

STATE OF SOUTH CAROLINA

COUNTY OF LEE

Laura Toney,

PLAINTIFF,

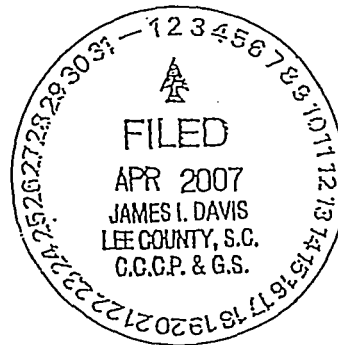
vs.

LaSalle Bank National Association, as
Trustee for the registered holders of
Structured Asset Securities Corporation,
Structured Asset Investment Loan Trust,
Mortgage Pass-Through Certificates,
Series 2004-11,

Defendant.

IN THE COURT OF COMMON PLEAS
C/A NO:2007-CP-31-66

ORDER DISSOLVING TEMPORARY
RESTRAINING ORDER



This is an action seeking to stay a foreclosure sale scheduled for April 2, 2007 in a separate action, LaSalle Bank v. Laura Toney, Case No. 2005-CP-31-168. This present action was commenced upon an Application for Temporary Restraining Order, Preliminary Injunction and Permanent Injunction filed March 22, 2007. A Summons, verified Complaint and affidavit were also filed on March 22, 2007. Based upon the representations set forth in the application and complaint, this Court issued an Order Granting Temporary Restraining Order filed March 23, 2007 that provided for the foreclosure sale to be stayed pending a hearing to be held March 27, 2007.

Appearing at the hearing were the Plaintiff herein Laura Toney and her attorneys in the present action Joseph Henry and Nathaniel Roberson. Appearing on behalf of the Defendant LaSalle Bank was its counsel of record in the pending foreclosure action, H. Guyton Murrell. At the hearing, attorney Murrell submitted a Return to the Application for Injunction and Restraining Order and the Court received evidence and heard arguments from both parties.

At the commencement of the proceedings, the Court took judicial notice of the pleadings, evidence and orders filed of public record in the pending foreclosure action, LaSalle Bank v. Laura Toney, Case No. 2005-CP-31-168. The Court took judicial notice of the four (4) Chapter 13 Bankruptcy filings by the Plaintiff Laura Toney and the Orders and filings therein.

The record in the pending foreclosure action reflects that Laura Toney is represented by attorney David Weeks. There is a letter dated January 11, 2006 to the Lee County Clerk of Court

and to opposing counsel confirming his representation of the mortgagor and requesting that any future correspondence be addressed to his law office. Pursuant to Rule 11(c) S.C.R.C.P., an attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon application, by order of the court, and not otherwise. The Rule further provides that written notice of change of attorney must be served as provided by Rule 5. The Court finds that this rule has not been complied with in this matter.

As to the issue of the continuing jurisdiction of the hearing officer over any matters related to the foreclosure action, Rule 53(c) S.C.R.C.P. provides that once a matter has been referred, the master of special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter. In the foreclosure action, the case was initially referred to the Lee County Master-in-Equity. The Lee County Master-in-Equity notified the moving party and the Clerk of Court in writing that he had a conflict that precluded his hearing the matter. The foreclosure action was subsequently referred to the Clarendon County Master-in-Equity, the Honorable W.C. Coffey, Jr., by Order of Reference executed the Honorable Thomas Cooper filed June 16, 2006. Although the hearing was held outside of Lee County, the Order of Reference was without any language limiting the authority of Judge Coffey or requiring Judge Coffey to hear the case within Lee County. Therefore, Judge Coffey sat with the same authority to adjudicate the foreclosure action as a circuit judge.

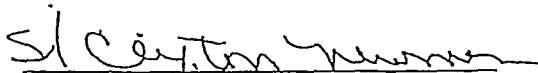
As to the contention in this action that the foreclosure is a separate matter, Rule 12(b) S.C.R.C.P. provides that every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto. A review of the pending foreclosure action shows that the pending case involves the same claims between the same parties. The foreclosure action has been referred to Judge Coffey and he has jurisdiction over the case.

The Court further notes that a Notice of Motion pursuant to Rule 59(e) S.C.R.C.P. was filed on March 23, 2007 in the foreclosure action. The Temporary Restraining Order was signed by this Court on the same day. The findings in the Temporary Restraining Order are based on the representation that in the application and Complaint of a Bankruptcy proceeding that imposed an automatic stay on the foreclosure action. The Court has taken judicial notice of the Order filed February 15, 2007 wherein the Honorable John Waites, U.S. Bankruptcy Judge for the District of South Carolina, ruled that no automatic stay existed under the last Chapter 13 Bankruptcy filed by the debtor Laura Toney. Those issues are part and parcel of the foreclosure proceeding and must be heard by the judge with the requisite jurisdiction under the Order of Reference.

THEREFORE, IT IS ORDERED that the Temporary Restraining Order issued by this Court on March 22, 2007 and filed on March 23, 2007 is hereby rescinded and the stay imposed thereby is dissolved,

IT IS FURTHER ORDERED that this case is dismissed with prejudice due to the pending foreclosure action on the identical issues.

IT IS SO ORDERED.


The Honorable Clifton Newman
Presiding Judge 3rd Judicial Circuit

Williamsburg, South Carolina

April 2, 2007

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG)
Deutsche Bank National Trust) NOTICE OF MOTION AND MOTION
Company as Trustee for the Holders) FOR RELIEF FROM JUDGMENT
of New Home Equity Loan Trust,) PURSUANT TO RULE 60
Series 2005-A, Asset Backed Pass-) (NON-JURY MORTGAGE FORECLOSURE)
Through Certificates,)
Plaintiff,) C/A NO.: 2007-CP-38-807
v.)
DEFICIENCY WAIVED
Laura T. Toney a/k/a Larura A.)
Toney, LaSalle Bank National)
Association, as Trustee for the)
Registered holders of Structured)
Asset Investment Loan Trust,)
Mortgage Pass-Through Certificates,)
Series 2004-11 and LaSalle Bank)
National Association, Trustee for)
Lehman Brothers Structured Asset)
Investment Loan Trust Sail 2005-2,)
Defendants.)

FILED
CLERK OF COURT
ORANGEBURG, SC

2008 APR 14 P 1:52

TO: DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR THE HOLDERS OF NEW HOME EQUITY LOAN TRUST, SERIES 2005-A, ASSET BACKED PASS-THROUGH CERTIFICATES, PLAINTIFF IN THE ABOVE ACTION, AND H. GUYTON MURRELL, ESQUIRE, ITS ATTORNEY:

YOU WILL PLEASE TAKE NOTICE, that the Defendant, Laura Toney, will move before the presiding judge on the tenth (10) day of service of this motion or at another suitable date as set by the court pursuant to the provisions of Rule 60(b) for an Order granting her relief from the Order of Foreclosure. The motion will be based upon, but will not be limited to, the following grounds:

1. That, through further investigation, Defendant Toney has learned that the closing documents were prepared by an out-of-State entity and were not prepared by the closing attorney as required by South Carolina's Supreme Court. Therefore, the foreclosure action was based upon documents that violate South Carolina law and create a defect in the validity of the Order granting the relief to the Plaintiff (See Attached); and

2. That Defendant Toney was not served with a copy of the Lis Penden as required by South Carolina law and the Lis Penden was not advertised as required by South Carolina law which makes the Lis Penden null and void (See Attached).

H. Guyton Murrell
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

This motion will further be based upon memoranda, argument of the parties, and such other and further evidence as the court will allow.

Laura Toney

By: *Laura Toney*
Laura Toney

Orangeburg, South Carolina

~~March 14th~~ 2008.

April

ATTEST: TRUE COPY
L. W. Miller
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

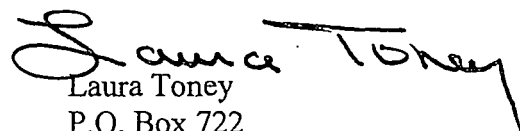
STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG
THE HONORABLE BURGDORF
MASTER-IN-EQUITY
PROOF OF SERVICE

FILED FOR RECORD
CLERK OF COURT
ORANGEBURG, SC
2008 APR 14 PM 1:52

RE: LaSalle Bank v. Laura Toney

This is to certify that I, Laura Toney deposited in the United States Mail to on April 14, 2008. The Korn Law Firm a copy of the Motion for a new trial addressed as follows:

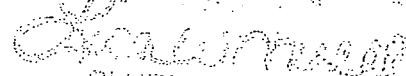
1300 Pickens Street
P.O. Box 11264
Columbia, SC 29211


Laura Toney
P.O. Box 722
Bishopville, SC 29010
(803) 459-6006

04-14-2008


Notary for SC

My Commission Expires Nov. 20, 2010


CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Deutsche Bank National Trust Company as Trustee
for the Holders of New Home Equity Loan Trust,
Series 2005-A, asset Backed Pass Through
Certificates

☐ Plaintiff

v.

Laura T. Toney A/K/A Larura A. Toney, Lasalle
Bank National Association, As Trustee For The
Registered Holders Of Structured Asset Investment
Loan Trust, Mortgage Pass-Through Certificates,
Series 2004-11 And Lasalle Bank National
Association, Trustee For Lehman Brothers Structured
Asset Investment Loan Trust Sail 2005-2

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2007-CP-38-807

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

FILED FOR RECORD
CLERK OF COURT
ORANGEBURG, SC
2007 APR 14 P 1:52

Plaintiff's Attorney:

N/A, Bar No.

Address:

phone:

e-mail:

fax:

other:

Defendant's Attorney:

Henry Guyton Murrell, Bar No.

Address:

Korn Law Firm, PA

PO Box 11264

Columbia, SC 29211

phone: 803-252-5817 fax: 803-252-5827

e-mail:

other:

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

ATTEST: TRUE COPY
Clerk of Court
ORANGEBURG COUNTY, SOUTH CAROLINA

SECTION I: Hearing Information

Nature of Motion: Rule 60

Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES / ☐ NO**SECTION II: Motion/Order Type**

- ☐ Written motion attached
☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee☒ PAID – AMOUNT: 25.00

- ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____☐ CONTESTED – AMOUNT DUE: _____

Cell phone voicemail messages may be delayed

Our agency representatives (who are seldom in the office and usually get their messages via cell phone) have experienced delays between the time the messages are left and the time the cell phone "beeps" to notify them that a message has been received. In an effort to increase our availability and service to agents, we have explored this issue with our cell phone company.

We understand that when a user is traveling in "extended coverage areas", cell phone messages go to the closest tower. That tower may be owned by another cell phone carrier. We are then at the mercy of that company's ability to get the messages out to our carrier and then to us. We are told this happens with all cellular companies.

For this reason, if you call anyone who works with us on his or her cell phone and do not get a reply within several hours, please call our office at 800-922-8814. We will make sure we get a message to the appropriate person. We always respond to agents! You can be assured delay in hearing back from any of us is unintended. Thanks for your assistance and understanding.

"Witness only" closings are not allowed in South Carol

This is a reminder to all agents that "witness only" closings are not allowed in South Carolina. We understand South Carolina closing attorneys are often asked to meet with borrowers to sign documents generated by out-of-state entities in connection with loans to be disbursed by out-of-state entities.

South Carolina lawyers should not participate in these types of closings because of the admonitions of our Supreme Court in *State v. Buyers Service*, 292 S.C. 426, 357 S.E.2d 15 (1987); *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773 (2003) and *In the Matter of Fortson*, (S.C. Supreme Court Case 25898, November 22, 2004).

As early as 1987, in *State v. Buyers Service*, the Court defined the practice of law in the residential closing arena to include: (1) preparing deeds, mortgages, notes and other legal instruments related to mortgage loans and transfers of real property; (2) conducting title examinations and preparing abstracts for anyone other than South Carolina licensed attorneys; (3) conducting real estate and mortgage loan closings; and (4) recording legal documents.

In 2003, in *Doe v. McMaster*, the Court confirmed that *State v. Buyers Service* is still good law and applies to refinances as well as sales. *Doe v. McMaster* also held that South Carolina attorneys must participate in or supervise the following four functions relating to residential closings: (1) title search and subsequent preparation of related documentation; (2) preparation of loan documents; (3) supervising the closing and providing advice to the buyer; and (4) recording legal documents.

Fortson is a 2004 disciplinary case where a lawyer was

suspended for allowing an outside "escrow" company to prepare his closing package and disburse the funds for his closings. When an employee of an outside company misappropriated the law firm's funds, the lawyer reported himself to the Court. The Court stated that the lawyer's actions violated the rules that prohibit a lawyer from having and control over money which belongs to another person. The Court found that the lawyer's actions constituted misconduct. So, the Court listed four items required by *Buyers Service* and *McMaster* for lawyers to perform in connection with estate closings, *Fortson* adds disbursement of funds as a fifth item.

(It is interesting to note, however, that the *McMaster* case, which was approved by the Court, has allowed disbursement by a title company.)

Reading these cases together makes it clear that the South Carolina Supreme Court does not allow "witness-only" closings. The Court expects that attorneys maintain their position of control over the residential closing process in South Carolina.

(See, also, the Boyce case discussed on page 4.)



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South Carolina Legislature Online

Home > Code of Laws Title/Chapter List > Title 15

South Carolina Code of Laws (Unannotated) Current through the end of the 2007 Regular Session

DISCLAIMER

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Please note that the Legislative Council is not able to respond to individual inquiries regarding the features, format, or use of this website. However, you may notify Legislative Printing, Information and Technology Systems at LPITS@scstatehouse.net regarding any apparent errors or omissions in the content of Code sections on this website, in which case LPITS will relay the information to appropriate staff members of the South Carolina Legislative Council for investigation.

Title 15 - Civil Remedies and Procedures

CHAPTER 11.

NOTICE OF LIS PENDENS

SECTION 15-11-10. Time when notice of lis pendens may be filed.

In an action affecting the title to real property the plaintiff (a) not more than twenty days before the complaint or at any time afterwards or (b) whenever a warrant of attachment under Section 10 to 15-19-560 shall be issued or at any time afterwards or a defendant when he sets up an affirmative cause of action in his answer and demands substantive relief, at the time of filing his answer or time afterwards if such answer be intended to affect real estate, may file with the clerk of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties to the action and the description of the property in that county affected thereby. If the action be for the foreclosure of a mortgage such notice must be filed twenty days before judgment and contain the date of the mortgage, the parties thereto and the time and place of recording such mortgage.

SECTION 15-11-20. Pendency as constructive notice; effect.

From the time of filing only, the pendency of the action shall be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer and shall be bound by all proceedings taken after the filing of such notice to the extent as if he were made a party to the action. For the purposes of this section, an action shall be deemed to be pending from the time of filing such notice.

SECTION 15-11-30. Service required.

Such notice shall be of no avail unless it shall be followed by the first publication of the summons or order therefor or by the personal service thereof on a defendant within sixty days after such filing.

SECTION 15-11-40. Cancellation of notice.

The court in which the action was commenced, in its discretion at any time after the action is discontinued, or abated, as provided in Section 15-5-190, on application of a person aggrieved by the notice, good cause shown and on a notice as directed or approved by the court, may order the notice by this chapter to be cancelled of record by the clerk of any county in whose office the notice is recorded. The cancellation must be made by an endorsement to that effect on the margin of the notice which refers to the order and for which the clerk is entitled to a fee of one dollar.

The lis pendens notice, however, may be cancelled without a court order by the person who filed the notice any time after the action has been settled, discontinued, abated, or dismissed by a court. The submission of a written notice of cancellation to the clerk of court of each county in which the notice was filed or recorded. The clerk may require a fee of one dollar for the effectuation of a cancellation in this manner.

SECTION 15-11-50. Limitation of effect of notice; refiling.

When the summons is published or served as above provided the notice of the pendency of the action shall constitute notice for only five years from the date of the filing of such notice, and, in order to provide constructive notice to a purchaser or encumbrancer of the property affected thereby during the five-year period or any such period after a refiling, the notice shall be refilled within five years from the date of filing in the first instance and within five years from the date of any such refiling. In the event any such notice be refilled it shall be entered in the book provided therefor as required for the original entry, and the clerk shall note upon the record of the filing that it is a refiling of such notice and shall note thereupon the date of the first entry and the book and page at which such notice is filed.

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Deutsche Bank National Trust
Company as Trustee for the Holders of
New Century Home Equity Loan Trust,
Series 2005-A, Asset Backed Pass-
Through Certificates,

PLAINTIFF,

vs.

Laura T. Toney a/k/a Laura A. Toney,
LaSalle Bank National Association, as
Trustee for the registered holders of
Structured Asset Investment Loan
Trust, Mortgage Pass-Through
Certificates, Series 2004-11 and
LaSalle Bank National Association,
Trustee for Lehman Brothers
Structured Asset Investment Loan
Trust Sail 2005-2,

Defendant.

IN THE COURT OF COMMON PLEAS
C/A NO:2007-CP-38-807

PLAINTIFF'S RETURN TO
DEFENDANT'S RULE 60 MOTION

FILED FOR RECORD
LISA W. HIZELL
CLERK OF COURT
ORANGEBURG, SC
2008 APR 21 P 3:28

TO: LAURA TONEY, PRO SE DEFENDANT:

In Return and Reply to the Defendant Laura Toney's Motion from Relief from Judgment pursuant to Rule 60(b), the Plaintiff would allege as follows:

General objections

The Defendant does not specify upon what portion of Rule 60(b) SCRPC her motion is based. Clearly, there is no surprise, inadvertence or excusable neglect as required by subparagraph (1). Likewise, there is no newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial as required by subparagraph (2). As set forth herein, the Defendant's arguments lack merit on their face and do not set forth a basis for relief under Rule 60. The Defendant cannot move for relief under Rule 60 merely upon the basis that she has performed a minimal amount of legal research since the

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ORANGEBURG, SC
2008 APR 21 P 3:28

entry of judgment and is should entitled to make every conceivable legal argument whether it has merit or not.

The Defendant Laura Toney has a well-established pattern of bad faith litigation in the civil and bankruptcy courts of South Carolina. The U.S. Bankruptcy Court has prohibited her from filing for relief under any chapter of the U.S. Bankruptcy Code due to her bad faith actions in that forum. She filed a previous pro se Rule 60 Motion in this action that also lacked merit on its face. The Defendant showed up an hour late for the hearing on that motion accompanied by an attorney, Joseph Henry. The motion was denied and withdrawn when Plaintiff's counsel pointed out that the motion was moot since service of the summons and complaint were not being contested.

