yeah, absolutely, your Honor. We do  
2 stipulate to that, and we, of course, do not  
3 contest that fact. The intent of the motion  
4 was to strike the case from the active docket.  
5 The -- we ended up moving under 40(j) since  
6 that is a rule under which the Court can strike  
7 a matter from the active docket.

8 At the time of when the motion was submitted,  
9 there was still a loss mitigation review  
10 underway. Because Mr. Ivey was not a signator  
11 on the note and mortgage, there had to be an  
12 assumption process that coincided with the  
13 modification process. So that assumption  
14 process was still underway, had yet to  
15 completely and totally go through, so the  
16 matter was not resolved fully at that time.

17 What plaintiff's counsel sought to do at that  
18 time was just to strike everything from the  
19 active docket, which has, in effect, the exact  
20 same -- has the same effect as a dismissal  
21 without prejudice with, of course, leads to  
22 restore -- or to move to restore at a later  
23 time. We did include that Rule 11 language  
24 down at the bottom of the motion stating that,  
25 you know, we reached out to opposing counsel in



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1 attempt to resolve this matter. It was not  
2 resolved, and that the hearing must be held.  
3 No order was submitted along with this motion,  
4 no proposed order. It is specifically titled  
5 a 40(j) Motion. So that was the intent behind  
6 the 40(j) motion was so that we could continue  
7 to work something out with Mr. Ivey in an  
8 event -- in an intent to amicably resolve this  
9 matter.

10 Now, your Honor, regarding the language in  
11 there about consent, you know, law is  
12 unfortunately a -- fortunately or  
13 unfortunately, a very form-driven practice.  
14 And so this was a form which was completed and  
15 modified but not modified as much as it  
16 possibly should have been. And so it contained  
17 two scrivener's errors within the body of that  
18 motion, and that was something that was covered  
19 in our memo in opposition. And like we pointed  
20 out our memo in opposition, scrivener's errors  
21 can happen on both sides of the case. The  
22 cover sheet from Mr. Cantrell's motion to  
23 dismiss has him listed at the plaintiff and me  
24 listed as the defendant.

25 So these sort of things happen, your Honor.



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1 It's not sanctionable. There was not bad  
2 faith. It was not frivolous. There was no  
3 malintent towards the defendant as far as this  
4 goes. Essentially, we were trying to, you  
5 know, just get this case stopped so that we  
6 could continue with the foreclosure  
7 intervention, which was subsequently completed.  
8 The assumption subsequently went through, and  
9 he's now been permanently modified. So it  
10 actually ended up working.

11 And so let's see here, like I said, there's no  
12 evidence of bad faith. There's no frivolous  
13 argument. Scrivener's errors can occur -- it  
14 was a harmless error. There was really no  
15 prejudice whatsoever to any party as far as  
16 this goes. You know, the case didn't go  
17 forward to a foreclosure hearing. The case --  
18 the property didn't end up going to sale. The  
19 loan ended being permanently modified.  
20 Everybody pretty much walked away happy with  
21 this one.

22 So really -- and that's our argument as far as  
23 the motion, your Honor, was that, you know, it  
24 was an attempt to strike the case from the  
25 active docket that contained a couple



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1 scrivener's errors in it. But we did add that  
2 Rule 11 language and tried to make it obvious  
3 that we needed a hearing as far as this goes.  
4 And, of course, we've stipulated in our facts  
5 that he did not consent. But the 40(j) was  
6 just the rule under which we moved in an  
7 attempt to get the Court to trike the case from  
8 the active docket because that gives the Court  
9 the power to do that. So ...

10 **THE COURT:** What about timeliness of the signature?

11 **MR. STORK:** Regarding the timeliness of the  
12 signature, your Honor, if you would take a look  
13 at the trial payment plan, which was attached  
14 to the stipulation of facts, you'll see that  
15 the signator is not listed as Richard Ivey.  
16 The signator is listed as Marion Ivey. So  
17 Richard Ivey, of course, ended up signing that  
18 as the PR for the estate. But of course, that  
19 had to end up going through the full assumption  
20 process. And, of course, once again, there was  
21 absolutely no prejudice whatsoever about this  
22 because the -- after the loan was assumed and  
23 after a permanent modification was entered  
24 into, a signed copy of the TPP was provided to  
25 Mr. Ivey. So -- and, of course, like you said,



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1 now the loan has been permanently modified, so  
2 he's living -- he's living in the property,  
3 making payments. Everything's current.  
4 Everything's good.

5 But it was not the intent to withhold this. We  
6 had to go through the assumption processed to  
7 before Mr. Ivey could end up assuming the loan  
8 and permanently modifying it. So, you know, I  
9 can't modify Mr. Ivey's loan; your Honor can't  
10 modify my loan. You really only modify a loan  
11 to which you are a party. So that had to end  
12 up happening prior to any sort of these things  
13 kicking in. And that's what ultimately ended  
14 up happening, was an assumption agreement was  
15 entered into and the loan was permanently  
16 modified.

17 **THE COURT:** And as far as if -- assuming the  
18 applicability of the Administrative Order,  
19 what's the time line as far as the timeliness  
20 of the dismissal subsequent to a foreclosure  
21 intervention or a payment plan had been entered  
22 into?

23 **MR. STORK:** Your Honor, I'd actually like to -- may  
24 I address the applicability of the  
25 Administrative Order?



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1 **THE COURT:** Well, I just want to -- address -- let's  
2 do it out of order. I want to -- I mean, I  
3 understand where you're headed with that as  
4 well. If the Order's applicable, it says it's  
5 supposed to be dismissed. I don't have the  
6 language right in front of me, but basically  
7 that's it. And that wasn't -- does that follow  
8 the permanent plan or the temporary plan, or is  
9 there some other time line that applies to  
10 that?

11 **MR. STORK:** Okay. Your Honor, if you would take a  
12 look -- let's see here -- at the language of  
13 the Administrative Order.

14 **MR. CANTRELL:** Would your Honor like a courtesy copy  
15 of that?

16 **THE COURT:** Yeah, give me a copy of that. I've got  
17 one in here somewhere. I just can't put my  
18 fingers on it.

19 **MR. CANTRELL:** Your Honor, I've highlighted -- the  
20 section you're looking for is the second from  
21 the bottom on that page. Maybe that'll help  
22 you.

23 **THE COURT:** So, Mr. Stork, we're looking at if the  
24 mortgagor shall be in compliance with the terms  
25 of the agreement after 90 days. Mortgagee's



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1 attorney shall promptly file a notice of  
2 dismissal of the action without prejudice and  
3 the case is dismissed.

4 **MR. STORK:** Certainly, your Honor. And while  
5 there's no bright-line test as to exactly what  
6 promptly is, essentially a Number 1 -- well, of  
7 course, I'll address whether he's the mortgagor  
8 here in a little bit. But promptly, to me,  
9 seems like within a reasonable time. And then  
10 again, it's -- you have to take a look at this  
11 as looking at a loan modification or other loss  
12 mitigation plan. The permanent modification  
13 had not been issued at that time, so  
14 essentially what this was, was a -- it was a  
15 trial plan to see if he would qualify for a  
16 permanent modification. And, of course, the  
17 assumption had to go through, and then the  
18 permanent modification had to end up being  
19 issued.

20 So we consent to this matter being dismissed at  
21 this time. And, of course, you know, it would  
22 have dismissed it once the permanent  
23 modification was entered into by the defendant.  
24 But there's really no guidance here as to, you  
25 know, as to what this could end up being. So



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1 let's say that it means, you know, a loan  
2 modification or other loss mitigation plan. If  
3 it's a forbearance which delays the  
4 foreclosure, does that -- you know, does that  
5 fall under the rules here? Because the  
6 foreclosure's still going on. It's just we're  
7 gonna delay in the proceedings to give them  
8 time to see if they can end up catching up.  
9 That's doesn't make sense. And so if we end  
10 having a trial payment plan where the three  
11 payments end up getting made and then the  
12 permanent modification comes through and they  
13 said, no, I reject the terms of that permanent  
14 modification, you know, under the -- it makes  
15 no sense under this order that the plaintiff  
16 would have to go back through and refile,  
17 re-serve, you know, get all the way back to  
18 where it would end up being at the hearing.  
19 That would be a waste of the Court's time; that  
20 would be a waste of the defendant's money if he  
21 intends to contest it; and that'd be a waste of  
22 the plaintiff's money. I refuse to believe  
23 that that was the Supreme Court's intent when  
24 they drafted this Order and they said that, you  
25 know, a loan modification or other loss



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1 mitigation plan must be dismissed promptly  
2 after that.

3 That does not mean -- a trial payment plan is  
4 not an agreement. It is not a loan  
5 modification or a loss mitigation plan. A  
6 trial payment plan is a trial period that leads  
7 to a loan modification or other loss mitigation  
8 plan. That's not what it is in fact. And so  
9 even if the order ends up being applicable, we  
10 gladly would have ended up dismissing this  
11 thing without prejudice once the loan was  
12 assumed and once the loan modification went  
13 through.

14 **THE COURT:** So why is the Order not applicable?

15 **MR. STORK:** The reason the Order's not applicable,  
16 Judge, is for the exact reason that we cited in  
17 our memo in opposition. Now, if I can state --  
18 let's see real quick. I'm sorry, Judge. Give  
19 me one quick second here. Ha, here we go.  
20 Your Honor, if you please take a look at the --  
21 what's labeled as page 3 of our memo in  
22 opposition. We quote what is an explanation  
23 letter, which was issued by Rosalyn Frierson on  
24 behalf of ---

25 **MR. CANTRELL:** Objection.



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1 **THE COURT:** What's the objection?

2 **MR. CANTRELL:** It's not in evidence, and it's not  
3 admissible. If it's ever attempted to be  
4 offered into evidence, I will provide the Court  
5 with more detail. But it's not properly before  
6 the Court as admissible evidence at this point.

7 **THE COURT:** So you're objecting to the June 7, 2011,  
8 letter of clarification regarding the Order?

9 **MR. CANTRELL:** I would if he was attempting to admit  
10 it. He hasn't, so it's not even -- he's  
11 referencing evidences as to outside the realm  
12 of evidence properly admitted before the Court.

13 **MR. STORK:** Oh, your Honor, this is of record in the  
14 case. We filed it with the Court, so it is  
15 properly before the Court to consider.

16 **MR. CANTRELL:** So anything he files with the Court,  
17 even if it's hearsay ---

18 **THE COURT:** Hang on, hang on, hang on.

19 **MR. CANTRELL:** I'm sorry, your Honor. I apologize.  
20 I withdraw. I withdraw. Go ahead. I'm sorry.

21 **THE COURT:** All right. I will take judicial notice  
22 of the letter of June 7, 2011, from court  
23 administration addressing the concerns or  
24 questions raised as to the Administrative Order  
25 which we are reviewing.



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1 So I will take judicial notice of that, so I'll  
2 hear from you on your arguments as to  
3 applicability of the Order subject to the  
4 interpretation or your position as to the  
5 interpretation as it may be under that letter,  
6 Mr. Stork.

7 **MR. STORK:** Thank you, your Honor.

8 **MR. CANTRELL:** Your Honor, one moment, if you may.

9 If you're gonna treat it as admissible even  
10 though it wasn't offered for admission, then  
11 perhaps I should enter posed objections to his  
12 admissibility at this point unless you're --  
13 okay. Let me make those objections. I thought  
14 it was untimely 'cause he hadn't actually asked  
15 for it to be admitted. But since your Honor  
16 has taken judicial notice, let me tell you why  
17 I believe it's not admissible evidence.

18 First of all, this letter is not authenticated  
19 under the South Carolina Rules of Evidence.  
20 It's required under Rules 901 and 902 that  
21 before any document be admitted to the Court  
22 that it -- the requirement of authentication or  
23 identification is a condition precedent to  
24 admissibility. It's necessary.

25 Now, the reason why he can't authenticate this



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1 letter is because he isn't the director of  
2 court administration, so he didn't write the  
3 letter. He isn't Dessa Ballard or  
4 Mr. Muckenfuss who received the letter. He's  
5 not a party to this letter at all. He has no  
6 way of knowing if this is actually the  
7 authentic letter that was sent between these  
8 parties. So he can't authenticated it. So my  
9 first objection is lack of authentication.  
10 Secondly, even if the Court were to find this  
11 was authentic since it appears to be from court  
12 administration without any foundational  
13 testimony, which is lacking here, then I would  
14 suggest that it's objectionable because it's  
15 hearsay. Your Honor, this is an out-of-court  
16 statement that he is offering to approve the  
17 contents of an order. And, in addition, it's  
18 irrelevant because what we have here is the  
19 director of court administration's  
20 interpretation of a court order. She can't do  
21 that. She's not a judge. She's certainly not  
22 a Supreme Court judge. I don't know if she may  
23 be an attorney. I don't know that.  
24 But I do know that she -- that it's said in  
25 here in the very first part it say we're not



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1 going to -- there is -- the Chief Justice has  
2 said there's no need to amend or modify the  
3 Order at this time. So the only way that Order  
4 of Justice Toal could be amended would be for  
5 the Court to do it. She can't do it. She  
6 lacks that authority. So it's irrelevant what  
7 she thinks about what this Order means.

8 **THE COURT:** I'll -- I understand the objection.  
9 We're talking about an Administrative Order.  
10 We're talking about a letter that was issued to  
11 clarify or address concerns that had been  
12 generated subsequent to its issuance of it  
13 specifically indicates that Ms. Frierson, the  
14 director of court administration was asked to  
15 address by the Chief Justice at that point in  
16 time. Like I said, I'll take judicial notice  
17 of that and your objection as to either  
18 admissibility or reference or incorporation in  
19 any fashion. It's duly noted, okay?

20 **MR. CANTRELL:** Very good, your Honor.

21 **THE COURT:** Mr. Stork?

22 **MR. STORK:** Thank you, your Honor. Okay. So  
23 backing up and returning to the question as to  
24 whether the 2011 Administrative Order applies  
25 to inherited properties or subsequently



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1 purchased properties by, I guess, subsequent  
2 purchasers after the note and mortgage were  
3 entered into. That issue, of course, arose  
4 immediately with the issuance of the 2011  
5 Administrative Order, and then Mr. Muckenfuss  
6 and Ms. Ballard, of course, posed these  
7 questions to the Court. The court  
8 administration produced this letter, which  
9 states and which is quoted in our memo, saying  
10 in paragraph A(1) concerning who is entitled to  
11 participate in foreclosure intervention.

12 The definition of "mortgagor" read in the --  
13 read in context includes only parties involved  
14 in the mortgage transaction in question. So  
15 now, opposing counsel, of course, argued that  
16 mortgagor under the -- on the face of the  
17 Administrative Order says every owner,  
18 mortgagor, and debtor under the note and  
19 mortgage at issue. Well, that was clarified.  
20 Mortgagor was clarified stating that it read in  
21 context only parties involved in the mortgage  
22 transaction in question.

23 Now, Mr. Ivey was not a party to the mortgage  
24 transaction in question. They have stipulated  
25 in the joint stipulation of facts here that the



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1 promissory note, which is subject to this  
2 action, was executed by Marion K. Ivey, and the  
3 mortgage, which is subject of this action was  
4 executed by Marion K. Ivey and Frank R. ivy.

5 So we have right here read in context only  
6 parties involved in the mortgage transaction in  
7 question, as is stipulated in the filed joint  
8 stipulation of facts, the parties, which were  
9 involved in the mortgage transaction in  
10 question, were Marion K. Ivey and Frank R.  
11 Ivey. So therefore, this Administrative Order  
12 is not applicable in this current situation,  
13 your Honor. And now ---

14 **THE COURT:** And there's no doubt he was an owner?

15 **MR. STORK:** There's no doubt that -- your Honor,  
16 there's not doubt that at the time of the  
17 foreclosure, he owned the subject property;  
18 however, he was not a mortgagor as is defined  
19 by the Administrative Order. He's not  
20 considered a mortgagor for the purpose of the  
21 2011 Administrative Order. Now, I know that  
22 it's ---

23 **THE COURT:** Doesn't the plain language just say  
24 mortgagor, in quotations, shall include every  
25 owner? I mean, isn't that pretty basic?



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1 MR. STORK: Your Honor, you would think that it  
2 would be. But, of course, then, again, you  
3 have situations like this which arise, which is  
4 what led to the necessity of the clarifying  
5 letter from the Rosalyn Frierson that says a  
6 mortgagor, read in context, includes only  
7 parties involved in the mortgage transaction in  
8 question.

9 So you see every owner mortgagor and debtor  
10 under the note and mortgage at issue. Those  
11 are the important words right there. You cant'  
12 just stop at owner. You have to keep going in  
13 that. And then if you -- of course, if you  
14 read it in context, your Honor, I agree that  
15 the plain language is there. Every owner,  
16 mortgagor, and debtor under the note and  
17 mortgage at issue. Mr. Ivey before us is not  
18 on the note. Mr. Ivey before us is not on the  
19 mortgage. And so, of course, that ended up  
20 being subsequently clarified by Rosalyn  
21 Frierson in her letter. He's not a party under  
22 the note and mortgage at issue. Therefore,  
23 he's not considered a mortgagor, and the  
24 Administrative Order does not apply to them.  
25 Now, your Honor if I can turn real quick to the



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1 Fannie Mae documents, which were supplied by  
2 opposing counsel, all of the documents which  
3 were supplied by him essentially state the same  
4 thing. If someone inherits the property and  
5 they're delinquent, they need to be reviewed  
6 for a loan modification or an assumption.

7 Your Honor?

8 **THE COURT:** Don't y'all -- that the language says --  
9 it talks about who is entitled to participate  
10 in the foreclosure intervention?

11 **MR. STORK:** Absolutely. And, your Honor, Mr. Ivey  
12 was entitled to participate. Mr. Ivey assumed  
13 the loan. Mr. Ivey permanently modified the  
14 loan.

15 **THE COURT:** And why was he entitled if he wasn't a  
16 mortgagor?

17 **MR. STORK:** Well, because this is -- Fannie Mae's  
18 guidelines are not controlling over the  
19 South Carolina Administrative Order or the  
20 Supreme Court.

21 **THE COURT:** But they provide guidance.

22 **MR. STORK:** This is Fannie Mae's internal policy  
23 saying that he's not a mortgagor, but we need  
24 to treat him like one. That's what it says.  
25 It doesn't say that he is a mortgagor. It says



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1 he should be treated by one. And, of course,  
2 we did end up treating him like one ---

3 **THE COURT:** So you're gonna treat him like one for  
4 the purposes of the loan modification but not  
5 for the purposes of the Order?

6 **MR. STORK:** Well, your Honor ---

7 **THE COURT:** Is that what we're saying?

8 **MR. STORK:** Well, I think essentially -- what they  
9 need to -- I think the clarification as far as  
10 that goes is that he needs to be treated like  
11 one in the fact that he needs to be reviewed.  
12 We can't just say, no, you're not on the note  
13 and mortgage, so we're not gonna review you.  
14 What that means is that we're gonna give him  
15 the opportunity to go through -- be reviewed  
16 for an assumption and be reviewed for a  
17 permanent modification. And that's exactly  
18 what ended up happening here, was that he was  
19 reviewed for an assumption; he was reviewed for  
20 a permanent modification, was approved for  
21 both. And now everything's fine.

22 **THE COURT:** Did y'all -- y'all served him with  
23 notice of foreclosure intervention?

24 **MR. STORK:** That is a piece of paper that is served  
25 upon all parties with the -- along with our



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1 summons and complaint. It's stapled to  
2 everything.

3 **MR. CANTRELL:** Actually ---

4 **THE COURT:** But it's not required for a non-owner or  
5 occupied person; is that right?

6 **MR. STORK:** That's ---

7 **THE COURT:** You know where I'm going with that? If  
8 y'all served him with that, called him that,  
9 treated him that way under one thing, how is it  
10 that it doesn't apply across the board?

11 **MR. STORK:** Well, we ended up filing a certificate  
12 of exemption with the Administrative Order  
13 based on the fact that this was not under  
14 owner-occupied. We have to serve that  
15 certificate of -- the notice of foreclosure  
16 intervention with our summons and complaint  
17 because that is required under the  
18 Administrative Order, is that shall be served  
19 along with the summons and complaint. So  
20 there's really no leeway there even if it's not  
21 a owner-occupied property. Now, of course,  
22 then, your Honor, let's say that this ended up  
23 being an owner-occupied property and that we  
24 received some incorrect information on the  
25 front end that somebody was deceased or



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1 somebody had moved out or that it was  
2 tenant-occupied.

3 And then let's say the tenant got kicked out,  
4 the owner moved back in. We didn't serve the  
5 notice of foreclosure intervention when all of  
6 a sudden it has been transferred back to an  
7 owner-occupied property. So that's what it is.  
8 I mean, it's really just kind of a protective  
9 measure as far as those things are served in  
10 the event that it does wind up being -- in the  
11 event that it isn't owner-occupied property or  
12 in the event that it -- we were, I guess,  
13 misinformed when the case was first referred to  
14 us and it ends up being an owner-occupied  
15 property.

16 **THE COURT:** But you knew from the beginning it  
17 wasn't.

18 **MR. STORK:** Well, we had notice in the beginning  
19 that it very easily could not have been.  
20 That's correct, your Honor. So but, of course,  
21 we ended up serving that just as a -- just as  
22 somewhat of a precaution. Of course, he  
23 responded. We ended up -- now, just because we  
24 say that you can be reviewed for foreclosure  
25 intervention does not necessarily mean that the



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1 rights of the 2011 Administrative Order apply.  
2 It is Fannie Mae's policy, as well as plenty of  
3 other lenders' policies as well, that, you  
4 know, if you can review somebody for loss  
5 mitigation, they would like to be reviewed for  
6 loss mitigation. Because Fannie Mae, you know,  
7 or a bunch of other banks or investors that are  
8 out there would much rather have somebody  
9 living in the house and making payments than  
10 have another house in Berkeley County,  
11 Charleston County, Horry County, wherever where  
12 they have to market it in REO, make sure the  
13 roof doesn't leak, make sure the grass is cut,  
14 that sort of stuff.

15 So if they're gonna be able to work something  
16 out with somebody, they're gonna try to work  
17 something out with somebody. And that's  
18 exactly what ended up happening in this  
19 situation, your Honor, was even though the 2011  
20 Administrative Order was inapplicable and my  
21 client was under absolutely no legal duty at  
22 this point to review somebody for loss  
23 mitigation, they reviewed him anyways for an  
24 assumption in a loss mitigation -- for an  
25 assumption in loss mitigation options. He was



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1 approved. The permanent modification been  
2 entered, and now he's current.

3 **THE COURT:** So basically, on the one hand, you're  
4 indicating that y'all are not subject to  
5 sanctions or any requirements of the Order  
6 because of the reading of the Order that says  
7 only parties involved in the mortgage  
8 transaction in question are subject to the  
9 Order?

10 **MR. STORK:** That's correct, your Honor.

11 **THE COURT:** And being not applicable, it pushes  
12 aside any sanctions or requirements that would  
13 potentially go along with that?

14 **MR. STORK:** Under the 2011 Order, that's 100 percent  
15 correct, your Honor.

16 **THE COURT:** Even if it is applicable, it's -- they  
17 were timely under the circumstances as to the  
18 signing, the returning, and the dismissal?

19 **MR. STORK:** Absolutely, Judge, because a loan  
20 modification or other loss mitigation plan  
21 meeting the assumption plan and the permanent  
22 modification, which was issued to Mr. Ivey was  
23 issued essentially after the motion to dismiss  
24 had been filed, after our -- after, you know,  
25 our motion to strike had been filed. We were



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1           trying to get this thing dismissed, but we had  
2           to clear up all these things procedurally. And  
3           now we're before the Court saying, your Honor,  
4           please, yeah, absolutely dismiss this case. So  
5           we're more than happy ---

6     **THE COURT:**   Without prejudice?

7     **MR. STORK:**   Without prejudice, Judge, definitely.

8     **THE COURT:**   Okay. All right. Anything further?

9     **MR. STORK:**   Nothing further at this time, your  
10           Honor.

11    **THE COURT:**   Okay. Thank you.

12           Mr. Cantrell?

13    **DEFENDANT'S REBUTTAL STATEMENT:**

14    **MR. CANTRELL:**  Yes, your Honor. Interesting. The  
15           last statement he said is we are trying to get  
16           this case dismissed. Well, if he'd really been  
17           trying, he'd let the Court dismiss it on  
18           October 31st and not file that improper 40(j)  
19           motion without our consent. And it would have  
20           got dismissed. So I have a little trouble with  
21           that last statement.

22           But that being said, what he did by doing that,  
23           your Honor, was he delayed the dismissal of the  
24           case. And remember, we're gonna be talking  
25           about Rule 11 in moment. And delay is one of



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1 the types of the sanctionable conduct. That's  
2 really what he accomplished by filing ---

3 **THE COURT:** Was there any prejudice to the delay and  
4 the dismissal? Was that there any substantive  
5 effect in the delay?

6 **MR. CANTRELL:** Yes. And this goes back to his  
7 earlier ---

8 **THE COURT:** How was your client affected ---

9 **MR. CANTRELL:** That's a good ---

10 **THE COURT:** --- adversely -- or well, affected,  
11 number one, and affected adversely, number two,  
12 by the lack of dismissal in October?

13 **MR. CANTRELL:** My client had to continue to pay the  
14 defendant. And let's go back to his earlier  
15 interpretation ---

16 **THE COURT:** He would have had to pay him anyway.

17 **MR. CANTRELL:** Not if it were dismissed. How would  
18 we have had to have had to pay the  
19 defendant ---

20 **THE COURT:** So you're saying that if it was  
21 dismissed -- at that point, if the case was  
22 dismissed without prejudice, he could then  
23 choose to not proceed with the trial payment  
24 plan to not have to make payments?

25 **MR. CANTRELL:** No, no. He could have done that, but



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1 he wouldn't have had to have dealt with these  
2 hearings to get the TPP agreement signed to --  
3 they wouldn't have -- I mean, there wouldn't  
4 have been any further case to defend. I had --  
5 we've had to come in here and do a lot to try  
6 to get them to comply with the Rules of Civil  
7 Procedure in the 2011 Order if he'd simply  
8 listened to the Court.

9 **THE COURT:** Let me make sure I understand.

10 **MR. CANTRELL:** Okay.

11 **THE COURT:** If it had been dismissed  
12 administratively for a lack of prosecution in  
13 October, you're saying that you would have  
14 considered that to be a timely dismissal  
15 because the temporary payment plan had been  
16 entered into and it should be dismissed at this  
17 point?

18 **MR. CANTRELL:** It wasn't technically timing that  
19 should have happened September 1st, but we  
20 wouldn't have been brought any objection. As  
21 a matter of fact, the e-mails ---

22 **THE COURT:** He would have -- Mr. Ivey would have  
23 continued to make the planned payments; is that  
24 right?

25 **MR. CANTRELL:** Well, yeah. We were -- at that



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1 point, we were waiting on the permanent mod.  
2 Remember, they didn't offer a permanent mod  
3 till we came to the last hearing. So we didn't  
4 have that.

5 **THE COURT:** Well, let's just kind of assume that he  
6 continued to make -- he made those temporary  
7 payments of the permanent loan modification and  
8 rolled right through. That's what you were  
9 anticipating? That's what you're telling me  
10 was supposed to have happened, right?

11 **MR. CANTRELL:** Yes.

12 **THE COURT:** You weren't anticipating that it would  
13 have dropped off. You would have -- you were  
14 expecting it to be dismissed and demanding that  
15 it be dismissed in September and that your  
16 intention was to continue to make the payments  
17 under the permanent plan, right?

18 **MR. CANTRELL:** Which we did.

19 **THE COURT:** Which you did and you have?

20 **MR. CANTRELL:** Have. Yes.

21 **THE COURT:** So when you're telling me that he  
22 wouldn't have had to have made payments, we're  
23 not talking about not making those payments;  
24 we're talking about some other payments?

25 **MR. CANTRELL:** Well, there's me, your Honor.



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1 THE COURT: You. Okay.

2 MR. CANTRELL: He's had to pay me ---

3 THE COURT: Okay.

4 MR. CANTRELL: --- thousands of dollars.

5 THE COURT: So the prejudice and the purported  
6 failure to dismiss in September when you  
7 consider it to have been timely is primarily  
8 the attorneys fees and the time spent and loss  
9 of income, that sort of thing, from that day  
10 until -- and through today; is that right?

