THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Bentley D. Price, Circuit Court Judge

Appellate Case No. 2020-001204
Case No. 2018-CP-10-02762

Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1, ... Plaintiff,

v.

Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, Suntrust Mortgage Inc., Capital Bank Corporation, Bank of America NA,Keybank National Association, and Olde Park Homeowners' Association Inc., ... Defendants.

AND

Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etiks ..... Appellants,

v.

Specialized Loan Servicing LLC a/k/a SLS, ... Respondent.

MOTION TO STRIKE

Pursuant to Rules 208, 210 and 240, SCACR, Respondent Specialized Loan Servicing LLC ("SLS") moves to strike from Appellants' Designation of Matter certain materials that were not presented to the lower court and from Appellants' opening brief any reference to those materials. SLS further moves to strike portions of Argument Section B of Appellants' Opening Brief, which contain unpreserved arguments regarding the impact of Appellants' bankruptcy on the viability of their claims for violation of the Real Estate Settlement Procedures Act ("RESPA").

BACKGROUND

This is a contested foreclosure action. The holder of Appellants' mortgage (Wilmington Trust) filed the foreclosure in 2016. Appellants then counterclaimed against Wilmington and also asserted what were styled "third party" claims against their mortgage servicer SLS.

SLS filed a motion for summary judgment and supporting exhibits on October 17, 2019. The lower court scheduled a hearing on SLS's motion for July 13, 2020.

Appellants e-filed their response brief without any accompanying exhibits ahead of the hearing on July 10, 2020. (*See* Printout of Docket Index, attached as **Exhibit A**.) Appellants, however, emailed the supporting exhibits to the hearing Judge the morning of the hearing. The five exhibits consisted of: (1) the pooling and servicing agreement for their mortgage and various others, (2) a copy of the affidavit submitted by SLS in support of its motion for summary judgment, (3) an affidavit previously submitted by Attorney Damon Wlodarcyzk (counsel for Wilmington Trust) in support of a motion for relief from the entry of default, (4) a copy of a consent order between SLS and the Consumer Financial Protection Bureau, and (5) the bankruptcy trustee's final report from Appellant Temisan Etikerentse's bankruptcy.

The lower court heard argument on SLS's motion on July 13, 2020 and again on July 15, 2020. Appellants did not submit any further supporting documents or evidence during those hearings. The Court then granted SLS's motion via Order dated July 22, 2020.

Appellants filed a motion to reconsider on July 29, 2020 that did not rely on any additional supporting exhibits. The Court denied that motion via Order dated August 5, 2020.

ARGUMENT

I. Documents not presented to the lower court should be stricken from Appellants' Designation of Matter.

Appellants' Designation of Matter lists several documents that were never presented to the lower court. Many of these documents are filings from entirely different proceedings. The improper designations are as follows:

- 2009 Foreclosure Complaint
- Chapter 7 Bankruptcy Petition
- Bankruptcy ECF No. 24-1
- Bankruptcy ECF No. 24-2
- Copy of Bankruptcy ECF Records (List)
- Bankruptcy ECF No. 36
- Bankruptcy ECF No. 37
- LPS 7907-7954
- Administrative Proceeding File No. 2020-BCFP-0002, In the Matter of Specialized Loan Servicing, Consent Order dated Mya 7, 2020

Furthermore, SLS is not familiar with several of these documents and their descriptions are insufficient to identify them with sufficient specificity. For example, it is unclear what "Copy of Bankruptcy ECF Records (List)" or "LPS 7907-7954" are referencing. The Designations are improper for this reason as well.

The South Carolina Rules of Appellate Procedure are clear: because the documents listed above were never presented to the lower court, Appellants may not include them in the Record and may not rely on them in their brief. *See* Rule 208(b)(4), SCACR ("The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may properly be included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged."); Rule 210(c), SCACR ("The Record ***shall not***, however, include matter which was not presented to the

lower court or tribunal." (emphasis added)). Moreover, as this Court has expressly acknowledged, "records in another proceeding cannot be considered by an appellate court unless they were introduced and made a part of the record in the same manner as other evidence." *Beall v. Doe*, 281 S.C. 363, 372, 315 S.E.2d 186, 191-92 (Ct. App. 1984).

The appropriate remedy for Appellants' improper designations and reliance on documents that were never presented to the lower Court is to strike that matter from their Designation and remove from their appellate brief any reference to or arguments based on those materials. *See* Jean Hoefer Toal et al., *Appellate Practice in South Carolina* (3d ed. 2016) at 405 (noting that "if a party includes material in the Designation that was not presented below, another party may ask the appellate court to strike the improper material"); *see also Epstein v. Coastal Timber Co., Inc.*, 393 S.C. 276, 289 n.4, 711 S.E.2d 912, 919 n.4 (2011) (noting that a party contesting the propriety of a deposition included in the Designation of Matter should "interpose[] a timely objection by filing a motion to strike at the time the motion was designated for inclusion in the record").

II. Portions of Argument Section B of Appellants' Opening Brief should also be stricken.

In addition to the documents identified above, the Court should also strike portions of Argument Section B of Appellants' brief. Pages 17 through 20 raise an argument that was not presented to the lower court—specifically, that the 2014 loss mitigation review of Appellants' loan by SLS and offer of a standard loan modification were not sufficient to satisfy RESPA's notice requirements for loss mitigation reviews because of various filings and communications by SLS in Appellant Temisan Etikerentse's bankruptcy. (*See* Br. of Appellant pp. 17-20.) This argument was not presented to the lower court in Appellants' response to SLS's motion, at either of the hearings, or in Appellants' motion to reconsider. (*See* Resp. in Opp'n, attached as **Exhibit B**; Mot.

to Reconsider, attached as **Exhibit C**; Hearing Transcripts, attached as **Exhibit D**.) Therefore, it is not preserved for review.

Appellants' failure to previously raise and preserve this argument warrants striking it from Appellants' brief. "It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (citing *Creech v. South Carolina Wildlife and Marine Res. Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997)). Thus, where a party fails to raise the issue in its briefing and argument to the trial court, that party is precluded from raising that issue on appeal. *Easterling v. Burger King Corp.*, 416 S.C. 437, 452-453, 786 S.E.2d 443, 451-452 (Ct. App. 2016).

As this Court explained in *Herron v. Century BMW*, the issue preservation rules are "designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011). It is axiomatic that issues cannot be raise for the first time on appeal, as this "enable[s] the lower court to rule properly after it has considered all relevant facts, law, and arguments." *Id.* "The requirement also serves as a keen incentive for a party to prepare a case thoroughly," as it "prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case." *I'On, L.L.C.*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

Appellants never raised the argument asserted in pages 17 to 20 in their brief to the lower court. Therefore, because the lower court never had an opportunity to address or rule on this issue, it should not be considered by this Court.

CONCLUSION

For the foregoing reasons, the items listed above should be stricken from Appellants' Designation of Matter, and any reference to those materials should be stricken from their Ppening Brief. Furthermore, the unpreserved argument contained in Argument Section B should be stricken from Appellants' Brief because it was not raised to and ruled upon by the lower court.

Respectfully submitted,

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February 11, 2021

Exhibit A

(Printout of Docket Index)

Julie J. Armstrong
Charleston County Clerk of Court

Charleston County
Circuit Court Case Details
Public Index

Switch View

Wilmington Trust National Association As Successor Trustee , plaintiff, et al VS Temisan Etikerentse , defendant, et al

Case Number:	2018CP1002762	**Court Agency:**	Common Pleas	**Filed Date:**	06/01/2018
Case Type:	Common Pleas	**Case Sub Type:**	Foreclosure 420	**File Type:**	Jury
Status:	Pending/ADR	**Assigned Judge:**	Clerk Of Court C P, G S, And Family Court		
Disposition:		**Disposition Date:**		**Disposition Judge:**	
Original Source Doc:		**Original Case #:**		**Restore Reason:**	Reopen Case for Rule 40J
Judgment Number:		**Court Roster:**			

Case Parties | Judgments | Tax Map Information | Associated Cases | Actions | Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
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Etikerentse, Temisan	Notice of Appeal to Court of Appeals	Filing		08/27/2020-10:57		
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Specialized Loan Servicing LLC	Motion/Alter and/or Amend Revise the Judgment	Motion		08/14/2020-15:27	08/14/2020-15:27	
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Specialized Loan Servicing LLC	Order/Order Cover Sheet $25.00	Filing		08/05/2020-15:16		
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Shy, Jayme L	10/14/2019_JRY_Roster/Notice of Case Roster Publication Sent	Action		10/08/2019-07:50		
Wlodarczyk, Damon Christian	10/14/2019_JRY_Roster/Notice of Case Roster Publication Sent	Action		10/08/2019-07:50		
McCumber, Alexis Wimberly	10/14/2019_JRY_Roster/Notice of Case Roster Publication Sent	Action		10/08/2019-07:50		
Varnado, Robert Bratton	10/14/2019_JRY_Roster/Notice of Case Roster Publication Sent	Action		10/08/2019-07:50		
Knowles, Brian Morris	10/14/2019_JRY_Roster/Notice of Case Roster Publication Sent	Action		10/08/2019-07:50		
Williams, Blake Terence	10/14/2019_JRY_Roster/Notice of Case Roster Publication Sent	Action		10/08/2019-07:50		
Barnwell, Brian Montgomery	10/14/2019_JRY_Roster/Notice of Case Roster Publication Sent	Action		10/08/2019-07:50		
	Order-Pltffs Motion to Withdraw as Counsel is Granted	Order		06/21/2019-14:13		
Shy, Jayme L	6/17/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2019-09:16		
Knowles, Brian Morris	6/17/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2019-09:16		
McCoy, Daniel Ray	6/17/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2019-09:16		
Varnado, Robert Bratton	6/17/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2019-09:16		
McCumber, Alexis Wimberly	6/17/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2019-09:16		
Wlodarczyk, Damon Christian	6/17/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2019-09:16		
Barnwell, Brian Montgomery	6/17/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2019-09:16		
Williams, Blake Terence	6/17/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		05/23/2019-09:16		
Wilmington Trust National Association As Successor Trustee	Motion/Motion Filing Fee	Filing		03/08/2019-12:45		
McCoy, Daniel Ray	Pltff Motion/Leave to Withdraw as Counsel	Motion		03/08/2019-10:05	06/19/2019-10:05	
Specialized Loan Servicing LLC	Order Denying Motion for Summary Judgment	Order		02/11/2019-14:39		
	Crtn Dfnts Memo in Opposition to Motion/Summary Judg, srv	Filing		02/07/2019-11:48		
	Withdrawal & Substitution of Atty W/In Firm for Crtn Dfs,srv	Filing		01/28/2019-08:58		
Wilmington Trust National Association As Successor Trustee	Notice of Hearing & Crt/Mailing	Filing		01/25/2019-10:01		
Shy, Jayme L	2/4/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		01/17/2019-12:08		
Knowles, Brian Morris	2/4/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		01/17/2019-12:08		
Varnado, Robert Bratton	2/4/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		01/17/2019-12:08		
McCumber, Alexis Wimberly	2/4/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		01/17/2019-12:08		
McCoy, Daniel Ray	2/4/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		01/17/2019-12:08		
Wlodarczyk, Damon Christian	2/4/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		01/17/2019-12:08		
McCoy, Daniel Ray	Specialized Loan Serv. LLC Motion/Summary Judgment & Crt/Srv	Motion		08/30/2018-15:52	02/07/2019-15:52	
Specialized Loan Servicing LLC	Memo in Support of Motion/Summary Judgement & Affidavit	Filing		08/30/2018-15:48		

Specialized Loan Servicing LLC	Motion/Motion Filing Fee	Filing		08/30/2018-13:29		
Wilmington Trust National Association As Successor Trustee	Lis Pendens Restored from Case 2016-CP-10-1987	Filing		06/01/2018-11:55		
Wilmington Trust National Association As Successor Trustee	Order Restoring Case 401	Filing		06/01/2018-11:24		

Exhibit B

(Appellants' Response in Opposition to Summary Judgment)

STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2018-CP-10-2792
WILMINGTON TRUST, NATIONAL ASSOCATION, as Successor Trustee to CITIBANK, N.A. AS TRUSTEE OF STRUCTURES ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARS ALT-A TRUST II, MOTGAGE PASS - THROUGH CERTIFICATES SERIES 2007-1, Plaintiff, vs. TEMISAN ETIKERENTS a/k/a TEMISAN K. ETIKERENTSE, IJOEMA ETIKERENTSE a/ka/ IJEOMA ETKIS, SUNTRUST MORTGAGE, INC., CAPITAL BANK CORPORATION, BANK OF AMERICA, N.A., KEYBANK NATIONAL ASSOCIATION and OLDE PARK HOMEOWNERS ASSOCIATION, INC., Defendants.	**THIRD-PARTY PLAINTIFFS' ETIKERENTSES MEMORANDUM IN OPPOSITION TO THIRD-PARTY DEFENDANT SLS's SECOND MOTION FOR SUMMAY JUDGMENT and WILMINGTON TRUST'S MOTION FOR SUMMARY JUDGEMENT**
TEMISAN ETIKERENTS a/k/a TEMISAN K. ETIKERENTSE, IJOEMA ETIKERENTSE a/ka/ IJEOMA ETKIS, Third-Party Plaintiffs, vs. SPECIALIZED LOAN SERVICING, LLC a/k/a SLS, Third-Party Defendant.	

