

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

Perry H. Gravely, Circuit Court Judge
Robin B. Stilwell, Circuit Court Judge

Case No. 2019-001565

Wells Fargo Bank, N. A. Plaintiff – Respondent

v.

Michelle Hodges, Individually and as Personal Representative
of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon;
SC Housing Corp.; and Twin Creeks Homeowners Association,
Inc. Defendants,

Of Whom Michelle Hodges, in her Individual capacity,
is the Appellant.

RECORD ON APPEAL

Michelle Hodges, Pro Se Appellant
6 Young Harris DR
Simpsonville, SC 29681
864-714-5263
Certified mail to: PO Box 95
Mauldin, SC 29662

①684

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP2308016

Wells Fargo Bank NA
PLAINTIFF(S)

Michelle Hodges et al
DEFENDANT(S)

- DISPOSITION TYPE (CHECK ONE)**
- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

This matter comes before the Court pursuant to Plaintiff's Motion to Alter or Amend her Complaint for a seventh time. The Motion is respectfully denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/26/2019 .

Probate Court Greenville County
Ruth Ladson Witherspoon Estate for Ruth Ladson Witherspoon Estate
Ruth Ladson Witherspoon for Ruth Ladson Witherspoon
Michelle Hodges Personal Representative for Michelle Hodges Personal Representative
Michelle Hodges Personal Representative for Michelle Hodges Personal Representative
Michelle Hodges for Michelle Hodges
Twin Creeks Homeowners Association Inc
Stanley Witherspoon
Michelle Hodges for Michelle Hodges
Ruth Ladson Witherspoon Estate for Ruth Ladson Witherspoon Estate
Ruth Ladson Witherspoon for Ruth Ladson Witherspoon
COPIES OF THIS ORDER BEING SERVED BY MAIL

1

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

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Greenville Common Pleas

Case Caption: Wells Fargo Bank NA vs. Michelle Hodges , defendant, et al
Case Number: 2017CP2308016
Type: Order/Electronic Form 4

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2019-04-26 13:59:24 page 3 of 3

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP2308016

Wells Fargo Bank NA
PLAINTIFF(S)

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☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

See Page 2

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/24/2019.

Probate Court Greenville County
Ruth Ladson Witherspoon Estate for Ruth Ladson Witherspoon Estate
Ruth Ladson Witherspoon for Ruth Ladson Witherspoon
Michelle Hodges Personal Representative for Michelle Hodges Personal Representative
Michelle Hodges Personal Representative for Michelle Hodges Personal Representative
Michelle Hodges for Michelle Hodges
Twin Creeks Homeowners Association Inc
Stanley Witherspoon
Michelle Hodges for Michelle Hodges
Ruth Ladson Witherspoon Estate for Ruth Ladson Witherspoon Estate
Ruth Ladson Witherspoon for Ruth Ladson Witherspoon
NAMES OF ADDITIONAL PARTIES SERVED BY MAIL

4

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter came before the Court upon various Motions filed by Plaintiff and Defendant Michelle Hodges. The hearing was held on July 22, 2019 and Sterling Laney, Esq. appeared on behalf of the Plaintiff and Michelle Hodges appeared pro se. The Court heard 4 Motions presented by Defendant Hodges and 3 presented by the Plaintiff, and all will be addressed below.

At the conclusion of the hearing, the Court took all Motions under advisement but did Order that this case be removed from the jury trial docket for August 5, 2019. Based on the rulings below, this matter will be referred to the Honorable Charles B. Simmons, Jr. as Master in Equity for Greenville County.