11 MR. CANTRELL: Well, we didn't have the TPP  
12 agreement signed at that point. And at that  
13 point -- remember, we got to look at that from  
14 that perspective -- something could have  
15 happened. He could have been changed  
16 servicers. He could have been denied. But we  
17 would not have pursued that, had the case been  
18 dismissed.

19 THE COURT: But it didn't happen, so I'm just, you  
20 know, looking at it from then to now. He did  
21 everything he was supposed to do to get it to  
22 make those payments?

23 MR. CANTRELL: He did.

24 THE COURT: Okay. What prejudice has he suffered  
25 other than the attorneys fees and having to



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1           come visit us?

2     **MR. CANTRELL:** Your Honor, there is also the whole  
3           question, the overriding question of: Does the  
4           Rule of Law really matter? Does this Order, if  
5           it applies, matter? Does the South Carolina  
6           Rules of Civil Procedure matter? Can -- did  
7           Fannie Mae and opposing counsel's firm do  
8           anything they want?

9     **THE COURT:** Different argument.

10    **MR. CANTRELL:** Okay.

11    **THE COURT:** The thing I'm asking is ---

12    **MR. CANTRELL:** But for the prejudice.

13    **THE COURT:** -- what prejudice?

14    **MR. CANTRELL:** It is that. It is that having to  
15           continue to defendant it. And really that  
16           comes back to his other argument about the 2011  
17           Order. Why does it make sense that if you've  
18           been in compliance for 90 days, it should be  
19           dismissed? It ends the thousands of dollars  
20           he's had to pay to defend this. It ends that.  
21           It stops and allows him -- because the Supreme  
22           Court has determined, at this point once you've  
23           got your temporary payments made, there's a  
24           very good chance this case needs to get off  
25           your docket. It needs to free up for more



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1 stuff that you can do, and it needs to keep us  
2 from having to keep paying the defendant 'cause  
3 we've reach a point of resolution. They can  
4 always come back and file it again. I think  
5 that's exactly what the 2011 ---

6 **THE COURT:** Were they trying to conclude the  
7 foreclosure? Were they trying to go towards  
8 sale?

9 **MR. CANTRELL:** I'm sorry, your Honor?

10 **THE COURT:** Was the plaintiff asking us, the Court,  
11 to go forward with the sale at any point in  
12 time from September up to today?

13 **MR. CANTRELL:** No, your Honor, they weren't.

14 **THE COURT:** Okay. All right.

15 **MR. CANTRELL:** I do have some remarks regarding the  
16 rest of what he said when we get a moment.

17 **THE COURT:** Sure.

18 **MR. CANTRELL:** I wanted to address your questions  
19 first. So let's talk a little about the  
20 administrative letter that your -- or the  
21 administrative -- court administration letter  
22 that your Honor took judicial notice of. First  
23 of all, this phrase, parties involved in the  
24 mortgage transaction in question. Well, I  
25 would submit that the director of court



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1 administration doesn't have the authority to  
2 interpret that phrase. I think only the  
3 Supreme Court could do that. They chose not to  
4 amend the Order to interpret it, so I don't  
5 think there was authority in here that can  
6 override the clear language of the order  
7 itself.

8 But let's assume that that's the case like he  
9 argues. Parties involved in the mortgage  
10 transaction. Remember, he didn't sign the note  
11 and the mortgage, but his primary residence is  
12 still subject to that mortgage. He has entered  
13 into a non-recourse agreement with Fannie Mae  
14 or Seterus to keep this property. But if he  
15 doesn't pay that, they can't sue him for any  
16 deficiency, but they can take property away.  
17 So his property is subject to the mortgage in  
18 question. So he is involved in the mortgage  
19 transaction, your Honor. He is.

20 Even though the interest to him was transferred  
21 post mortgage, he's involved in the mortgage  
22 transaction. So, you know, there's no reason  
23 why you couldn't read this language to -- it  
24 doesn't have -- it doesn't say that he had to  
25 sign the mortgage. Obviously, one of the two



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1 people on the original transaction didn't.  
2 That doesn't mean that they weren't also --  
3 their property interest wasn't subject to that  
4 mortgage. His property interest is subject to  
5 that mortgage. He is involved in that mortgage  
6 transaction in that context. So I think due to  
7 the fact that this isn't -- a judge-interpreted  
8 this Order. They chose not to amend it. Your  
9 Honor must give this -- read this in the light  
10 most favorable to my client. And I think that  
11 he is involved in the mortgage transaction  
12 because of that to the extent that Ms. Frierson  
13 has the ability to interpret that Order without  
14 the Court taking action. Okay. Now, that's my  
15 argument on that.

16 When Mr. Stork started his argument in this  
17 matter, he made a statement. And actually the  
18 statement's in his -- it's actually in his  
19 objection as well. So let's just start there.  
20 He said -- okay. Oh, on page 6 near the middle  
21 he says additionally the plaintiff did not  
22 submit nor file with the motion to strike a  
23 proposed order granting the motion to strike,  
24 further indicating that plaintiff intended to  
25 afford the defendant a full and fair



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1 opportunity for a hearing before any  
2 determination on the motion to strike would be  
3 made by the Court. This is page 6 of his  
4 objection, your Honor.

5 So basically says we submitted this motion to  
6 strike, but we didn't submit a proposed order,  
7 which is proof that we intended to give you  
8 guys a hearing. Now, if that's true, your  
9 Honor, then how did you get this on  
10 October 31st, prepare the proposed order, and  
11 sign it the same day? Does your Honor have a  
12 copy of what was actually sent in to the Court  
13 with that motion?

14 **THE COURT:** I've got the Court's file.

15 **MR. CANTRELL:** Okay.

16 **THE COURT:** And the Form 4 could have been prepared  
17 by my office.

18 **MR. CANTRELL:** It was not, your Honor. And I can  
19 prove that. I have my copy of what was sent to  
20 me as a copy of that order. I'm gonna show  
21 this to Mr. Stork so that he'll know.

22 If you want to look at my copy. If you want to  
23 look at your own, that's fine. I'll be glad to  
24 hand my copy up to the Court.

25 And actually I'll do that since he's looking at



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1 his copy. I'm gonna hand up two things, your  
2 Honor. This is my copy ---

3 **MR. STORK:** Looks like -- John, let me see what  
4 you're handing up there real quick.

5 **MR. CANTRELL:** Okay.

6 **MR. STORK:** Thank you.

7 **MR. CANTRELL:** This is the 40(j) motion. And this  
8 is that, that, that, and that (indicating).  
9 And then the service page. And may I show the  
10 judge that as well?

11 **MR. STORK:** That's not how it appears in my file.

12 **MR. CANTRELL:** Okay. You can make that argument to  
13 the judge. Can we hand this up to show him  
14 what we received?

15 **MR. STORK:** You can hand up what you ---

16 **MR. CANTRELL:** Okay.

17 **MR. STORK:** You have hand up what you have.

18 But, your Honor, that's not what's showing in  
19 our file.

20 **MR. CANTRELL:** Your Honor, I'm handing up two thing.  
21 This is the document that he served on me  
22 pursuant to that certificate of service. And  
23 this is a copy of the actual signed order,  
24 which your Honor has the original of. But I  
25 want you to look at -- behind that motion and



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1 tell me what you see attached to it. I see a  
2 Form 4 Order granting the request of relief.  
3 Will the Court take judicial notice ---

4 **THE COURT:** So your position is submitted along with  
5 the motion was the Form 4 with the action  
6 stricken, checked and the Rule 40(j), and the  
7 significance of that is that it reinforces your  
8 argument that there was no hearing offered or  
9 available -- or not necessarily available, but  
10 being requested by the plaintiff in the way  
11 that -- in the manner that it was submitted; is  
12 that right?

13 **MR. CANTRELL:** That's part of the it, your Honor.  
14 It's also another misrepresentation of fact to  
15 the Court on top of the other ones. And if  
16 you'll look closely at that proposed form order  
17 and the one that you've signed ---

18 **THE COURT:** I mean, don't cases get dismissed and --  
19 or orders issued inadvertently and then  
20 rectified all the time?

21 **MR. CANTRELL:** I'm not sure what you mean by that,  
22 your Honor. I'm simply pointing out that his  
23 statement to the Court was false. He submitted  
24 a proposed order. Your Honor signed it the  
25 same day. And if you look closely at his form



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1 order and your signed one, the only difference  
2 is that you apparently highlighted the little  
3 check boxes. It is the same exact Order. And  
4 what he told you a little while ago was false,  
5 just like his representation that there was  
6 consent in this motion. We just can't allow  
7 these kind of continued falsehoods. I mean,  
8 this is sanctionable conduct.

9 So if the court reporter would please hand me  
10 back, I think the judge is finished with my  
11 copy.

12 Thank you, your Honor. So that statement was  
13 false. And if he wants to respond to that at  
14 this point and if your Honor wants to hear at  
15 this point, I'll certainly be glad to give him  
16 that. Or if he wants to do that later, that's  
17 up to him. But that's the very first thing he  
18 talked about when we were -- when he was  
19 starting to talk. And it's wrong. It's wrong  
20 again.

21 He talked about there being no bad faith. You  
22 know, you don't have to have bad faith and  
23 violate an order for it to be sanctionable.  
24 You have to have an order or a rule, and you  
25 either follow it or you don't. And if there's



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1 damages caused by that, lack of bad faith is  
2 irrelevant, your Honor. You can't go around  
3 doing whatever you want saying, well, you got  
4 your modification so any bad stuff we may have  
5 done in the interim, we just need to ignore  
6 that. That's -- all that does is it creates  
7 further bad stuff down the road if somebody  
8 never learns to do anything different, your  
9 Honor.

10 They said they were trying to get the case  
11 dismissed so they could continue with  
12 foreclosure intervention. They didn't have to  
13 do that. Under the 2011 Order as I read it,  
14 this thing is supposed to be dismissed after 90  
15 days of compliance with the TPP, and it can  
16 continue on its own. It doesn't have to be in  
17 a court-supervised process taking up your  
18 docket time. I think the 2011 Order intends  
19 that the case get out of the way as soon as  
20 there's a likely chance it's not coming back.  
21 It's not a dismissal with prejudice. It's  
22 without prejudice. That's what they should  
23 have done under the Order.

24 Now, maybe if Mr. Stork becomes the Chief  
25 Justice, he'll write a different order. But



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1 Chief Justice Toal did not. And that has  
2 remained the order of the Court, and I think  
3 your Honor should interpret it just the way  
4 it's written. After 90 days, the case is gone.  
5 He didn't want that to happen, so he filed this  
6 improper 40(j) motion, which had no basis in  
7 law, had no good grounds to support it.  
8 Because there was no consent.

9 So, you know, he should not have done that.  
10 And if he hadn't done that, we wouldn't be  
11 here. We wouldn't have had all these hearings.  
12 We would have continued with the trial mod,  
13 gotten a permanent mod hopefully. I mean, we  
14 don't know. They didn't actually offer a  
15 permanent mod till we showed up here on our  
16 hearing. And you know -- well, I'll get to  
17 that when I talk about Rule 11 in just a  
18 minute. But okay.

19 And, you know, the time not only to defend the  
20 case, I think, is the best reason for the  
21 Supreme Court to cut it off at that point.  
22 There's a reasonable chance the Court's never  
23 gonna see this again after a successfully  
24 completed TPP, which we did. And that's when  
25 the court -- Supreme Court says the case should



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1 be off the Court's docket. And it didn't  
2 happen because he didn't let it get dismissed  
3 without prejudice.

4 Okay. So let's go back and talk about Rule 11  
5 and, you know, is bad faith required and all of  
6 these other arguments that he has raised.  
7 Let's talk about Rule 11. And I'm gonna  
8 reference the rule itself so that there won't  
9 be any question about what it says. Okay.

10 Okay. Rule 11(a), in pertinent part, says  
11 the -- or electronic signature of an attorney  
12 or party constitutes a certificate by him that  
13 he has read the pleading motion or other paper,  
14 that to the best of his knowledge, information,  
15 and belief that there is good ground to support  
16 it, and that it is not interposed for delay.

17 So there's several ways you can violate Rule 11  
18 here. One is you might not sign the paper, and  
19 that's not at issue here. There's got to be  
20 good grounds supported, which is at issue here  
21 because there is no way you can file -- and  
22 I'll report to find there's no way you can file  
23 a Rule 40(j) motion without consent. He seems  
24 to have sent -- be acting like the Court could  
25 require us -- could impose on us -- the Court



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1           could order a Rule 40(j) order. You can't do  
2           that, your Honor, with all due respect. You  
3           have no authority to require me or my client to  
4           consent to a Rule 40(j). His discussion about  
5           how the Court could order that, the Court  
6           cannot. The Court could acknowledge that the  
7           parties have agreed to it and enter a consent  
8           order to that effect, but the Court cannot  
9           require us to do that.

10          So there was no good ground to support this  
11          Rule 40(j) motion acknowledging no consent and  
12          delay. You know, we stipulated in your facts  
13          that -- let's see, in paragraph 8 that  
14          October 11th Suzanne Burkhalter told them that  
15          the case was gonna be dismissed on the 31st, if  
16          they didn't proceed by then. So then on the  
17          31st by overnight mail, you get this proposed  
18          Order and this motion, this 40(j) motion, and  
19          the case doesn't get dismissed. So, I mean,  
20          you can't very well get somebody to admit  
21          they're filing something for delay, but isn't  
22          the circumstantial evidence here pretty high  
23          that the only reason they filed that was to  
24          keep the case in motion? They've said so they  
25          can continue with the foreclosure intervention



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1 process. But under the 2011 Order, the Court  
2 doesn't have to supervise that. They should  
3 have simply let this thing die at that point,  
4 and they'd have saved us all the struggle. But  
5 they didn't do that. And so I believe there --  
6 you can -- your Honor could decide that that  
7 was filed to delay the dismissal of the case.  
8 It shouldn't have happened. It was an improper  
9 motion without any basis in law or fact --  
10 without any basis in law, but it was improper  
11 according to the rules. So I believe under  
12 that, you could find that it was interposed or  
13 delay.

14 Now, it's interesting about delay. Okay. What  
15 does our Supreme Court say? There's a case  
16 called Runyon versus Wright, your Honor. And  
17 if you've got the -- I love this annotated  
18 South Carolina Bar Rules, you know, with the  
19 little cases behind it. I don't know if your  
20 Honor has the same one or not. But it's Justin  
21 Kahn's book that he puts out. And if you look  
22 it the back, it has cases. And one of the  
23 cases cited under the Rule 11 is Runyon versus  
24 Wright. It's 322SC15. It was a 1996 Supreme  
25 Court case. And it says in pertinent part,



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1 under this rule, a party and/or the party's  
2 attorney may be sanctioned for filing a  
3 frivolous pleading, motion, or other paper or  
4 for making frivolous arguments. The party or  
5 attorney may also be sanctioned for filing a  
6 pleading, motion, or other paper in bad faith,  
7 i.e., to cause unnecessary delay. Remember he  
8 say there was no bad faith? If your Honor  
9 finds that this motion was filed for the  
10 purposes of delaying this case from being  
11 dismissed, then your Honor could find bad faith  
12 under this case. It says whether or not there  
13 is good ground to support it.

14 So even if there's good ground for the motion,  
15 which there wasn't, but it was filed for  
16 purposes of delay, the Supreme Court says  
17 that's bad faith. It's sanctionable. The  
18 sanction may include an order to the pay the  
19 reasonable cost in attorneys fees incurred by  
20 the party or parties defending against the  
21 frivolous action or action brought in bad  
22 faith, a reasonable fine to be paid to the  
23 Court, or a directive of a nonmonetary nature  
24 designed to deter the party or the party's  
25 attorney from bringing any future frivolous



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1 action or action in bad faith. Your Honor  
2 could order an injunction that they never again  
3 file a 40(j) order without the actual consent.  
4 That's allowable under the rule too. Further,  
5 if appropriate, under the facts of the case,  
6 the Court may order a party and/or the party's  
7 attorney to pay a reasonable monetary penalty  
8 to the party or parties defending against the  
9 frivolous action or action brought in bad  
10 faith.

11 So there's a whole lot of options that the  
12 Court has here, most of which are requested in  
13 our prayer for relief. There's another action  
14 really that we didn't request, and your Honor  
15 should understand our restraint in that area.  
16 They've submitted a false document to the  
17 Court. That violates their duty of candor to  
18 the Court, and it could be grounds for criminal  
19 contempt. There is a Supreme Court case from  
20 a few years ago where it was a malpractice case  
21 where the guy alleges ---

22 **THE COURT:** Are you suggesting that there was  
23 criminal activity in the submission of the  
24 documents?

25 **MR. CANTRELL:** I think under the Court's reading of



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1 contempt and the criminal contempt law, as  
2 mentioned in that case from a few years ago, it  
3 could be construed as criminal contempt. We  
4 didn't ask ---

5 **THE COURT:** So you are suggesting?

6 **MR. CANTRELL:** I haven't asked the Court for that.  
7 I'm pointing out that I didn't ask the Court  
8 for that.

9 **THE COURT:** No. I'm asking you if you're suggesting  
10 that there was criminal activity. And if so,  
11 you have an obligation to report it to the Bar  
12 and to the Supreme Court. So don't suggest  
13 criminal activity and allude to it without  
14 doing your due diligence as well.

15 **MR. CANTRELL:** Exactly, your Honor.

16 **THE COURT:** So ---

17 **MR. CANTRELL:** Even if that were the case, I  
18 wouldn't report on any of those actions to this  
19 Court.

20 **THE COURT:** I'll ask you again. Are you suggesting  
21 to me that there was criminal activity in this  
22 action?

23 **MR. CANTRELL:** I'm Not. And I have not raised that  
24 as a request ---

25 **THE COURT:** You did already.



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1 **MR. CANTRELL:** I was trying to point out that I  
2 didn't, but that's fine. It hadn't been done,  
3 your Honor. I have not raised that in this  
4 action.

5 **THE COURT:** All right. Well, then I'm not gonna  
6 hear anymore about it if you haven't rased it.

7 **MR. CANTRELL:** Very good, your Honor.

8 **THE COURT:** All right.

9 **MR. CANTRELL:** That's fair. In any event, the  
10 contempt here, I believe, is a serious  
11 contempt, your Honor. And you have a lot of  
12 leeway as to what you can do about it based on  
13 the Supreme Court's Order and Runyon versus  
14 Wright.

15 Okay. We talked about all of that. Okay. And  
16 note that Rule 11 allows the sanctions against  
17 the party or its counsel. Remember the  
18 language of the 2011 Order said that upon the  
19 completion of the TPP payments, the plaintiff's  
20 counsel shall file that stipulation of  
21 dismissal without prejudice. So we believe  
22 that imposes a duty directly on opposing  
23 counsel to file that. And we haven't asked  
24 that counsel, as in Mr. Stork be sanctioned.  
25 We've ask that Scott & Corley be sanctioned



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1 because of respondeat superior. We don't think  
2 he's done anything that wasn't, you know,  
3 allowed or required by his firm in his normal  
4 duties. So we haven't asked for anything  
5 against him personally, but we do believe that  
6 firms that file these kinds of motions should  
7 be jointly and separably liable with their  
8 clients.

9 I mean, if my client came to me and I told  
10 them, well, you need to dismiss this 'cause the  
11 rules says you should and they say no, I'd say,  
12 well, thank you very much. You need to find  
13 another attorney. Because I would have  
14 personal liability under that order where I  
15 have creditor's attorney, I believe. So that's  
16 why we're asking for joint and separable  
17 liability as to any sanctions the Court might  
18 choose to issue because the rule allows for it.  
19 Okay. Now, what did we request from the Court?  
20 And I guess this gets back to our prayer for  
21 relief and our motion for sanctions. Okay.  
22 Some of that's changed 'cause they have done  
23 some stuff to ameliorate our original concerns  
24 since the last hearing. First thing we ask,  
25 find that both plaintiff and Scott & Corley are



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1 in contempt of the 2011 Order. We've already  
2 stated our reasons why we've asked for that.  
3 Find that both -- and there's also respondeat  
4 superior for the point of the actions of the  
5 attorney are binding on the client. So to the  
6 extent an attorney were to violate something as  
7 the agent for the creditor -- for their  
8 representative party, they would -- that party  
9 would also be responsible for the attorney's  
10 actions.

11 Second, find that both plaintiff and Scott &  
12 Corley have violated Rule 11. Again, that's  
13 back to even -- even though that was filed by  
14 the law firm, the client was responsible for  
15 that action.

16 Three, required plaintiff comply with the 2011  
17 Order by providing defendant with a signed copy  
18 of TPP. That's been done. So we don't need  
19 that relief anymore. The per diem sanctions,  
20 that's not necessary.

21 Four, find that the allegations in the Rule  
22 40(j) motion that the defendant consented to  
23 the action are false and that plaintiff and its  
24 attorneys knew they were false when made. I  
25 would like a finding to that effect, even



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1           though your Honor has vacated that prior order.  
2           I want it to be clear that the Court has found  
3           that this was done, that those allegations were  
4           false and that they knew they were false when  
5           they were made.

6           Dismiss the pending foreclosure case either  
7           without prejudice under the terms of the 2011  
8           Order or with prejudice as a sanction for the  
9           plaintiff's actions in filing the Rule 40(j)  
10          motion. Now, let's talk about that because  
11          that's actually another allowable dismissal  
12          sanction. Let's -- reading to you from a Court  
13          of Appeals case called Georganne Apparel, Inc.  
14          versus Todd 301 S.C. 87(1990). It said Rules  
15          41(A)(2) and (B) permits dismissal with  
16          prejudice for failure of the plaintiff to  
17          prosecute, which is what the Court tried to  
18          happen, or to comply with these rules, the  
19          Rules of Civil Procedure, or any other order of  
20          the Court.

21          So really we've got all of them. They were  
22          failing to prosecute, so the Court tried to get  
23          rid of it until they filed the 40(j) motion.  
24          They failed to comply with the Rules of Civil  
25          Procedure by filing the 40 (j) motion without



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1 consent. And they violated a 2011 order in two  
2 respects regarding the TPP agreement and their  
3 failure to dismiss it without prejudice after  
4 the September 1st payment.

5 So we think that under this Court of Appeals  
6 ruling, your Honor could dismiss it with  
7 prejudice as a sanction. And considering the  
8 fact that we're only asking for civil sanction,  
9 that's all that's before the Court here, that's  
10 maybe not too much to ask the Court, given  
11 what's happened in this case. So we would ask  
12 that your Honor either dismiss it without  
13 prejudice under the 2011 Order or with  
14 prejudice if your Honor finds that to be  
15 appropriate as a sanction. We've asked that  
16 the Court award such actual damages including  
17 reasonable attorneys fees as may be proper.  
18 Your Honor's indicated that would be taken up  
19 later. I'm fine with that.

20 If you find a violation, award such additional  
21 sanctions as may be required to compensate  
22 defendant for plaintiff's actions or to deter  
23 plaintiff from taking such actions in the  
24 future. Remember that language from the Runyon  
25 versus Wright case. Part of what you can do in



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1 a civil contempt finding is deter this  
2 plaintiff or similar plaintiffs from taking  
3 these kind of actions again. You could order  
4 a monetary award against them payable to the  
5 Court either as a fine or to the defendant for  
6 deterrence purposes returns. Even above and  
7 beyond the compensation, the attorneys fees and  
8 the mileage and the few things that we've asked  
9 for there, you know, your Honor can order  
10 monetary sanctions against them saying this is  
11 bad stuff. You shouldn't do this again. You  
12 know, you need to read these rules. You need  
13 to follow them. Rule 11, does Rule 11 apply  
14 to -- does Rule 11 provide any duty to consult  
15 in a foreclosure case, your Honor? They  
16 insisted it did. That's why they contacted me.  
17 But it doesn't. Rule 11 doesn't apply in a  
18 foreclosure case as far as the duty to consult.  
19 Let me clarify that. I mean, it does apply to  
20 improper actions, but it actually says that  
21 there is no duty of consultation on motions to  
22 dismiss, summary judgment, or in real estate  
23 foreclosure cases. So ---

24 **THE COURT:** There's no duty to consult regarding  
25 motions to dismiss?



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1 MR. CANTRELL: No. No, there's no duty to consult  
2 with motions to dismiss or summary judgment ---

3 THE COURT: Does that include 40(j) motions?

4 MR. CANTRELL: It's not a motion to dismiss. See,  
5 they tried to equate those, but there was no  
6 duty. But they did consult. I mean, there's  
7 nothing wrong with consulting, but I'm just  
8 saying it's another misunderstanding of the  
9 rules, your Honor. They misunderstood 40(j).  
10 They thought that they could do it without  
11 consent. They misunderstood the Rule 11. They  
12 think that it requires them to consult. I'm  
13 glad they did consult. I'd prefer that. But  
14 they're coming in there and saying, well, we  
15 consulted with you because we had to under the  
16 rules. The rules don't require that. That's  
17 just a misunderstanding of the rules.

18 And in any event, so you can order monetary  
19 sanctions either to the Court as a fine or to  
20 the defendant for deterrence purposes over any  
21 above and compensation. That's what the Runyon  
22 versus Wright case says. And for any other  
23 relief you find proper. You might find an  
24 injunction is proper to say, look, this is what  
25 the law says. You can't file 40(j)s. The



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1 Court can't grant 40(j)s without consent. And  
2 you're not gonna do this again in the state of  
3 South Carolina under the unified judicial  
4 system.

5 Your Honor has statewide jurisdiction to say  
6 don't do this again, Fannie Mae; don't do this  
7 again Scott & Corley. And because you did do  
8 this, we're gonna make you pay the damages and  
9 maybe a monetary sanction. I don't know.  
10 That's certainly up to your Honor, depending on  
11 how your Honor views this situation. But those  
12 are allowable to you under the wording of Rule  
13 11 and under the Runyon verses Wright Supreme  
14 Court case interpreted it.

15 And so, your Honor, we respectfully request  
16 that your Honor give us relief in this case.  
17 We would love, you know, to have walked away at  
18 the end of October, had this case been  
19 dismissed for failure to prosecute. They did  
20 everything they could to prevent that, improper  
21 actions that shouldn't have taken. And if it  
22 weren't for that, we wouldn't be here today.  
23 We wouldn't have had to be here at the last  
24 hearing. So we do ask that you respectfully  
25 consider our request and give us the relief



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1 we've requested in our motion.

2 **THE COURT:** All right. Thank you, Mr. Cantrell.

3 Mr. Stork?

4 **MR. STORK:** Very briefly.

5 **THE COURT:** I mean, clearly, if what Cantrell is  
6 saying is correct, that had it been dismissed  
7 for the lack of prosecution, that  
8 administratively through our office, then there  
9 wouldn't have been anything after that,  
10 presumably the loan modification would have  
11 gone forward. The necessity of the case going  
12 forward at that point in time or there wasn't  
13 a necessity of the case to go forward. Y'all  
14 were seeking that, I guess, keep it -- keep the  
15 door open in case the loan modification did not  
16 succeed; is that correct?

17 **PLAINTIFF'S REBUTTAL STATEMENT:**

18 **MR. STORK:** That is Mr. Cantrell's argument. That  
19 is, however, not the way that things work in  
20 real life, your Honor. There have been several  
21 cases, including a couple that I'm currently  
22 dealing with right now, where defendants have  
23 completed a trial payment plan, had been  
24 offered a permanent modification, and then  
25 decided to reject those modifications and



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1 appeal those.

2 So now, given -- and that was the reason that  
3 we ended up filing this motion to strike this  
4 case from the active docket, was to allow time  
5 for that permanent modification to end up going  
6 through, that once a trial payment plan is  
7 completed, that -- everybody doesn't walk away.  
8 That doesn't solve everybody's problems. All  
9 that says is you've qualified for what would be  
10 a loan modification or A loss mitigation plan.  
11 That's gonna be generated. And so that was  
12 generated. But there's no permanency. There's  
13 no finality to successfully completing a trial  
14 payment plan. And that is an important  
15 distinction ---.

16 **THE COURT:** Would you agree that the motion show  
17 that more properly than just to disregard --  
18 just remove the language of 40(j) and put  
19 motion to strike from the active docket with  
20 leave to restore?

