

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM MARION COUNTY  
COURT OF COMMON PLEAS

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Honorable W. Haigh Porter, Special Referee

CIVIL ACTION NO. 2018-CP-33-00653  
APPELLATE CASE NO. 2020-000139

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**RECEIVED**

**Dec 07 2020**

**SC Court of Appeals**

Ex Parte Beaulah Belin and James Belin, .....Appellants.

In re Wilmington Savings Fund Society, FSB, as trustee of Stanwich  
Mortgage Loan Trust A, .....Plaintiff,

v.

Bertha Dunham a/k/a Bertha E. Dunham and Ernest L. Dunham.....Defendant(s)

Of which Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage  
Loan Trust A.....Respondent.

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**SUPPLEMENTAL RECORD ON APPEAL**

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Attorney for Respondent

**RECORD ON APPEAL**

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**CERTIFICATION BY COUNSEL**

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I, the undersigned counsel, does hereby certify that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted this 7th day of December, 2020.

/s/ Paul B. Ferrara, III  
Paul B. Ferrara, III  
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Attorney for Appellant

**RECEIVED**  
**Dec 07 2020**  
**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2018-CP-33-00653

Wilmington Savings Fund Society, FSB, as  
trustee of Stanwich Mortgage Loan Trust A,  
  
Plaintiff,

vs.

Bertha Dunham aka Bertha E. Dunham and  
Ernest L. Dunham,  
  
Defendants.

**ORDER OF REFERENCE**

(Non-Jury)

Foreclosure Of Real Estate Mortgage

(File No. 4043.17918)

**IT APPEARING** that the above entitled case is an action for the foreclosure of a real estate mortgage and, pursuant to Rule 53(b) SCRPC, may be referred to the Haigh Porter as Special Referee in the above entitled county by Order of the Clerk of Court; and,

**IT IS HEREBY ORDERED** that this matter is referred to Haigh Porter the Special Referee for Marion County, to make his findings of fact and conclusions of law; to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRPC; to hear any issues, including motions, after sale or judgment including, but not limited to, the issuance of Supplemental Orders, Writs of Assistance and hearing of any issues involving possession and/or removal of property and appraisal proceedings under S.C. Code Ann. §29-3-680, et seq. (1976 SC Code of Laws, as amended). Any appeal from the final judgment entered by the Special Referee shall be directly to the Supreme Court or Court of Appeals, as appropriate. Any judicial sale of the property subject to this action may be held on a day other than the regular judicial sale day; and

**IT IS SO ORDERED.**

*SIGNATURE PAGE TO FOLLOW*



Marion Common Pleas

**Case Caption:** Wilmington Savings Fund, Fsb As Trustee , plaintiff, et al VS Bertha Dunham , defendant, et al  
**Case Number:** 2018CP3300653  
**Type:** Order/Referred to Master or Special Referee

So Ordered

s/Christy M. Gray, Marion County Clerk of Court,  
By ABS

Electronically signed on 2019-03-12 16:14:56 page 2 of 2

ELECTRONICALLY FILED - 2019 Mar 12 4:15 PM - MARION - COMMON PLEAS - CASE#2018CP3300653

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A,

Plaintiff,

vs.

Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2018-CP-33-00653

**SPECIAL REFEREE'S ORDER OF JUDGMENT OF FORECLOSURE AND SALE DECREE**

(Non-Jury)

(Not Eligible for HAMP)

(Deficiency Waived)

(File No. 4043.17918)

RILEY POPE & LANEY, LLC  
Attorneys for Plaintiff

Pursuant to Rule 53 SCRPC, the above entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in this cause without further order of court. Any appeal from this Order shall be directly to the South Carolina Court of Appeals.

Pursuant to said Order of Reference a hearing was held on April 22, 2019, attended by attorneys for the Plaintiff. Exhibits were identified, offered and received into evidence. Based upon the proof made of the facts and circumstances alleged in the pleadings, I find, conclude and order as follows:

FINDINGS OF FACT:

- 1) The Lis Pendens was filed on September 20, 2018.
- 2) The Summons and Complaint were filed on September 20, 2018.
- 3) Service was made upon the Defendants as shown by the proof of service filed herein.
- 4) The Defendants Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham are in default as shown by Affidavit, Notice, or Order filed herein.
- 5) The Defendants and all attorneys of record were notified of the time, date, and place of the hearing in this matter.
- 6) According to the affidavit filed herein, a good faith investigation did not determine that the defaulting Defendants Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham are

in the military service and therefore entitled to protection under the Servicemembers' Civil Relief Act, 50 U.S.C. §3901 et seq., or any amendments thereto.

7) For value received, Bertha Dunham and Ernest L. Dunham made, executed and delivered a note ("Note") dated April 13, 2006, promising thereby to pay to the order of CitiFinancial, Inc. the sum of Thirty Seven Thousand Nine Hundred Seventy and 54/100 (\$37,970.54) Dollars, with interest at the rate of 10.63% per annum, with a current rate of 9.6300% per annum. Other terms and conditions are stated in the Note, which is of record herein.

8) To better secure the payment of the Note described above, Bertha E. Dunham made, executed, and delivered to CitiFinancial, Inc. a certain real estate mortgage ("Mortgage") in writing, dated April 13, 2006, covering real property in Marion County, which is the same as that described in the Complaint. The Mortgage was filed in the Office of the Register of Mesne Conveyances/Register of Deeds for Marion County on April 13, 2006, in Book 819 at Page 146. Thereafter, by assignment recorded December 21, 2017 in Book 401 at Page 5, the mortgage was assigned to Citifinancial Servicing LLC; thereafter, by assignment recorded December 21, 2017 in Book 401 at Page 6, the mortgage was assigned to the Plaintiff.

9) The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor and constitutes a first mortgage lien on the mortgaged premises.

10) The Plaintiff is the real party in interest pursuant to SCRC 17(a) and is entitled to enforce the terms of the subject Note and Mortgage.

11) The titleholder of record of the subject property as of the filing of the Lis Pendens in this action is Bertha E. Dunham aka Bertha Dunham, who is the original mortgagor.

12) Any notice required by the terms of the Note and/or Mortgage or by state or federal statutes has been given to the applicable Defendants prior to the commencement of this action.

13) The loan evidenced by the Note and Mortgage is serviced by a servicer participating in the Home Affordable Modification Program (HAMP). It is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac. Based on the allegations in the Complaint that the subject loan is not eligible for HAMP modification, the Court finds that there are no HAMP issues to be resolved before foreclosure is ordered or the sale is commenced.

14) An Attorney Certification having been filed in this matter pursuant to Administrative Order 2011-05-02-01, the Court finds that the foreclosure action may proceed to Judgment and Sale.

15) The Note payments which became due on December 24, 2017, and subsequent months, have not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of its attorney for collection by foreclosure.

16) The sum of \$3,450.00 is a reasonable fee to allow as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. The inclusion of services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

17) The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of the within action, including an attorney's fee, secured by the Note and Mortgage, is as follows:

(a) Principal amount due as of December 24, 2017	\$33,542.96
(b) Interest from November 24, 2017 to March 20, 2019 at a current rate of 9.6300%	\$4,252.04
(c) Advances	
Escrow	\$427.68
Title Services	\$150.00
Additional Escrow: Haz	\$23.76
(d) Interest Per Diem from March 21, 2019 to April 22, 2019 (33 days x 8.85)	\$292.05
(e) Costs of collection prior to hearing (service of process, filing fees, etc.)	\$823.48
(f) Attorneys Fee	\$3,450.00
<b>Total debt secured by Note and Mortgage, including interest to date shown</b>	<b>\$42,961.97</b>

Interest for the period from the date shown in (b) above through the date of this judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 9.6300% per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such

judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

18) The Plaintiff is seeking the usual foreclosure of the mortgage and although deficiency was demanded in the Complaint, Plaintiff now wishes to waive the right to a personal or deficiency judgment pursuant to Rule 71(b) SCRPC.

#### CONCLUSIONS OF LAW

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1) The Plaintiff's Mortgage should be declared a first mortgage lien and Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

2) The Court finds that there are no HAMP issues to be resolved before foreclosure is ordered or the sale is commenced.

3) The Court also finds that the Plaintiff is in compliance with Administrative Order 2011-05-02-01 and that the foreclosure action may proceed to Judgment and Sale.

4) The Defendants named herein, and all persons whosoever claiming under Defendants, are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged premises so sold, or any part thereof.

5) Pursuant to Rule 53, SCRPC, this Order shall constitute a final judgment.

6) There is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of \$42,961.97, as set out in the Findings of Fact *supra*.

7) The amount due in the preceding paragraph (the "Total Debt" as set out in the Findings of Fact *supra*, and later accrued interest on the principal), shall constitute the total judgment debt due Plaintiff and shall bear interest hereafter at the rate of 9.6300% per annum. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the judgment figures set forth herein. It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee awarded. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by statement and shall be adjudicated by the Court without further finding.

to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

9) On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Special Referee, at public auction, at 12:00 p.m. at the County Courthouse in Marion, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on some other day appointed by the Court), on the following terms, that is to say:

10) For cash: The Special Referee, will require, at the time of the bid, a deposit of 5% of the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event of non-compliance, the deposit may be forfeited without further hearing and applied first to the costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to make the required deposit at time of bid or comply with the other terms of the bid within thirty (30) days, then the property may be re-sold on the same terms and conditions on some subsequent Sales Day, but at the risk of the defaulting bidder(s).

11) Interest on the balance of the bid shall be paid through the day of compliance at the rate of 9.6300%.

12) Purchaser shall pay for any statutory commission on sale from the proceeds of sale, deed preparation, costs of recording the deed, and deed stamps.

13) A personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

14) The sale is subject to assessments, county taxes, existing easements, easements and restrictions of record, and other senior encumbrances.

15) The Special Referee, will, by advertisement according to law, give notice of the time and place of such sale and the terms thereof and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within thirty (30) days after the conclusion of the bidding, then the Special Referee, may advertise the said premises for sale on the next or some other subsequent sales day

at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

16) In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales day upon the terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

17) If Plaintiff is the successful bidder at the sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Special Referee, only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

18) The Special Referee will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus should be held pending further Order of this court.

19) In the event the successful bidder is other than the Defendant(s) in possession of the subject property, upon full compliance and title by deed from the Court vested into such purchaser, and upon issuance of a Writ of Assistance by the Court, the Sheriff of Marion County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful purchaser or his assigns in full, quiet, and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession. All valid tenant rights shall be protected pursuant to the Protecting Tenants at Foreclosure Act of 2009.

20) In the event the successful purchaser is someone other than the Defendant(s) in possession of the subject property, and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage is said property, and title by deed from the Court is vested into such purchaser, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by

the Purchaser or its agents from the subject property by placing said property on the public street or highway or by any other means.

21) In accordance with S.C. Code Ann. §30-9-31, the deed of conveyance made pursuant to said sale shall be indexed by the R.M. C. in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the Special Referee, who executes such deed as grantor.

22) The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

23) The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-half (1/2) acre, bounded Northeast One hundred Five (105) feet by U.S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

Being the same property conveyed to William Dunham, Jr. and Bertha E. Dunham by deed of the United States of America, dated October 15, 1975 and recorded November 5, 1975 in Deed Book A136 at Page 583; thereafter, William Dunham, Jr. conveyed his interest in the subject property to Bertha E. Dunham by deed dated May 10, 1983 and recorded September 19, 1983 in Deed Book A196 at Page 24.

TMS No. 163-00-00-053-000

Property Address: 1701 West Highway 378, Gresham, SC 29546

AND IT IS SO ORDERED.



Haigh Porter  
Special Referee Marion County

April 22, 2019  
Florence, South Carolina

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

FORM 4  
 JUDGMENT IN A CIVIL CASE  
 CASE NO. 2018-CP-33-00653

Wilmington Savings Fund Society, FSB, as trustee of Stanwich  
 Mortgage Loan Trust A

PLAINTIFF

vs.  
 Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham  
 DEFENDANTS.

Submitted by: Riley Pope & Laney, LLC Post Office Box 11412, Columbia, SC 29211	Attorney for Plaintiff
--	------------------------

**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(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other -- \_\_\_\_\_
  - ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other -- \_\_\_\_\_
  - STAYED DUE TO 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:

Tax Map # 163-00-00-053-000; 1701 West Highway 378, Gresham, SC 29546

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.

*Walter Porter*  
 Circuit Court Judge *Special Referee*

\_\_\_\_\_  
 Judge Code

4/25/19  
 Date



STATE OF SOUTH CAROLINA  
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS  
CASE NO.: 2018-CP-33-00653

Wilmington Savings Fund Society, FSB,  
as trustee of Stanwich Mortgage Loan  
Trust A,  
Plaintiff,  
vs.

**ORDER DENYING THIRD PARTY MOTION  
TO INTERVENE AND MOTION TO SET  
ASIDE JUDGMENT**

Bertha Dunham a/k/a Bertha E. Dunham;  
and Ernest L. Dunham.  
Defendant(s).

**INTRODUCTION**

**THIS MATTER** came before me on October 29, 2019 to fully hear and adjudicate the Motion to Intervene and Motion to Set Aside Judgment filed by Beulah Mae Belin and James Belin, by and through their attorney, Paul B. Ferrara, III, (hereinafter “Belins”), who live in a mobile/manufactured home on the land of Bertha Dunham and Ernest Dunham (hereinafter “Defendants”). Present at the hearing was William P. Stork, Esq., attorney for Plaintiff, and appearing telephonically was Paul B. Ferrara, III, attorney for the Belins.

Based upon the arguments, testimony, and evidence presented at trial, I find and conclude as follows:

**BACKGROUND**

The instant action is one for foreclosure of property located in Marion County, South Carolina. The foreclosure arises out of a Mortgage Note (“Note”) executed by Defendants on April 13, 2006 and delivered to CitiFinancial, Inc. a certain Promissory Note (“Note”) in writing wherein and whereby the Defendants promised to pay to the Plaintiff, the principal sum of \$37,970.54, together with interest at an adjustable interest rate with an initial interest rate of 10.63% per annum on the unpaid balance; said principal and interest being payable in monthly installments, commencing on the 1st day of each month thereafter until the said Note is fully paid.

In order to secure the payment of said Note, the said Defendant, did on the same date, to wit, April 13, 2006, make, execute, and deliver to CitiFinancial, Inc., its successors and assigns, a certain real estate Mortgage ("Mortgage") covering real property located in Marion County, South Carolina as more fully described in said Mortgage as follows:

ALL that certain piece, parcel of lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-Half (1 / 2) acre, bounded Northeast One Hundred Five (105) feet by U.S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

Together with all singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

This being the same property conveyed to William Dunham, Jr. and Bertha E. Dunham by deed of the United States of America, dated October 15, 1975 and recorded November 5, 1975 in Deed Book A136 at Page 583; thereafter, William Dunham, Jr. conveyed his interest in the subject property to Bertha E. Dunham by deed dated May 10, 1983 and recorded September 19, 1983 in Deed Book A19 at Page 24.

*Handwritten initials: H-2, WP*

*TMS No. 163-00-00-053-000*

*Property Address: 1701 West Highway 378, Gresham, SC 29546*

The Mortgage was recorded April 13, 2006 in the ROD's Office for Marion County in Book 819 at page 146.

Thereafter, the Mortgage was assigned to Citifinancial Servicing, LLC by assignment recorded on December 21, 2017 in Book 401 at Page 5. Thereafter, the Mortgage was assigned to Plaintiff by assignment recorded on December 21, 2017 in Book 401 at Page 6. The Mortgage evidences and secures the repayment of money advanced by

the Mortgagee to, or on behalf of, the mortgagor(s) and constitutes a purchase money first lien on the Mortgaged premises.

On September 20, 2018, the Plaintiff filed its Lis Pendens, Summons, and Complaint for Foreclosure. By Order filed March 12, 2019, this matter was referred to the Honorable Haigh Porter as Special Referee for Marion County to hear any issues, including motions after sale or judgment. On April 25, 2019, a Special Referee's Order of Judgment of Foreclosure and Sale Decree was filed along with a Notice of Sale directing the subject real property to be sold at public auction on June 11, 2019. The Notice of Sale of the subject real property was advertised in the Star Enterprise, a local newspaper of general circulation, on May 22, 2019, May 29, 2019, and June 5, 2019. On June 11, 2019, the subject real property was sold at public auction with Plaintiff being the high bidder. After compliance with their bid, Plaintiff was issued a deed to the subject real property which was recorded with the Marion County ROD's office on August 28, 2019 in Book 466 at Page 309.

On October 25, 2019, over a year after Plaintiff filed their Lis Pendens and over 4 months since the subject property sold at public auction, the Belins filed a Motion to Intervene and Motion to Set Aside Judgment.

## DISCUSSION

### STANDARD FOR INTERVENTION

#3  
18P

South Carolina courts should not always grant intervention. *Ken's Cabana, LLC v. Flemington Props., LLC (ex parte Horry Cnty. State Bank)*, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App. 2004). Though intervention "should be liberally granted," courts should consider judicial efficiency and the practical consequences of decisions to allow or deny intervention. *Id.* Essentially, courts should consider the "unique facts and circumstances" of each case. *Id.*

An applicant is entitled to intervention of right if she timely applies and either "a statute confers an unconditional right to intervene," Rule 24(a)(1), SCRPC. or

the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair

or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Rule 24(a)(2), SCRCP. Here, no statute grants the Belins an unconditional right to intervene. Accordingly, the Belins asserts a right to intervene based on Rule 24(a)(2) of the South Carolina Rules of Civil Procedure.

"Intervention of right requires a direct, substantial, legally protectable interest in the proceedings." *Dep't of Health & Envtl. Control v. Columbia Organic Chemistry Co. (ex parte Reichlyn)*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993). An application for intervention of right must

(1) Establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented.

*Id.* At 498, S.E.2d at 663; *Berkeley Electric Coop., Inc. v. Mount Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990). All four factors are required to intervene on this basis; failing to establish any one prevents an applicant from intervening. *Dep't of Health & Envtl. Control v. Columbia Organic Chemistry Co. (ex parte Reichlyn)*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993).

An applicant can ask a court to allow permissive intervention if the applicant timely applies and either "a statute confers a conditional right to intervene," Rule 24(b)(1), SCRCP, or "an applicant's claim or defense and the main action have a question of law or fact in common." Rule 24 (b)(2), SCRCP. "In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Rule 24, SCRCP. While it is unclear from the body of the Belins' Motion, they may assert that either S.C. Code Ann. §15-67-210 or §15-67-240 provide the Belins a conditional right to intervene. If this is not their assertion, then the Belins assert a right to intervene based on Rule 24(b)(2) of the South Carolina Rules of Civil procedure.

South Carolina courts have the discretion to grant or deny permissive intervention. *S.C. Tax Comm'n v. Union Cnty. Treasurer*, 295 S.C. 257, 262, 368 S.E.2d 72, 75 (Ct. App. 1988). However, courts should only grant permissive intervention when an applicant "has a

cause of action or defense it could bring or assert.” *Id.* At 263, 368 S.E.2d at 75-76. Permissive intervention exists because administrative procedures support disposing of claims or defenses together when they have common questions. *Id.* At 263, 368 S.E.2d at 75. Without permissive intervention, an applicant could be forced to “institute or ... defend a separate proceeding that would substantially duplicate the one in question.” *Id.* At 263, 368 S.E.2d at 75-76.

#### A. THE BELINS ARE NOT ENTITLED TO INTERVENE IN THE LITIGATION

##### 1. The Belins are Not Entitled To Intervention Of Right.

The Belins are not entitled to intervention of right. Because the Belins have no interest in the subject real property, because the Belins failed to timely apply for intervention, and because the Belins interest was already adequately protected through the foreclosure proceeding, the Belins’ Motion to Intervene fails.

##### A. The Belins are not entitled to intervention of right because they have no interest in the subject real property.

The Belins do not have any interest in the subject real property, and therefore they are not entitled to intervention of right. One of the elements which must be satisfied for a Court to grant intervention of right is that the Intervenor must, “assert an interest relating to the property or transaction which is the subject of the action.” *Horry Cnty. State Bank v. Flemington Props., LLC*, 631 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004). The Belins have no such interest. “Failure to satisfy *any one* of the four requirements precludes intervention.” *Dep’t of Health & Envl. Control v. Columbia Organic Chemistry Co. (ex parte Reichlyn)*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993)(*emphasis added*).

##### i. *The Belins have no title to the subject property.*

In their Motion to Intervention, the Belins merely assert a possible civil claim for adverse possession, they do not claim that any portion of the real property was ever deeded to them. Prior to the initiation of foreclosure proceedings, a title search was conducted to determine which parties may have an interest in the subject real property. No additional parties were found to have any interest in the subject real property. A review of the public

records shows that no deed vesting any legal interest to the subject real property to the Belins is recorded with the Marion County Register of Deeds. Generally, for a deed to be a valid conveyance, it is required to be recorded with the office of the register of deeds. S.C. Code Ann. §30-7-10 (2017). "No possession of real property described in an instrument of writing required by law to be recorded shall operate as notice of such instrument." S.C. Code Ann. §30-7-90 (2017).