At the hearing, the Court gave both parties ample opportunity to present any information which they felt needed to be reviewed by the Court. In ruling on the Motions, the Court considered arguments at the hearing, all pleadings and Memoranda presented by both sides and the Court rules as set forth below:

- 1) Defendant Hodges' Motion for Sanctions. Even though this Motion addressed additional issues, Defendant Hodges advised that she was only going forward on the Plaintiff's failure to respond to various Requests to Admit relating to the genuineness and authenticity of documents. Plaintiff's counsel argued that the Plaintiff had objected to certain Request to Admit because they had exceeded the number allowed by Rule 26, but advised that he would agree to supplement the Plaintiff's previous response for any requests which specifically related to the authenticity of documents within 10 days from the date of this Order. Otherwise, Defendant Hodges failed to prove that she was entitled to any sanctions and her Motion is denied.
- 2) Defendant Hodges' Motion to Compel. Even though numerous issues were discussed during this portion of the hearing, Defendant Hodges advised the court that the only issue on which she was proceeding related to the Request to Admit which has been addressed above. Defendant Hodges also indicated that the discovery responses had not been properly verified since the date of the verification was before the date of the responses. The Court finds that this does not make the verification defective and was within the S.C. Rules of Civil Procedure relating to discovery. Otherwise, Defendant Hodges failed to establish any basis for an Order compelling the Plaintiff to provide any additional discovery responses and this Motion is Denied.
- 3) Defendant Hodges' Motion for Status Conference. At the beginning of the hearing, the Court asked for the parties to provide any information about the status of their cases which satisfied the request for a status conference. In light of the additional rulings, any further status conference would not be needed.
- 4) Defendant Hodges' Motion to Strike Trial Date. The Court removed the case from the August 5, 2019 term of Court and the matter will be referred to the Master in Equity as set forth below.
- 5) Plaintiff's Motion for Status Conference and Date Certain. As stated, this issue has been resolved by the other rulings in this matter.

As to the remaining 2 Motions by the Plaintiff, Motion for Summary Judgment and Motion to Strike Defendant's right to a jury trial, the Court preliminary grants both Motions on the grounds set forth in the Motions, Plaintiff's Memoranda and arguments at the hearing. The Court would ask the Plaintiff's attorney submit a proposed Order along these lines for the Court's consideration as to both Motions with a copy of the proposed Order sent to defendant Hodge when it is presented to the Court. Further, the Order should provide that this case shall be referred to the Honorable Charles B. Simmons, Jr., Master in Equity for Greenville County for final disposition. This referral to the Master in Equity shall be effective upon issuance of this final order.



Greenville Common Pleas

Case Caption: Wells Fargo Bank NA vs. Michelle Hodges , defendant, et al

Case Number: 2017CP2308016

Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2019-07-24 14:39:31 page 3 of 3

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Wells Fargo Bank, NA,

Plaintiff,

v.

Michelle Hodges, Individually; Michelle Hodges, as Personal Representative of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon; SC Housing Corp.; Twin Creeks Homeowners Association, Inc.;

Defendants.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Case No. 2017-CP-23-08016

ORDER

This matter came before the Court on July 22, 2019, for a hearing on various motions. The Court dispensed with several motions via a Form 4 Order entered on July 24, 2019. This Order addresses Plaintiff Wells Fargo Bank, N.A.'s ("Plaintiff" or "Wells Fargo") remaining two motions: Motion for Summary Judgment and Motion to Strike Defendant's Jury Trial Demand (collectively the "Motions"). At the hearing, Wells Fargo was represented by S. Sterling Laney, III, Esquire of Womble Bond Dickinson (US) LLP. Defendant Michelle Hodges ("Defendant" or "Hodges") appeared *pro se*.

After carefully reviewing the motion and memoranda submitted by the parties, hearing arguments from the parties, and considering the applicable law and facts related to the motion, the Court, in viewing the facts in the light most favorable to Defendant, finds it is proper to enter an Order Granting Wells Fargo's Motion for Summary Judgment and dismissing Defendant's counterclaims and the affirmative defenses of Lack of Subject Matter Jurisdiction, Lack of Standing, Fraud on the Court, and Protection from Sale Due to Transfer by Desent (sic) with

prejudice. In light of the Court's ruling regarding Defendant's counterclaims, the Court grants Wells Fargo's Motion to Strike the Defendant's Jury Trial Demand and further orders that this case be referred to the Honorable Charles B. Simmons, Jr., Master in Equity for Greenville County, for final disposition.