21 **MR. STORK:** Absolutely, you Honor. And honestly  
22 what we were trying to do with 40(j) motion, if  
23 I may be completely candid to the Court right  
24 now, was to move under a rule. We tried to  
25 find some rule that this motion to strike would



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1 fall under. And so the only one that we could  
2 try to make it fit under would be 40(j).  
3 Now, as far as where Mr. Cantrell said --  
4 regarding the delay. Your Honor, if that were  
5 true and every motion that was filed in an  
6 attempt to delay, then every motion for a  
7 continuance would be, you know, a bad faith  
8 under Rule 11. Say that there's settlement  
9 negotiations going on, somebody's not ready for  
10 trial and someone makes a motion to continue.  
11 That wouldn't be sanctionable under Rule 11.  
12 That was exactly what we were -- what the  
13 attempt of the plaintiff was by filing this  
14 motion to strike was to attempt to give the  
15 settlement discussions the opportunity to flesh  
16 out, become permanent, and then everybody  
17 can -- everything can be dismissed and  
18 everybody can walk away happy.  
19 So I believe that it's just kind of arguing  
20 over semantics as to whether it was stricken or  
21 at which point it would have ended up being  
22 dismissed. I mean, as of right now, that's  
23 exactly, you know, what it is because now we're  
24 saying, please, yes, dismiss this matter  
25 without prejudice. The loan has been modified.



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1           Everybody's good to go so ...

2     **THE COURT:** Thank you, Mr. Stork.

3     **MR. STORK:** All right. Thank you, your Honor.

4     **CLOSING REMARKS BY THE COURT:**

5     **THE COURT:** All right, gentleman. Thank y'all very  
6           much. Y'all have fleshed out every potential  
7           position and argument regarding the scenario.  
8           What I'm gonna ask you to do is submit to me an  
9           order, a proposed order by e-mail so I can look  
10          at it. And it'll give you an opportunity to  
11          kind of blend together the arguments, in light  
12          of what's happened today, granting the relief.  
13          I'm not gonna request that at this point that  
14          Mr. Cantrell go through the steps of preparing  
15          the affidavits to support the monetary  
16          sanctions that are requested, including the  
17          attorneys fees 'cause I don't want you to have  
18          to do that in case I rule against you. Okay.  
19          I don't want you to have the go through and  
20          prepare all those things if I'm not gonna  
21          grant. I'd rather you give the orders. I make  
22          the decision. And then I'll flesh it out.  
23          And I'll say if, for example, I'll say that  
24          your request for relief, Mr. Cantrell, is  
25          denied, then you won't have wasted that time.



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1 And I'll execute something closer to  
2 Mr. Stork's proposed order than yours,  
3 obviously.

4 If it goes the other way, then I'll accompany  
5 that by saying I'm going to grant the relief.  
6 Please submit these documents within the  
7 specified period of time and allow Mr. Stork an  
8 opportunity to respond to those as to -- as may  
9 be necessary regarding the fees or whatever.

10 **MR. STORK:** And, your Honor, just for a point of  
11 clarification, the proposed orders to be  
12 submitted, the relief which you were saying is  
13 being granted is the dismissal of the case,  
14 correct?

15 **THE COURT:** The relief as requested by you,  
16 including the dismissal of the case.

17 **MR. STORK:** Including dismissal of the case.

18 **THE COURT:** But the bottom line -- and on any of  
19 them would be that relief as to sanctions, if  
20 that were granted, bottom line lash line, case  
21 is now it's hereafter dismissed. And I'm  
22 assuming that you would include in there,  
23 Mr. Cantrell, in your proposed order that it  
24 would dismissed with prejudice and including  
25 the rationale for that as part of the order.



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1 MR. CANTRELL: I'll probably include both because  
2 your Honor has the authority to dismiss it  
3 without prejudice under the 2011 Order or with  
4 sanctions under the other authority cited. So  
5 I'll probably ---

6 THE COURT: You put in there what you want me to do.

7 MR. CANTRELL: Exactly. And he -- his order, of  
8 course, would be why my request to relief  
9 should be denied, not for granting the relief  
10 but for denying the relief from his  
11 perspective?

12 THE COURT: Exactly.

13 MR. CANTRELL: And would that be submitted in Word  
14 format?

15 THE COURT: Yes.

16 MR. CANTRELL: And is there a particular time frame  
17 within which your Honor would like ---

18 THE COURT: How much time do you gentlemen need? I  
19 don't -- I know y'all got other things that you  
20 might be doing. And here as much as I'd like  
21 to think I'm the -- your only case.

22 MR. STORK: Three weeks, John?

23 MR. CANTRELL: I'm good. I'm good with -- he's  
24 busier than me, your Honor, as the foreclosure  
25 attorney, so I'm more than happy to give him



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1 the leeway in that regard.

2 **MR. STORK:** Could we have three weeks to prepare the  
3 proposed order, your Honor?

4 **THE COURT:** Three, yeah. Put it down. Put a  
5 calendar out for three. If there's any major  
6 issues with that, you let me know.

7 **MR. STORK:** Thank you, Judge.

8 **THE COURT:** And copy each other. And, yeah, I don't  
9 want an e-mail chain picking at each other's  
10 orders, please.

11 **MR. STORK:** Certainly.

12 **MR. CANTRELL:** Just submit them and your Honor will  
13 decide.

14 **THE COURT:** And then we'll go from there. All  
15 right. Thank you, gentlemen.

16 **(There being nothing further, the hearing concluded**  
17 **at 12:48 p.m.)**

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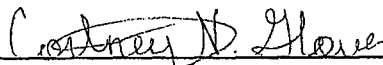
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**CERTIFICATE**

This is to certify that the within hearing consisting of one hundred twelve (112) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on May 9, 2018.

  
\_\_\_\_\_  
Cortney N. Glover  
Court Reporter



Notary Public for South Carolina  
My Commission Expires: December 1, 2025



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John Cantrell <johncantrelljr@gmail.com>

**RE: Richard Ivey foreclosure case; 151083.00327; 2016-CP-08-00591**

Louise Johnson <ceasiej@scottandcorley.com>  
To: John Cantrell <johncantrelljr@gmail.com>  
Cc: William Stork <williams@scottandcorley.com>, Caroline Laster <carolinel@scottandcorley.com>

Wed, Nov 1, 2017 at 6:14 PM

Hi, John:

Yes, we are aware of the motion we filed seeking a 40(j) order. As you may recall, we first asked you for your consent to a 40(j), but you advised us you would not consent. Accordingly, in accordance with the Rules of Civil Procedure, we filed a motion and requested a hearing for the relief sought.

We complied with our obligation to try to resolve with you first to no avail. Therefore we properly filed this Motion. Of course, now that we have filed this Motion, you will be afforded notice and a hearing for you to appear and dispute the requested relief.

If you would like to reconsider and forego having to attend a hearing on this, we are still more than happy to enter into a 40(j) by consent.

Thanks and have a nice evening. Ceasie

Louise "Ceasie" M. Johnson / Senior Counsel  
ceasiej@scottandcorley.com / 803.767.4810

Scott & Corley, PA  
Office: 803.252.3340 / Fax: 855.236.4081  
2712 Middleburg Dr. Suite 200 Columbia, SC 29204  
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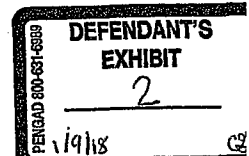
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John Cantrell <johncantrelljr@gmail.com>

**RE: Richard Ivey foreclosure case; 151083.00327; 2016-CP-08-00591**

John Cantrell <johncantrelljr@gmail.com>

Wed, Nov 1, 2017 at 5:05 PM

To: Louise Johnson <ceasiej@scottandcorley.com>, William Stork <williams@scottandcorley.com>

Cc: Caroline Laster <carolinel@scottandcorley.com>

Will:

Are you aware that a Rule 40(j) motion has been filed with the court by your office in this case without my consent?

Sincerely,

John R. Cantrell, Jr.

Cantrell Legal, PC

PO Box 1276

Goose Creek, SC 29445-1276

843-797-2454 voice

309-213-0922 fax

Dist. SC (4th Cir)

NACBA, SC State Chair

johncantrelljr@gmail.com

On Tue, Oct 24, 2017 at 3:16 PM, Louise Johnson <ceasiej@scottandcorley.com> wrote:

Hi, John:

I have received and reviewed your email and am discussing your concerns with my client. I will get back to you as soon as I hear back from my client. Thanks. Ceasie



Louise "Ceasie" M. Johnson / Senior Counsel  
ceasiej@scottandcorley.com / 803.767.4810

Scott & Corley, PA  
Office: 803.252.3340 / Fax: 855.236.4081  
2712 Middleburg Dr. Suite 200 Columbia, SC 29204  
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**RE: Richard Ivey foreclosure case; 151083.00327; 2016-CP-08-00591**

John Cantrell <johncantrelljr@gmail.com>  
To: Caroline Laster <caroline1@scottandcorley.com>  
Cc: Louise Johnson <ceasiej@scottandcorley.com>

Tue, Oct 24, 2017 at 3:09 PM

Caroline:

I am concerned that your client may be in contempt of the 2011 Admin order already. There are two reasons why I believe that may be the case. First, your client has never executed and returned the TPP agreement, in spite of the fact that the Admin order states that this should be done after the first payment is received, and in spite of the fact that I have asked for it repeatedly. Second, the 2011 Admin order also says as follows:

"If the Mortgagor shall be in compliance with the terms of the Agreement after 90 days, the Mortgagee's attorney shall promptly file a notice of dismissal of the action without prejudice, and the case will be dismissed. Such notice of dismissal shall be served on all parties to the action."

It appears that your law firm has failed to comply with the Admin order as well. However, if you are willing to immediately comply with the order by filing the required notice of dismissal of the action without prejudice, then I think that would satisfy my client. If you are not willing to do so, then please advise so that I can ask my client whether he wishes for me to file a motion for contempt of the Admin order. If that becomes necessary, then I shall have to ask the court to order my fees to be reimbursed as well.

By the way, although it is not relevant for compliance with the Admin order, I am under the impression that my client has signed and returned the assumption agreement, so it appears that the ball is in your client's court.

Sincerely,  
John R. Cantrell, Jr.  
Cantrell Legal, PC  
PO Box 1276  
Goose Creek, SC 29445-1276  
843-797-2454 voice  
309-213-0922 fax  
Dist. SC (4th Cir)  
NACBA, SC State Chair  
johncantrelljr@gmail.com

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John Cantrell <johncantrelljr@gmail.com>

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**RE: Richard Ivey foreclosure case; 151083.00327; 2016-CP-08-00591**

---

John Cantrell <johncantrelljr@gmail.com>  
To: Caroline Laster <carolinel@scottandcorley.com>  
Cc: Louise Johnson <ceasiej@scottandcorley.com>

Wed, Oct 4, 2017 at 11:26 AM

Caroline:

I haven't yet received a copy of the requested TPP agreement signed by your client. According to the terms of the TPP, this was supposed to be signed after my client's first TPP payment, and he has now completed all three TPP payments. By the way, he has been informed by Seterus that they won't accept any more payments from him until the assumption agreement is returned, so they are no longer drafting his monthly payment amount.

Also, my client has just received the assumption agreement. I have a few concerns with this document:

1. It was sent directly to my client instead of to me as required by the 2011 SC Admin Order.
2. The terms of the loan mod agreement are not provided. Basically, Seterus wants my client to assume the loan before he knows the terms of the new loan. We don't know if the new loan will be feasible or not. We also don't know what charges or fees are supposed to be paid in the new loan.

In that regard, I would like to request the following on an expedited basis so that we can determine if signing the assumption agreement is in our client's best interests:

- A. Copy of the proposed final loan mod agreement or at least all material terms of the final agreement
- B. Either an itemized reinstatement quote or an itemized payoff, or both, showing all charges and fees that Seterus intends to try to collect as part of the new loan

Sincerely,  
John R. Cantrell, Jr.  
Cantrell Legal, PC  
PO Box 1276  
Goose Creek, SC 29445-1276  
843-797-2454 voice  
309-213-0922 fax  
Dist. SC (4th Cir)  
NACBA, SC State Chair  
johncantrelljr@gmail.com

On Mon, Sep 25, 2017 at 11:26 AM, John Cantrell <johncantrelljr@gmail.com> wrote:

Has your client signed the TPP agreement? If not, then why not? If so, then please send a copy of that agreement signed by your client for my files.

Sincerely,  
John R. Cantrell, Jr.  
Cantrell Legal, PC  
PO Box 1276  
Goose Creek, SC 29445-1276  
843-797-2454 voice  
309-213-0922 fax  
Dist. SC (4th Cir)  
NACBA, SC State Chair  
johncantrelljr@gmail.com

On Mon, Sep 25, 2017 at 10:27 AM, Caroline Laster <carolinel@scottandcorley.com> wrote:

Good Morning,

Mr.Cantrell,

The final modification is currently on hold at this time. Due to the borrower Marion Ivey being deceased, the executor of the estate did not go through an assumption review process prior to be offered the trial modification. A non recourse assumption agreement is being generated and will be mailed to your client for him to execute, sign, notarize and return to our client. Once the agreement is back, the final modification will be generated.

In the mean time, your client shall continue to pay the trial amount of \$1,018.11.

Please let us us know if you have any questions.

Thank you for your assistances in this matter.

**Caroline Laster**

Managing Litigation Paralegal\*

carolinel@scottandcorley.com

\*NOT LICENSED TO PRACTICE LAW



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ATTORNEYS AND COUNSELLORS AT LAW

Main: 803.252.3340 / Fax: 855.236.4081  
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---

**From:** Caroline Laster  
**Sent:** Monday, September 18, 2017 11:54 AM  
**To:** 'John Cantrell'; Louise Johnson  
**Subject:** RE: Richard Ivey foreclosure case; 151083.00327; 2016-CP-08-00591

Good Morning Mr. Cantrell,

We are currently pending receipt of the signed agreement. Our client has confirmed all three payments were received. I will provide you with a copy of the signed agreement once it is available.

Thank you,

**Caroline Laster**

Managing Litigation Paralegal\*

carolinel@scottandcorley.com

\*NOT LICENSED TO PRACTICE LAW



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**From:** John Cantrell [mailto:johncantrelljr@gmail.com]

**Sent:** Monday, September 18, 2017 11:50 AM

**To:** Louise Johnson

**Cc:** Caroline Laster

**Subject:** Re: Richard Ivey foredosure case; 151083.00327; 2016-CP-08-00591

Louise:

It has been two months since my last email. Have you acquired a signed copy of the TPP from your client yet? If not, can you acquire one? It is my understanding that my client has made all three TPP payments. We would like to get a copy of the signed agreement, and proceed to have the foreclosure dismissed per the administrative order.

Sincerely,  
John R. Cantrell, Jr.  
Cantrell Legal, PC  
PO Box 1276  
Goose Creek, SC 29445-1276  
843-797-2454 voice  
309-213-0922 fax  
Dist. SC (4th Cir)

NACBA, SC State Chair  
johncantrelljr@gmail.com

On Tue, Jul 18, 2017 at 3:23 PM, Louise Johnson <ceasiej@scottandcorley.com> wrote:

!!! definitely follow up on that. Thx. C

Louise "Ceasie" M. Johnson / Senior Counsel  
ceasiej@scottandcorley.com / 803.767.4810

**Scott & Corley, PA**

Office: 803.252.3340 / Fax: 855.236.4081  
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On Jul 18, 2017, at 3:23 PM, John Cantrell <johncantrelljr@gmail.com> wrote:

Louise:

Regarding the TPP agreement, I believe that the signature page that my client submitted also had a place at the bottom for Seterus to sign. Can you make sure that your client signs the TPP form and then send me a copy of the form signed by them for my records?

Sincerely,  
John R. Cantrell, Jr.  
Cantrell Legal, PC  
PO Box 1276  
Goose Creek, SC 29445-1276  
843-797-2454 voice  
309-213-0922 fax  
Dist. SC (4th Cir)

NACBA, SC State Chair  
johncantrelljr@gmail.com

On Mon, Jul 17, 2017 at 8:06 AM, Caroline Laster <carolinel@scottandcorley.com> wrote:

Good Afternoon John,

We have received confirmation from our client that Richard Ivey has been approved for Trial Payment Plan and the first payment has been made for July 1, 2017. I have contacted the court and cancelled the scheduled MSJ Hearing for July 20, 2017. Please allow this email to serve as notice of the cancellation.

## Lender Letter LL-2013-04

February 27, 2013

To: All Fannie Mae Single-Family Servicers

### Transfers of Ownership and Mortgage Assumptions

Fannie Mae is clarifying the servicer's obligations in connection with a transfer of ownership of a property securing a mortgage loan when the due-on-sale (or due-on-transfer) provision is not enforceable because the property transfer is considered an exempt transaction in the *Servicing Guide*. An example of an exempt transaction is the transfer of ownership of a property to a widow or orphan of the deceased borrower.

This Lender Letter describes updates or clarifications to:

- Communicating with a New Property Owner when the Property Transfer is Exempt
- Delinquent Mortgage Loans and Exempt Transactions
- MBS Requirements

For all other transfers of ownership of a property securing a conventional mortgage loan with an enforceable due-on-sale (or due-on-transfer) provision, the servicer must follow the guidance in the *Servicing Guide*.

### Communicating with a New Property Owner when the Property Transfer is Exempt

#### *Servicing Guide*, Part III, Section 408.02: Exempt Transactions

Servicers must implement policies and procedures to promptly identify and communicate with the new property owner in connection with a property transfer that is an exempt transaction. These policies and procedures must allow the new owner to continue making mortgage payments and pursue an assumption of the mortgage loan as well as a foreclosure prevention alternative, if applicable. This includes a widow, executor, or administrator of the borrower's estate, or other authorized representative of the borrower upon notification of the borrower's death.

### Delinquent Mortgage Loans and Exempt Transactions

#### *Servicing Guide*, Part III, Section 408.02: Exempt Transactions

Fannie Mae is clarifying its policy with respect to a delinquent mortgage loan where the due-on-sale (or due-on-transfer) provision is not enforceable because the property transfer is considered an exempt transaction in the *Servicing Guide*. If the mortgage loan is delinquent and the new property owner is unable to bring the mortgage loan current but may be able to resolve the delinquency with a foreclosure prevention alternative (for example, HAMP, standard modification, Mortgage Release™, or short sale) and assume the mortgage loan, the servicer must collect a Borrower Response Package from the new property owner and evaluate the request as if they were a borrower. If the servicer determines that a foreclosure prevention alternative is appropriate, it must submit its recommendation to Fannie Mae for written approval. Fannie Mae will determine the terms of the foreclosure prevention alternative and any related assumption.

The servicer must submit the case into HomeSaver Solutions® Network (HSSN) under the recommended foreclosure prevention alternative (for example, HAMP, standard modification, Mortgage Release, or short

sale) and indicate that a transfer of ownership or an assumption is associated with the case in the comments section.

## MBS Requirements

***Servicing Guide*, Part VI, Chapter 3: Reclassification of MBS Mortgage Loans; Part VII, Section 602.02.08: Reclassification or Removal of MBS Mortgage Loans Prior to Effective Date of the Mortgage Loan Modification and Section 609.03.09: Reclassification or Removal of MBS Mortgage Loans Prior to Effective Date of Mortgage Loan Modification**

As a reminder, in the case of an exempt transaction, before finalizing any permanent modification entered into in conjunction with an assumption for an MBS Pool mortgage loan, the mortgage loan must be:

- in a continuous state of delinquency for at least four consecutive monthly payment dates (or at least eight consecutive payment dates in the case of a biweekly mortgage loan) without a full cure of the delinquency, and
- removed from the MBS pool.

Servicers are also reminded to follow related *Servicing Guide* requirements pertaining to MBS Pool mortgage loans when considering any other foreclosure prevention alternative.

\*\*\*\*\*

Servicers should contact their Servicing Consultant, Portfolio Manager, or Fannie Mae's National Servicing Organization's Servicer Support Center at 1-888-FANNIE5 (1-888-326-6435) with any questions regarding this Lender Letter

Gwen Muse-Evans  
Senior Vice President  
Chief Risk Officer for Credit Portfolio Management

## **Servicing Guide Announcement SVC-2013-17**

August 28, 2013

### **Miscellaneous Servicing Policy Changes**

This Announcement describes servicing policy changes and updates for the following:

- Delinquency Management and Default Prevention for Assuming Borrowers
- Updates to Unemployment Forbearance
- Update to Servicer Name Change Requirements
- Intent to Accept and Acceptance of a Fannie Mae Modification Offer

### **Effective Date**

Unless otherwise indicated, servicers must implement the revised requirements in this Announcement immediately for all mortgage loans that become delinquent on or after the date of this Announcement.

### **Delinquency Management and Default Prevention for Assuming Borrowers**

#### ***Servicing Guide, Part III, Section 408.02: Exempt Transactions***

Fannie Mae is clarifying the servicer's obligations in connection with a transfer of ownership of a property securing a mortgage loan when the due-on-sale (or due-on-transfer) provision is not enforceable because the property transfer is considered an exempt transaction in the *Servicing Guide*.

Servicers must implement policies and procedures to promptly identify and communicate with the new property owner in connection with a property transfer that is an exempt transaction. These policies and procedures must allow the new owner to continue making mortgage payments and pursue an assumption of the mortgage loan as well as a foreclosure prevention alternative, if applicable. This includes a widow, executor, or administrator of the borrower's estate, or other authorized representative of the borrower upon notification of the borrower's death.

#### ***Delinquent Mortgage Loans and Exempt Transactions***

If the mortgage loan is delinquent and the new property owner is unable to bring the mortgage loan current, he or she must be evaluated for all available workout options.

Servicers must follow *Servicing Guide* eligibility and Borrower Response Package requirements when considering any workout option, including the Streamlined Modification (described in Announcement SVC-2013-05, *Streamlined Modifications, Conventional Mortgage Loan Modifications, and Outbound Communications*).

If the servicer determines that a workout option is appropriate, it must submit its recommendation to Fannie Mae for written approval. Fannie Mae will determine the terms of the workout option and any related assumption. The servicer must submit the case into HomeSaver Solutions® Network (HSSN) under the recommended workout option and indicate that a transfer of ownership or an assumption is associated with the case in the comments section.

## Updates to Unemployment Forbearance

### **Announcement SVC-2012-01, Introduction to Fannie Mae Unemployment Forbearance**

Fannie Mae is clarifying that prior to the expiration date of the initial unemployment forbearance period or upon notification of re-employment, the servicer must evaluate the borrower for an extension of the unemployment forbearance term or another workout option, if applicable. Servicers must complete the evaluation in accordance with the *Servicing Guide*, including the use of the Streamlined Modification and the streamlined documentation requirements for a standard short sale and Mortgage Release™

### **Borrower Solicitation and Follow-Up**

Fannie Mae currently requires that no later than 60 days prior to the end of the extended unemployment forbearance period or upon notification of re-employment, the servicer must request updated documentation in order to evaluate the borrower for another foreclosure prevention alternative. The current requirement also prohibits verbal updates for converting to another foreclosure prevention alternative.

With this Announcement, Fannie Mae is eliminating the guidance referenced in the paragraph above and replacing it with the following:

Prior to the expiration date of the extended unemployment forbearance period or upon notification of re-employment; servicers must evaluate the borrower for another foreclosure prevention alternative, in accordance with the *Servicing Guide*, including the use of the Streamlined Modification and the streamlined documentation requirements for the standard short sale and Mortgage Release.

### **Effective Date**

Servicers are encouraged to implement the new policies for Unemployment Forbearance immediately; however, servicers are required to implement these policies no later than November 1, 2013.

## Update to Servicer Name Change Requirements

### ***Servicing Guide*, Part I, Section 204: Changes in Servicer's Organization**

Fannie Mae will no longer require servicers to treat a servicer name change as a transfer of servicing. The servicer must contact their Servicing Consultant, Portfolio Manager, or Fannie Mae's National Servicing Organization's Servicer Support Center when changing its organization's name. All other notification requirements relating to name changes, as indicated in the *Servicing Guide*, remain unchanged.

## Intent to Accept and Acceptance of a Fannie Mae Modification Offer

### ***Servicing Guide*, Part VII, Section 602.02.06: Trial Period Plan**

Fannie Mae is updating the requirements of the *Evaluation Notice* to specify that the 14-day time frame for the borrower to contact the servicer is to indicate the borrower's intent to accept or reject a loan modification offer.

Servicers are reminded that processing an *Evaluation Notice* must still include the steps which the borrower must take to participate in or accept the offer. The content in the Evaluation Notice Model Clauses posted on the [Fannie Mae website](#) contains the correct information.

\*\*\*\*\*

Servicers should contact their Servicing Consultant, Portfolio Manager, or Fannie Mae's National Servicing Organization's Servicing Solutions Center at 1-888-FANNIE5 (1-888-326-6435) with any questions regarding this Announcement.

Gwen Muse-Evans  
Senior Vice President  
Chief Risk Officer for Credit Portfolio Management



## Servicing Guide

Published October 19, 2015

» [Table of Contents](#)

### D1-4.1-02: Allowable Exemptions Due to the Type of Transfer (11/12/2014)

This topic contains information on allowable exemptions due to the type of transfer.

Search guide content

[BACK TO PART D >](#)

Unless the previous borrower requests a release of liability, the servicer must process the following exempt transactions without reviewing or approving the terms of the transfer:

- A transfer of the property to
  - the surviving party in the event of the death of a joint tenant or a tenant by the entirety;
  - a junior lienholder as a result of a foreclosure or acceptance of a deed-in-lieu of foreclosure for the subordinate mortgage loan;
  - one of the borrowers if the property is jointly owned by unrelated co-borrowers, as long as the borrower who is gaining full ownership of the property continues to occupy it and the transfer occurs after at least 12 months have elapsed since the mortgage loan was closed;
  - a related or unrelated natural person, provided the transferee acknowledges in writing that he or she
    - is assuming all of the obligations under, and will be bound by the note and the security interest; and
    - will occupy the property with the transferor as his or her principal residence.
- A transfer of the property (or, if the borrower is an *inter vivos* revocable trust, a transfer of a beneficial interest in the trust) to
  - a relative of the deceased borrower (or, in the case of an *inter vivos* revocable trust borrower, to a relative of the individual who established the trust), as long as the transferee occupies the property;
  - the spouse, child(ren), parent(s), brother(s) or sister(s), grandparent(s), or grandchild(ren) of the borrower (or, in the case of an *inter vivos* revocable trust borrower, of the individual who established the trust), as long as the transferee occupies the property;
  - a spouse of the borrower (or, in the case of an *inter vivos* revocable trust borrower, of the individual who established the trust) under a divorce decree or legal separation agreement or from an incidental property settlement agreement, as long as the transferee will occupy the property;
  - an *inter vivos* trust (or, if the borrower is an *inter vivos* revocable trust, into a new trust) as long as the borrower (or the individual who established the original *inter vivos* revocable trust) will be the beneficiary of the trust and the occupant of the property.
- The granting of a leasehold interest that has a term of three or fewer years and does not provide an option to purchase the property. If the lease has a renewal option that would allow the term to extend beyond three years, this exemption does not apply.
- The creation of a subordinate lien, as long as it does not relate to a transfer of occupancy rights.
- The creation of a purchase money security interest for household appliances.

The servicer must determine that the transferee's credit and financial capacity is acceptable under current Fannie Mae underwriting guidelines (see the *Selling Guide* for additional information) if the previous borrower requests a release of liability. The following table provides the servicer's requirements for evaluating a request for a release of liability.

If the servicer...	Then the servicer...
has determined that the transferee is capable of assuming the mortgage loan obligation and the mortgage loan <ul style="list-style-type: none"> <li>• does not have MI, or</li> <li>• has MI and the mortgage insurer agrees to the release</li> </ul>	is authorized to approve the release of liability.
has determined that the transferee is capable of assuming the mortgage loan obligation but the mortgage loan has MI and the mortgage insurer does not agree to the release.	must deny the request for the release of liability, although the transfer may still be processed without a release of liability. <p><small>Note: The denial must state the mortgage insurer's decision as its reason for not approving the release.</small></p>

<https://www.fanniemae.com/content/guide/servicing/d1/4.1/02.html>

PENGAD 800-831-6889  
**DEFENDANT'S EXHIBIT**  
 5  
 1/19/18

D1-4.1-02: Allowable Exemptions Due to the Type of Transfer (11/12/2014)

If the servicer...	Then the servicer...
has determined that the transferee is not capable of assuming the mortgage obligation	must deny the request for release of liability, although the transfer may still be processed without a release of liability.

The servicer must follow the procedures in *Obtaining MI Approval for a Conventional Mortgage Loan* in [E-1-28, Processing a Transfer of Ownership](#) for information on obtaining mortgage insurer approval and in *Completing a Transfer of Ownership* in [E-1-28, Processing a Transfer of Ownership](#) for detailed requirements related to executing the assumption (or assumption and release) agreement.

The servicer must notify the applicable property insurance companies, tax authorities, the mortgage insurer, and any other interested parties when it processes a transfer of ownership.