Attorney Henry represented the Defendant in a previous action for an injunction in another foreclosure. The ex parte injunction in that matter was granted due to the Defendant's representations in her application, submitted by attorney Henry, that Plaintiff's counsel had knowingly violated an automatic stay in bankruptcy. The injunction was dissolved and dismissed with prejudice once the evidence established that no automatic stay was in place. (See Attached **Order dissolving Temporary Restraining Order filed April 2, 2007, 2007-CP-31-66**). Curiously, she has also filed the present motion in this case pro se despite attorney Henry making an appearance at the previous motion hearing and no notice or order relieving him as counsel appearing in the record.

The arguments promulgated by her latest motion, whether they have merit or lack merit, could have been made previously and Plaintiff's counsel would argue that such arguments are now being made as part of the pattern and practice of bad faith litigation and abuse of process by the Defendant Laura Toney.

Service of lis pendens

The Defendant Laura Toney claims that the Lis Pendens is required to be served upon her and the failure to do so renders the foreclosure null and void. The only authority cited by the Defendant is §15-11-10 through §15-11-50, S.C. Code of Laws. Presumably, the Defendant is relying upon §15-11-30. The statute reads:

Section 15-11-30. Service required.

Such notice shall be of no avail unless it shall be followed by the first publication of the summons or an order therefor or by the personal service thereof on a defendant within sixty days after such filing.

The personal service required by the statute for the notice provided by the lis pendens to be effective refers to the summons and not the lis pendens itself. This is equally apparent from reading the provisions of Chapter 11 as a whole and particularly from reading §15-11-10. That statute requires the notice of pendency of an action (i.e. a lis pendens) to be filed not more than twenty days before the complaint **or at any time thereafter**. The statute further states that the lis pendens can even be filed as late as twenty (2) days before judgment in a foreclosure action. As a matter of economy and efficiency, most practitioners file the lis pendens just prior to or with the Summons and Complaint so that a further title examination and potential amendment of the pleadings is not required. South Carolina Jurisprudence, Volume 27 Mortgages §111 also confirms this commonsense reading of the statute:

The lis pendens must be filed not more than twenty days prior to the filing of the complaint and must be filed at least twenty days before entry of a foreclosure decree. If filed more than twenty days prior to the filing of the complaint, the lis pendens is automatically invalid and need not be declared ineffective. The lis pendens will also be rendered invalid **unless a defendant is personally served with the summons and complaint** or service by publication is commenced within sixty days after the date of filing of such lis pendens.

The procedural argument that the foreclosure is invalid due to a failure to serve the lis pendens is without merit. Assuming that the Defendant's motion is truly pro se, she is still held to the same standard set forth in Rule 11 SCRPC. The motion lacks a good ground to support the allegations contained therein as required by Rule 11(a) SCRPC and the motion is clearly submitted for the purpose of delay. The Defendant should be subject to the sanctions set forth in Rule 11, including reasonable expenses incurred and reasonable attorney's fee and any other appropriate sanctions necessary to maintain the integrity of the court.

Documents for closing prepared out of state

Again, this is an argument that was not made at trial and is not “newly discovered evidence” that would constitute a grounds for relief under Rule 60(b) SCRPC. The Defendant Laura Toney misrepresents the findings contained in the line of cases exemplified by State v. Buyers Service, 292 S.C. 426, 357 S.E.2d 15 (1987) and Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773 (2003).

The holding of these cases does not state that the closing attorney must prepare every single document to be used in the closing. To the contrary, the McMaster case was a petition to the Supreme Court in its original jurisdiction to determine if a proposed business association of a South Carolina attorney with a lender bank and a title company would violate the prohibition against the unauthorized practice of law. The holding in the case was that as long as the attorney did not abdicate his duty to perform or supervise the four (4) areas set forth in the opinion, the proposed business arrangement did not violate the prohibition. In simple terms, an attorney has to discharge their duties as an attorney and cannot merely show up to “sign off” on the loan documents as a mere witness. As to the preparation of loan documents, the Court held “Lender may prepare legal documents for use in refinancing a loan for real estate as long as an independent attorney reviews and corrects, if needed, the documents to ensure their compliance with law.”

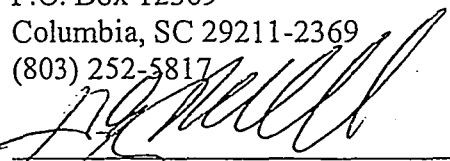
The above argument is based upon the assumption that some or all of the documents for closing were prepared out of state, as is common practice in the industry. However that is not a fact in evidence and Plaintiff would further object to the motion on the basis that it assumes and argues upon facts not in evidence.

As set forth in preceding argument, the motion is set forth upon either a flawed reading of the applicable statutory and caselaw or is a conscious effort at misrepresentation to the court. The Defendant Laura Toney has a proven track record of bad faith litigation and has specifically sought to advance legal arguments through misrepresentation in previous matters. It is anathema to the judicial system in general and the guiding principles of the equity court in particular to permit this type of bad faith litigation to continue unabated. Plaintiff counsel requests that the court deny the Defendant’s motion and impose appropriate sanctions, including but not limited an award of reasonable expenses and reasonable attorney’s fees in repeatedly having to defend meritless motions.

WHEREFORE, HAVING RETURNED AND REPLIED TO THE
DEFENDANT'S MOTION, Plaintiff requests:

1. That Defendant's Motion be denied;
2. That the Plaintiff's Motion for Sanctions be granted and that an award be enforced through the contempt powers of the court;
3. That Defendant Laura Toney be barred from further motions;
4. For such other and further relief as the Court may deem appropriate.

Korn Law Firm, P.A.
P.O. Box 12369
Columbia, SC 29211-2369
(803) 252-5817



H. Guyton Murrell, Esq.
Attorney for Plaintiff

April 18, 2008
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEE

Laura Toney,

PLAINTIFF,

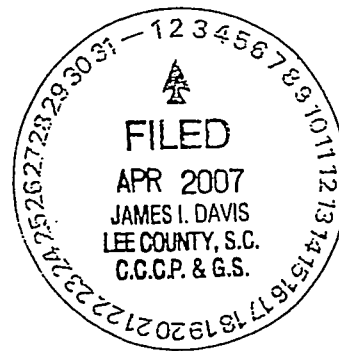
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C/A NO:2007-CP-31-66

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At the commencement of the proceedings, the Court took judicial notice of the pleadings, evidence and orders filed of public record in the pending foreclosure action, LaSalle Bank v. Laura Toney, Case No. 2005-CP-31-168. The Court took judicial notice of the four (4) Chapter 13 Bankruptcy filings by the Plaintiff Laura Toney and the Orders and filings therein.

The record in the pending foreclosure action reflects that Laura Toney is represented by attorney David Weeks. There is a letter dated January 11, 2006 to the Lee County Clerk of Court

and to opposing counsel confirming his representation of the mortgagor and requesting that any future correspondence be addressed to his law office. Pursuant to Rule 11(c) S.C.R.C.P., an attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon application, by order of the court, and not otherwise. The Rule further provides that written notice of change of attorney must be served as provided by Rule 5. The Court finds that this rule has not been complied with in this matter.

As to the issue of the continuing jurisdiction of the hearing officer over any matters related to the foreclosure action, Rule 53(c) S.C.R.C.P. provides that once a matter has been referred, the master of special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter. In the foreclosure action, the case was initially referred to the Lee County Master-in-Equity. The Lee County Master-in-Equity notified the moving party and the Clerk of Court in writing that he had a conflict that precluded his hearing the matter. The foreclosure action was subsequently referred to the Clarendon County Master-in-Equity, the Honorable W.C. Coffey, Jr., by Order of Reference executed the Honorable Thomas Cooper filed June 16, 2006. Although the hearing was held outside of Lee County, the Order of Reference was without any language limiting the authority of Judge Coffey or requiring Judge Coffey to hear the case within Lee County. Therefore, Judge Coffey sat with the same authority to adjudicate the foreclosure action as a circuit judge.

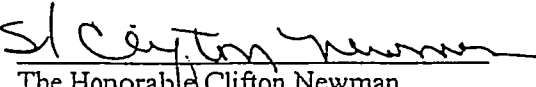
As to the contention in this action that the foreclosure is a separate matter, Rule 12(b) S.C.R.C.P. provides that every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto. A review of the pending foreclosure action shows that the pending case involves the same claims between the same parties. The foreclosure action has been referred to Judge Coffey and he has jurisdiction over the case.

The Court further notes that a Notice of Motion pursuant to Rule 59(e) S.C.R.C.P. was filed on March 23, 2007 in the foreclosure action. The Temporary Restraining Order was signed by this Court on the same day. The findings in the Temporary Restraining Order are based on the representation that in the application and Complaint of a Bankruptcy proceeding that imposed an automatic stay on the foreclosure action. The Court has taken judicial notice of the Order filed February 15, 2007 wherein the Honorable John Waites, U.S. Bankruptcy Judge for the District of South Carolina, ruled that no automatic stay existed under the last Chapter 13 Bankruptcy filed by the debtor Laura Toney. Those issues are part and parcel of the foreclosure proceeding and must be heard by the judge with the requisite jurisdiction under the Order of Reference.

THEREFORE, IT IS ORDERED that the Temporary Restraining Order issued by this Court on March 22, 2007 and filed on March 23, 2007 is hereby rescinded and the stay imposed thereby is dissolved,

IT IS FURTHER ORDERED that this case is dismissed with prejudice due to the pending foreclosure action on the identical issues.

IT IS SO ORDERED.


The Honorable Clifton Newman
Presiding Judge 3rd Judicial Circuit

Williamsburg, South Carolina

April 2, 2007

STATE OF SOUTH CAROLINA

COUNTY OF LEE

LaSalle Bank National Association, as
Trustee for the registered holders of
Structured Asset Securities Corporation,
Structured Asset Investment Loan Trust,
Mortgage Pass-Through Certificates, Series
2004-11

PLAINTIFF,

vs.

Laura Toney,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

(NON-JURY
FORECLOSURE)

MORTGAGE

C/A NO:2005-CP-31-169

F99-2321

CERTIFICATE OF MAILING

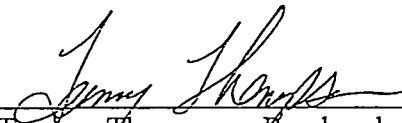
The undersigned hereby certifies that on April 18, 2008, she served one copy of Plaintiff's Return to Defendant's Motion for Relief from Judgment upon the following by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

Laura Toney
P.O. Box 722
Bishopville, SC 29010

Joseph Henry, Esquire
1708-B Richland Street
Columbia, SC 29201

FILED FOR RECORD
LISA W. NIZELL
CLERK OF COURT
ORANGEBURG, SC
2008 APR 21 P 3:28

ORANGEBURG COUNTY, SOUTH CAROLINA


Tammy Thompson, Paralegal

April 18 2008
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg
Deutsche Bank

☒ Plaintiff

v.

Laura T. Toney

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

07-CP-38-807

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: <u>H. Guyton Merrell, Esq.</u> , Bar No. Address: <u>PO Box 12369</u> <u>Columbia, SC 29221-2369</u> phone: fax: e-mail: other:		Defendant's Attorney: <u>NONE</u> , Bar No. Address: phone: fax: e-mail: other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: <u>Motion to be heard by Master in Equity</u> Estimated Time Needed: <u>15 min</u> Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <u>H. Guyton Merrell</u> Signature of Attorney for ☒ Plaintiff / ☐ Defendant <u>4-16-08</u> Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: <u>\$25.00</u> ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE <u>[Signature]</u> CODE: <u>[Signature]</u> Date: <u>4-16-08</u> CLERK OF COURT	
CLERK'S VERIFICATION Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

2008 APR 21 P 4:50
FILED FOR RECORD
CLERK OF COURT
ORANGEBURG, SC

ATTEST: TRUE COPY

ORANGEBURG COUNTY, SOUTH CAROLINA
Date Filed:

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Deutsche Bank National Trust
Company as Trustee for the Holders of
New Century Home Equity Loan Trust,
Series 2005-A, Asset Backed Pass-
Through Certificates,

PLAINTIFF,

vs.

Laura T. Toney a/k/a Laura A. Toney,
LaSalle Bank National Association, as
Trustee for the registered holders of
Structured Asset Investment Loan
Trust, Mortgage Pass-Through
Certificates, Series 2004-11 and
LaSalle Bank National Association,
Trustee for Lehman Brothers
Structured Asset Investment Loan
Trust Sail 2005-2,

Defendant.

IN THE COURT OF COMMON PLEAS
C/A NO:2007-CP-38-807

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR SANCTIONS**

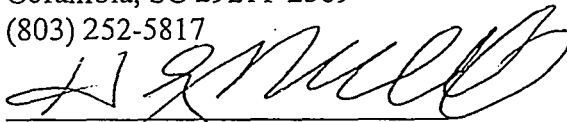
TO: LAURA TONEY, PRO SE DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that the attorney for the plaintiff will move before the court on the tenth (10th) day after service of this motion, or as soon thereafter as counsel may be heard, for an Order imposing sanctions against the Defendant Laura Toney for the filing of a motion that is frivolous and without merit on its fact and in violation of Rule 11(a) S.C.R.C.P. Plaintiff seeks an Order requiring the Defendant Laura Toney to pay Plaintiff the reasonable costs and attorneys fees incurred in responding to this motion, a previous frivolous motion and also to bar the Defendant Laura Toney from filing any further motions in this matter.

2008 APR 2 4:39 PM
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

This Motion is made on the grounds that the Rule 60(b) Motion filed the Defendant Laura Toney is based upon a defective interpretation of the relevant statutory and caselaw and the motion lacks merit on its face. The Plaintiff would further show that the Defendant Laura Toney has a well-established pattern and practice of bad faith actions in the civil and bankruptcy courts of this state. Plaintiff would show that there is no good ground to support her motion in this matter and her motion is interposed for the purpose of delay. This Motion for sanctions based on the pleadings in this case, affidavits, loan documents, relevant Orders of the U.S. Bankruptcy Court for the District of South Carolina, other civil matters, and the applicable statutory and case law.

Korn Law Firm, P.A.
P.O. Box 12369
Columbia, SC 29211-2369
(803) 252-5817



H. Guyton Murrell, Esq.
Attorney for Plaintiff

April 15, 2006
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Deutsche Bank National Trust Company as
Trustee for the Holders of New Century
Home Equity Loan Trust, Series 2005-A,
Asset Backed Pass-Through Certificates,

PLAINTIFF,

vs.

Laura T. Toney a/k/a Laura A. Toney,
LaSalle Bank National Association, as
Trustee for the registered holders of
Structured Asset Investment Loan Trust,
Mortgage Pass-Through Certificates, Series
2004-11 and LaSalle Bank National
Association, Trustee for Lehman Brothers
Structured Asset Investment Loan Trust Sail
2005-2,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO:2007-CP-38-807

(NON-JURY
FORECLOSURE)

MORTGAGE

F27-02370

CERTIFICATE OF MAILING

The undersigned hereby certifies that on April 16, 2008, she served one copy of Plaintiff's Notice of Motion & Motion for Sanctions upon the following by depositing a copy of same in the United States Mail, postage prepaid, and addressed as follows:

Laura Toney
P.O. Box 722
Bishopville, SC 29010

April 16, 2008
Columbia, South Carolina

Tammy Thompson
Tammy Thompson, Paralegal
FILED
CLERK OF COURT
ORANGEBURG, SC
2008 APR 21 P 4:59
ORANGEBURG COUNTY, SOUTH CAROLINA

PROCEEDINGS

1
2 MR. MURRELL: Your Honor, I'm Guyton Murrell
3 appearing for the Plaintiff. I'm just a little
4 confused as to the status of the case. This is a
5 motion by Ms. Toney to vacate a foreclosure. Of
6 course, I'd objected to her presenting testimony
7 rather than by affidavits required by the rules,
8 but it was my understanding the subsequent
9 hearing was for the purpose of presenting
10 testimony from the closing attorney and his
11 paralegal, so I've subpoenaed them to appear here
12 today. And I just wanted to confirm that that's
13 the status of it, and we're picking it up from
14 the conclusion of the Defendant presenting her
15 part of the motion.

16 MR. YOUNG: That's part of it. We've
17 subpoenaed Daniel Green. He was also a signer on
18 some of those documents, and so he's going to
19 testify as well.

20 MR. MURRELL: Your Honor, I didn't get a
21 copy of that subpoena.

22 MR. YOUNG: He didn't get a copy of it, but
23 he's still here, and he knew he was obviously a
24 witness to it, because he signed the documents,
25 so it shouldn't be any surprise.

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1 MR. MURRELL: You're required to provide a
2 copy of the subpoena to the other side, much
3 less, under Rule 7, when you request something in
4 a motion, you're supposed to state what you're
5 requesting and the particular grounds that you're
6 requesting it on. And again, that's so that
7 there's no trial by ambush. I'm going to claim
8 that the documents were done by an out of state
9 agency, which is, of course, perfectly permitted
10 under the rules as long as there's an independent
11 attorney reviewing the documents to make sure
12 they conform, and then gets up on the stand and
13 testifies, oh no, the mortgage broker made the
14 disbursements. And again, this is just right in
15 line with that of, well, you know, I'm not going
16 to follow the rules and give the other side
17 notice that we're going to subpoena somebody to
18 testify. I provided him notice of that, both
19 with subpoenas and by way of letter.

20 MR. YOUNG: And by way of affidavit.

21 MR. MURRELL: And again, I tried to conform
22 to the rules and gave him an affidavit with the
23 relevant documents and the testimony of both the
24 attorney and the paralegal.

25 MR. YOUNG: Mr. Green's a signatory on the

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1 thing. That's what he's here to testify to, and
2 that shouldn't have been any surprise to anyone.

3 JUDGE BURGDORF: Okay. I think if he's a
4 signatory on the thing, I'll let his testimony
5 in.

6 MR. MURRELL: Again, Your Honor, just so my
7 objection is noted that they haven't complied
8 with the rules, and I think this motion is--

9 JUDGE BURGDORF: I'll note that.

10 MR. MURRELL: Both because part of this
11 motion that hasn't been conformed with as well as
12 in line with the previous frivolous motion and
13 her long pattern of bad faith and dilatory
14 tactics practice in other cases.

15 JUDGE BURGDORF: Let's go ahead and proceed.

16 MR. YOUNG: Do you want me to go first with
17 Mr. Green?

18 MR. MURRELL: I guess if the Judge is going
19 to let you present additional evidence, we're
20 still on his part of the motion.

21 MR. YOUNG: We'll call Mr. Green.

22 (Daniel Green, being duly sworn, testified
23 as follows:)

24 EXAMINATION

25 BY MR. YOUNG:

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1 on the mortgage, that's an affirmation that Tracy
2 Kirkpatrick had witnessed the signature of Laura
3 Toney. I don't think it states that she was
4 necessarily in the room at the time of the loan
5 closing.