The Belins argued that the placement of a mobile home on the subject real property may provide an interest in the real property upon which the mobile home is situated. This assertion is wrong and contrary to law governing the ownership of mobile homes. Under S.C. Code Ann. 56-19-10(39) (1976), a mobile home is not considered real property, but is considered personal property which must be titled with the Department of Motor Vehicles and is taxed just like any other personal property which is taxed by the Department of Motor Vehicles. The argument that the placement of a mobile home on property leads to adverse possession is essentially the same argument as if to say that the parking of a moped on a piece of property leads to a claim of adverse possession.

ii. *The Belins merely assert a possible civil cause of action for adverse possession.*

Adverse possession is not an interest in real property, it is merely a civil cause of action. Black's Law Dictionary 6th Ed. (1990). After a civil action asserting adverse possession is filed, a trier of fact must determine whether there is enough evidence to substantiate a claim of adverse possession, and only then would title be transferred to the alleged adverse possessor. *see Miller v. Leaird*, 307 S.C. 56, 413 S.E.2d 841 (1992). Even if the assertion of adverse possession were to create an interest, no action has been filed by the Belins at this time. A review of the public index finds no Lis Pendens filed by the Belins much less a suit for adverse possession. In this matter, the Belins claim for adverse possession must be construed in the same light as a claim for premises liability would. Both adverse possession and premises liability are civil causes of action which must be asserted against the landowner, and neither creates an interest in the real property.

Because the Belins have no legal title to the subject real property, and because adverse possession is a civil cause of action which, when merely referenced in a pleading, does not create an interest in the subject property, the Belins have no interest in the subject real property.

B. The Belins are not entitled to intervention of right because they did not apply in a timely fashion.

The Belins did not timely apply for intervention of right. The following factors determine whether a motion to intervene is timely:

- 1) The time that has passed since the applicant knew or should have known of his or her interest in the suit; 2) the reason for the delay; 3) the stage to which the litigation has progressed; and 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention.

*Dep't of Health & Env'tl. Control v. Columbia Organic Chemistry Co. (ex parte Reichlyn)*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993).

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The Belins filed their Motion to Intervene on October 25, 2019. This filing was over a year after Plaintiff filed their Lis Pendens in this matter. "From the time of filing only, the pendency of the action shall be constructive notice to a purchaser or encumbrancer of the property affected thereby ..." S.C. Code Ann. §15-11-20 (1976). As of September 20, 2018, the Belins were on constructive notice of the Plaintiff's action because of the filing of Plaintiff's Lis Pendens. The clock to intervene started ticking the moment that Plaintiff filed their Lis Pendens. In addition to the notice proffered by the Lis Pendens, the subject real property was sold at public auction. This auction was advertised for three consecutive weeks in a local paper of general circulation. The publication provided additional notice to the Belins of the pending action. In spite of the notice provided by the Lis Pendens, and in spite of the notice provided by the publication for three consecutive weeks of the public auction, the Belins took no action to intervene in the subject action.

No reason has been delineated by the Belins which would justify this delay.

Litigation of this matter has progressed to the point that the case is finalized and the subject property has been sold at public auction. This is the penultimate point of the matter and would be extremely prejudicial to Plaintiff to allow for intervention. Assuming,

*arguendo*, that intervention were allowed, Plaintiff has incurred a plethora of costs, expenses, and loss of revenue which would be ongoing. A denial of intervention, in the alternative, does not prejudice the Belins. According to their own Motion, their mobile home was not placed on the subject real property until June of 2006. Plaintiff's Mortgage was recorded with the Marion County Register of Deeds on April 13, 2006, so even if the Belins were allowed to intervene, and even if they were to succeed on their cause of action for adverse possession, any and all interest gained would be "subject to" Plaintiff's mortgage and would be wiped out through the subsequent foreclosure sale.

In summation, the Belins' Motion to Intervene is untimely, there is no justification proffered for the delay, litigation has progressed to the point where all issues have been fully adjudicated and the real property sold, and the Plaintiff would be extremely prejudiced by intervention while the Belins are not prejudiced by the denial of intervention.

C. The Belins are not entitled to intervention of right because this action does not impair or impede their ability to protect their interest.

As was discussed above, Plaintiff's Mortgage was executed by the Dunhams on April 13, 2006 and was filed of record with the Marion County Register of Deeds on April 13, 2006 in Book 819 at Page 146. According to the Belins own motion, the mobile home was not placed on the subject real property until June of 2006. *Mtn. to Intervene* at 2. As South Carolina is a race-notice state whereby any interest or lien created after the recording of a prior interest or lien is junior and "subject to" that certain senior lien. *see* S.C. Code Ann. 30-7-10 & 30-7-20 (1976).

In the present action, because Plaintiff's Mortgage encumbering the subject real property was recorded on April 13, 2006, and because the Belins allege that their mobile home was not placed on the subject real property until June of 2006, and possible interest that the Belins would be vested through a successful adverse possession claim would be "subject to" Plaintiff's mortgage and, therefore, would be subsequently eliminated through Plaintiff's foreclosure.

In summation, even if the Belins were to eventually bring an adverse possession cause of action, and even if the Belins were successful with their cause of action, because

the Belins' interest would be "subject to" Plaintiff's Mortgage we would wind up in the exact same position we are now, only with much more time and money wasted from all parties.

D. The Belins are not entitled to intervention of right because any interest they may have if they are successful in an adverse possession cause of action would be adequately represented by existing parties.

Any interest that the Belins may have gained if they were to have brought and were successful in an adverse possession cause of action prior to the initiation of Plaintiff's foreclosure would have been adequately represented by the existing Defendants to the foreclosure action. Whether existing representation is adequate to protect the interests of an applicant depends on:

- 1) Whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent.

*Berkeley Electric Coop., Inc. v. Mount Pleasant*, 302 S.C. 186, 191, 394 S.E.2d 712, 715 (1990). Courts presume that an applicant's interests are adequately represented "[w]hen an applicant for intervention and an existing party have the same interests or ultimate objective." *S.C. Tax Comm'n v. Union Cnty. Treasurer*, 295 S.C. 257, 260, 368 S.E.2d 72, 74 (Ct. App. 1988)(denying intervention because applicant's only objective was to retain disputed tax funds, which was identical to the objective of the County Treasurer); *see also Ken's Cabana LLC v. Flemington Props., LLC (ex parte Horry Cnty. State Bank)*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004). In deciding adequacy of representation, courts consider "whether the absentee is likely to have anything of his own to say that will be of value." *Ken's Cabana, LLC v. Flemington Props., LLC (ex parte Horry Cnty. State Bank)* 361 S.C. 503, 510, 604 S.E.2d 723, 726 (Ct. App. 2004). The applicant has the burden to show that existing representation is inadequate. *Id.*

In the present case, the Belins did not meet their burden to show inadequate representation. Since the Belins are not parties to the Note and Mortgage at issue, they

cannot assert any unique arguments which would not have been raised by the Defendants. Indeed, the Belins would have had the exact same goal as the Defendants; attempting to delay or stop Plaintiff's foreclosure and eviction proceedings.

In a case similar to this one, the South Carolina Court of Appeals denied the intervention of a mortgagee in regards to a dispute of a mortgagor's possession or and title to real property. *see Ken's Cabana, LLC v. Flemington Props., LLC (ex parte Horry Cnty. State Bank)*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004). In *Ken's Cabana*, a married couple sold restaurant property to Ken's Cabana. *Id.* At 505, 604 S.E.2d at 724. As part of the purchase, the married couple's company granted Ken's Cabana a nonexclusive parking easement. *Id.* Ken's Cabana borrowed money from Horry County State Bank to make the purchase; the loan was secured by a mortgage on the restaurant and the easement. *Id.* At 506, 604 S.E.2d at 724. Later, another company bought the property on which the easement was located. *Id.* When Ken's Cabana violated the terms of the easement, the new owner terminated it. *Id.* Ken's Cabana sued the new owner, and Horry County State Bank tried to intervene. *Id.* At 506-507, 604 S.E.2d at 724-25.

The South Carolina Court of Appeals upheld the trial court's ruling that Horry County State Bank could not intervene because Ken's Cabana adequately represented Horry County State Bank's interests. *Id.* At 513, 604 S.E.2d at 728. The Court found that the interests of both parties were "essentially the same" – to retain the easement. Indeed, the Court found that,

"The Bank's mortgage on the parking easement is only as good as Ken's Cabana's right to use it. As the trial judge found, 'The rights and defenses of the Bank rise and fall with the acts and omissions of their mortgagor, Ken's Cabana.' They share the same interest and objective."

*Id.* At 510, 604 S.E.2d at 727. Horry County State bank could not identify any arguments or defenses that Ken's Cabana could not have raised. *Id.* Additionally, Horry County State Bank could not enumerate any "unique knowledge, experience, or perspective that [it] could bring to the proceedings." *Id.* As such, the South Carolina Court of Appeals upheld the lower court's denial of intervention of right.

In this matter, the Belins are like Horry County State Bank in *Ken's Cabana*. The Belins' interests are identical to that of the Defendants', delaying or defending against the foreclosure and eviction proceedings.

Indeed, the Belins argument for intervention of right is even weaker than that of Horry County State Bank's. Unlike Horry County State Bank, the Belins are not in privity of contract with any party to this case. The Belins now assert an interest based on a possible cause of action which would have begun to accrue after the filing of Plaintiff's Mortgage.

Plaintiff also asserts that the Belins' interests are adequately represented even in the Defendants and the Belins have different goals for the litigation. The mere possibility that two parties could have different intentions about the disposition of property is not enough to prove that representation is inadequate. *Ken's Cabana, LLC v. Flemington Props., LLC (ex parte Horry Cnty. State Bank)* 361 S.C. 503, 509, 604 S.E.2d 723, 726 (Ct. App. 2004). In *Ken's Cabana*, Horry County State Bank claimed that its intentions for the mortgage property might be different from Ken's Cabana. *Id.* Ken's Cabana might want to sell the restaurant or declare bankruptcy, which Horry County State Bank's intent was to protect its security interest. *Id.* The South Carolina Court of Appeals found that the possible difference in intentions did not show that Ken's Cabana was an inadequate representative of Horry County State Bank's interests. The same logic applies here.

Because the Belins interests in this matter are the mirror image of the Defendant's interests, and because the Belins cannot not identify any arguments or defenses which could not have been raised by the Defendants, and because the mere possibility that the Belins and the Defendants intentions about the disposition of the property is inadequate to show inadequate representation, the Belins are not entitled to intervention of right.

**2. The Belins are Not Entitled To Permissive Intervention.**

The Belins are not entitled to permissive intervention.

"To warrant intervention under Rule 24(b) an applicant should ordinarily show he is charged with a public duty requiring him to intervene, or he has a claim or defense involving a question of law or fact in common with the main action. A mere general interest in the subject matter of the litigation is not sufficient." *S.C. Tax Comm'n v. Union Cnty. Treasurer*, 295 S.C. 257, 262, 368 S.E.2d 72, 75 (Ct. App. 1988).

Since no statute conveys the Belins the right to intervene, there is no public duty requiring them to intervene. Because the Belins are not a party to the subject promissory note and mortgage, because the Belins have no interest in the subject real property, and because any possible claim for adverse possession would have begun to accrue after the filing of Plaintiff's Mortgage, there are no claims or defenses which she may assert in the present action. At this junction, the Belins have a mere general interest in the litigation, and as was stated in *S.C. Tax Comm'n v. Union Cnty. Treasurer*, a mere general interest in the litigation is not sufficient for intervention.

Furthermore, like intervention of right, permissive intervention requires that an applicant's interests be different than those of existing parties to the action. *S.C. Tax Comm'n v. Union Cnty. Treasurer*, 295 S.C. 257, 263-64, 368 S.E.2d 72, 75 (Ct. App. 1988). Here, as was discussed above, the Belins interests are the mirror image of the interests of the Defendants.

Because there is no statute which conveys the Belins the right to intervene, because the Belins are not a party to the subject promissory note and mortgage, because the Belins have no legal interest in the subject real property, and because any interest which would be gained through adverse possession (if the Belins ever bring the action and assuming they are successful in Court) would be "subject to" Plaintiff's mortgage, and because the Belins' interests in the litigation are the same as that of the Defendants, they are not entitled to permissive intervention.

*[Handwritten initials]*

**B. THE BELINS ARE NOT ENTITLED TO HAVE THE JUDGMENT VACATED**

While the Belins' Motion to set aside the Special Referee's order of Judgment of Foreclosure and Sale asserts to be a motion pursuant to Rule 55, SCRCPC, the proper Rule under which to move to set aside a Judgment is Rule 60, SCRCPC. A motion under Rule 55, SCRCPC would be proper if the Belins were seeking to get relief from default, but as a Judgment has been entered, and that Judgment has been of record for quite some time, the proper motion would be under Rule 60, SCRCPC. "Relief from a final judgment must be had through Rule 60 which is the mechanism for relief from a judgment or order." *Thompson v. Ballentine*, 298 S.c. 289, 291, 379 S.E.2d 896, 898 (1989). Since the proper motion for

relief from judgment is under Rule 60, SCRCP, it is that analysis that Plaintiff will discuss in this Order. As no clerical error is asserted by the Belins, this motion is pursuant to Rule 60(b), SCRCP.

“Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge.” *Tobias v. Rice* 379 S.C 357, 665 S.E.2d 216, 219 (Ct.App 2008) *reversed* 386 S.C. 306, 688 S.E.2d 552 (2010). “Rule 60(b), SCRCP requires a show in of one of five enumerated reasons before the court may grant relief from a judgment.” *Patterson v. McNeil & Associates, Inc.*, 312 S.C. 471, 441 S.E.2d 328, 329 n.2 (Ct.App 1994). “It is well settled that the moving party in a Rule 60(b) motion has the burden of presenting evidence entitling him to relief. Memorandum in support of a motion is not evidence.” *McClurg v. Deaton* 395 S.C. 85, 87, 716 S.E.2d 887, 888 (2011). “In determining whether one should be relieved from the entry of default, a court shall consider the following factors: (1) the timing of the motion for relief; (2) whether one has a meritorious defense; and (3) the degree of prejudice to the nonmoving party if the relief is granted.” *Top Value Homes, Inc. v. Harden*, 319 S.C. 302, 460 S.E.2d 427, 429 (Ct.App 1995). While the Belins’ Motion is made within the 1-year timeframe as delineated by Rule 60(b), SCRCP, there is no meritorious defense and the granting of the motion would be extremely prejudicial to the Plaintiff.

**I. The Belins have no meritorious defense to the foreclosure action.**

It is paramount that a moving party must show a meritorious defense to be entitled to relief under Rule 60(b), SCRCP. *see Bowers v. Bowers*, 304 S.C. 65, 66, 403 S.E.2d 127, 129 (Ct. App. 1991). “A motion to open or vacate judgment should be supported by affidavits as to the facts on which the application relies.” *Arnold v. Arnold*, 285 S.C. 296, 328 S.E.2d 924 (Ct. App. 1985).

In the instant matter, no affidavits executed by the Belins have been filed. Because no affidavits have been filed, there is no evidence presented to the Court which shows a meritorious defense to the foreclosure action. All that is presented to the Court is a motion which alleges that a mobile home owned by the Belins was placed on the Defendants’ property two months after Plaintiff’s mortgage was filed of record.

The Belins assert a possible civil cause of action for adverse possession, but the mere assertion of a possible cause of action does not rise to the level of a meritorious defense. To

prove a cause of action/defense of adverse possession, a party must show that that the occupation of the land was (1) actual; (2) open; (3) notorious; (4) hostile; (5) continuous; and (6) exclusive. *Getsinger v. Midlands Orthopedic Profit Sharing Plan*, 327 S.C. 424, 489 S.E.2d 223 (Ct. App. 1997). No affidavit as to any of the adverse possession factors has been filed with the Court. Because no affidavit has been filed with the Court, the Belins fail to show any meritorious defense to the foreclosure action.

Examining the Belins' Motion, they allege that the mobile home was placed on the subject real property in June of 2006. The Plaintiff's Mortgage was filed on April 13, 2006. Because the Plaintiff's Mortgage was filed before the Belins' placed their mobile home on the property, any land which would possibly be adversely possessed would be "subject to" Plaintiff's mortgage. Therefore, even if the Belins' Motion was supported by an affidavit, their adverse possession claim would not rise to the level of a meritorious defense.

Because the Belins have not presented any evidence to the Court supporting their Rule 60(b) Motion, and because any land adversely possessed from the Defendants would be "subject to" Plaintiff's Mortgage, no meritorious defense exists.

**2. The granting of the Belins' 60(b) motion would be extremely prejudicial to Plaintiff.**

The last payment credited to the Defendant's mortgage account was on November 24, 2017. Since that time, Plaintiff has been paying all escrows for this account in addition to attorney's fees and costs to bringing the underlying foreclosure action and present eviction action. Plaintiff initiated the underlying foreclosure lawsuit by the filing of a Summons, Complaint, and Lis Pendens on September 20, 2018. Since that time, Plaintiff has reviewed the Defendants for possible loss mitigation (which resulted in denial), obtained judgment, completed a public auction, and obtained title to the subject real property.

To allow the judgment to be overturned at this point would be extremely prejudicial. Plaintiff would have to continue to make escrow advances, corporate advances, and pay attorney fees and costs. This is in addition to losing the contractual interest amount as was agreed upon by the Defendants. Because deficiency is waived in the underlying foreclosure, if this property was to go back through the foreclosure process and be resold, there is a very real possibility that the Plaintiff would not be able to recoup the entirety of the judgment amount to which they are entitled.

As was discussed above, there is no merit to the Belins' proffered adverse possession claim. It is much more likely than not that if the Belins' Rule 60(b) Motion is granted, that all parties will be in this exact same position a number of months from now, only having expended much more money and money on needless litigation.

Because of the massive amount of money already expended by Plaintiff, because of the continuing money being lost by Plaintiff, because the Belins' adverse possession cause of action lacks merit, because of the waste of additional money and time that vacating judgment would necessitate, and because all vacating judgment would do is delay proceedings with the same result once litigation is finished, the Plaintiff would be extremely prejudiced by the granting of the Belins' Rule 60(b) motion.

### CONCLUSIONS OF LAW

The Belins not entitled to intervention of right nor permissive intervention. The common factor with both intervention of right and permissive intervention is that the intervening party must have an interest in the litigation beyond a mere general interest in the litigation. While the Belins are currently residing in a mobile/manufactured home situated on the real property which is subject of this litigation, they has no legal nor equitable interest in the property.

Additionally, the Belins did not timely apply for intervention. The Motion to Intervene was filed and served over a year after the Plaintiff filed their Lis Pendens, and several months after the subject real property was advertised and sold at public auction.

Any interest that the Belins may have in the subject real property was adequately protected by the Defendants. The Belins' interest in the litigation is the mirror image of the Defendants', and no arguments or defenses could have been raised by the Belins that could not have been raised by the Defendants.

No statute conveys the Belins the right to intervene.

The Belins Motion to Set Aside Judgment is properly considered under Rule 60(b), SCRCF. not the proffered Rule 55, SCRCF. Therefore, under Rule 60(b), SCRCF, the Belins must show a meritorious defense to the foreclosure and the degree of prejudice to the Plaintiff must be considered.

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The Belins possible assertion of a future adverse possession claim does not create a meritorious defense. No affidavits have been received by this Court from the Belins as to their possible assertion of adverse possession. Additionally, the Belins state that the mobile/manufactured home was not placed on the subject real property until after the Mortgage was recorded, and therefore any adverse possession would be "subject to" Plaintiff's Mortgage.


The Plaintiff would be extremely prejudiced if this Court were to grant the Belins' Motion to Set Aside Judgment. The Plaintiff has already lost a significant amount of money during the court of the Defendants' breach and the following litigation; to set aside the sale and Judgment would merely cause the Plaintiff to expend more money while leading to the same result.

**IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:**

1. That the Belins' Motion to Intervene is hereby denied, and;
2. That the Belins' Motion to Set Aside Judgment is denied.

*dlp*

AND IT IS SO ORDERED.

  
 \_\_\_\_\_  
 The Honorable W. Haigh Porter  
 Special Referee for Marion County

Date: Dec. 27, 2019  
 Florence, South Carolina



# Disclosure Statement, Note and Security Agreement

Borrower(s) (Name and mailing address) BERTHA DUNHAM ERNEST L DUNHAM 1701 W HWY 37B GRESHAM SC 29546	Lender (Name, address, city and state) CITIFINANCIAL, INC. 235 N MAIN ST MARION SC 29571	Account No. [REDACTED]
		Date of Loan 04/13/2006

<b>ANNUAL PERCENTAGE RATE</b> The cost of Borrower's credit as a yearly rate.  11.01 %	<b>FINANCE CHARGE</b> The dollar amount the credit will cost Borrower.  \$ 89,538.40	<b>Amount Financed</b> The amount of credit provided to Borrower or on Borrower's behalf.  \$ 36,839.60	<b>Total of Payments</b> The amount Borrower will have paid after Borrower has made all payments as scheduled.  \$ 126,378.00
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**Payment Schedule:**

Number of Payments	Amount of Payments *	When Payments Are Due
360	\$351.05	MONTHLY BEGINNING 05/18/2006
	\$	
	\$	
	\$	

**Security:** If checked, Borrower is giving a security interest in:  
 Real Property

**Late Charge:** If a payment is more than 10 days late, Borrower will pay a late charge equal to the greater of 5.0 % of the payment due or \$ 15.00

**Prepayment:** If Borrower pays off early, Borrower will not have to pay a penalty; and will not be entitled to a refund of part of the finance charge.