If the mortgage loan is delinquent and the new property owner is unable to bring the mortgage loan current, the servicer must evaluate him or her for all available workout options in accordance with *Chapter D2-2, Requirements for Contacting a Borrower* and *Chapter D2-3, Fannie Mae's Home Retention and Liquidation Workout Options*. If the servicer determines that a workout option is appropriate, it must submit its recommendation to Fannie Mae via HSSN for written approval. The servicer must follow the procedures in *Requesting Approval for a Workout Option for a New Property Owner* in [E-1-35, Requesting Fannie Mae's Approval via HomeSever Solutions Network](#) for requesting Fannie Mae's prior approval via HSSN.



**South Carolina Court Administration**  
South Carolina Supreme Court  
Columbia, South Carolina

ROSALYN W. FRIERSON  
DIRECTOR

1015 SUMTER STREET, SUITE 200  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1800  
FAX: (803) 734-1355  
E-MAIL: [rfrierson@eccourts.org](mailto:rfrierson@eccourts.org)

June 7, 2011

Desa Ballard  
Ballard Watson Weissenstein  
Post Office Box 6338  
West Columbia, SC 29171

Robert A. Muckenfuss  
McGuireWoods  
Bank of America Corporate Center  
100 North Tryon Street  
Suite 2900  
Charlotte, N.C. 28202-4011

Dear Attorneys Ballard and Muckenfuss:

I have been asked by the Chief Justice to respond to the concerns expressed in both of your letters regarding the May 2, 2011, Administrative Order related to Mortgage Foreclosure Actions. I inform you that the Chief Justice has considered the questions posed and has determined that there is no need to amend or modify the order at this time. However, I will attempt to clarify some of your questions related to the Administrative Order.

First, as the nature of the order is procedural, no conflict with efforts to deal with the mortgage foreclosure crisis at the federal level is intended. Further, I am not aware of any contest over federal preemption involving similar procedural directives in other states. Secondly, the overall purpose of the order was to remedy breakdowns in communications between lender-servicers and borrowers related to loss mitigation efforts, and to assure that interested homeowner-borrowers are afforded a fair opportunity to take advantage of available relief. Since the execution of the order, concerns regarding these matters have been confirmed by reports from active cases. Thus, the order provides for a reliable point of contact for borrowers with their lender-servicer, namely, the lender-servicer's attorney. This avoids a fundamental

disconnect between the borrower and the lender-servicer that leads a borrower to misunderstand, or be misled, as to the status of the foreclosure litigation and its consequences.

Additionally, the trial court depends on the lender-servicer's attorney for information concerning the status of loss mitigation efforts between the borrower and the lender-servicer. The attorney is under a duty to provide relevant and candid information to the court about the case, including loss mitigation. Such information directly affects whether a case can proceed, or should be dismissed. That does not always occur, because the attorney is unaware of that circumstance, and thus, cannot advise the court.

For these reasons, the involvement of the lender-servicer's attorney at every stage of the foreclosure process is critical, and the order so provides. The order is not intended to preclude all contact between borrower and lender-servicer. Rather, it provides that the lender-servicer's attorney must be involved in the process, so that the trial court can be adequately apprised of all proceedings in the case, and handle the case accordingly. The order should not heighten Rule 11 standards for the lender-servicer's attorney. As with all litigation, an attorney may reasonably rely on information provided by the client in the handling of the case. The problem has been that the attorney is not made privy to all such information.

Notwithstanding that the order will stand as drawn, there are a few matters raised as concerns that fairly deserve comment. Concerning the forms to be used in implementing the order, specific forms for that purpose will not be provided by the court. Adequate forms have already been created by attorneys, and the trial courts are not requiring specific language, so long as the intent of the order is carried out.

In paragraph A(1), concerning who is entitled to participate in foreclosure intervention, the definition of "Mortgagor," read in context includes only parties involved in the mortgage transaction in question.

In paragraph A(5), "foreclosure intervention" includes all policies and processes or procedures actually employed by a Mortgagee, if any. The order does not impose a requirement to create policies, processes or procedures, or to use those of other lender-servicers, or of government agencies having no oversight or control of the loan in question. Procedures in this State for loans subject to HAMP oversight are dealt with by prior administrative orders.

In paragraph B(1)(e) of the order, the tolling of the time to answer in the foreclosure action is to be just as in other cases where the time to answer is suspended, either by agreement, or rule. Regarding cases pending on May 9, 2011, where a Mortgagor was not in default when served with the notice of the right to foreclosure intervention, and elects to participate in foreclosure intervention, the Mortgagor will have 30 days from the date of mailing of the notice of denial of relief to respond to the complaint. If the Mortgagor is already in default, relief from default is by the usual Rule 55 or Rule 60 procedure. As to actions filed after May 9, where the Mortgagor elects to participate in foreclosure intervention, the time to answer is tolled, and the Mortgagor has 30 days from mailing of the notice of denial to answer the complaint.

Finally, consistent with the intent and purpose of the order, if a Mortgagor has already participated in a foreclosure intervention process provided by a Mortgagee, but has either failed to qualify for relief, or has defaulted under a loss mitigation agreement, the provisions of the order have been satisfied, and the Mortgagee has complied with the order. In such case, the Mortgagee will certify compliance through its attorney, and provide the trial court the relevant documents to support such certification. The foreclosure action can then proceed unabated.

Nothing in the order is intended to preclude renewed efforts on the part of the parties to seek foreclosure intervention after the initial process has been completed without success. Where foreclosure intervention as contemplated by the order has been denied, the foreclosure action can proceed toward completion without further abatement, even though the parties may continue efforts at foreclosure intervention while the foreclosure action proceeds. However, the lender-servicer's attorney will retain the "point of contact" role, and the responsibility of providing reliable information to the trial court, as discussed above.

While the Administrative Order will not be modified, all orders are subject to some interpretation as they are implemented in actual cases. That should be permitted to occur in this instance. Such interpretations are always subject to further review.

I trust that this response will be helpful in dealing with the concerns you have raised.

Sincerely,



Rosalyn W. Frierson, Director  
S.C. Court Administration

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY

NINTH JUDICIAL CIRCUIT

Federal National Mortgage Association  
("Fannie Mae"),

CASE NO.: 2016-CP-08-0591

Plaintiff,

vs.

Richard C. Ivey a/k/a Richard Curtis Ivey,  
*et al.*

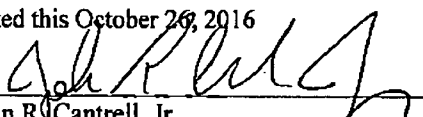
**NOTICE OF APPEARANCE AND  
REQUEST FOR FORECLOSURE  
INTERVENTION**

Defendants.

The undersigned hereby provides notice of an appearance in this case as attorney of record on behalf of the Defendant Richard C. Ivey, and requests that the undersigned attorney be copied with all notices and pleadings served in this case at the address provided herein.

The undersigned also hereby provides notice that this residential property is occupied by the Defendant Richard C. Ivey as his primary residence, and Richard C. Ivey has a sole ownership interest in this residence. Defendant believes that Plaintiff's statement filed with this court that the property is not an owner-occupied dwelling is incorrect. Defendant therefore requests that he be provided with foreclosure intervention options pursuant to the May 2, 2011 Supreme Court Administrative Order and the 2009 Administrative Order as well.

Dated this October 26, 2016

  
John R. Cantrell, Jr.  
Attorney for the Defendant Richard C. Ivey  
Cantrell Legal, PC  
PO Box 1276  
Goose Creek, SC 29445-1276  
(843) 797-2454 (office)  
(309) 213-0922 (fax)  
Email: [lawyer@comcast.net](mailto:lawyer@comcast.net)

MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

2016 OCT 27 AM 9:04

FILED

TSM

JRC

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Federal National Mortgage Association ("Fannie Mae"),

PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey; Crowfield Plantation Community Services Association, Inc.; Unifund CCR Partners Assignee of Palisades, a General Partnership; and CIT Bank, National Association ,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-08-00591

CERTIFICATE OF SERVICE BY MAIL

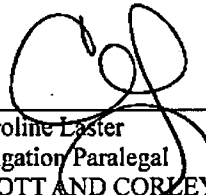
2017 FEB 15 AM 11:28  
FILED  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY

(151083.00327)

The undersigned hereby certifies that s/he is an employee of Scott and Corley, P.A. and is a person of such age and discretion as to be competent to serve papers and that on February 10 2017, she mailed a copy of the Plaintiff's Good Faith Loss Mitigation review by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at the Scott and Corley, P.A. office, 2712 Middleburg Drive, Suite 200, Columbia, SC 29204.

Addressee:

John R. Cantrell (Attorney for Richard C. Ivey)  
Post Office Box 1276  
Charleston, SC 29445-1276



Caroline Easter  
Litigation Paralegal  
SCOTT AND CORLEY, P.A.  
2712 Middleburg Dr., St 200 (29204)  
P.O. Box 2065 (29202)  
Columbia, South Carolina

AL

**SCOTT AND CORLEY, P.A.**  
Attorneys and Counselors at Law

---

Street Address: 2712 Middleburg Drive, Suite 200  
Columbia, SC 29204

Telephone: (803) 252-3340  
Facsimile: (855) 601-4921

Mailing Address:  
P.O. Box 2065  
Columbia, SC 29202

February 10 2017

The Honorable Mary P. Brown  
Berkeley County Clerk of Court  
P.O. Box 219  
Moncks Corner, SC 29461-0219

**Re:** Federal National Mortgage Association ("Fannie Mae"), v. Richard C. Ivey a/k/a Richard Curtis Ivey; Crowfield Plantation Community Services Association, Inc.; Unifund CCR Partners Assignee of Palisades, a General Partnership; and CIT Bank, National Association  
CA: 2016-CP-08-00591  
SLF No. 151083.00327

Dear Ms. Brown:

Enclosed please find the original and one copy of the Plaintiff's Good Faith Loss Mitigation review and Certificate of Service by Mail to be filed in the above-referenced matter. Please have filed and return a clocked copy in the envelope provided.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Scott and Corley, P.A.

Caroline Laster  
Litigation Paralegal

Enclosed:  
John Cantell, Esq

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-08-00591

Federal National Mortgage Association ("Fannie Mae"),  
PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey; Crowfield  
Plantation Community Services Association, Inc.; Unifund  
CCR Partners Assignee of Palisades, a General  
Partnership; and CIT Bank, National Association  
DEFENDANT(S).

MOTION AND ORDER INFORMATION FORM  
AND COVER SHEET

**SUBMITTING PARTY: PLAINTIFF**

**Name, SC Bar No. and Address of Plaintiff's Attorney**

**Name, SC Bar No. and Address of Defendant's Attorney**

Ronald C. Scott, SC Bar #4996  
Reginald P. Corley, SC Bar #69453  
Angelia J. Grant, SC Bar #78334  
Jessica S. Corley, SC Bar #80470  
Allison E. Heffeman, SC Bar #68530

Matthew E. Rupert, SC Bar #100740  
William P. Stork, SC Bar #100242  
Louise M. Johnson, SC Bar #16586  
Tasha B. Thompson, SC Bar #76415  
Jane S. Ruschky, SC Bar #70472

ATTORNEYS FOR PLAINTIFF  
2712 Middleburg Drive, Suite 200  
(P.O. Box 2065)  
Columbia, SC 29204 (29202)  
Telephone: (803) 252-3340  
Fax: (855) 601-4921

Email rons@scottandcorley.com  
allisonh@scottandcorley.com  
m  
tashat@scottandcorley.com

reggiec@scottandcorley.com  
matthewr@scottandcorley.com  
janer@scottandcorley.com

angig@scottandcorley.com  
williams@scottandcorley.com

jessicac@scottandcorley.com  
ceasiej@scottandcorley.com

2017 JUN 20 PM 3:19  
FILED  
TJH  
CLERK OF COURT  
BERKELEY COUNTY, SC

- 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**

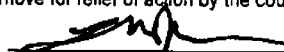
Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: 15MINS Court Reporter Needed: Yes

**SECTION II: MOTION TYPE**

- Written Motion attached
- Form Motion -

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

  
\_\_\_\_\_  
Signature of Attorney for Plaintiff

6/16 2017  
\_\_\_\_\_  
Date Submitted

**SECTION III: MOTION FEE**

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

**JUDGE'S SECTION**

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

JUDGE CODE: \_\_\_\_\_ DATE: \_\_\_\_\_

\_\_\_\_\_  
Judge Signature

**CLERK'S VERIFICATION**

Collected by: TJH

DATE FILED: \_\_\_\_\_

- MOTION FEE COLLECTED: \$ 25.00
- CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

CC: LMS

SCCA 233 (12/2009)

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

Federal National Mortgage Association ("Fannie Mae"),

PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey;  
Crowfield Plantation Community Services  
Association, Inc.; Unifund CCR Partners  
Assignee of Palisades, a General Partnership; and  
CIT Bank, National Association ,

DEFENDANT(S).

(151083.00327)

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-08-00591

PLAINTIFF'S NOTICE OF MOTION AND  
MOTION FOR SUMMARY JUDGMENT

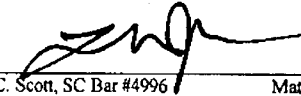
2017 JUN 20 PM 3:19  
FILED  
MAY 20 11 30 AM  
CLERK OF COURT  
BERKELEY COUNTY, SC

TO: JOHN CANTRELL, ATTORNEY FOR DEFENDANT(S) RICHARD IVEY:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through its undersigned attorney, will, on the tenth (10th) day after service or as soon thereafter as counsel may be heard, move before the Honorable Dale Van Slambrook, as Master in Equity for for Berkeley County, for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, granting Plaintiff summary judgment as to liability only in this foreclosure matter. This motion is made upon the grounds that there is no genuine issue as to any material fact and that the Plaintiff is entitled to judgment as a matter of law.

This motion is supported by the South Carolina Rules of Civil Procedure, relevant case law, and any discovery, affidavits, or memoranda presented.

SCOTT AND CORLEY, P.A.

By: 

Ronald C. Scott, SC Bar #4996  
Reginald P. Corley, SC Bar #69453  
Angelia J. Grant, SC Bar #78334  
Jessica S. Corley, SC Bar #80470  
Allison E. Heffernan, SC Bar #68530  
Matthew E. Rupert, SC Bar #100740  
William P. Stork, SC Bar #100242  
Louise M. Johnson, SC Bar #16586  
Tasha B. Thompson, SC Bar #76415  
Jane S. Ruschky, SC Bar #70472

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

June 16, 2017

**"EXHIBIT"**

**FIXED/ADJUSTABLE RATE NOTE**  
(LIBOR One-Year Index (As Published In *The Wall Street Journal*)-Rate Caps)

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

August 18, 2006  
(Date)

Mount Pleasant  
(City)

South Carolina  
(State)

108 Winding Rock Road, Goose Creek, SC 29445  
(Property Address)

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 172,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is **IndyMac Bank, F.S.B., a federally chartered savings bank**. I will make all payments under this Note in the form of cash, check or money order.

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

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of **5.250 %**. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

**3. PAYMENTS**

**(A) Time and Place of Payments**

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

I will make my monthly payments on the first day of each month beginning on **October, 2006**

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on **September 1, 2036**, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at **IndyMac Bank, F.S.B., P.O. Box 78826, Phoenix, AZ 85062-8826** or at a different place if required by the Note Holder.

**(B) Amount of My Initial Monthly Payments**

Each of my initial monthly payments will be in the amount of U.S. \$ **949.79**. This amount may change.

**(C) Monthly Payment Changes**

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

**4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES**

**(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of **September, 2011**, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

**(B) The Index**

Beginning with the first Change Date, my adjustable 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."

*mkl*

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 750/1000ths percentage points ( 2.750 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one 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 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.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.250 % or less than 2.750 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 10.250 %.

(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 initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any 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.

5. BORROWER'S RIGHT TO PREPAY

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

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

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

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

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

(C) Notice of Default

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

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(D) **No Waiver By Note Holder**  
Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

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

**8. GIVING OF NOTICES**

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

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

**9. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

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

**10. WAIVERS**

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

**11. UNIFORM SECURED NOTE**

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

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

**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.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

**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.

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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. 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.

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

Marion K Ivey (Seal)  
Marion K Ivey -Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_\_ (Seal)  
-Borrower

(Sign Original Only)

Pay To The Order Of

Without Recourse  
IndyMac Bank, F.S.B.  
By: Wilson A. McElveen  
Wilson A. McElveen  
Vice President

EXHIBIT  
2

Doc # 00074891

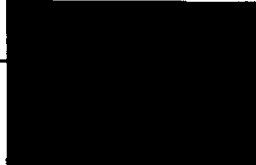
After recording please return to:

IndyMac Bank, F.S.B. c/o  
Document Management  
*[Company Name]*

*[Name of Natural Person]*  
901 E. 104th Street Building  
B Suite 400/500  
*[Street Address]*

Kansas City, MO 64131  
*[City, State Zip Code]*

*[Space Above This Line For Recording Data]*



### MORTGAGE

MIN

#### 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 August 18, 2006 together with all Riders to this document.

(B) "Borrower" is Frank R Ivey and Marion K Ivey

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is IndyMac Bank, F.S.B., a federally chartered savings bank

Lender is a Federal Savings Bank organized and existing under the laws of United States of America

Initials: MKD FIO

Pasadena, CA 91101

Lender's address is 155 North Lake Avenue,

(E) "Note" means the promissory note signed by Borrower and dated August 18, 2006. The Note states that Borrower owes Lender one hundred seventy two thousand and NO/100ths Dollars (U.S. \$ 172,000.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than September 1, 2036 .

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

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

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

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

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

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

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

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

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 3) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

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

Initials: M.K.D. Z.K.D.

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

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §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.

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

**TRANSFER OF RIGHTS IN THE PROPERTY**

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

County of Berkeley  
*(Type of Recording Jurisdiction)* *(Name of Recording Jurisdiction)*

See Exhibit A attached hereto and made a part hereof

which currently has the address of 108 Winding Rock Road

Goose Creek, South Carolina 29445 ("Property Address")  
*(City)* *(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 understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record.

Initials: MKL ZLR

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

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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) contracts 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)

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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

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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.

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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.

(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,

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

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

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

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

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

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

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 Page 10 of 14  
 00004, The Compliance Source, Inc.

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 this 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

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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 19) 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

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reinstated 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 § 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 one hundred fifty percent (150%) of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

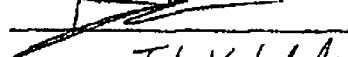
BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:



  
Marion K Ivey (Seal)  
-Borrower

Printed Name: Angela Smith  
(Please Complete)

  
Printed Name: John K. Ivey  
(Please Complete)

  
John K. Ivey (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

(Acknowledgments on Following Page)



State of SC §  
County of Charleston §  
§

Before me the undersigned authority, on this day personally appeared Marion K Ivey and Frank R Ivey

known to me (or proved to me through an identity card or other document) to be the person(s) whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal on this 18 day of August 2013.

(Seal)

[Signature]  
Notary Public  
My Commission Expires: 1-12-2014

MKL  
FAD

**FIXED/ADJUSTABLE RATE RIDER**  
**(LIBOR One-Year Index (As Published In *The Wall Street Journal*)—Rate Caps)**

THIS FIXED/ADJUSTABLE RATE RIDER is made this 18th day of August, 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 ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to IndyMac Bank, F.S.B., a federally chartered savings bank ("Lender") of the same date and covering the property described in the Security Instrument and located at:

108 Winding Rock Road, Goose Creek, SC 29445  
*(Property Address)*

**THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.**

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

- A. **ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES**  
The Note provides for an initial fixed interest rate of 5.250 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:
- 4. **ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES**
  - (A) **Change Dates**  
The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of September, 2011, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."
  - (B) **The Index**  
Beginning with the first Change Date, my adjustable 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.

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**(C) Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding two and 750/1000ths percentage points (2.750 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one 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 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.

**(D) Limits on Interest Rate Changes**

The interest rate I am required to pay at the first Change Date will not be greater than 10.250 % or less than 2.750 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 10.250 %.

**(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 change in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any 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.

**B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

**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.

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2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

**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. 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.

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

*Marian K Ivey* (Seal) - Borrower  
Marian K Ivey

*Frank R Ivey* (Seal) - Borrower  
Frank R Ivey

(Seal) - Borrower

(Seal) - Borrower

EXHIBIT A

00074891 Vol: 5913 Pg: 177

All that certain piece, parcel of lot of land, situate, lying and being in Piedmonte Place Subdivision, Community of Crowfield Plantation, City of Goose Creek, Berkeley County, South Carolina, Being shown and designated as Lot 5, Block B on "Plat Showing Piedmonte Place, Phase III, Property of Westvaco Development Corporation, Located on Crowfield Plantation, in the City of Goose Creek, Berkeley County, South Carolina," dated October 1, 1991, in the RMC Office for Berkeley Count in Plat File Cabinet J, page 49. Said lot has such size, shape, metes, bounds, location and dimensions as shown on said plat.

This being the same property conveyed to the mortgagor(s) by deed of Steven M. Vaughn Construction Co., Inc. dated 01/13/94 and recorded 01/14/94 in Berkeley County RMC Office in Book 436 at Page 190.

TMS: 243-02-09-031

Street Address: 108 Winding Rock Road

mtg legal rev 05-KR-562

Berkeley County  
Cynthia B. Forte  
Register of Deeds  
Moncks Corner 294616120

Vol 1 5913 Pg 159



Instrument Number: 2006- 00074891

As  
Mortgage

Recorded On: August 29, 2006

Parties: IVEY FRANK R

To

INDYMAC BANK

Billable Pages: 14

Recorded By: KING & KNOBELOCH PC

Num Of Pages: 19

Comment:

\*\* Examined and Charged as Follows: \*\*

Mortgage 24.00  
Recording Charge: 24.00

\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Berkeley County, SC

File Information:

Document Number: 2006- 00074891

Receipt Number: 73088

Recorded Date/Time: August 29, 2006 03:40:36P

Book-Vol/Pg: Bk-R VI-5913 Pg-159

Cashier / Station: R McMakin / Cash Super Station 5

Record and Return To:

KING & KNOBELOCH PC

808 JOHNNIE DODDS BLVD

MT PLEASANT SC 29464-3021



*Cynthia B. Forte*

Cynthia B Forte - Register of Deeds

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS )

COUNTY OF BERKELEY )

NINTH JUDICIAL CIRCUIT )

CASE NO.: 2016-CP-08-0591 )

Federal National Mortgage Association ("Fannie Mae") )

MOTION AND ORDER INFORMATION )

PLAINTIFF, )

FORM AND COVERSHEET )

vs. )

Richard C. Ivey a/k/a Richard Curtis Ivey, et al. )

DEFENDANT. )

Plaintiff's Attorney: <u>John R. Cantrell, Jr, Bar No. 010309</u> Address: <u>PO Box 1276, Goose Creek, SC 29445-1276</u> Phone: <u>(843) 797-2454</u> Fax <u>(309) 213-0922</u> E-mail: <u>lawyer@comcast.net</u> Other: _____	Defendant's Attorney: <u>William P. Stork, Bar No. 100242</u> Address: <u>PO Box 2065, Columbia, SC 29202</u> Phone: <u>(803) 252-3340</u> Fax <u>(855) 601-4921</u> E-mail: <u>williams@scottandcorley.com</u> Other: _____
<input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete SECTIONS II and III) <input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: <u>Motion to Dismiss and For Sanctions</u> Estimated Time Needed: <u>30 minutes</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant _____ Date submitted _____	
<b>SECTION III: Motion Fee</b>	
<input checked="" type="checkbox"/> <b>PAID - AMOUNT:</b> \$ <u>25.00</u> <input type="checkbox"/> <b>EXEMPT:</b> (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> 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: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____  Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: <u>[Signature]</u> Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ <u>25.00</u> <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

MARY P. BROWN  
 CLERK OF COURT  
 BERKELEY COUNTY, SC  
 NOV - 7 PM 2:50  
 FILED

NC JRC

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY

NINTH JUDICIAL CIRCUIT

Federal National Mortgage Association  
("Fannie Mae"),

CASE NO.: 2016-CP-08-0591

Plaintiff,

vs.

**NOTICE AND MOTION TO DISMISS  
CASE AND FOR SANCTIONS**

Richard C. Ivey a/k/a Richard Curtis Ivey,  
*et al.*

Defendants.

2017 NOV -7 PM 2:50  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

FILED  
*[Handwritten Signature]*

TO: Plaintiff and Scott & Corley, P.A.

The defendant Richard C. Ivey, by and through his undersigned counsel, hereby files this Motion to Dismiss Case and For Sanctions ("Motion"). Notice is hereby given that this Motion will be heard by the Berkeley County Master In Equity on November 15, 2017 at 9:30 am at the Berkeley County Courthouse in Moncks Corner, South Carolina or at such later time as the court may allow.

Contempt of 2011 Order

The first reason that defendant is asking the court to dismiss the pending foreclosure case is due to plaintiff's failure to comply with the South Carolina Supreme Court's May 2, 2011 Administrative Order ("2011 Order") regarding foreclosure actions. Defendant believes that plaintiff has violated this order in two ways. Defendant was approved for a streamlined Trial Payment Plan (TPP) loan modification offer prior to July 1, 2017. Defendant signed that TPP Agreement and returned it to plaintiff in a timely manner. Defendant then made timely payments under the TPP starting July 1, 2017 and ending September 1, 2017, which successfully completed his payments due under the TPP. Pursuant to the 2011 Order, upon reaching an agreement on a loan modification, the "...Agreement shall be reduced to writing, executed by the Mortgagor and Mortgagee, and served on all parties in the case". The first way in which plaintiff has violated the 2011 Order is that plaintiff

has never complied with the requirement to sign the TPP Agreement and has never served the signed Agreement on all parties in this case. Defendant signed the TPP Agreement and returned it to plaintiff prior to making his first payment. Defendant's counsel has tried repeatedly to obtain a signed copy of the TPP Agreement from the plaintiff on multiple occasions, the first being an email to plaintiff's counsel Louise Johnson dated July 18, 2017. She responded that same day acknowledging receipt of that email and promising to follow-up on that request. Due to lack of receipt of the signed TPP Agreement, another email was sent to her by defendant's counsel on September 18, 2017. Her paralegal, Caroline Laster, responded that same day by email and indicated that they were still awaiting receipt of the signed TPP Agreement, and promised to provide a copy once received. In that same email, Caroline confirmed that all three payments due on the TPP had been received by the plaintiff. Another email to plaintiff's counsel was sent by defendant's counsel on September 25, 2017 requesting a copy of the signed TPP Agreement, but no response was received, so a subsequent email was sent on October 4, 2017 again requesting the signed TPP Agreement and reminding plaintiff's counsel that, according to the terms of the TPP Agreement, that it was supposed to have been signed by plaintiff after defendant had made his first TPP payment. Caroline Laster acknowledged receipt of this email that same day. On October 24, 2011, defendant's counsel advised plaintiff's counsel that defendant believed that plaintiff was in contempt of the 2011 Order, due in part to plaintiff's failure to sign and return the TPP Agreement, which has never been received by defendant or served on all parties to the case, as required by the 2011 Order.

The second way in which plaintiff has violated the 2011 Order is due to plaintiff's failure to voluntarily dismiss the foreclosure case without prejudice after defendant completed his payments under the TPP. The 2011 Order provides that "[i]f the Mortgagor shall be in compliance with the terms of the Agreement after 90 days, the Mortgagee's attorney shall promptly file a notice of dismissal of the action without prejudice, and the case will be dismissed. Such notice of dismissal shall be served on all

parties to the action". The email of Caroline Laster referenced above dated September 18, 2017 confirmed that defendant had complied with his payment obligations under the TPP Agreement for the 90 days required by the 2011 Order. Indeed, defendant's counsel's email to plaintiff's counsel on October 24, 2011 demanded that plaintiff's counsel comply with the 2011 Order by immediately dismissing the foreclosure case without prejudice. However, plaintiff's counsel has willfully refused to do so. Instead, plaintiff has chosen to file the pending Rule 40(j) Motion to Strike, without first obtaining defendant's written consent to that motion. Both plaintiff's counsel, and by the law of agency the plaintiff as well, have therefore violated the 2011 Order by failing to dismiss the foreclosure case without prejudice as is required by the 2011 Order.

Defendant has been damaged by plaintiff's contempt of the 2011 Order, due to having had to incur unnecessary attorney fees to require the court to issue an order requiring plaintiff's compliance with the 2011 Order, and due to the extra delay that defendant has experienced in getting the pending foreclosure case dismissed.