TO: THE HONORABLE BENTLEY PRICE, SOUTH CAROLINA CIRCUIT COURT JUDGE:

COMES NOW THE Defendants and Third-Party Plaintiffs Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etikerentse ("Third-Party Plaintiffs" or "Etikerentse"), who by and through their undersigned attorneys submit the following memorandum of law in opposition to the second motion for summary judgment of Third-Party Defendant Specialized Loan Servicing, LLC a/k/a SLS ("Third-Party Defendant " or "SLS") filed October 10, 2019 and the Motion for Summary Judgment as to Counterclaims of the Plaintiff Wilmington Trust, N.A. ("Plaintiff" or "Wilmington Trust") filed January 20, 2020.

RELEVANT FACTS

On June 15, 2007, Dr. Temisan Etikerentse issued an *Interest Only Adjustable Rate Negotiable Note* ("Note") to Countrywide Home Loans, Inc. ("CHL" or "Originator") in the amount of $1,402,500.00 and executed a Mortgage to secure its repayment. The terms of the Note provided its Etikerentse would make 120 interest-only installment payments beginning August 1, 2007 in the amount of $8,181.25 before the first interest rate change on July 1, 2017.

Wilmington Trust, N.A. ("Wilmington" or "Trustee") is the Trustee for a pool of *qualified mortgages*[1] held in a Trust pursuant to a real estate mortgage investment conduit ("REMIC")

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[1] "A real estate mortgage investment conduit ... is a 'mortgage securities vehicle authorized by the Tax Reform Act of 1986 that holds commercial and residential mortgages in trusts, and issues securities representing undivided interest in these mortgages…'" *United States v. Lopez*, 222 F.3d 428, 435 n.8 (7th Cir. 2000). REMICs allow mortgage payments to be pass through to certificate holders without first being subject to income tax. Pursuant to 26 U.S.C. 860G(a)(3), the term "qualified mortgage" means:

> (A)any obligation (including any participation or certificate of beneficial ownership therein) which is principally secured by an interest in real property and which—
> (i)is transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC, (ii)is purchased by the REMIC within the 3-month period beginning on the startup day if, except as provided in regulations, such purchase is pursuant to a fixed-price contract in effect on the startup day, or(iii)represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase (I)is attributable to an advance made to the obligor pursuant to the original terms of a reverse mortgage loan or other obligation, (II)occurs after the startup day, and (III)is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day

agreement. The trust was created and is governed by a Pooling and Servicing Agreement ("PSA"). [Exhibit A]. Under the terms of the PSA, the Trustee holds the Trust assets for the exclusive benefit of the holder of the certificates that represent interest in the Trust ("Certificateholders"). *See* PSA § 2.02; 12 C.F.R. § 301.7701-4(a).[2] Under the PSA, the Trust acquired 3,187 promissory notes from Structured Asset Mortgage Investments II, Inc. ("Depositor"), which in turn acquired the promissory notes from EMC Mortgage Corporation ("Seller" or "Sponsor"). One of the "qualified mortgages" identified among the loans in the Trust includes a negotiable instrument ("Note") issued by the Petitioner to Countrywide Home Loans, Inc. ("Originator" or "CHL") on June 15, 2007 and a mortgage given to secure its repayment on the same date. The Sponsor obtained the Note from Originator, via blank indorsement**,** at or before August 1, 2007.

The PSA also designates Wells Fargo Bank, N.A. ("Wells Fargo") as the "master servicer," to "supervise, monitor and oversee the obligation of the Servicers to service and administer their respective Mortgage Loans in accordance with the terms of the applicable Servicing Agreements;" and its relationship with the Trustee Wilmington is that of "an independent contractor." *See* PSA § 3.03(a)-(c). Section 3.05 of the PSA further provides that "[t]he Trustee shall furnish the Master Servicer, upon written request from a Servicing Officer, with any *powers of attorney* empowering the Master Servicer or any Servicer … to foreclose upon or otherwise liquidate Mortgaged Property, and to appeal, prosecute or defend in any court action relating to the Mortgage Loans or the Mortgaged Property, in accordance with the applicable Servicing Agreement and this Agreement" *See* PSA § 3.05 (emphasis added).

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[2] 12 C.F.R. § 301.7701-4(a) provides that an arrangement is treated as a trust if the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit. The REMIC at issue here is organized as a common law trust under the State of New York and designated as Bear Stearns ALT-A Trust II 2007-1.

Specialized Loan Servicing, ("SLS") is a loan servicer located in Highlands Ranch, Colorado and is not named in the PSA. SLS says it "is not and has never been a party to the note or mortgage at issue in this action, or a successor thereto." *See* Affidavit of SLS Assistant Vice President Mark McCloskey ("McCloskey Affidavit") at ¶ 8; attached as Exhibit B. McCloskey **importantly** testifies, "at all times, SLS has acted only as servicer of the note and mortgage on behalf of the holder [sic] of the same, which is Wilmington." *Id.*

But in the spring of 2016, SLS retained the law firm of Riley Pope & Laney, LLC ("RPL Firm") in Columbia, and directed attorney Damon C. Wlodarczyk ("Wlodarczyk") "to file a foreclosure action naming Wilmington Trust as the Plaintiff." *See* Affidavit of Damon C. Wlodarczyk ("Wlodarczyk Affidavit") at ¶ 2 (case number 2016-CP-10-1987); attached as Exhibit C. Through his attorney, Dr. Etikerentse answered, counterclaimed and brought a third party claim against SLS. The gravamen of his complaint is SLS failed to adhere to loss mitigation disclosures required under 12 C.F.R. § 1024.41 before filing various foreclosure related pleadings and motions.

On April 23, 2020 SLS executed a "Stipulation and Consent to the Issuance of a Consent Order." ("Stipulation"). By this Stipulation, SLS has consented to the issuance of Administrative Proceeding File No. 2020-BCFP-0002, *In the Matter of : Specialized Loan Servicing, Consent Order* dated May 7, 2020, ("Consent Order") and "the facts necessary to establish the [Bureau of Financial Protection's] jurisdiction over Respondent and the subject matter of this action." under 12 U.S.C. §§ 5563 & 5565. [Exhibit D].

SLS has admitted "the following law violations: (1) Respondent violated the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2601 et seq., its implementing regulation, Regulation X, 12 C.F.R. part 1024, and the Consumer Financial Protection Act of 2010 (CFPA)

by taking prohibited foreclosure actions against certain borrowers, in violation of 12 C.F.R. §§ 1024.41(f)(2) and (g); and (2) Respondent violated RESPA, Regulation X, and the CFPA by failing to send or timely send evaluation notices to certain borrowers, in violation of 12 C.F.R. § 1024.41(c)(1)." *Id*. ¶. 1.

Pursuant to Section VII of the Consent Order, SLS has been ordered to engage in a comprehensive plan to identify and compensate those harmed and in the interim, "no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order." 12 U.S.C. 5563(d)(4). This is a critical holding.

The Consent Order further requires attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, may not violate RESPA, 12 U.S.C. § 2601 *et seq*., and its implementing regulation, Regulation X, 12 C.F.R. part 1024, and must take the certain affirmative before moving for summary judgment.

SLS'S MOTION FOR SUMMARY JUDGMENT

A.. Rule 14 Argument.

SLS's primary grounds for summary judgment is made under Rule 14(a) of the South Carolina Rules of Civil Procedure. SLS says that "it cannot possibly be liable, in whole or in part, for Wilmington's foreclosure claim against the Plaintiffs. The specific facts of the case belie SLS's argument, however.

But, in 2016-CP-10-1987, the attorney for Wilmington Trust testified in an affidavit that: "my firm was retained by Specialized Loan Servicing ('SLS') to bring an action for foreclosure on behalf of the Plaintiff." (See Exhibit A, at ¶ 2). Being paid by SLS to institute the claim, Mr. Wlodarczyk of Riley Pope even initially felt that he would defend the third-party action. (*Id*. at ¶

8). In fact, the current counsel for SLS – Mr. Daniel L. McCoy – *appeared for Wilmington Trust* to set aside an entry of default in 2016-CP-10-1987. Thus, Wilmington Trust is simply the party SLS ***directed its legal team to name as the foreclosing party to escape actions undertaken by it alone***.

Under Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability. Consequently, a non-party is subject to impleader only if there is a basis to assert he is liable to the named defendant(s) for all or part of the plaintiff's claim. *Smith v. Tiffany*, 419 S.C. 548, 560, 799 S.E.2d 479, 486 (2017). The outcome of the principal claim must impact the third-party defendant's liability. *First Gen. Serv. of Charleston v. Miller*, 314 S.C. 349, 341-342, 445 S.E. 2d 446, 447 (1994).

Here, there is more than enough basis to assert the claim against SLS because: (1) there is not a lawyer truly representing Wilmington, nor is Wilmington really involved; (2) SLS is paying *and* directing both sets of lawyers; (3) there are no Wilmington documents supporting the foreclosure, but in fact all of the relevant documents produced in the case are from SLS; (4) even the lawyer for "Wilmington" is also asking for summary judgment based on SLS's affidavit; and (5) controlling the foreclosure process by hiring Riley Pope & Laney (purported counsel for Wilmington Trust). *See Exhibits A and G.*

Yet, absent each of these, SLS has blatantly signed a Consent Order admitting to the same. This is really a case of SLS saying that Wilmington Trust is making a foreclosure case, but in reality its SLS on both sides of the same case.

B. Breach of Contract/Lack of Privity Argument.

Third-Party Plaintiffs would concede that lack of privity undermines their direct cause of action against SLS for breach of contract, but would ask the Court for leave under Rule 15(a) to

amend the third-party action to bring a claim for tortious interference with contract by SLS. *See Dutch Fork Development Group II, LLC v. SEL Properties, LLC*, 406 S.C. 596, 604, 753 S.E.2d 840, 844 (2012).