See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

\* Does not include any insurance premium.

**Additional Information:**

Total amount of this estate's payment including insurance premiums, if any. \$ 351.05	PRINCIPAL \$ 37,970.54	POINTS/FEE \$ 1,105.94	DATE CHARGES BEGIN 04/18/2006
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**Required Insurance Disclosure:**  
 If Borrower grants Lender a security interest as indicated in this document, insurance to protect the Lender's interest in the collateral may be required. If this loan is secured by real property, or mobile/manufactured home, then fire, extended coverage, collision and/or comprehensive casualty insurance is required naming Lender as loss payee, until the loan is fully paid. The amount of such insurance must be sufficient to satisfy the unpaid balance of the loan, or be equal to the value of the collateral, whichever is less. Such insurance may be provided through an existing policy or a policy obtained independently and purchased by Borrower. Borrower may obtain such insurance from any insurer that is reasonably acceptable to Lender.

**Optional Insurance Disclosure:**  
 Borrower is not required to purchase optional insurance products, such as: Credit Life, Credit Disability, Involuntary Unemployment Insurance or any other optional insurance products. Lender's decision to grant credit will not be affected by Borrower's decision to purchase or decline to purchase optional insurance.

Coverage will not be provided unless Borrower signs and agrees to pay the applicable monthly premium in addition to the monthly loan payment disclosed above.

Borrower should refer to the terms contained in the applicable certificate or policy of insurance issued for the exact description of benefits, exclusions and premium rates.

If Borrower purchases insurance, Borrower's monthly payment will include both the monthly loan payment disclosed above and the applicable monthly premiums.

I/We request the following insurance:

Premium Due with the First Month's Loan Payment	First Year's Premium *	Insurance Type:
\$ NONE	\$	CREDIT LIFE, CREDIT DISABILITY, AND INVOLUNTARY UNEMPLOYMENT INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS I/WE AGREE TO PAY THE ADDITIONAL COST BY SIGNING BELOW. The Coverage is for the initial term of the loan unless otherwise noted.
\$ NONE	\$	
\$ NONE	\$	

[Signature] 4/13/2006  
 First Borrower's Signature Date

[Signature] 4-13-06  
 Second Borrower's Signature Date

(\* First year's premiums are calculated on the assumption that monthly loan payments are timely made). Accrued but unpaid premium, if not paid earlier, will be due and payable at the time of the final payment on the loan. However, failure to pay premiums may result in termination of insurance as described below.

**Termination of Insurance:**  
 Borrower may cancel any of the optional insurance products offered at any time. The optional insurance will terminate upon the earliest of the following occurrences:

- (1) the Lender's receipt of Borrower's written request for termination;
- (2) on the date when the sum of past due premiums equal or exceed four times the first month premium;
- (3) termination pursuant to the provisions of the insurance certificate;
- (4) payment in full of Borrower's Loan;
- (5) death of Borrower.

**TERMS:** In this Disclosure Statement, Note and Security Agreement, the word "Borrower" refers to the persons signing below as Borrower, whether one or more. If more than one Borrower signs, each will be responsible, individually and together, for all promises made and for repaying the loan in full. The word "Lender" refers to the Lender, whose name and address are shown above.

**PROMISE TO PAY:** In return for a loan that Borrower has received, Borrower promises to pay to the order of Lender the Principal shown above, plus interest on the unpaid Principal balance from the Date Charges Begin shown above until fully paid at the following agreed annual Rate of Interest:

(Applicable Box Must be Checked)

10.63 % per annum on the entire unpaid Principal balance.

% per annum on the first \$ of the unpaid Principal balance; and % per annum on the remaining unpaid Principal balance.

Lender will compute interest on the unpaid Principal balance on a daily basis from the date charges begin until Borrower repays the loan. If Borrower does not make sufficient or timely payments according to the payment schedule above, Borrower will incur greater interest charges on the loan.

Principal and interest shall be payable in the substantially equal monthly installments shown above, except that any appropriate adjustments will be made to the first and final payments, beginning on the first payment date shown above and continuing on the same day in each following month until paid in full. Upon the final payment date or the acceleration thereof, the entire outstanding balance of Principal and interest evidenced by this Disclosure Statement, Note and Security Agreement shall be due and payable. Any payment(s) which Lender accepts after the final payment date or the acceleration thereof do not constitute a renewal or extension of this loan unless Lender so determines.

Each payment shall be applied as follows: (1) monthly loan payments due (first to interest, then principal), (2) insurance premiums due, (3) unpaid interest to the date of payment, if any, then (4) principal.

Any amount shown above as Points/Fees has been paid by Borrower as Points/Fees. This amount is considered a prepaid charge and is in addition to the above Rate of Interest. Points/Fees are earned prior to any other interest on the loan balance. In the event of prepayment of the loan, Points/Fees will be refunded only if required by state law.

**PREPAYMENT:** Borrower may prepay this loan in whole or in part at any time without penalty. However, upon partial prepayment, interest will continue to accrue on any remaining Principal balance. Partial prepayment will not affect the amount or due date of subsequent scheduled payments on the loan, but may reduce the number of such payments.

**LATE CHARGE:** If a payment is more than 10 days late, Borrower will pay a late charge equal to the greater of 5.0 % of the unpaid portion of the Payment due or \$ 15.00. Lender may, at its option, waive any late charge or portion thereof without waiving its right to require a late charge with regard to any other late payment.

**BAD CHECKS:** Lender may charge a fee of \$ 25.00 if a check, negotiable order of withdrawal or draft is returned for insufficient funds or insufficient credit.

**SECURITY AGREEMENT:** Borrower's loan is secured by a Deed of Trust or Mortgage of even date on real property which requires Lender's written consent to a sale or transfer of the encumbered real property located at 1701 W HWY 378 GRESHAM SC 29546. See either the Deed of Trust or the Mortgage for terms applicable to Lender's interest in Borrower's real property ("Property").

**OWNERSHIP OF PROPERTY:** Borrower represents that the Property is owned by Borrower free and clear of all liens and encumbrances except those of which Borrower has informed Lender in writing. Prior to any default, Borrower may keep and use the Property at Borrower's own risk, subject to the provisions of the Uniform Commercial Code.

**USE OF PROPERTY:** Borrower will not sell, lease, encumber, or otherwise dispose of the Property without Lender's prior written consent. Borrower will not use or permit the use of the Property for illegal purposes.

**TAXES AND FEES:** Borrower will pay all taxes, assessments, and other fees payable on the Property. If Borrower fails to pay such amounts, Lender may pay such amounts for Borrower and the amounts paid by Lender will be added to the unpaid balance of the loan, subject to the provisions of the South Carolina Consumer Protection Code.

**INSURANCE:** If any insurance coverage is obtained at Lender's office, upon Borrower's default, Borrower hereby gives Lender a power of attorney to cancel part or all of the insurance and to apply any returned premiums to Borrower's unpaid balance. If Borrower purchases any insurance at Lender's office, Borrower understands and acknowledges that (1) the insurance company may be affiliated with Lender, (2) Lender's employee(s) may be an agent for the insurance company, (3) such employee(s) is not acting as the agent, broker or fiduciary for Borrower on this loan, but may be the agent of the insurance company, and (4) Lender or the insurance company may realize some benefit from the sale of that insurance. If Borrower fails to obtain or maintain any required insurance or fails to designate an agent through whom the insurance is to be obtained, Lender may purchase such required insurance for Borrower through an agent of Lender's choice, and the amounts paid by Lender will be added to the unpaid balance of the loan.

**LOAN CHARGES:** If a law that applies to this loan and that 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 (i) any such loan charge will be reduced by the amount necessary to reduce the charge to the permitted limit, and (ii) any sums already collected from Borrower that exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under this loan 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.

**DEFAULT:** Borrower will be in default if:

1. Borrower does not make any scheduled payment on time;
2. Borrower is (or any other person puts Borrower) in bankruptcy, insolvency or receivership;
3. Any of Borrower's creditors attempts by legal process to take and keep any property of Borrower, including the Property securing this loan;
4. Borrower fails to fulfill any promise made under this agreement; or
5. A default occurs under any Real Estate Mortgage or Deed of Trust which secures this loan or under any other mortgage or deed of trust on the real property.

Subject to Borrower's right to any notice of default, right to cure default, and any other applicable law, if Borrower defaults, Lender may require Borrower to repay the entire unpaid Principal balance and any accrued interest at once. Lender's failure to exercise or delay in exercising any of its rights when default occurs does not constitute a waiver of those or any other rights under this Note. If this debt is referred for collection to an attorney not a salaried employee of Lender, Lender shall be entitled to collect all reasonable costs and expenses of collection, including, but not limited to, court costs, and if the original amount financed exceeds an amount specified in the provisions of the South Carolina Consumer Protection Code allowing for attorney's fees in connection with supervised loans, reasonable attorney's fees not in excess of 15% of the unpaid debt.

**EFFECTS OF DEFAULT:** If Borrower defaults, Borrower will deliver the Property to Lender or, upon Lender's demand, assemble the Property and make it available to Lender at a reasonably convenient place. Lender may, without previous notice or demand and without legal process, peacefully enter any place where the Property is located and take possession of it. The Property may be sold with notice at a private or public sale at a location chosen by Lender. At such a sale, Lender may purchase the Property. The proceeds of the sale, minus reasonable expenses incurred in collecting on the debt, will be credited to the unpaid balance of Borrower's loan. The expenses that will be deducted from the proceeds of the sale include: the costs of taking, removing, holding, repairing, and selling the Property; reasonable fees (if the original Principal exceeds an amount specified in the provisions of the South Carolina Consumer Protection Code allowing for attorney's fees in connection with supervised loans) paid to an attorney who is not a salaried employee of Lender; and the costs of removing any superior liens or claims on the Property. If the proceeds of sale are not sufficient to pay off the entire balance plus costs, Borrower agrees to pay the remaining amount upon demand. If Borrower has left other property in the repossessed Property, Lender may hold such property temporarily for Borrower without responsibility or liability for the property.

Notice of the time and place of a public sale or notice of the time after which a private sale will occur is reasonable if mailed to the Borrower's address at least five (5) days before the sale. The notice may be mailed to Borrower's last address shown on Lender's records.

**LAW THAT APPLIES:** South Carolina law and federal law, as applicable, govern this Disclosure Statement, Note and Security Agreement. If any part is unenforceable, this will not make any other part unenforceable. In no event will Borrower be required to pay interest or charges in excess of those permitted by law.

**OTHER RIGHTS:** Lender may accept payments after maturity or after a default without waiving its rights with respect to any subsequent default in payment. Borrower agrees that Lender may extend time for payment after maturity without notice. The terms of this agreement can be waived or changed only in a writing signed by Lender.

Where the context requires, singular words may be read in the plural and plural words in the singular. References to the masculine gender may be read to apply to the feminine gender.

**INTEREST AFTER MATURITY:** Lender, at its option, may collect interest from and after maturity upon the unpaid principal balance at either the maximum rate permitted by the then applicable law or rate of interest then prevailing under this contract.

Borrower's Initials B.D. E.D.

BERTHA DUNHAM ERNEST L DUNHAM

04/13/2006

**OTHER TERMS:** Each Borrower under this Disclosure Statement, Note and Security Agreement, if more than one, agrees that Lender may obtain approval from one Borrower to change the repayment terms and release any Property securing the loan, or add parties to or release parties from this agreement, without notice to any other Borrower and without releasing any other Borrower from his responsibilities. Lender does not have to notify Borrower before instituting suit if the note is not paid, and Lender can sue any or all Borrowers upon the default by any Borrower.

Borrower, endorser, sureties and guarantors, to the extent permitted by law, severally waive their right to require Lender to demand payment of amounts due, to give notice of amounts that have not been paid, to receive notice of any extensions of time to pay which Lender allows to any Borrower and to require Lender to show particular diligence in bringing suit against anyone responsible for repayment of this loan, and additionally, waive benefit of homestead and exemption laws now in force or later enacted, including stay of execution and condemnation, on any property securing this loan and waive the benefit of valuation and appraisal.

This Disclosure Statement, Note and Security Agreement shall be the joint and several obligation of all makers, sureties, guarantors and endorsers and shall be binding upon them, their heirs, successors, legal representatives and assigns.

If any part of the Disclosure Statement, Note and Security Agreement and, if applicable, the Mortgage or Deed of Trust and accompanying Itemization of Amount Financed is unenforceable, this will not make any other part unenforceable.

**REFINANCING:** The overall cost of refinancing an existing loan balance may be greater than the cost of keeping the existing loan and obtaining a second loan for any additional funds Borrower wishes to borrow.

**AUTHORIZATION TO USE CREDIT REPORT:** By signing below, Borrower authorizes Lender to obtain, review and use information contained in the Borrower's credit report in order to determine whether the Borrower may qualify for products and services offered by Lender. This authorization terminates when Borrower's outstanding balance due under this Disclosure Statement, Note and Security Agreement is paid in full. Borrower may cancel such authorization at any time by writing the following: Transaction Processing, 300 St. Paul Place, BSP13A, Baltimore, MD 21202. In order to process Borrower's request, Lender must be provided Borrower's full name, address, social security number and account number.

The following notice applies only if this box is checked.

**NOTICE**

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF, RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

By signing below, Borrower agrees to the terms contained herein, acknowledges receipt of a copy of this Disclosure Statement, Note and Security Agreement and, if applicable, the Mortgage or Deed of Trust and of the accompanying Itemization of Amount Financed, and authorizes the disbursements stated therein.

WITNESSES:  
*[Handwritten signatures]*

SIGNED:  
*Bertha Dunham* (Seal)  
BERTHA DUNHAM -Borrower  
*Ernest L Dunham* (Seal)  
ERNEST L DUNHAM -Borrower  
(Seal)  
-Borrower

CITIFINANCIAL INC.  
By *[Handwritten Signature]*  
(Name and Title) 04/13/2006 11:28:24

**SECURITY INTEREST OF NONOBLIGOR:** Borrower only is personally liable for payment of the loan. Nonobligor is liable and bound by all other terms, conditions, covenants, and agreements contained in this Disclosure Statement, Note and Security Agreement, including but not limited to the right and power of Lender to repossess and sell the Property securing this loan, in the event of default by Borrower in payment of this loan.

\_\_\_\_\_  
Signature (Seal) Date

\_\_\_\_\_  
Signature (Seal) Date

This Rider Amends The Loan Agreement/Promissory Note Entered Into On Date Below

Agreed Rate Reduction Rider

Borrower(s) (Name and mailing address) BERTHA DUNHAM ERNEST L DUNHAM 1701 W HWY 378 GRESHAM SC 29546	Lender (Name, address, city and state) CITIFINANCIAL, INC.  235 N MAIN ST MARION SC 29571	Account No. [REDACTED]
		Date of Loan 04/13/2006

Borrower has agreed to pay the rate of interest set forth in the Note (the "Note Rate") until the full amount of principal has been paid. However, if on any one of the second, third or fourth anniversaries of the scheduled due date of the first full installment payment due date under the Note (each, an "Anniversary Date") Borrower has demonstrated a Good Payment History, Lender agrees to decrease the Note Rate to 9.63 %. Borrower will be deemed to have demonstrated a "Good Payment History" if Borrower: (a) has made each of the most recent 24 consecutive monthly payments under the Note before the date the next payment was due; (b) has never been late by 91 days or more in making any monthly payments due under the Note; (c) neither Borrower nor Co-Borrower has filed petitions in bankruptcy during the term of the loan; and (d) no provision of the Note has been modified prior to the Anniversary Date. Modifications to the Note include deferment of a scheduled payment, legal action with respect to enforcement of the Note or the Mortgage, and an adjustment of the loan terms. If Borrower demonstrates a Good Payment History, the new Note Rate will take effect one month after the earliest Anniversary Date on which Borrower has demonstrated a Good Payment History ("Rate Reduction Date"). Beginning with Borrower's first monthly payment after the Rate Reduction Date, Borrower will pay the new amount as the monthly payment until the Maturity Date. Lender will decrease Borrower's Note Rate only one time during the term of the loan, provided Borrower demonstrates a Good Payment History on any one of the second, third, or fourth Anniversary Dates.

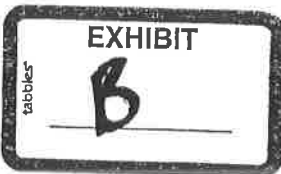
BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Agreed Rate Reduction Rider.

Bertha L Dunham  
Borrower

4/13/2006  
Date

Ernest L. Dunham  
Co-Borrower

4-13-06  
Date



After recording return to:  
CITIFINANCIAL, INC.  
235 N MAIN ST  
MARION SC 29571

FILED, RECORDED, INDEXED  
04/13/2006 02:15:20PM  
Rec Fee: 12.00 St Fee: 0.00  
Co Fee: 0.00 Pages: 6  
Sherry R. Rhodes - Clerk of Court  
Marion County, SC

**MORTGAGE**

THIS MORTGAGE is made this 13th day of April, 2006, between the Mortgagor, BERTHA E. DUNHAM (herein "Borrower"), and the Mortgagee, CITIFINANCIAL, INC., a corporation organized and existing under the laws of South Carolina, whose address is 235 N MAIN ST MARION SC 29571 (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ 37,970.54, which indebtedness is evidenced by Borrower's note dated 04/13/2006 and extensions and renewals thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of indebtedness, if not sooner paid, due and payable on 04/18/2036;

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in the County of MARION, State of South Carolina:

SEE SCHEDULE A ATTACHED

TO HAVE AND TO HOLD unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

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

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:  
1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note.

000010688 BK: 00819 Pg: 00146

1) For assignment of mortgage to Citifinancial Servicing LLC See RE vol 401 Page 5  
2) For assignment of mortgage to Wilmington Savings Fund Society (Trustee) See RE vol 401 Page 6

2. **Funds for Taxes and Insurance.** Subject to applicable law or a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Mortgage and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional lender.

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Mortgage.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note, and then to the principal of the Note.

4. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

5. **Hazard 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 such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

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.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

6. **Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

7. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

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10. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note, (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property to Lender under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

12. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

13. **Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. **Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

15. **Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

16. **Transfer of the Property or a Beneficial Interest In Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Mortgage.

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 delivered or mailed within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on Borrower.

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

17. **Acceleration; Remedies.** Except as provided in paragraph 16 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 12 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 20 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding, and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the nonexistence of a default or any other defense of Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorneys' fees, and costs of documentary evidence, abstracts and title reports, all of which shall be additional sums secured by this Mortgage.

18. **Borrower's Right to Reinstale.** Notwithstanding Lender's acceleration of the sums secured by this Mortgage due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums which would be then due under this Mortgage and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in paragraph 17 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

000010688 Bk # 00819 Pg # 00148

19. **Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

20. **Release.** Upon payment of all sums secured by this Mortgage, this Mortgage shall become null and void, and Lender shall release this mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

21. **Waiver of Homestead.** Borrower hereby waives all rights of homestead exemption in the Property.

22. **Waiver of Right of Appraisal.** Borrower hereby waives the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained by Lender against Borrower in the event of foreclosure under this Mortgage.

23. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. 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.

Borrower shall promptly give Lender written notice of 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. If Borrower learns, or is notified by any governmental or regulatory authority, 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.

As used in this paragraph 23, "Hazardous Substances" are those substances defined as toxic or hazardous substances 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. As used in this paragraph 23, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

(Intentionally Left Blank)

000010688 Bk : 00817 Ps : 00149

REQUEST FOR NOTICE OF DEFAULT  
AND FORECLOSURE UNDER SUPERIOR  
MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, with a copy to P. O. Box 17170, Baltimore, MD 21203, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

Signed, sealed and delivered in the presence of:

Nicole Brunson  
John Kelly

Bertha E. Dunham (Seal)  
Borrower

\_\_\_\_\_  
(Seal)  
Borrower

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA MARION County ss:

Before me personally appeared Nicole Brunson and made oath that she saw the within named Borrower sign, seal, and as her act and deed, deliver the within written Mortgage; and that she with Johnny Beltrami witnessed the execution thereof.

Sworn before me this 13<sup>th</sup> day of April 2006

Samuel Ray Stear (Seal)  
Notary Public for South Carolina

Nicole Brunson

My commission expires: MARCH 15, 2007

## Schedule A

Report Number: [REDACTED]  
Client Number: [REDACTED]  
Customer: Dunham, Bertha E.