#### Violation of Rule 11, SCRCP

By its actions in this case, plaintiff has also violated Rule 11, SCRCP. Plaintiff's pending Rule 40(j) Motion is evidence of this fact. As noted in defendant's Objection to the Rule 40(j) Motion, which defendant hereby incorporates by reference in this motion, the Rule 40(j) Motion is improper for two reasons. It is improper since such a motion can only be filed if all parties consent in writing to that motion, and defendant's consent was never obtained. To the contrary, defendant informed plaintiff's counsel via email that defendant did not consent to the filing of the Rule 40(j) Motion, but plaintiff willfully filed the motion anyway. Additionally, the Rule 40(j) Motion contains two allegations that defendant did consent to the Rule 40(j) Motion, but those allegations are false, and plaintiff knew that those allegations were false when they were made. This means that the Rule 40(j) Motion was made in bad faith, and without good ground in fact or law to support it, which violates Rule 11, SCRCP.

Defendant also believes that plaintiff's Rule 40(j) Motion was filed for purposes of delay, which is improper under Rule 11, SCRCP as well. Defendant requests that the court take judicial notice of the

fact that the court had been in contact via email with plaintiff's attorney, and had told plaintiff's attorney via email that the foreclosure case was to be dismissed by October 31, 2017 for failure to prosecute, but that the case would not be dismissed if a Rule 40(j) consent order was submitted by that date. Defendant also requests that the court take judicial notice of the fact that plaintiff's Rule 40(j) Motion was sent via overnight mail to the court and was not received by the court until October 31, 2017. Defendant therefore believes, and alleges, that plaintiff's filing of the Rule 40(j) Motion without first obtaining defendant's consent was done in an attempt to delay the foreclosure case from being dismissed as the court indicated would happen if the Rule 40(j) motion were not filed by October 31, 2017.

As a result of plaintiff's violation of Rule 11, SCRCP, defendant has suffered damages as a result of unnecessary attorney fees that have been incurred both in defending the improper Rule 40(j) Motion and in having to file this motion to dismiss the foreclosure case and to recover sanctions for that violation of the rules. Defendant has also suffered damages by having the dismissal of the foreclosure case delayed as a result of plaintiff's actions.

#### Conclusion

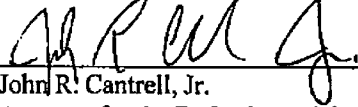
Defendant has been damaged by the egregious actions of plaintiff and its counsel, which actions are in contempt of the Supreme Court's 2011 Order and Rule 11, SCRCP. Plaintiff should not be allowed escape unscathed after having inflicted damage on the defendant, who has complied with his obligations under the TPP Agreement and the 2011 Order, but who is still having to expend time and money to defend the pending foreclosure case. If plaintiff had merely complied with its obligations under the 2011 Order or, in the alternative, had simply allowed the court to dismiss the foreclosure case for failure to prosecute, then defendant's damages would not have occurred. However, instead of allowing the case to be dismissed without prejudice, as the applicable law requires, plaintiff, and its counsel, willfully chose to file an improper motion which made false allegations of fact in support of that motion. Such conduct is both reprehensible and inexcusable, and contrary to governing law.

Defendant therefore respectfully requests that the court take the following actions:

1. Find that both plaintiff and Scott and Corley, P.A. are in contempt of the 2011 Order,

2. Find that both plaintiff and Scott & Corley, P.A. have violated Rule 11, SCRCP,
3. Require plaintiff to comply with the 2011 Order by providing defendant with a signed copy of the TPP Agreement within a reasonable time or else face per diem sanctions to coerce compliance,
4. Find that the allegations in plaintiff's Rule 40(j) Motion that defendant consented to that motion are false and that plaintiff and its attorneys knew that they were false when made,
5. Dismiss the pending foreclosure case either without prejudice under the terms of the 2011 Order or with prejudice as a sanction for plaintiff's actions in the filing of the Rule 40(j) Motion,
6. Award such actual damages, including reasonable attorney fees, as may be proper,
7. Award such additional sanctions as may be required to compensate defendant for plaintiff's actions or to deter plaintiff from taking such actions in the future in other cases, and
8. For such other relief as to the court may seem just and proper.

Dated this November 4, 2017

  
 John R. Cantrell, Jr.  
 Attorney for the Defendant Richard C. Ivey  
 Cantrell Legal, PC  
 PO Box 1276  
 Goose Creek, SC 29445-1276  
 (843) 797-2454 (office)  
 (309) 213-0922 (fax)  
 Email: [lawyer@comcast.net](mailto:lawyer@comcast.net)

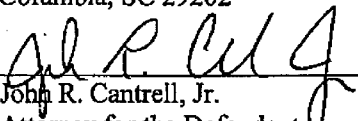
MARY P. BROWN  
 CLERK OF COURT  
 BERKELEY COUNTY, SC

*Handwritten:* 2:50 PM NOV -7  
**FILED**

Certificate of Service

I hereby certify that the Notice and Motion to Dismiss Case and For Sanctions in the above-referenced matter, has been served by mailing the same to the Plaintiff through its legal counsel at the address indicated below via first class mail, with the proper postage affixed, on this November 4, 2017 at the following address:

Scott & Corley, P.A.  
 PO Box 2065  
 Columbia, SC 29202

  
 John R. Cantrell, Jr.  
 Attorney for the Defendant

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY

NINTH JUDICIAL CIRCUIT

Federal National Mortgage Association  
("Fannie Mae"),

CASE NO.: 2016-CP-08-0591

Plaintiff,

vs.

Richard C. Ivey a/k/a Richard Curtis Ivey,  
*et al.*

OBJECTION TO RULE 40(J) MOTION

Defendants.

2016 NOV -7 PM 2:50  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

FILED

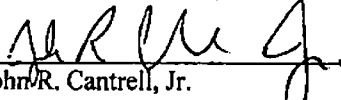
The defendant Richard C. Ivey, by and through his undersigned counsel, hereby objects to plaintiff's Rule 40(j) Motion to Strike ("Motion") the pending foreclosure case from the active roster.

The first reason defendant objects to plaintiff's Rule 40(j) Motion is based on the language of the Rule itself. Rule 40(j) is titled "Case Stricken From Docket by Agreement". In addition, in the text of the Rule itself it is clear that it only applies when "all parties adverse to that claim...agree in writing that it may be stricken...". In this case, defendant did not agree to the Motion, and plaintiff's counsel was aware that defendant did not agree to the Motion before it was filed with the court. To the best of defendant's knowledge, he cannot be forced to agree to the Motion, therefore the court cannot grant the Motion based on the clear language of the Rule itself.

The second reason defendant objects to the Motion is that there are allegations in the Motion that are false representations of fact that are made in support of the Motion. As indicated above, consent to the Motion is an essential element of a motion of this type. Plaintiff therefore stated in the Motion that the Motion was made "with the consent of all appearing parties of record" and again in the second sentence of the Motion "with the consent of all parties of record". However, these allegations are false, since defendant never consented to the Motion. Reference to the Rule itself, as quoted above, shows that this consent must be given in writing. Defendant requests that the court

take judicial notice of the fact that no written consent of the defendant was attached to the Motion, and defendant alleges that no such consent exists. Further, plaintiff was aware of the fact that no consent was given to this Motion before the Motion was filed with the court. Therefore, due to the false allegation of consent, the court should deny the Motion.

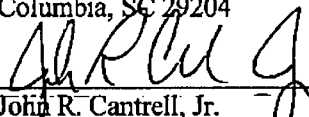
Dated this November 4, 2017

  
\_\_\_\_\_  
John R. Cantrell, Jr.  
Attorney for the Defendant Richard C. Ivey  
Cantrell Legal, PC  
PO Box 1276  
Goose Creek, SC 29445-1276  
(843) 797-2454 (office)  
(309) 213-0922 (fax)  
Email: [lawyer@comcast.net](mailto:lawyer@comcast.net)

Certificate of Service

I hereby certify that the Objection to Rule 40(j) Motion in the above-referenced matter, has been served by mailing the same to the Plaintiff through its legal counsel at the address indicated below via first class mail, with the proper postage affixed, on this November 4, 2017 at the following address:

Scott & Corley, P.A.  
PO Box 2065  
Columbia, SC 29204

  
\_\_\_\_\_  
John R. Cantrell, Jr.  
Attorney for the Defendant

2017 NOV -7 PM 2:50  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

*Handwritten:* FILED

# CANTRELL LEGAL, PC

PO BOX 1276

GOOSE CREEK SC 29445-1276

843-797-2454 (voice) 309-213-0922 (fax)

Email: lawyer@comcast.net

## COVER LETTER

November 4, 2017

Berkeley County Clerk of Court  
PO Box 219  
Moncks Corner SC 29461-0219

ATTN.: Recording Clerk

IN RE: Fannie Mae v. Ivey

Case No.: 2016-CP-08-0591 - ..

Dear Sir or Madam:

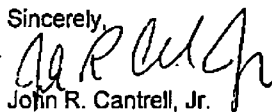
(X) Enclosed are the following documents for filing or for your files:  
Original Notice and Motion to Dismiss Case and For Sanctions  
Original Objection to Rule 40(j) Motion

( ) Please return the extra filed copies of the document with the courier.

(X) Enclosed is check # 1159 for \$25.00 for motion filing fee.

( ) Other:

Sincerely,

  
John R. Cantrell, Jr.  
Attorney at Law

Common Pleas

Clerk : Mary P. Brown  
300 B California Avenue  
Moncks Corner, SC 29461

Phone:(843) 719-4400 Fax:(843) 719-4509

Received From: Cantrell, John R Jr.  
PO Box 1276  
Goose Creek, SC 294451276

Date: 11/7/2017  
Receipt #: 6077346  
Clerk: c08thill

Paying for: Ivey, Richard C.

Transaction Type: Payment

Reference #: 1159

Payment Type: Check \$25.00

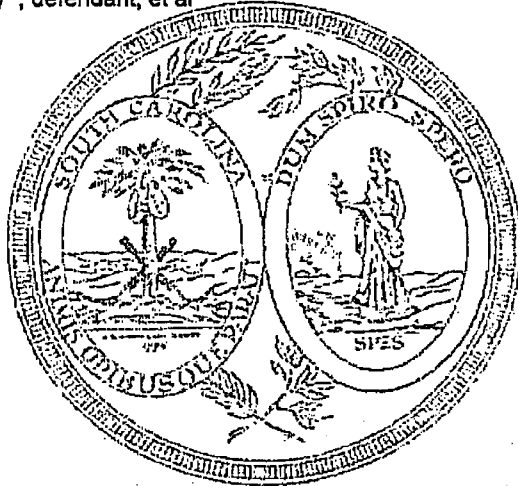
Comment:  
Non-Refundable

Total Paid: \$25.00

You may check the status of your Berkeley case at:

<http://www.sccourts.org/caseSearch/>

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2016CP0800591	Federal National Mortgage Association VS Richard C. Ivey , defendant, et al	\$25.00	\$25.00	\$0.00



<b>Total Cases:</b>	<b>1</b>	<b>\$25.00</b>	<b>\$25.00</b>	<b>\$0.00</b>
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STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Federal National Mortgage Association ("Fannie Mae"),

PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey, et al.,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-18-01829

JOINT STIPULATION AS TO FACTS

MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

FILED  
NOV 15 AM 9:27

(151083.00327)

The defendant Richard C. Ivey, by and through his undersigned counsel, and the undersigned William P. Stork, as counsel for plaintiff and an authorized representative of Scott & Corley, P.A., hereby file this Joint Stipulation As To Undisputed Facts in an effort to narrow the issues and reduce costs for matters that may need to be proved for hearings pending before this court currently set to be heard on November 15, 2017, or at such later time as the court may allow.

The parties named above hereby stipulate to the following undisputed facts:

1. This is an action to foreclose real property situated in Berkeley County, South Carolina.
2. The promissory note which is subject of this action was executed on August 18, 2006 by Marion K. Ivey. The mortgage which is subject of this action was executed on August 18, 2006 by Marion K. Ivey and Frank R. Ivey.
3. Frank K. Ivey passed away on September 19, 2008, Marion K. Ivey passed away on January 13, 2009.
4. Richard C. Ivey a/k/a Richard Curtis Ivey is the owner of the subject real property through inheritance, and not a signatory of the promissory note or the mortgage.
5. During the course of this pending foreclosure case, plaintiff sent defendant a streamlined Trial Payment Plan ("TPP") loan modification offer by mail.

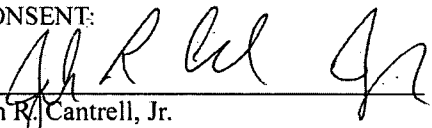
6. On June 26, 2017, defendant signed and returned the TPP Agreement to plaintiff by overnight mail. An authentic copy of the TPP Agreement signed by defendant is attached as an exhibit to this Joint Stipulation.
7. Pursuant to the TPP, defendant made three trial payments of \$1,018.11 to plaintiff on or before July 1, 2017, August 1, 2017, and September 1, 2017, which Scott & Corley, P.A. confirmed via email to defendant's counsel on September 18, 2017.
8. On October 11, 2017, Suzanne Albert, a/k/a Suzanne Burekhalter, on behalf of the court, informed plaintiff's counsel by email that the pending foreclosure case would be dismissed for failure to prosecute if the plaintiff was unable to proceed by October 31, 2017.
9. On October 31, 2017, plaintiff filed the pending Rule 40(j) Motion to Strike the foreclosure case from the active docket.
10. The Rule 40(j) Motion was signed by attorney William P. Stork, as counsel for plaintiff and as authorized agent for Scott & Corley, P.A., which is plaintiff's counsel in this case.
11. Neither defendant nor his counsel have ever consented, in writing or otherwise, to the filing of the Rule 40(j) Motion. Also, no other defendant in this case has provided plaintiff with written consent to the filing of the Rule 40(j) Motion.
12. Before filing the pending Rule 40(j) Motion, plaintiff's counsel was aware that defendant had not consented to the filing of that Motion.
13. Due to Defendant and Defendant's counsel's failure to consent to a Rule 40(j) Order, Plaintiff's counsel filed the pending Rule 40(j) Motion and included language stating that, pursuant to Rule 11, SCRCF, Plaintiff's counsel attempted to obtain consent from Defendant's Counsel, however a hearing on Plaintiff's motion must be scheduled.

***SIGNATURE BLOCK ON FOLLOWING PAGE***

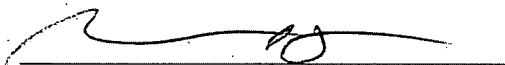
AND IT IS SO AGREED AND STIPULATED.

Dated this November 15, 2017.

I CONSENT:

  
\_\_\_\_\_  
John R. Cantrell, Jr.  
Attorney for the Defendant Richard C. Ivey  
Cantrell Legal, PC  
PO Box 1276  
Goose Creek, SC 29445-1276  
(843) 797-2454 (office)  
(309) 213-0922 (fax)  
Email: [lawyer@comcast.net](mailto:lawyer@comcast.net)

I CONSENT:

  
\_\_\_\_\_  
William P. Stork  
Attorney for the Plaintiff  
Scott & Corley, P.A.  
PO Box 2065  
Columbia, SC 29202  
(803) 252-3340 (office)  
(855) 601-4921 (fax)  
Email: [williams@scottandcorley.com](mailto:williams@scottandcorley.com)

**seterus**

PO Box 1077, Hartford, CT 06143-1077

L271AP.1

IVEY, MARION K  
108 WINDING ROCK RD  
GOOSE CREEK, SC 29445

**Mortgage Trial  
Modification Offer  
YOU'RE APPROVED!**

Loan number: 29477662, serviced by Seterus, Inc.

May 19, 2017

Dear IVEY, MARION K:

**Avoid Foreclosure—Act Now**

Your mortgage is delinquent. We've tried to contact you to discuss the foreclosure prevention options available to you, but your time to act is running out. To avoid foreclosure, you must contact us:

**Option 1: Stay in Your Home**

Based on our estimate of your home's value, you're approved for a Trial Period Plan to modify your mortgage payment (see attached). During this Trial Period Plan, you will be required to make three monthly payments in the amount of \$1,018.11 each.

Please call us at 866.570.5277 or write us at PO Box 1077, Hartford, CT 06143-1077 by June 02, 2017 to confirm your participation and for directions on how to make your first Trial Period Plan payment. If you follow the terms of the enclosed Trial Period Plan, your loan will be permanently modified. To stay in your home and avoid foreclosure, you must contact us right away or send us your Trial Period Plan payment by June 02, 2017.

**Option 2: Leave Your Home and Avoid Foreclosure**

If you are unable or unwilling to pay the monthly payment listed above, you have two options to avoid foreclosure—a short sale or a Mortgage Release. You can still avoid the financial and emotional impacts of foreclosure, but you must contact us now!

**Contact Us**

Seterus NMLS ID Number: 787641, Employee NMLS ID Number: 1010949

THIS COMMUNICATION IS FROM A DEBT COLLECTOR AS WE SOMETIMES ACT AS A DEBT COLLECTOR. WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. HOWEVER, IF YOU ARE IN BANKRUPTCY OR RECEIVED A BANKRUPTCY DISCHARGE OF THIS DEBT, THIS LETTER IS NOT AN ATTEMPT TO COLLECT THE DEBT. THIS NOTICE IS BEING FURNISHED FOR YOUR INFORMATION AND TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS. IF YOU RECEIVE OR HAVE RECEIVED A DISCHARGE OF THIS DEBT THAT IS NOT REAFFIRMED IN A BANKRUPTCY PROCEEDING, YOU WILL NOT BE PERSONALLY RESPONSIBLE FOR THE DEBT. COLORADO: SEE WWW.COLORADOATTORNEYGENERAL.GOV/CA FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT. Seterus, Inc. maintains a local office at 355 Union Boulevard, Suite 250, Lakewood, CO 80228. The office's phone number is 888.738.5576. NEW YORK CITY: 1411669, 1411665, 1411662. TENNESSEE: This collection agency is licensed by the Collection Service Board of the Department of Commerce and Insurance. Seterus, Inc. is licensed to do business at 14523 SW Millikan Way, Beaverton, OR 97005.

Page 1 of 8

Seterus, Inc.  
14523 SW Millikan Way, Suite 200  
Beaverton, OR 97005

Business Hours (Pacific Time)  
Monday-Thursday 5 a.m. to 8 p.m.  
Friday 5 a.m. to 6 p.m.

IVEY, MARION K.

May 19, 2017

Loan number: 29477662

We want to help you. Call us today at 866.570.5277 if you would like to discuss any of these options. If you do not respond by June 02, 2017, this offer will be revoked and we may refer your mortgage to foreclosure, or if your loan has been referred to foreclosure, foreclosure proceedings may continue, and a foreclosure sale may occur, which may add additional fees to your loan. For borrowers having difficulty making their payments, we have loan specialists available Monday-Thursday 5 a.m. to 9 p.m., Friday 5 a.m. to 6 p.m., and Saturday 9 a.m. to 12 p.m. (Pacific time); Saturday hours may vary.

Sincerely,

Seterus, Inc.

Enclosures:

Streamlined Modification Trial Period Plan Notice

Streamlined Modification Trial Period Plan - Frequently Asked Questions

Additional Trial Period Plan Information and Legal Notices

Return envelope

Page 2 of 8

Seterus, Inc.  
14523 SW Millikan Way, Suite 200  
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Monday-Thursday 5 a.m. to 8 p.m.  
Friday 5 a.m. to 6 p.m.

IVEY, MARION K.  
May 19, 2017  
Loan number: 29477662

To accept the terms of this trial plan, your signature is required below. All co-borrowers, if applicable, must also sign to indicate their acceptance as well. You can submit the signed form in one of the following ways: Please make sure your loan number is on the form.

- Overnight: 758 Rainbow Road, Windsor, CT 06095
- Regular Mail: P.O. Box 1077, Hartford, CT 06143-1077

I accept the terms of the Trial Period Plan as outlined in this letter.

LOAN #: 29477662

Borrower:

MARION K IVEY BY Marion K Ivey Signature Ch [Signature] Her Personal Representative Date 6/26/17  
Name (please print) Signature Representative Date  
RICHARD SCHWEE, Her Personal Representative

Co-Borrower (if applicable):

RICHARD SCHWEE, owner BY Ch [Signature] Signature Ch [Signature] Date 6/26/17  
Name (please print) Signature Date

Co-Borrower (if applicable):

Name (please print) Signature Date

Co-Borrower (if applicable):

Name (please print) Signature Date

Co-Borrower (if applicable):

Name (please print) Signature Date

Seterus will sign and return a copy of this document once we have received your first Trial Period Plan payment as shown above.

For Seterus, Inc. (Authorized Signer) Date

Seterus, Inc.  
14523 SW Millikan Way, Suite 200  
Beaverton, OR 97005

Business Hours (Pacific Time)  
Monday - Thursday 5 a.m. to 8 p.m.  
Friday 5 a.m. to 6 p.m.

## Streamlined Modification Trial Period Plan Notice

Based on a careful review of your mortgage account, we are offering you an opportunity to enter into a Trial Period Plan for a mortgage modification. This is the first step toward qualifying for more affordable mortgage payments or more manageable terms. It is important that you read this information in its entirety so that you completely understand the actions you need to take to successfully complete the Trial Period Plan to permanently modify your mortgage.

### Proposed Modification Terms

If you successfully complete the Trial Period Plan by making the required payments, you will receive a loan modification with an interest rate of 4.12500%, which will be fixed starting the date your modification is effective and for the full term of your modified loan. You may be eligible to have up to 30% of your principal balance deferred, and the deferred amount will not be subject to any interest charges. The deferred principal will not be due and payable until the earliest of:

- the end of the term of the modified mortgage; or
- the date the interest-bearing balance of your loan has been paid off; or
- the sale or transfer of your interest in the property; or
- a refinance of your mortgage loan.

### TIME IS OF THE ESSENCE

**Step 1: To Stop the Foreclosure Process (Suspension of Foreclosure)** In order for us to delay referring your mortgage to foreclosure or suspend foreclosure proceedings, if your loan has been referred to foreclosure:

- You must contact us at 866.570.5277 or in writing to PO Box 1077, Hartford, CT 06143-1077, no later than June 02, 2017, to indicate your intent to accept this offer;
- You may also make your first Trial Period Plan payment by June 02, 2017, which is earlier than the scheduled due date described below, and we will stop the foreclosure process.

However, if you do not respond by June 02, 2017, this offer will be revoked, and we may refer your mortgage to foreclosure, or if your loan has been referred to foreclosure, foreclosure proceedings may continue, and a foreclosure sale may occur.

If you do not respond as indicated above and still want to be considered for this plan, you can provide the first trial plan payment by July 31, 2017. At that time, Seterus will then evaluate your loan to determine if it is still eligible for the trial plan. If you are eligible, you will receive a letter confirming your trial period plan. If you are not eligible at that time, Seterus will notify you and refund the trial payment. If Seterus does not receive the trial plan payment by July 31, 2017, this offer will be revoked.

### Step 2: Make Trial Period Plan Payments

To successfully complete the Trial Period Plan, you must make the first Trial Period Plan payment below as soon as possible, but no later than July 31, 2017. To qualify for a permanent modification, you must make the remainder of your trial period payments by the last day of the month that these payments are due. The trial payment due dates appear in the table below. We encourage you to make the trial payments as of the due date to remain current on your plan.

Page 4 of 8

Seterus, Inc.  
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Beaverton, OR 97005

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Friday 5 a.m. to 6 p.m.

**Streamlined Modification Trial Period Plan Notice**  
**Continued**

TRIAL PERIOD PLAN 480		
Payment Number	Payment Amount	Due Date
1 <sup>st</sup> payment	\$1,018.11	July 01, 2017
2 <sup>nd</sup> payment	\$1,018.11	August 01, 2017
3 <sup>rd</sup> payment	\$1,018.11	September 01, 2017

Please send your Trial Period Plan payments to us at P.O. Box 11790, Newark, NJ 07101-4790. You may also make your payments by calling 866.570.5277 and speaking to an agent.

If you have questions about your Trial Period Plan or permanent modification requirements, please contact us at 866.570.5277.

**Next Steps**

- It is important that you thoroughly review the **Frequently Asked Questions and Additional Trial Period Plan Information and Legal Notices** information attached.
- We reserve the right to revoke this offer or terminate the plan following your acceptance if we learn of information that would make you ineligible for the Trial Period Plan.
- Once you have successfully made each of the trial payments as required, you have submitted the required signed copies of your modification agreement, we have signed the modification agreement, and you otherwise remain eligible for the modification, your mortgage will be permanently modified in accordance with the terms of your modification agreement.
- We must receive each payment in the month in which it is due. If you miss a payment or do not fulfill any other terms of your Trial Period Plan, this offer will end and your mortgage loan will not be modified.**
- If you have questions about this information, your Trial Period Plan payments, or our mortgage modification requirements, please contact us at 866.570.5277.
- If you feel that you cannot afford the Trial Period Plan payments shown above but want to remain in your home, or if you have decided to leave your home, please contact us at 866.570.5277 to discuss alternatives to foreclosure.
- Please note that except for your monthly mortgage payment amount during the Trial Period Plan, the terms of your existing note and all mortgage requirements remain in effect and unchanged during the Trial Period Plan.

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## Streamlined Modification Trial Period Plan Notice - Frequently Asked Questions

### Q: What else should I know about this offer?

- If you have taken Step 1 above, you make your new Trial Period Plan payments timely, and you continue to remain eligible for the permanent modification, we will not conduct a foreclosure sale.
- You will not be charged any fees for this Trial Period Plan or a permanent modification.
- If your loan is modified, we will waive all unpaid late charges.
- **Credit Reporting:** We will continue to report the delinquency status of your loan to credit reporting agencies as well as your entry into a Trial Period Plan in accordance with the requirements of the Fair Credit Reporting Act and the Consumer Data Industry Association requirements. Credit scoring companies generally consider the entry into a plan with reduced payments as an increased credit risk. As a result, entering into a Trial Period Plan may adversely affect your credit score, particularly if you have a good credit score. For more information about your credit score, go to [www.consumer.ftc.gov](http://www.consumer.ftc.gov).

### Q: Why is there a Trial Period Plan?

The Trial Period Plan offers you immediate payment relief and gives you time to make sure you can manage the estimated new monthly mortgage payment. The Trial Period Plan is temporary, and your existing loan and loan requirements remain in effect and unchanged during the Trial Period Plan.

### Q: When will I know if my loan can be modified permanently, and how will the modified loan balance be determined?

If you continue to remain eligible for the permanent modification, once you make all of your Trial Period Plan payments on time and return to us the required copies of a modification agreement with your signature, we will sign one copy and send it back to you so that you will have a fully executed modification agreement detailing the terms of the modified loan. Any difference between the amount of the Trial Period Plan payments and your regular mortgage payments will be added to the balance of your loan along with any other past due amounts as permitted by your loan documents. While this will increase the total amount that you owe, it should not significantly change the amount of your modified mortgage payment.

### Q: Will my interest rate and principal and interest payment be fixed after my loan is permanently modified?

If your loan is permanently modified as described above under the Proposed Modification Terms, your interest rate and monthly principal and interest payment will be fixed for the life of your mortgage. Regardless of the modification program, your new monthly payment will include an escrow for property taxes, hazard insurance, and other escrowed expenses. If the cost of your homeowners insurance, property tax assessment, or other escrowed expenses increases, your monthly payment will increase as well.

### Q: What happens if I can't afford the trial payments?

If you cannot afford the trial plan payments, contact us right away at 866-570-5277, so we can discuss other options. If you do not make the specified trial period payments in full when due, you will not qualify for a permanent modification and will not be allowed to enter into a permanent Loan Modification Agreement.

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Seterus, Inc.  
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Beaverton, OR 97005

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Friday 9 a.m. to 6 p.m.