C. HAMP/SCUTPA/RESPA

This Court lacks subject matter to rule on Sections III, IV and V of the Third-Party Defendant's motion for summary judgment. But some background is necessary:

In the wake of the 2008 financial crisis, Congress established the Consumer Financial Protection Bureau ("CFPB"), an independent regulatory agency tasked with ensuring that consumer debt products are safe and transparent. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), 124 Stat. 1376. In addition, Congress enacted a new prohibition on "any unfair, deceptive, or abusive act or practice" by certain participants in the consumer-finance sector. §5536(a)(1)(B) and transferred the administration of 18 existing federal statutes to the CFPB, including 12 U.S.C. 2601,et seq. known as the Real Estate Settlement Procedures Act of 1974 ("RESPA")[3]. See §§5512(a), 5481(12), (14).

To "ensur[e] that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive," 12 U.S.C. §5511(a), Congress authorized the CFPB to implement that broad

[3] In addition to the specific statutory mandates and amendments the Dodd-Frank Act established in RESPA, by adding section 6(k)(1)(E) to RESPA, the Dodd-Frank Act authorizes the Bureau, through section 6(k), to prescribe regulations that are appropriate to carry out the consumer protection purposes of the title. RESPA is a remedial consumer protection statute and imposes obligations upon servicers of federally related mortgage loans. RESPA has established a consumer protection paradigm of requiring disclosures to consumers, and establishing servicer requirements and prohibitions, for the purpose of protecting borrowers from certain potential harms. The disclosures include, for example, disclosures regarding escrow account balances and disbursements, transfers of mortgage servicing among mortgage servicers, and force-placed insurance notices. The requirements and prohibitions include requirements for servicers to respond to qualified written requests from borrowers and with respect to escrow account payments. Servicers are subject to civil liability for failure to comply with such requirements and prohibitions.

standard (and the 18 pre-existing statutes placed under the agency's purview) through binding regulations. §§5531(a)–(b), 5581(a)(1)(A), (b).

Citing "widespread concern among mortgage market participants, consumer advocates, and policymakers regarding pervasive problems with servicers' performance of loss mitigation activity in connection with the financial crisis, including lost documents, non-responsive servicers, and unwillingness to work with borrowers to reach agreement on loss mitigation options," 78 F.R. 10816, the Bureau added 12 C.F.R. 1024.41 "Loss Mitigation Procedures" to RESPA in 2013.

It is true that "the Bureau did not intend to create a private right of action for borrowers to enforce, in private litigation, any requirements that are imposed by owners or assignees of mortgage loans (including investors or guarantors) on servicers to mitigate losses for such parties. *Rather, the Bureau intended that borrowers could enforce the loss mitigation procedures against servicers to ensure that servicers complied with the appropriate procedural steps before completing the foreclosure process when a borrower had submitted a complete loss mitigation application."* 78 F.R. 10822. Thus, the Plaintiff clearly has a private cause of action. Equally clear, is that violations of the procedures, as alleged by the Plaintiff, are indeed considered unfair and deceptive are enforceable under 12 U.S.C. § 2605(f). See 12 C.F.R. § 1024.41(a).

Congress also vested the CFPB with potent enforcement powers. The agency has the authority to conduct investigations, issue subpoenas and civil investigative demands, initiate administrative adjudications, and prosecute civil actions in federal court. §§5562, 5564(a), (f). In doing so, Congress gave the CFPB extensive rulemaking, enforcement, and adjudicatory powers, including the authority to conduct investigations, issue subpoenas and civil investigative demands, initiate administrative adjudications, prosecute civil actions in federal court, and issue binding

decisions in administrative proceedings. The CFPB may seek restitution, disgorgement, injunctive relief, and significant civil penalties for violations of the 19 federal statutes under its purview.

Importantly, on April 23, 2020, SLS executed a "Stipulation and Consent to the Issuance of a Consent Order." ("Stipulation") [See Exhibit C]. By this Stipulation, SLS has consented to the issuance of Administrative Proceeding File No. 2020-BCFP-0002, *In the Matter of : Specialized Loan Servicing, Consent Order* dated May 7, 2020, ("Consent Order") and "the facts necessary to establish the [Bureau of Financial Protection's] jurisdiction over Respondent and the subject matter of this action." under 12 U.S.C. §§ 5563 & 5565.

SLS has admitted "the following law violations: (1) Respondent violated the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2601 et seq., its implementing regulation, Regulation X, 12 C.F.R. part 1024, and the Consumer Financial Protection Act of 2010 (CFPA) by taking prohibited foreclosure actions against certain borrowers, in violation of 12 C.F.R. § 1024.41(f)(2) and (g); and (2) Respondent violated RESPA, Regulation X, and the CFPA by failing to send or timely send evaluation notices to certain borrowers, in violation of 12 C.F.R. § 1024.41(c)(1)." *Id.* ¶. 1. Those violations are unfair and deceptive.

Typically, SLS's Consent Order would be more than enough to trigger a violation under the South Carolina Unfair Trade Practices Act ("SCUPTA"), S.C. Code § 39-5-10 *et seq*., which provides "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful." 15 U.S.C. § 45(a)(1); *see* S.C. Code Ann. § 39-5-20(a). SCUTPA "declares unfair or deceptive acts or practices in trade or commerce unlawful." *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.* 414

S.C. 33, 56, 77 S.E.2d. 176, 188 (2015); *Singleton v. Stokes Motors, Inc.,* 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004) (citing S.C. Code Ann. § 39-5-20(a) (2002).[4]

However, pursuant to Section VII of the Consent Order, SLS has been ordered to engage in a comprehensive plan to identify and compensate those harmed and in the interim, "no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order." 12 U.S.C. 5563(d)(4). Additionally, both because Riley Pope and Laney and Nelson Mullins have "actual notice" of the Consent Order, they must engage in certain "affirmative actions" prior to proceeding with motions for summary judgement on behalf of their client, SLS.

Clearly, if Nelson Mullins, as argued in SLS' Motion, is not aware that 12 C.F.R. 1024.41 is a regulation promulgated under RESPA, no such affirmative review has occurred. Thus, neither SLS cannot proceed, nor its lawyers can proceed on behalf of their client, in the instant motions. In analyzing the same language in a similar statute [12 U.S.C. § 1818(i)(1)] the United States Supreme Court had declared "Congress has spoken clearly and directly: '[N]o court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any [Board] notice

[4] SCUTPA provides for both civil actions brought by private citizens and enforcement actions brought by the Attorney General on behalf of the State. S.C. Code Ann. §§ 39-5-50(a), -110(a), -140(a) (1985). *Ortho*, 414 S.C. at 57, 77 S.E.2d at 189. S.C. Code Ann. § 39-5-140(a) requires no more than "any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages." *See Freemantle v. Preston,* 398 S.C. 186, 194-95, 728 S.E.2d 40, 44 (2012) (holding that where the appellant asserted he was a citizen of South Carolina, then "[n]othing more" was required under statute). The terms "unfair" and "deceptive" are not defined in SCUTPA; rather, in section 39-5-20(b) of the Act, the General Assembly directs that in construing those terms, the courts of our state "will be guided by" decisions from the federal courts, the Federal Trade Commission Act (FTCA), and interpretations given by the Federal Trade Commission (FTC).

or order under this section.'" *Board of Governors, FRS v. MCorp Financial, Inc*., 502 U.S. 32, 44 (1991).

D. Bankruptcy Argument

SLS concedes in its motion [at p. 14] that "a debtor may pursue a claim belonging to the bankruptcy estate only if the trustee abandons it pursuant to 11 U.S.C. 554(a)." However, the trustee did this – abandoned the claim. See Trustee's Final Report ("TFR"), April 25, 2016 (Exhibit E). Thus, SLS's entire motion for summary judgment breaks down.

WILMINGTON TRUST'S MOTION FOR SUMMARY JUDGMENT

Wilmington Trust has also moved for Summary Judgment as to Counterclaims. Since this motion does not specify the basis for why Wilmington Trust should receive summary judgment, but is made with generally many of the same exhibits as SLS, Defendant's believe Wilmington Trust's arguments should fail for the same reason as given above[5]. Also, Third-Party Plaintiffs reference their arguments made in their Memorandum in Opposition to Wilmington Trust's Motion to Strike, especially initiating foreclosure proceedings while a loss mitigation application is being processed – which was clearly the case in the instant action. 12 C.F.R. § 1024.41(f), (g).

CONCLUSION

For these reasons, the Defendants/Third-Party Plaintiffs respectfully request that the Court deny the two instant motions.

(signature on next page)

[5] Pursuant to Rule 7(b)(1), SCRP, a motion "shall state with particularity the grounds therefore, and shall set forth the relief or order sought." To the extent that Wilmington Trust failed to follow Rule 7(b)(1), we object.

BROWN & VARNADO LLC

/s Robert B. Varnado

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Attorneys for Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etiks

July 10, 2020
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of ***Third-Party Plaintiff Etikerentse's Memorandum in Opposition to Third-Party Defendant SLS's Second Motion for Summary Judgment and Plaintiff's Motion for Summary Judgment as to Counterclaims*** upon all parties to these matters by depositing a true copy of the same in the U.S. mail, proper postage prepaid, addressed to counsel of record as follows, unless served by email if otherwise indicated:

Via Email
Daniel R. McCoy, Esquire
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Via Email
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Jayme L. Shy, Esquire
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2838 Devine Street
Columbia, SC 29205
Attorneys for Plaintiffs

/s Robert B. Varnado
_____
Robert B. Varnado

July 10, 2020
Mount Pleasant, South Carolina

Exhibit C

(Appellants' Motion to Reconsider)

STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2018-CP-10-2792
WILMINGTON TRUST, NATIONAL ASSOCATION, as Successor Trustee to CITIBANK, N.A. AS TRUSTEE OF STRUCTURES ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARS ALT-A TRUST II, MOTGAGE PASS - THROUGH CERTIFICATES SERIES 2007-1, Plaintiff, vs. TEMISAN ETIKERENTS a/k/a TEMISAN K. ETIKERENTSE, IJOEMA ETIKERENTSE a/ka/ IJEOMA ETKIS, SUNTRUST MORTGAGE, INC., CAPITAL BANK CORPORATION, BANK OF AMERICA, N.A., KEYBANK NATIONAL ASSOCIATION and OLDE PARK HOMEOWNERS ASSOCIATION, INC., Defendants.	**THIRD-PARTY PLAINTIFFS' ETIKERENTSES NOTICE OF MOTION AND MOTION TO RECONSIDER**
TEMISAN ETIKERENTS a/k/a TEMISAN K. ETIKERENTSE, IJOEMA ETIKERENTSE a/ka/ IJEOMA ETKIS, Third-Party Plaintiffs, vs. SPECIALIZED LOAN SERVICING, LLC a/k/a SLS, Third-Party Defendant.	

TO: BLAKE T. WILLIAMS, ESQ., ATTORNEY FOR THE THIRD-PARTY DEFENDANT SPECIALIZED LOAN SERVING, LLC:

PLEASE TAKE NOTICE that the Third-Party Plaintiffs Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etikerentse ("Third-Party Plaintiffs" or "Etikerentse"), by and through their undersigned attorneys and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, will move before the Honorable Bentley Price, South Carolina Circuit Judge, at the Charleston County Court of Common Pleas, 100 Broad Street, Charleston, South Carolina 29401, ten days hence or at such other time, date and place as counsel may be heard, seeking the court to alter, amend and/or reconsider its Form 4 Order of July 22, 2020 granting SLS's Motion for Summary Judgment (which the undersigned received written notice of on July 22, 2020), based on the following law.

A.. Rule 14 Argument.

SLS's primary grounds for summary judgment is made under Rule 14(a) of the South Carolina Rules of Civil Procedure. SLS says that "it cannot possibly be liable, in whole or in part, for Wilmington's foreclosure claim against the Plaintiffs. The specific facts of the case belie SLS's argument, however. In 2016-CP-10-1987, the attorney for Wilmington Trust testified in an affidavit that: "my firm was retained by Specialized Loan Servicing ('SLS') to bring an action for foreclosure on behalf of the Plaintiff." Being paid by SLS to institute the claim, Mr. Wlodarczyk of Riley Pope even initially felt that he would defend the third-party action. (*Id*. at ¶ 8). In fact, counsel for SLS – Mr. Daniel L. McCoy – *appeared for Wilmington Trust* to set aside an entry of default in 2016-CP-10-1987. Thus, Wilmington Trust is simply the party SLS ***directed its legal team to name as the foreclosing party to escape actions undertaken by it alone***.