6 MR. YOUNG: Okay. Are you going to call
7 your two witnesses?

8 MR. MURRELL: Yes.

9 MR. YOUNG: Okay.

10 MR. MURRELL: Is that the extent of their
11 case?

12 MR. YOUNG: That will be it right now.

13 MR. MURRELL: Well, I mean, again, if it's
14 their motion, they need to put up their entire
15 case.

16 MR. YOUNG: Then I call Mr. May.

17 (Michael H. May, being duly sworn, testified
18 as follows:)

19 **EXAMINATION**

20 **BY MR. YOUNG:**

21 Q Mr. May, let me ask you a couple of questions
22 here real quick. First of all, state your full
23 name for the record.

24 A Michael H. May.

25 Q And Mr. May, you are a practicing attorney here

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1 in South Carolina?

2 A That's correct.

3 Q And where is your primary office?

4 A 2026 Assembly Street, Suite 104, in Columbia.

5 Q Who do you practice with?

6 A David Ratchford is my business partner.

7 Q And how long have you been practicing law over
8 there?

9 A Practicing law with him?

10 Q Yes.

11 A About, I think since about 2000, 2001.

12 Q Okay. And your primary focus of your practice is
13 what?

14 A Real estate.

15 Q Real estate?

16 A Yes, sir.

17 Q And do you do anything else other than real
18 estate?

19 A An occasional divorce once in a while.

20 Q At my request, did you send me a copy of your
21 loan closing package?

22 A Yes, sir.

23 Q And let me just show you this and ask you whether
24 or not this constitutes your package that you
25 sent to me?

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1 A I believe it is, Mr. Young.

2 MR. YOUNG: We would offer this entire
3 document as an exhibit.

4 MR. MURRELL: I haven't had a chance to
5 review the entire document, Your Honor.

6 MR. YOUNG: I think--

7 MR. MURRELL: I mean, I think it would be
8 appropriate to submit the specific documents that
9 he's going to refer to out of it rather than hand
10 this to me now and say I want to submit all of
11 this. I mean, I think that's a bit--

12 JUDGE BURGDORF: Can you pick specific
13 documents?

14 MR. YOUNG: I'm going to have every document
15 that Mrs. Toney signed. But it's all relevant to
16 this case as far as the loan is concerned.

17 MR. MURRELL: Your Honor, this is a default
18 case. Under the previous motion, she admitted
19 she was served with the pleadings and didn't
20 submit an answer, and all of the allegations of
21 the Complaint are admitted. She's now here on
22 two very specific grounds. You didn't serve me
23 with a lis pendens which has no merit, and that
24 the documents were prepared out of state which is
25 permitted under the rules. Now, they're going

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1 into entirely different areas and submitting
2 files this thick and asking me to not object to
3 it. You know, I haven't been provided this ahead
4 of time and can't logically go through that
5 entire file and say whether or not this is
6 proper, this is not proper. Certainly there has
7 never been anything said previously, certainly
8 not in the motion as to any forgery allegations
9 or anything else. And that would again be
10 entirely contrary to this being a default case.

11 JUDGE BURGDORF: Mr. Young?

12 MR. YOUNG: If it please the Court, this is
13 his file, and quite frankly, the question is
14 whether or not he was present at the loan
15 closing, his secretary's present, Mr. Green
16 obviously has testified that he was present. All
17 of that is being questioned by Mrs. Toney as to
18 who was actually present and who notarized and
19 witnessed her signature. And she contended last
20 time when she testified in front of you that that
21 was not the case in the situation.

22 MR. MURRELL: Your Honor, her testimony was
23 that Mr. May was present. She claimed Ms.
24 Kirkpatrick was not present. And I had her here
25 to testify as to that allegation. Now they're

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1 alleging something entirely different. Again,
2 this is the worse case of trial by ambush that
3 I've seen in quite some time, and that's the
4 whole reason for the rules, to keep a level
5 playing field for the parties, to lead to a true
6 examination of facts and what can logically be
7 contested rather than, you know, letting somebody
8 who has a voluminous history of bad faith and
9 false statements in court actions shoot from the
10 hip. I mean, the Supreme Court has already made
11 a finding of fact that she acts in bad faith, the
12 Bankruptcy Court has already made that finding,
13 and the Circuit Court in Lee County has also made
14 that finding. And this is just another example
15 of it. And you know, bad faith actions are like
16 anything else. If it's sanctioned, you get less
17 of it; if you encourage it, you get more of it.
18 And you know, this leads to a direct denigration
19 of the whole judicial process. I don't know how
20 on earth I'm supposed to logically defend against
21 a case when I have no idea what they're going to
22 allege, and they're just given complete freedom
23 to allege anything and everything. If something
24 doesn't work, then they just allege something
25 else orally at court. I mean, you know, there is

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1 such a thing as notice and due process, and this
2 is entirely contrary to it.

3 MR. YOUNG: I'll go through this thing as I
4 need to put documents in if that's the case.

5 BY MR. YOUNG:

6 Q Mr. May, are these copies of the checks that you
7 issued as a result of this closing?

8 A Yes, sir, they are.

9 Q And did this, monies from the bank, did it go
10 through your trust account?

11 A Yes, sir.

12 Q And then of course, you issued your own checks--

13 A We issued the checks, yes, sir.

14 MR. YOUNG: We would offer this into
15 evidence.

16 MR. MURRELL: Could I see those, please?

17 MR. YOUNG: Yes, sir.

18 MR. MURRELL: To the extent any of these
19 documents pertain to the allegations that are in
20 the written motion, I don't object. To the
21 extent that they're new matters that are trying
22 to be alleged now, I do object, Your Honor.

23 MR. YOUNG: Okay. We're still offering them
24 into evidence, Your Honor, as one exhibit.

25 (Exhibit No. 2 was marked for

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1 identification.)

2 BY MR. YOUNG:

3 Q Mr. May, let me show you what's been marked or
4 shown as instructions for a funding loan, and I
5 ask you whether or not the initials at the bottom
6 are, in fact, Ms. Toney's?

7 A Yes, they sure are, and that is a copy of her
8 driver's license that I got.

9 Q And that's all part of the same document; is that
10 correct?

11 A No, sir. This we get separately when Ms. Toney
12 shows up at closing or any client shows up at
13 closing, we get a copy of the driver's license.
14 This is part of the closing package that comes
15 out of our office that we provide, because I
16 always inquire of our clients whether or not
17 they've been advised that they have the right to
18 choose their own attorney, that's the
19 verification.

20 MR. YOUNG: We would offer this as one
21 exhibit, and then I'm going to ask him some
22 questions about it.

23 MR. MURRELL: If I could see it, Your Honor.
24 I think this is already a part of the record as
25 far as the closing attorney's affidavit, Your

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1 Honor.

2 MR. YOUNG: I would offer this as an
3 exhibit.

4 (Exhibit No. 3 was marked for
5 identification.)

6 BY MR. YOUNG:

7 Q Mr. May, let me show you what's been marked as
8 Court's Exhibit 3, ask you whether or not you had
9 ever done any legal work for Mrs. Toney prior to
10 that day?

11 A We had done two closings for her prior, two
12 different pieces of property.

13 Q Okay. And she did select you as the closing
14 attorney?

15 A On those two, I believe she went through her
16 mortgage broker, Lab Financial Services. They
17 offered her a choice of attorneys. I think she
18 probably went with their recommendation. That's
19 how we got involved with those two closings.

20 MR. MURRELL: Your Honor, I'm going to
21 object to any attorney preference questions
22 since, again, that's not in the pleadings. Is
23 that overruled?

24 JUDGE BURGDORF: Mr. Young?

25 MR. YOUNG: Well, just wanted to know

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1 whether or not he discussed it with her, and
2 whether or not she said she selected him.
3 Obviously, he says she put her initials here.

4 MR. MURRELL: Again, that's nowhere in the
5 motion, Your Honor, and I don't think there's
6 anything in the prior testimony, objection or
7 otherwise.

8 JUDGE BURGDORF: Yeah, I don't really know
9 what relevance that would have in this motion
10 today.

11 MR. YOUNG: One of the things I'm dealing
12 with, Your Honor, is that Mrs. Toney has stated,
13 and she stated to you, that this closing was not
14 done properly, and that she did not have an
15 opportunity to select her attorney. This is
16 something that I'm finding out now, that she's
17 dealt with him previously.

18 MR. MURRELL: Your Honor, that was not
19 stated. The motion states two grounds that were
20 frivolous on their face. These are grounds that
21 she's brought up in other cases which the courts
22 have found to be lacking credibility. That was
23 one reason why I did attach the document to the
24 proposed affidavit, since she has a history of
25 this type of bad faith behavior. Of course, I

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1 would also note, as I previously did before,
2 she's been through Chapter 13 bankruptcies, which
3 of course, she was found to be in bad faith on.
4 You're required to state any counterclaims you
5 have and affirm your debts. She affirmed these
6 debts, and she stated earlier she had no
7 counterclaims or other claims to allege. And now
8 that, you know, the bankruptcy trustee is passed
9 on those issues, and you know, made the
10 determinations about her estate, she all of a
11 sudden wants to say, oh, well now I want to claim
12 these and get some benefit out of them. Again,
13 Your Honor, that is exactly why my objection
14 should be sustained in this case, and we should
15 deal with what is in the motion.

16 MR. YOUNG: And he files an affidavit,
17 attaches this, and then says I'm not supposed to
18 ask any questions about it? I don't think that's
19 right.

20 JUDGE BURGDORF: That's in the affidavit?

21 MR. YOUNG: That's what he just said.

22 MR. MURRELL: I said there's an affidavit
23 where I attached some of the closing instructions
24 that she had had, but again--

25 JUDGE BURGDORF: That's one of them?

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1 MR. MURRELL: That's one of them, yes, sir,
2 but not in the other cases.

3 JUDGE BURGDORF: Well, if it's attached on
4 this case, I think he has--

5 MR. MURRELL: It is, but not to the extent
6 where he's going to question about other matters.

7 JUDGE BURGDORF: Of the case--

8 MR. MURRELL: That's correct. How many
9 other loans have you done for her? You know,
10 well, let's talk about this other loan. You
11 know, if he wants to ask him did she initial that
12 and choose you in that case, yeah, that's
13 perfectly proper.

14 JUDGE BURGDORF: That's what he just did.

15 MR. MURRELL: Right, but he was also
16 starting to ask him about other loans he had
17 done, and how did you get selected on those other
18 loans.

19 MR. YOUNG: Well, it would make sense, if
20 he's done loans for her in the past that she
21 would select him to do this loan, if he's done it
22 properly and correctly, and she was satisfied
23 with his services. And that's probably how we
24 got here.

25 MR. MURRELL: If she's got a complaint about

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1 her other cases, she needs to take those up in
2 the other counties.

3 JUDGE BURGDORF: I agree with that.

4 MR. MURRELL: I can, and of course, have
5 handed up the order in the previous case where
6 that argument was found to be wholly lacking in
7 credibility. And since that's res judicata, I
8 think if the Court's going to inquire into it,
9 they should inquire into it to the extent that
10 another court's made a decision on that.

11 JUDGE BURGDORF: Yeah, that's not before me
12 today.

13 MR. YOUNG: No, sir, but this is quite
14 relevant as to whether or not she selected him,
15 and that's a proper question.

16 JUDGE BURGDORF: Go ahead.

17 BY MR. YOUNG:

18 Q She selected you as the attorney for this; is
19 that correct?

20 A I do not know for a fact that she selected me. I
21 understand that she had originally had a previous
22 mortgage company, they came to us after we had
23 already done the title search. I assumed, and I
24 believe there's another document in the file,
25 where she signed that she picked us because of

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1 that reason.

2 Q Well, when she initialed here, she didn't tell
3 you she wanted somebody else to close it, did
4 she?

5 A No, certainly not. I asked her if she was aware
6 of the fact that she had the right to choose her
7 own attorney to do this, and I said if that's the
8 case, then initial the appropriate blocks, and
9 she did.

10 Q Okay. This is an affidavit and agreement. Was
11 this signed by Ms. Toney and witnessed by you?

12 A Yes, sir, it was. Affidavit and agreement just
13 says that we will pay her old mortgage off, and
14 we'll send them the amount they tell us to send
15 them, and if there is an underage, in other
16 words, if it's short, then we'll get in touch
17 with her; if it's too much, then they will send
18 her the difference.

19 Q No question, she signed that in your presence?

20 A Yes, sir.

21 JUDGE BURGDORF: We would offer this into
22 evidence, Your Honor.

23 MR. MURRELL: No objection, except to the
24 extent that it's not relevant to the motion
25 that's before the Court.

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1 (Exhibit No. 4 was marked for
2 identification.)

3 BY MR. YOUNG:

4 Q The other documents that were relative to this
5 closing authorization to make corrections and
6 stuff like that, all that was signed in your
7 presence?

8 A Every document was signed in my presence.

9 Q Do you go over everything with the client, or do
10 you just say sign here, sign here, sign here?

11 A No, sir. I go over every single document,
12 explain what the document is, and give them the
13 opportunity to ask any questions about them.

14 Q Okay. And that's Indemnity Agreement, you've
15 gotten her to sign that?

16 A Yes, sir.

17 Q So all these documents that you've provided to me
18 with her signature, those, as far as you're
19 concerned, when your signature appears on that
20 same document, they were signed in your presence?

21 A Every document from the closing itself that has
22 been signed, I was present, yes, sir.

23 Q Okay.

24 A And explained each document.

25 Q Just as a demonstration, as far as the survey,

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1 not getting a new survey?

2 A That's correct.

3 Q She signed that?

4 A She signed that--

5 Q It wasn't necessary for it to be witnessed then,
6 right?

7 A No, sir.

8 Q But it's undated. Is there any reason--

9 A It's undated just because that's done at the
10 closing. If I need to go back and date them, I
11 will, but it's usually not necessary. Those
12 documents are generated by my office.

13 MR. YOUNG: We would offer this into
14 evidence, Your Honor.

15 MR. MURRELL: Your Honor, I object to the
16 extent that it's not relevant to the issue we've
17 got before us.

18 JUDGE BURGDOFF: I don't understand the
19 relevance either exactly, what the survey would
20 have to do with it.

21 MR. YOUNG: It's building upon the fact that
22 Ms. Toney says that some things were done
23 irregularly as far as witnesses are concerned.
24 I'm leading up to it as far as other documents.
25 Mr. May says he was there the entire time, and

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1 everything that was signed was signed by her,
2 nobody signed for her or anything like that, and
3 it's a critical part of this case.

4 MR. MURRELL: Again, I don't understand what
5 not having to have a survey has to do with it.

6 MR. YOUNG: It just shows that she signed
7 another document, he says, in his presence.

8 MR. MURRELL: Again, I would object. It's
9 not in any way related to the issue we have
10 before us as stated in their motion.

11 MR. YOUNG: I'd like to put it in. If the
12 Court objects or says no, I won't.

13 JUDGE BURGDORF: Well, I don't see any harm
14 in putting it in, if you want to go ahead and put
15 it in. You just need to stay on track where
16 we're headed.

17 MR. YOUNG: Yes, sir.

18 (Exhibit No. 5 was marked for
19 identification.)

20 MR. YOUNG: If it please the Court, I
21 believe the mortgage is already in evidence.

22 MR. MURRELL: I know I've attached it to his
23 affidavit, Your Honor.

24 BY MR. YOUNG:

25 Q Let me just show you this. Mr. May, let me show

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1 you a copy of a mortgage, ask you whether or not
2 that was the mortgage that was executed in May
3 of 2005?

4 A Yes, it is.

5 Q You have three witnesses there. Mr. Green has
6 identified his signature as being present. At
7 the time Ms. Toney signed that document, I see
8 where she signed twice, what was the reason for
9 that; do you recall?

10 A Because her name, I believe, is Laura T. Toney.
11 She was listed on the documents as Laura A.
12 Toney. I got her to, I changed the A to a T and
13 got her to initial, but then elected to go ahead
14 and have her sign again as Laura T. Toney just so
15 there wasn't any confusion.

16 Q Other than you and Mr. Green, was Ms. Kirkpatrick
17 in the room at the time she signed?

18 A At the time she signed the mortgage, yes, she
19 was.

20 Q Okay. And Ms. Kirkpatrick signed the notary
21 statement underneath it?

22 A That's correct. No, she, Ms. Kirkpatrick is not
23 a notary. That's another staff member at my
24 office.

25 Q Okay. She notarized Ms. Kirkpatrick's?

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1 A That's correct.

2 Q All right. She was not in the closing?

3 A Ms. Leaphart was in and out of the closing
4 several different times, but I don't believe she
5 was there the entire time as Ms. Kirkpatrick was
6 not there the entire time.

7 Q Let me show you the Settlement Statement for this
8 closing and ask you whether or not you recognize
9 that?

10 A That's it.

11 MR. MURRELL: That should already be in
12 evidence, Your Honor. I think I submitted that.

13 MR. YOUNG: I think you did.

14 BY MR. YOUNG:

15 Q Did Mrs. Toney get \$11,000?

16 A \$11,102.61.

17 Q And the first mortgage to Bank of America was
18 paid off?

19 A That's correct, yes, sir.

20 Q And then all the other fees that were--

21 A Were disbursed according to that, yes, sir.

22 Q Okay. Did you go over the Truth in Lending
23 Statement with Ms. Toney?

24 A Yes, sir.

25 MR. MURRELL: Again, Your Honor, I'm going

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1 to object, since this isn't in their motion. I'm
2 overruled?

3 JUDGE BURGDORF: He's already testified to
4 it, so--

5 **BY MR. YOUNG:**

6 Q Did you review that with her?

7 A Yes, sir, I sure did.

8 Q And she understood the actual payoff interest
9 rate would be 11 percent?

10 A I explained how the annual percentage rate was to
11 her and how that works to the best of my
12 knowledge. It's kind of confusing, but yes, I
13 did explain it to her.

14 Q Okay. Did she have any questions, do you recall?

15 A I don't recall if she had any questions. Ms.
16 Toney looked at a lot of documents very carefully
17 and took her time, but I don't recall her asking
18 a question about any specific documents.

19 Q No question in your mind that's her signature?

20 A Absolutely, no, sir.

21 Q You have no recollection of her asking you any
22 questions at that time?

23 A I don't remember any questions.

24 Q Okay. Let me show you the note for this closing
25 and ask you whether or not that is Ms. Toney's

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1 signature on the back of that?