FACTUAL BACKGROUND

This is a mortgage foreclosure action that was initiated on December 22, 2017. The loan in question was entered into on March 28, 2012 between Defendant's mother, Ruth Witherspoon, and NVR Mortgage Finance, Inc. Since Wells Fargo filed its foreclosure complaint, Defendant has amended her answer and counterclaims multiple times. Defendant's current pleading, which is the subject of this Order, is her "Sixth Amended Answer and Counterclaim", which was filed on July 30, 2018. In this pleading, Defendant asserted the following counterclaims against Wells Fargo: (1) Actual Fraud; (2) Breach of Fiduciary Duty; (3) Intentional Infliction of Emotional Distress; (4) Negligence; (5) Deceptive Business Practices All of Which Occurred; and (6) Fair Debt Collection Prohibited. Defendant also asserted the following affirmative defenses: (1) Fraud Upon the Court; (2) Protection from Sale Due to Transfer by Desent (sic); (3) Lack of Standing; (4) Unclean Hands; and (5) Lack of Jurisdiction.

LEGAL STANDARD

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452 (2001) (citations omitted). To this end, summary judgment must be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "In determining whether any triable issues of fact exist for summary

judgment purposes, the evidence and all the inferences that can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.” *Cunningham ex rel. Grice v. Helping Hands, Inc.*, 352 S.C. 485, 491 (2003). However, “when a motion for summary judgment is made and supported as provided by the rule, an adverse party may not rest upon the mere allegations or denials of his pleadings.” *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 497 (1990) (quoting Rule 56(e), SCRPC). Rather, “[t]he adverse party’s response, including affidavits or as otherwise provided by the rule, must set forth specific facts showing there is a genuine issue for trial.” *Id.*

LAW/ANALYSIS

I. Subject Matter Jurisdiction

As a threshold matter, the Court finds that it has subject matter jurisdiction to hear this foreclosure case. Defendant argued that Wells Fargo’s failure to file a claim in her mother’s probate estate divests this Court of subject matter jurisdiction. Defendant is incorrect. Under the South Carolina Probate Code, a secured creditor is not required to file a claim against the probate estate if it is solely seeking to foreclose the mortgage and is not attempting to hold the estate liable for the deficiency following the foreclosure sale. S.C. Code Ann. §62-3-104. (“This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.”). *See also Beach First Nat’l Bank v. Gurnham (In re Estate of Gurnham)*, 407 S.C. 194, 205, 754 S.E.2d 875, 881 (2014) (discussing intersection of probate law and mortgage foreclosure actions and holding that, “the secured creditor may pursue foreclosure proceedings on the security for the mortgage without presenting a claim against the estate.”). It is hornbook South Carolina law that the court of common pleas in the county where the property affected by the foreclosure action is located has

subject matter jurisdiction. *Meaders Bros. v. Skelton*, 234 S.C. 134, 107 S.E.2d 1 (1959). *See also* 27 S.C. Jur. Mortgages §105.

In the present case, Wells Fargo has indicated it is not seeking a deficiency judgment against the estate. (See Complaint at ¶13). Accordingly, Wells Fargo was not required to file a claim in Defendant's mother's probate estate. Therefore, this Court has subject matter jurisdiction over this foreclosure action because the property at issue is located at 6 Young Harris Drive, Simpsonville, South Carolina 29681, which is located in Greenville County, South Carolina.

II. Counterclaims

a. Tort-Based Counterclaims

Wells Fargo is entitled to summary judgment as to all of the tort-based counterclaims asserted by the Defendant. During her deposition and again at the hearing, Defendant admitted that all of her tort-based counterclaims were based on the failed loan modification review that took place in 2017. No matter how she couches her counterclaims – whether as fraud, breach of contract with fraudulent intent, breach of fiduciary duty, intentional infliction of emotional distress, or negligence, deceptive business practices – they fail as a matter of law.

In *Weber v. Bank of America, N.A.*, No. 0:13-cv-01999-JFA, 2013 Lexis 128863, at *7 (D.S.C. Sep. 10, 2013), the borrowers sued the bank following their failure to be approved for a loan modification. *Id.* at *11. The borrowers argued that the bank's failure to consider them and/or approve them for a loan modification was negligence per se because it violated the 2011 South Carolina Supreme Court's Administrative Order regarding Foreclosure Intervention (the "Administrative Order") or federal loss mitigation guidelines, such as HAMP. *Id.* at *7. The court in *Weber* granted the bank's motion to dismiss holding that, "the 'denial of a loan modification under HAMP [or other similar programs] does not create a private cause of action.'" *Id.* at *12.