The argument also seeks to collaterally attack a final order of the U.S. Bankruptcy Court (U.S. Bankruptcy Judge David Duncan): "that [SLS] has possession of the Note" and is "the assignee of the Mortgage." (See Certification of Facts for the Motion on Behalf of Specialized

Loan Servicing LLC to Modify Stay or for Adequate Protection, June 22, 2015 BR 14-04497-DD). The Certification of Facts, which were filed under penalty of perjury, resulted in a final order. *Ritzen Group Inc. v. Jackson Masonry, LLC,* 140 S.Ct. 582, 585 (2020) ("Relief from bankruptcy's automatic stay thus presents a discrete dispute qualifying as an independent 'proceeding' within the meaning of § 158(a)")..

Judge Duncan's order was "immediately appealable." *Id*. SLS, however, failed to appeal it. SLS cannot now collaterally attack the Bankruptcy Court's finding here, which SLS Assistant V.P. Mark McCloskey does by testifying that: "SLS is not and has never been a party to the note or mortgage at issue in this action, or a successor thereto" and that: "at all times, SLS has acted only as servicer of the note and mortgage on behalf of the holder [sic] of the same, which is Wilmington." (McCloskey Aff. at ¶ 8). In other words, SLS cannot take two diametrically opposed, factual positions under oath, and then use its second sworn statement to collaterally attack a final order of the Bankruptcy Court based on the first! The lack of records on which McCloskey bases his testimony is not unnoticed.

Under Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability. Consequently, a non-party is subject to impleader only if there is a basis to assert he is liable to the named defendant(s) for all or part of the plaintiff's claim. *Smith v. Tiffany*, 419 S.C. 548, 560, 799 S.E.2d 479, 486 (2017). The outcome of the principal claim must impact the third-party defendant's liability. *First Gen. Serv. of Charleston v. Miller*, 314 S.C. 349, 341-342, 445 S.E. 2d 446, 447 (1994).

Here, there is more than enough basis to assert the claim against SLS because: (1) there is not a lawyer truly representing Wilmington, nor is Wilmington really involved; (2) SLS is paying *and* directing both sets of lawyers; (3) there are no Wilmington documents supporting the

foreclosure, but in fact all of the relevant documents produced in the case are from SLS; (4) SLS (not Wilmington) attempted to modify the Etikerentse loan [but instead offered what really constituted a refinance]; (5) SLS failed to give proper disclosures not Wilmington; (6) SLS is telling whatever court whatever SLS thinks can get it money it is not owed; and (7) even the lawyer for "Wilmington" is also asking for summary judgment based on SLS's affidavit; (8) controlling the foreclosure process by hiring Riley Pope & Laney (purported counsel for Wilmington Trust); (9) preparing and recording the assignment of the mortgage by its agent Robin Mathews; failure to maintain accurate records; and engage in loss mitigation. *See Exhibits A and G*.

Also, there are several additional reasons. First, the alleged the assignment of the mortgage executed on November 4, 2014 by SLS employee Robin Mathews is the aspect of "conveyancing and affects legal rights" to include who can bring the action against Dr. Etikerentse. Absent this "assignment," Wilmington Trust's complaint fails to allege any other manner by which Wilmington Trust could maintain this action against Dr. Etikerentse. Our Supreme Court has twice held recording instruments after a real estate transfer is the practice of law, thus Ms. Mathews' actions are on behalf of SLS as its purported agent for Wilmington. Further, such assignments are illegal and a nullity as the unauthorized practice of law by a non-lawyer. *See State v. Buyers Serv. Co., Inc.,* 292 S.C. 426, 430, 357 S.E.2d 15, 17 (1987); *Rogers, Townsend & Thomas v. Peck,* 419 S.C. 240, 248, 797 S.E.2d 396, 400 (2017).

Second, the basis of the foreclosure action is a manufactured default on the part of the SLS. To swallow SLS's argument, we would have to accept, as a matter of law, that a servicer is free to refuse a tendered payment and then to hold the borrower responsible for having failed to make the payment. Both the 2009 and 2016 complaints admit that Dr. Etikerentse paid the Eight Thousand One Hundred Eighty One and 25/100 ($8,181.25) Dollars each month as required from August 1,

2007 through November 1, 2008. Neither complaint explains how, before his next payment was due, the note went into default and allowing an accelerated amount of $1,392,298.51 to be due on December 1, 2008.

The terms of the note are governed by the Home Ownership Lending Act (HOLA) and thus the instrument itself preempts South Carolina law on other definitions of "default." *See Fidelity Fed. Sav. & Loan Assn. v. De la Cuesta*, 458 US 141, 157 (1982) (Principles of preemption are not inapplicable here because real property law is a matter of special concern to the State because its regulator has "discretion, regulating comprehensively the operations of [Countrywide], including their lending practices and, specifically, the terms of loan instruments."). Certainly, SLS seeks to avoid its liability under the RESPA by hiring Riley Pope & Laney and managing a foreclosure action in the name of a third party, Wilmington Trust. Without SLS, there would be nothing. Thus, SLS's argument that it is "just" a servicer is wrong.

Finally, SLS' reliance upon *Deutsche Bank Nat'l Trust Co. v. Stevenson*, 2013 WL 12241630 (D.S.C. 2013) is misplaced. SLS asserts that *Stevenson* stands for the proposition that a *servicer* cannot be the party to a third party complaint stands in bright conflict with the same order determining "that the Stevensons have not alleged a valid third-party complaint." *Id*.

C. HAMP/SCUTPA/RESPA.

This Court lacks subject matter jurisdiction to rule on Sections III, IV and V of the Third-Party Defendant's motion for summary judgment by virtue of the Consumer Financial Protection Bureau's ("CFPB") April 23, 2020 "Stipulation and Consent to the Issuance of a Consent Order." ("Stipulation") executed by SLS and a Consent Order with the CFPB dated May 7, 2020.

In the wake of the 2008 financial crisis, Congress established the Consumer Financial Protection Bureau ("CFPB"), an independent regulatory agency tasked with ensuring that

consumer debt products are safe and transparent. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), 124 Stat. 1376. In addition, Congress enacted a new prohibition on "any unfair, deceptive, or abusive act or practice" by certain participants in the consumer-finance sector. §5536(a)(1)(B) and transferred the administration of 18 existing federal statutes to the CFPB, including 12 U.S.C. 2601,et seq. known as the Real Estate Settlement Procedures Act of 1974 ("RESPA")[1]. See §§5512(a), 5481(12), (14).

To "ensur[e] that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive," 12 U.S.C. §5511(a), Congress authorized the CFPB to implement that broad standard (and the 18 pre-existing statutes placed under the agency's purview) through binding regulations. §§5531(a)–(b), 5581(a)(1)(A), (b).

Citing "widespread concern among mortgage market participants, consumer advocates, and policymakers regarding pervasive problems with servicers' performance of loss mitigation activity in connection with the financial crisis, including lost documents, non-responsive servicers, and unwillingness to work with borrowers to reach agreement on loss mitigation options," 78 F.R. 10816, the Bureau added 12 C.F.R. 1024.41 "Loss Mitigation Procedures" to RESPA in 2013. All which are alleged here in the matter at bar.

[1] In addition to the specific statutory mandates and amendments the Dodd-Frank Act established in RESPA, by adding section 6(k)(1)(E) to RESPA, the Dodd-Frank Act authorizes the Bureau, through section 6(k), to prescribe regulations that are appropriate to carry out the consumer protection purposes of the title. RESPA is a remedial consumer protection statute and imposes obligations upon servicers of federally related mortgage loans. RESPA has established a consumer protection paradigm of requiring disclosures to consumers, and establishing servicer requirements and prohibitions, for the purpose of protecting borrowers from certain potential harms. The disclosures include, for example, disclosures regarding escrow account balances and disbursements, transfers of mortgage servicing among mortgage servicers, and force-placed insurance notices. The requirements and prohibitions include requirements for servicers to respond to qualified written requests from borrowers and with respect to escrow account payments. Servicers are subject to civil liability for failure to comply with such requirements and prohibitions.

It is true that "the Bureau did not intend to create a private right of action for borrowers to enforce, in private litigation, any requirements that are imposed by owners or assignees of mortgage loans (including investors or guarantors) on servicers to mitigate losses for such parties. *Rather, the Bureau intended that borrowers could enforce the loss mitigation procedures against servicers to ensure that servicers complied with the appropriate procedural steps before completing the foreclosure process when a borrower had submitted a complete loss mitigation application."* 78 F.R. 10822.

Thus, the Plaintiff clearly has a private cause of action. Equally clear, is that violations of the procedures, as alleged by the Plaintiff, are indeed considered unfair and deceptive are enforceable under 12 U.S.C. § 2605(f). See 12 C.F.R. § 1024.41(a).

The SCUTPA is modeled after the Federal Trade Commission Act, which provides "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful." 15 U.S.C. § 45(a)(1). SCUTPA "declares unfair or deceptive acts or practices in trade or commerce unlawful." *State v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.* 414 S.C. 33, 77 S.E. 2d. 176 (2015); *Singleton v. Stokes Motors, Inc.,* 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004) (citing S.C. Code Ann. § 39-5-20(a) (2002)). The terms "unfair" and "deceptive" are not defined in SCUTPA; rather, in section 39-5-20(b) of the Act, the legislature directs that in construing those terms, the courts of our state "will be guided by" decisions from the federal courts, the Federal Trade Commission Act ("FTCA"), and interpretations given by the Federal Trade Commission ("Commission").

"Once the Commission has chosen a particular legal rationale for holding a practice to be unfair, however, familiar principles of administrative law dictate that its decision must stand or fall on that basis, and a reviewing court may not consider other reasons why the practice might be

deemed unfair." *FTC v. Indiana Federation of Dentists,* 476 US 447, 455 (1986) (quoting *FTC* v. *Algoma Lumber Co.,* 291 U. S. 67, 73 (1934) and recognizing that the statute forbids a state court to "make its own appraisal of the testimony, picking and choosing for itself among uncertain and conflicting inferences.") SLS's motion fails on this point alone. Absent any allegation that the Commission's holding of unfairness is not supported by evidence, there exists no legal argument.

The SCUPTA mirrors this and provides for both civil actions brought by private citizens and enforcement actions brought by the Attorney General on behalf of the State. S.C. Code Ann. §§ 39-5-50(a), -110(a), -140(a) (1985). *Ortho*, 414 S.C. at 57, 77 S.E.2d at 189. S.C. Code Ann. § 39-5-140(a) requires no more than "any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages." *See Freemantle v. Preston,* 398 S.C. 186, 194-95, 728 S.E.2d 40, 44 (2012) (holding that where the appellant asserted he was a citizen of South Carolina, then "[n]othing more" was required under statute).

Congress also vested the CFPB with potent enforcement powers. The agency has the authority to conduct investigations, issue subpoenas and civil investigative demands, initiate administrative adjudications, and prosecute civil actions in federal court. §§5562, 5564(a), (f). In doing so, Congress gave the CFPB extensive rulemaking, enforcement, and adjudicatory powers, including the authority to conduct investigations, issue subpoenas and civil investigative demands, initiate administrative adjudications, prosecute civil actions in federal court, and issue binding decisions in administrative proceedings. The CFPB may seek restitution, disgorgement, injunctive relief, and significant civil penalties for violations of the 19 federal statutes under its purview.