2 A Yes, sir. Once again, Laura A. and Laura T.

3 Q Okay. And why did she sign it twice again?

4 A Once again, the documents were drawn by the
5 lender as Laura A. Toney. Where they got Laura
6 A, I have no idea, and we had determined that she
7 was on title as Laura T. Toney, and the lender
8 instructed us to have her sign an affidavit that
9 stated Laura A. and Laura T. were the same
10 person, which we did do that, but just over
11 cautious, I guess, I had her sign it both ways so
12 there was no question.

13 Q All right. With respect to the Uniform
14 Residential Loan Application, did you have
15 anything to do with the preparation of this?

16 A No, sir. That's provided by the lender.

17 MR. MURRELL: Again, Your Honor, this is
18 loan origination, not loan closing. I'd like to
19 continue to note my objection.

20 JUDGE BURGDORF: What relevance?

21 MR. YOUNG: This is very relevant, Your
22 Honor, and the reason is this. Somehow, some
23 way, they've got income here for \$6,000 on this
24 lady. And somebody has put in information about
25 her income which is erroneous. Now she's, I want

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1 to find out, the question is this, is whether or
2 not she signed here on this document and how
3 thoroughly he went over this document with her.

4 MR. MURRELL: Your Honor -- I'm sorry. Are
5 you through?

6 MR. YOUNG: Yes, sir.

7 MR. MURRELL: I'm sorry, I don't mean to
8 interrupt you.

9 MR. YOUNG: No problem.

10 MR. MURRELL: He's not part of the loan
11 origination process. This is in no way mentioned
12 in any of the pleadings that they filed in this.
13 I mean again, you know, this is just the worse
14 kind of, it bears no relationship to the motion
15 as they set forth. They alleged one thing, and
16 they're coming in alleging something entirely
17 different. But certainly, he's had no
18 involvement with the loan origination, and as a
19 preview of my argument, this loan originated with
20 New Century Mortgage Corporation. Deutsch Bank
21 now holds it as a holder in due course. So,
22 again, if they want to allege anything against
23 New Century, they can certainly, are free to file
24 any action to do so. But not only is this wholly
25 irrelevant to, and unrelated to the motion that

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1 they filed, you know, this is a claim that they
2 would have against somebody else. My client's a
3 holder in due course and should not be subjected
4 to this, especially not when there's not been any
5 proper notice done under the rules.

6 MR. YOUNG: I think I'm entitled to ask him
7 about this, and this is part of the loan closing
8 package. This was made available as part of the
9 documents that he's relying on to foreclose.
10 This is very much a relevant part of that.

11 MR. MURRELL: Your Honor, this was a default
12 foreclosure case.. She's admitted the allegations
13 of the Complaint as was stipulated at the
14 previous frivolous hearing in this case that we
15 had to wait several hours to have when another
16 attorney showed up. And now, without benefit of
17 Substitution of Counsel, we've got another motion
18 that has frivolous grounds on its face, so in the
19 interim, since that hearing, they're now alleging
20 something entirely different against a separate
21 and distinct corporation. I don't understand how
22 I'm supposed to play baseball if I'm blindfolded
23 and turned the opposite direction. I mean,
24 that's not what the rules are supposed to do.
25 The rules are supposed to get a level playing

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1 ground for all parties.

2 JUDGE BURGDORF: Go ahead, Mr. Young. I
3 mean what, and here again, I question what Mr.
4 Murrell is saying as far as relevance in regards
5 to the motion before me.

6 MR. YOUNG: This is part of what she said
7 her motion was, that this loan package, the loan
8 closing, the loan foreclosure, was defective from
9 the standpoint that documents that she signed,
10 apparently, and I need to ask him that, were
11 bogus or false. But if she signed them, then of
12 course, he has every right to question her about,
13 well, if that's a false document there, why did
14 you sign it? Did you bring it to Mr. May's
15 attention that it was wrong? That would be a
16 proper question.

17 MR. MURRELL: Your Honor, the motion is as
18 stated. Number one, that through further
19 investigation, Defendant Laura Toney has learned
20 that closing documents were prepared by an out of
21 state entity and were not prepared by the closing
22 attorney as required by the South Carolina
23 Supreme Court. I've cited in the affidavit the
24 case law that says as long as an independent
25 attorney inspects it, insures that it conforms

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1 with the law, that's fine. Defendant Toney was
2 not served with a copy of the lis pendens.
3 That's frivolous on its case, and it was
4 admitted. I don't see any of this in the motion.

5 JUDGE BURGDORF: Yeah, that's what's giving
6 me some problem too, is that we're going far
7 field--

8 MR. YOUNG: Well, if he didn't inspect this,
9 if he didn't ask her about the \$6,000 on a
10 teacher's income, what did he do?

11 JUDGE BURGDORF: But that's not a part--

12 MR. MURRELL: That's not the motion.

13 JUDGE BURGDORF: The motion, that's what I'm
14 getting at, what Mr. Murrell said, about the
15 motion, this was a two-pronged motion, and
16 neither of these prongs, one is obviously, the
17 lis pendens aspect is obviously wrong, no
18 question there. But the other part being an out
19 of state, that's the only other prong of the
20 motion. I guess what I'm trying to say is,
21 should you file another motion regarding all
22 these things you're questioning the attorney on,
23 then that might open the door for all these
24 questions--

25 MR. MURRELL: Your Honor, let me set forth a

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1 clear distinction. Ms. Laura Toney filed this
2 motion. She's already been found to be in bad
3 faith and dilatory tactics. Mr. Young did not
4 file this motion, but Mr. Young is an attorney
5 like me, we're part of a brotherhood, and I
6 assume he takes Rule 11 as seriously as I do.
7 You make a thorough investigation, and you have a
8 basis to allege something before you file a
9 motion. Now, I understand he's stepped in to
10 advocate for her at this state, and I certainly
11 don't fault him for that, but I assume he's going
12 to thoroughly investigate it, and if there's not
13 a basis for it, you know, an attorney, the way
14 the rules are set up, will use some caution, and
15 may tell the client, I don't have a good faith
16 basis to file that. And that's where we are. I
17 mean, you know, I don't think they should get the
18 benefit of arguing things that aren't in the
19 motion when, you know, nobody's liability is on
20 the line.

21 JUDGE BURGDORF: Let's, let me break here at
22 this point, and can I just talk to the attorneys,
23 have everybody, all the witnesses leave at this
24 point?

25 MR. YOUNG: Yes, sir.

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1 (Off the record from 11:26 a.m. to
2 11:28 a.m.)

3 BY MR. YOUNG:

4 Q Mr. May, let me show you the Uniform Residential
5 Loan Application that was part and parcel of the
6 documents that you produced. Did you review that
7 with Ms. Toney?

8 A Yes, sir, I did. Normally, what I'll say is,
9 this is a copy of the loan application that your
10 lender printed up from the information you
11 provided them. Please make sure it's accurate,
12 and if it is, initial at the bottom of each page,
13 and then sign on the third page.

14 Q And did she review it in your presence?

15 A To the best of my knowledge, she did, yes, sir.

16 Q And did she initial it--

17 A She initialed the bottom of the first two pages,
18 and she signed the third, both Laura T. and Laura
19 A.

20 Q Let me show you something on this. When you saw
21 her income of \$6,000 a month, did you question
22 that with her?

23 A I don't recall questioning that with her, no, I
24 don't. I had no reason to.

25 Q And did she raise that question with you saying

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1 that, "Mr. May, there's something wrong here.
2 This shows an income of 6,000, when the truth is
3 that my income is about 3?"

4 A If she had done that, I would have stopped the
5 closing. I would not have proceeded.

6 Q That's your practice?

7 A Something like that, yes, sir. I have to protect
8 the lender also, and if that was brought to my
9 attention, then I would not have continued the
10 closing.

11 MR. YOUNG: We would offer this into
12 evidence, Your Honor.

13 MR. MURRELL: Just to the extent of my
14 earlier objections, Your Honor.

15 (Exhibit No. 6 was marked for
16 identification.)

17 MR. YOUNG: Your Honor, I'm almost through.

18 BY MR. YOUNG:

19 Q Frankly, I think we can just summarize. Mr. May,
20 all these documents you provided that have either
21 Mrs. Toney's initials or her signature, on the
22 day of closing, was all of that done in your
23 presence?

24 A Yes, sir.

25 Q Did anybody from your office, that you know of,

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1 go back and prepare any documents realizing that
2 Mrs. Toney's signature was not on it and sign it
3 for her or put her initials on it?

4 A No, sir.

5 Q Now, is that a practice in your office to do
6 anything like that?

7 A We've never done that, no, sir.

8 Q Okay.

9 MR. YOUNG: That's all the questions I have
10 at this time.

11 MR. MURRELL: I'm going to try to make this
12 brief, Your Honor.

13 EXAMINATION

14 BY MR. MURRELL:

15 Q Mr. May, did you previously review and sign,
16 after making proper revisions, an affidavit which
17 has been submitted to the Court?

18 A Yes, sir, I did.

19 Q Is this a file copy of that affidavit?

20 A I believe it is.

21 Q And does it truthfully state your knowledge of
22 the case, both based upon your recollection and
23 the documents that are in your file?

24 A Yes, it does.

25 Q And are you familiar with the case law regarding

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1 real estate closings, Doe versus McMaster, State
2 vs. Buyer Services Company and related cases?

3 A Yes, sir, I am.

4 Q And in this particular closing from Ms. Laura
5 Toney, did your office perform the four duties
6 that are set forth in those cases to the best of
7 your knowledge?

8 A Yes, sir, we sure did.

9 Q Your office commissioned and reviewed the Title
10 Search?

11 A Absolutely. We normally, we have several
12 abstractors who, or Title Searchers who go out
13 and search the title, they send the Title Search
14 to us, and then I review it and make sure it's
15 okay.

16 Q And typically, you use that to issue a Lender
17 Title Policy?

18 A Yes, sure do.

19 Q Okay. So--

20 A That all came out of our office under my
21 supervision, yes, sir.

22 Q And do you receive and review the loan documents?

23 A We normally get the loan documents, back in '05,
24 sometimes they are overnighted to us, sometimes
25 they're emailed. We generally get them, usually

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1 the day of, sometimes the day prior, and take
2 enough time to go through the documents and make
3 sure that they are in accordance with the
4 accepted policies and statutes of South Carolina.

5 Q And in this particular instance, there was a
6 minor discrepancy regarding her name, Laura A.
7 and Laura T?

8 A Yes, sir.

9 Q And so in fact, a name affidavit was executed to
10 deal with that issue?

11 A Well, the name affidavit is normally a document
12 that is in the file sent to us by the lender. I
13 believe that whoever the processor was that
14 actually processed the documents in my office
15 noted the difference between the Laura A. and
16 Laura T. and added that to that document, and I
17 got her to sign the documents that it was the
18 same person.

19 Q And did you personally attend and conduct the
20 real estate closing in this particular loan?

21 A Yes, sir, I did.

22 Q And did you explain the documents and review them
23 with Ms. Toney?

24 A I went over every single document with her, yes.

25 Q And all of the documents which have previously

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1 been submitted into evidence that were attached
2 to your affidavit, that is her signature, and you
3 can state that emphatically, under oath?

4 A Under oath, and I understand what perjury is,
5 yes.

6 Q And did your law firm make the disbursements of
7 the various payments coming out of the loan?

8 A That's correct. We get the HUD, we get either a
9 wire or a check, and it goes into our trust
10 account, and then we make the disbursements, and
11 I believe the checks are already in evidence.

12 Q Okay. And so this attorney's trust check account
13 number 4018, that's issued by your trust account?

14 A That's correct.

15 Q And those are the funds that Ms. Toney received
16 from this particular closing?

17 A That's correct, sir.

18 Q And according to your records, that was
19 negotiated by Ms. Toney?

20 A I believe it is, that what you're referencing
21 here is the copy of the check that we received
22 from the bank, both sides, and does indicate that
23 she, or at least somebody signed Laura T. Toney
24 to the backside, and that appears, I'm pointing
25 to the fingerprint on the front side of the

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1 check, appears to be a fingerprint, I don't know
2 if that's actually hers or not, but it was
3 fiduciary.

4 Q And certainly no disbursements were made by the
5 mortgage broker?

6 A There may be some confusion on that. Sometimes
7 the mortgage broker, or in this case the Loan
8 Officer, will pick up the check on behalf of
9 their client. I don't know if that was the case
10 in this one or not. I don't know if Ms. Toney
11 came to our office and picked it up, or if Mr.
12 Green picked it up for her.

13 Q But there's no question that your law firm did
14 the disbursements from the trust account as
15 required by law?

16 A No question at all.

17 Q Okay. And, let's see, did your office
18 subsequently determine whether or not the prior
19 mortgage that had been paid off through these
20 funds had been satisfied of record?

21 A Yeah, and I'm not sure exactly how we came about
22 that knowledge, but it was brought to our
23 attention that that had not been satisfied of
24 record, and I believe we did an attorney sat to
25 satisfy that.

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1 Q Okay. And that's a copy that's attached to your
2 affidavit?

3 A Yes, it is.

4 Q Okay. So, you can state under oath that you
5 fully performed all the duties required of you in
6 this loan closing?

7 A As far as I know, yes, sir.

8 Q And all those were in conformance with state and
9 federal requirements and with your ethical duty
10 as an attorney?

11 A I believe they were.

12 MR. MURRELL: No further questions, Your
13 Honor. Oh, just one, I'm sorry.

14 BY MR. MURRELL:

15 Q Was Ms. Kirkpatrick there at the time that she
16 indicated her witnessing of Ms. Toney's signature
17 on those documents?

18 A Yes, for the mortgage at least, yes.

19 Q Okay. No further questions.

20 MR. YOUNG: Just a couple of followup.

21 EXAMINATION

22 BY MR. YOUNG:

23 Q Mr. May, you indicated that the checks that were
24 signed, I take it Ms. Kirkpatrick has signing
25 authority on your checks?

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1 A Yes, sir.

2 Q They're dated the day of the closing, May 23?

3 A Yes, sir.

4 Q Were they issued that same day?

5 A That's hard for me to say, Mr. Young. Generally,
6 this is not owner occupied, so it would have
7 funded the same day, it would have scheduled to
8 fund the same day. If we had gotten the wire in
9 on the date that it closed, then we would have
10 disbursed the funds that day. If not, we would
11 have disbursed after we got the funds in.
12 Sometimes it happens that even though they fund
13 it the same day, it gets cued at our bank, if
14 it's a wire, and they will not deposit it and
15 show it into our account until perhaps the next
16 day. So I don't know when it was actually given
17 to her.

18 MR. YOUNG: Okay. That's fine. That's all
19 the questions I would have.

20 MR. MURRELL: No further questions.

21 MR. YOUNG: Okay. Call Ms. Kirkpatrick to
22 the stand.

23 (Tracy L. Kirkpatrick, being duly sworn,
24 testified as follows:)

25 EXAMINATION

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1 BY MR. YOUNG:

2 Q Ms. Kirkpatrick, would you please state your full
3 name for the record?

4 A Yes, Tracy L. Kirkpatrick.

5 Q And where do you live, please?

6 A Lexington, South Carolina.

7 Q And by whom are you employed?

8 A Ratchford and May.

9 Q And how long have you been employed there?

10 A Ten years.

11 Q Ten years?

12 A Yes, sir.

13 Q And what are your primary duties there?

14 A Process, prepare packages, disbursements, answer
15 phones.

16 Q Loan closing paralegal?

17 A No, sir.

18 Q Assistant lawyer, or what?

19 A That would be nice.

20 Q Okay. You've heard Mr. May testify with respect
21 to several documents which your name appears on
22 with respect to the mortgage and that sort of
23 thing?

24 A Yes, sir.

25 Q Were you present when Ms. Toney signed these

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1 documents?

2 A Yes, sir.

3 Q Ms. Kirkpatrick, let me show you the document; is
4 that your signature there?

5 A Yes, sir.

6 Q Did you witness her signing that?

7 A Yes, sir.

8 Q That's the mortgage; is that correct?

9 A Yes, sir.

10 Q And did you later, then, appear before Ms.
11 Leaphart?

12 A As far as I remember, yes, sir.

13 Q Okay. And were you present when Mr. May was
14 reviewing the loan closing documents with Mrs.
15 Toney?

16 A Just the mortgage.

17 Q Just the mortgage?

18 A Yes, sir.

19 Q And do you normally remain in the closing, or are
20 you in and out?

21 A In and out. I come in to witness mortgages if
22 I'm available.

23 Q Okay. And there's no question that's your
24 signature?

25 A None at all.

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1 Q And the signature on the check, do you have check
2 signing authority?

3 A Yes, sir, I do.

4 Q And did you issue this check to Mrs. Laura Toney
5 on May 23? Is that your signature?

6 A That's my signature, yes, sir.

7 Q Is that check issued on that day, or at a later
8 day; do you recall?

9 A I don't recall. It has that date on it, but I
10 could have wrote the checks that day and prepared
11 them for another day. I don't know if it was a
12 non-owner occupy, if there was a refinance, I'm
13 not sure.

14 Q Okay. One second, please. No further questions.

15 MR. MURRELL: I'll try to make it brief,
16 Your Honor.

17 EXAMINATION

18 BY MR. MURRELL:

19 Q Ms. Kirkpatrick, did you review and sign an
20 affidavit that has been filed with the Court?

21 A Yes, I did.

22 Q And is it true and correct, to the best of your
23 knowledge and recollection?

24 A Yes, sir, it is.

25 Q And you understand what the concept of perjury

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1 is?

2 A Yes, sir, I do.

3 Q And that it's punishable by the Court, by a fine
4 and imprisonment?

5 A Yes.

6 Q And you're stating before the Court and before
7 God almighty that this is a truthful statement as
8 set forth in your affidavit?

9 A Yes, sir.

10 Q And you witnessed Ms. Toney sign the mortgage?

11 A Yes, sir.

12 MR. MURRELL: No further questions, Your
13 Honor.

14 MR. YOUNG: No additional questions. We
15 call Ms. Toney to the stand.

16 JUDGE BURGDORF: It's ten to 12. We won't
17 have enough time to do her in ten minutes. I
18 don't want to-- it may be a good time--

19 MR. YOUNG: Do you break for lunch at this
20 time?

21 JUDGE BURGDORF: I need to break around 12.

22 MR. YOUNG: Yes, sir. Well, let's do that
23 now if that's okay with you.

24 (Off the record from 11:41 a.m. to
25 1:05 p.m.)

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1 Q Ms. Toney, let me show you the mortgage which is
2 dated May 23, 2005. Are those your initials?

3 A Yes.

4 Q First page of that mortgage?

5 A Yes, sir.

6 Q Is that your signature on the last page, next to
7 the last page?

8 A Yes, sir.

9 Q So you signed that, and those are your initials
10 there too; is that right?

11 A Yes, sir.

12 Q Okay. Now, when you signed, were the three
13 people that are listed here, Ms. Kirkpatrick,
14 Mr. May and Mr. Green, present when you signed
15 it?