**Streamlined Modification Trial Period Plan Notice - Frequently Asked Questions**  
**Continued**

- Q: What happens once I send the Borrower Response Package to you?**  
Within five business days of receipt of the package, we will send you a notice of incompleteness if there is any missing information or documentation that you must still submit. We cannot guarantee that you will receive any (or a particular type of) assistance.
- Q: What happens if I misstate or misrepresent my information/documentation?**  
If you intentionally misrepresent any fact in connection with any of the documentation you have submitted to demonstrate your status, financial information, or hardship, the Trial Period Plan and any Loan Modification Agreement may be cancelled, and we may pursue foreclosure proceedings. Note: Knowingly submitting false information may violate federal law.
- Q: What if my property is scheduled for a foreclosure sale in the future?**  
If you submit a complete Borrower Response Package less than 37 calendar days before a scheduled foreclosure sale, there is no guarantee we can evaluate you for a foreclosure alternative in time to stop the foreclosure sale. Even if we are able to approve you for a foreclosure alternative prior to a sale, a court with jurisdiction over the foreclosure proceeding, or the public official charged with carrying out the sale, may not halt the scheduled sale.
- Q: What happens to my mortgage while you are evaluating my Borrower Response Package?**  
You remain obligated to make all mortgage payments as they come due, even while we are evaluating the types of assistance that may be available.
- Q: Where can I find more information on foreclosure prevention?**  
Please see the Information on Avoiding Foreclosure in this package, contact us at 866.570.5277, or visit [www.seterus.com](http://www.seterus.com). Additional foreclosure prevention resources are available to you, provided by Fannie Mae, at [www.KnowYourOptions.com](http://www.KnowYourOptions.com).

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**Additional Trial Period Plan Information and Legal Notices**

The terms of this offer are accepted and the terms of your Trial Period Plan are effective on the day you verbally indicate to us your intent to accept this offer or make your first trial period payment per the Trial Period Plan outlined in this letter. By accepting this offer, you and we agree that:

**We will not refer your loan to foreclosure or proceed to foreclosure sale during the Trial Period Plan, provided you are complying with the terms of the Trial Period Plan:**

- Any pending foreclosure action or proceeding that has been suspended may be resumed as allowed by applicable law if you fail to comply with the terms of the plan or do not qualify for a permanent modification.
- You agree that we will hold the Trial Period Plan payments in an account until sufficient funds are in the account to pay your oldest delinquent monthly payment. You also agree that we will not pay you interest on the amounts held in the account. If any money is left in this account at the end of the Trial Period Plan and you qualify for a loan modification, those funds will be deducted from amounts that would otherwise be added to your modified principal balance.
- Our acceptance and posting of your payment during the Trial Period Plan will not be deemed a waiver of the acceleration of your loan (or foreclosure actions) and related activities, including the right to resume or continue foreclosure action if you fail to comply with the terms of the plan, and shall not constitute a cure of your default under your loan unless such payments are sufficient to completely cure your entire default under your loan.

**If your monthly payment did not include escrows for taxes and insurance, you are now required to do so:**

- You agree that any prior waiver that allowed you to pay directly for taxes and insurance is revoked.
- You agree that we will establish an escrow account and that you will pay required escrows into that account.

**Your current loan documents remain in effect; however, you may make the Trial Period Plan payment instead of the payment required under your loan documents:**

You agree that all terms and provisions of your current mortgage note and mortgage security instrument remain in full force and effect and you will comply with those terms, and that nothing in the Trial Period Plan shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the loan documents.

**The Trial Period Plan notice will be rescinded if an error is detected:**

You agree that, if there is an error in the terms of the Trial Period Plan, or you are deemed ineligible after issuance of the Trial Period Plan notice, the Trial Period Plan will be void and of no legal effect upon notice to you of such error. You understand that a corrected Trial Period Plan will be provided to you, if it is determined that you remain eligible for a loan modification after correction of the error.

Page 8 of 8

Seterus, Inc.  
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Business Hours (Pacific Time)  
Monday-Thursday 5 a.m. to 5 p.m.  
Friday 5 a.m. to 6 p.m.

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

PROBATE COURT

IN THE MATTER OF: MARION KUEHMSTEDT IVEY

CASE NUMBER: 2009ES08-148-2

**CERTIFICATE OF APPOINTMENT**

This is to certify that

RICHARD C. IVEY

is the duly qualified

- Personal Representative
- Guardian
- Conservator
- Trustee

In the above matter and that this Appointment, having been executed on the 23<sup>RD</sup> day of APRIL, 2012 is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS: NONE

Executed this 23<sup>RD</sup> day of APRIL, 2012

  
Keith W. Kornahrens, Probate Court Judge

Do not accept a copy of this Certificate without the raised seal of the Probate Court

FORM #141PC (1/91)  
62-1-305; 62-3-103; 62-5-304; 62-5-421; 62-7-201

IVEY, MARION K  
May 19, 2017  
Loan number: 29477662

To accept the terms of this trial plan, your signature is required below. All co-borrowers, if applicable, must also sign to indicate their acceptance as well. You can submit the signed form in one of the following ways. Please make sure your loan number is on the form.

- Overnight: 758 Rainbow Road, Windsor, CT 06095
- Regular Mail: PO Box 1077; Hartford, CT 06143-1077

I accept the terms of the Trial Period Plan as outlined in this letter:

LOAN #: 29477662

Borrower:

MAKION K. IVEY BY Richard Ivey Her Personal Representative 6/26/17  
Name (please print) Signature Representative Date

Co-Borrower (if applicable):  
RICHARD IVEY, OWNER BY INHERITANCE  
Name (please print) Signature Date

Signature Date

Co-Borrower (if applicable):

Name (please print) Signature Date

Co-Borrower (if applicable):

Name (please print) Signature Date

Co-Borrower (if applicable):

Name (please print) Signature Date

Seterus will sign and return a copy of this document once we have received your first Trial Period Plan payment as shown above.

[Signature] 11-20-17  
For Seterus, Inc. (Authorized Signer) Date

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
 )  
 Federal National Mortgage Association )  
 ("Fannie Mae") )  
 )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Richard C. Ivey a/k/a Richard Curtis )  
 Ivey; Crowfield Plantation Community )  
 Services Association, Inc.; Unifund CCR )  
 Partners Assignee of Palisades, a General )  
 Partnership; and CIT Bank; National )  
 Association, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
 CASE No. 2016-CP-08-00591

**ORDER DENYING DEFENDANT'S  
 MOTION FOR SANCTIONS  
 AND  
 DISMISSING CASE WITHOUT PREJUDICE**

151083.00327

This matter comes before the Court pursuant to the Motion to Dismiss Case and for Sanctions ("Motion") filed by Defendant Richard C. Ivey a/k/a Richard Curtis Ivey ("Defendant") against Federal National Mortgage Association ("Plaintiff"). A hearing was held before this Court on January 9, 2018. Present and participating at the hearing were William P. Stork, attorney for Plaintiff, and John R., Cantrell, Jr., attorney for Defendant. Based upon a review of the file, evidence presented and admitted in the record, arguments of counsel, and applicable South Carolina statutory and case law, I hereby find that the relief sought in Defendant's Motion for sanctions against Plaintiff and/or Plaintiff's counsel is hereby DENIED. I further find that the portion of Defendant's Motion seeking dismissal of the case, is hereby granted without prejudice based upon consent of the parties.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

**I hereby find and conclude as a matter of law that the South Carolina Supreme Court's 2011 Administrative Order does not apply to the Defendant nor the subject property in this matter.**

In Defendant's Motion, he alleges that Plaintiff is in contempt of the South Carolina Supreme court's May 2, 2011 Administrative Order ("Administrative Order"), and, thus, Defendant is entitled to sanctions against the Plaintiff and/or Plaintiff's counsel. This argument is without merit, however, because Defendant nor the subject property is entitled to the protection afforded by the Administrative Order.

The Administrative Order expressly and solely applies to the "Mortgagor," which is defined in the Administrative Order as, "every owner, mortgagor, and debtor under the note and mortgage at issue." [emphasis added]. In this case, Defendant was not a party to the original, underlying "note and mortgage at issue." Rather, Marion K. Ivey and Frank R. Ivey (the Defendant's deceased parents) (collectively, "Mortgagors") were the only "owners, mortgagors, and debtors" who executed and delivered the note and mortgage to Plaintiff's predecessor in interest. Defendant did not acquire his inherited interest in the subject property until well after his parents, the Mortgagors, closed on the underlying note and mortgage transaction. Accordingly, a plain reading of the Administrative Order dictates that this Court find that Defendant was not in privity of contract with Plaintiff nor its predecessor with regard to the note and mortgage at issue, and, therefore, any protections afforded by the Administrative Order do not apply to Defendant.

To further bolster this Court's finding and conclusion that the Administrative Order does not apply to Defendant in this case, this Court specifically takes judicial notice, pursuant to Rule 201 of the South Carolina Rules of Evidence, of the South Carolina Court Administration's formal letter dated June 7, 2011 ("Admin Explanation Letter"), which interprets and explains the intent, scope, and application of the Administrative Order.

Pursuant to the Admin Explanation Letter:

In paragraph A(1), concerning who is entitled to participate in foreclosure intervention, the definition of "Mortgagor," read in context **includes only parties involved in the mortgage transaction in question.** [emphasis added].

Admin Explanation Letter, Page 2.

In this case, Defendant is not a "party involved in the mortgage transaction in question," as the mortgage transaction was between and among the Mortgagors and Plaintiff's predecessor in interest, only. As stated above, Defendant merely obtained an inherited interest in the mortgaged property, subject to Plaintiff's first priority mortgage lien, *after* the note and mortgage transaction/closing was completed between the Borrowers and Plaintiff's predecessor.

I hereby find and conclude that, because the Defendant is not entitled to the protections afforded by the Administrative Order, neither Plaintiff nor Plaintiff's counsel can be sanctioned for any alleged violation of said Administrative Order. Neither Plaintiff nor Plaintiff's counsel is, nor ever was, required to comply with any of the terms of the Administrative Order with respect to Defendant in this case; therefore, it is axiomatic that Plaintiff or Plaintiff's counsel could be sanctioned for failing to do that which is not required by law.

Based on the foregoing, I hereby find and conclude that Defendant's Motion for sanctions based upon an alleged violation of the Administrative Order fails as a matter of law and is denied.

- I. **In the alternative, even in the event that this Court were to assume that the Administrative Order applies to Defendant, I hereby find and conclude as a matter of law that Plaintiff fully complied with the terms of the Administrative Order.**

Subsequent to the filing of this action, Plaintiff actually, and in good faith, participated in loss mitigation efforts with the Defendant which resulted in the Defendant entering into a trial modification with Plaintiff on or about July 2017 ("Trial Mod"). The Administrative Order does not impose any specific requirements on the Mortgagee when the parties have merely entered into a temporary or trial work-out solution. Instead, the Administrative Order only sets forth certain required procedures in the event that the parties agree to a formal and final loan modification or loss mitigation plan as follows:

In the event that the Mortgagor and Mortgagee agree on any **loan modification or other loss mitigation plan** ("Agreement"), such Agreement shall be reduced to writing, executed by the Mortgagor and Mortgagee, and served on all parties in the case. Any pending case shall be stayed, and no hearing or foreclosure sale held for 90 days following the entry of any Agreement, unless the Mortgagor shall not comply with the terms of the Agreement. [emphasis added].

...

**If the Mortgagor shall be in compliance with the terms of the Agreement after 90 days, the Mortgagee's attorney shall promptly file a notice of dismissal of the action without prejudice, and the case will be dismissed.** (emphasis added).

In this case, the Parties did not agree to any final "loan modification or loss mitigation plan" as contemplated by the Administrative Order. Rather, Plaintiff allowed Defendant to participate in a tentative work-out solution in the form of the

Trial Mod. The Trial Mod entered into by Defendant and Plaintiff in this case was merely temporary, with the express provision that if Defendant were to default under the Trial Mod, Defendant would be denied a permanent loan modification. I, therefore, find and conclude that the Trial Mod does not constitute an "Agreement" as defined in the Administrative Order, and, thus, Plaintiff did not violate any provision of the Administrative Order with respect to the Trial Mod.

Defendant also contends that Plaintiff should be sanctioned for failing to dismiss the case without prejudice immediately after the parties entered into the Trial Mod. I find and conclude that Plaintiff did not violate the dismissal provisions of the Administrative Order for the following reasons: (i) the Administrative Order does not require the dismissal of the case unless and until the Defendant "shall be in compliance with the terms of the Agreement after 90 days;" (ii) Defendant did not complete and fully comply with the Trial Mod for 90 days until approximately September 2017; (iii) Plaintiff, in good faith, filed a Rule 40(j) Motion to Strike from Active Docket in October 2017 ("Motion to Strike"), to allow time for the parties to formalize a permanent loan modification (at the conclusion of the Trial Mod period); and (iv) Plaintiff has met and complied with the term "promptly" in the Administrative Order, although not specifically defined, as Plaintiff is now seeking and consents to the dismissal of the action.

Additionally, this Court's finding is bolstered by the fact that the South Carolina Supreme Court contemplated and provided in its Administrative Order the need for at least 90 days of certainty of compliance by Defendant before requiring the Plaintiff to "promptly" seek dismissal of the case without prejudice. This 90-day period furthers the goals of judicial economy (by ensuring the Plaintiff would not have to file an entire new action in the event of an early default under a loan modification), mitigation of legal costs for Plaintiff and Defendant, and mitigation of potential substantial delay that

would result if the case were dismissed and required to be refiled due to Defendant's early default under any loan modification.

Accordingly, even in the event the Court were to find that the Administrative Order applies in this case, the Defendant's argument in support of sanctions against Plaintiff and/or Plaintiff's counsel fails as a matter of law because Plaintiff complied with all terms of the Administrative Order. I hereby find and conclude as a matter of law that Plaintiff complied with the Administrative Order; therefore, Defendant's Motion for sanctions is denied

**II. Plaintiff and its counsel complied with Rule 11, SCRPC, at all times throughout the case, and, therefore, any alleged violation thereof cannot support a basis for sanctions against Plaintiff and/or Plaintiff's counsel.**

Under Rule 11(a), SCRPC, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it. *Ex parte Gregory*, 378 S.C. 430, 663 S.E.2d 46 (2008). "Rule 11 requires '[a]ll motions filed shall contain an affirmation that the movant's counsel prior to filing the motion has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter ... unless the movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held.' The penalty for noncompliance is to strike the motion unless the attorney promptly amends the document to comply with the rule." *Jackson v. Speed*, 326 S.C. 289, 310, 486 S.E.2d 750, 761 (1997). The determination whether to impose sanctions is at the discretion of the Judge and "sounds in equity rather than at law." *Holmes v. Haynsworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 641, 760 S.E.2d 399, 410 (2014), *reh'g denied* (Aug. 5, 2014).

Counsel for Plaintiff filed its Motion to Strike pursuant to Rule 40(j) on or about October 31, 2017 ("Motion to Strike"), seeking a hearing and Order Striking the case

from the active docket to allow the parties sufficient time to resolve the matter. In accordance with the requirements of Rule 11, SCRCP, *prior to filing its Motion to Strike*, counsel for Plaintiff discussed Plaintiff's desire to strike the case with leave to restore with counsel for Defendant and respectfully requested Defendant's consent to Plaintiff's Motion to Strike. Plaintiff concedes that counsel for Defendant advised Plaintiff that Defendant would not consent to the Motion to Strike; however, Plaintiff's good faith efforts to resolve the Motion to Strike prior to its filing are evidenced by the last paragraph of the filed Motion to Strike which states:

Pursuant to Rule 11, SCRCP, the undersigned hereby certifies that prior to filing this motion, opposing counsel was contacted in good faith to resolve this matter and that it appears that a hearing will be required.

Counsel for Defendant incorrectly asserts that Plaintiff "willfully" filed the Motion to Strike without Defendant's consent, and as such, Plaintiff allegedly violated Rule 11, SCRCP. Defendant's assertion is misplaced and without merit based on the foregoing. Although the filed Motion to Strike contained two minor, scrivener's errors mistakenly indicating that the Defendant consented to the Motion, the fact that the Motion to Strike expressly provided that the parties did not reach an agreement as to the Motion to Strike, and that a hearing was necessary, supersedes any prior scrivener's error and illustrates Plaintiff's full compliance with Rule 11, SCRCP. The filed Motion to Strike clearly stated that a hearing on the matter would be required to provide Defendant a full and fair opportunity to dispute and/or argue against the Motion to Strike.

As further evidence that scrivener's errors occur in matters such as these, Defendant's Motion Cover Sheet for his Motion to Dismiss lists Defendant's counsel in the place of Plaintiff's counsel, and Plaintiff's counsel in the place of Defendant's counsel. (see **Exhibit "2"**). While the Court has recognized, "[i]t is of vital importance, not only to the parties involved but to the court as well, that the correct attorneys are

listed as the attorneys of record," Plaintiff's counsel recognizes that scrivener's errors occur and is not seeking to sanction Defendant's counsel for this scrivener's error. *Culbertson v. Clemens*, 322 S.C. 20, 25, 471 S.E.2d 163, 165 (1996).

It is well settled that "The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." Rule 61, SCRPC. Any defect in Plaintiff's Motion to Strike was a harmless error which did not affect the substantial rights of the parties. Defendant completed his loan modification review, was approved, and is now current. Whether the case was stricken from the docket, or whether it was dismissed, is now irrelevant since the loan is current and Plaintiff consents to the matter being dismissed.

Lastly, Defendant claims that Plaintiff filed the Motion to Strike merely for the purposes of delay and that such alleged improper motive is improper under Rule 11, SCRPC. Defendant has provided no evidence whatsoever that supports this contention. Rather, Plaintiff's true intent in seeking the Motion to Strike was to allow the parties sufficient time to consummate a settlement that would be beneficial to both parties. Defendant failed to show any prejudice to him resulting from the Motion to Strike, and Plaintiff established good grounds to file such Motion to Strike.

For the foregoing reasons, Defendant's claim that Plaintiff's counsel and/or Plaintiff violated Rule 11 SCRPC is completely unsupported by the facts and evidence and fails to support an award of sanctions against Plaintiff as a matter of law.

#### ORDER

Based on the foregoing, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. Defendant's Motion for Sanctions against Plaintiff and/or Plaintiff's counsel based upon an alleged violation of the Administrative Order is denied;

2. Defendant's Motion for Sanctions against Plaintiff and/or Plaintiff's counsel based upon an alleged violation of Rule 11 of the South Carolina Rules of Civil Procedure is denied;

3. The case is dismissed without prejudice; and

IT IS SO ORDERED.

\_\_\_\_\_, 2018

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Dale Edward Van Slambrook  
Berkeley County Master in Equity

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY

NINTH JUDICIAL CIRCUIT

Federal National Mortgage Association  
("Fannie Mae"),

CASE NO.: 2016-CP-08-0591

Plaintiff,

vs.

**ORDER GRANTING MOTION TO  
DISMISS CASE AND FOR SANCTIONS**

Richard C. Ivey a/k/a Richard Curtis Ivey,  
*et al.*

\_\_\_\_\_  
Defendants.

This matter comes before the court pursuant to the Motion to Dismiss Case and For Sanctions ("Sanctions Motion") which was filed with this court on November 7, 2017, and which came before this court for hearing originally on November 15, 2017, and was heard in part and then continued for final hearing until January 9, 2018. Present at both hearings were Plaintiff's counsel William P. Stork, and the defendant Richard C. Ivey and his counsel, John R. Cantrell, Jr. The court makes the following Findings of Fact and Conclusions of Law pursuant to Rule 52, SCRPC.<sup>1</sup>

**FINDINGS OF FACT**

1. Plaintiff Federal National Mortgage Association ("Fannie Mae") filed this foreclosure action against Richard C. Ivey a/k/a Richard Curtis Ivey ("Mr. Ivey"), *et al.*, on March 9, 2016.
2. The Note and Mortgage in this case were signed by one or both of Mr. Ivey's parents on August 18, 2016, and not by Mr. Ivey. (see Def. Ex. 1, Joint Stipulation at par. 2)
3. Mr. Ivey acquired his interest in the subject property after the loan documents were signed in this case by inheritance. (Def. Ex. 1 at par. 3 & 4)

<sup>1</sup> To the extent that any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent that any Conclusions of Law constitute Findings of Fact, they are so adopted.

4. During the pendency of this foreclosure case, plaintiff sent Mr. Ivey a Streamlined Trial Payment Plan loan modification offer by mail. (Def. Ex. 1 at par. 5 and attached exhibit)
5. On June 26, 2017, Mr. Ivey signed and returned the TPP Agreement to plaintiff by overnight mail. (Def. Ex. 1 at par. 6 and attached exhibit)
6. Pursuant to the TPP, Mr. Ivey made three timely payments in the correct amount of \$1,018.11 to plaintiff on or before July 1, 2017, August 1, 2017, and September 1, 2017. Plaintiff's counsel confirmed receipt of these payments via email on September 18, 2017. (Def. Ex. 1 at par. 7 and Def. Ex. 2 for copy of email)
7. At the bottom of the signature page of the TPP Agreement, it states as follows: "Seterus will sign and return a copy of this document once we have received your first Trial Period Plan payment as shown above." (Def. Ex. 1 exhibit p. 3) Seterus is plaintiff's mortgage servicer.
8. Prior to the time that the Sanctions Motion was filed, Mr. Ivey's counsel made numerous attempts via email to plaintiff's counsel to get plaintiff to provide him with a copy of the TPP Agreement signed by Seterus, as plaintiff's servicer. These requests were made beginning on July 18, 2017 through October 24, 2017. (Def. Ex. 2)
9. Although plaintiff's counsel made representations that a copy of the TPP Agreement signed by plaintiff's servicer would be provided to Mr. Ivey, that did not occur prior to the time that Mr. Ivey filed the Sanctions Motion.
10. At the original hearing on the Sanctions Motion on November 15, 2017, the court instructed plaintiff's counsel to have his client provide a copy of the TPP Agreement signed by plaintiff's servicer prior to the continued hearing date on the Sanctions Motion scheduled for January 9, 2018. Plaintiff complied with this directive by providing Mr.

Ivey with a copy of the TPP Agreement signed by plaintiff's servicer on November 27, 2017.

11. On October 11, 2017, court staff informed plaintiff's counsel via email that the pending foreclosure case would be dismissed for failure to prosecute if plaintiff was unable to proceed by October 31, 2017. (Def. Ex. 1 at par. 8)
12. On October 24, 2017, defendant's counsel emailed plaintiff's counsel stating that plaintiff may be in contempt of the 2011 South Carolina Supreme Court Administrative Order regarding foreclosure intervention options ("2011 Admin Order") since plaintiff had not yet returned a signed copy of the TPP Agreement, and since plaintiff's counsel had not yet filed a notice of dismissal of the foreclosure case without prejudice as defendant believed was required by the 2011 Admin Order. Mr. Ivey's counsel further stated that if plaintiff were to immediately comply with the 2011 Admin Order by filing a notice of dismissal of the foreclosure case without prejudice, then Mr. Ivey would be satisfied with that result. However, in the event that plaintiff was not willing to dismiss the case without prejudice, that Mr. Ivey might file a motion for contempt of the 2011 Admin Order and would then ask the court to reimburse his fees for that necessary work. (Def. Ex. 2)
13. On October 31, 2017, plaintiff filed a Rule 40(j) Motion to Strike the foreclosure case from the active docket. (Def. Ex. 1 at par. 9)
14. On November 1, 2017, Mr. Ivey's counsel received notice of the filing of the Rule 40(j) Motion and emailed plaintiff's counsel to confirm that they were aware that the motion had been filed without Mr. Ivey's consent. (Def. Ex. 2)

15. Plaintiff's counsel replied to defendant's counsel's email also on November 1, 2017 and indicated that the Rule 40(j) Motion was filed intentionally and with knowledge that Mr. Ivey did not consent. Plaintiff's counsel further stated that the Rule 40(j) Motion was properly filed since they had attempted, pursuant to Rule 11 SCRCPC, to resolve it first with plaintiff's counsel before it was filed. (Def. Ex. 2) (Def. Ex. 1 at par. 13)
16. Mr. Ivey filed an Objection to the Rule 40(j) Motion on November 7, 2017.
17. The Rule 40(j) Motion was signed by William P. Stork as plaintiff's counsel and as an authorized agent for Scott & Corley, P.A., which is plaintiff's counsel in this case. (Def. Ex. 1 at par. 10)
18. Neither Mr. Ivey nor his counsel have ever consented, in writing or otherwise to the filing of plaintiff's Rule 40(j) Motion. Also, no other defendant in this case has provided plaintiff with written consent to the filing of the Rule 40(j) Motion. (Def. Ex. 1 at par. 11)
19. Before filing the Rule 40(j) Motion, plaintiff's counsel was aware that Mr. Ivey had not consented to the filing of the Rule 40(j) Motion. (Def. Ex. 1 at par. 12)
20. Reference to the court's records shows that the cover sheet for the Rule 40(j) Motion did not request a hearing on the motion, but that it was submitted with the box checked stating that it was a "Proposed Order/Consent Order."
21. Reference to the one page body of the Rule 40(j) Motion shows that plaintiff claimed in the first sentence that the motion was made "with the consent of all parties of record." The second sentence of the motion also indicates that it was made "with the consent of all parties of record", but these factual representations were false.
22. The last sentence of the body of the Rule 40(j) Motion states that "[p]ursuant to Rule 11, SCRCPC, the undersigned [counsel for plaintiff] hereby certifies that prior to filing this

Motion, opposing counsel was contacted in good faith to resolve this matter and that it appears that a hearing will be required.”

23. Attached to plaintiff's Rule 40(j) Motion was a proposed Form 4 Order granting the motion.
24. Based on the representations of consent in the Rule 40(j) Motion and the lack of a request for a hearing in the motion cover sheet attached to the motion, the court granted the Rule 40(j) Motion by signing and filing the proposed Form 4 Order on October 31, 2017, which was the same day it was received by the court.
25. At the first hearing on the Sanctions Motion on November 15, 2017, the court ordered that the Rule 40(j) Order was to be vacated due to the fact that it was “improvidently granted due to the fact that the defendant Richard C. Ivey did not consent to the entry of that order.” This order vacating the prior order was filed with the court on December 1, 2017.
26. Prior to the final hearing on the Sanctions Motion, Mr. Ivey signed an agreement assuming the mortgage loan without recourse as to personal liability, and the parties signed the final loan modification documents as well.
27. In support of defendant's arguments in support of the Sanctions Motion at the final hearing on January 9, 2018, defendant submitted five exhibits, all but one of which were admitted without objection. However, defendant's Exhibit 5, which is a portion of the Fannie Mae Servicing Guide regarding allowable exemptions, was conditionally admitted subject to plaintiff's objection that it was dated October 25, 2016, which was after the date that the pending foreclosure case was filed, and the court reserved ruling on that issue.

28. In support of plaintiff's arguments in opposition to the Sanctions Motion at the final hearing on January 9, 2018, defendant did not attempt to introduce any evidence into the record. However, defendant did reference a June 7, 2011 letter from South Carolina Court Administration Director Rosalyn W. Frierson to Desa Ballard and Robert A. Muckenfuss, which letter the court chose to take judicial notice regarding sua sponte. After the court did so, the court allowed defendant's counsel to note his objection to this letter on the grounds of lack of authentication, lack of relevance, and hearsay.
29. Although Mr. Ivey was present at both hearings, and his counsel indicated that he was prepared to offer evidence of his alleged damages, the court informed him that it was premature of offer evidence of damages until after the court issues its ruling on the Sanctions Motion, after which he could present evidence of damages by way of affidavit in the event that the court ruled in his favor.

#### **DEFENDANT'S ARGUMENTS**

Defendant argues that plaintiff has violated both the 2011 Admin Order and Rule 11, SCRCF, and that both plaintiff and its counsel, Scott & Corley, PA should be jointly and severally liable to defendant for any damages that defendant has incurred as a result of having filed the Objection to plaintiff's Rule 40(j) Motion, and the instant Sanctions Motion.

Defendant claims that plaintiff is in contempt of the 2011 Admin Order in two particulars. First, that plaintiff's failure have its servicer sign and return a copy of the TPP Agreement prior to defendant's filing of the Objection to the Rule 40(j) Motion and the Sanctions Motion violated that portion of the 2011 Admin Order which requires that "[i]n the event that the Mortgagor and Mortgagee agree on any loan modification or other loss mitigation plan ("Agreement"), such Agreement shall be reduced to writing, executed by the Mortgagor and

Mortgagee, and served on all parties in the case.” Defendant argues that above the signature line for Plaintiff’s servicer on the TPP Agreement, plaintiff’s servicer represents that it would provide a signed copy of the TPP Agreement once defendant had made the first payment under that agreement on June 26, 2017, which defendant argues provides the timing for when the TPP Agreement should have been signed and provided to the defendant. Defendant argues that the failure of the plaintiff to provide a copy of the signed TPP Agreement prior to the filing of the Sanctions Motion puts plaintiff itself in civil contempt of the 2011 Admin Order.