In light of this recitation of federal law, on April 23, 2020, SLS executed the Stipulation and a Consent Order in Administrative Proceeding File No. 2020-BCFP-0002, *In the Matter of : Specialized Loan Servicing, Consent Order* dated May 7, 2020, ("Consent Order"), which gives "the facts necessary to establish the [Bureau of Financial Protection's] jurisdiction over Respondent and the subject matter of this action." under 12 U.S.C. §§ 5563 & 5565.

SLS has admitted "the following law violations: (1) Respondent violated the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2601 et seq., its implementing regulation, Regulation X, 12 C.F.R. part 1024, and the Consumer Financial Protection Act of 2010 (CFPA) by taking prohibited foreclosure actions against certain borrowers, in violation of 12 C.F.R. § 1024.41(f)(2) and (g); and (2) Respondent violated RESPA, Regulation X, and the CFPA by failing to send or timely send evaluation notices to certain borrowers, in violation of 12 C.F.R. § 1024.41(c)(1)." *Id*. ¶. 1. Those violations are unfair and deceptive.

Thus, SLS's Consent Order is more than enough to trigger a violation under the South Carolina Unfair Trade Practices Act ("SCUPTA"), S.C. Code § 39-5-10 *et seq*., which provides "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful." 15 U.S.C. § 45(a)(1); *see* S.C. Code Ann. § 39-5-20(a). SCUTPA "declares unfair or deceptive acts or practices in trade or commerce unlawful." *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.* 414 S.C. 33, 56, 77 S.E.2d. 176, 188 (2015); *Singleton v. Stokes Motors, Inc.,* 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004) (citing S.C. Code Ann. § 39-5-20(a) (2002). Moreover, SLS has violated RESPA by its own admission.

However, pursuant to Section VII of the Consent Order, SLS has been ordered to engage in a comprehensive plan to identify and compensate those harmed and in the interim,

"no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order." 12 U.S.C. 5563(d)(4). Additionally, both because Riley Pope and Laney and Nelson Mullins have "actual notice" of the Consent Order, they must engage in certain "affirmative actions" prior to proceeding with motions for summary judgement on behalf of their client, SLS. Thus, neither SLS can proceed, nor its lawyers on behalf of their client, in the instant motions. In analyzing the same language in a similar statute [12 U.S.C. § 1818(i)(1)] the United States Supreme Court had declared "Congress has spoken clearly and directly: '[N]o court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any [Board] notice or order under this section.'" *Board of Governors, FRS v. MCorp Financial, Inc*., 502 U.S. 32, 44 (1991).

C. SLS's Bankruptcy Argument

SLS concedes in its motion [at p. 14] that "a debtor may pursue a claim belonging to the bankruptcy estate only if the trustee abandons it pursuant to 11 U.S.C. 554(a)." Here, the trustee abandoned the claim. (See Trustee's Final Report, 4/25/16). SLS's motion must therefore fail.

CONCLUSION

For these reasons, the Third-Party Defendants respectfully request that the Court reconsider the Form 4 Order granting SLS's motion for summary judgment. Also, the Etikerentses have asserted federal claims and the lack of a written order: "raises the concern that the state court may be evading federal law and discriminating against federal causes of action. The adequacy of the state-law ground to support a judgment precluding litigation of the federal claim is itself a federal question." *Howlett v. Rose,* 496 US 356, 366 (1990).

(signature on following page)

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July 29, 2020
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of ***Third-Party Plaintiff Etikerentse's Notice of Motion and Motion to Reconsider*** upon all parties to these matters by depositing a true copy of the same in the U.S. mail, proper postage prepaid, addressed to counsel of record as follows, unless served by email if otherwise indicated:

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Robert B. Varnado

July 29, 2020
Mount Pleasant, South Carolina

Exhibit D

(Hearing Transcripts)

STATE OF SOUTH CAROLINA | COURT OF COMMON PLEAS

COUNTY OF CHARLESTON | 2018-CP-10-02762

Wilmington Trust,

Plaintiff

-vs-

Temisan Etikerentse,

Defendant

TRANSCRIPT OF RECORD

July 13, 2020

Charleston, South Carolina (Via Zoom)

B E F O R E:

The Honorable Bentley Price, Judge

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

Damon Wlodarczyk, Esquire
Attorney for the Plaintiff

Rob Varnado, Esquire
Brian Knowles, Esquire
Blake Williams, Esquire
Attorneys for the Defendant

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
First Judicial Circuit

EXHIBITS

NO EXHIBITS INTRODUCED

THE COURT: All right. Good afternoon.
MR. WILLIAMS: Good afternoon, Your Honor.
THE COURT: So the way we are going to proceed is, we'll start with the Plaintiffs. For the record, if you'll just introduce yourselves and the parties in which you represent. Then, we'll move on to the defense. And whoever's motion this is, if you'll just let me know what it is, and I'll be happy to hear from you. So, we'll start with the Plaintiff.
MR. WLODARCZYK: Thank you, Your Honor. Damon Wlodarczyk, law firm of Riley, Pope & Laney. I represent Wilmington Trust.
MR. VARNADO: Your Honor, I'm Rob Varnado, and along with Brian Knowles, we represent the Defendants and third-party Plaintiffs, the Etikerentses, who I think to simplify things we'll just call Dr. E, if that's okay?
THE COURT: Sure. Not a problem.
MR. WILLIAMS: Your Honor, Blake Williams with Nelson Mullins representing the third-party Defendant, the loan servicer, Specialized Loan Servicing.
MR. KNOWLES: I'm Brian, Your Honor. Brian Knowles.
THE COURT: All righty. And whose motion

is it?

MR. WILLIAMS: We've got three pending motions. We've got the third-party Defendant's motion for summary judgment and then the Plaintiff trust, also moot for summary judgment, and had filed a motion to strike jury demand. Unless Damon has a preference, it may be best for us to proceed with the third-party Defendant's motion first. But I'm fine with however Your Honor would like to proceed.

THE COURT: Whatever is convenient and easiest for you all. I'm happy to hear from you.

MR. WILLIAMS: All right. Thank you, Your Honor. I will go ahead then. May it please the Court. This is a contested foreclosure action. It was filed originally back in 2016 by the Plaintiff, Wilmington Trust. The borrowers counterclaimed and filed third-party claims against my client, the loan servicer, Specialized Loan Servicing. The case was 40J back in 2017, restored in 2018.

Shortly thereafter, we filed a motion for summary judgment just on a supporting affidavit. Discovery was still ongoing, and so that motion was denied at that time by the judge to give more time for factual inquiry. We proceeded with conducting additional discovery. Discovery is now closed.

We filed this motion, and it's ripe for adjudication before you.

Briefly on the procedural issues, I'll start by noting that these are not proper third-party claims against SLS. Third party under Rule 14 contemplates derivative liability, where a party is trying to shift some or all of its responsibility onto another Defendant, and that simply can't be the case with a foreclosure claim like this.

And the Deutsche Bank versus Stevenson case we relied on in our brief addressed -- the district of South Carolina addresses this exact issue where you had an attempt to assert third-party claims against the servicer in a foreclosure action, and the Court said those are not proper third-party claims. So for that reason alone, the claim should be dismissed.

But then on the merits, Your Honor, also summary judgment is proper. First, this is a multimillion dollar property, 7,000-square foot house, and Dr. Etikerentse is a medical doctor. He and his wife have lived in this property since 2008 without making a mortgage payment.

Nobody is disputing that they're in default and have been in default for 12 years. The counterclaims and third-party claims were an effort

to stretch the case out and delay, and they've succeeded in that, and we are just trying to get some momentum on this case finally.

As you'll notice in reviewing their response brief to our motion, they have not submitted any actual evidence or affidavits that would contradict the evidence we submitted in support of our motion. The attachments there are wholly irrelevant to the merits of this case. It's a lot of information about the loan trust and a consent order that has no bearing on this case.

In particular, there is no evidence of any damages. A close view of the complaint and Dr. E's deposition testimony supports that their biggest issues with the supposed bad acts of SLS are that essentially the negative consequences of the foreclosure suit. They said there's a cloud hanging over their heads, they've had trouble accessing credit, and they don't want to lose their home. But that's a natural consequence of not paying your mortgage.

And, additionally, they weren't able to articulate any other issues, or Dr. E was not, in his deposition, aside from he didn't obtain a loan modification on terms that he could afford, and he's not entitled to a loan modification.

But despite that, we've offered two mods that were not accepted, and the reason given was he just couldn't afford the numbers, but we tried to -- we've made offers and attempted to resolve the issues, but we just couldn't square the circle, but that's not damages caused by my client.

Your Honor, briefly, we'll rely on our brief as to the individual claims. I'm not going to go into too much detail on those, but I'll just do a couple of high notes. They've asserted four claims. The first is for breach of contract, and in their response brief they acknowledged there is no contract between them and my client. So that's dispositive of that claim.

In one sentence, they requested leave to amend to assert tortious interference. This case is four years old. They've never made a motion to amend until five o'clock the business day before the hearing, they make this request, if the Court is going to grant summary judgment on breach of contract. Way too late. Discovery is closed, and that would not be -- it would be manifestly unreasonable at this point to allow a new claim.

On the declaratory judgment claim, that's their second claim. That's an attempt to get around the fact that HAMP does not provide a private right

of action. And as the case that's cited in our brief detail, numerous courts have said you can't try to re-characterize a claim for violation of HAMP by asserting a different theory like a declaratory claim. So that claim is also -- that's also dispositive of that claim.

In addition, the complaint filed by the trust noted that they didn't qualify for HAMP in the first place because the principal balance owed was beyond the ceiling of the HAMP guidelines, and they produced no evidence in response to that that would contradict that fact.

On the UTPA claim, in his deposition, Dr. E was only able to articulate two supposed bad acts by SLS, and that was -- he claimed he did not receive the notice of intent to foreclose. But later in his deposition, when shown the document, he acknowledged he received it.

Also, he complained -- continued to complain about not getting a loan modification on terms he could afford. That's not damages supporting -- unfair acts supporting the UTPA claim for the same reasons there's no damages. And they have not produced any evidence of damages that would support their UTPA claim or any other claim.

Finally, on the RESPA claim, the regulations -- operative regulations only require consideration of one complete loss mitigation package, which we did in 2014. We offered a loan mod that was not accepted. Despite not having any obligation to further review them for loss mitigation options, we did.

We offered another mod in 2016; that was not accepted either. And so we've gone above and beyond our duties under RESPA. And that claim also fails due to the lack of evidence of damages.

Under RESPA, it requires an even further showing of harm directly tied to the supposed violation, not just harm generally. You have to tie it to the alleged violation of RESPA, and they've made no effort to do that.

For all of those reasons, and lack of any evidence on the merits, we ask that you grant our motion for summary judgment on these third-party claims and allow the foreclosure action to proceed. And I'm happy to address any questions you may have.

THE COURT: All righty. Who would like to respond?

MR. VARNADO: Me, Your Honor. I am Rob Varnado. May it please the Court. SLS's argument is that we are not involved. But even if we were involved,

they say there is no private cause of action or HAMP, there's no SCUTPA, South Carolina Unfair and Deceptive Trade Practices Act, and there's no RESPA violation present.

And they further argue that the bankruptcy -- that unless the bankruptcy trustee abandons its claim on the mortgage, there could be no cause of action brought for any wrong it did prior to the filing of the bankruptcy petition in August 2014.

So let's go to the bankruptcy first. That was the last thing that Nelson Mullins filed in its brief. But, first, the trustee did abandon its claim. In Exhibit E to my memorandum in opposition, I cite the trustee's order. And I can't bring it up now in my complaint, but basically it's 783 Navigators Run, Mount Pleasant. That was their home. There was insufficient value to benefit the estate, the trustee said. So the trustee abandons that claim now. So that's one.