The court in *Weber* concluded that “the [Toal] Administrative Order does not impose a duty on Defendant to provide a loan modification, and neither the [Toal] Administrative Order nor the ‘other federal programs’ create a private cause of action for failure to provide a loan modification or meaningful process through which to petition Defendant for a loan modification.” *Id.* at *17. Several South Carolina courts since *Weber* have addressed these same types of claims and agreed that the denial of a loan modification does not create a private cause of action. *See Carrington v. Mnuchin*, Civil Action No. 5:13-03422-JMC, 2014 U.S. Dist. LEXIS 119430, at *28-29 (D.S.C. Aug. 27, 2014) (dismissing claims for fraud and breach of contract for fraudulent based on alleged failure to evaluate and approve the borrowers for a loan modification). *See also Thomas v. Enter. Bank of S.C.*, Civil Action No. 1:16-cv-02793-JMC, 2018 U.S. Dist. LEXIS 47958, at *4 (D.S.C. Mar. 23, 2018) (dismissing claims for fraud, misrepresentation, and breach of contract based on the loan modification process).

Accordingly, based on the holdings of *Weber* and its progeny, Defendant’s tort-based counterclaims of (1) fraud, (2) breach of fiduciary duty, (3) intentional infliction of emotional distress, (4) negligence, and (5) unfair trade practices all fail as a matter of law because there is not a private cause of action for failure to provide a loan modification. The Court, therefore, grants summary judgment and dismisses these counterclaims with prejudice.

The Court further finds and holds that even if these tort-based counterclaims could constitute a private cause of action in this case, each of them should still be dismissed for the alternative reasons provided by Wells Fargo during oral argument as well as in its Motion for Summary Judgment and Reply in Support of its Motion for Summary Judgment.



b. Fair Debt Collection Practices Act

A review of each of Defendant's pleadings reveals that she has not cited to a single section of the Fair Debt Collection Practices Act in her counterclaim which Wells Fargo allegedly violated. In her deposition, Defendant was asked to elaborate on the basis for her claim. Her response was, "The cause of action is for fair debt collection. I don't know." (See Hodges Dep. 100:15-16). In addition to her failure to specifically plead this cause of action and be able to articulate what the basis for her claim is, Defendant's counterclaim for violation of the Fair Debt Collection Practices Act fails as a matter of law because Wells Fargo is a "creditor" and not a "debt collector." 15 U.S.C. §1692a(4) and (6)(F). *See, e.g. Davis v. Dillard Nat'l Bank*, 1:02 CV 00546, 2003 WL 21297331, *4 (M.D.N.C. June 4, 2003) ("Crediting institutions, such as banks, are not debt collectors under section 1692a(6)(A) because they collect their own debts and are in the business of lending money to consumers.") Additionally, "Loan servicers are not 'debt collectors' under the FDCPA unless the debt being serviced was in default at the time the servicer obtained it." *Taggart v. Wells Fargo Home Mortg., Inc.*, No. 10-cv-00843, 2010 U.S. Dist. LEXIS 102747, at *34 (E.D. Pa. Sep. 27, 2010).

In the present case, the only evidence before this Court is that Wells Fargo was at all times collecting a debt in its own name. Further, Wells Fargo was at the very least the loan servicer prior to the loan being in default. Accordingly, Wells Fargo cannot be considered a debt collector; therefore, Defendant's Fair Debt Collection Practices Act claim fails as a matter of law and Wells Fargo is entitled to summary judgment and this counterclaim is dismissed with prejudice.