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-half (1/2) acre, bounded Northeast One Hundred Five (105) feet by U. S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E. J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E. J. Atkinson. The said lot being shown on a Map of lot sold by E. J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

This being the same property conveyed to Bertha E. Dunham from William Dunham Jr. herein by Deed dated 05/10/1983 and recorded 09/19/1983 in Book A196 at Page 24.

000010688 BK #: 00819 P# : 00151

201700047942  
NATIONWIDE TITLE CLEARING

Instrument Vol Page  
201700047942 OR 401 5

When Recorded Return To:  
CitiFinancial Servicing, LLC  
C/O Nationwide Title Clearing, Inc.  
2100 Alt. 19 North  
Palm Harbor, FL 34683

NTC Order # [REDACTED]  
CMS Loan # [REDACTED]

201700047942  
Filed for Record in  
MARION COUNTY, SC  
CHRISTY M. GRAY, CLERK OF COURTS  
12-21-2017 At 01:50 pm.  
ASSIGN HTG 6.00  
Vol 401 Page 5 - 5

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, CFNA RECEIVABLES (TX), LLC, A TEXAS LIMITED LIABILITY COMPANY F/K/A CFNA RECEIVABLES (TX), INC., A TEXAS CORPORATION, SUCCESSOR BY MERGER TO CFNA RECEIVABLES (SC), INC. F/K/A CITIFINANCIAL, INC., A SOUTH CAROLINA CORPORATION, WHOSE ADDRESS IS C/O CITIMORTGAGE, INC., 1000 TECHNOLOGY DRIVE, O'FALLON, MO 63368, (ASSIGNOR), by these presents does convey, grant, assign, transfer and set over the described Mortgage with all interest secured thereby, all liens, and any rights due or to become due thereon to CITIFINANCIAL SERVICING LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS C/O CITIMORTGAGE, INC., 1000 TECHNOLOGY DRIVE, O'FALLON, MO 63368 (800)922-6235, ITS SUCCESSORS AND ASSIGNS, (ASSIGNEE).

Said Mortgage dated 04/13/2006, made by BERTHA E. DUNHAM to CITIFINANCIAL, INC. and recorded 04/13/2006 in the Recorder or Registrar of Deeds of MARION County, South Carolina in Vol 10812, Page 00146 and Instrument # 000010688.

Dated on 12/14/2017 (MM/DD/YYYY)  
CFNA RECEIVABLES (TX), LLC, A TEXAS LIMITED LIABILITY COMPANY F/K/A CFNA RECEIVABLES (TX), INC., A TEXAS CORPORATION, SUCCESSOR BY MERGER TO CFNA RECEIVABLES (SC), INC. F/K/A CITIFINANCIAL, INC., A SOUTH CAROLINA CORPORATION

By: Ercilia Green  
Ercilia Green  
VICE PRESIDENT

Signed and Acknowledged  
In the Presence of:


All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.

Alan Baker  
Alan Baker  
Witness 1

Angela Pavao  
Angela Pavao  
Witness 2

STATE OF FLORIDA COUNTY OF PINELLAS  
The foregoing instrument was acknowledged before me on 12/14/2017 (MM/DD/YYYY), by Ercilia Green as VICE PRESIDENT of CFNA RECEIVABLES (TX), LLC, A TEXAS LIMITED LIABILITY COMPANY F/K/A CFNA RECEIVABLES (TX), INC., A TEXAS CORPORATION, SUCCESSOR BY MERGER TO CFNA RECEIVABLES (SC), INC. F/K/A CITIFINANCIAL, INC., A SOUTH CAROLINA CORPORATION, who, as such VICE PRESIDENT being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

Sheilah Morris  
Sheilah Morris  
Notary Public - State of FLORIDA  
Commission expires: 10/13/2020

  
SHEILAH MORRIS  
Notary Public - State of Florida  
My Commission #GG 38833  
Expires October 13, 2020

Document Prepared By: D.Larose/NYC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152  
Recording Requested By: CitiFinancial Servicing, LLC, C/O Nationwide Title Clearing, Inc. 2100 Alt. 19 North, Palm Harbor, FL 34683  
CF001 25680198 MAS27 DOCR T071712-03:45:44 [C-1] FRMSC1



61. 4015

NATIONWIDE TITLE CLEARING

Instrument 201700047943 CR Vol Page 401 6

When Recorded Return To:  
CitiFinancial Servicing, LLC  
C/O Nationwide Title Clearing, Inc.  
2100 Alt. 19 North  
Palm Harbor, FL 34683

201700047943  
Filed for Record in  
MARION COUNTY, SC  
CHRISTY H. GRAY, CLERK OF COURTS  
12-21-2017 At 01:52 pm.  
ASSIGN HTG 6.00  
Vol 401 Page 6 - 6

NTC Order # [REDACTED]  
CMS Loan # [REDACTED]

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, CITIFINANCIAL SERVICING LLC, A DELAWARE LIMITED LIABILITY COMPANY, WHOSE ADDRESS IS C/O CITIMORTGAGE, INC., 1000 TECHNOLOGY DRIVE, O'FALLON, MO 63368, (ASSIGNOR), by these presents does convey, grant, assign, transfer and set over the described Mortgage with all interest secured thereby, all liens, and any rights due or to become due thereon to WILMINGTON SAVINGS FUND SOCIETY, FSB, AS TRUSTEE OF STANWICH MORTGAGE LOAN TRUST A, WHOSE ADDRESS IS 1600 SOUTH DOUGLASS ROAD, SUITE 200-A, ANAHEIM, CA 92806, ITS SUCCESSORS AND ASSIGNS, (ASSIGNEE).

Said Mortgage dated 04/13/2006, made by BERTHA E. DUNHAM to CITIFINANCIAL, INC. and recorded 04/13/2006 in the Recorder or Registrar of Deeds of MARION County, South Carolina in Vol. 00819, Page 00146 and Instrument # 000010688.

Dated on 12/14/2017 (MM/DD/YYYY)  
CITIFINANCIAL SERVICING LLC, A DELAWARE LIMITED LIABILITY COMPANY

By: Ercilia Green  
Ercilia Green  
VICE PRESIDENT


Signed and Acknowledged  
in the Presence of:  
Alan Baker  
Alan Baker  
Witness 1

All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.

Angela Pavao  
Angela Pavao  
Witness 2

STATE OF FLORIDA COUNTY OF PINELLAS  
The foregoing instrument was acknowledged before me on 12/14/2017 (MM/DD/YYYY), by Ercilia Green as VICE PRESIDENT of CITIFINANCIAL SERVICING LLC, A DELAWARE LIMITED LIABILITY COMPANY, who, as such VICE PRESIDENT being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

Sheilah Morris  
Sheilah Morris  
Notary Public - State of FLORIDA  
Commission expires: 10/13/2020

 SHEILAH MORRIS  
Notary Public - State of Florida  
My Commission #GG 38533  
Expires October 13, 2020

Document Prepared By: D.Larose/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152  
Recording Requested By: CitiFinancial Servicing, LLC, C/O Nationwide Title Clearing, Inc. 2100 Alt. 19 North, Palm Harbor, FL 34683  
CF00126147094 MAS27 DOCR 1071712-03:55:46 [C-1] FRMSC1



02.401/16

STATE OF SOUTH CAROLINA

FILED IN THE COURT OF COMMON PLEAS

COUNTY OF MARION

2018 SEP 20 11:03:15 C/A NO.: 2018-CP-33-

Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A,

2018 CP33 0 0 6 5 3

Plaintiff,

vs.

LIS PENDENS

LP 57

Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham,

Defendants.

(File No 4043.17918)

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced and is now or will be pending in this Court upon complaint of the above-named Plaintiff against the above-named Defendants for the foreclosure of a certain mortgage of real estate given by Bertha E. Dunham to CitiFinancial, Inc. dated April 13, 2006, and recorded in the public records of Marion County on April 13, 2006, in Book 819 at Page 146. Thereafter, by assignment recorded December 21, 2017 in Book 401 at Page 5, the mortgage was assigned to Citifinancial Servicing LLC; thereafter, by assignment recorded December 21, 2017 in Book 401 at Page 6, the mortgage was assigned to the Plaintiff.

The premises covered and affected by the Plaintiff's mortgage and the foreclosure thereof, were, at the time of the making thereof, and at the time of the filing of this notice, described as follows:

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-half (1/2) acre, bounded Northeast One hundred Five (105) feet by U.S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

Being the same property conveyed to William Dunham, Jr. and Bertha E. Dunham by deed of the United States of America, dated October 15, 1975 and recorded November 5, 1975 in Deed Book A136 at Page 583; thereafter, William Dunham, Jr. conveyed his interest in the subject property to Bertha E. Dunham by deed dated May 10, 1983 and recorded September 19, 1983 in Deed Book A196 at Page 24.

TMS No. 163-00-00-053-000  
Property Address: 1701 West Highway 378, Gresham, SC 29546

RILEY POPE & LANEY, LLC



T. Lowndes Pope, SC Bar 66507

Heidi B. Carey, SC Bar 7020

Damon C. Wlodarczyk, SC Bar 70460

— Jayme L. Shy, SC Bar 81551

Meredith M. Robertson, SC Bar 68322

Peter M. Balthazor, SC Bar 68244

Jason M. Hunter, SC Bar #101501

Stephanie M. Huggins, SC Bar #101757

Nicholas S. Hulse, SC Bar #102740

2838 Devine Street

Post Office Box 11412 (29211)

Columbia, South Carolina 29205

(803) 799-9993

Attorneys for Plaintiff

September 18, 2018  
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A

FILBD

2018 SEP 20 PM 3:15

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

vs.

2018-CP - \_\_\_\_\_

Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham

Defendants.

2018 CP33 0 0 6 5 3

Submitted By:

T. Lowndes Pope, SC Bar #66507
Heidi B. Carey, SC Bar #7020
Damon C. Wlodarczyk, SC Bar #70460
Jayme L. Shy, SC Bar #81551
Meredith M. Robertson, SC Bar #68322
Peter M. Balthazor, SC Bar #68244
Jason M. Hunter, SC Bar #101501
Stephanie M. Huggins, SC Bar #101757
Nicholas S. Hulsc, SC Bar #102740
RILEY POPE & LANEY, LLC
Attorneys for Plaintiff

Address: Post Office Box 11412, Columbia, SC 29211
Telephone #: (803) 799-9993
Fax #: (803) 239-1414
E-mail: http://rplfirm.lawoffice.com

NOTE: The coversheet and 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 coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

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

NATURE OF ACTION (Check One Box Below)

Grid of categories for NATURE OF ACTION including Contracts, Torts - Professional Malpractice, Torts - Personal Injury, Real Property, Administrative Law/Relief, Judgments/Settlements, Appeals, and Special/Complex/Other.

Submitting Party Signature:

Handwritten signature of Jayme L. Shy

Date:

Handwritten date 9/18/18

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

**Pursuant to the ADR Rules, 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 210<sup>th</sup> 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.
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 MARION

Wilmington Savings Fund Society, FSB, as trustee  
of Stanwich Mortgage Loan Trust A,

Plaintiff,

vs.

Bertha Dunham aka Bertha E. Dunham and Ernest  
L. Dunham,

Defendants.

FILED

2018 SEP 20

PM 3:15 THE CIRCUIT COURT  
FOR THE TWELFTH  
JUDICIAL CIRCUIT

CERTIFICATE OF EXEMPTION  
FROM ADR

Docket No. 2018-CP-33-

2018 CP33 0 0 6 5 3

(File No. 4043.17918)

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ADR 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 a forfeiture proceeding brought by the State;
- this is a case involving a mortgage foreclosure; or
- the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

RILEY POPE & LANEY, LLC



T. Lowndes Pope, SC Bar 66507

Heidi B. Carey, SC Bar 7020

Damon C. Wlodarczyk, SC Bar 70460

Jayme L. Shy, SC Bar 81551

Jason M. Hunter, SC Bar #101501

Nicholas S. Hulse, SC Bar #102740

2838 Devine Street

Post Office Box 11412 (29211)

Columbia, South Carolina 29205

(803) 799-9993

Attorneys for Plaintiff

September 18, 2018  
Columbia, South Carolina

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 I(d), Rules of Circuit Court Arbitration.

FILED

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A,

2018 SEP 20 PM 3:15

IN THE COURT OF COMMON PLEAS

C/A NO.: 2018-CP-33-

2018 CP33 0 0 6 5 3

Plaintiff,

vs.

Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham,

Defendants.

**NOTICE OF RIGHT TO FORECLOSURE INTERVENTION**

(File No. 4043.17918)

PLEASE TAKE NOTICE THAT pursuant to the South Carolina Supreme Court Administrative Order 2011-05-02-01, you have a right to be considered for Foreclosure Intervention.

Throughout this foreclosure action and any foreclosure intervention process, you also have the right to communicate with and otherwise deal with the Plaintiff through its law firm, Riley Pope & Laney, LLC.

Riley Pope & Laney, LLC 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.

Please communicate your request for foreclosure intervention to Riley Pope & Laney, LLC by returning the attached Request for Foreclosure Intervention form within 30 days from your receipt of this Notice. **IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN FORECLOSURE INTERVENTION, THE FORECLOSURE ACTION MAY PROCEED.**

RILEY POPE & LANEY, LLC



T. Lowndes Pope, SC Bar 66507

Heidi B. Carey, SC Bar 7020

Damon C. Wlodarczyk, SC Bar 70460

Jayne L. Shy, SC Bar 81551

Meredith M. Robertson, SC Bar 68322

Peter M. Balthazor, SC Bar 68244

Jason M. Hunter, SC Bar #101501

Stephanie M. Huggins, SC Bar #101757

Nicholas S. Hulse, SC Bar #102740

2838 Devine Street

Post Office Box 11412 (29211)

Columbia, South Carolina 29205

(803) 799-9993

Attorneys for Plaintiff

September 18, 2018  
Columbia, South Carolina

**Request for Foreclosure Intervention**

RPL File No: 4043.17918

Case Caption: Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A vs. Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham

This document is exchanged exclusively for the purpose of foreclosure intervention pursuant to S.C. Supreme Court Administrative Order 2011-05-02-01.

\_\_\_\_\_ I am the owner of and occupy the following property as my principal residence: 1701 West Highway 378, Gresham, SC 29546.  
(Please include proof of residence, such as a copy of a current utility bill, voter registration card, driver's license, etc.)

\_\_\_\_\_ I am the owner but the above-referenced property is not my principal residence.

I am interested in the following type(s) of loss mitigation (please note that you may not qualify for any or all of the foreclosure intervention programs)

_____	Loan Modification	_____	Deed In Lieu
_____	Payment Plan	_____	Short Sale
_____	Forbearance Agreement	_____	Other: _____

\_\_\_\_\_ I elect to NOT participate in any Foreclosure Intervention.

Contact Information:

Home \_\_\_\_\_ Cell \_\_\_\_\_  
Work \_\_\_\_\_ Other \_\_\_\_\_

May we leave a phone message? At home  Yes  No

On your cell phone:  Yes  No At work  Yes  No

May we call your cell phone?  Yes  No

May we send you an email message?  Yes  No -- If yes, use this email address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (Signature) Date: \_\_\_\_\_  
\_\_\_\_\_ (Print Name)

*\*Military service members on "active duty" or "active service," or a dependent of such a service member may be entitled to certain legal protections pursuant to the Servicemembers' Civil Relief Act, 50 U.S.C. §3901 et seq. If you believe that you may be entitled to such protection, please contact our office immediately.*

*\*\*If you have been discharged in a bankruptcy proceeding, we are not seeking personal liability against you, but are pursuing the rights against the property as provided in the security agreements.*

**\*\*PLEASE RETURN TO\*\***

Riley Pope & Laney, LLC  
Post Office Box 11412, Columbia, SC 29211  
Fax (803) 239-1414

**RILEY POPE & LANEY, LLC IS A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

FILED

STATE OF SOUTH CAROLINA

2018 SEP 20 11 10 AM

JUDICIAL CIRCUIT COURT OF COMMON PLEAS

COUNTY OF MARION

C/A NO.: 2018-CP-33-

Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A,

2018 CP33 0 0 6 5 3

Plaintiff,

SUMMONS AND NOTICE

vs.

Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham,

Defendants.

(File No. 4043.17918)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2838 Devine Street, Columbia, South Carolina 29205, 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:

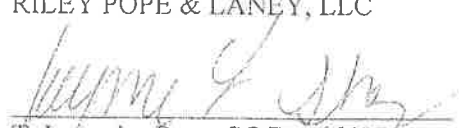
YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Plaintiff.

~~YOU WILL ALSO TAKE NOTICE~~ that should you fail to answer the foregoing Summons, the Plaintiff will move for a general Order of Reference of this cause to the Master-in-Equity or a Special Referee for the aforesaid County, which Order shall, pursuant to Rule 53, SCRCF, specifically provide that the said Master or Special Referee is authorized and empowered, to enter a final judgment in this case and any appeal from the final judgment entered herein to be made directly to the Supreme Court.

YOU WILL ALSO TAKE NOTICE that under the provisions of S.C. Code Ann. §29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the attached mortgage is perfected and Plaintiff hereby gives notice that all rents shall be payable directly to it by delivery to its undersigned attorneys from the date of default. In the alternative Plaintiff will move before a Judge of this Circuit on the 10th day after service hereof, or as soon thereafter as counsel may be heard, for an Order enforcing the assignment of rents, if any, and compelling payment of all rents covered by such assignment directly to the Plaintiff, which motion is to be based upon the original note and mortgage which is the subject of this action and the Complaint attached hereto.

**THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION GAINED WILL BE USED FOR THAT PURPOSE.**

RILEY POPE & LANEY, LLC

  
T. Lowndes Pope, SC Bar 66507  
Heidi B. Carey, SC Bar 7020  
Damon C. Wlodarczyk, SC Bar 70460  
Jayme L. Shy, SC Bar 81551  
Meredith M. Robertson, SC Bar 68322  
Peter M. Balthazor, SC Bar 68244  
Jason M. Hunter, SC Bar #101501  
Stephanie M. Huggins, SC Bar #101757  
Nicholas S. Hulse, SC Bar #102740  
2838 Devine Street  
Post Office Box 11412 (29211)  
Columbia, South Carolina 29205  
(803) 799-9993  
Attorneys for Plaintiff

September 18, 2018  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF MARION

FILED  
IN THE COURT OF COMMON PLEAS

C/A NO. 2018-CP-35-

2018 CP330 0 65 3

Wilmington Savings Fund Society, FSB, as  
trustee of Stanwich Mortgage Loan Trust A,

Plaintiff,

vs.

Bertha Dunham aka Bertha E. Dunham and  
Ernest L. Dunham,

Defendants.

COMPLAINT

FOR A FIRST CAUSE OF ACTION  
Foreclosure of Real Estate Mortgage

(Non-Jury)

(File No. 4043.17918)

The Plaintiff above-named, complaining of the Defendants above named, herein alleges:

GENERAL ALLEGATIONS

1. This is an action for the foreclosure of a mortgage upon real estate in Marion County, South Carolina.
2. The Plaintiff is a corporation or other legal entity duly organized and existing under and by virtue of the laws of one of the States of The United States of America and is authorized to transact business in the State of South Carolina.
3. The Plaintiff is holder of or otherwise entitled to enforce the Note and Mortgage described hereafter and that are the subject of this action.
4. Some lien on or right, title, or interest in the real estate, the subject of this action, may be claimed by the Defendants herein.
5. Based upon a search of the public records of Marion County, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made Defendants.
6. The Defendants herein described, if any, 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 S.C. Code Ann. §15-35-840.
7. On or about April 13, 2006, Bertha Dunham and Ernest L. Dunham made, executed and delivered unto CitiFinancial, Inc. a certain Note ("Note") in the principal sum of Thirty Seven Thousand Nine Hundred Seventy and 54/100 (\$37,970.54) Dollars, with an interest rate of 10.63% per annum, payable in monthly installments of principal and interest of \$351.05 beginning May 18, 2006, a copy of which is attached hereto as Exhibit "A" and made a part hereof by reference.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Bertha E. Dunham made, executed and delivered unto Citifinancial, Inc. a certain real estate mortgage ("Mortgage") covering the following described property:

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-half (1/2) acre, bounded Northeast One hundred Five (105) feet by U.S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

Being the same property conveyed to William Dunham, Jr. and Bertha E. Dunham by deed of the United States of America, dated October 15, 1975 and recorded November 5, 1975 in Deed Book A136 at Page 583; thereafter, William Dunham, Jr. conveyed his interest in the subject property to Bertha E. Dunham by deed dated May 10, 1983 and recorded September 19, 1983 in Deed Book A196 at Page 24.

TMS No. 163-00-00-053-000

Property Address: 1701 West Highway 378, Gresham, SC 29546

9. The Mortgage was signed, witnessed and probated; thereafter the Mortgage was recorded in the public records of Marion County on April 13, 2006, in Book 819 at Page 146. Thereafter, by assignment recorded December 21, 2017 in Book 401 at Page 5, the mortgage was assigned to Citifinancial Servicing LLC; thereafter, by assignment recorded December 21, 2017 in Book 401 at Page 6, the mortgage was assigned to the Plaintiff. A copy of the Plaintiff's Mortgage and Assignment(s) are collectively attached hereto as Exhibit "B" and made a part hereof by reference.

