

Exhibit “B”

issue of subject matter jurisdiction. *See Bodkin v. Bodkin*, 388 S.C. 203, 228, 694 S.E.2d 230, 243 (Ct. App. 2010) (the court must accept stipulations as binding); *C.A.N. Enterprises, Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 2929 S.C. 556, 559, 357 S.E.2d 714, 715 (Ct. App. 1987), *aff'd* 296 S.C. 373, 373 S.E.2d 584 (1998) (stipulations are binding upon parties who make them); *Gatewood v. Moses*, 39 S.C.L. 244, 247 (S.C. App. L. 1852) (appellant was not permitted to raise and discuss a legal ground expressly waived at the circuit court trial). All other arguments regarding the validity of the loan documents and the procedural history of this matter were explicitly waived by Defendants and cannot be properly presented to the Court through a Rule 59(e) Motion. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (a party cannot use a Rule 59(e) motion to present an issue the party could have previously raised but elected not to raise prior to the court's ruling). Defendants' waiver of all counterclaims and defenses specifically includes the two new issues raised in Defendants' Motion - (1) "Other Problem with Chain of Title" and (2) "Order of Reference." Thus, the Court finds these arguments have been waived and can no longer be presented to the Court.

Furthermore, this Court upholds its ruling that it has subject matter jurisdiction because FIRREA does not apply to Plaintiff NCP Pilgrim, LLC's ("NCP") claims. Specifically, the Court affirms its reliance upon *Tillman v. Resolution Tr. Corp.*, 37 F.3d 1032, 1035 (4th Cir. 1994) and *Freeman v. F.D.I.C.*, 56 F.3d 1394, 1399 (D.C. Cir. 1995) to conclude that FIRREA sections 1821(d)(3)-(13) require only those persons or entities making claims *against a failed financial institution* or seeking to adjudicate their rights *against the failed institution* to present their claims first to the Federal Deposit Insurance Corporation ("FDIC") through its administrative claims process. It should be noted that *Tillman* explicitly states that FIRREA's limitation of judicial review was established to ensure that creditors would not opt out of the administrative review.

Tillman, 37 F.3d 1032, 1035 (4th Cir. 1994). A review of NCP's claims clearly shows that NCP is not making a claim against the failed institution, Carolina Federal, or against the receiver, the FDIC, in this action and is not a creditor of either entity. Instead, NCP is seeking to foreclose upon the subject Note and Mortgage based upon its status as the holder of these documents. Accordingly, NCP's claims are not subject to FIRREA and this Court has subject matter jurisdiction.

Based on the reasoning outlined above, this Court hereby denies Defendants' Motion under Rule 59(e), SCRPC, to reconsider its Master's Decree of Foreclosure and Notice of Sale, dated July 13, 2020.

IT IS SO ORDERED.

James E. Chellis
Dorchester County Master-In-Equity

August _____, 2020

_____, South Carolina



Dorchester Common Pleas

Case Caption: Ncp Pilgrim, Llc VS Mary Lou Cercopely , defendant, et al

Case Number: 2018CP1802053

Type: Master/Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

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