III. Affirmative Defenses

As more specifically set forth below, the Defendant's affirmative defenses of (1) fraud on the court, (2) protection from sale due to transfer by descent (sic), and (3) lack of standing fail as a

matter of law. The Court, therefore, grants Wells Fargo's Motion for Summary Judgment and dismisses the aforementioned affirmative defenses with prejudice.

a. Fraud on the Court

Defendant argued that certain statements made during the course of this litigation constitute fraud on the court. "Fraud on the court" claims are reserved for the "most egregious misconduct." *Chewing v. Ford Motor Co.*, 354 S.C. 72, 579 S.E.2d 605 (2003). "Attorney fraud", as alleged in this case, goes to the heart of the judicial system. *Id.* at 83; 579 S.E.2d at 611. Importantly, fraud on the court claims are only allowed where extrinsic fraud exists. *Chewing v. Ford Motor Co.*, 354 S.C. 72, 78-79, 579 S.E.2d 605, 608-09 (2003) ("Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action."). On the other hand, intrinsic fraud is "fraud which was presented and considered in trial." *Id.* "Relief is granted for extrinsic but not intrinsic fraud on the theory that the latter deceptions should be discovered during the litigation itself, and to permit such relief undermines the stability of all judgments." *Id.* at 82; 579 S.E.2d at 610 (quoting *Mr. G. v. Mrs. G.*, 320 S.C. 305, 308, 465 S.E.2d 101, 103 (Ct. App. 1995)).

This affirmative defense fails for multiple reasons. First, the Court finds that any statements made during the course of this litigation, including the pleadings, are entitled to an absolute privilege and cannot form the basis of a fraud on the court claim. *See Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002) (holding that filing of *lis pendens* could not form basis for action for slander of title because filing enjoyed absolute privilege). Second, the Court finds that there was nothing fraudulent about the statements at issue.

Third, each of Defendant's fraud on the court claims regard filings or statements being made during the course of this litigation. Defendant has been free to contest the truth and veracity of these filings and statements and is, in fact, doing so. Accordingly, in no way has Defendant been prevented from fully trying and presenting her case based on these allegedly false or fraudulent pleadings and/or statements. Therefore, Defendant's fraud on the court claims, at most, concern intrinsic fraud and cannot support an affirmative defense of fraud on the court. For these reasons, Wells Fargo is entitled to summary judgment as to this affirmative defense and it is dismissed with prejudice.

b. Protection from sale Due to Transfer by Desent (sic)

Defendant argued that Wells Fargo was prohibited from declaring the loan in default based on the "due on sale" provision contained in the mortgage. The due on sale provision is typically triggered when the original mortgagor transfers their interest in the property without the consent of the mortgagee. However, the Garn-St. Germain Depository Act of 1982, 12 U.S.C. §1701j-3, prohibits a mortgagee from declaring a default based on the due on sale provision when the transfer is the result of the death of the mortgagor.

In the present case, Wells Fargo declared a default under the terms of the loan due to lack of payment. In fact, the complaint is devoid of any mention of a default due to the transfer of the subject property. Accordingly, Defendant's affirmative defense on this point is irrelevant and is dismissed with prejudice.

c. Lack of Standing

Defendant's affirmative defense, claiming lack of standing, fails as a matter of law because the subject Promissory Note is endorsed in blank and Wells Fargo is in possession of the original Promissory Note. Under the South Carolina's version of Article 3 of the UCC, S.C. Code Ann. §

36-3-301, possession of the original note endorsed in blank is prima facie evidence of ownership. *In re Woodberry*, 383 B.R. 373, 377 (Bankr. D.S.C. 2008) “(Possession of a bearer instrument is prima facie evidence of ownership)”. See also *In re Neals*, 459 B.R. 612, 619 (holding where the original note has been presented and there is undisputed evidence the person trying to enforce the note was also the loan servicer responsible for collecting payments on and enforcing the terms of the note, then such entity has the right of a holder, including the right to enforce the note under South Carolina’s version of Article 3 of the UCC). Additionally, Wells Fargo has indisputably been the loan servicer at all times relevant to this lawsuit. Indeed, the crux of Defendant’s entire defense in this case is the denial of a loan modification by Wells Fargo. It is well-established that a loan servicer has standing in a mortgage foreclosure action. *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 224, 746 S.E.2d 478, 483 (Ct. App. 2013).

Accordingly, based on either Wells Fargo’s possession of the original note or its status as a loan servicer, there is no genuine issue of material fact as to Wells Fargo’s standing to initiate this foreclosure action. Defendant’s affirmative defense of lack of standing is dismissed with prejudice.