And, second, the wrong which we assert all took place post petition. That's the filing of the bankruptcy petition stemming from an alleged loan modification approved by SLS in 2014. So SLS says that it notifies Dr. E, but there exists no mechanism by which it can enter into a modification with Dr. E,

and I'll get into that in a second.

So our position is that SLS's own memorandum only conclusively states the reason to reject its motion, the trustee's abandonment of the claim, but also filing of the bankruptcy proceeding, raising a genuine issue of material fact.

My second point of HAMP. You heard counsel talk about HAMP, but HAMP is really not an issue here. The issue is RESPA, the Real Estate Settlement Procedures Act, by failing to disclose what was going on during the modification process. So it's not a HAMP issue; it's really a RESPA issue. And I think that counsel is pushing it a little bit to call it a HAMP issue and show you all the cases, saying that we have no private right of cause of action, but it's a red herring. It really is a RESPA issue.

So -- and anyhow that get's us to the consent order. Now, Counsel, Mr. Williams, said, well, this is really an irrelevant order that came out in May of 2020, just two months ago, and it's irrelevant because it's administrative and has nothing to do with this case.

But in that order, which I included -- I think it's Exhibit C -- I'm sorry, Exhibit D of my documents. I say that this order is really something

that should be -- is a very big deal because SLS should have withdrawn its motion to Rule 14, SCUTPA and RESPA, after executing the stipulation to the CFPB.

So what is CFPB? The Consumer Financial Protection Bureau was created by Congress, and they gave the CFPB the power to hold all of the financial wrongdoings, unfair and deceptive trade practices, that sort of thing, for banks and for servicers, like SLS, under it.

And SLS stipulated to the CFPB's jurisdiction, which provides -- and that's under 12 U.S.C. 5531(a), which provides that the Consumer Financial Protection Bureau may take any action to prevent a covered person or a servicer, service provider, that would include SLS, committing or engaging in unfair, deceptive and abusive practices under federal law.

So, they admitted in this consent order that they have committed unfair and deceptive trade practices. They admitted that they've conducted RESPA violations. And so you really get this -- and they said, well, we're not going to admit that we did anything wrong. Right now, we're going to look at it.

And, therefore, the CFPB, who we think is the regulator for this particular thing, says

that the Court shall have no jurisdiction, that this Court shall have no jurisdiction. And I think I have it quoted here, and I quoted it in my brief too, Your Honor.

And I say that -- it says in Section 7 of the consent order, "SLS has to engage in a comprehensive plan to identify and compensate those harmed," which we would assert includes Dr. E in the interim. And it says, "No Court shall have jurisdiction to effect the enforcement of any notice or review, modify, suspend or terminate."

So, basically, what they've done is they've taken out everything from this Court, and they're going to look at it. That's what they've told the CFPB. And we think that they can't come in here and say, well, it's just an administrative order. It has nothing to do with this case. This is all just about South Carolina law, Judge, but not national law, national consumer financial protection law.

So we say that they are really trying to interfere with an ongoing administrative action, which Mr. Williams's client, with difference of lawyers, I imagine, is proceeding with right now. If you look at that order, it's not too long, it says that. So to do so would interfere with an ongoing

administrative action.

And more to the point, SLS has benefitted from the consent order and should not be allowed to circumvent its requirement by a collateral attack here.

So to wrap up, we think that their motions for summary judgment under SCUTPA, under RESPA, under HAMP have all been -- the Court has lost jurisdiction to determine all those things.

And then, secondly, we say that under 14(a), the argument which Mr. Williams made when he first started, was that well, you know, here's this case law from the district court of South Carolina, and it says that a servicer cannot be held responsible for the acts of the holder, which would be Wilmington Trust.

But here we have a situation where Wilmington Trust is on both sides -- I'm sorry. SLS is on both sides of this complaint. SLS hired Mr. Wlodarczyk, and he admits it in an affidavit he filed last year. He says they specifically retained me, SLS. And SLS hired Mr. Williams.

And so here you have a situation where if you look at everything, SLS is really saying, well, we're the servicer, and we're the servicer who is bringing this claim, and we don't think that they're allowed to. So, therefore, we think that a 14(a)

argument should be dismissed.

So, Judge, I wrote about it at length in my memorandum in opposition. I do think that Wilmington Trust, who really is an SLS lawyer, Mr. Wlodarczyk, moved for summary judgment. They actually moved for summary judgment on the same affidavit which Mr. Williams prepared, which I think would further go into the fact that Mr. Wlodarczyk really represents SLS.

But be that as it may, we think that his motion for summary judgment really follows -- tracks Mr. Williams. So for all those reasons, we feel that the motion for summary judgment should not go forward. Thank you.

THE COURT: All right, Mr. Wlodarczyk, do you want to argue your motion for summary judgment?

MR. WLODARCZYK: May it please, Your Honor. Damon Wlodarczyk on behalf of the Plaintiff. Counsel is correct. We basically joined in SLS's motion for summary judgment. The basis is if you listen to the arguments, and if you listen to -- or see what's in the briefs and the complaint, SLS was servicing this loan.

There is no interaction on behalf of Wilmington Trust. What it is is a trust.

It's a holding company for these assets. It hires various servicers to service these loans.

Essentially, the arguments and counterclaim, normally what happens is there's just a counterclaim, a counterclaim against the holder of the note because, essentially, this is an argument of principal agency theory. They're saying that Wilmington Trust is liable because of the acts of its agent. There is no evidence that they had direct communication or correspondence with Wilmington Trust.

In fact, if you look at documents and the loss mitigation efforts, and the packages that were sent out, they were all sent out by SLS on behalf of the note holder. So, I have always argued in the previous hearings on this that normally it would not be unheard of for a borrower to assert counterclaims against the holder of the note arguing that the servicer's actions cause it to be liable for these damages.

So our position is simply if there's no liability for the agent, there obviously can't be any liability to the principal. So that's our basis for the summary judgment motion. If you -- which all the issues were briefed on the merits.

If you find that Plaintiff cannot, on the merits, sustain these claims against SLS,

then obviously, they can't sustain the claims against the owner of the note through the actions of its agent.

THE COURT: All right. And who has the motion to strike the jury demand?

MR. WLODARCZYK: That's my motion, Your Honor.

THE COURT: Okay. I'll be happy to hear from you.

MR. WLODARCZYK: Thank you, Your Honor. If the motion for summary judgment is denied -- if it's granted, obviously, it renders the motion to strike moot. But, essentially, I briefed the issue in the motion. Under South Carolina law, it's well established that foreclosure actions are equity, and there's no right by trial by jury.

In order to get a jury trial in an equity action through counterclaims, or third-party practices, you have to bring compulsory counterclaims and not permissive counterclaims.

We have argued and set forth all of the claims, counter and third party, asserted by Dr. E in this case to seek money damages. That is the relief that can be afforded for a RESPA violation, that is the relief afforded for a violation of the unfair trade practices law, that is the relief for a breach of

contract action is money damages.

Because of that, because none of these causes by action would nullify the note and mortgage at issue, and none of them seek to nullify the note and mortgage at issue, then there is no question that the note and mortgage at issue are, in fact, enforceable.

And as set forth in my brief, in order for a counterclaim and a foreclosure action to be compulsory, it has to affect the enforceability of the note and mortgage. Because the pleadings don't seek damages, because the cause of action seek money damages, they don't go to the enforceability of the note and mortgage.

And, therefore, all the claims asserted by electing to bring them in this case, instead of bringing a separate action as Plaintiff, Dr. E against anybody else, he has waived his right to have a jury trial in this matter. And we would ask that the jury demand be struck and that the case be referred to the Master in Equity to address any remaining issues.

And, obviously, our counterclaim motion for summary judgment is just as to the counterclaims. It doesn't seek anything to do with the actual foreclosure itself.

THE COURT: All right. Mr. Varnado, would you like to respond?

MR. VARNADO: I think Mr. Knowles will have a response to that motion, Your Honor.

THE COURT: All right. Mr. Knowles.

MR. KNOWLES: Thank you, Your Honor. As I wrote in our response in opposition to their brief to strike the jury trial, these counterclaims are actually compulsory. The claims directly affect these parties' ability to come in here and try to collect on the note and foreclosure on the mortgage, and that's two reasons.

First off is that these guys apparently don't care about RESPA. And RESPA says you can't file a foreclosure while you're engaged in loss mitigation efforts with the borrower. And if you look back in the answer and counterclaims in Paragraph 68, I outlined some of the correspondences in the loss mitigation efforts that were going back and forth between the parties and the borrower.

And this was all occurring during the time that, number one, there was a prior foreclosure. This house has been in foreclosure twice now. The first foreclosure was filed in 2009, 2010, and then there was a bankruptcy filed. Because of that bankruptcy,

the first case was dismissed, and then loss mitigation efforts are still continuing. I was involved in the first case as well. Loss mitigation was continuing for years.

And at the time that they filed foreclosure on April 8, 2016, I have documentation between the parties and the borrower where they're trying to work out loss mitigation. RESPA says you can't file foreclosure when you're doing that.

So this is a compulsory counterclaim where I've alleged violations of RESPA and the provisions that apply to that. And that directly has a bearing on their ability to come in and try to collect on the note and mortgage, if they can't do it in the first place.

THE COURT: What did -- I mean, at what stage of the process was it when they filed?

MR. KNOWLES: Let's see. Three days before filing, a letter had been sent April 5, 2016 to the borrower stating in there, it was -- they were still sending documents back and forth. These guys apparently don't know how to keep track of documents, and that's just not Dr. E saying that.

SLS has been involved in a class action in California where thousands of borrowers have said

the same thing Dr. E says, is that we send you stuff, you continue to ask for it, we resend it, we can document it, and then I send it as his lawyer time after time after time for months, and then these guys are writing me back saying, oh, I never got it. We never got this; we never got that. So it was a continuous stringing along of the borrower and me as counsel when I had e-mail confirmations that we sent what they were asking for.

THE COURT: --- allege that SLS was trying to muddy the waters or to try to delay this in any way. You would assume they would just want to get paid and move on.

MR. KNOWLES: Well, the problem is if you offer somebody loss mitigation, RESPA federal law says you can't foreclose while you're engaged in those loss mitigation efforts. That's the bottom line.

THE COURT: All right.

MR. KNOWLES: They were deeply involved in loss mitigation efforts, and SLS was continuing to ask for other documents, and that was three days prior to foreclosure being filed.

THE COURT: Well, let's talk about the real issue. When did the original foreclosure action commence on this? You told me, but I forget.

MR. KNOWLES: April 8, 2016. This is the second foreclosure.

THE COURT: Right. And both against Dr. E?

MR. KNOWLES: Right.

THE COURT: And he filed bankruptcy, I assume. Did that discharge any of it, or in the alternative, did they just dismiss the action because it was going to go into bankruptcy?

MR. VARNADO: Your Honor, I think I might address that point. We contend that the bankruptcy discharged everything but the mortgage for them -- for SLS, you know, to go after the mortgage.

THE COURT: All right. So you're saying everything was discharged in bankruptcy but the mortgage?

MR. VARNADO: That's correct, sir.

THE COURT: All right.

MR. VARNADO: And we also say that SLS basically violated the automatic stay because they filed a second motion for foreclosure, the second suit for foreclosure actually, while it was going on in the name of Wilmington Trust. So they would have to go back to Judge Duncan and ask for ---

MR. WILLIAMS: In the complaint ---

THE COURT: Well, hold on. Let's keep

going. What I'm trying to get at is whether my decision in any of this is going to be dispositive of the case. I don't think -- I mean, it can't be, I guess, for the third-party claims. But, I guess, my question is so Dr. E has been in negotiations with SLS since 2008 for 12 years and still ain't paid a dime on the mortgage?

MR. WILLIAMS: That's right, Your Honor.