16 A The only people in that room were me, Mr. May and
17 Mr. Green. Ms. Kirkpatrick, I saw her for the
18 first time in my life this morning. As a matter
19 of fact, when I got these documents, I noticed
20 that her ink was darker than the other signature.
21 And I looked at it, I said, "I don't know this
22 person." So, you know, I'm not a handwriting
23 expert, but she signed later. She was not in the
24 room, she was not in the room at all. She did
25 not sign anything in my presence.

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- 1 Q So there's no question that's your signature?
- 2 A That's my signature.
- 3 Q All right. This check for \$11,102.61, did you
- 4 receive that check?
- 5 A Yes, sir.
- 6 Q Is that your endorsement?
- 7 A Yes, sir.
- 8 Q And did you get the money?
- 9 A Yes, sir.
- 10 Q This is your Loan Closing Statement. Is that
- 11 your signature at the bottom of this Loan Closing
- 12 Statement?
- 13 A That's not my signature.
- 14 Q That's not your signature?
- 15 A That's not my signature, no, sir, it's not. That
- 16 is not my signature. It's not.
- 17 Q Okay. But all the other payouts, the actual
- 18 \$11,102.61 that was called for that you received,
- 19 you got the money?
- 20 A Yes, sir.
- 21 Q But you're saying you just didn't sign that?
- 22 A I didn't, that's not my signature.
- 23 Q How about the name affidavit; is that your
- 24 signature?
- 25 A That's not my signature right here, and this is

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1 not my signature. Now, Laura A. Toney, that's my
2 signature. The first one is my signature. The
3 other three, they're not my signatures. They're
4 not. But the first one is.

5 Q All right. I got one other question for you, and
6 then turn you loose. I need a copy of that note.

7 MR. MURRELL: Now, it should be into
8 evidence already as part of--

9 MR. YOUNG: Yeah, I know, I just wanted to
10 show her. Your Honor, I apologize. I just think
11 it's important she identify the note and say
12 whether or not she signed that. Does your file
13 have the note in it, Your Honor?

14 JUDGE BURGDORF: I think this is it.

15 MR. MURRELL: It's been submitted into
16 evidence, at least as part of the main
17 foreclosure case, Your Honor.

18 MR. YOUNG: Can I see it, please?

19 MR. MURRELL: Here's a copy from the Loan
20 Origination File which I also received, so you
21 can refer to that.

22 MR. YOUNG: Thank you. And I would assume
23 the note is already in evidence.

24 MR. MURRELL: I know it was submitted as a
25 part of the main foreclosure case.

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1 MR. YOUNG: Sure. That would be a natural
2 course to do that.

3 BY MR. YOUNG:

4 Q Ms. Toney, let me show you a note which is dated
5 May 23, 2005, and I ask you whether or not this
6 is your signature on the note?

7 A No, sir, that's not my signature. Now -- no,
8 this is not my signature. Not, no, see, that's
9 not my signature. That's not my signature, no,
10 sir.

11 Q You deny you signed the note?

12 A That's not my signature, neither one.

13 MR. YOUNG: Your Honor, is the note in
14 evidence? I need to make absolutely sure.

15 MR. MURRELL: It definitely was submitted as
16 part of the foreclosure case, Your Honor.
17 There's not a question about that.

18 JUDGE BURGDORF: I see the mortgage in here,
19 but I don't see the note, unless it's not part of
20 the affidavit.

21 MR. YOUNG: Can we make a copy of this?

22 MR. MURRELL: It was Exhibit 1 as part of
23 the record, but we can certainly submit that one
24 into evidence.

25 JUDGE BURGDORF: It's not in the affidavit.

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1 MR. MURRELL: Oh no, not in the affidavit,
2 but in the main foreclosure case--

3 JUDGE BURGDORF: Oh, okay.

4 MR. YOUNG: Can we submit this?

5 MR. MURRELL: We can certainly submit that.
6 As I say, it is part of the record, but I have no
7 objection to submitting that.

8 (Exhibit No. 8 was marked for
9 identification.)

10 BY MR. YOUNG:

11 Q Ms. Toney, you will probably misinterpret my
12 question here, but I'm a little bit lost. If you
13 didn't sign the note, I can't imagine Mr. May
14 letting you sign the mortgage. Are you positive
15 about that?

16 A That's not my signature.

17 Q All right. You understand that the loan process
18 on through the lawyer's office, and you get the
19 benefit of the closing by them paying off the
20 mortgage and giving you a check for the \$11,100?

21 A Right.

22 Q And you deny those are your signatures?

23 A Those are not my signatures.

24 Q All right. Is there anything else you want this
25 Court to know?

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1 A Mr. Murrell, Mr. Murrell--

2 MR. MURRELL: Please instruct the witness to
3 answer yes or no.

4 JUDGE BURGDORF: Please answer the question.

5 DEPONENT: Yes, sir.

6 BY MR. MURRELL:

7 Q Just briefly, ma'am, you had a previous motion in
8 this case, correct?

9 A Yes.

10 Q And that was withdrawn and denied, correct?

11 MR. YOUNG: What do you mean by withdrawn
12 and denied?

13 MR. MURRELL: She moved to withdraw it, and
14 I asked that it be denied, and the Court denied
15 it.

16 DEPONENT: I don't--

17 BY MR. MURRELL:

18 Q You don't recall coming down here with Attorney
19 Joe Henry?

20 A Yes.

21 Q Okay. And now, we've come down here again today.

22 A Yes.

23 Q Okay. Now, your testimony before that you had --
24 who did you receive your -- no, when your
25 attorney questioned you about the proceeds from

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1 this loan, you don't dispute that you received
2 the money from the loan?

3 A Yes, I received the money.

4 Q And you don't dispute that they paid off your
5 prior mortgage to Bank of America?

6 A No, I don't.

7 Q Okay. And you don't dispute that you negotiated
8 that check?

9 A No, I don't.

10 Q And that's your signature on the check?

11 A Yes.

12 Q Is that your fingerprint on the check?

13 A I guess it is, yes.

14 Q Okay. And who did you get the check from?

15 A I got it from Mr. May the same day, the day of
16 the closing.

17 Q And your testimony previously under oath was that
18 you got it from the broker; is that correct?

19 A I don't recall saying--

20 Q You don't recall saying that?

21 A Not on this loan. I think this check came
22 directly from the attorney's office. I believe
23 this check came from the attorney's office, I
24 believe.

25 Q Okay. So, I'm going to ask you, a copy of the

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1 transcript from the May 6 hearing, on Page 16,
2 Line 10 through 17, right there, where Mr. Young
3 questions you, "Ms. Toney, I know you're going to
4 be asked this question. Did you get the
5 \$11,102.61 as a result of this closing?" And
6 your answer was?

7 A I recall getting a check. I don't recall the
8 amount.

9 Q Hold on, hold on, let me finish this. And then
10 he asked you, "Did you get it from the attorney
11 or from someone else?" And your response was?

12 A I received it from the broker; I got it from the
13 broker.

14 Q Okay. So now your testimony is different--

15 A Okay, can I answer that?

16 Q I'm asking you--

17 A Are you going to let me answer it?

18 Q Yes, ma'am, as soon as--

19 A Mr. Green--

20 Q Hold on.

21 A Mr. Green was there, Mr. May was there, and I was
22 there. The checks were disbursed in the same
23 office with all of us. He gave all the checks
24 over to the broker, and the broker handed it over
25 to me. But Mr. May disbursed the money in the

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1 office while we were all there right after the
2 loan closing.

3 Q Okay. So May 6, you didn't go into detail and
4 said I got it from the broker, correct?

5 A If--

6 Q I need a yes or no, ma'am.

7 A That doesn't even make sense.

8 MR. YOUNG: If it please the Court, what
9 difference does it make?

10 JUDGE BURGDORF: I think maybe you're
11 getting long beyond--

12 MR. MURRELL: Your Honor, this is my point.
13 She clearly sought to mislead the Court, if not
14 commit perjury, when she said she got it from the
15 broker. Her motion was frivolous on its face,
16 they didn't serve an LP -- doesn't matter -- the
17 document was prepared out of state -- that
18 doesn't matter. This is the only thing that I
19 could discern that gave cause to any concern
20 whatsoever where she gave the impression that the
21 broker did the disbursements, which is absolutely
22 prohibited. That's not the case, and the
23 documents have shown otherwise. That's why she's
24 coming to court now with a whole new bag of
25 tricks.

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1 JUDGE BURGDORF: I believe she just
2 explained that everyone was in the room; is that
3 correct?

4 DEPONENT: We were in an office, we were all
5 in the same office.

6 JUDGE BURGDORF: Same office, the broker and
7 the attorney?

8 DEPONENT: Right, and he paid me with a
9 check.

10 JUDGE BURGDORF: So it's not a matter of
11 who, and I'm not trying to give evidence, but
12 it's not a matter of who actually handed her the
13 check, they were all there together, so--

14 MR. MURRELL: Well, again, Your Honor--

15 JUDGE BURGDORF: I think she answered the
16 question is what I'm saying.

17 MR. MURRELL: That's not what she said, and
18 I'll submit to the Court that that's merely
19 attempting to gloss over what I would submit
20 would be perjury. No further questions.

21 EXAMINATION

22 BY MR. YOUNG:

23 Q Okay. Ms. Toney, did you intend to mislead the
24 Court or anyone when you said that you got a
25 check from the broker?

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1 executed by me.

2 Q Do you want the Court to know anything else?

3 A No, that's it.

4 MR. YOUNG: Okay. Your Honor, that's the
5 entirety of our case.

6 MR. MURRELL: Your Honor, I do have a motion
7 for sanctions. I'd like to hand up an affidavit
8 of attorney's fees, I think that's the original.
9 And I'd certainly have the Court take into
10 consideration not only the pattern of bad faith
11 and dilatory tactics and other judicial
12 proceedings which directly relate to this one,
13 but the dilatory tactics and frivolous motions
14 filed in this case. And again, I think this,
15 appearing today -- I'm speaking right now, ma'am
16 -- this is a perfect example of it in that the
17 argument she's presented today is wholly
18 different from the argument she had in her
19 written motion, which is not conforming with Rule
20 7, but more importantly, just goes to show that
21 she changes her argument to fit whatever she
22 thinks she can have success with, and it's not
23 based upon the facts to put it in the best way
24 possible.

25 MR. YOUNG: If it please the Court, what Ms.

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1 Toney wants me to ask you is whether or not you
2 can continue this until she can get a handwriting
3 expert to, in an effort, I think, to demonstrate
4 to the Court that she did not sign the note and
5 other documents that are contained in the loan
6 closing package, to wit one of them being the
7 loan application that shows \$6,000 income. I
8 think she denied, if you remember, there's two
9 signatures on that. She said one, the first one
10 looked like hers, and then she denied that.
11 She's denied signing the note, and she's denied
12 her initials on several documents and other
13 signatures. And what she's asking now is that
14 this matter be continued until such time as she
15 can retain the services of a handwriting expert
16 to demonstrate to the Court that those initials
17 and those signatures are, in fact, not hers.

18 MR. MURRELL: Your Honor, back in May of
19 2006, we served her with a Complaint that she
20 admits getting saying you signed this note.
21 She's been fully on notice of what we're
22 alleging. We've conformed with the rules in
23 every way possible. Again, what she's arguing
24 today and what she's asking for regarding a
25 continuance, are not even contained in her motion

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1 today. And it's repugnant to the integrity of
2 the Court to give dignity to this type of
3 argument.

4 DEPONENT: Your Honor--

5 JUDGE BURGDORF: Ms. Toney, you have an
6 attorney present. He has to ask me the
7 questions.

8 DEPONENT: Yes, sir. I'm so sorry.

9 MR. YOUNG: What do you want me to ask him?

10 DEPONENT: I did not see these documents
11 until recently, you know. I never did get a
12 packet; my packet did not have signatures on it.

13 MR. YOUNG: I sent you a complete copy of
14 everything.

15 DEPONENT: And when you gave me, that's when
16 I realized that there were forgeries, when I
17 received your packet from Mr. May. It's not as
18 if I had this information since the time the
19 foreclosure was filed. I just recognized the
20 forgeries when I received the packet from you.

21 MR. MURRELL: Your Honor, this is a Rule 60
22 motion, and again, what they're arguing is not
23 what's in their written motion. But is this
24 newly discovered evidence when I serve her with a
25 Complaint that says we allege you signed this

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1 note? How can you not say that was easily
2 discoverable by her. She knows whether or not
3 she signed a note. She admitted the debt in
4 bankruptcy. And you know, again, this is, you
5 know, she's trying this argument on for size
6 since nothing else has seemed to gain any
7 traction to her. And Your Honor, I'd ask the
8 Court to make it a level playing field, and you
9 know, although she's certainly entitled to her
10 day in Court, she's entitled to file a motion, as
11 long as it's not frivolous, and entitled to an
12 appeal, but she's not entitled to act with
13 impunity when she's clearly in violation of both
14 Rule 11 and with regards to testifying
15 truthfully. And I think the documents and the
16 testimony clearly show that, as well as, of
17 course, a well established track record by
18 previous courts, both at the State Court level
19 and the US Bankruptcy Court level as well as the
20 South Carolina Court of Appeals, that this is not
21 a truthful defendant. She does not act in good
22 faith, she'll act dilatory, and she will act in
23 bad faith if given the opportunity and the
24 encouragement.

25 MR. YOUNG: I would ask you to give her a

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1 few more days before you rule to see, and let
2 her, it's at her expense, let her retain a
3 handwriting expert and see. And we'll submit the
4 results of that both to Mr. Murrell and to the
5 Court.

6 MR. MURRELL: Your Honor, we waived
7 deficiency in this case, and although I have
8 filed a motion for sanctions because of costs
9 which have been incurred, both with regards to
10 the previous motion, which was obviously
11 frivolous, and as to this one which is frivolous
12 on its face, but there comes a point in time in
13 which my client should not be subjected to what
14 is just plain harassment, much less myself. I
15 mean, you know, I try to--

16 JUDGE BURGDORF: Okay, my question, I guess,
17 Mr. Young, would be just what purpose would it
18 serve, if in fact, the handwriting expert does,
19 in fact, say that it was not the same signature?

20 MR. YOUNG: As an officer of the Court, I
21 would tell you that I cannot imagine in my
22 wildest imagination that Mr. May would have
23 allowed her to sign a mortgage if she had not
24 first signed the note, one follows the other.
25 But she says she didn't sign the note. I wasn't

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1 there, I don't know. She was. But if I'm a
2 closing attorney, you're not signing the mortgage
3 until you sign the note first, and we'll go
4 through that. But she says she didn't sign it.
5 There's only one way that I know to prove,
6 without any doubt, whether or not she signed it,
7 and that is to have an expert render an opinion.
8 And this is not going to be cheap for her,
9 because I can tell you that handwriting experts
10 that I've used lately, it costs you about \$1,500
11 to get the initial opinion, then they want to
12 charge you another \$1,000 or so to come and
13 testify. All we're asking for is an opinion. So
14 she's going to have to come up with \$1,500,
15 \$2,000 probably to get somebody even to consider
16 and to take the various documents as submissions,
17 and then compare them to the note.

18 JUDGE BURGDORF: Are you aware of the fact
19 that she has already hired a handwriting expert
20 in other matters before this Court? He's
21 testified in this court.

22 MR. YOUNG: Oh, he has?

23 JUDGE BURGDORF: Yes, sir.

24 MR. YOUNG: Well, I guess she could hire the
25 same one. That's the disadvantage I have coming

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1 into this case late. I don't know if that person
2 has even looked at this one. He may or may not,
3 I don't know.

4 JUDGE BURGDORF: I don't know whether he has
5 either.

6 DEPONENT: He hasn't.

7 MR. YOUNG: So I don't know what the
8 testimony would be, I have no idea. But I can
9 tell you this, and I'm just being as candid with
10 the Court as I can, as I said just a minute ago,
11 I can't imagine Mr. May having proceeded through
12 the closing and not having her sign the note
13 first. And so, but she says she didn't, so I
14 think that I've got to go with that.

15 MR. MURRELL: Your Honor, putting aside the
16 obvious findings of dilatory tactics and bad
17 faith, what would a handwriting expert do? It
18 would be an opinion by somebody, gee, I think
19 this is or is not, as opposed to eyewitness
20 testimony by both an officer of the Court and a
21 paralegal who, you know, do for a living loans.
22 You learn how to do it, you do it the right way,
23 and you do it the same way every single time.
24 They have testified under oath that she signed
25 these documents. And I don't see, if she got a

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1 handwriting expert that she paid enough money to
2 get the, or went through enough to get the
3 opinion she wanted, how that would possibly
4 overrule eyewitness testimony by reliable
5 witnesses.

6 JUDGE BURGDORF: How long would you ask for
7 a continuance? How much longer?

8 MR. YOUNG: I'd say 45 days, 30 days,
9 however long it takes her to get somebody. I
10 mean, if I were the Court, because, Mr. Murrell's
11 position, I understand it, he's tired of dealing
12 with this thing. You say 30 days? Give her
13 30 days to get you a report, and if she doesn't
14 have it then, that's too bad.

15 JUDGE BURGDORF: When you say a report, are
16 you talking about just a--

17 MR. MURRELL: Your Honor, am I required to
18 get a conflicting report? I mean, it is--

19 JUDGE BURGDORF: What I'm asking, if you're
20 going to have a handwriting expert, I think Mr.
21 Murrell has a right to cross-examine him and all
22 that.

23 MR. YOUNG: Certainly, if the handwriting
24 expert found it wasn't her handwriting, then I
25 would think he would have the right, but he may

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1 very well verify that it is, in fact, her
2 handwriting.

3 MR. MURRELL: How is this not a compulsory
4 counterclaim that should have been alleged one
5 year ago? I mean, my client's not only had to
6 pay me to continue to litigate this, but now
7 they're supposed to pay me to litigate this issue
8 as well as hire my own conflicting expert, as
9 well as my client can do nothing with the
10 property while these motions are pending. I
11 mean, Your Honor, that's -- you know, I
12 understand allowing pro ses, although she's not
13 pro se anymore, to have their day in court, but
14 there comes a point at which, you know, I don't
15 understand how the system is supposed to
16 function, and how an attorney is supposed to bear
17 under this burden. You know, I am a single
18 parent, I've got four kids by myself, and I do
19 the best I can. But, you know, I have a hard --
20 I don't think it's reasonable to do that, unless
21 you require Ms. Toney to post a bond. I mean,
22 like I said, I think it should be ended today,
23 but we're going to let her continue to run with
24 this line when there's such an obvious proof of
25 bad faith, and she just continue it with

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1 impunity.