IV. Motion to Strike Jury Demand

Since the only remaining claims in this action are equitable, the Court grants Wells Fargo’s motion to strike Defendant’s jury demand based on the reasons set forth in Wells Fargo’s Motion to Strike Jury Demand, oral arguments, and applicable South Carolina law.

CONCLUSION

For the reasons set forth above, Wells Fargo is entitled to summary judgment as to each of the Defendant’s counterclaims asserted in this action. In addition, Wells Fargo is entitled to summary judgment as to the following affirmative defenses: (1) lack of subject matter



jurisdiction; (2) fraud on the court, (3) protection from sale due to transfer by desent (sic), and (4) lack of standing. Given that the only remaining claims in this action are equitable, the Court finds that Wells Fargo's Motion to Strike Defendant's Jury Demand should be granted.

THEREFORE IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Wells Fargo's Motion for Summary Judgment is granted in its entirety;
2. Defendant's counterclaims are hereby dismissed with prejudice;
3. Defendant's affirmative defenses of (1) lack of subject matter jurisdiction; (2) fraud on the court, (3) protection from sale due to transfer by desent (sic), and (4) lack of standing are hereby dismissed with prejudice;
4. Wells Fargo's Motion to Strike Jury Demand is granted in its entirety; and
5. The above-captioned action is referred to the Honorable Charles B. Simmons, Jr., Master in Equity for Greenville County, to take testimony and other evidence offered and to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in this case pursuant to Rule 53 and 71, SCRCP. Any appeal of the final judgment shall be to the South Carolina Supreme Court or the Court of Appeals in accordance with S.C. Code §14-11-85 and Rule 53(e), SCRCP.

AND IT IS SO ORDERED.

[JUDGE PERRY H. GRAVELY'S SIGNATURE PAGE TO FOLLOW]

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Greenville Common Pleas

Case Caption: Wells Fargo Bank NA vs. Michelle Hodges , defendant, et al

Case Number: 2017CP2308016

Type: Order/Summary Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2019-08-07 11:00:59 page 11 of 11

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MICHELLE HODGES
6 Young Harris DR
Simpsonville, SC 29681
864-714-5263

Greenville County Court of Common Pleas
Attn: Clerk of Court, Peter B. Wickensimer
305 E. North ST
Greenville, SC 29601

Dear Clerk of the Court:

Below is my – **CORRECTED**

SEVENTH AMENDED ANSWER, DEFENSES AND COUNTER CLAIM

15 *Praser*

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) CASE NO. 2017CP2308016
Wells Fargo Bank, NA) SEVENTH AMENDED ANSWER,
Plaintiff,) DEFENSES AND COUNTER CLAIMS
) DEFENDANT – Michelle Hodges
) (TRIAL BY JURY)
)
)
Michelle Hodges, Individually: Michelle Hodges)
as Personal Representative of the Estate of Ruth)
Ladson Witherspoon: Stanley Witherspoon:)
SC Housing Corp.: Twin Creeks Homeowners)
Association, Inc.;)

SEVENTH AMENDED ANSWER

Defendant and Counterclaim Plaintiff, Michelle Hodges Individually, proceeding pro se and answering

the Complaint of the Plaintiff Wells Fargo Bank, NA alleges and states as follows:

1. Answering paragraphs 1 - Admit - This is a Fraudulent Foreclosure as it is a step in a series of events in a scheme to defraud me of my property.
2. Answering paragraphs 2 - Admit.