MR. VARNADO: Well, Your Honor, you have to realize that SLS told him that they were not going to accept any more payments from him, that he had to pay the whole sum -- the whole lump sum. So, I don't think it's fair for SLS to say, well, he hadn't paid anything in 12 years because you can't. Once SLS says we're not going to take your money anymore, then that's it.

And we also -- with all due respect to Mr. Williams, we do contend that there was a problem with the default because SLS -- and this really chimes in with what Mr. Knowles was saying, and I'm not saying anything about the counsel present, but that SLS really doesn't know what it's doing.

THE COURT: Well, I'm not asking -- obviously, I don't know any of y'all overly well. Mr. Williams seems like he's a nice enough guy, and I'm not blaming him for anything. But what I am concerned about is I understand what happened in the foreclosure.

SLS said that's it, you're not making payments, we're just going to call in the note, we want all of our money, quit making payments until you pay us all, but it's 12 years ago, and he's still living in the house?

MR. KNOWLES: Well, it's been the second foreclosure. My client has been wanting to get a modification for over a decade.

MR. WILLIAMS: We've offered two, Your Honor. They were both rejected, that he couldn't afford the terms.

THE COURT: Well, why doesn't he just get out of the house if he can't afford it?

MR. KNOWLES: I think the problem though is that under federal law they were still engaging in loss mitigation efforts, and RESPA clearly states they could not file foreclosure ---

THE COURT: All right. Let's ---

MR. KNOWLES: --- point related to the bankruptcy. They've attempted to try to collect on monies owed under the note that they're not entitled to under this second action as well. So we would state that these are compulsory counterclaims; they're not permissive. They have direct bearing on whether they can do what they're doing. So we would ask that the

right to a jury trial be allowed to go forward.

THE COURT: Well, Mr. Williams, I'm just -- what's SLS's position with regards to the home? I mean, are they still holding their feet -- I mean, their stance firm and just saying, no, we're not taking payments, you owe us all the money, or we're going to foreclose on the house and get you out of it?

I understand what Mr. Knowles is saying and Mr. Varnado is saying, is that SLS shouldn't have done what they did, but we've got two competing interests. One, you've got SLS who may be doing something -- there's no contention, I assume, that money is owed, but Dr. E couldn't afford it.

But the fact that he's still in the house 12 years later, and SLS is not willing to -- I guess, you're indicating that you've tried twice to try to come up with a modification of amounts that he could afford, and both of those were denied.

MR. WILLIAMS: That's correct, Your Honor. We tried. We've made two offers, and I think the square just can't be circled. The payments that will be required to reinstate the loan even if -- and, of course, this situation is one where the loan has been sold and there's an investor, and so there's different competing interests that would have to approve of any

modification, but we've offered twice. He said on both, you know, I couldn't afford those terms. I just couldn't afford the monthly payments to reinstate the loan. And so we're at the point where the square can't be circled. We've got to proceed with the foreclosure.

THE COURT: All right.

MR. WILLIAMS: And he indicated he does not want to do a deed in lieu or anything like that because he wants to keep the house.

THE COURT: Right.

MR. KNOWLES: If I may, Your Honor, respond to that?

THE COURT: Sure.

MR. KNOWLES: I mean, one of the problems here that I've been trying to get across is that in all these years of loan modification and SLS keeps saying to us, well, we didn't get that document, resend it to us. This went on for years.

Well, in the interim, that's just stringing my guy along. And then they say, well, it's not our fault this is taking this long, and then they tack on hundreds of thousands of dollars in interest, hundreds of thousands of dollars in penalties, fees, insurance. Everything keeps getting accrued.

And then my client is getting the bad side

of the deal there because they're saying, well, if we modify it, you're going to still owe us all this. It doesn't matter we've strung you along for four or five years trying to get you in a modification, you still owe us all this accrued money. It's just a complete unfair practice.

THE COURT: All right. All right, Gentlemen, if you all will allow me, let me take a look at one or two of the briefs again, and I'll have an answer by the end of the day, but I want to go back and look at one or two things, if that's all right. We have a two o'clock hearing that we need to get to.

MR. KNOWLES: Thank you, Your Honor.

MR. VARNADO: Thank you, Your Honor.

THE COURT: All right. Thank you very much.

MR. KNOWLES: Thank you.

THE COURT: Yes, sir.

(End of Transcript of Record)

CERTIFICATE OF REPORTER

State of South Carolina)
County of Charleston)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, via Zoom, on the 13th of July, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 30, 2020

Yvestre Torres
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
) Court of Common Pleas
COUNTY OF CHARLESTON) Case No. 2018-CP-10-2762
_____)
)
WILMINGTON TRUST, National)
Association, as successor Trustee)
to Citibank, N.A. as)
Trustee of Structured Asset)
Mortgage Investments II Inc.,)
Bear Stearns Alt-A Trust)
II, Mortgage Pass-Through)
Certificates Series 2007-1,)
)
Plaintiff,) Transcript of Record
)
vs.) Dated: July 15, 2020
)
TEMISAN ETIKERENTSE a/k/a Temisan)
L. Etikerentse, Ijeoma Etikerentse)
a/k/a Ijeoma Etkis, SunTrust)
Mortgage, Inc., Capital Bank)
Corporation, Bank of America, NA,)
Keybank National Association, and)
Olde Park Homeowners Association,)
Inc.,)
)
Defendants,)
_____)
)
TEMISAN ETIKERENTSE a/k/a Temisan)
L. Etikerentse and Ijeoma)
Etikerentse a/k/a Ijeoma Etkis,)
)
Third-Party Plaintiffs,)
)
vs.)
Specialized Loan Servicing, LLC)
a/k/a SLS,)
)
Third-Party Defendant.)
_____)

B E F O R E:

THE HONORABLE BENTLEY D. PRICE

A P P E A R A N C E:

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Original transcript ordered by:
Brian Morris Knowles

Stenographically recorded and transcribed by:

Karen V. Andersen, RMR, CRR, CSR

THE COURT: I got confused, because you have to remember, you've been dealing with this case for 12 years and I dealt with it for 30 minutes. And it gets to be somewhat complex. And I started to get off track when y'all were making your arguments. And I think you could probably tell because of some of the questions I had at the end. So I decided to go and read all the briefs to see if I could really kind of undercover what was going on here; and I did.

And so once I read them all, I told Julie you have to give me another hearing because I've got a thousand questions now. That's why I wanted to bring everybody back together. As I read the briefs, obviously, I got more information and I had a lot of questions. So I appreciate y'all agreeing to get back together.

So the issues are very unique. Let me pull the brief up here. I got one on my desk and one on my other computer. Essentially, what we have is this. We have Dr. E, who purchased the home. At some point in time, fell on hard times and was not able to afford the home. That's evidenced by the fact that he actually went through bankruptcy. And I think, obviously, was afforded some relief in bankruptcy. However, he had remained in the house.

The doctor is alleging that SLS, by their own admission, has violated certain rules and conditions that the Congress and the federal government set up. And I assume that

was somewhat of a federally nation-wide type situation whenever all of these mortgage companies were getting popped for some of the practices that they basically underwent. So what Dr. E is saying is that, I feel as though until SLS participates in my loss mitigation application, that I don't have to -- I can't bring any foreclosure action.

In the middle of this, we have SLS, who apparently hasn't been alleged to have violated a lot of these. And I've looked, the HAMP and SCUPTA and the RESPA, and that that violation, it takes any jurisdiction out of my hands and puts it back into what essentially would be -- I don't know whose hands it would be in at that point. But that the motion for summary judgment couldn't go forward and I have no jurisdiction to handle anything because of their clear violation.

It looks like in May of this year, they entered into some form of agreement, a consent order, which the doctor then ultimately indicates that by entering into the consent order, that they say in one of their briefs, it's really a case of SLS saying that Wilmington Trust is making a foreclosure case. But in reality, it's SLS on both sides of the case.

So what there is is an issue with SLS apparently doing what the doctor considers unfair proceedings by bringing the foreclosure action, but hiding behind the actual bank itself and directing the bank of Wilmington Trust to hire

lawyers and bring a foreclosure action against the doctor.

The doctor has indicated that the reason for doing that is some type of practice that they have been popped for previously in doing so and bringing these actions, which is against the RESPA and other federally mandated procedures that they have to follow.

So then based on what I asked SLS, or whenever we had this hearing, I think on Monday, I said, well, did you all not participate in the loss mitigation application? And they indicated not only once, but twice that we have attempted to participate and do a, what they called, a loan modification in an attempt to keep the doctor in the home.

And in one of the briefs I read that the attorney for the doctor was involved at that point in time. And it doesn't say that doctor -- doesn't say he couldn't afford it. Just says simply he doesn't wish to participate in that modification, or maybe can't afford to participate in that modification.

So the first question is for SLS. What is the difference between this loss mitigation application and the loan motion which you allege you offered Dr. E twice?

MR. WILLIAMS: Yes, Your Honor, Blake Williams. First, I would like to note on that consent order -- and I will get to your question. I apologize. I just want to note on that consent order that there was no omission of any -- as to

any facts or conclusions of law. That's in the terms of the consent order, Section 2, paragraph 2.

And then those jurisdictional issues on that consent order, paragraph 63, that's talking about enforcement of that consent order as between the Consumer Financial Protection Bureau and SLS, not the borrowers. So you still have jurisdiction to hear this.

THE COURT: All right. Well, that clears up one thing.

MR. WILLIAMS: And on RESPA, what the regulations require that 12 CFR 1024.41, that they've cited in their complaint and brief, requires the lenders to engage in loss mitigation, which means the borrowers submit documents. The lender evaluates them for potential options. And one of the attachments to our brief is the result of that process in 2014.

And it said, well, you've been approved for a loan mod. And they considered some other options. And that didn't meet that criteria. So that satisfied RESPA's guidelines.

THE COURT: All right.

MR. WILLIAMS: In a subsection of RESPA, that same regulation says that's all that's required of a lender. They have to do that one time, which we did in 2014. Once you've done that, you've satisfied your obligation. Then the

lender can, of course, continue to evaluate a borrower for loss mitigation options, which is what we did in 2016.

And they are trying to tie that and say, well, that was improper, we violated RESPA. But we were entitled to do that because we had complied with the one time, evaluated them, made a decision, let them know of that, that they were -- they had been approved for a loan mod, and we considered for options. So we were entitled to proceed with the foreclosure, but, of course, wanted to continue to try to engage in loss mitigation to see if there was a way to save the house. And we offered a second mod in 2016.

THE COURT: All right. That answered my question. All right. There seems to be a lot of -- and there is a lot of contention that SLS is essentially driving this train and forcing Wilmington Trust to foreclose on the property.

All right. And the contention, of course, is that SLS is just a loan servicing agency, and that Wilmington Trust, obviously, holds the mortgage, but that SLS is, basically, the same, that they are foreclosing on the property and forcing or, again, driving the train of Wilmington Trust to foreclose on the property.

So with that being said, and I guess this would go to either Mr. Varnado or Mr. Knowles. Okay. Fine. I throw SLS out. But that still leaves Wilmington Trust able to still

foreclose on the loan. Correct, or no?

MR. VARNADO: I believe that the only motions before Your Honor, which are the loans we are talking about now, the only question before you is whether Dr. E can sue SLS and counterclaim against Wilmington Trust. So one of the things that we said for, in the defense to Mr. Williams's argument, is that they really are the same entity on both sides. But you are right in that we could go against Wilmington Trust.

And just as an aside, it's the trust, the REMIC trust holds the note. The trustee, Wilmington Trust can enforce the note. That's what we say. And also that SLS hired Mr. Wlodarczyk and hired Mr. Williams. So I hope that answers your questions about --

THE COURT: They are very simple questions. Okay. So that answers that. All right.

So here's -- let's lay it out there and put it out there in layman's terms. Dr. E got into a house, interest only. Couldn't afford it. Was going to lose the house. He is suing saying that SLS did not, I guess, appropriately or properly participate in the loss mitigation application or the RESPA requirements. So in doing so, and by their failure to do that, then what is his argument? Well, because they didn't do that, I get to stay in this house for free?