2 JUDGE BURGDORF: I think your idea of
3 posting a bond would not be a bad idea.

4 MR. MURRELL: Like I said, my first option,
5 my preference is to have this dismissed because
6 of its obvious lack of any merit both in terms of
7 what you've heard today, and in that it bears no
8 relation to the motion she's filed.

9 JUDGE BURGDORF: Well, I mean, as I say, I
10 like to give everybody a chance to do what they
11 feel like they have to do. I hate to put anybody
12 through any hoops that they shouldn't have to go
13 through. But then on the other hand, to make
14 justice prevail and make sure that we've covered
15 all the bases, I want to be as fair to both sides
16 as I possibly can. And the way I see it is, I
17 think a handwriting expert, if she's adamant
18 about this, then so be it. But on the other
19 hand, on your side, I think you deserve to have
20 the protection of the bond that should it not be,
21 should a handwriting expert not, should she say
22 that it's not her, or it is her signature rather,
23 that there should be some sort of, basically,
24 protection for your side.

25 MR. MURRELL: Against my client who's a

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1 holder in due course. But I mean, I don't, Your
2 Honor, again, my client took this loan as a
3 holder in due course. She can allege all this
4 against the loan originator who is in business in
5 California. I would state, as an officer of the
6 court, I investigated on the internet, they're
7 still in business. She can allege all this
8 against them.

9 JUDGE BURGDORF: Her attorney has asked for
10 it, and here again, in order to allow him to get
11 into the case more, I would rather--

12 MR. MURRELL: I understand, Your Honor, but
13 none of this is in the written motion that they
14 filed, and I'm having to, to the best I can--

15 JUDGE BURGDORF: I understand completely.

16 MR. MURRELL: Under ambush--

17 JUDGE BURGDORF: I understand completely.

18 MR. MURRELL: So, I would object, for the
19 record, that I don't think the rules should be
20 discarded for Ms. Toney's benefit.

21 JUDGE BURGDORF: Well, the only thing we're
22 talking about here is one simple deal, and that's
23 to have a handwriting expert examine the note to
24 determine authenticity of the handwriting.
25 That's the narrow focus of this thing, and we've

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1 already gone through the rest of this testimony,
2 we've waited this long, gone through all this.
3 If she wants to spend this kind of money to do
4 that--

5 MR. MURRELL: But how is my client not going
6 to have to spend the corresponding amount?

7 JUDGE BURGDORF: Well, that's, you know, the
8 question is, as Mr. Young pointed out, if the
9 handwriting expert says it's her handwriting,
10 that ends it.

11 MR. MURRELL: I mean, the research I've done
12 on handwriting experts, they're not held in that
13 high of regard. It's not, I've tested the ink,
14 and it dates to such and such. It's, my opinion
15 is this is or isn't. And that's supposed to be
16 weighed against eyewitness testimony? I don't
17 think it's fair to have my client have to fight
18 in the dark.

19 JUDGE BURGDORF: I understand where you're
20 coming from. I understand completely where
21 you're coming from, a hundred percent. But I
22 still think if that's the one thing it's going to
23 take, then I think let's do it and not have
24 anymore left to do. Let's just get rid of it.

25 MR. MURRELL: Are they going to be permitted

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1 to raise any other issues?

2 JUDGE BURGDORF: No.

3 MR. MURRELL: Since additional issues have
4 been raised today--

5 JUDGE BURGDORF: Absolutely not.

6 MR. MURRELL: And the Court's going to note
7 my continuing objection to the arguments that
8 were raised today that were not in the written
9 motion?

10 JUDGE BURGDORF: Absolutely. We're talking
11 about one narrow thing, and that's the
12 handwriting expert. And if it turns out that
13 they say that it's her signature, I would agree
14 with Mr. Young, I can't imagine it not being,
15 because no closing attorney would ever have a
16 person sign a mortgage and not have them sign the
17 note. I looked at the note and the mortgage, and
18 it looks like the same signature to me, but I'm
19 not an expert. But anyway, that's, I'm going to
20 rule that way; I just want to ask you what you
21 would feel would protect your client.

22 MR. MURRELL: Well, I think a bond should be
23 posted in the appropriate amount of the value of
24 the property as well as the attorney's fees we've
25 incurred today. I mean, she's got all the money

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1 in the world to litigate while my client
2 continues to have to pay insurance on the
3 property, keep the property secure, and pay taxes
4 on it, foregoing a potential appeal. I mean, how
5 long is my client required to, how on earth are
6 we supposed to run a banking system in this
7 United States under these conditions.

8 JUDGE BURGDORF: I don't want to get into
9 the whole --

10 MR. MURRELL: Well Judge, I just, you know,
11 I understand Ms. Toney is zealous in her
12 advocacy, that, you know, I don't feel like it's
13 a level playing field. We've obeyed the rules,
14 we've stuck to the rules, I do long written
15 returns and research it--

16 JUDGE BURGDORF: I understand.

17 MR. MURRELL: And I'm, you know, arguments
18 are pulled out of a hat when I come into court.

19 JUDGE BURGDORF: I understand completely.
20 That's why I'm limiting it to just, just a
21 narrow, very, very, very narrow, one point and
22 one point only.

23 MR. YOUNG: Please the Court, on the amount
24 of the bond, Mr. Murrell's request for the value
25 of the property is too, since, they're not out,

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1 even at the end of thirty days, they've still got
2 the property. It's not like it's going to be
3 diminished in value, certainly a bond which would
4 pay the interest for the month would be probably
5 appropriate.

6 JUDGE BURGDORF: And attorney's fees.

7 MR. YOUNG: And the value of his attorney's
8 fees, I think that would be appropriate.

9 JUDGE BURGDORF: I do too.

10 MR. YOUNG: But to go beyond that would be
11 excessive.

12 JUDGE BURGDORF: I believe so too. So I
13 think bond would be an amount of, with attorney's
14 fees of about \$5,000, and the interest, we do
15 have, what is our interest fee, Mr. Murrell? You
16 would probably be able to find that quicker than
17 anybody else.

18 MR. MURRELL: Let's see. Looks like it was
19 10.6 percent off of a principal balance of
20 \$54,156.73, well, off of the judgment. Let me
21 see if we calculated what it was per day when we
22 did the sale way back when. Your Honor, how many
23 days is she going to be required before she posts
24 the bond? I'd like that to be the first hoop
25 she's got to jump through.

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1 JUDGE BURGDORF: Well, that's what I was
2 getting ready to say, that that needs to be done
3 basically immediately. When I say immediately,
4 within the next however many days you think--

5 MR. YOUNG: Seven to ten days.

6 JUDGE BURGDORF: Seven days would be, I
7 think, yeah, by next week, since Monday's a
8 holiday.

9 MR. YOUNG: You want me to make it next
10 Thursday?

11 JUDGE BURGDORF: Next Thursday, that'll be
12 fine.

13 MR. YOUNG: Okay, Thursday.

14 JUDGE BURGDORF: And if we don't have it by
15 Thursday, Mr. Murrell's motion for denial will be
16 granted.

17 MR. MURRELL: I also have a motion for
18 sanctions as well, Your Honor. Is that going to
19 be reserved?

20 JUDGE BURGDORF: We're going to reserve that
21 too, here again, by next Thursday, and if the
22 bond hasn't been posted, then your motion's
23 granted.

24 MR. YOUNG: So it's Thursday, the 4th.

25 MR. MURRELL: If I can just confirm that in

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1 writing; do you have an email, and I'll send you
2 an email copy of it?

3 MR. YOUNG: Sure.

4 MR. MURRELL: I mean, it's easy enough to
5 calculate off the amount of the decree.

6 MR. YOUNG: Okay, it's
7 KYoung@sumterattorney.com. You can tell all
8 these young lawyers email everything.

9 JUDGE BURGDORF: Anything else you want to
10 put on the record?

11 MR. YOUNG: I think we've covered it all.

12 JUDGE BURGDORF: Okay.

13 MR. YOUNG: Thank you very much.

14 JUDGE BURGDORF: And by the way, assuming
15 that the bond is posted by next Thursday, we have
16 30 days, not from that date, but from today in
17 which to get some sort of report from--

18 MR. MURRELL: And Your Honor, what documents
19 are going to be examined? I mean again, this
20 is--

21 JUDGE BURGDORF: Just the note.

22 MR. MURRELL: Just the note, that's the only
23 document?

24 JUDGE BURGDORF: Oh, and the statement.

25 MR. MURRELL: The Attorney Preference?

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United States Bankruptcy Court - District of South Carolina

J. Bratton Davis United States
Bankruptcy Courthouse
1100 Laurel Street
Columbia, SC 29201-2423

Case Number: 06-03028-jw

Chapter: 13

In re: *(Debtor(s) name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address)*

Laura Ann Toney
PO Box 722
Bishopville, SC 29010

SSN: xxx-xx-6990

Entered By The Court
8/30/06

**ORDER OF DISMISSAL
(PURSUANT TO LOCAL BANKRUPTCY RULE 2003-1)**

Filed By The Court

8/30/06

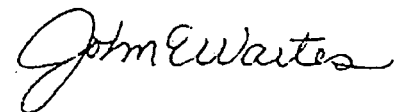
Clerk of Court
US Bankruptcy Court

It appears that notice of possible dismissal of the above captioned case for the failure of the debtor(s) or the attorney for the debtor(s) to appear at the meeting of creditors (or at a continued or special meeting of creditors) or for the failure to appear prepared to proceed, was given pursuant to Local Bankruptcy Rule 2003-1.

IT IS ORDERED that:

1. This case is dismissed;
2. The clerk shall close the case;
3. Any fees due to the Clerk of Court pursuant to 28 U.S.C. §1930 and the appendix thereto, including filing fees, shall be paid within ten (10) days of the entry of this order, unless otherwise ordered by the court;

Columbia, South Carolina
August 30, 2006



Chief United States Bankruptcy Judge

United States Bankruptcy Court – District of South Carolina
J. Bratton Davis United States
Bankruptcy Courthouse
1100 Laurel Street
Columbia, SC 29201-2423

Case Number: 06-05381-dd

Chapter: 13

In re: (Debtor(s) name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address)

Laura A Toney
PO Box 722
Bishopville, SC 29010

SSN: xxx-xx-6990

Entered By The Court
1/2/07

ORDER OF DISMISSAL
FOR FAILURE TO FILE TIMELY
LISTS, SCHEDULES, STATEMENTS
AND OTHER DOCUMENTS

Filed By The Court

1/2/07

Tammi M. Hellwig
Clerk of Court
US Bankruptcy Court

It appears that notice of possible dismissal of the above captioned case was given pursuant to South Carolina Local Bankruptcy Rule 1007-2, South Carolina Local Bankruptcy Rule 9010-4, and/or South Carolina Local Bankruptcy Rule 3015-1 and that the following documents:

Statement of Assitance for Pro Se

required by Federal Rules of Bankruptcy Procedure 1007, 1019 and/or 3015(b), and the Local Rules of the Court have not been filed by the above named debtor(s) within the time periods set forth therein.

IT IS ORDERED that:

1. Pursuant to South Carolina Local Bankruptcy Rule 1007-2, South Carolina Local Bankruptcy Rule 9010-4, and/or South Carolina Local Bankruptcy Rule 3015-1, this case is dismissed;
2. The clerk shall close the case;
3. Any fees due to the Clerk of Court pursuant to 28 U.S.C. §1930 and the appendix thereto, including filing fees, shall be paid within ten (10) days of the entry of this order, unless otherwise ordered by the court;

Columbia, South Carolina
January 2, 2007



United States Bankruptcy Judge

United States Bankruptcy Court – District of South Carolina
J. Bratton Davis United States
Bankruptcy Courthouse
1100 Laurel Street
Columbia, SC 29201-2423

Case Number: 06-04333-dd

Chapter: 13

In re: *(Debtor(s) name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address)*

Laura Ann Toney
PO Box 722
729 Chatmon St
Bishopville, SC 29010

SSN: xxx-xx-6990

Entered By The Court
11/15/06

**ORDER OF DISMISSAL
FOR FAILURE TO FILE TIMELY
LISTS, SCHEDULES, STATEMENTS
AND OTHER DOCUMENTS**

Filed By The Court

11/15/06

Tammi M. Hellwig
Clerk of Court
US Bankruptcy Court

It appears that notice of possible dismissal of the above captioned case was given pursuant to South Carolina Local Bankruptcy Rule 1007-2, South Carolina Local Bankruptcy Rule 9010-4, and/or South Carolina Local Bankruptcy Rule 3015-1 and that the following documents:

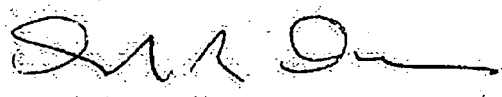
SCHEDULES A TO J, STATEMENT OF FINANCIAL AFFAIRS, STATEMENT OF INCOME CALCULATION, PAYMENT ADVICES, STATEMENT OF INCREASE INCOME/EXP, CHAPTER 13 PLAN, AND PRO SE STATEMENT OF ASSISTANCE.

required by Federal Rules of Bankruptcy Procedure 1007, 1019 and/or 3015(b), and the Local Rules of the Court have not been filed by the above named debtor(s) within the time periods set forth therein.

IT IS ORDERED that:

1. Pursuant to South Carolina Local Bankruptcy Rule 1007-2, South Carolina Local Bankruptcy Rule 9010-4, and/or South Carolina Local Bankruptcy Rule 3015-1, this case is dismissed;
2. The clerk shall close the case;
3. Any fees due to the Clerk of Court pursuant to 28 U.S.C. §1930 and the appendix thereto, including filing fees, shall be paid within ten (10) days of the entry of this order, unless otherwise ordered by the court;

Columbia, South Carolina
November 15, 2006


United States Bankruptcy Judge

1 seated?

2 JUDGE BURGDORF: Sure, please, please.

3 MR. YOUNG: I mean no disrespect to the
4 Court by not standing.

5 JUDGE BURGDORF: No, please, make yourself
6 comfortable.

7 (Marvin H. Dawson, Jr., being first duly
8 sworn, testified as follows:)

9 EXAMINATION

10 BY MR. YOUNG:

11 Q Mr. Dawson, good afternoon. You're under oath,
12 and you've been sworn. Please state your full
13 name for the record.

14 A Marvin H. Dawson, Jr., known also as Mickey
15 Dawson.

16 Q All right, sir. And Mr. Dawson, how old are you,
17 please?

18 A Tomorrow, I'll be 70.

19 Q Well, happy birthday tomorrow.

20 A Thank you.

21 Q Where do you live, please?

22 A Spartanburg, South Carolina.

23 Q And what do you do for a living?

24 A I'm a Forensic Document Examiner, commonly
25 sometimes called Handwriting Expert.

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1 Q And how long have you been engaged in document
2 examination?

3 A Maybe 36 years, 37 years.

4 Q Would you please -- does the Court need to know
5 his educational background?

6 JUDGE BURGDORF: No. We've already gone
7 through all that, I think there's no necessity.

8 MR. MURRELL: It's nothing beyond the
9 curriculum vitae, is it? Although, as I say, I
10 just got handed that.

11 MR. YOUNG: Then, I would offer him as an
12 expert in the field of Forensic Handwriting
13 Analysis.

14 MR. MURRELL: I'm going to object to the
15 extent that he can qualify as such when the
16 documents he's got aren't capable of being
17 verified under any scientific basis. You know,
18 not only the rules, but as you correctly noted in
19 the transcript, I mean, you can look at it and
20 tell if you think it's her signature same as he
21 can.

22 JUDGE BURGDORF: Well, we just qualified him
23 basically as an expert now. I think that's--

24 MR. MURRELL: Well, I mean, I'd object,
25 because I don't think the field is subject to

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1 verifiable -- on a scientific basis.

2 JUDGE BURGDORF: Well, I think that goes to
3 the weight of the evidence rather than the
4 admissibility of it, I think, so I'm going to
5 qualify him as an expert--

6 MR. MURRELL: Okay. I mean, as I said, to
7 the extent that I've just gotten this stuff
8 handed to me, I mean, I'd object.

9 JUDGE BURGDORF: Now, I got a copy of this
10 at least last week.

11 MR. MURRELL: I got a copy of his, of the
12 initial report. It didn't have any of his
13 curriculum vitae. And it was mailed to my
14 office; it was faxed to yours.

15 JUDGE BURGDORF: Oh, okay.

16 MR. MURRELL: So I obviously don't know
17 anything about his qualifications. Now the
18 report I didn't get at the same time you did,
19 because it was faxed to you, and it was mailed to
20 me.

21 JUDGE BURGDORF: Okay. There are two cases,
22 parallel cases, and I'm getting them confused.

23 MR. YOUNG: First of all, I apologize to Mr.
24 Murrell that it wasn't faxed to him, and I hope
25 the next document got faxed at the same time--

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1 MR. MURRELL: I haven't received the other
2 document, and I hope there aren't going to be
3 anymore.

4 MR. YOUNG: I thought they had one other
5 thing they were sending to you. They faxed it to
6 the Court and then faxed you.

7 JUDGE BURGDORF: There was one thing that
8 was faxed to me that didn't have copied to Mr.
9 Murrell. In fact, I was going to ask you about
10 that, dated September 3.

11 MR. MURRELL: I think that was the initial
12 handwriting analysis that he submitted, because
13 she was supposed to post the bond on the 4th. So
14 that one was mailed to my office.

15 JUDGE BURGDORF: Okay. But you just didn't
16 have it on here, that's why I was wondering.
17 Nonetheless, I will hold Mr. Murrell's objection,
18 and I'll qualify him as an expert.

19 BY MR. YOUNG:

20 Q Mr. Dawson, now that you've been qualified as an
21 expert, did you have an opportunity to look at a
22 note that bore the signature of Laura A. Toney?

23 A I did.

24 Q Do you have a copy of that with you?

25 A I should have, yes, sir. Yes, I have a copy of

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1 that, Page 3 of that document.

2 Q 3 of 3?

3 A Page 3 of 3, sir.

4 Q Did you examine that and compare that with other
5 signatures of Mrs. Toney to arrive at an opinion
6 as to whether or not that is, in fact, her
7 signature?

8 A I did.

9 Q And what was your conclusion?

10 A That based upon examination of a poor machine
11 copy, I stated there are indications that this
12 may not be her signature.