Defendant further claims that both plaintiff and its counsel, Scott & Corley, PA are in contempt of the 2011 Admin Order due to plaintiff’s failure to dismiss the foreclosure case without prejudice promptly after 90 days from July 1, 2017, which was the first payment date under the TPP Agreement. Defendant argues that the 2011 Admin Order requires that “[i]f the Mortgagor shall be in compliance with the terms of the Agreement after 90 days, the Mortgagee’s attorney shall promptly file a notice of dismissal of the action without prejudice, and the case will be dismissed. Such notice of dismissal shall be served on all parties to the action.”

Defendant argues that this duty is imposed upon plaintiff’s counsel specifically, and upon plaintiff under the law of agency, so that both plaintiff and its counsel should be liable for civil contempt for any violation of this section of the 2011 Admin Order.

Defendant also argues that plaintiff and/or its counsel are liable to him for damages for violation of Rule 11, SCRCF in regards to the allegedly improper Rule 40(j) Motion that was filed by plaintiff. Defendant argues that it was improper *ab initio* since defendant claims that a Rule 40(j) motion can only be filed with the consent of all parties of record, and that plaintiff’s counsel admitted that no such consent had been obtained before willfully filing the motion. Defendant further argues that the plaintiff’s repeated representations in the motion that such

consent was obtained are false, along with its claim to have requested a hearing on the motion when the cover sheet did not request such a hearing, and that these were false allegations of material fact which violate Rule 11, SCRCPP since there was no good ground to support them. Defendant also argues that the Rule 40(j) motion was made in bad faith, both due to the repeated false allegations contained in the motion and due to the allegation that the motion was filed merely to delay the court's dismissal of the case without prejudice for lack of prosecution, which the court indicated would occur after October 31, 2017, which was the date that plaintiff filed the allegedly improper Rule 40(j) Motion, which the court granted and then later vacated.

Due to plaintiff's alleged violation of the 2011 Admin Order and Rule 11, SCRCPP, defendant asks that the court award the following relief: (1) find that both plaintiff and Scott & Corley PA have violated Rule 11, SCRCPP, (2) find that the allegations in the Rule 40(j) Motion that defendant consented to that motion were false and that both plaintiff and Scott & Corley PA knew that the allegations were false when they were made, (3) dismiss the foreclosure case either without prejudice under the 2011 Admin Order or with prejudice as a sanction, (4) award such actual damages, including attorney fees, as may be proper, (5) award such additional sanctions as may be required to compensate defendant for plaintiff's actions or to deter plaintiff from taking such actions in future cases, (6) find that any creditor attorney fees incurred by plaintiff either in regards to the allegedly improper Rule 40(j) Motion or in defending against the Sanctions Motion are unreasonable and therefore not allowed to be charged against the mortgage account on this property, and (7) award such other relief as the court may find to be proper. Although defendant had originally asked the court to award per diem sanctions until plaintiff produced a copy of the TPP Agreement signed by plaintiff's servicer, defendant withdrew this request after receiving that document prior to the final hearing in this matter.

In response to plaintiff's arguments, defendant argues that he is a Mortgagor under the 2011 Admin Order, since the plain language of that order states that the term "[m]ortgagor shall include every owner, mortgagor and debtor under the note and mortgage at issue," and that he is admittedly the owner of the property by inheritance, so the fact that he may not qualify under either the "mortgagor" or "debtor under the note and mortgage at issue" terms does not matter, since he qualifies as an owner. He also objects to the admission of the June 7, 2011 letter on the grounds of lack of authentication, lack of relevance since the 2011 Admin Order was not amended as a result of this letter and he alleges that it can't be changed or interpreted by the Director of South Carolina Court Administration, and that it is hearsay. However, the court has overruled these objections and taken judicial notice of this letter and its contents as admissible evidence. He also argues that in the event that the letter is properly admitted as evidence, that Mr. Ivey is a party involved in the mortgage transaction in question, since he has signed an agreement to assume the loan pursuant to the final mortgage modification that has been entered into between the parties prior to the final hearing on the Sanctions Motion, and because his inherited ownership interest in the property has always been subject to the mortgage transaction in question.

He further argues that Fannie Mae itself considers him to be a mortgagor under its published policies requiring its servicers to treat successors in interest due to inheritance as mortgagors, as evidenced by his Exhibits 3, 4, and 5. He argues that the 2011 Admin Order is procedural only, as is also indicated in the June 7, 2011 letter from Rosalyn W. Frierson, and that the fact that Fannie Mae considers him to be a mortgagor for purposes of foreclosure intervention under its guidelines means that he should also be considered as a Mortgagor under the 2011 Admin Order. He argues that, from a public policy perspective, it is not equitable to

exclude successors in interest such as widows and orphans from the protection of the 2011 Admin Order, since that is the result if the court accepts the plaintiff's interpretation of that Order, especially since such an interpretation would violate the plaintiff's own published guidelines regarding the entitlement of such persons to participate in the foreclosure intervention process and treating them as if they were mortgagors under the loan documents. Mr. Ivey believes that Fannie Mae should be equitably estopped from taking a position in this case contrary to their published guidelines on the question of whether or not he is a mortgagor entitled to foreclosure intervention. He also believes that the 90 day period runs from the first payment date, which in this case was July 1, 2017, and that it is not absurd for the 2011 Admin Order to require that the case be dismissed without prejudice prior to the time that the parties enter into a final loan modification agreement, even though there may be some chance that a plaintiff might be required to refile a foreclosure action in the event that a case were dismissed before the parties agreed to a final loan modification agreement. The defendant argues that the plain language of the 2011 Admin Order appears to require dismissal within 90 days after the payments start under the TPP Agreement, and that it is not absurd for the Supreme Court to want to remove a case from the docket and therefore minimize a homeowner's litigation costs once the homeowner has complied with the terms of the TPP Agreement.

In response to plaintiff's arguments as to why they should not be liable for a violation of Rule 11, SCRCP, defendant argues a finding of bad faith is not required to find a willful violation of Rule 11, but that all that is required for willfulness is that the court find that the plaintiff acted intentionally, as they did here when filing the Rule 40(j) Motion, and that the action taken was in violation of the law or applicable rules. Defendant argues that plaintiff's multiple false allegations about consent were not mere scrivener's errors, but that they were

material misrepresentations of fact which the court relied upon when signing the Rule 40(j) Form 4 Order the same day it was received. The defendant believes that it was not obvious to the court that a hearing had been requested on the Rule 40(j) Motion, since the motion's cover sheet did not request such a hearing, and that even if such a hearing had clearly been requested, that it still doesn't mean that there was good ground to support a Rule 40(j) motion that was filed with knowledge by plaintiff's counsel that there was no consent to the motion, which is required for filing a motion of that type. Defendant therefore argues that the court's main focus should be on the fact that there can be no good ground to support a Rule 40(j) Motion that is filed without the consent of all parties in writing as is required by the rule, and that the fact that the court vacated the improper order immediately, once it was brought to the court's attention at the first hearing on the Sanctions Motion on November 15, 2017, due to the fact that the defendant had not consented to the filing of that motion is evidence that there were no good grounds to support it.

However, although a finding of bad faith is not required to support a motion for a violation of Rule 11, SCRPC, that there was actually bad faith in this case since the plaintiff admits that the Rule 40(j) Motion was filed to in order to give the parties time to complete a settlement, even though the defendant had demanded that the plaintiff dismiss the case under the 2011 Admin Order prior to the time that any settlement was reached. Defendant argues that this extra time that plaintiff sought to achieve is evidence of plaintiff's desire to delay the termination of the case, which would have happened if plaintiff had not filed the allegedly improper Rule 40(j) Motion on the day that it did, since the court had advised plaintiff that the case would be dismissed for lack of prosecution if plaintiff didn't file a Rule 40(j) Motion on the day that they did.

Contrary to plaintiff's allegations that they didn't attach a proposed order to the Rule 40(j) Motion, which they claim was evidence that they were seeking a hearing on the Rule 40(j) Motion, defendant alleges that the copy of the Rule 40(j) Motion which was served upon defendant's counsel includes a Form 4 Order granting the Rule 40(j) Motion and that the defendant showed his copy of the Rule 40(j) Motion to opposing counsel and the Court at the final hearing on the Sanctions Motion on January 9, 2018, which included that proposed Form 4 Order, and that this was the same Form 4 Order that the court signed and filed the same day it was received by the court, with the only apparent changes by the court being some tracing of the "X" in the boxes by the court on the Form 4 Order. Plaintiff requests that the court take judicial notice of the fact that it is the same Form 4 Order that was submitted by the plaintiff with the Rule 40(j) Motion.

In responding to plaintiff's claims that the allegations in the Rule 40(j) Motion were harmless error that should be disregarded by the court, since the parties were able to eventually reach a final loan modification agreement, defendant argues that this does not excuse the filing of an improper motion, and that defendant was damaged by having to incur attorney fees to file an objection to the improper motion, which objection was a complete success when the court vacated the improvidently entered order, and that the defendant likewise incurred substantial damages in the form of attorney fees, lost wages, and mileage expenses as a result of having to prosecute the Sanctions Motion to recover those damages from the plaintiff, since the parties were unable to reach an agreement to settle the Sanctions Motions, although they tried to do so. Defendant argues that the end does not justify the means, and that a court of equity should not allow the plaintiff to file improper motions with no good ground to support them with impunity. Defendant further argues that plaintiff should be judicially estopped from claiming that the false

material misrepresentations of fact in the Rule 40(j) Motion were harmless error, since the court relied upon those false allegations when signing the Rule 40(j) Order, so plaintiff cannot recharacterize them now, especially since plaintiff did nothing to alert the court to these false allegations of fact even after the court signed and returned the Rule 40(j) Order to the plaintiff during the two weeks between the date it was filed by the court and the November 15, 2017 first hearing on the Objection to the Rule 40(j) Motion and the Sanctions Motion. Defendant argues that it was only his pursuit of the Objection to the allegedly improper Rule 40(j) Motion and the Sanctions Motion that brought this improvidently entered order to the court's attention.

### **PLAINTIFF'S ARGUMENTS**

In response to defendant's arguments, plaintiff argues primarily that the 2011 Admin Order does not apply to this foreclosure case, since plaintiff alleges that in order for the 2011 Admin Order to apply, the defendant must be the one to have signed the original loan documents, which the defendant admits he did not do, since he obtained his interest in the property after the loan documents were signed by his parents, from whom he inherited the property subject to the foreclosure action. Plaintiff bases this argument on the June 7, 2011 letter from South Carolina Court Administration Director Rosalyn W. Frierson, which states in regards to whom it applies that "concerning who is entitled to participate in foreclosure intervention, the definition of 'Mortgagor,' read in context includes only parties involved in the mortgage transaction in question." Since Mr. Ivey did not sign the loan documents, plaintiff argues that he is not a mortgagor to whom the 2011 Admin Order applies. Plaintiff further argues that if the court does rule that the 2011 Admin Order applies to Mr. Ivey and this foreclosure action, that the Sanctions Motion is moot since the parties have entered into a final loan modification agreement before the final hearing on the Sanctions Motion was held. Plaintiff also argues that the 90 day period in

the 2011 Admin Order does not start at the time the parties enter into a TPP Agreement, but rather when the parties reach a final loan modification agreement, since it would be absurd to dismiss a case without prejudice before a final agreement is reached, since sometimes agreements fail before final loan modification is reached and in that event the plaintiff would just have to file another foreclosure case, which is not in the interests of judicial economy.

In regards to plaintiff's alleged violation of Rule 11, SCRCP, plaintiff argues that there was no violation, since both plaintiff and its counsel at all times complied with Rule 11, SCRCP. Plaintiff argues that either a party or its counsel may only be sanctioned under Rule 11 if they file a frivolous document with the court, make frivolous arguments, or file any document in bad faith. They argue that Rule 11 requires them to consult with opposing counsel before filing any motion in this case, which they did, which was evidence of their good faith in filing the motion even though they knew that defendant did not consent to the Rule 40(j) motion. They argue that they did not willfully file the motion, contrary to defendant's allegations, due to their attempts to resolve the motion before filing it. Although they admit that the Rule 40(j) Motion contained "two minor scrivener's errors" in regards to the false allegations of consent in their motion, plaintiff argues that the fact that their motion expressly provided that the parties did not reach an agreement about filing the Rule 40(j) Motion, and that a hearing was necessary, overcomes the alleged scrivener's errors and shows plaintiff's compliance with Rule 11. Plaintiff argues that defendant's sanctions motion likewise contains scrivener's errors in that the motion cover sheet mistakenly labels the plaintiff's attorney as the attorney for the defendant, and vice versa, but that they are not seeking to sanction defendant for these scrivener's errors.

Plaintiff further argues that any defect in the Rule 40(j) Motion was a harmless error that did not affect the substantial rights of the parties and argues that this harmless error must be

disregarded by the court pursuant to Rule 61, SCRCPC. Since the parties were able to reach a final loan modification agreement in spite of any alleged errors in the filing of the Rule 40(j) Motion, plaintiff argues this is proof that those errors were harmless.

Plaintiff argues that the fact that there was no proposed order submitted with the Rule 40(j) Motion is further evidence that plaintiff intended that the defendant get a full and fair opportunity for hearing before the court made any decision on the motion.

Plaintiff argues that defendant's allegations that the Rule 40(j) Motion was filed in bad faith for purposes of delay are without evidentiary support, and that the reason the Rule 40(j) Motion was filed was to allow the parties time to complete a mutually beneficial settlement of the foreclosure case by way of a final loan modification agreement, which they did prior to the final hearing on the Sanctions Motion.

#### CONCLUSIONS OF LAW

First, the court would like to address the evidentiary objection that plaintiff made as to Defendant's Exhibit 5, which is the portion of the Fannie Mae Servicing Guide that applies to determine allowable exemptions regarding transfers of property. The plaintiff objected that since this document was dated October 25, 2016, and this foreclosure case was filed on March 9, 2016, this document is not relevant to this case. The plaintiff is correct that there is a header on this document showing the October 25, 2016 date, but defendant argued at the hearing in this matter that this header date was merely the date that the document was printed by him from the Fannie Mae website, and that the actual date of the document's applicability was November 12, 2014, as shown near the top of the first page of the document. Upon considering the matter, the court agrees that the document was made applicable by Fannie Mae as a change to its Servicing Guide on November 12, 2014 and that the other date in the header appears to be a normal printing date.

Therefore, the court overrules plaintiff's limited objection to Defendant's Exhibit 5 on the date issue and admits this document into evidence, since it was created prior to the filing of this foreclosure case.

Defendant argues that plaintiff has violated both the 2011 Admin Order, and Rule 11, SCRCF. Therefore, the court will address each in turn. In addition to the sanctions requested by the plaintiff in the Sanctions Motion, both parties are also asking the court to dismiss this case, either with or without prejudice, which the court will also address.

First, the court will consider defendant's allegation that the plaintiff has violated the 2011 Admin Order issued by the South Carolina Supreme Court regarding procedural rules for providing certain persons with the right to foreclosure intervention. Defendant argues that plaintiff has violated the 2011 Admin Order both by failing to provide defendant with a signed copy of the TPP Agreement in a timely manner, and by failing to dismiss the case promptly without prejudice after the defendant had complied with the terms of the TPP Agreement for a period of 90 days.

As a preliminary matter, as plaintiff correctly points out, there can be no violation of the 2011 Admin Order if it doesn't apply to defendant or the facts of this case. Therefore, the first question to be considered is whether or not defendant qualifies for foreclosure intervention under the 2011 Admin Order. There is no dispute that the property at issue is the defendant's primary residence or that he is the owner of the property by inheritance from his parents, who were the parties that signed the loan documents, and that the defendant himself did not sign those documents. The dispute in this case centers on whether or not the defendant is a Mortgagor as defined in the 2011 Admin Order. Interestingly, a defendant can qualify as a Mortgagor entitled to foreclosure intervention under that Order in three ways. First, the defendant can be an owner

of the property. Second, the defendant can be a mortgagor. Third, the defendant can be a debtor under the note and mortgage at issue.

Mr. Ivey argues that he qualifies as a Mortgagor since he is an owner of the property by inheritance. A plain reading of the language of the 2011 Admin Order appears to support this contention. The parties have stipulated to the fact that he is an owner of the subject property by inheritance. That appears to be enough for him to qualify as a Mortgagor under the definition of that term in the 2011 Admin Order. It is not necessary for him to qualify under all three prongs of the Mortgagor definition, but only qualifying under one will suffice. Fannie Mae argues that the language of the June 7, 2011 letter from the Director of South Carolina Court Administration clearly limits the application of the 2011 Admin Order to “parties involved in the mortgage transaction in question.” However, this court is not convinced that this letter was either intended to or can change the plain language of the 2011 Admin Order itself. First, the letter indicates that the Supreme Court does not intend to amend the language of the 2011 Admin Order, so its plain language still controls. Second, the letter indicates that the 2011 Admin Order was intended to be procedural only and was not attempting to create or change any substantive rights. That fact will become important upon further examination. Third, the court believes that the defendant is involved in the mortgage transaction in question, since his ownership interest is subject to the terms of the mortgage, which is a lien against his property, even though he did not sign the original loan documents. He is no stranger to the mortgage transaction for that reason alone. Moreover, since the Supreme Court itself did not choose to amend the terms of its 2011 Admin Order, this court is not convinced that the Director of South Carolina Court Administration can do so, which is why this court chooses to closely follow the unamended plain language of the

2011 Admin Order itself, and to interpret the June 7, 2011 letter in the light most favorable to Mr. Ivey's status as the undisputed owner of the subject property.

Regarding the second prong of the definition, that of "mortgagor", at first glance it might appear that Mr. Ivey could not possibly qualify under this prong, since he admittedly did not sign the mortgage in question. The same could be said regarding the third prong of the definition. However, it must be remembered that the 2011 Admin Order is procedural only, and seeks only to allow persons protected by its terms to enjoy the full amount of any substantive rights that they might have to foreclosure intervention. In that regard, examination of defendant's exhibits 3-5, which the court has admitted into evidence, make it clear that the plaintiff, Fannie Mae, treats Mr. Ivey as a borrower under its Servicing Guide, and requires its servicers to comply with policies announced in that Guide. In particular, in Defendant's Exhibit 3, in the last full paragraph at the bottom of the first page, Fannie Mae states that if the property in question has been transferred pursuant to an exempt transaction as defined in the Servicing Guide, then if a mortgage loan is delinquent, and the new property owner is unable to bring the loan current, but may be able to resolve the delinquency with a foreclosure prevention alternative (including a modification) and assume the mortgage loan, then "the servicer must collect a Borrower Response Package from the new property owner and evaluate the request as if they were a borrower." That makes it necessary to reference Fannie Mae's list of exempt transactions to see if Mr. Ivey qualifies for this treatment as if he were a borrower. Defendant's Exhibit 5 is the Servicing Guide's section defining exempt transactions, and it includes, under the second main bullet point on page 1 of that exhibit, "[a] transfer of the property ... to ... the spouse, child(ren), parent(s), brother(s), or sister(s), grandparent(s), or grandchild(ren) of the borrower ... as long as the transferee occupies the property." It therefore appears to the court that the plaintiff has

conferred upon Mr. Ivey status as a borrower for purposes of being entitled to any foreclosure intervention options that they provide. This status as a borrower would therefore also appear to entitle Mr. Ivey to foreclosure intervention under either the second prong of the Mortgagor definition in the 2011 Admin Order or perhaps even the third prong, due to the use of the word “borrower” in the Fannie Mae Servicing Guide. In any event, the court sees no reason to disqualify Mr. Ivey from enjoying the procedural protections of the 2011 Admin Order when he has substantive rights to foreclosure intervention by Fannie Mae's own admission. However, the court is at a loss to understand why plaintiff would make allegations in its arguments about Mr. Ivey's failure to qualify for foreclosure intervention under the terms of the 2011 Admin Order when it has admitted in its Servicing Guide that he qualifies for foreclosure intervention due to his ownership of the property by an exempt transfer of that property from his parents upon their death. It does not appear that plaintiff's arguments on this issue are being made in good faith.

Since the court has now found that the 2011 Admin Order applies to this case and this defendant, the court must determine whether or not plaintiff has complied with that Order. Defendant argues first that plaintiff failed to comply with the 2011 Admin Order because plaintiff did not timely provide defendant with a signed copy of the TPP Agreement, which was signed by Mr. Ivey as evidenced by the exhibit attached to Defendant's Ex. 1. The 2011 Admin Order requires that “[i]n the event that the Mortgagor and Mortgagee agree on any loan modification or other loss mitigation plan (“Agreement”), such Agreement shall be reduced to writing, executed by the Mortgagor and Mortgagee, and served on all parties in the case.” Plaintiff asks this court to rule that this language only applies to a final loan modification agreement, and not to the TPP Agreement at issue in this case, but the plain language of the 2011 Admin Order does not support that limitation. The court finds that “any loan modification or

other loss mitigation plan” means just what it says, and that it includes the TPP Agreement at issue in this case. The TPP Agreement in this case was reduced to writing as is evidenced by the copy attached to Defendant's Ex. 1. It was also executed by the Mr. Ivey as the Mortgagor. However, it was not executed by the Mortgagee or served on all parties in the case prior to the time that Defendant's Sanctions Motion was filed with the court. It appears from the terms of the TPP Agreement itself that plaintiff's servicer was supposed to have signed and returned a copy of the TPP Agreement to defendant after having received Mr. Ivey's first payment under that Agreement on June 26, 2017. However, as is evidenced by Defendant's Ex. 2, defendant's counsel sent multiple requests for that document from July 18, 2017 until October 24, 2017, which was shortly before defendant filed the Sanctions Motion and well after defendant had completed all three payments required under the TPP Agreement, which is well after Mr. Ivey's first payment under that Agreement. Under the circumstances, the court cannot find that plaintiff complied with the terms of the 2011 Admin Order regarding signing and serving the executed Agreement on all parties in the case. Indeed, the plaintiff has provided no evidence that anyone other than Mr. Ivey was ever served with the TPP Agreement, and that didn't happen until after the first hearing on the Sanctions Motion, at which time the court instructed plaintiff to execute the TPP Agreement and provide a copy of it to Mr. Ivey. However, barring intervention by the defendant and the court, there is no evidence that plaintiff would ever have complied with this requirement of the 2011 Admin Order. This error was not harmless, since as the defendant argued at the first hearing on the Sanctions Motion, had plaintiff chosen to transfer this loan to another servicer prior to the time that the parties entered into a final loan modification, Mr. Ivey would have had no proof that he had entered into a TPP Agreement with plaintiff, and a new servicer could have made him start all over again with the foreclosure intervention process. This

is not acceptable to this court or under the requirements of the 2011 Admin Order. “The circuit court may punish by fine or imprisonment, at the discretion of the court, all contempts of authority in any cause or hearing before the same.” (S.C. Code Sec. 14-5-320). The elements of civil contempt are “(A) The existence of a valid duty, order or obligation or prohibition; (B) Appropriate knowledge/notice (actual or implied) of element (A), with sufficient time to comply; (C) A willful, voluntary or even an attempted violation of the duty, order or obligation found in element (A).” (South Carolina Contempt Law, 2<sup>nd</sup> Ed., by Timothy L. Brown, 2011)(citations omitted). Here, there is no question that the 2011 Admin Order was a valid order that this court is required to enforce. The court also takes judicial notice of the fact that both plaintiff and its counsel have been active in filing foreclosure cases for a long time and are fully aware of the terms of the 2011 Admin Order and had plenty of time to comply with it in regards to executing and serving the TPP Agreement in this case. Plaintiff's failure to comply with the 2011 Admin Order was voluntary, since they had plenty of time to comply with the requirement to execute and serve all parties with the TPP Agreement, but failed to do so within the time that they had contracted with Mr. Ivey to do so. Plaintiff's failure to comply with the 2011 Admin Order was also willful, since “[a] willful act is "one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law." *State v. Bevilacqua*, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct.App.1994) (internal quotation marks and citation omitted); accord *Widman v. Widman*, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct.App.2001).” *Floyd v. Floyd*, 365 S.C. 56, 615 S.E.2d 465 (Ct. App. 2005). “Once the moving party makes out a prima facie case of contempt by pleading the Order and showing its noncompliance, the burden shifts to the Respondent to establish his defense and inability to

comply with the order.” *Redick v. Redick*, 266 S.C. 241, 222 S.E.2d 758 (1976). Here defendant has made a prima facie case for contempt of the 2011 Admin Order by plaintiff in regards to its failure to execute and serve all parties with the TPP Agreement in a timely manner, and plaintiff has failed to establish a suitable defense and has not alleged inability to comply with the order, which plaintiff eventually did after being instructed to do so by the court after the first hearing on the Sanctions Motion, so plaintiff was clearly able to comply with the 2011 Admin Order had it chosen to do so. The court therefore finds that Fannie Mae is in civil contempt of the 2011 Admin Order by failing to execute the TPP Agreement in a timely manner and serve it on all parties in the case as required by that Order.

Second, defendant claims that both plaintiff and its counsel are in contempt of the 2011 Admin Order due to their failure to comply with the following language in the 2011 Admin Order: “If the Mortgagor shall be in compliance with the terms of the Agreement after 90 days, the Mortgagee's attorney shall promptly file a notice of dismissal of the action without prejudice, and the case will be dismissed. Such notice of dismissal shall be served on all parties to the action.” The court has already ruled that the Agreement referred to in the order includes the TPP Agreement at issue in this case, and not merely the final loan modification agreement. The 2011 Admin Order is not absurd, as plaintiff argues, due to the fact that it might be necessary for a plaintiff that had dismissed a case without prejudice to have to refile a case upon a failure of the Mortgagor to finalize a permanent loan modification agreement. Indeed, even if a Mortgagor completes a final loan modification agreement, it might still be necessary for a Mortgagee to refile a foreclosure action previously dismissed at some point after a final loan modification is executed. However, allowing the foreclosure case to be dismissed within 90 days after a Mortgagor has successfully performed under a TPP Agreement serves the useful purpose of

removing unnecessary foreclosure cases from the court's docket and in minimizing the Mortgagor's attorney fees for defending the foreclosure, and thereby allowing the Mortgagor to use that money to fund any payments due to the Mortgagee under the loan modification agreement instead, which is a much better use of the Mortgagor's funds. In this case, it is apparent that both plaintiff and its counsel were aware that Mr. Ivey had completed all required payments under the TPP Agreement by no later than September 18, 2017, but plaintiff's counsel failed to file the required notice of voluntary dismissal, in spite of defendant's counsel's emails asking them to do so as late as October 24, 2017. Indeed, even the court itself, for other reasons in regards to lack of prosecution of the case that had been pending a long time before this court, had requested that the plaintiff either move the case forward or else the court would dismiss the case without prejudice after the October 31, 2017 deadline to move the case along. Ironically, had plaintiff simply taken no action at all, instead of its action in filing the allegedly improper Rule 40(j) Motion without defendant's consent on October 31, 2017, the plaintiff's case would have achieved the same result as if it had attempted to dismiss the case without prejudice under the terms of the 2011 Admin Order, and Mr. Ivey, as evidenced by the October 24, 2017 email from his counsel to plaintiff's counsel, would have found it unnecessary to take the actions for which he is now seeking sanctions. So plaintiff's harm appears to have been self-inflicted due both to its failure to promptly dismiss the case without prejudice after September 1, 2017, and due to the filing of the Rule 40(j) Motion, which served only to delay the dismissal of the foreclosure case. Therefore, applying the standards set forth above in regards to whether plaintiff's failure to dismiss the case with prejudice promptly was in contempt of the 2011 Admin Order, the court finds that both plaintiff and its counsel, Scott and Corley PA, are jointly and severally liable for contempt of the Order due to the fact that plaintiff's counsel failed to comply

with its duty to promptly dismiss the case without prejudice after that duty arose on September 1, 2017 and plaintiff is liable for this contempt as well since plaintiff's counsel is its agent in this foreclosure case, and plaintiff had a duty to instruct its counsel to dismiss the case without prejudice as of September 1, 2017, but willfully failed to do so.