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3. Answering paragraphs 3 - Denied - Per the Plaintiff the negotiable instrument was assigned to it by MERS. MERS cannot negotiate, as MERS never came into possession of the negotiable instrument. The MERS assignment verifies bifurcation of the Note and Mortgage. Since this was done the Negotiable instrument no longer has a Secured status and as such is now unsecured indebtedness. Failure to establish the chain of ownership renders the security instrument a nullity. Once there is nullity of the Security Instrument, the security instrument cannot regain its status as a negotiable instrument.
4. Answering paragraphs 4 - Admit, this allegation is Fraudulent, as the Plaintiff is aware that it claimed to have considered me for the FHA HAMP program, in a letter dated 9/8/17.
5. Answering paragraphs 5 - Admit, I a 50% owner of subject property and my brother Stanley Witherspoon also is a 50% owner of the subject property.
6. Answering paragraph 6 - Denied - lack of sufficient information to form a belief.
7. Answering paragraph 7 - Admit in part to the Note. Deny in part, that the note was delivered to the Plaintiff.
8. Answering paragraph 8 - Admit in part to the Note not legal description. Deny in part that Plaintiff is a current successor in interest.
9. Answering paragraph 9 - Admit in part to mortgage recording. Deny in part, last sentence, as it is incomplete.
10. Answering paragraphs 10 - Admit in part - This is a purchase money mortgage and the Mortgage states "This debt is evidence by the Borrower's note". Deny in part that any money was advanced to any owners.
11. Answering paragraph 11 - Admit.

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12. Answering paragraph 12 – Deny in part that the Plaintiff has the right to declare balance, as the Plaintiff lacks standing. Deny in part the amount of the debt.
13. Answering paragraph 13 – Lack of enough information to form a belief.
14. Answering paragraph 14 – Deny the plaintiff has any rights under the Mortgage, as the Plaintiff has demonstrated that it has standing.
15. Answering paragraph 15 – Lack of enough information to admit that Plaintiff may be forced to pay sums, according to the terms of the mortgage. Deny in part, as to any costs for securing the property, as this is not warranted, as I occupy the property.
16. Answering paragraph 16 – Denied – The Plaintiff must demonstrate that it has standing, by producing the original Note and Mortgage and showing that it was the holder of the same at the time of the filing of the complaint.
17. Answering paragraph 17 - Admit to all, except the Plaintiff's lien position. Deny Plaintiff's purported lien position, as Plaintiff has not demonstrated any lien position.
18. With respect to the WHEREFORE clauses and sub clauses, I deny that Plaintiff is entitled to any relief it seeks or any relief what so ever.
19. WHEREFORE, having answered the Plaintiff's complaint, I raise the following Defenses including Affirmative Defenses.

FIRST DEFENSE
LACK OF STANDING

20. The Plaintiff lacks standing, as the Note and Mortgage have been bifurcated, due to Securitization. Further, the Plaintiff cannot simply stipulate to the Note and Mortgage, as the Plaintiff is not a "Holder in Due Course", and it supposedly acquired the debt while the loan was not performing. Therefore the Plaintiff must provide the Original

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Note and Mortgage and document that it was the holder of the same at the time of the filing of the complaint.

SECOND DEFENSE
UNCLEAN HANDS

21. The Plaintiff has unclean hands due to material breaches of both promises in the mortgage contract with a fraudulent Act "unclean hands" precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. Arnold v. City of Spartanburg, 201 S.C. 523, 23 S.E. (2d) 735 (1943)

THIRD DEFENSE
FAILURE TO MITIGATE

22. HUD requires loss mitigation under 24 CFR 203.605 and in this case the Plaintiff has failed to mitigation. Therefore the Plaintiff is not able to foreclose.

FOURTH DEFENSE
FAILURE TO ADD AN INDESPESABLE PARTY

23. Failure to add MERS as an indispensable party warranting for dismissal with prejudice.

FIFTH DEFENSE
LACK OF JURISDICTION

24. The Plaintiff has failed to invoke the Courts jurisdiction, by producing the Original Note and Mortgage.

SIXTH DEFENSE
CONTRACT PERFORMANCE

25. The Plaintiff has not performed all conditions precedent required by the Mortgage

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contract.

SEVENTH DEFENSE
FAILURE IN APPLYING STATE LAW PROCEDURE

26. The Plaintiff has failed to follow state law procedure, under South Carolina

Supreme Court order 2011-01-02, by failing to offer foreclosure intervention.

The Plaintiff falsely claims that the property is non owner occupied, making the loan not qualify for foreclosure intervention.



CONTERCLAIM

27. Counterclaimant and Counterclaim

Michelle Hodges, a resident of 6 Young Harris Dr – Simpsonville, SC, 29681, in the county of Greenville, brings this counterclaim for Breach of Contract and Unfair Debt Collections under SC title 15.