13 Q All right. And would you please explain to the
14 Court why you think this may not be her
15 signature?

16 A I brought a chart to better explain that.

17 Q Would you please show him that, and tell him why?

18 A I sure will. Would you hold this for me please?

19 Q And also, go into the control factors that you
20 used.

21 A Yes, sir. The protocol on this examination is
22 the same that we would use on any handwriting
23 case, using the ASTM standards. And that is, we
24 have referred to, referred to the questioned
25 signatures, examined them for any unnaturalness,

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1 flowing of the line, shading of the line, things
2 that would suggest genuineness. And then we
3 examined them to see if they have very blunt
4 initial strokes, a very heavy line, a drawn look,
5 which is generally representative of a
6 non-genuine signature. Then we took the specimen
7 signatures, and once again, verified those as
8 common authorship, and then compared the specimen
9 to the questioned, looking for any similarities
10 or differences, or unique writings, very subtle
11 agreements or disagreements, attempt to reach a
12 conclusion. The chart I have in front of me,
13 first thing, we look at the A, and you'll notice
14 under the questioned, the Q5 reference as a
15 questioned signature, you'll notice the A is down
16 below the line, very heavily drawn, and looks
17 like a pen stopped at the top, and maybe one on
18 the baseline. To the right is an A on the K1,
19 that specimen, and it's very nicely made, and you
20 do not have any stops, starts. The number 2 item
21 would be a terminal stroke of the R, appears to
22 have a slight direction change. If you will
23 notice, it comes down from the peak of the R, and
24 sort of stops, and then changes direction.
25 That's not a natural pen movement. To the right

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1 of that is a K14, and you'll see it goes up and
2 comes down at a nice level straight movement.

3 Q K1 would be a known sample?

4 A Yes, sir, known sample. On Item 3, we're looking
5 at the A again; this is a very roughly made A.
6 You have an initial stroke starting around, there
7 would appear to be a stop. That white
8 transparent spot probably is going to be from the
9 pen. That is not a lift or anything. It's just,
10 but you see where the line is not continuous
11 straight across. Bottom of the A, there is a
12 lift up in there. You have to look at it very
13 carefully, and up and down. The A of all the
14 specimen signatures is made nice, round, and with
15 no stops, starts or problems. The O, you'll
16 notice, is very blocked up on the questioned, the
17 Q50. It's very heavy all the way around. You
18 have pen stroke coming through, down through this
19 part of the O. Ink is built up on several sides,
20 almost as if there's some retracing or touching
21 up.

22 Q What O are you talking about in her signature?

23 A This is Q5A, it would be the O in Toney.

24 Q The top signature of that note?

25 A I'll have to reference this, sir. Yes, it would

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1 be. Yes, sir, that's correct. To the right of
2 that would be one of the known Os, and you see
3 it's nice, smooth, and it does have an opening
4 there. Looking at 5, the N in the Q5A signature
5 is blocked up and set up against the staff, the N
6 and the K14 is open and very firmly made. Item
7 6, you look at the E in Q5A, the E is traced
8 over, it would appear to be, left side 9:00
9 position. Pen skips, but right below that, you
10 can see where there's a stop in the construction
11 of the E. There is also more of a vertical
12 construction and wider. Her Es normally would
13 slant back to the left, and would be oblong, and
14 very nicely made. Number 7, in the Q5AY, you
15 have an eyelet, lefthand staff, and normally, she
16 does not put an eyelet in that staff. Continuing
17 on down on Number 8, the R--

18 Q A is the B section, which would be the signature
19 below?

20 A Yes, sir, that is correct, sir.

21 Q So this is the second signature that appears on
22 the note?

23 A Yes, sir, that is correct. Number 8, we see the
24 R is very heavy, built up, and it looks like a
25 retracing in there. The normal R is tinted, and

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1 it's very nicely made, smoothly made pressure.
2 Number 9, the O in Q5B has the initial stroke
3 going into it and around. Generally, in Q14,
4 generally her O is open and without initial
5 stroke.

6 Q All right. That differs even from the O that's
7 directly above that signature, does it not?

8 A That is correct.

9 Q So the two Os there as exhibits differ from each
10 other; is that right?

11 A That is true, on the questioned and the note.
12 Number 10, the E is closed, and the questioned is
13 closed up, it's tinted, it's retraced. Normally,
14 her E is open and has a left-hand slant.

15 Q Now, that E differs from the one above that too,
16 doesn't it? Signature above it on the note?

17 A Yes, it does. Number 11, the bow of the Y is
18 tinted, it's a very shallow type bow as far as
19 the width goes. Normally her bow, the Y is open
20 and broad. So these are the differences. I
21 noted, these are the differences I noted in this
22 examination, and I had requested the original
23 document for this, Your Honor.

24 Q All right. Now, can you please tell the Court
25 why you did not choose to compare the L's in

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1 Laura?

2 A I didn't feel as though I needed to. I think the
3 lower case letters was of such a problem that I
4 needed to address the uppercase letters.

5 Q Does that apply likewise with the T?

6 A Yes, sir.

7 Q Did you form an opinion as to whether or not the
8 signatures on the note were authentic? In other
9 words, that of Mrs. Laura Toney?

10 A The signatures in question?

11 Q Yes, sir.

12 A I did not.

13 Q You did not?

14 A No. I said there are indications they may not be
15 true.

16 Q Indications?

17 A The reason I did not raise that level anymore is
18 the lack of quality in what I had to work with.

19 Q So the evidence is far from conclusive, I think,
20 is what you're saying?

21 A That is correct, sir.

22 Q Likewise, if they had shown similarities to her
23 other signatures, you would have reached the
24 conclusion that they were, in fact, Ms. Toney's
25 signature; is that right?

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1 A Let me get off the little document stuff here and
2 answer your question. I know you asked what time
3 it is, but Your Honor, we're dealing with machine
4 copies, and you have a decent amount of writing.
5 If there is a gross difference, we can do an
6 elimination depending on how much weight we give
7 to it. We cannot give an identification on a
8 machine copy. We may say that there's a reason
9 to believe that's a genuine signature, or we
10 might even say it's a genuine signature based on
11 what we have to work with. But there will always
12 be a qualification on that under remarks that's
13 qualified upon examination of the original
14 document. The reason is, the signature in
15 question could be a cut and paste through
16 Microsoft, it could be a carbon tracing, it could
17 be a genuine signature placed on that document.
18 So therefore, when you have a machine copy, you
19 do not give an identification, but you can work
20 very closely with elimination. That is addressed
21 under examination limitations, which is in the
22 report, sir. So that's the reason why. If I had
23 had the original, and I could see the, what
24 appears to be pen stops, pen lifts, etc., it
25 would reinforce that this is, indeed, a

Missy Graczyk, Court Reporter

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1 non-genuine signature. If I had the original,
2 and I saw that the problems here with the
3 signatures were created by some other means,
4 mechanical means, then they would be approached
5 differently.

6 Q Without the original documents then, you simply
7 can't tell to an exact science, anyway?

8 A Yes, sir.

9 Q Being that we don't have the original, and being
10 that the best we've got are these copies--

11 A Yes, sir.

12 Q --and you found so many discrepancies in the
13 signature itself, is it likely, in your opinion,
14 Ms. Toney signed this document?

15 A I would go back to my case report. There are
16 indications she did not.

17 Q She did not. Thank you. Please answer any
18 questions Mr. Murrell would have.

19 **EXAMINATION**

20 **BY MR. MURRELL:**

21 Q Mr. Dawson, what did you use in the examination?
22 Now, you mentioned the handwriting samples that
23 Ms. Toney provided you, correct?

24 A Yes, sir. Those came from Board of Education
25 files.

Missy Graczyk, Court Reporter

1 Q Did you get those, or she provided those to you?

2 A She provided those to me, sir.

3 Q Okay. What else did you use for examination?

4 Did you just use the samples that she provided
5 you and the documents that she asked you to
6 examine?

7 A That is correct.

8 Q Did you use anything else whatsoever in your
9 examination?

10 A No, I did not.

11 Q Okay. Is a person's handwriting the same at all
12 times?

13 A No.

14 Q What can alter their handwriting?

15 A It's called natural variation. You can write
16 your signature a hundred times, no two times
17 would be alike. Natural variation, or even
18 awkward letter forms from time to time. However,
19 even though there is natural variation, the
20 formation of the letter forms, letter
21 combinations, remain the same. In other words,
22 the habits remain the same.

23 Q Has it, is it your understanding that a person's
24 signature can change or be altered, whether
25 greatly or slightly, based upon their mental or

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1 physical condition?

2 A We do take, it may be, if it's of a lesser
3 occurrence and more occurrence. I do a lot of
4 the elder law that's become popular in the past
5 six or eight years, and many times, you get
6 hospital beds, or Hospice, and you see a lot of
7 tremor. You see a lot of off baseline, etc., but
8 you still see the very unique and subtle
9 agreements or disagreements which will lead the
10 examiner to a certain area where you do further
11 examination of. It's possible that the person
12 could break their wrist, and that's why we ask
13 for contemporary standards to remove any
14 suggestions like that.

15 Q What do you mean by contemporary standards?

16 A If the questioned document is September of 2004,
17 we try to get September 2004 collected examples.
18 Sometimes, it depends on the habits. If the
19 individual writer's habits are so consistent
20 within the specimen, then you can eliminate a lot
21 of problems.

22 Q So the documents you used, I guess you would say
23 as your control factors, were documents provided
24 by Ms. Toney from some other file?

25 A That's true, and they were, by looking at those

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1 and examining those, they were naturally
2 executed--

3 Q In your opinion?

4 A Yes, sir, based upon 35 years of experience and
5 training. They were naturally executed, and they
6 flowed very nicely, and they had all the
7 characteristics you would expect from a genuine
8 signature.

9 Q And were those done on the same exact date as the
10 documents that were in question?

11 A No. I think they varied some in date. I do not
12 recall the exact dates.

13 Q So did Ms. Toney provide you with any documents
14 from this closing or on the exact date that she,
15 that were not in question as her signature?

16 A I don't believe so. I think what I had of her
17 handwriting, what I wanted, was collected
18 signatures where there would be no challenge as
19 to authenticity.

20 Q So, you used what Ms. Toney provided you?

21 A As I've answered before, yes, sir.

22 Q Okay. Do you know whether or not the document
23 she provided you used the same pen that she, that
24 was used on these documents that were being
25 questioned?

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1 A That wasn't the issue.

2 Q Okay. Does every pen write the exact same?

3 A Technically, I think the answer would be no, but
4 generally, you have a Bic 44 that's going to
5 write the same unless the point or the tip has
6 been damaged, or the pen is defective. And
7 that's caused by minute granular things getting
8 into the bulb and scratching it or whatever.

9 Q So pens can vary, depending upon the type of pen
10 and depending upon its condition?

11 A True, but the pen doesn't write the letter and
12 the subtle agreements and disagreements, the
13 writer does.

14 Q But do some pens write thicker than others?

15 A Certainly.

16 Q Do some pens have a damaged ball and the ink
17 plots up at the end?

18 A From time to time. However, you see, one you've
19 judged there, even though it may be a bold line,
20 you know, like that, and that's where you're
21 heading. You can also see the shading of the
22 ink, the release of pressure, and that is, of
23 course, some natural genuine characteristics,
24 even through a felt tip. But when it's heavy,
25 broad, all the way through, slowly executed,

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1 blunt initial and terminal strokes, normally
2 that's not a genuine writing.

3 Q Did you have Ms. Toney -- okay, you testified you
4 didn't use any control documents from the same
5 date as the alleged documents. Did you have her
6 write out a sample for you in your presence?

7 A No, I did not. I do not like that, because then,
8 under cross-examination, they can allege that
9 she's playing games with me. I wanted all normal
10 courses of business signatures to eliminate that
11 suggestion.

12 Q So, you used documents that she told you were her
13 signature, but you did not know that to be a
14 fact?

15 A I felt that by the source of the documents, they
16 were genuine documents. They had witnesses on
17 them. There may have been one or two notarized--

18 Q Is that reflected in your report? I didn't see
19 that in any of the documents you handed in with
20 your report, being notarized or witnessed.

21 A I wasn't asked that, I was asked was it--

22 Q Well, I'm asking you if it's in your report.

23 A No.

24 Q Okay. Did you -- you said all you used were the
25 handwriting samples, so you didn't interview Ms.

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1 Toney about her physical condition at the time,
2 or if she was on any medication or anything like
3 that?

4 A I didn't feel that I needed to. I was after the,
5 I was examining the evidence, and she wasn't the
6 evidence. The evidence was in front of me.

7 Q Well, but I thought that you testified that a
8 person's mental and physical condition can alter,
9 slightly, the way they write their signature?

10 A I did, but I also qualified that by saying the
11 construction of the letters and letter
12 combination remain the same, even though
13 pictorially, it may seem awkward.

14 Q How many examinations have you done for Ms.
15 Toney?

16 A Two, sir, both of them on the table.

17 Q Okay. I thought you did one for the Lee County
18 case, and you did one for this case?

19 MS. TONEY: They are included.

20 MR. MURRELL: Now, Your Honor, she can't
21 coach the witness. I would object to that.

22 DEPONENT: Let me answer your question. In
23 the first hearing, I understood there was a Lee
24 County issue. I was not there, I was not aware
25 of it, I had no idea what y'all were talking

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1 about.

2 MR. MURRELL: Your Honor, I wasn't in that
3 hearing, but I'm a little confused why he was
4 admitted as an expert and testifying on an
5 Orangeburg County case using evidence from a Lee
6 County matter.

7 JUDGE BURGDORF: No, no. I think -- this
8 doesn't need to be on the record.

9 (Off the record, briefly.)

10 MR. MURRELL: Your Honor, I've asked you for
11 the witness not to talk to the--

12 JUDGE BURGDORF: Mr. Young, he's in charge
13 of the witness.

14 MR. MURRELL: I know, but you know, he's
15 discussing--

16 MR. YOUNG: I agreed that she shouldn't have
17 said something, but she'd like to say something
18 to the Court now if you would permit her.

19 MR. MURRELL: Your Honor, I need to finish
20 my cross-examination.

21 JUDGE BURGDORF: Yeah. Let him finish.
22 Then she can, y'all can have the lead.

23 BY MR. MURRELL:

24 Q So you've done two examinations for Ms. Toney?

25 A Yes, that is correct.

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1 Q And you used the same control documents on each
2 case?

3 A Yes, sir.

4 Q And both times, low and behold, you have found
5 indications that it's not her signature?

6 A No. The first time I think it was qualified as
7 not her signature, this time it's indications
8 they're not.

9 Q Okay, but you didn't examine the bankruptcy
10 petition where she affirmed this debt, did you?

11 A Sir, I think I've answered that, with all due
12 respect. I think I've answered that what, about
13 four or five times now? I have not examined
14 that. You have what I've examined.

15 Q It just got handed to me, sir, and I have not had
16 much of a chance to review it, so I'm just trying
17 to make sure I'm covering my bases.

18 A I can appreciate that, yet for another time, sir,
19 I have examined nothing except what's there. I
20 can assure you that to the best of my knowledge,
21 I have examined no case files. The only thing
22 I've examined would be from her Board of
23 Education, her signature, and whatever these
24 documents are listed in my report. There's only
25 five entries, you can glance at them and see

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1 exactly what they are, or I can publish it,
2 either way.

3 Q And let me couch this appropriately, sir. You're
4 limited by what you're provided, correct?

5 A Yes.

6 Q No further questions.

7 MR. YOUNG: Please the Court, at this time,
8 I would like to offer into evidence Mr. Dawson's
9 first report dated December 12, 2007, and his
10 supplemental report dated September 2, 2008.

11 JUDGE BURGDORF: Now, that is, I know it was
12 in here, it was introduced in the other case,
13 LaSalle case. I'm not sure that's -- has that
14 been introduced in this case?

15 MR. MURRELL: Absolutely not, Your Honor.

16 MR. YOUNG: And we'd offer it into evidence
17 along with his chart so it can be part of the
18 record.

19 MR. MURRELL: I'm going to renew my
20 objection, Your Honor. I mean, this has been
21 trial by ambush from day one.

22 JUDGE BURGDORF: I understand your
23 objection.

24 MR. MURRELL: I'm sorry, the day--

25 JUDGE BURGDORF: I understand your

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1 objection. He's going to testify in cross on it,
2 so, he's testified to it, so --

3 MR. YOUNG: Can I have these marked, please?

4 (Exhibit Nos. 1 and 2 were marked for
5 identification.)

6 EXAMINATION

7 BY MR. YOUNG:

8 Q Mr. Dawson, just to clear up a couple of things,
9 you don't go out and dig through public records
10 and everything to find signatures, you examine
11 what's provided to you; is that correct?

12 A That's normal procedure, yes, sir.

13 Q And you take documents that individuals say these
14 are other documents that I have signed, this is a
15 questioned signature, run the comparison for me;
16 isn't that right?

17 A Yes, sir.

18 Q And that's what you did in this case?

19 A Yes, sir.

20 Q Thank you.

21 MR. YOUNG: That's all the questions I would
22 have; if Mr. Murrell has anymore.

23 MR. MURRELL: Not of this witness. He can
24 be excused.

25 JUDGE BURGDORF: I think that's the only

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1 Q So you got the money that's reflected on the HUD
2 Settlement Statement?

3 A Yes.

4 Q And there's no question that these loan proceeds
5 paid off the prior mortgage?

6 A No.

7 Q And it was your intent to sign a note to get the
8 loan; is that correct?

9 A Well, I thought all of the necessary documents
10 were there for me to sign.

11 Q Ma'am, it's a yes or no question. Did you intend
12 to sign the note to get the loan proceeds?

13 A I wanted to sign all of the necessary documents
14 for the loan.

15 Q So you got the full benefit of the loan proceeds?

16 A Yes.

17 Q And did you include this mortgage as a debt on
18 your bankruptcy schedule?

19 A Yes, I did, but I found out about the forgery
20 long after the bankruptcy.

21 Q Ma'am, I'm asking you if you included it as a
22 secured mortgage on your bankruptcy schedule?

23 A Yes, I did.

24 Q And did you affirmatively state on Schedule B,
25 Paragraph 21, that you did not have any defenses,

Missy Graczyk, Court Reporter

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(803) 528-0022 * MissyCR@bellsouth.net

KORN LAW FIRM, P. A.
POST OFFICE BOX 11264,
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211
(803) 252-5817

September 11, 2008

Fax (803) 533-5898 & regular mail
Orangeburg County Master-in-Equity
P.O. Drawer 9000
Orangeburg, SC 29116

Re: Deutsche Bank v. Laura Toney, et al
Case No. 2007-CP-38-807
File No. F27-02370

Dear Judge Burgdorf:

This letter is in response and in objection to the "report" submitted by opposing counsel. It was apparently submitted to your office by fax but was submitted to my office by regular mail. The failure to provide the document to me in the same time and manner as it was sent to your office is improper.