Defendant also requests that the court sanction plaintiff and/or its counsel, for violating Rule 11, SCRCPC in regards to the allegedly improper Rule 40(j) Motion. The court has the authority to sanction either a party or its counsel, as may be appropriate, under the language of Rule 11, SCRCPC for filing any document without good grounds to support it or for filing any document in bad faith even if there are good grounds to support it. Our Supreme Court has held that a document filed for purposes of delay is evidence of bad faith. *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). In this case, there were no good grounds to support filing a Rule 40(j) Motion without the written consent of all parties to the case, which the Rule itself requires. Plaintiff's arguments about scrivener's errors and providing notice of a hearing aside, it is simply improper to file a Rule 40(j) Motion without the written consent of all parties to the case, which principle it appears that plaintiff simply does not understand, since it has admitted to filing the Rule 40(j) Motion with knowledge that Mr. Ivey did not consent, but still thinks that it can offer explanations as to why such a filing is proper. Plaintiff even continues to maintain in its most recent filings in this matter that its Rule 40(j) Motion was properly filed, in spite of this court's ruling in the Form 4 Order vacating the Rule 40(j) Order that it was improvidently granted due to the fact that Mr. Ivey did not consent to its filing. Such stubborn failure to properly read Rule 40(j), or this court's order vacating the improvidently granted Rule 40(j) Motion, is inexcusable. If the court were to consider plaintiff's arguments about its justification for filing the Rule 40(j) Motion without the written consent of all parties to the case, which isn't

necessary due to the plain language of the Rule, the court finds that they are lacking. There is no way that a reasonable attorney, or even a paralegal, could read the one page body of the Rule 40(j) Motion without realizing that it had twice in as many sentences falsely alleged the consent of all appearing parties of record. The court therefore has to wonder whether or not plaintiff's counsel actually did read the Rule 40(j) Motion prior to filing it, since the failure to do so would also be a Rule 11, SCRCP violation. In addition, reading the cover sheet attached to the Rule 40(j) Motion makes it clear that plaintiff was not requesting a hearing on the motion, but instead expected the court to sign it as a consent order, which the court did the same day it was received. Plaintiff's language at the end of its one page Rule 40(j) Motion about a hearing being required makes no sense in this context, and contrary to plaintiff's arguments in this case, there is no express language in this last sentence in the Rule 40(j) Motion informing the court that the defendant had not consented to the filing of the motion. To the contrary, every indication in the Rule 40(j) Motion that was given led the court to believe that this was a proposed consent order, and the court relied upon those material misrepresentations of fact in signing and filing the Form 4 Order the very day it was received by the court. The court was able to do so since the plaintiff had attached that very same Form 4 order to the Rule 40(j) Motion, contrary to plaintiff's representations to this court at the January 9, 2018 hearing on the Sanctions Motion, at which time the court takes judicial notice that defendant's counsel produced for inspection by plaintiff's counsel and the court his copy of the Rule 40(j) Motion that was served upon him by plaintiff's counsel, which copy included the proposed Form 4 Order that plaintiff has denied attaching to the Rule 40(j) Motion. Plaintiff also insists that Rule 11(a) requires that its counsel consult with opposing counsel prior to filing a motion in a foreclosure case, but plaintiff is mistaken in the reading of that Rule as well as in the reading of Rule 40(j), since Rule 11(a) clearly provides an

exception to the duty to consult in regards to any action taken in “real estate foreclosure cases,” which is the type of case involved in this action. The court also finds that the timing of the Rule 40(j) Motion leads the court to conclude that it was filed in bad faith for purposes of delay. If the plaintiff had not filed the improper Rule 40(j) Motion without defendant's consent when it did, then the foreclosure case would have been dismissed by this court for lack of prosecution. Plaintiff admits to having filed the Rule 40(j) Motion to provide the parties with more time to complete the final loan modification agreement, but there is no such right that plaintiff possesses. Plaintiff's duty was to dismiss the case as promptly after September 1, 2017 as possible, so plaintiff's Rule 40(j) Motion served only to delay that requirement of the 2011 Admin Order, and was done in bad faith. The court therefore finds that both plaintiff's counsel, Scott & Corley PA, and plaintiff are jointly liable to defendant for violating Rule 11, SCRPC by filing an improper Rule 40(j) Motion without the written consent of all parties in the foreclosure case, and for the purpose of delaying the dismissal of this case, which constitutes bad faith, and entitles defendant to sanctions for that willful violation of the SCRPC.

Having now found that plaintiff and/or its counsel are liable to defendant either for civil contempt of the 2011 Admin Order or a violation of Rule 11, SCRPC, the court must now decide how the pending foreclosure case should be dismissed. It is clear that the court could dismiss the case without prejudice under the terms of the 2011 Admin Order, and plaintiff consents to that action at this point, although it is long overdue in the opinion of this court. The court believes that it could also dismiss the case with prejudice pursuant to Rule 41(a)(2) and (b) due to plaintiff's failure to comply with Rule 11, SCRPC and its willful violation of the 2011 Admin Order. *See Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 92, 399 S.E.2d 16, 19 (Ct. App. 1990). However, the court chooses not to dismiss the case with prejudice under the facts of this

case, but will instead award the defendant appropriate other relief, including such damages as the defendant may prove by affidavit or any later hearing on damages as may be necessary, that have resulted from either the filing of the improper Rule 40(j) Motion or the contempt of the 2011 Admin Order. The court will also order such injunctive relief as may be necessary to prevent similar defendants from suffering similar damages by either plaintiff or its counsel in this state in any other pending or future foreclosure actions that might be filed by them.

### CONCLUSION

As is more specifically detailed above, the court finds that the plaintiff, Fannie Mae, and its counsel, Scott & Corley PA, should be sanctioned for willful violation of the 2011 Admin Order both due to plaintiff's failure to timely execute and serve all parties with a copy of the fully executed TPP Agreement, and due to plaintiff and its counsel's failure to promptly dismiss the pending foreclosure case after defendant's final payment under the TPP Agreement on or before September 1, 2017. The court also finds that both plaintiff and its counsel have violated Rule 11(a), SCRPC by filing the improper Rule 40(j) Motion without first obtaining written consent from all parties in the pending case, since there were no good grounds to support the filing of the Rule 40(j) Motion without that consent. The court finds that both plaintiff and its counsel are judicially estopped from now claiming that the material misrepresentations of fact regarding the alleged consent of all parties to the filing of that Motion are mere scrivener's errors, since the court relied upon those material misrepresentations of fact when signing and filing the improvidently granted Rule 40(j) Order. In addition, the court finds that the pending foreclosure case should be dismissed without prejudice immediately upon the filing of this order. However, the court will retain jurisdiction over this case to the extent necessary to enforce the terms of this order that follow.

IT IS THEREFORE ORDERED that

1. Both the plaintiff, Fannie Mae, and its counsel, Scott & Corley PA, have violated the 2011 Admin Order as indicated above, and are jointly and severally liable to the defendant, Richard C. Ivey, for any damages caused by that violation;
2. Both the plaintiff, Fannie Mae, and its counsel, Scott & Corley PA, have violated Rule 11(a), SCRCF by filing or authorizing the filing of the improper Rule 40(j) Motion, and are jointly and severally liable to the defendant, Richard C. Ivey, for any damages caused by that violation;
3. The pending foreclosure case is dismissed without prejudice;
4. The defendant shall submit affidavits in support of his request for compensation for any economic damages incurred in this case as the direct result of either the filing of the improper Rule 40(j) Motion or the violation of the 2011 Admin Order, and such affidavits shall be submitted to the court by email within 10 days after defendant's receipt of notice of the entry of this order, and shall be served by email upon plaintiff's counsel for review by them and their client. If plaintiff objects to defendant's alleged damages, it shall serve such written objection within 10 days after email receipt by its counsel of the damage affidavits and shall file its objection in writing with the court, after which an evidentiary hearing shall be set by the court on that objection. However, the court reserves the right to award such additional damages as may be appropriate for any time necessary for defendant to prove up its damages in the event a court hearing on damages is required by plaintiff;

5. The allegations in the Rule 40(j) motion that defendant consented to that motion were false and both plaintiff and its counsel, Scott & Corley PA, knew that those allegations were materially false when they were made;
6. Pursuant to South Carolina Code Sec. 14-5-320, the court finds that punitive damages are appropriate due to conduct by both plaintiff and its counsel that was taken either in reckless or intentional violation of applicable law and the South Carolina Rules of Civil Procedure, so the court awards the defendant, Richard C. Ivey, \$5,000.00 in punitive damages, to be awarded jointly and severally against Fannie Mae and Scott & Corley, PA and to be paid by them and received by defendant within 30 days after plaintiff's notice of entry of this order with this sanction payable to Cantrell Legal, PC, PO Box 1276, Goose Creek, South Carolina 29445 for the benefit of Richard C. Ivey;
7. That any attorney fees or costs incurred by plaintiff or its servicer for either the filing of the Rule 40(j) Motion or plaintiff's defense of the Sanctions Motion are found to be unreasonable under the terms of the Note and Mortgage at issue and therefore plaintiff shall not charge any such fees or costs for these matters to defendant Richard C. Ivey's mortgage loan account, and that violation of this order by plaintiff or its servicer shall entitle defendant to such attorney fees and other damages as defendant may prove to have incurred in successfully enforcing this order in this court;
8. That due to the potential for repetition of these same improper actions that both plaintiff and its counsel have taken in this case or in other cases currently pending in other South Carolina courts or to be filed in the future in any South Carolina court, this court hereby orders a permanent injunction requiring both Fannie Mae and Scott & Corley PA, and all attorneys employed by them in South Carolina now or in the future to take the following

actions, and that this permanent injunction shall be enforceable by any applicable defendant in any court in this state:

- To refrain from filing any Rule 40(j) motions in this state unless those motions fully comply with Rule 40(j), SCRCP
- To fully comply with the 2011 Admin Order by promptly executing and serving on all parties to any foreclosure case a fully executed copy of the TPP Agreement in that case within 30 days of the receipt by plaintiff's counsel of both a copy of the TPP Agreement executed by the defendant Mortgagor and the first payment due under any TPP Agreement
- To fully comply with the 2011 Admin Order by promptly dismissing without prejudice every pending or future foreclosure case within 30 days after any defendant Mortgagor's completion of payments due under the TPP Agreement at issue in that Mortgagor's pending or future foreclosure case

IT IS SO ORDERED.

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Dale Edward Van Slambrook  
Berkeley County Master in Equity

Moncks Corner, SC  
February \_\_\_\_, 2018

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BERKELEY )  
 )  
 Federal National Mortgage Association )  
 ("Fannie Mae") )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Richard C. Ivey a/k/a Richard Curtis )  
 Ivey; Crowfield Plantation Community )  
 Services Association, Inc.; Unifund CCR )  
 Partners Assignee of Palisades, a General )  
 Partnership; and CIT Bank, National )  
 Association, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 CASE No. 2016-CP-08-00591

**PLAINTIFF'S OBJECTION AND  
 MEMORANDUM IN OPPOSITION TO  
 DEFENDANT'S MOTION FOR SANCTIONS**

2018 JAN -9 PM 12:40  
 MARY P. BROWNE  
 CLERK OF COURT  
 BERKELEY COUNTY, S.C.  
 FJBG

151083.00327

Federal National Mortgage Association ("Plaintiff") hereby objects to the Motion for Sanctions ("Motion") filed by Defendant Richard C. Ivey a/k/a Richard Curtis Ivey ("Defendant") and respectfully submits the following Memorandum in Opposition to the Motion.

In support of his Motion, Defendant seeks sanctions against Plaintiff and/or Plaintiff's counsel based on the following two theories: (1) alleged contempt of the South Carolina Supreme court's May 2, 2011 Administrative Order ("Administrative Order"), and (2) alleged violation of Rule 11 SCRPC.

The Defendant's asserted bases in support of his requests for sanctions are without merit and fail as a matter of law based upon the following:

*[Handwritten signature]*

C.L

## ARGUMENT

**I. The subject property and Defendant are not entitled to the protection of the South Carolina Supreme Court's 2011 Administrative Order.**

After the entry of the Administrative Order, the South Carolina Court Administration issued a formal letter dated June 7, 2011 ("Admin Explanation Letter"), which interpreted and explained the intent, scope, and application of the Administrative Order. A true and correct copy of the Admin Explanation Letter is attached hereto as Exhibit 1 and incorporated herein by reference. Pursuant to the Admin Explanation Letter:

In paragraph A(1), concerning who is entitled to participate in foreclosure intervention, the definition of "Mortgagor," read in context includes only parties involved in the mortgage transaction in question. [emphasis added].

Admin Explanation Letter, Page 2.

In this case, the Defendant is not a "party involved in the mortgage transaction in question," as the mortgage transaction was between and among Marion K. Ivey and Frank R. Ivey (the Defendant's deceased parents) (collectively, "Borrowers") and Plaintiff's predecessor in interest, only. The Defendant merely obtained an inherited ownership interest in the mortgaged property, subject to Plaintiff's first priority mortgage lien, *after* the Note and Mortgage transaction/closing was completed between the Borrowers and Plaintiff's predecessor. Because the Defendant is not entitled to the protections afforded by the Administrative Order, neither Plaintiff nor counsel for Plaintiff can be sanctioned for any alleged violation of said Administrative Order. Plaintiff nor Plaintiff's counsel is or was required to comply with any of the terms of the Administrative Order in this case, therefore, it is axiomatic to assert that Plaintiff or Plaintiff's counsel could be sanctioned for failing to do that which it is not by law required to do.

Furthermore, although the Plaintiff was not required to comply with the Administrative Order under the facts of this case, the Plaintiff actually, and in good faith, entered into loss mitigation efforts with the Defendant, which concluded in a formal Mortgage Modification and Assumption Agreement ("Loan Mod").

Accordingly, the Defendant's argument in support of sanctions against Plaintiff and/or Plaintiff's counsel for alleged violation(s) of the Administrative Order fails as a matter of law. In the alternative, in the event the Court finds that the Administrative Order is applicable, which Plaintiff expressly denies, the Defendant's argument in support of sanctions against Plaintiff and/or Plaintiff's counsel is moot due to the fact that the parties actually negotiated and entered into finalized Loan Mod.

**II. Plaintiff and its counsel complied with Rule 11, SCRPC, at all times throughout the case, and, therefore, any alleged violation thereof cannot support a basis for sanctions against Plaintiff and/or Plaintiff's counsel.**

Under Rule 11(a), SCRPC, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it. *Ex parte Gregory*, 378 S.C. 430, 663 S.E.2d 46 (2008). "Rule 11 requires '[a]ll motions filed shall contain an affirmation that the movant's counsel prior to filing the motion has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter ... unless the movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held.' The penalty for noncompliance is to strike the motion unless the attorney promptly amends the document to comply with the rule." *Jackson v. Speed*, 326 S.C. 289, 310, 486 S.E.2d 750, 761 (1997). The determination whether to impose sanctions is at the discretion of the Judge and "sounds in equity rather than at law." *Holmes v. Haynsworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 641, 760 S.E.2d 399, 410 (2014), *reh'g denied* (Aug. 5, 2014).

Counsel for Plaintiff filed a Rule 40(j) Motion on or about October 31, 2017 ("Motion to Strike"), seeking a hearing and Order Striking the case from the active docket to allow the parties sufficient time to resolve the matter. In accordance with the requirements of Rule 11, SCRCF, *prior to filing its Motion to Strike*, counsel for Plaintiff discussed Plaintiff's desire to strike the case with leave to restore with counsel for Defendant and respectfully requested Defendant's consent to Plaintiff's Motion to Strike. Plaintiff concedes that counsel for Defendant advised Plaintiff that Defendant would not consent to the Motion to Strike; however, Plaintiff's good faith efforts to resolve the Motion to Strike prior to its filing are evidenced by the last paragraph of the filed Motion to Strike which states:

Pursuant to Rule 11, SCRCF, the undersigned hereby certifies that prior to filing this motion, opposing counsel was contacted in good faith to resolve this matter and that it appears that a hearing will be required.

Counsel for Defendant incorrectly asserts that Plaintiff "willfully" filed the Motion to Strike without Defendant's consent, and as such, Plaintiff allegedly violated Rule 11, SCRCF. Defendant's assertion is misplaced and without merit based on the foregoing. Although the filed Motion to Strike contained two minor, scrivener's errors mistakenly indicating that the Defendant consented to the Motion, the fact that the Motion to Strike expressly provided that the parties did not reach an agreement as to the Motion to Strike, and that a hearing was necessary, supersedes any prior scrivener's error and illustrates Plaintiff's full compliance with Rule 11, SCRCF. The filed Motion to Strike clearly stated that a hearing on the matter would be required to provide Defendant a full and fair opportunity to dispute and/or argue against the Motion to Strike.

As further evidence that scrivener's errors occur in matters such as these, Defendant's Motion Cover Sheet for his Motion to Dismiss lists Defendant's counsel in the place of Plaintiff's counsel, and Plaintiff's counsel in the place of Defendant's

As further evidence that scrivener's errors occur in matters such as these, Defendant's Motion Cover Sheet for his Motion to Dismiss lists Defendant's counsel in the place of Plaintiff's counsel, and Plaintiff's counsel in the place of Defendant's counsel. (see Exhibit "2"). While the Court has recognized, "[i]t is of vital importance, not only to the parties involved but to the court as well, that the correct attorneys are listed as the attorneys of record," Plaintiff's counsel recognizes that scrivener's errors occur and is not seeking to sanction Defendant's counsel for this scrivener's error. *Culbertson v. Clemens*, 322 S.C. 20, 25, 471 S.E.2d 163, 165 (1996).

It is well settled that "The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." Rule 61, SCRCP. Any defect in Plaintiff's Motion to Strike was a harmless error which did not affect the substantial rights of the parties. Defendant completed his loan modification review, was approved, and is now current. Whether the case was stricken from the docket, or whether it was dismissed, is now irrelevant since the loan is current and Plaintiff consents to the matter being dismissed.

Additionally, the Plaintiff did not submit nor file with the Motion to Strike a proposed Order Granting the Motion to Strike, further indicating that Plaintiff intended to afford the Defendant a full and fair opportunity for a hearing before any determination on the Motion to Strike would be made by the Court.

Lastly, Defendant claims that Plaintiff filed the Motion to Strike merely for the purposes of delay and that such alleged improper motive is improper under Rule 11, SCRCP. Defendant has provided no evidence whatsoever that supports this contention. Rather, Plaintiff's true intent in seeking the Motion to Strike was to allow the parties sufficient time to consummate a settlement that would be beneficial to both parties.

For the foregoing reasons, Defendant's claim that Plaintiff's counsel and/or Plaintiff violated Rule 11 SCRCP is completely unsupported by the facts and evidence and fails to support an award of sanctions against Plaintiff as a matter of law.

CONCLUSION

Based on the foregoing, the Defendant's Motion for Sanctions against Plaintiff and/or Plaintiff's counsel should be denied.

Respectfully submitted,

SCOTT AND CORLEY, P.A.

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June 7, 2011

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Post Office Box 6338  
West Columbia, SC 29171

Robert A. Muckenfuss  
McGuireWoods  
Bank of America Corporate Center  
100 North Tryon Street  
Suite 2900  
Charlotte, N.C. 28202-4011

Dear Attorneys Ballard and Muckenfuss:

I have been asked by the Chief Justice to respond to the concerns expressed in both of your letters regarding the May 2, 2011, Administrative Order related to Mortgage Foreclosure Actions. I inform you that the Chief Justice has considered the questions posed and has determined that there is no need to amend or modify the order at this time. However, I will attempt to clarify some of your questions related to the Administrative Order.

First, as the nature of the order is procedural, no conflict with efforts to deal with the mortgage foreclosure crisis at the federal level is intended. Further, I am not aware of any contest over federal preemption involving similar procedural directives in other states. Secondly, the overall purpose of the order was to remedy breakdowns in communications between lender-servicers and borrowers related to loss mitigation efforts, and to assure that interested homeowner-borrowers are afforded a fair opportunity to take advantage of available relief. Since the execution of the order, concerns regarding these matters have been confirmed by reports from active cases. Thus, the order provides for a reliable point of contact for borrowers with their lender-servicer, namely, the lender-servicer's attorney. This avoids a fundamental

disconnect between the borrower and the lender-servicer that leads a borrower to misunderstand, or be misled, as to the status of the foreclosure litigation and its consequences.

Additionally, the trial court depends on the lender-servicer's attorney for information concerning the status of loss mitigation efforts between the borrower and the lender-servicer. The attorney is under a duty to provide relevant and candid information to the court about the case, including loss mitigation. Such information directly affects whether a case can proceed, or should be dismissed. That does not always occur, because the attorney is unaware of that circumstance, and thus, cannot advise the court.

For these reasons, the involvement of the lender-servicer's attorney at every stage of the foreclosure process is critical, and the order so provides. The order is not intended to preclude all contact between borrower and lender-servicer. Rather, it provides that the lender-servicer's attorney must be involved in the process, so that the trial court can be adequately apprised of all proceedings in the case, and handle the case accordingly. The order should not heighten Rule 11 standards for the lender-servicer's attorney. As with all litigation, an attorney may reasonably rely on information provided by the client in the handling of the case. The problem has been that the attorney is not made privy to all such information.

Notwithstanding that the order will stand as drawn, there are a few matters raised as concerns that fairly deserve comment. Concerning the forms to be used in implementing the order, specific forms for that purpose will not be provided by the court. Adequate forms have already been created by attorneys, and the trial courts are not requiring specific language, so long as the intent of the order is carried out.

In paragraph A(1), concerning who is entitled to participate in foreclosure intervention, the definition of "Mortgagor," read in context includes only parties involved in the mortgage transaction in question.

In paragraph A(5), "foreclosure intervention" includes all policies and processes or procedures actually employed by a Mortgagee, if any. The order does not impose a requirement to create policies, processes or procedures, or to use those of other lender-servicers, or of government agencies having no oversight or control of the loan in question. Procedures in this State for loans subject to HAMP oversight are dealt with by prior administrative orders.

In paragraph B(1)(e) of the order, the tolling of the time to answer in the foreclosure action is to be just as in other cases where the time to answer is suspended, either by agreement, or rule. Regarding cases pending on May 9, 2011, where a Mortgagor was not in default when served with the notice of the right to foreclosure intervention, and elects to participate in foreclosure intervention, the Mortgagor will have 30 days from the date of mailing of the notice of denial of relief to respond to the complaint. If the Mortgagor is already in default, relief from default is by the usual Rule 55 or Rule 60 procedure. As to actions filed after May 9, where the Mortgagor elects to participate in foreclosure intervention, the time to answer is tolled, and the Mortgagor has 30 days from mailing of the notice of denial to answer the complaint.

Finally, consistent with the intent and purpose of the order, if a Mortgagor has already participated in a foreclosure intervention process provided by a Mortgagee, but has either failed to qualify for relief, or has defaulted under a loss mitigation agreement, the provisions of the order have been satisfied, and the Mortgagee has complied with the order. In such case, the Mortgagee will certify compliance through its attorney, and provide the trial court the relevant documents to support such certification. The foreclosure action can then proceed unabated.

Nothing in the order is intended to preclude renewed efforts on the part of the parties to seek foreclosure intervention after the initial process has been completed without success. Where foreclosure intervention as contemplated by the order has been denied, the foreclosure action can proceed toward completion without further abatement, even though the parties may continue efforts at foreclosure intervention while the foreclosure action proceeds. However, the lender-servicer's attorney will retain the "point of contact" role, and the responsibility of providing reliable information to the trial court, as discussed above.

While the Administrative Order will not be modified, all orders are subject to some interpretation as they are implemented in actual cases. That should be permitted to occur in this instance. Such interpretations are always subject to further review.

I trust that this response will be helpful in dealing with the concerns you have raised.

Sincerely,



Rosalyn W. Frierson, Director  
S.C. Court Administration

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

COUNTY OF BERKELEY

CASE NO. 2016-CP-08-0591

Federal National Mortgage Association ("Fannie Mae")

MOTION AND ORDER INFORMATION

PLAINTIFF

FORM AND COVERSHEET

vs.

Richard G. Ivey, a/k/a Richard Curtis Ivey, et al.

DEFENDANT

Plaintiff's Attorney: John R. Cantrell, Jr., Bar No. 010309 Address: PO Box 1276, Goose Creek, SC 29445-1276 Phone: (843) 797-2454 Fax (309) 213-0922 E-mail: lawyer@comcast.net Other:	Defendant's Attorney: William P. Stork, Bar No. 100242 Address: PO Box 2065, Columbia, SC 29202 Phone: (803) 252-3340 Fax (855) 601-4921 E-mail: williams@scottandcorley.com Other:
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b> Nature of Motion: Motion to Dismiss and For Sanctions Estimated Time Needed: 30 minutes      Court Reporter Needed: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b> <input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant      Date submitted:	
<b>SECTION III: Motion Fee</b> <input checked="" type="checkbox"/> PAID - AMOUNT \$ 25.00 <input type="checkbox"/> EXEMPT (check reason): <ul style="list-style-type: none"> <li><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</li> <li><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</li> <li><input type="checkbox"/> Indigent Status      <input type="checkbox"/> State Agency v. Indigent Party</li> <li><input type="checkbox"/> Sexually Violent Predator Act      <input type="checkbox"/> Post-Conviction Relief</li> <li><input type="checkbox"/> Motion for Stay in Bankruptcy</li> <li><input type="checkbox"/> Motion for Publication      <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)</li> <li><input type="checkbox"/> Proposed order submitted at request of the court; or reduced to writing from motion made in open court per judge's instructions</li> </ul> Name of Court Reporter: _____ <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE CODE _____ Date:
<b>CLERK'S VERIFICATION</b> Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input checked="" type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

Federal National Mortgage Association  
("Fannie Mae"),

PLAINTIFF,

VS.

Richard C. Ivey a/k/a Richard Curtis Ivey;  
Crowfield Plantation Community Services  
Association, Inc.; and Unifund CCR Partners  
Assignee of Palisades, a General Partnership,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-08-00591

CERTIFICATE OF SERVICE BY MAIL

(151083.00327)

The undersigned hereby certifies that she is an employee of Scott and Corley, P.A. and is a person of such age and discretion as to be competent to serve papers and that on January 5, 2018, she mailed a copy of the Plaintiff's Objection and Memorandum in Opposition to Defendant's Motion for Sanctions by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at the Scott and Corley, P.A. office, 2712 Middleburg Drive, Suite 200, Columbia, SC 29204.

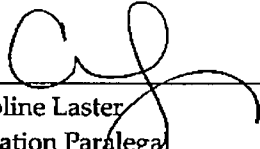
John R. Cantrell  
Attorney for Richard C. Ivey  
Post Office Box 1276  
Charleston, SC 29445-1276

Paul A. James  
Attorney for Crowfield Plantation  
Community Services Association, Inc.  
1134 Waterfront Drive  
Mt. Pleasant, SC 29464

FILED

2018 JAN -9 PM 12:40

MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

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

SCOTT AND CORLEY, P.A.  
Attorneys and Counselors at Law

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2712 Middleburg Drive,  
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Columbia, SC 29204

Telephone: (803) 252-3340  
Facsimile: (855) 601-4921

Mailing Address:  
P.O. Box 2065  
Columbia, SC 29202

January 5 2018

The Honorable Mary P. Brown  
Berkeley Clerk of Court  
P.O. Box 219  
Moncks Corner, SC 29461

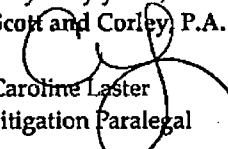
RE: Federal National Mortgage Association ("Fannie Mae"), v. Richard C. Ivey a/k/a Richard Curtis Ivey; Crowfield Plantation Community Services Association, Inc.; and Unifund CCR Partners Assignee of Palisades, a General Partnership  
Case No. 2016-CP-08-00591; SLF No. 151083.00327

Dear Mrs. Brown,

Enclosed please find one original and copy of the Plaintiff's Objection and Memorandum in Opposition to Defendant's Motion for Sanctions, along with a Certificate of Service in the above referenced matter. Upon filing, kindly return a clocked copy of same to our office in the self-addressed, postpaid envelope provided.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,  
Scott and Corley, P.A.

  
Caroline Laster  
Litigation Paralegal

Enclosed: Marion K. Ivey  
John R. Cantrell  
Paul A. James

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

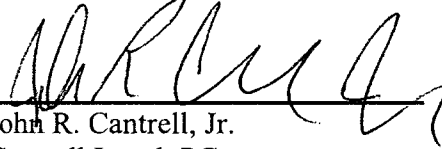
**IF YOU ARE UNDER THE PROTECTION OF THE BANKRUPTCY COURT OR HAVE BEEN DISCHARGED AS A RESULT OF A BANKRUPTCY PROCEEDING, THIS NOTICE IS GIVEN TO YOU PURSUANT TO STATUTORY REQUIREMENT AND FOR INFORMATIONAL PURPOSES AND IS NOT INTENDED AS AN ATTEMPT TO COLLECT A DEBT OR AS AN ACT TO COLLECT, ASSESS, OR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

Certificate of Counsel

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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.

December 31, 2018

  
\_\_\_\_\_  
John R. Cantrell, Jr.  
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(843) 797-2454  
*Attorney for Appellant*