10. The Mortgage evidences and secures the repayment of money advanced by the Plaintiff, or its predecessor in interest, to, or on behalf of, the mortgagor and constitutes a first mortgage lien on the mortgaged premises.

11. The loan evidenced by the Note and Mortgage is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac. The Home Affordable Modification Program (HAMP) expired on December 31, 2016. Therefore, this loan is not subject to modification under HAMP.

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

12. The Plaintiff incorporates the allegations of the preceding Paragraphs as if repeated verbatim.

13. With regard to the Note and/or Mortgage which are the subject matter of this suit, Plaintiff and its attorney have provided all applicable notices and rights to cure as required and otherwise have complied with all applicable Federal, State, and local statutes, laws, rules, regulations, orders or other government directives.

14. The installments of principal and interest which became due on December 24, 2017 have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the Note and Mortgage, elects to and does declare the entire balance of said principal and interest due and payable at once, and that there is now due and owing and unpaid upon the said Note and Mortgage the sum of Thirty Three Thousand Five Hundred Forty Two and 96/100 (\$33,542.96) Dollars as of December 24, 2017, with a current interest rate of 9.6300% per annum from February 13, 2018, together with reasonable attorney's fees and the costs and disbursements of this action, plus all moneys, if any, advanced by the Plaintiff under the terms of the Note and Mortgage for the payment of ad valorem taxes and/or insurance premiums, property maintenance, and securing thereof or otherwise.

15. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action, and under the terms of the Note and Mortgage, Plaintiff's counsel is entitled to reasonable attorney's fees and costs of this action.

16. Plaintiff may be forced to pay sums for taxes, 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.

17. Plaintiff's right to a personal or deficiency judgment pursuant to S.C. Code Ann. §29-3-650 and §29-3-660 is expressly demanded against Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham.

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

(1) Ascertain and determine the amount due upon the Note and Mortgage held or being enforced by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a first mortgage lien on the subject property, and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, the costs of maintaining the property or securing and inspecting the property, if any, incurred as a result of this delinquency, and for the costs of this action.

(3) If necessary, appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor, and/or the grantee(s) of the mortgagor, and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

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(4) Sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

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

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

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

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

(6) Grant judgment against the Defendants Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham pursuant to S.C. Code Ann. §29-3-650 and §29-3-660.

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

RILEY POPE & LANEY, LLC



T. Lowndes Pope, SC Bar 66507

Heidi B. Carey, SC Bar 7020

Damon C. Wlodarczyk, SC Bar 70460

Jayne L. Shy, SC Bar 81551

Meredith M. Robertson, SC Bar 68322

Peter M. Balthazor, SC Bar 68244

Jason M. Hunter, SC Bar #101501

Stephanie M. Huggins, SC Bar #101757

Nicholas S. Hulse, SC Bar #102740

2838 Devine Street

Post Office Box 11412 (29211)

Columbia, South Carolina 29205

(803) 799-9993

Attorneys for Plaintiff

September 18, 2018  
Columbia, South Carolina

**NOTICE REQUIRED BY THE FAIR DEBT  
COLLECTION PRACTICES ACT  
15 U.S.C. Section 1601, As Amended**

Bertha Dunham and Ernest L. Dunham  
1701 West Highway 378, Gresham, SC 29546  
File No. 4043,17918

1. Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A is the Creditor to whom the debt is owed. Creditor has retained the law firm of Riley Pope & Laney, LLC, to collect the owed debt. Any written requests should be addressed to Riley Pope & Laney, LLC, Post Office Box 11412, Columbia, SC, 29211, (803) 799-9993 (Phone), (803) 239-1414 (Fax).
2. As of September 18, 2018, the total debt you owe is \$39,493.80. Because interest, late charges, attorney's fees and costs, and other charges as allowed by the Note and Mortgage continue to accrue from the date set forth above, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write or call as directed in Paragraph One (1) of this Notice.
3. Unless you, the Consumer, either orally or in writing within thirty (30) days after the receipt of this Notice, disputes the debt or any portion of the debt set forth in Paragraph Two (2) of this Notice and further described in the Complaint attached hereto, the validity of the debt will be assumed to be valid by the Creditor's law firm, Riley Pope & Laney, LLC.
4. If you, the Consumer, notify Riley Pope & Laney, LLC, at the address set forth in Paragraph One (1) of this Notice in writing within thirty (30) days of the receipt of this Notice that the debt or any portion thereof is disputed, Riley Pope & Laney, LLC, will obtain a verification of the debt, and a copy of the verification will be mailed to the Consumer by Riley Pope & Laney, LLC.
5. If you, the Consumer, make a written request to Riley Pope & Laney, LLC within thirty (30) days of the receipt of this Notice, Riley Pope & Laney, LLC, will provide you, the Consumer, the name and address of the original Creditor, if different from the current Creditor.
6. This notice should not be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.
7. Please be advised that the time period in which you, the Consumer, have to dispute the amount of your debt and request additional information does not alter or affect the time period set forth in the South Carolina Rules of Civil Procedure for the filing of an answer or other responsive pleading to the Complaint.
8. Military service members on "active duty" or "active service," or a dependent of such a service member may be entitled to certain legal protections pursuant to the Servicemembers' Civil Relief Act, 50 U.S.C. §3901 et seq. If you believe that you may be entitled to such protection, please contact our office immediately.
9. If you have been discharged in a bankruptcy proceeding, we are not seeking personal liability against you, but are pursuing the rights against the property as provided in the security agreements.

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



**Disclosure Statement, Note and Security Agreement**

Borrower(s) (Name and mailing address) BERTHA DUNHAM ERNEST L DUNHAM 1701 W HWY 378 GRESHAM SC 29546	Lender (Name, address, city and state) CITYFINANCIAL, INC. 235 N MAIN ST MARION SC 29571	Account No. _____ Date of Loan 04/13/2006
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<b>ANNUAL PERCENTAGE RATE</b> The cost of Borrower's credit as a yearly rate. 11.01 %	<b>FINANCE CHARGE</b> The dollar amount the credit will cost Borrower. \$ 89,538.40	<b>Amount Financed</b> The amount of credit provided to Borrower or on Borrower's behalf. \$ 36,839.60	<b>Total of Payments</b> The amount Borrower will have paid after Borrower has made all payments as scheduled. \$ 126,378.00
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**Payment Schedule:**

Number of Payments	Amount of Payments *	When Payments Are Due
360	\$351.05	MONTHLY BEGINNING 05/18/2006
	\$	
	\$	
	\$	

**Security:** If checked, Borrower is giving a security interest in:  
 Real Property

**Late Charge:** If a payment is more than 10 days late, Borrower will pay a late charge equal to the greater of 5.0 % of the payment due or \$ 15.00

**Prepayment:** If Borrower pays off early, Borrower will not have to pay a penalty; and will not be entitled to a refund of part of the finance charge.

See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

\* Does not include any insurance premium.  
Additional Information:

Total amount of first month's payment including insurance premium, if any. \$ 351.05	PRINCIPAL \$ 37,970.54	INTEREST \$ 1,105.94	DATE CHARGES BEGIN 04/18/2006
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**Required Insurance Disclosure:**  
If Borrower grants Lender a security interest as indicated in this document, insurance to protect the Lender's interest in the collateral may be required. If this loan is secured by real property, or mobile/manufactured home, then fire, extended coverage, collision and/or comprehensive casualty insurance is required naming Lender as loss payee, until the loan is fully paid. The amount of such insurance must be sufficient to satisfy the unpaid balance of the loan, or be equal to the value of the collateral, whichever is less. Such insurance may be provided through an existing policy or a policy obtained independently and purchased by Borrower. Borrower may obtain such insurance from any insurer that is reasonably acceptable to Lender.

**Optional Insurance Disclosure:**  
Borrower is not required to purchase optional insurance products, such as: Credit Life, Credit Disability, Involuntary Unemployment Insurance or any other optional insurance products. Lender's decision to grant credit will not be affected by Borrower's decision to purchase or decline to purchase optional insurance.  
Coverage will not be provided unless Borrower signs and agrees to pay the applicable monthly premium in addition to the monthly loan payment disclosed above.  
Borrower should refer to the terms contained in the applicable certificate or policy of insurance issued for the exact description of benefits, exclusions and premium rates.  
If Borrower purchases insurance, Borrower's monthly payment will include both the monthly loan payment disclosed above and the applicable monthly premiums.

I/We request the following insurance:

Premium Due with the First Month's Loan Payment	First Year's Premium *	Insurance Type:
\$ NONE	\$	CREDIT LIFE, CREDIT DISABILITY, AND INVOLUNTARY UNEMPLOYMENT INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS I/WE AGREE TO PAY THE ADDITIONAL COST BY SIGNING BELOW. The Coverage is for the initial term of the loan unless otherwise noted.
\$ NONE	\$	
\$ NONE	\$	

Bertha Dunham 4/13/2006  
 First Borrower's Signature Date  
Ernest L. Dunham 4-13-06  
 Second Borrower's Signature Date

(\* First year's premiums are calculated on the assumption that monthly loan payments are timely made). Accrued but unpaid premium, if not paid earlier, will be due and payable at the time of the final payment on the loan. However, failure to pay premiums may result in termination of insurance as described below.

**Termination of Insurance:**  
Borrower may cancel any of the optional insurance products offered at any time. The optional insurance will terminate upon the earliest of the following occurrences:  
(1) the Lender's receipt of Borrower's written request for termination;  
(2) on the date when the sum of past due premiums equal or exceed four times the first month premium;  
(3) termination pursuant to the provisions of the insurance certificate;  
(4) payment in full of Borrower's Loan;  
(5) death of Borrower.

**TERMS:** In this Disclosure Statement, Note and Security Agreement, the word "Borrower" refers to the persons signing below as Borrower, whether one or more. If more than one Borrower signs, each will be responsible, individually and together, for all promises made and for repaying the loan in full. The word "Lender" refers to the Lender, whose name and address are shown above.

**PROMISE TO PAY:** In return for a loan that Borrower has received, Borrower promises to pay to the order of Lender the Principal shown above, plus interest on the unpaid Principal balance from the Date Charges Begin shown above until fully paid at the following agreed annual Rate of Interest:  
(Applicable Box Must be Checked)

10.63 % per annum on the entire unpaid Principal balance.

% per annum on the first \$ \_\_\_\_\_ of the unpaid Principal balance; and \_\_\_\_\_ % per annum on the next \$ \_\_\_\_\_ of the unpaid Principal balance; and \_\_\_\_\_ % per annum on the remaining unpaid Principal balance.

Lender will compute interest on the unpaid Principal balance on a daily basis from the date charges begin until Borrower repays the loan. If Borrower does not make sufficient or timely payments according to the payment schedule above, Borrower will incur greater interest charges on the loan.

Principal and interest shall be payable in the substantially equal monthly installments shown above, except that any appropriate adjustments will be made to the first and final payments, beginning on the first payment date shown above and continuing on the same day in each following month until paid in full. Upon the final payment date or the acceleration thereof, the entire outstanding balance of Principal and interest evidenced by this Disclosure Statement, Note and Security Agreement shall be due and payable. Any payment(s) which Lender accepts after the final payment date or the acceleration thereof do not constitute a renewal or extension of this loan unless Lender so determines.

Each payment shall be applied as follows: (1) monthly loan payments due (first to interest, then principal), (2) insurance premiums due, (3) unpaid interest to the date of payment, if any, then (4) principal.

Any amount shown above as Points/Fees has been paid by Borrower as Points/Fees. This amount is considered a prepaid charge and is in addition to the above Rate of Interest. Points/Fees are earned prior to any other interest on the loan balance. In the event of prepayment of the loan, Points/Fees will be refunded only if required by state law.

**PREPAYMENT:** Borrower may prepay this loan in whole or in part at any time without penalty. However, upon partial prepayment, interest will continue to accrue on any remaining Principal balance. Partial prepayment will not affect the amount or due date of subsequent scheduled payments on the loan, but may reduce the number of such payments.

**LATE CHARGE:** If a payment is more than 10 days late, Borrower will pay a late charge equal to the greater of 5.0 % of the unpaid portion of the Payment due or \$ 15.00. Lender may, at its option, waive any late charge or portion thereof without waiving its right to require a late charge with regard to any other late payment.

**DAD CHECKS:** Lender may charge a fee of \$ 25.00 if a check, negotiable order of withdrawal or draft is returned for insufficient funds or insufficient credit.

**SECURITY AGREEMENT:** Borrower's loan is secured by a Deed of Trust or Mortgage of even date on real property which requires Lender's written consent to a sale or transfer of the encumbered real property located at 1701 W HWY 370 GRESHAM SC 29546. See either the Deed of Trust or the Mortgage for terms applicable to Lender's interest in Borrower's real property ("Property").

**OWNERSHIP OF PROPERTY:** Borrower represents that the Property is owned by Borrower free and clear of all liens and encumbrances except those of which Borrower has informed Lender in writing. Prior to any default, Borrower may keep and use the Property at Borrower's own risk, subject to the provisions of the Uniform Commercial Code.

**USE OF PROPERTY:** Borrower will not sell, lease, encumber, or otherwise dispose of the Property without Lender's prior written consent. Borrower will not use or permit the use of the Property for illegal purposes.

**TAXES AND FEES:** Borrower will pay all taxes, assessments, and other fees payable on the Property. If Borrower fails to pay such amounts, Lender may pay such amounts for Borrower and the amounts paid by Lender will be added to the unpaid balance of the loan, subject to the provisions of the South Carolina Consumer Protection Code.

**INSURANCE:** If any insurance coverage is obtained at Lender's office, upon Borrower's default, Borrower hereby gives Lender a power of attorney to cancel part or all of the insurance and to apply any returned premiums to Borrower's unpaid balance. If Borrower purchases any insurance at Lender's office, Borrower understands and acknowledges that (1) the insurance company may be affiliated with Lender, (2) Lender's employee(s) may be an agent for the insurance company, (3) such employee(s) is not acting as the agent, broker or fiduciary for Borrower on this loan, but may be the agent of the insurance company, and (4) Lender or the insurance company may realize some benefit from the sale of that insurance. If Borrower fails to obtain or maintain any required insurance or fails to designate an agent through whom the insurance is to be obtained, Lender may purchase such required insurance for Borrower through an agent of Lender's choice, and the amounts paid by Lender will be added to the unpaid balance of the loan.

**LOAN CHARGES:** If a law that applies to this loan and that 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 (i) any such loan charge will be reduced by the amount necessary to reduce the charge to the permitted limit, and (ii) any sums already collected from Borrower that exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under this loan 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.

**DEFAULT:** Borrower will be in default if:

1. Borrower does not make any scheduled payment on time;
2. Borrower is (or any other person puts Borrower) in bankruptcy, insolvency or receivership;
3. Any of Borrower's creditors attempts by legal process to take and keep any property of Borrower, including the Property securing this loan;
4. Borrower fails to fulfill any promise made under this agreement; or
5. A default occurs under any Real Estate Mortgage or Deed of Trust which secures this loan or under any other mortgage or deed of trust on the real property.

Subject to Borrower's right to any notice of default, right to cure default, and any other applicable law, if Borrower defaults, Lender may require Borrower to repay the entire unpaid Principal balance and any accrued interest at once. Lender's failure to exercise or delay in exercising any of its rights when default occurs does not constitute a waiver of those or any other rights under this Note. If this debt is referred for collection to an attorney not a salaried employee of Lender, Lender shall be entitled to collect all reasonable costs and expenses of collection, including, but not limited to, court costs, and if the original amount financed exceeds an amount specified in the provisions of the South Carolina Consumer Protection Code allowing for attorney's fees in connection with supervised loans, reasonable attorney's fees not in excess of 15% of the unpaid debt.

**EFFECTS OF DEFAULT:** If Borrower defaults, Borrower will deliver the Property to Lender or, upon Lender's demand, assemble the Property and make it available to Lender at a reasonably convenient place. Lender may, without previous notice or demand and without legal process, peacefully enter any place where the Property is located and take possession of it. The Property may be sold with notice at a private or public sale at a location chosen by Lender. At such a sale, Lender may purchase the Property. The proceeds of the sale, minus reasonable expenses incurred in collecting on the debt, will be credited to the unpaid balance of Borrower's loan. The expenses that will be deducted from the proceeds of the sale include: the costs of taking, removing, holding, repairing, and selling the Property; reasonable fees (if the original Principal exceeds an amount specified in the provisions of the South Carolina Consumer Protection Code allowing for attorney's fees in connection with supervised loans) paid to an attorney who is not a salaried employee of Lender; and the costs of removing any superior liens or claims on the Property. If the proceeds of sale are not sufficient to pay off the entire balance plus costs, Borrower agrees to pay the remaining amount upon demand. If Borrower has left other property in the repossessed Property, Lender may hold such property temporarily for Borrower without responsibility or liability for the property.

Notice of the time and place of a public sale or notice of the time after which a private sale will occur is reasonable if mailed to the Borrower's address at least five (5) days before the sale. The notice may be mailed to Borrower's last address shown on Lender's records.

**LAW THAT APPLIES:** South Carolina law and federal law, as applicable, govern this Disclosure Statement, Note and Security Agreement. If any part is unenforceable, this will not make any other part unenforceable. In no event will Borrower be required to pay interest or charges in excess of those permitted by law.

**OTHER RIGHTS:** Lender may accept payments after maturity or after a default without waiving its rights with respect to any subsequent default in payment. Borrower agrees that Lender may extend time for payment after maturity without notice. The terms of this agreement can be waived or changed only in a writing signed by Lender.

Where the context requires, singular words may be read in the plural and plural words in the singular. References to the masculine gender may be read to apply to the feminine gender.

**INTEREST AFTER MATURITY:** Lender, at its option, may collect interest from and after maturity upon the unpaid principal balance at either the maximum rate permitted by the then applicable law or rate of interest then prevailing under this contract.

Borrower's Initials B.D. E.O.

BERTHA DUNHAM ERNEST L DUNHAM

04/13/2006

**OTHER TERMS:** Each Borrower under this Disclosure Statement, Note and Security Agreement, if more than one, agrees that Lender may obtain approval from one Borrower to change the repayment terms and release any Property securing the loan, or add parties to or release parties from this agreement, without notice to any other Borrower and without releasing any other Borrower from his responsibilities. Lender does not have to notify Borrower before instituting suit if the note is not paid, and Lender can sue any or all Borrowers upon the default by any Borrower.

Borrower, endorsers, sureties and guarantors, to the extent permitted by law, severally waive their right to require Lender to demand payment of amounts due, to give notice of amounts that have not been paid, to receive notice of any extensions of time to pay which Lender allows to any Borrower and to require Lender to show particular diligence in bringing suit against anyone responsible for repayment of this loan, and additionally, waive benefit of homestead and exemption laws now in force or later enacted, including stay of execution and condemnation, on any property securing this loan and waive the benefit of valuation and appraisalment.

This Disclosure Statement, Note and Security Agreement shall be the joint and several obligation of all makers, sureties, guarantors and endorsers and shall be binding upon them, their heirs, successors, legal representatives and assigns.

If any part of the Disclosure Statement, Note and Security Agreement and, if applicable, the Mortgage or Deed of Trust and accompanying Itemization of Amount Financed is unenforceable, this will not make any other part unenforceable.

**REFINANCING:** The overall cost of refinancing an existing loan balance may be greater than the cost of keeping the existing loan and obtaining a second loan for any additional funds Borrower wishes to borrow.

**AUTHORIZATION TO USE CREDIT REPORT:** By signing below, Borrower authorizes Lender to obtain, review and use information contained in the Borrower's credit report in order to determine whether the Borrower may qualify for products and services offered by Lender. This authorization terminates when Borrower's outstanding balance due under this Disclosure Statement, Note and Security Agreement is paid in full. Borrower may cancel such authorization at any time by writing the following: Transaction Processing, 300 St. Paul Place, BSP13A, Baltimore, MD 21202. In order to process Borrower's request, Lender must be provided Borrower's full name, address, social security number and account number.

The following notice applies only if this box is checked.

**NOTICE**

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

By signing below, Borrower agrees to the terms contained herein, acknowledges receipt of a copy of this Disclosure Statement, Note and Security Agreement and, if applicable, the Mortgage or Deed of Trust and of the accompanying Itemization of Amount Financed, and authorizes the disbursements stated therein.

WITNESSES:

*[Handwritten signatures of witnesses]*

SIGNED: *[Signature]* (Seal)  
BERTHA DUNHAM -Borrower (Seal)  
*[Signature]* -Borrower (Seal)  
ERNEST L DUNHAM -Borrower (Seal)

CITIFINANCIAL INC.  
By *[Signature]* 04/13/2006 11:28:29  
(Name and Title)

**SECURITY INTEREST OF NONOBLIGOR:** Borrower only is personally liable for payment of the loan. Nonobligor is liable and bound by all other terms, conditions, covenants, and agreements contained in this Disclosure Statement, Note and Security Agreement, including but not limited to the right and power of Lender to repossess and sell the Property securing this loan, in the event of default by Borrower in payment of this loan.