It is my understanding that Ms. Toney was barred from presenting any further evidence unless she posted the requisite bond and this submission by opposing counsel appears to be in direct violation of the order previously issued so I would object to it on that basis. Without delving into the lack of qualifications by Mr. Dawson, I would note that the document is not even submitted in affidavit form as required by the rules. The "examination" does not employ any reliable or objective standards. It uses documents supplied by Ms. Toney as the supposed control documents for examination. The documents which Ms. Toney admitted were signed by her at the closing were apparently not used or reviewed by Mr. Dawson. Instead, Mr. Dawson apparently used documents that, assuming they were signed by Ms. Toney, were executed long before or long after the loan documents. Mr. Dawson appears to have merely rubberstamped his prior report issued in the Lee County case and did not even use any new or different documents. That "report" was determined unpersuasive in the prior litigation and the new "report" seems to be merely a rubberstamp of the prior submission.

I previously requested that the Court take judicial notice of the Defendant's prior bankruptcies and a copy of the relevant orders were submitted into evidence. I have enclosed a copy of Schedule D from her Bankruptcy Case #06-05381-dd where she expressly acknowledged that the mortgage debt was a perfected secured lien. Also attached is Schedule B wherein she was required to state in paragraph 21 **under penalty**

of perjury any "contingent and unliquidated counterclaims claims of every nature, including ... counterclaims of the debtor and rights to setoff claims". I have also enclosed the proof of claim served on Ms. Toney in the bankruptcy, which was approved by the U.S. Bankruptcy Court in the case. This clearly acts as judicial estoppel. The caselaw is well established that Ms. Toney cannot take an inconsistent stance in this litigation than in the prior bankruptcy. Ms. Toney may have been pro se in the bankruptcy, but she spent a great deal of time and thought on the case. She even requested a breakdown of the escrow analysis for the loan, which was provided to her.

As in the prior case, this "report" is an opinion only and is not an objective examination that can be viewed as accurate. Also as in the prior case, there was reliable eyewitness testimony that Ms. Toney signed the documents. Ms. Toney does not dispute that she made payments on the account as required by the note for one (1) year. She was served a copy of the note with the proof of claim and it was accepted and incorporated into her bankruptcy. She does not dispute that she was served with the pleadings in this matter and is in default. Her previous testimony was that she got the loan proceeds from the mortgage broker. The cancelled check from the closing attorney's trust account clearly established that her testimony was at least misleading. I still argue that it constituted perjury and that appeared to be the only reason your honor set the case for further hearing.

I would request that your honor enforce the prior ruling, exclude the "report" due to the failure to post the requisite bond and grant my motion for sanctions. The orders I submitted clearly prove Laura Toney's record of bad faith litigation and dilatory tactics in the trial courts, U.S. Bankruptcy Court and the South Carolina Appellate Court. In this case, she filed a Rule 59 motion that was frivolous. She then filed the present Rule 60 motion and the two (2) grounds stated in the motion are frivolous on their face. Over my objections, she gave either misleading testimony or perjury as to disbursement of the loan proceeds. Her attorney apparently subpoenaed the loan officer to appear with his file and did not serve me with a copy of the subpoena as expressly required by Rule 45(b)(1). Now her attorney directly violated the court's prior order by submitting a "report" without posting the requisite bond.

I strongly disagree with attorney Young that this is "whole new situation". This is exactly the same pattern of bad faith litigation, dilatory tactics and disregard for the court rules that has been employed in the prior litigation in Lee County. I would request that the enforce its prior ruling, exclude and disregard the "report" and maintain the integrity of the legal process by sanctioning the clear violations of both the rules of court and the express rulings previously issued.

Your attention in this matter is very much appreciated.

Very truly yours,

H. Guyton Murrell

cc:

Fax (803) 773-4374 & regular mail

Kenneth Young, Esquire

23 W. Calhoun Street

Sumter, SC 29150

KORN LAW FIRM, P. A.
POST OFFICE BOX 11264,
1300 PICKENS STREET
COLUMBIA, SOUTH CAROLINA 29211
(803) 252-5817

February 11, 2009

Orangeburg County Master-in-Equity
P.O. Drawer 9000
Orangeburg, SC 29116

Re: Deutsche Bank v. Laura Toney, et al
Case No. 2007-CP-38-807
File No. F27-02370

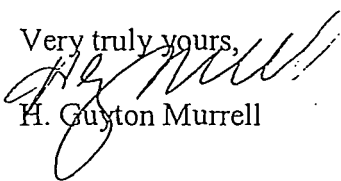
Dear Judge Burgdorf:

Please permit this letter to serve as my response to the accusations by Ms. Toney's bankruptcy attorney that I violated the bankruptcy stay by scheduling a hearing for February 11, 2009 at 10:30 a.m. on Ms. Toney's Motion for Reconsideration in the above noted matter. I was very surprised by attorney French's statements given that I had discussed the matter with him at length and he had assured me that the hearing would not be deemed a violation of the stay.

The motion was filed by Ms. Toney pro se despite her having an attorney of record. **The hearing was scheduled by Ms. Toney and not me.** Ms. Toney prepared and sent a notice of hearing, a copy of which is enclosed. The notice drafted by Ms. Toney was defective in that it did not provide notice of the hearing to any of the other parties or to the court. After discussing the matter with attorney French and the Chapter 13 trustee, I was assured that the hearing was not a violation of the stay given that the hearing was being held at the insistence of Ms. Toney. Therefore, I prepared and mailed a notice of hearing that corrected the defects in Ms. Toney's notice.

The notice I prepared on January 27, 2009 confirmed that I had advised the court and all parties of Ms. Toney's Chapter 13 Bankruptcy. I categorically deny attorney French's allegations of improper conduct.

Very truly yours,


H. Guyton Murrell

cc:

Kenneth Young, Esquire
23 W. Calhoun Street
Sumter, SC 29150

Elizabeth Polk, Esquire
P.O. Box 2065
Columbia, SC 29202

Orangeburg County Clerk of Court
P.O. Drawer 9000
Orangeburg, SC 29116

Shawn M. French, Esquire
1476 Ben Sawyer Blvd, Suite 3
Mt. Pleasant, SC 29464

Joy S. Goodwin, Esquire
Chapter 13 Trustee
1813 Laurel Street
Columbia, SC 29201

F27-01808
68370

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

CASE NO. 2007-CP-38-807

Deutsche Bank

PLAINTIFF

NOTICE OF HEARING

v.

Laura Toney

DEFENDANT.

TO: Korn Law Firm

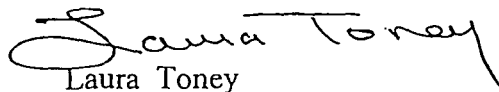
P.O. Box 11264

1300 Pickens Street

Columbia, SC 29211

PLEASE BE ADVISED that a hearing has been scheduled in this matter for February 11, 2009, at 10:30 AM before The Honorable O. Davie Burgdorf, Master-In-Equity for Orangeburg County at the Orangeburg County Courthouse, 190 Gibson Street, Orangeburg, South Carolina.

January ²³~~20~~, 2009


Laura Toney

P.O. Box 722

Bishopville, SC 29010

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

CASE NO. 2007-CP-38-807

Deutsche Bank

PLAINTIFF

v.

Laura Toney

DEFENDANT

CERTIFICATE OF MAILING

I, Laura Toney, Defendant, certify that I served a copy of the Notice of Hearing on the Korn Law Firm via United States Mail on January ²³20, 2009, addressed as follows:

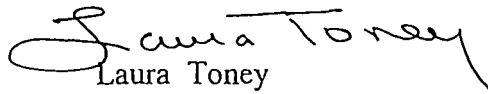
Korn Law Firm

P.O. Box 11264

1300 Pickens Street

Columbia, SC 29211

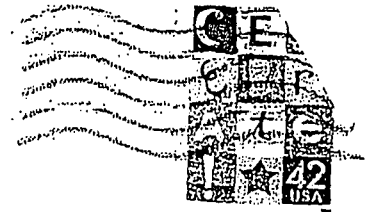
January ²³20, 2009


Laura Toney

Laura Toney
P.O. Box 722
Bishopville, SC 29010

COLUMBIA SC 292

23 JAN 2003 PM 3:1

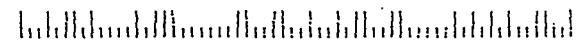


Korn Law Firm
P.O. Box 11264
1300 Pickens Street
Columbia, SC 29211

KORN LAW FIRM

H.H.

29201+3469



[WHEN RECORDED RETURN TO:]
KORN LAW FIRM
1300 PICKENS STREET
P.O. BOX 11264
[COLUMBIA, SC 29211-1264]

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

ASSIGNMENT OF MORTGAGE
BOOK 1587 PAGE 104

F25-04043

FOR VALUE RECEIVED, the undersigned, New Century Mortgage Corporation, does hereby transfer, assign, set over and convey to Deutsche Bank National Trust Company, as Trustee, in Trust for the Benefit of the Certificateholders, New Century Mortgage Securities, New Century Home Equity Loan Trust, Series 2005-A, Asset Backed Pass-Through Certificates 7105 Corporate Drive, Plano, TX 75024, their successors and assigns, all beneficial interest under that certain mortgage executed by Laura T. Toney, to New Century Mortgage Corporation which mortgage is recorded on June 1, 2005, in the Office of the RMC for Orangeburg County, South Carolina, in Mortgage Book 1587 page 104, together with all the notes and indebtedness secured by said mortgage, the money due and to become due thereon with interest, and all rights accrued or to accrue; and the undersigned does hereby remise, release, quit claim and convey to Deutsche Bank National Trust Company, as Trustee, in Trust for the Benefit of the Certificateholders, New Century Mortgage Securities, New Century Home Equity Loan Trust, Series 2005-A, Asset Backed Pass-Through Certificates in and to the property described in and conveyed by said mortgage.

PROPERTY ADDRESS: 1030 Spring Street, Orangeburg, SC 29117

IN WITNESS WHEREOF, the undersigned New Century Mortgage Corporation, on _____, 2005 has hereunto set its hand and seal.

New Century Mortgage Corporation

BY: *Sandy Alotta*

ITS: SANDY ALOTTA, ASSISTANT VICE PRESIDENT

Jennifer Alotta
Witness #1

Jennifer Alotta
Witness #2

ATTEST: TRUE COPY
Gail Laney
REGISTER OF DEEDS
ORANGEBURG COUNTY, SOUTH CAROLINA

FILED Nov 02, 2005 10:08:47 am
BOOK 01641
PAGE 0051 THRU 0052
INSTRUMENT # 2005006583

FILED
ORANGEBURG
COUNTY
GAIL LANEY
REGISTER
OF DEEDS

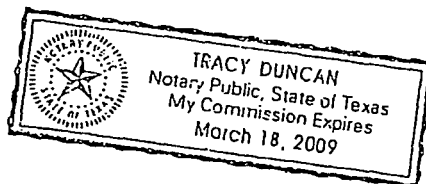
Gail Laney
Signature

CORPORATE ACKNOWLEDGEMENT

State of TEXAS
County of COLLIN

On _____, 200____, _____ personally came before me and, being duly sworn, did state that he/she is ~~GARY ALLOTTA, ASSISTANT VICE PRESIDENT~~ of the corporation described in the above document; that he/she signed the above document in my presence on behalf of this corporation; and that he/she had full authority to do so.

[Signature]
Notary Public for the County of Collin
State of TX
My Commission expires: _____



1254
0294

D-BK:01254 PG:0294

KORN LAW FIRM

P.O. BOX 12369
COLUMBIA, SC 29211-2369

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

DEED
(PUBLIC SALE)

C/A NO: 2007-CP-38-807

F27-02370

To Whom These Presents shall concern:

I, O. Davie Burgdorf, as Master in Equity for Orangeburg County, State of South Carolina, send greetings:

WHEREAS, in an action in the Court of Common Pleas in Orangeburg County between Deutsche Bank National Trust Company As Trustee For The Holders Of New Century Home Equity Loan Trust, Series 2005-A, Asset Backed Pass-Through Certificates and Laura T. Toney a/k/a Laura A. Toney, LaSalle Bank National Association, as Trustee for the registered holders of Structured Asset Securities Corporation, Structured Asset Investment Loan Trust, Mortgage Pass-Through Certificates, Series 2004-11 and LaSalle, Bank National Association, Trustee for Lehman Brothers Structured Asset Investment Loan Trust Sail 2005-2 as Defendants, the Judge of said County by Order passed on January 10, 2008 did decree that the property described should be sold by the Master in Equity for Orangeburg County on the terms and for the purposes mentioned in the order granted in the case; and WHEREAS, I the undersigned, as Master in Equity for Orangeburg County, after due advertisement of the said property for sale at public outcry, did openly and publicly, and after the matter of auction, sell the said property on February 4, 2008 for the sum of Forty Thousand And 00/100 (\$40,000.00) Dollars, said sum being the highest amount bid, to Deutsche Bank National Trust Company As Trustee For The Holders Of New Century Home Equity Loan Trust, Series 2005-A, Asset Backed Pass-Through Certificates, its successors and assigns.

NOW, KNOW ALL MEN, That I, the undersigned, as Master in Equity for Orangeburg County, pursuant to the forgoing and also in consideration of the said bid paid as the aforesaid by the said herein below named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and by these presents do grant bargain and release the following described property unto the grantee, Deutsche Bank National Trust Company As Trustee For The Holders Of New Century Home Equity Loan Trust, Series 2005-A, Asset Backed Pass-Through Certificates, its successors and assigns.

LEGAL DESCRIPTION AND PROPERTY ADDRESS:

All that certain piece, parcel or lot of land, together with the improvements thereon, if any, situate, lying and being in the City of Orangeburg, County of Orangeburg, State of South Carolina, being shown as a portions of Lots 26, 27 and 29, Boulevard Terrace, containing 0.10 acre, as shown on that plat of survey prepared for Angela Y. Spigner by Donald J. Smith, Jr., RLS, dated January 27, 1996 and recorded in the office of the Register of Deeds for Orangeburg County in Plat Book 75-S at page 332. Being bounded and measuring generally as follows: On the Northeast by Lot 29, property now or formerly of Jerold Keitt, measuring thereon fifty-eight and forty hundredths (58.40') feet; on the Southeast by portion of Lot 26, 27 and 28, property now or formerly of David Hodgson, measuring thereon seventy four and ninety six hundredths (74.96') feet; on the Southwest by Spring Street, sixty and ninety two hundredths (60.92') feet; and on the Northwest by Lot 6, Block "B", property now or formerly of Lamar Judy, measuring thereon seventy four and ninety eight hundredths (74.98') feet.

FILED Mar 06, 2008 11:24:11 am
BOOK 01254
PAGE 0294 THRU 0298
INSTRUMENT # 2008001070

FILED
ORANGEBURG
COUNTY
GAIL LANEY
REGISTER
OF DEEDS

ENTERED IN THE OFFICE OF ASSESSOR
MAP 0173 SHEET 06 BLOCK 16 PARCEL 09
THIS 10 DAY OF March 2008
ORANGEBURG COUNTY JIM MCLEAN, COUNTY ASSESSOR

Hal Sany
Signature

This conveyance is made subject to any and all existing reservations, easements, right-of-way, zoning ordinances, and restrictive or protective covenants that may appear of record or on the premises.

This being the property conveyed to Laura T. Toney by deed from Carrie Bell Thomas, dated October 2, 2003 and recorded on October 6, 2003, in Book 1006 at Page 315, in the Register of Deeds Office for Orangeburg County, South Carolina.

1030 Spring Street, Orangeburg, SC 29117

TMS # 0173-06-16-009.000

0034450

Grantees Address: 7105 Corporate Drive
PTX-B-35 Plano, TX 75024

TOGETHER, with all the singular the hereditaments, rights, members and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions and remainders, rents, issues, and profits thereof; and also any estate, right, title, interest, dower, possession, benefit, claim or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

TO HAVE AND TO HOLD the said property, with its hereditaments, privileges, and appurtenances, unto the said grantee, his/its successors and assigns for their own use, benefit, and behoof, forever.

IN WITNESS WHEREOF, I, the undersigned, as Master in Equity for Orangeburg County, under and by virtue of the said order(s), have hereunto set my Hand and Seal the 30 day of February the year of our Lord Two Thousand Eight, and in the Two Hundred and Thirtieth ~~year~~ second year of Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED

In the Presence of:

Kerue B Wingard
J. Janet Porterfield

O. Davie Burgdorf
Master in Equity for Orangeburg

(L.S.)

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

C/A NO: 2007-CP-38-807

PERSONALLY APPEARED the undersigned witness and made oath that (s)he saw O. Davie Burgdorf, as Master in Equity for Orangeburg County, sign, seal, and deliver the within Deed; and that deponent together with the other witness signed their names as witnesses thereto.

Heene S Wingard

SWORN to before me this
20 day of February, 2008

F. Janet Porterfield (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8-12-2013

This deed was prepared by Korn Law Firm, P.A., Attorney at Law, 1300 Pickens Street,
Columbia, SC 29201

Index: Laura T. Toney
Master in Equity

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

D-BK:01254 PG:0297

AFFIDAVIT

F27-02370

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

1. I have read the information on this affidavit and I understand such information.
2. The property located at 1030 Spring Street, Orangeburg, SC 29117, bearing Tax Map Number 0173-06-16-009.000, was transferred by O. Davie Burgdorf, as Master in Equity to Deutsche Bank National Trust Company As Trustee For The Holders Of New Century Home Equity Loan Trust, Series 2005-A, Asset Backed Pass-Through Certificates.
3. Check one of the following: The DEED is
 - (a) _____ subject to the deed recording fees as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ☒ EXEMPT FROM RECORDING FEES AS FOLLOWS:
_____ #2 Transferred to a Government Agency
☒ #13 Transferred to Mortgage by Foreclosure or Deed in Lieu of Foreclosure
_____ Other _____
4. Complete the following if either item 3(a) or 3(b) above has been checked.
 - (a) \$_____ The fee is computed on the consideration paid or to be paid in money or money's worth.
5. Check YES _____ or NO ~~XXXX~~ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$_____.
6. The DEED Recording Fee is computed as follows:
 - (a) \$_____ the amount listed in item 4 above.
 - (b) \$_____ the amount listed in item 5 above.
 - (c) \$_____ subtract Line 6(b) from Line 6(a).
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee is \$ 10.00
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected to the transaction as: Plaintiff's Attorney.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 4
Day of March, 2008

[Signature]
Notary Public for South Carolina
My Commission Expires: 7/19/14

[Signature]
Responsible Person Connected with this Transaction

INFORMATION

Except as provided in this paragraph, the term value means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.