MR. VARNADO: Well, Your Honor, again, the issue

of Wilmington Trust foreclosure against Dr. E is not before Your Honor. The only thing that's before Your Honor is, one, did we violate the -- did we violate and say that we should have a jury trial when we didn't? Okay. That's one thing.

And the other thing is SLS is saying that we -- Dr. E cannot sue them for what they did in violation of RESPA for himself. So the foreclosure against Dr. E is still going on and will still be brought up before another circuit judge.

And then so it's really is, can Dr. E counterclaim against Wilmington Trust and sue SLS? That's what's before Your Honor.

THE COURT: Okay.

MR. VARNADO: And then I want to say one other thing too. The consent order, which SLS entered with the CFPB in May of this year, just two months ago, says that, you know, we are not admitting anything. But this is important. They admit to the jurisdiction of CFPB.

So, basically, SLS's lawyers for the consent order said: Gosh. We don't even know what we did or didn't do. We can't even figure it out. You have to let us have time to figure it out so that we will get back to you on it. Well, we give you -- we consent to your jurisdiction. We consent to your jurisdiction for the unfairness of the trade practice. We consent for your jurisdiction for RESPA. We just have to get back to you.

So that's why the CSPB said no court -- which would include Your Honor, I believe -- can issue an order on UTPA or RESPA or anything like that. So, in fact, SLS is benefiting from this order because they get to stay anything they want. But then Mr. Williams is coming up and saying, well, you really have jurisdiction, Your Honor, you can rule on these claims.

THE COURT: Who do you want --

MR. VARNADO: What I want to say is that the foreclosure action which Mr. Wlodarczyk brought against Dr. E is still out there. So it's just a matter of can Dr. E sue SLS, counterclaim against Wilmington Trust, and say, for these reasons, for RESPA and for ETPA.

THE COURT: So who do you allege has jurisdiction?

MR. VARNADO: Right now the CSPB has jurisdiction, Your Honor.

THE COURT: All right. Mr. Williams, why do you say they don't?

MR. WILLIAMS: I urge you to take a close look at the language of the consent order. It was sent as an attachment to the borrower's response brief. I think they e-mailed it to Your Honor. And I've got the consent order, the consent order related to the CFPB's administrative proceedings against SLS. It doesn't have anything to do with the

individual loans or claims like this foreclosure action. It's just an administrative proceeding. The order does not say that it's halting all foreclosure actions or all claims against SLS across the country.

MR. VARNADO: You know, Judge, I think that it does. So we disagree. I disagree with Mr. Williams on that. And I would urge you also to please look at that consent order and see what it is.

THE COURT: Well --

MR. WILLIAMS: Your Honor, sorry to interject. But the consent order, these are customary. The CFPB has done this with several different financial entities. And, in fact, two federal courts of Court of Appeals have looked at these types of consent orders and noted that a borrower doesn't have the ability to enforce its terms. And that's kind of what they are trying to do here. They are relying on this consent order that doesn't -- it's administrative in nature. It's only between SLS and --

MR. VARNADO: Your Honor, I would just say this. I am not relying on the consent order. I am not trying to get you to do anything to SLS based on the consent order. I'm saying two things, one, that the consent order's language says that you lack the jurisdiction now to hear these things because the CFPB does; and, two, I'm saying that, how can Mr. Williams say for SLS, oh, you know, Varnado didn't prove anything,

hasn't proved anything on the UTPA or anything on Hamp. And yet, they have gone to the CFPB, who is congressionally authorized, the only one congressionally authorized to hear this matter, and said, we submit to your jurisdiction because we don't know, we don't know what we've done or haven't done.

So I think that the failure there is that if they don't know what they have done or haven't done, then Dr. E should be getting something from them saying whether we did or didn't do it. And that is in the --

THE COURT: Are you alleging that they owe him? What does SLS owe Dr. E to say that they have done or not done something?

MR. VARNADO: That's what they said.

MR. WILLIAMS: Your Honor, we've done discovery in this case. They have not submitted any evidence in support of their claim other than relying on this consent order that doesn't have any direct relationship to this case. It's just a generalized consent order.

The jurisdictional provision they cited is 12 U.S.C. 5563. And it's talking about the CFPB's jurisdiction.

Anyway, sorry, Your Honor.

THE COURT: That's fine.

MR. KNOWLES: If I may for a moment, RESPA sets out how this process has to go about if you engage in loan modification efforts, which all came about after 2008 when all

these houses got turned upsidedown when the economy tanked. And Congress acted and enacted HAMP. And then certain RESPA requirements came out to try to help people save their homes. And this applied to people like Dr. E.

And in this original foreclosure, Blake and Nelson Mullins wasn't in the City Bank foreclosure. City Bank was the plaintiff in that case and ultimately was transferred somehow to this new trust, Wilmington. But it went on for years that I was involved with SLS in that case, in the background for years going through loss mitigation efforts where they would consistently, repeatedly request us to resend information, that we would resend them. And then they would again come back to us and say, wait, we didn't get it, we need you to send it again.

And all the while, because of the amount of this loan -- this isn't a $100,000 loan. It was over a million dollars. Began to accrue all the tremendous interest and penalties and attorneys' fees.

And my point, though, is that RESPA, when they start doing this, sets out how you have to go about doing it. And it's -- once they engage in it, they have to follow the rules. They have to follow what it says. So what they have done here is say, yeah, we engaged in loan modification, tried to do this, but they violated RESPA in trying to do it. They didn't follow the rules. And then they brought an action they

didn't even have the right to bring. They were still engaged in loss mitigation efforts three days prior to filing this second lawsuit.

And RESPA clearly says you can't even bring it. You got to send the borrower a 30-day notice saying, we've engaged in loss mitigation and it's failed. And then they have to wait 30 days and then they can bring it.

And as mentioned in the answer, I mean, all of this has been turned over in discovery. It's in SLS's documents. And we've discussed it.

THE COURT: Your claim, Mr. Knowles, is that they did not file the two requirements of the loan modification response and then, ultimately, gave Dr. E 30 days to respond, and that, in a sense, was a violation of RESPA?

MR. KNOWLES: Well, RESPA requires after a borrower has submitted -- it doesn't require them to approve everybody that submits a loss mitigation application. But it does require, once an application is started, that when it's completed, they have to either approve it or deny it. And then they've got to send an approval or a denial letter. And then they've got to wait 30 days before they file it.

MR. WILLIAMS: Your Honor, that's what we did in 2014.

THE COURT: That's what I'm saying.

MR. KNOWLES: Mr. Williams, on April 5th, 2016,

SLS is sending Dr. E a letter saying that you all are continuing to work through the process of resolving your potential or existing delinquency.

MR. WILLIAMS: That's right. And we were entitled to continue the loss mitigation process. But we complied with the guidelines that required consideration that first time. And we made a decision and gave that notice.

MR. VARNADO: Another thing we put in our brief is, SLS did not have the right to engage in the loan modification or refinance.

THE COURT: Why would they not --

MR. VARNADO: Because they are the servicer.

THE COURT: Well, you can't say that they can't, that they have to participate and do all these things, but then say that they don't have the right to do it because they are just a servicer. You can't make that argument.

MR. VARNADO: I can. And the reason why is this, is that they cannot engage in loan modification as a servicer, but they did. And they brought a suit against Dr. E. So he gets both the arguments. That's what we say, Your Honor.

THE COURT: Well, that's what you are saying SLS did, was bring it. But, obviously, their contention is it's through the new trust.

MR. VARNADO: Then again -- yes, sir. I understand that. And I understand what they are saying.

Counsel made fine arguments. But at the end of the day, it's, are there general issues of material fact? And there are. And are there issues of law? And there are. So that's our position.

MR. KNOWLES: It isn't complicated procedurally where we are today. I mean, it's not -- it is a 10-year-old litigation on this house. And Dr. E has not made a payment. But after 10 years, there's --

THE COURT: That's the -- I literally have talked to six people about this case. And everybody always says the same thing: I don't understand how this guy's still in this house 10 years later and hasn't made a single payment.

MR. VARNADO: The thing is that SLS said, we are not going to take any more payments from you at all unless you pay us everything you want. And then they filed the case. And because it was after the meltdown in 2008/2009, the case was stopped by the Supreme Court. And it kind of drug on there for a while. Then Dr. E filed his bankruptcy action and went before Judge Davis.

We contend, although it's not in front of you, we contend that SLS has violated the discharge orders and violated the automatic stay by filing this case --

MR. WILLIAMS: Leaving us an automatic stay from 2015 in that bankruptcy.

MR. VARNADO: I didn't hear you.

MR. WILLIAMS: There's an order where we -- SLS got relief from the automatic stay back in 2015. There's an order on the bankruptcy case.

MR. VARNADO: That's right.

MR. WILLIAMS: I'm not trying bankruptcy, though, and --

MR. VARNADO: I am not saying that I'm a great bankruptcy attorney either, but what they did say is that SLS said to Judge Duncan, we are the real party in interest and we are the creditor. So we want to get -- and they are in Chapter 7. So Chapter 7, the individual gets discharged very early. And then after a time, the trustee gets everything.

So they go in front of the trustee and say, Judge Duncan, we want you to let us continue the foreclosure, us, SLS. But that's not what SLS did. SLS hires Wilmington Trust to bring the claim.

And not only does Wilmington Trust bring the claim, they bring the claim for the whole note that was discharged, because all personal liability is discharged.

MR. KNOWLES: Procedurally completely screwed up from the way it's been brought. But the -- I'm not sure that that's even before you. They filed summary judgment on whether or not there's a genuine issue of material fact on these counterclaims. And we believe that we have compulsory

counterclaims that -- I don't understand how they could be entitled to summary judgment on it.

MR. WILLIAMS: Your Honor, my last point, they didn't submit any evidence in support of their response -- that's all I will say -- to counter the evidence that we submitted in support of our affidavit, deposition testimony.

THE COURT: All right. Y'all answered the questions that I have for now. So I will just take a look at the briefs again and try to get you a decision as soon as possible.

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter, Certified Realtime Reporter for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Bentley D. Price, Circuit Court Judge

Appellate Case No. 2020-001204
Case No. 2018-CP-10-02762

Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1, ... Plaintiff,

v.

Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, Suntrust Mortgage Inc., Capital Bank Corporation, Bank of America NA,Keybank National Association, and Olde Park Homeowners' Association Inc., ... Defendants.

AND

Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etiks ..... Appellants,

v.

Specialized Loan Servicing LLC a/k/a SLS, ... Respondent.

PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Nelson Mullins Riley & Scarborough, LLP, do hereby certify that on February 11, 2021, I have served all counsel in this action with a copy of the pleading(s) hereinbelow in accordance with the Supreme Court's May 29, 2020 Administrative Order by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System.

Documents Served: Motion to Strike with Exhibits A - D
Ltr. Requesting Extension of Time to File Response Brief

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Counsel for Respondent Specialized Loan Servicing, LLC

Blake Williams

From: Blake Williams
Sent: Thursday, February 11, 2021 2:42 PM
To: Rob Varnado; Brian Knowles
Subject: Etikerentse v. SLS, Appellate Case No. 2020-001204
Attachments: 2021.02.11 Motion to Strike and Exhibits.pdf; 2021.02.11 Letter Requesting Extension.pdf

Good afternoon,

Attached for service please find: (1) Respondent's Motion to Strike and (2) a letter requesting a 30 day extension of time to file Respondent's initial brief and designation of matter.

This is being served on you via email pursuant to subsection (g)(3) of Supreme Court Administrative Order 2020-05-29-02. I will email these to the Court for filing momentarily and will be sure to cc y'all on that communication.

Thank you,

NELSON MULLINS

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