Signature \_\_\_\_\_ (Seal) Date \_\_\_\_\_

Signature \_\_\_\_\_ (Seal) Date \_\_\_\_\_

This Rider Amends The Loan Agreement/Promissory Note Entered Into On Date Below

**Agreed Rate Reduction Rider**

Borrower(s) (Name and mailing address) BERTHA DUNHAM ERNEST L DUNHAM 1701 W HWY 378 GRESHAM SC 29546	Lender (Name, address, city and state) CITIFINANCIAL, INC. 235 N MAIN ST MARION SC 29571	Account No. [REDACTED]
		Date of Loan 04/13/2006

Borrower has agreed to pay the rate of interest set forth in the Note (the "Note Rate") until the full amount of principal has been paid. However, if on any one of the second, third or fourth anniversaries of the scheduled due date of the first full installment payment due date under the Note (each, an "Anniversary Date") Borrower has demonstrated a Good Payment History, Lender agrees to decrease the Note Rate to 9.63%. Borrower will be deemed to have demonstrated a "Good Payment History" if Borrower: (a) has made each of the most recent 24 consecutive monthly payments under the Note before the date the next payment was due; (b) has never been late by 91 days or more in making any monthly payments due under the Note; (c) neither Borrower nor Co-Borrower has filed petitions in bankruptcy during the term of the loan; and (d) no provision of the Note has been modified prior to the Anniversary Date. Modifications to the Note include deferment of a scheduled payment, legal action with respect to enforcement of the Note or the Mortgage, and an adjustment of the loan terms. If Borrower demonstrates a Good Payment History, the new Note Rate will take effect one month after the earliest Anniversary Date on which Borrower has demonstrated a Good Payment History ("Rate Reduction Date"). Beginning with Borrower's first monthly payment after the Rate Reduction Date, Borrower will pay the new amount as the monthly payment until the Maturity Date. Lender will decrease Borrower's Note Rate only one time during the term of the loan, provided Borrower demonstrates a Good Payment History on any one of the second, third, or fourth Anniversary Dates.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Agreed Rate Reduction Rider.

Bertha L Dunham  
Borrower

4/13-2006  
Date

Ernest L. Dunham  
Co-Borrower

4-13-06  
Date

CFN Loan # [REDACTED]  
CMS Loan # [REDACTED]

ALLONGE TO NOTE

Original Loan Amount: \$37,970.54  
Note Date: 04/13/2006  
Borrower(s): BERTHA DUNHAM AND ERNEST L. DUNHAM  
Address: 1701 W HWY 378  
GRESHAM, SC 29546

PAY TO THE ORDER OF  
CITIFINANCIAL SERVICING LLC, A DELAWARE LIMITED LIABILITY COMPANY

WITHOUT RECOURSE

CFNA RECEIVABLES (TX), LLC, A TEXAS LIMITED LIABILITY COMPANY F/K/A CFNA RECEIVABLES (TX), INC., A TEXAS CORPORATION, SUCCESSOR BY MERGER TO CFNA RECEIVABLES (SC), INC. F/K/A CITIFINANCIAL, INC., A SOUTH CAROLINA CORPORATION

By: [Signature] Dated: DEC 15 2017  
Name: Francis DeNardo  
Title: VICE PRESIDENT

PAY TO THE ORDER OF

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WITHOUT RECOURSE

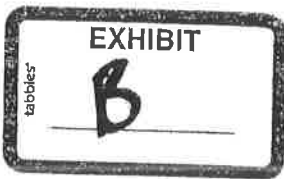
CITIFINANCIAL SERVICING LLC, A DELAWARE LIMITED LIABILITY COMPANY

By: [Signature] Dated: DEC 15 2017  
Name: Danielle Burns  
Title: VICE PRESIDENT

CF001 26147093 ALLONGE CF001 B MAS27

[REDACTED]

[REDACTED] 10  
DUNHAM CARR OG 729KBC 2017-SA-PRIV



After recording return to:  
CITIFINANCIAL, INC.  
235 N MAIN ST  
MARION SC 29571

FILED, RECORDED, INDEXED  
04/13/2006 02:15:20PM  
Rec Fee: 12.00 St Fee: 0.00  
Co Fee: 0.00 Pages: 6  
Sherry R. Rhodes - Clerk of Court  
Marion County, SC

1) For assignment of mortgage to Citifinancial Servicing LLC See RE vol 401 Page 5  
2) For assignment of mortgage to Wilmington Savings Fund Society (Trustee) See RE vol 401 Page 6

**MORTGAGE**

THIS MORTGAGE is made this 13th day of April, 2006, between the Mortgagor, **BERTHA E. DUNHAM**, herein "Borrower"), and the Mortgagee, **CITIFINANCIAL, INC.**, a corporation organized and existing under the laws of South Carolina, whose address is 235 N MAIN ST MARION SC 29571 ("Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$ 37,970.54, which indebtedness is evidenced by Borrower's note dated 04/13/2006 and extensions and renewals thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of indebtedness, if not sooner paid, due and payable on 04/18/2036;

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in the County of MARION, State of South Carolina:

SEE SCHEDULE A ATTACHED

TO HAVE AND TO HOLD unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

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

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:  
1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note.

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2. **Funds for Taxes and Insurance.** Subject to applicable law or a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments (including condominium and planned unit development assessments, if any) which may attain priority over this Mortgage and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Borrower shall not be obligated to make such payments of Funds to Lender to the extent that Borrower makes such payments to the holder of a prior mortgage or deed of trust if such holder is an institutional lender.

If Borrower pays Funds to Lender, the Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Mortgage that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Mortgage.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all sums secured by this Mortgage, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Mortgage.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note, and then to the principal of the Note.

4. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

5. **Hazard 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 such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

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.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

6. **Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

7. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

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10. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 16 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note, (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property to Lender under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

12. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

13. **Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. **Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

15. **Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

16. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Mortgage.

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 delivered or mailed within which Borrower must pay all sums secured by this Mortgage. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on Borrower.

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

17. **Acceleration; Remedies.** Except as provided in paragraph 16 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall give notice to Borrower as provided in paragraph 12 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 20 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding, and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the nonexistence of a default or any other defense of Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorneys' fees, and costs of documentary evidence, abstracts and title reports, all of which shall be additional sums secured by this Mortgage.

18. **Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Mortgage due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums which would be then due under this Mortgage and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in paragraph 17 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

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19. **Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

20. **Release.** Upon payment of all sums secured by this Mortgage, this Mortgage shall become null and void, and Lender shall release this mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

21. **Waiver of Homestead.** Borrower hereby waives all rights of homestead exemption in the Property.

22. **Waiver of Right of Appraisal.** Borrower hereby waives the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained by Lender against Borrower in the event of foreclosure under this Mortgage.

23. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. 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.

Borrower shall promptly give Lender written notice of 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. If Borrower learns, or is notified by any governmental or regulatory authority, 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.

As used in this paragraph 23, "Hazardous Substances" are those substances defined as toxic or hazardous substances 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. As used in this paragraph 23, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

(Intentionally Left Blank)

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REQUEST FOR NOTICE OF DEFAULT  
AND FORECLOSURE UNDER SUPERIOR  
MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, with a copy to P. O. Box 17170, Baltimore, MD 21203, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

Signed, sealed and delivered in the presence of:

Nicole Brunson  
John Bailey

Bertley E. Dunham (Seal)  
Borrower

\_\_\_\_\_  
(Seal)  
Borrower

ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA, MARION County ss:

Before me personally appeared Nicole Brunson and made oath that she saw the within named Borrower sign, seal, and as he act and deed, deliver the within written Mortgage; and that she with Johnny Belimany witnessed the execution thereof.

Sworn before me this 13<sup>th</sup> day of April 2006

Simon Ray Stear (Seal)  
Notary Public for South Carolina

My commission expires: March 15, 2007

## Schedule A

Report Number: [REDACTED]  
Client Number: [REDACTED]  
Customer: Dunham, Bertha E.

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-half (1/2) acre, bounded Northeast One Hundred Five (105) feet by U. S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E. J. Alkinson; and Northwest Two Hundred Ten (210) feet by lands of E. J. Alkinson. The said lot being shown on a Map of lot sold by E. J. Alkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

This being the same property conveyed to Bertha E. Dunham from William Dunham Jr. herein by Deed dated 05/10/1983 and recorded 09/19/1983 in Book A196 at Page 24.

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Common Pleas

Clerk : Christy M. Gray

103 N. Main Street

Marion, SC 29571

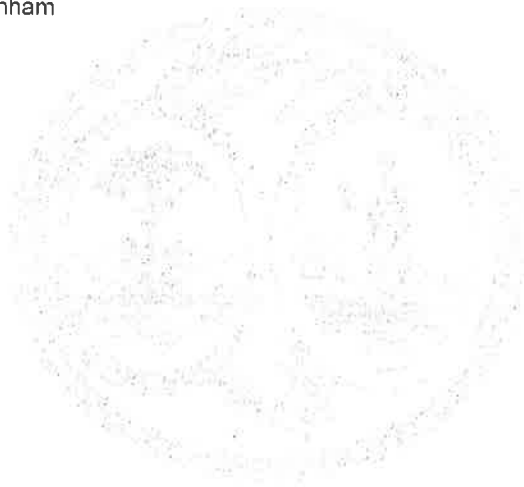
Phone:(843) 423-8240 Fax:(843) 423-8242

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Received From: Shy, Jayme L Date: 9/20/2018  
 PO Box 11412 Receipt #: 19649  
 Columbia, SC 29211 Clerk: c33asmallw  
 Paying for: Wilmington Savings Fund, Fsb A:  
 Transaction Type: Payment Reference #: 101449  
 Payment Type: Check \$150.00 Comment:  
 Total Paid: \$150.00 Non-Refundable

Total Received: \$150.00 You may check the status of your Marion case at:  
 Change Due: \$0.00 <http://www.sccourts.org/caseSearch/>

Case #	Caption	Previous Balance	Amount Paid	Balance Due	S/T
2018CP3300653	Wilmington Savings Fund, Fsb As Trustee VS Bertha Dunham	\$150.00	\$150.00	\$0.00	420




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

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Wilmington Savings Fund Society, FSB, as  
trustee of Stanwich Mortgage Loan Trust A,

Plaintiff,

vs.

Bertha Dunham aka Bertha E. Dunham and Ernest  
L. Dunham,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2018-CP-33-00653

**NOTICE OF DENIAL OF FORECLOSURE  
INTERVENTION**

(File No. 4043.17918)

PLEASE TAKE NOTICE that the Plaintiff in this action has denied foreclosure intervention and intends to proceed with the referenced foreclosure action.

YOU WILL ALSO TAKE NOTICE that pursuant to South Carolina Supreme Court Administrative Order 2011-05-02-01, you have thirty (30) days from the date of mailing of this notice to file and serve a copy of your Answer or other response to the Summons and Complaint in this matter on the subscribers at their offices at 2838 Devine Street

Post Office Box 11412 (29211), Columbia, South Carolina 29205.

**THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT AND ANY  
INFORMATION GAINED WILL BE USED FOR THAT PURPOSE.**

RILEY POPE & LANEY, LLC

s/ Jason M. Hunter

Jason M. Hunter, SC Bar #101501

2838 Devine Street

Post Office Box 11412 (29211)

Columbia, South Carolina 29205

(803) 799-9993

Attorneys for Plaintiff

February 6, 2019

STATE OF SOUTH CAROLINA  
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2018-CP-33-00653

Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A,

Plaintiff,

vs.

Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham,

Defendants.

**NOTICE OF DEFAULT**

(Non-Jury)

Foreclosure of Real Estate Mortgage

(File No. 4043.17918)

The Defendants herein named were duly served with the Summons and Complaint as required by Rule 4 SCRPC, as evidenced by the Affidavits of Service filed herein;

That more than thirty (30) days, exclusive of the day of service, has elapsed since the service aforesaid, and no Answer, Notice of Appearance or other responsive pleading has been received by or served upon the Plaintiff or its attorneys by or on behalf of Defendants Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham; and

That Defendants Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham are now in default under Rules 6 and 55, SCRPC.

RILEY POPE & LANEY, LLC

s/ Jason M. Hunter  
Jason M. Hunter, SC Bar #101501  
2838 Devine Street  
Post Office Box 11412 (29211)  
Columbia, South Carolina 29205  
(803) 799-9993  
Attorneys for Plaintiff

March 12, 2019  
Columbia, South Carolina

**NOTICE OF SALE**

2018-CP-33-00653

BY VIRTUE of a decree heretofore granted in the case of: Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A against Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham, I, the undersigned Special Referee for Marion County, will sell on June 11, 2019, at 12:00 p.m. at the County Courthouse in Marion, South Carolina, to the highest bidder, the following described property, to-wit:

*All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-half (1/2) acre, bounded Northeast One hundred Five (105) feet by U.S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.*

*Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.*

*Being the same property conveyed to William Dunham, Jr. and Bertha E. Dunham by deed of the United States of America, dated October 15, 1975 and recorded November 5, 1975 in Deed Book A136 at Page 583; thereafter, William Dunham, Jr. conveyed his interest in the subject property to Bertha E. Dunham by deed dated May 10, 1983 and recorded September 19, 1983 in Deed Book A196 at Page 24.*

TMS No. 163-00-00-053-000

Property Address: 1701 West Highway 378, Gresham, SC 29546

TERMS OF SALE: The successful bidder, other than the plaintiff, will deposit with the Special Referee at conclusion of the bidding, five per cent (5%) of said bid, in cash or equivalent, as evidence of good faith, same to be applied to purchase price in case of compliance, but to be forfeited and applied first to costs and then to plaintiff's debt in the case of noncompliance. Should the successful bidder fail or refuse to make the required deposit at time of bid or comply with the other terms of the bid within thirty (30) days, then the Special Referee may resell the property on the same terms and conditions (at the risk of the said defaulting bidder). Should the Plaintiff, or one of its representatives, fail to be present at the time of sale, the property is automatically withdrawn from said sale and sold at the next available sales day upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or any Supplemental Order. The successful bidder will be required to pay for documentary stamps on the Deed and interest on the balance of the bid from the date of sale to the date of compliance with the bid at the rate of 9.6300%.

THIS SALE IS SUBJECT TO ASSESSMENTS, COUNTY TAXES, EXISTING EASEMENTS, EASEMENTS AND RESTRICTIONS OF RECORD, AND OTHER SENIOR ENCUMBRANCES.

No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

NOTICE: The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search well before the foreclosure sale date.



Honorable Haigh Porter  
Special Referee Marion County

Marion, South Carolina  
April 22, 2019

RILEY POPE & LANEY, LLC  
Post Office Box 11412  
Columbia, SC 29211  
(803) 799-9993  
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF MARION

C/A NO.: 2018-CP-33-00653

Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A,

Plaintiff,

**ORDER ON SALE AND DISBURSEMENTS**

vs.

Foreclosure of Real Estate Mortgage  
(Deficiency Waived)

Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham,

Defendant(s).

(File No. 4043.17918)

UNDER AUTHORITY of a Judgment of Foreclosure herein entered on April 25, 2019, I offered for sale to the highest bidder for cash, at public auction, the premises subject to this suit, and thereafter received at the final sale conducted on June 11, 2019, at 12:00 p.m. at the County Courthouse in Marion, South Carolina, a high bid of \$35,000.00 from Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A. I executed and delivered a Foreclosure Deed to Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A, and disbursed the funds as follows:

RECEIPTS

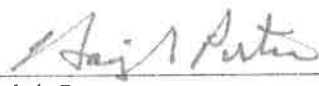
Reference deposit paid by Plaintiff	\$250.00
Commission	<u>\$350.00</u>
Total	\$600.00

DISBURSEMENTS

Reference Fee	\$225.00
Commission	\$350.00
Court Deed	<u>\$25.00</u>
Total	\$600.00

ALL of the funds having been disbursed, I hereby ORDER the file closed and the case ended,

And it is so ordered.

  
\_\_\_\_\_  
Haigh Porter  
Special Referee, Marion County

**FORM 4**

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-33-00653

Wilmington Savings Fund Society, FSB, as trustee of Stanwich  
 Mortgage Loan Trust A

PLAINTIFF

vs.

Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham  
 DEFENDANTS.

Submitted by: Riley Pope & Lancy, LLC Post Office Box 11412, Columbia, SC 29211	Attorney for Plaintiff
--	------------------------

**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(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other -- \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other -- \_\_\_\_\_
- STAYED DUE TO 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	N/A	N/A

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

Tax Map # 163-00-00-053-000; 1701 West Highway 378, Gresham, SC 29546

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.

Circuit Court Judge  
 SCRCP Form 4C (2/2017)

Judge Code

Date



**Carolina Publishing**

**Advertising Affidavit**

310 South Dargan Street  
Florence, SC 29506  
(843) 317-6397

Account Number  
2263660

Date  
June 05, 2019

STOX POSTING & PUBLISHING  
2701 TRANSIT RD SUITE 139  
ELMA, NY 14059

Date	Category	Description	Ad Size	Total Cost
06/05/2019	_Legal Notices	NOTICE OF SALE 2018-CP-33-00653 BY VIRTU	1 x 81 L	306.60

**Publisher of the  
Star Enterprise**

This is to certify that the attached NOTICE OF SALE 2018-CP-33 was published in the Star Enterprise in the City of Marion, state of South Carolina on the following dates:

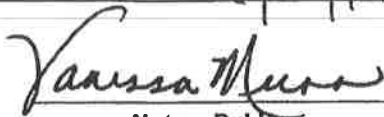
05/22, 05/29, 06/05/2019

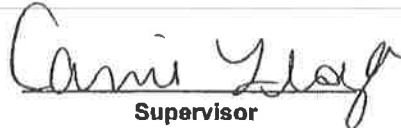
The First Insertion being given ... 05/22/2019

Newspaper reference: 0001148818

Sworn to and subscribed before me this

6/7/19

  
 Notary Public

  
 Supervisor

State of South Carolina  
My Commission expires

03/12/2023

VANESSA MUNN Notary Public-State of South Carolina My Commission Expires March 12, 2028
--

**THIS IS NOT A BILL. PLEASE PAY FROM INVOICE. THANK YOU**

NOTICE OF SALE 2018-CP-33-00653 BY VIRTUE of a decree heretofore granted in the case of: Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A against Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham, I, the undersigned Special Referee for Marion County, will sell on **June 11, 2019, at 12:00 p.m.** at the Marion County Courthouse in Marion, South Carolina, to the highest bidder, the following described property, to-wit: All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-half (1/2) acre, bounded Northeast One hundred Five (105) feet by U.S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969. Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining. Being the same property conveyed to William Dunham, Jr. and Bertha E. Dunham by deed of the United States of America, dated October 15, 1975 and recorded November 5, 1975 in Deed Book A136 at Page 583; thereafter, William Dunham, Jr. conveyed his interest in the subject property to Bertha E. Dunham by deed dated May 10, 1983 and recorded September 19, 1983 in Deed Book A196 at Page 24. TMS No. 163-00-00-053-000 Property Address: 1701 West Highway 378, Gresham, SC 29546 **TERMS OF SALE:** The successful bidder, other than the plaintiff, will deposit with the Special Referee at conclusion of the bidding, five per cent (5%) of said bid, in cash or equivalent, as evidence of good faith, same to be applied to purchase price in case of compliance, but to be forfeited and applied first to costs and then to plaintiff's debt in the case of noncompliance. Should the successful bidder fail or refuse to make the required deposit at time of bid or comply with the other terms of the bid within thirty (30) days, then the Special Referee may resell the property on the same terms and conditions (at the risk of the said defaulting bidder). Should the Plaintiff, or one of its representatives, fail to be present at the time of sale, the property is automatically withdrawn from said sale and sold at the next available sales day upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or any Supplemental Order. The successful bidder will be required to pay for documentary stamps on the Deed and interest on the balance of the bid from the date of sale to the date of compliance with the bid at the rate of 9.6300%. **THIS SALE IS SUBJECT TO ASSESSMENTS, COUNTY TAXES, EXISTING EASEMENTS, EASEMENTS AND RESTRICTIONS OF RECORD, AND OTHER SENIOR ENCUMBRANCES.** No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately. **NOTICE:** The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search well before the foreclosure sale date. Honorable Haigh Porter Special Referee Marion County Riley Pope & Laney, LLC Post Office Box 11412 Columbia, SC 29211 (803) 799-9993 Attorneys for Plaintiff (May 22, 29 & June 5, 2019)

NOTICE OF SALE 2018-CP-33-00653 BY VIRTUE of a decree heretofore granted in the case of: Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A against Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham, I, the undersigned Special Referee for Marion County, will sell on **June 11, 2019, at 12:00 p.m.** at the Marion County Courthouse in Marion, South Carolina, to the highest bidder, the following described property, to-wit: All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-half (1/2) acre, bounded Northeast One hundred Five (105) feet by U.S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969. Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining. Being the same property conveyed to William Dunham, Jr. and Bertha E. Dunham by deed of the United States of America, dated October 15, 1975 and recorded November 5, 1975 in Deed Book A136 at Page 583; thereafter, William Dunham, Jr. conveyed his interest in the subject property to Bertha E. Dunham by deed dated May 10, 1983 and recorded September 19, 1983 in Deed Book A196 at Page 24. TMS No. 163-00-053-000 Property Address: 1701 West Highway 378, Gresham, SC 29546 **TERMS OF SALE:** The successful bidder, other than the plaintiff, will deposit with the Special Referee at conclusion of the bidding, five per cent (5%) of said bid, in cash or equivalent, as evidence of good faith, same to be applied to purchase price in case of compliance, but to be forfeited and applied first to costs and then to plaintiff's debt in the case of noncompliance. Should the successful bidder fail or refuse to make the required deposit at time of bid or comply with the other terms of the bid within thirty (30) days, then the Special Referee may resell the property on the same terms and conditions (at the risk of the said defaulting bidder). Should the Plaintiff, or one of its representatives, fail to be present at the time of sale, the property is automatically withdrawn from said sale and sold at the next available sales day upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or any Supplemental Order. The successful bidder will be required to pay for documentary stamps on the Deed and interest on the balance of the bid from the date of sale to the date of compliance with the bid at the rate of 9.6300%. **THIS SALE IS SUBJECT TO ASSESSMENTS, COUNTY TAXES, EXISTING EASEMENTS, EASEMENTS AND RESTRICTIONS OF RECORD, AND OTHER SENIOR ENCUMBRANCES.** No personal or deficiency judgment being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately. **NOTICE:** The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search well before the foreclosure sale date. Honorable Halgh Porter Special Referee Marion County Riley Pope & Laney, LLC Post Office Box 11412 Columbia, SC 29211 (803) 799-9993 Attorneys for Plaintiff (May 22, 29 & June 5, 2019)

Riley Pope & Loney, LLC  
2838 Devine Street  
Post Office Box 11411 (29211)  
Columbia, South Carolina 29205

STATE OF SOUTH CAROLINA  
COUNTY OF MARION

**FORECLOSURE DEED  
Public Sale**



To all whom these Presents shall concern:

I, Haigh Porter, as Special Referee for Marion County, State of South Carolina, send Greetings:

WHEREAS, in an action in the Court of Common Pleas in the County and State aforesaid, between Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A as Plaintiff and Bertha Dunham aka Bertha E. Dunham and Ernest L. Dunham as Defendants, by an Order filed of record on April 25, 2019 in Case No. 2018-CP-33-00653, it was decreed that the property hereinafter described should be sold by the Special Referee for Marion County on the terms and for the purposes mentioned in the order(s) granted in the case, as by reference thereto will appear.

NOW THEREFORE KNOW ALL MEN, that I, the undersigned, as Special Referee for Marion County, on June 11, 2019, pursuant to the foregoing, openly and publicly, in consideration of the premises, and also in consideration of the sum of Thirty five thousand and 00/100 (\$35,000.00) Dollars as paid by the hereinafter named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant and release the following property unto **Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A, its successors and assigns,**

All that certain piece, parcel or lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-half (1/2) acre, bounded Northeast One hundred Five (105) feet by U.S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

Being the same property conveyed to William Dunham, Jr. and Bertha E. Dunham by deed of the United States of America, dated October 15, 1975 and recorded November 5, 1975 in Deed Book A136 at Page 583; thereafter, William Dunham, Jr. conveyed his interest in the subject property to Bertha E. Dunham by deed dated May 10, 1983 and recorded September 19, 1983 in Deed Book A196 at Page 24.

TMS No. 163-00-00-053-000  
Property Address: 1701 West Highway 378, Gresham, SC 29546

**GRANTEE'S ADDRESS: 1600 South Douglass Road  
Suite 200-A  
Anaheim, CA 92806**

201900053279 EXEMPT  
CHRISTY N. GRAY  
CLERK OF COURTS  
MARION COUNTY, SC  
08-28-2019 01:30 pm.  
REC FEE: 15.00

Property Owner of Record: Bertha E. Dunham aka Bertha Dunham

TOGETHER with all and singular the rights, members, hereditaments and appurtenances whatsoever, to the said premises belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, possession, property, benefit,

4093.17918

claim and demand whatsoever, both at law and in equity, of all the parties to the said suit and of all other persons rightfully claiming or to claim the same, or any part thereof, by, from or under them, or either of them.

COPY

Subject to assessments, taxes, easements, conditions and restrictions of record and otherwise affecting the property.

TO HAVE AND TO HOLD, the said premises with its hereditaments, privileges and appurtenances unto the said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, I, the undersigned, as Special Referee for Marion County, under and by virtue of the said order(s), have hereunto set my Hand and Seal the 9<sup>th</sup> day of August, 2019.

SIGNED, SEALED, AND DELIVERED  
in the Presence of:

E. Jane Joyner  
Witness No. 1

Printed name: E. JANE JOYNER

Haigh Porter  
Haigh Porter

Special Referee for Marion County

Matthew Porter  
Witness No. 2/Notary Public

Printed name: Matthew Porter

STATE OF SOUTH CAROLINA

COUNTY OF MARION

PERSONALLY APPEARED before me the undersigned witness and made oath that (s)he saw Haigh Porter, as Special Referee for Marion County, sign, seal and deliver the within Deed; and that deponent, together with the other witness signed their names as witnesses thereto. The subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a party to or beneficiary of the transaction, signed the record as a subscribing witness, and witnessed the principal sign the record.

WITNESS our hands and seals on this 9<sup>th</sup> day of August, 2019.

E. Jane Joyner  
Witness No. 1

Printed name: E. JANE JOYNER

Matthew Porter (L.S.)  
Notary Public for South Carolina

Printed name: Matthew Porter

My commission expires: 4/14/25

STATE OF SOUTH CAROLINA

COUNTY OF MARION

AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS



PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 1701 West Highway 378, Gresham, SC 29546, bearing County Tax Map Number 163-00-00-053-000, was transferred by Haigh Porter, as Special Referee for Marion County to Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A on 8/9/19.
3. Check one of the following: The deed is

(a)

Subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b)

Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c)

Exempt from the deed recording fee because (See Information section of affidavit); (#13) Transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.

(If exempt, please skip items 4 – 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase realty?  Yes  No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of affidavit):

(a)

The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ \_\_\_\_\_.

(b)

The fee is computed on the fair market value of the realty which is \$ \_\_\_\_\_.

(c)

The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ \_\_\_\_\_.

5. Yes  No  to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \_\_\_\_\_.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: \$ \_\_\_\_\_

(b) Place the amount listed in item 5 above here: \$ \_\_\_\_\_

(If no amount is listed, place zero here.)

(c) Subtract line 6(b) from line 6(a) and place result here: \$ \_\_\_\_\_

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ \_\_\_\_\_.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for the Plaintiff.

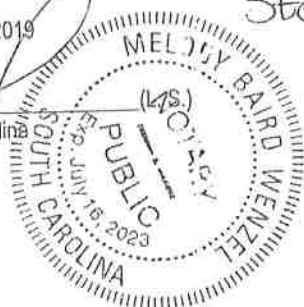
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

August 16, 2019  
Columbia, South Carolina

SWORN to before me this 16 day of August, 2019

Notary Public for South Carolina  
My Commission Expires:

*[Handwritten signature]*



*[Handwritten signature: Steph M. Huggins]*  
Responsible Person Connected with the Transaction  
Jason M. Hunter, Attorney for Plaintiff  
*[Handwritten signature: Stephanie M. Huggins]*

## Ferrara Law Firm, PLLC

8887 Old University Blvd. Ste. 200  
North Charleston, SC 29406  
(843) 569-5511 / Fax (843) 569-5411

Paul B. Ferrara, III\*  
Janel K. Ferrara\*

*\*(also Admitted in N.C.)*

RECEIVED  
FEB 18 2020  
SC Court of Appeals

February 10, 2020

SENT VIA US MAIL AND FACSIMILE TO: 1-803-734-1839  
The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Ex Parte Beullah and James Belin (Wilmington Savings Fund Society  
v. Betha Dunham  
Appellate Case No.: 2020-000139  
Our File No.: 19-561

Dear Ms. Kitchings:

Pursuant to SCACR 207 and 607, the Order appealed from was the result of a telephonic hearing on October 29, 2019 and a transcript was not taken.

Thank you.

Sincerely,

FERRARA LAW FIRM, PLLC

Paul B. Ferrara, III

Enclosures

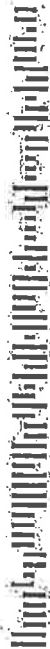
cc: William Stork, Esq.

errara Law Firm, PLLC  
887 Old University Blvd, STE 201  
North Charleston SC 29406

CHARLESTON  
SC 294  
11 FEB 20  
PM 3 L



US POSTAGE  
FIRST-CLASS  
FROM 29406  
02/11/2020  
stamps  
endicia



The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia SC 29211-1629

RECEIVED

FEB 18 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF MARION	)	C/A NO.: 2018-CP-33-00653
	)	
Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A,	)	<b>NOTICE OF MOTION, MOTION TO INTERVENE AND MOTION TO SET ASIDE JUDGMENT</b>
Plaintiff,	)	
Vs.	)	
	)	
Bertha Dunham a/k/a Bertha E. Dunham and Ernest L. Dunham	)	
Defendant(s).	)	

NOW COMES, Beulah Mae Belin and James Belin, by and through their attorney, Paul B. Ferrara, III, Esq., for an Order allowing intervention as set forth below not sooner than ten (10) days henceforth by the presiding Master-in- Equity.

PLEASE TAKE NOTICE that, as soon as the matter may be heard in the above-entitled action, the intervenors Beulah Mae Belin and James Belin, move this Court under the South Carolina Rules of Civil Procedure, Rule 24, for an order granting them leave to intervene in the above-named action.

The grounds for issuance of this order are that interveners, Beulah Mae and James Belin, have a legal interest in the property which is subject to the above-referenced litigation as a result of adverse possession. Adverse possession when asserted, is an affirmative defense. Jones v. Legan, 681 S.2d 10, 11 (2009). The party asserting adverse possession must show continuous, hostile, open, actual, notorious and exclusive possession for a certain period of time. Mullis v. Winchester, 237 S.C. 487, 491 (1961). Beulah Mae Belin and James Belin have a 1995 Oakwood mobile home that is located on

the premises of the property subject to this foreclosure action. This mobile home has been located on the premises of the subject property since approximately June of 2006. Beulah Mae Belin and James Belin have occupied the land continuously, hostilely, openly, obviously, exclusively, notoriously and continuously against the interests of Bertha Dunham a/k/a Bertha E. Dunham and Ernest L. Dunham since 2006. Beulah Mae Belin and James Belin were not served within the foreclosure process by Plaintiff and have adversely possessed the property for greater than 10 years. They have not had a chance to answer this foreclosure matter and assert this defense or any other defenses they may have. As such Beulah Mae Belin and James Belin have equitable and legal interests in the above referenced property subject to the foreclosure and wish to intervene in this matter.

For the above-mentioned reasons, Beulah Mae Belin and James Belin, move this Court under the South Carolina Rules of Civil Procedure Rule 55, to set aside the Special Referee's Order of Judgment of Foreclosure and Sale Decree dated April 22, 2019 against Bertha Dunham a/ka Bertha E. Dunham and Ernest L. Dunham. Moreover, the post-sale Order for Writ of Assistance dated September 24, 2019 should be vacated or held in abeyance pending a hearing on the above-referenced matters.

These motions are based on this Notice, along with all papers filed in this action and on any evidence or case law that is presented at the hearing.

October 25, 2019

FERRARA LAW FIRM, PLLC

S/Paul B. Ferrara, III  
 8887 Old University Blvd.  
 North Charleston, SC 29406  
 (843) 569-5511/(843) 569-5411 fax  
 SC Bar No.: 70511  
 paul@ferraralawfirm.net

STATE OF SOUTH CAROLINA  
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2018-CP-33-00653

Wilmington Savings Fund Society, FSB, as  
trustee of Stanwich Mortgage Loan Trust  
A,  
Plaintiff,  
vs.

**MEMORANDUM IN OPPOSITION TO  
MOTION TO INTERVENE AND  
MOTION TO SET ASIDE JUDGMENT  
OF BEULAH MAE BELIN AND JAMES  
BELIN**

Bertha Dunham a/k/a Bertha E. Dunham;  
and Ernest L. Dunham,  
Defendant(s).

Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A (hereinafter "Plaintiff") respectfully submits this Memorandum in Opposition to the Motion to Intervene and Motion to Set Aside Judgment of Beulah Mae Belin and James Belin. (hereinafter "Belins") and requests that this Court deny the Belins' Motion.

The Belins brought this action in an attempt to intervene in a dispute between Plaintiff and Defendants. The Belins are not involved in the dispute. Instead, the Belins are the owners of a mobile home situated on real property formerly owned by Defendants, which real property was the subject of foreclosure proceedings initiated by Plaintiff. Now, the Belins seek to intervene in the aforesaid litigation despite having no legal or equitable interest in the real property which was subject of the litigation and despite the litigation being fully adjudicated and the subject real property having been sold at judicial auction. The Belins also are attempting to have Plaintiff's Judgment vacated despite having no meritorious defense and in the face of extreme prejudice to Plaintiff.

**I. INTRODUCTION AND FACTS**

On or about April 13, 2006, Bertha Dunham and Ernest L. Dunham (hereinafter referred to as the "Defendants") executed, and delivered to the CitiFinancial, Inc. a certain Promissory Note ("Note") in writing wherein and whereby the Defendants promised to pay to the Plaintiff, the principal sum of \$37,970.54, together with interest at an adjustable interest

rate with an initial interest rate of 10.63% per annum on the unpaid balance; said principal and interest being payable in monthly installments, commencing on the 1st day of each month thereafter until the said Note is fully paid.

In order to secure the payment of said Note, the said Defendant, did on the same date, to wit, April 13, 2006, make, execute, and deliver to CitiFinancial, Inc., its successors and assigns, a certain real estate Mortgage ("Mortgage") covering real property located in Marion County, South Carolina as more fully described in said Mortgage as follows:

ALL that certain piece, parcel of lot of land in Brittons Neck Township, Marion County, South Carolina, containing One-Half (1 / 2) acre, bounded Northeast One Hundred Five (105) feet by U.S. Highway No. 378; Southeast Two Hundred Ten (210) feet by road leading into Dog Lake; Southwest One Hundred Five (105) feet by lands of E.J. Atkinson; and Northwest Two Hundred Ten (210) feet by lands of E.J. Atkinson. The said lot being shown on a Map of Lot sold by E.J. Atkinson to Southeastern Homes, made by Johnson Engineers July 16, 1969.

Together with all singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

This being the same property conveyed to William Dunham, Jr. and Bertha E. Dunham by deed of the United States of America, dated October 15, 1975 and recorded November 5, 1975 in Deed Book A136 at Page 583; thereafter, William Dunham, Jr. conveyed his interest in the subject property to Bertha E. Dunham by deed dated May 10, 1983 and recorded September 19, 1983 in Deed Book A19 at Page 24.

*TMS No. 163-00-00-053-000*

*Property Address: 1701 West Highway 378, Gresham, SC 29546*

The Mortgage was recorded April 13, 2006 in the ROD's Office for Marion County in Book 819 at page 146.

Thereafter, the Mortgage was assigned to Citifinancial Servicing, LLC by assignment recorded on December 21, 2017 in Book 401 at Page 5. Thereafter, the Mortgage was

assigned to Plaintiff by assignment recorded on December 21, 2017 in Book 401 at Page 6. The Mortgage evidences and secures the repayment of money advanced by the Mortgagee to, or on behalf of, the mortgagor(s) and constitutes a purchase money first lien on the Mortgaged premises.

In and by the terms of said Note and Mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal or interest or any portion thereof when due, or if any of the conditions and requirements in the Mortgage securing the same not be 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. In and by the terms of the said Note, it is further provided that the maker thereof shall pay all collection costs, including reasonable attorney's fees, if the said Note be placed in the hands of an attorney for collection after default. Any notice required by the terms of the Mortgage or by state or federal law has been given to the applicable defendant(s) prior to the commencement of this action.

The installments of principal and interest falling due from and after December 24, 2017, have not been paid, thereby placing the Defendant in default under the terms of the Note and Mortgage. Although demand for the payment thereof has been made, the Defendant has failed to cure the default.

On September 20, 2018, the Plaintiff filed its Lis Pendens, Summons, and Complaint for Foreclosure. By Order filed March 12, 2019, this matter was referred to the Honorable Haigh Porter as Special Referee for Marion County to hear any issues, including motions after sale or judgment. On April 25, 2019, a Special Referee's Order of Judgment of Foreclosure and Sale Decree was filed along with a Notice of Sale directing the subject real property to be sold at public auction on June 11, 2019. The Notice of Sale of the subject real property was advertised in the Star Enterprise, a local newspaper of general circulation, on May 22, 2019, May 29, 2019, and June 5, 2019. On June 11, 2019, the subject real property was sold at public auction with Plaintiff being the high bidder. After compliance with their bid, Plaintiff was issued a deed to the subject real property which was recorded with the Marion County ROD's office on August 28, 2019 in Book 466 at Page 309.

On October 25, 2019, over a year after Plaintiff filed their Lis Pendens and over 4 months since the subject property sold at public auction, the Belins filed a Motion to Intervene and Motion to Set Aside Judgment. This motion will be discussed in Plaintiff's memorandum.

## II. LEGAL STANDARD AND BURDEN OF PROOF

South Carolina courts should not always grant intervention. *Ken's Cabana, LLC v. Flemington Props., LLC (ex parte Horry Cnty. State Bank)*, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App. 2004). Though intervention "should be liberally granted," courts should consider judicial efficiency and the practical consequences of decisions to allow or deny intervention. *Id.* Essentially, courts should consider the "unique facts and circumstances" of each case. *Id.*

An applicant is entitled to intervention of right if she timely applies and either "a statute confers an unconditional right to intervene," Rule 24(a)(1), SCRPC, or

the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Rule 24(a)(2), SCRPC. Here, no statute grants the Belins an unconditional right to intervene. Accordingly, the Belins asserts a right to intervene based on Rule 24(a)(2) of the South Carolina Rules of Civil Procedure.

"Intervention of right requires a direct, substantial, legally protectable interest in the proceedings." *Dep't of Health & Envtl. Control v. Columbia Organic Chemistry Co. (ex parte Reichlyn)*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993). An application for intervention of right must

(1) Establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented.

*Id.* At 498, S.E.2d at 663; *Berkeley Electric Coop., Inc. v. Mount Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990). All four factors are required to intervene on this basis; failing to establish any one prevents an applicant from intervening. *Dep't of Health & Env'tl. Control v. Columbia Organic Chemistry Co. (ex parte Reichlyn)*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993).

An applicant can ask a court to allow permissive intervention if the applicant timely applies and either “a statute confers a conditional right to intervene,” Rule 24(b)(1), SCRCP, or “an applicant’s claim or defense and the main action have a question of law or fact in common.” Rule 24 (b)(2), SCRCP. “In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Rule 24, SCRCP. While it is unclear from the body of the Belins’ Motion, they may assert that either S.C. Code Ann. §15-67-210 or §15-67-240 provide the Belins a conditional right to intervene. If this is not their assertion, then the Belins assert a right to intervene based on Rule 24(b)(2) of the South Carolina Rules of Civil procedure.

South Carolina courts have the discretion to grant or deny permissive intervention. *S.C. Tax Comm’n v. Union Cnty. Treasurer*, 295 S.C. 257, 262, 368 S.E.2d 72, 75 (Ct. App. 1988). However, courts should only grant permissive intervention when an applicant “has a cause of action or defense it could bring or assert.” *Id.* At 263, 368 S.E.2d at 75-76. Permissive intervention exists because administrative procedures support disposing of claims or defenses together when they have common questions. *Id.* At 263, 368 S.E.2d at 75. Without permissive intervention, an applicant could be forced to “institute or ... defend a separate proceeding that would substantially duplicate the one in question.” *Id.* At 263, 368 S.E.2d at 75-76.

### III. DISCUSSION

#### **A. THE BELINS ARE NOT ENTITLED TO INTERVENE IN THE LITIGATION**

##### **1. The Belins are Not Entitled To Intervention Of Right.**

This Court should deny the Belins’ Motion to Intervene because the Belins are not entitled to intervention of right. Because the Belins have no interest in the subject real property, because the Belins failed to timely apply for intervention, and because the Belins

interest was already adequately protected through the foreclosure proceeding, the Belins' Motion to Intervene must fail. Any one of the listed flaws with the Belins' Motion to Intervene is enough to prevent the Belins from intervention.

A. The Belins are not entitled to intervention of right because they have no interest in the subject real property.

The Belins do not have any interest in the subject real property, and therefore they are not entitled to intervention of right. One of the elements which must be satisfied for a Court to grant intervention of right is that the Intervenor must, "assert an interest relating to the property or transaction which is the subject of the action." *Horry Cnty. State Bank v. Flemington Props., LLC*, 631 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004). The Belins have no such interest. "Failure to satisfy *any one* of the four requirements precludes intervention." *Dep't of Health & Envtl. Control v. Columbia Organic Chemistry Co. (ex parte Reichlyn)*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993)(*emphasis added*).

*i. The Belins have no title to the subject property.*

In their Motion to Intervention, the Belins merely assert a possible civil claim for adverse possession, they do not claim that any portion of the real property was ever deeded to them. Prior to the initiation of foreclosure proceedings, a title search was conducted to determine which parties may have an interest in the subject real property. No additional parties were found to have any interest in the subject real property. A review of the public records shows that no deed vesting any legal interest to the subject real property to the Belins is recorded with the Marion County Register of Deeds. Generally, for a deed to be a valid conveyance, it is required to be recorded with the office of the register of deeds. S.C. Code Ann. §30-7-10 (2017). "No possession of real property described in an instrument of writing required by law to be recorded shall operate as notice of such instrument." S.C. Code Ann. §30-7-90 (2017).

The Belins argued that the placement of a mobile home on the subject real property may provide an interest in the real property upon which the mobile home is situated. This assertion is wrong and contrary to law governing the ownership of mobile homes. Under S.C. Code Ann. 56-19-10(39) (1976), a mobile home is not considered real property, but is

considered personal property which must be titled with the Department of Motor Vehicles and is taxed just like any other personal property which is taxed by the Department of Motor Vehicles. The argument that the placement of a mobile home on property leads to adverse possession is essentially the same argument as if to say that the parking of a moped on a piece of property leads to a claim of adverse possession.

*ii. The Belins merely assert a possible civil cause of action for adverse possession.*

Regardless of the validity of their claim of possible adverse possession, the simple fact is that adverse possession is not an interest in real property, it is merely a civil cause of action. Black's Law Dictionary 6th Ed. (1990). After a civil action asserting adverse possession is filed, a trier of fact must determine whether there is enough evidence to substantiate a claim of adverse possession, and only then would title be transferred to the alleged adverse possessor. *see Miller v. Leaird*, 307 S.C. 56, 413 S.E.2d 841 (1992). Even if the assertion of adverse possession were to create an interest, no action has been filed by the Belins at this time. A review of the public index finds no Lis Pendens filed by the Belins much less a suit for adverse possession. In this matter, the Belins claim for adverse possession must be construed in the same light as a claim for premises liability would. Both adverse possession and premises liability are civil causes of action which must be asserted against the landowner, and neither creates an interest in the real property.

Because the Belins have no legal title to the subject real property, and because adverse possession is a civil cause of action which, when merely referenced in a pleading, does not create an interest in the subject property, the Belins have no interest in the subject real property and should be denied intervention.

B. The Belins are not entitled to intervention of right because they did not apply in a timely fashion.

The Belins did not timely apply for intervention of right. The following factors determine whether a motion to intervene is timely:

1) The time that has passed since the applicant knew or should have known of his or her interest in the suit; 2) the reason for the delay; 3) the stage to which the litigation has progressed; and 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention.

*Dep't of Health & Envtl. Control v. Columbia Organic Chemistry Co. (ex parte Reichlyn)*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993).

The Belins filed their Motion to Intervene on October 25, 2019. This filing was over a year after Plaintiff filed their Lis Pendens in this matter. "From the time of filing only, the pendency of the action shall be constructive notice to a purchaser or encumbrancer of the property affected thereby ..." S.C. Code Ann. §15-11-20 (1976). As of September 20, 2018, the Belins were on constructive notice of the Plaintiff's action because of the filing of Plaintiff's Lis Pendens. The clock to intervene started ticking the moment that Plaintiff filed their Lis Pendens. In addition to the notice proffered by the Lis Pendens, the subject real property was sold at public auction. This auction was advertised for three consecutive weeks in a local paper of general circulation. The publication provided additional notice to the Belins of the pending action. In spite of the notice provided by the Lis Pendens, and in spite of the notice provided by the publication for three consecutive weeks of the public auction, the Belins took no action to intervene in the subject action.

No reason has been delineated by the Belins which would justify this delay.

Litigation of this matter has progressed to the point that the case is finalized and the subject property has been sold at public auction. This is the penultimate point of the matter and would be extremely prejudicial to Plaintiff to allow for intervention. Assuming, *arguendo*, that intervention were allowed, Plaintiff has incurred a plethora of costs, expenses, and loss of revenue which would be ongoing. A denial of intervention, in the alternative, would not prejudice the Belins. According to their own Motion, their mobile home was not placed on the subject real property until June of 2006. Plaintiff's Mortgage was recorded with the Marion County Register of Deeds on April 13, 2006, so even if the Belins were allowed to intervene, and even if they were to succeed on their cause of action

for adverse possession, any and all interest gained would be “subject to” Plaintiff’s mortgage and would be wiped out through the subsequent foreclosure sale.

In summation, the Belins’ Motion to Intervene is untimely, there is no justification proffered for the delay, litigation has progressed to the point where all issues have been fully adjudicated and the real property sold, and the Plaintiff would be extremely prejudiced by intervention while the Belins would not be prejudiced at all by a denial of intervention.

C. The Belins are not entitled to intervention of right because this action does not impair or impede their ability to protect their interest.

As was discussed above, Plaintiff’s Mortgage was executed by the Dunhams on April 13, 2006 and was filed of record with the Marion County Register of Deeds on April 13, 2006 in Book 819 at Page 146. According to the Belins own motion, the mobile home was not placed on the subject real property until June of 2006. *Mtn. to Intervene* at 2. As South Carolina is a race-notice state whereby any interest or lien created after the recording of a prior interest or lien is junior and “subject to” that certain senior lien. *see* S.C. Code Ann. 30-7-10 & 30-7-20 (1976).

In the present action, because Plaintiff’s Mortgage encumbering the subject real property was recorded on April 13, 2006, and because the Belins allege that their mobile home was not placed on the subject real property until June of 2006, and possible interest that the Belins would be vested through a successful adverse possession claim would be “subject to” Plaintiff’s mortgage and, therefore, would be subsequently eliminated through Plaintiff’s foreclosure.

In summation, even if the Belins were to eventually bring an adverse possession cause of action, and even if the Belins were successful with their cause of action, because the Belins’ interest would be “subject to” Plaintiff’s Mortgage we would wind up in the exact same position we are now, only with much more time and money wasted from all parties.

D. The Belins are not entitled to intervention of right because any interest they may have if they are successful in an adverse possession cause of action would be adequately represented by existing parties.

Any interest that the Belins may have gained if they were to have brought and were successful in an adverse possession cause of action prior to the initiation of Plaintiff's foreclosure would have been adequately represent by the existing Defendants to the foreclosure action. Whether existing representation is adequate to protect the interests of an applicant depends on:

- 1) Whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent.

*Berkeley Electric Coop., Inc. v. Mount Pleasant*, 302 S.C 186, 191, 394 S.E.2d 712, 715 (1990). Courts presume that an applicant's interests are adequately represented "[w]hen an applicant for intervention and an existing party have the same interests or ultimate objective." *S.C. Tax Comm'n v. Union Cnty. Treasurer*, 295 S.C. 257, 260, 368 S.E.wd 72, 74 (Ct. App. 1988)(denying intervention because applicant's only objective was to retain disputed tax funds, which was identical to the objective of the County Treasurer); *see also Ken's Cabana LLC v. Flemington Props., LLC (ex parte Horry Cnty. State Bank)*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004. In deciding adequacy of representation, courts consider "whether the absentee is likely to have anything of his own to say that will be of value." *Ken's Cabana, LLC v. Flemington Props., LLC (ex parte Horry Cnty. State Bank)* 361 S.C. 503, 510, 604 S.E.2d 723, 726 (Ct. App. 2004). The applicant has the burden to show that existing representation is inadequate. *Id.*

In the present case, the Belins cannot meet their burden to show inadequate representation. Since the Belins are not parties to the Note and Mortgage at issue, they cannot assert any unique arguments which would not have been raised by the Defendants. Indeed, the Belins would have had the exact same goal as the Defendants; attempting to delay or stop Plaintiff's foreclosure and eviction proceedings.

In a case similar to this one, the South Carolina Court of Appeals denied the intervention of a mortgagee in regards to a dispute of a mortgagor's possession or and title to real property. *see Ken's Cabana, LLC v. Flemington Props., LLC (ex parte Horry Cnty. State Bank)*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004). In *Ken's Cabana*, a married couple sold restaurant property to Ken's Cabana. *Id.* At 505, 604 S.E.2d at 724. As part of the purchase, the married couple's company granted Ken's Cabana a nonexclusive parking easement. *Id.* Ken's Cabana borrowed money from Horry County State Bank to make the purchase; the loan was secured by a mortgage on the restaurant and the easement. *Id.* At 506, 604 S.E.2d at 724. Later, another company bought the property on which the easement was located. *Id.* When Ken's Cabana violated the terms of the easement, the new owner terminated it. *Id.* Ken's Cabana sued the new owner, and Horry County State Bank tried to intervene. *Id.* At 506-507, 604 S.E.2d at 724-25.

The South Carolina Court of Appeals upheld the trial court's ruling that Horry County State Bank could not intervene because Ken's Cabana adequately represented Horry County State Bank's interests. *Id.* At 513, 604 S.E.2d at 728. The Court found that the interests of both parties were "essentially the same" – to retain the easement. Indeed, the Court found that,

"The Bank's mortgage on the parking easement is only as good as Ken's Cabana's right to use it. As the trial judge found, 'The rights and defenses of the Bank rise and fall with the acts and omissions of their mortgagor, Ken's Cabana.' They share the same interest and objective."

*Id.* At 510, 604 S.E.2d at 727. Horry County State bank could not identify any arguments or defenses that Ken's Cabana could not have raised. *Id.* Additionally, Horry County State Bank could not enumerate any "unique knowledge, experience, or perspective that [it] could bring to the proceedings." *Id.* As such, the South Carolina Court of Appeals upheld the lower court's denial of intervention of right.

In this matter, the Belins are like Horry County State Bank in *Ken's Cabana*. The Belins' interests are identical to that of the Defendants', delaying or defending against the foreclosure and eviction proceedings.

Indeed, the Belins argument for intervention of right is even weaker than that of Horry County State Bank's. Unlike Horry County State Bank, the Belins are not in privity of contract with any party to this case. The Belins now assert an interest based on a possible cause of action which would have begun to accrue after the filing of Plaintiff's Mortgage.

Plaintiff also asserts that the Belins' interests are adequately represented even in the Defendants and the Belins have different goals for the litigation. The mere possibility that two parties could have different intentions about the disposition of property is not enough to prove that representation is inadequate. *Ken's Cabana, LLC v. Flemington Props., LLC (ex parte Horry Cnty. State Bank)* 361 S.C. 503, 509, 604 S.E.2d 723, 726 (Ct. App. 2004). In *Ken's Cabana*, Horry County State Bank claimed that its intentions for the mortgage property might be different from Ken's Cabana. *Id.* Ken's Cabana might want to sell the restaurant or declare bankruptcy, which Horry County State Bank's intent was to protect its security interest. *Id.* The South Carolina Court of Appeals found that the possible difference in intentions did not show that Ken's Cabana was an inadequate representative of Horry County State Bank's interests. The same logic applies here.

Because the Belins interests in this matter are the mirror image of the Defendant's interests, and because the Belins cannot not identify any arguments or defenses which could not have been raised by the Defendants, and because the mere possibility that the Belins and the Defendants intentions about the disposition of the property is inadequate to show inadequate representation, the Belins are not entitled to intervention of right.

## **2. The Belins are Not Entitled To Permissive Intervention.**

This Court should deny the Belins Motion to Intervene because the Belins are not entitled to permissive intervention.

"To warrant intervention under Rule 24(b) an applicant should ordinarily show he is charged with a public duty requiring him to intervene, or he has a claim or defense involving a question of law or fact in common with the main action. A mere general interest in the subject matter of the litigation is not sufficient." *S.C. Tax Comm'n v. Union Cnty. Treasurer*, 295 S.C. 257, 262, 368 S.E.2d 72, 75 (Ct. App. 1988).

Since no statute conveys the Belins the right to intervene, there is no public duty requiring them to intervene. Because the Belins are not a party to the subject promissory

note and mortgage, because the Belins have no interest in the subject real property, and because any possible claim for adverse possession would have begun to accrue after the filing of Plaintiff's Mortgage, there are no claims or defenses which she may assert in the present action. At this junction, the Belins have a mere general interest in the litigation, and as was stated in *S.C. Tax Comm'n v. Union Cnty. Treasurer*, a mere general interest in the litigation is not sufficient for intervention.

Furthermore, like intervention of right, permissive intervention requires that an applicant's interests be different than those of existing parties to the action. *S.C. Tax Comm'n v. Union Cnty. Treasurer*, 295 S.C. 257, 263-64, 368 S.E.2d 72, 75 (Ct. App. 1988). Here, as was discussed above, the Belins interests are the mirror image of the interests of the Defendants.

Because there is no statute which conveys the Belins right to intervene, because the Belins are not a party to the subject promissory note and mortgage, because the Belins have no legal interest in the subject real property, and because any interest which would be gained through adverse possession (if the Belins ever bring the action and assuming they are successful in Court) would be "subject to" Plaintiff's mortgage, and because the Belins' interests in the litigation are the same as that of the Defendants, they are not entitled to permissive intervention.

**B. ASSUMING, ARGUENDO, THAT THE BELINS ARE ALLOWED TO INTERVENE, THEY ARE NOT ENTITLED TO HAVE THE JUDGMENT VACATED**

While the Belins' Motion to set aside the Special Referee's order of Judgment of Foreclosure and Sale asserts to be a motion pursuant to Rule 55, SCRCF, the proper Rule under which to move to set aside a Judgment is Rule 60, SCRCF. A motion under Rule 55, SCRCF would be proper if the Belins were seeking to get relief from default, but as a Judgment has been entered, and that Judgment has been of record for quite some time, the proper motion would be under Rule 60, SCRCF. "Relief from a final judgment must be had through Rule 60 which is the mechanism for relief from a judgment or order." *Thompson v. Ballentine*, 298 S.c. 289, 291, 379 S.E.2d 896, 898 (1989). Since the proper motion for

relief from judgment is under Rule 60, SCRCP, it is that analysis that Plaintiff will discuss in this memorandum. As no clerical error is asserted by the Belins, Plaintiff believes that this motion is pursuant to Rule 60(b), SCRCP.

“Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge.” *Tobias v. Rice* 379 S.C. 357, 665 S.E.2d 216, 219 (Ct.App 2008) *reversed* 386 S.C. 306, 688 S.E.2d 552 (2010). “Rule 60(b), SCRCP requires a show in of one of five enumerated reasons before the court may grant relief from a judgment.” *Patterson v. McNeil & Associates, Inc.*, 312 S.C. 471, 441 S.E.2d 328, 329 n.2 (Ct.App 1994). “It is well settled that the moving party in a Rule 60(b) motion has the burden of presenting evidence entitling him to relief. Memorandum in support of a motion is not evidence.” *McClurg v. Deaton* 395 S.C. 85, 87, 716 S.E.2d 887, 888 (2011). “In determining whether one should be relieved from the entry of default, a court shall consider the following factors: (1) the timing of the motion for relief; (2) whether one has a meritorious defense; and (3) the degree of prejudice to the nonmoving party if the relief is granted.” *Top Value Homes, Inc. v. Harden*, 319 S.C. 302, 460 S.E.2d 427, 429 (Ct.App 1995). While the Belins’ Motion is made within the 1-year timeframe as delineated by Rule 60(b), SCRCP, there is no meritorious defense and the granting of the motion would be extremely prejudicial to the Plaintiff.

**1. The Belins have no meritorious defense to the foreclosure action.**

It is paramount that a moving party must show a meritorious defense to be entitled to relief under Rule 60(b), SCRCP. *see Bowers v. Bowers*, 304 S.C. 65, 66, 403 S.E.2d 127, 129 (Ct. App. 1991). “A motion to open or vacate judgment should be supported by affidavits as to the facts on which the application relies.” *Arnold v. Arnold*, 285 S.C. 296, 328 S.E.2d 924 (Ct. App. 1985).

In the instant matter, no affidavits executed by the Belins have been filed. Because no affidavits have been filed, there is no evidence presented to the Court which shows a meritorious defense to the foreclosure action. All that is presented to the Court is a motion which alleges that a mobile home owned by the Belins was placed on the Defendants’ property two months after Plaintiff’s mortgage was filed of record.

The Belins assert a possible civil cause of action for adverse possession, but the mere assertion of a possible cause of action does not rise to the level of a meritorious defense. To

prove a cause of action/defense of adverse possession, a party must show that that the occupation of the land was (1) actual; (2) open; (3) notorious; (4) hostile; (5) continuous; and (6) exclusive. *Getsinger v. Midlands Orthopedic Profit Sharing Plan*, 327 S.C. 424, 489 S.E.2d 223 (Ct. App. 1997). No affidavit as to any of the adverse possession factors has been filed with the Court. Because no affidavit has been filed with the Court, the Belins fail to show any meritorious defense to the foreclosure action.

Examining the Belins' Motion, they allege that the mobile home was placed on the subject real property in June of 2006. The Plaintiff's Mortgage was filed on April 13, 2006. Because the Plaintiff's Mortgage was filed before the Belins' placed their mobile home on the property, any land which would possibly be adversely possessed would be "subject to" Plaintiff's mortgage. Therefore, even if the Belins' Motion was supported by an affidavit, their adverse possession claim would not rise to the level of a meritorious defense.

Because the Belins have not presented any evidence to the Court supporting their Rule 60(b) Motion, and because any land adversely possessed from the Defendants would be "subject to" Plaintiff's Mortgage, no meritorious defense exists and the Belins' Rule 60(b) Motion should be denied.

**2. The granting of the Belins' 60(b) motion would be extremely prejudicial to Plaintiff.**

The last payment credited to the Defendant's mortgage account was on November 24, 2017. Since that time, Plaintiff has been paying all escrows for this account in addition to attorney's fees and costs to bringing the underlying foreclosure action and present eviction action. Plaintiff initiated the underlying foreclosure lawsuit by the filing of a Summons, Complaint, and Lis Pendens on September 20, 2018. Since that time, Plaintiff has reviewed the Defendants for possible loss mitigation (which resulted in denial), obtained judgment, completed a public auction, and obtained title to the subject real property.

To allow the judgment to be overturned at this point would be extremely prejudicial. Plaintiff would have to continue to make escrow advances, corporate advances, and pay attorney fees and costs. This is in addition to losing the contractual interest amount as was agreed upon by the Defendants. Because deficiency is waived in the underlying foreclosure, if this property was to go back through the foreclosure process and be resold, there is a very

real possibility that the Plaintiff would not be able to recoup the entirety of the judgment amount to which they are entitled.

As was discussed above, there is no merit to the Belins' proffered adverse possession claim. It is much more likely than not that if the Belins' Rule 60(b) Motion is granted, that all parties will be in this exact same position a number of months from now, only having expended much more money and money on needless litigation.

Because of the massive amount of money already expended by Plaintiff, because of the continuing money being lost by Plaintiff, because the Belins' adverse possession cause of action lacks merit, because of the waste of additional money and time that vacating judgment would necessitate, and because all vacating judgment would do is delay proceedings with the same result once litigation is finished, the Plaintiff would be extremely prejudiced by the granting of the Belins' Rule 60(b) motion and, therefore, the Motion should be denied.

#### IV. CONCLUSION

Based on the arguments and authority in this Memorandum, this Court should deny the Belins' Motion to Intervene and Motion to Vacate Judgment.

s/ William P. Stork

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Columbia, SC

Date: November 15, 2019

STATE OF SOUTH CAROLINA  
COUNTY OF MARION

IN THE COURT OF COMMON PLEAS

C/A NO.: 2018-CP-33-00653

Wilmington Savings Fund Society, FSB, as  
trustee of Stanwich Mortgage Loan Trust A,  
Plaintiff,  
vs.

**CERTIFICATE OF SERVICE BY MAIL**

Bertha Dunham a/k/a Bertha E. Dunham; and  
Ernest L. Dunham,  
Defendant(s).


The undersigned hereby certifies that she is an employee of Brock & Scott, PLLC,  
and is a person of such age and discretion to be competent to serve papers.

That on the 15<sup>th</sup> day of November 2019, she served a copy of the below listed  
documents by placing said copy in a postage paid envelope addressed to each of the following  
persons at the address stated below, which is the last known address, and by depositing said  
envelope and contents in the U.S. Mail.

Documents:           - Memorandum in Opposition Motion to Intervene  
                                  and Motion to Set Aside Judgment  
                                  - Certificate of Service by Mail

Party(ies) Served:  
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The Honorable W. Haigh Porter  
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\_\_\_\_\_  
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Columbia, South Carolina