28. Counterclaim Defendant

Wells Fargo, Bank N. A. a foreign corporation with offices in Greenville, SC
Last known address 101 n. Phillips Avenue, Sioux Falls, South Dakota

JURISDICTION AND VENUE

29. Defendant is a person and operating in south Carolina under 33-15-11(b)(8)
30. The Court has jurisdiction over the parties and the subject matter of this action.
31. The action is properly brought in the Greenville County Court of Common Pleas.
32. This civil action is brought pursuant to S.C. Code Ann. 15-5-150 and Public law 11-203, Title X, 124 Stat. 2092 – 1962-1692p Fair Debt Collection Practices Act

ALLEGATIONS

33. The Plaintiff has materially breached the Mortgage contract accompanied by fraudulent acts on both of the promises in the contract to the point of rescission and has collected the debt under deceptive means, showing a reckless disregard of my rights and a successor in the above referenced property.



STATEMENT TRUE TO ALL CLAIMS

1. The Plaintiff is a servicer, as the Plaintiff is responsible for servicing of the loan and the Plaintiff has stipulated to being the servicer in paragraph of the complaint.
2. The Plaintiff deceptively collected the purported debt through a third party, Rogers, Townsend and Thomas, whom is in the business of collecting debts owned by another person, namely the Plaintiff.
3. The Doctrine of Respondeat superior applies to all claims, as the Plaintiff is responsible for the acts of its employees, as the employees were acting within the scope of their employment, when paying the property taxes and in making a loss mitigation decision.
4. The Mortgage is dated 3/28/012, signed recorded in the county of Greenville on 3/29/12 in book 5155 on pages 5354-5354 and secures a loan amount of \$158,414.00, for the property at 6 Young Harris Dr – Simpsonville, SC 29681, with MERS as beneficiary.
5. Under the Uniform Covenants, on page 2, item 1, my mother, Mrs. Ruth Witherspoon whom is the original borrower, promised to pay monthly, principal, Interest, late charge, taxes, special assessments, FHA mortgage insurance and Hazard Insurance, due on the note.
6. Under Uniform Covenants item 9(d) NVR agreed that "...in many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults". The loan was made and on 5/1/2012, we (my mother and I) began making payments.
7. Further under the uniform covenants item 12 page 5 of the contract states "...the covenants and agreements of the Security Instrument shall bind and benefit the

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successors and assigns of Lender and borrower”

8. My brother and I each have a 50% successor interest in the property stated in paragraph 3, via Deed of Distribution dated and recorded 12/6/2016. Our Mother, Mrs. Ruth Witherspoon, passed away on 7/5/2015.

9. The Plaintiff has stipulated to the Mortgage in the complaint in paragraph 9.

10. The dispute can be resolved by a Declaratory judgement, as to my status as a successor occupant and the court's/Jury's decision that my claims defeat the Plaintiff's claims due to the Plaintiffs failure to mitigate.

COUNT I and II
BREACH OF CONTRACT
ACCOMPANIED BY A FRAUDULENT ACT

1. I reiterate all statements above and further state, that a contract existed, as stated above and Agency relationship of Principal an Agent arose out of the contract. The Plaintiff owed me a duty of honesty, in loss mitigation, face to face contact and a proper determination of my status as a successor in interest.
2. The Plaintiff took total control over the loss mitigation process, after if received my application dated 6/16/2017, along with, bank statements, tax returns and pay stubs.
3. The Plaintiff sent me a letter acknowledging that it had received my application and documents stated above and began advising me as to what additional documents were needed for their program and when, where and how to return the documents. It was a mutual relationship of trust and confidence, as I continued to return all documentation according to the Plaintiff's request.

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4. The Plaintiff knew that I was reposing trust in it as it provided me with follow up letters, explaining what to expect and when it would be making a decision.
5. Under item 9(d) page 5 of the mortgage contract, the Plaintiff promised to be subject to HUD regulations and HUD requires face to face contact and loss mitigation, prior to foreclosure.
6. The Plaintiff failed to mitigate under HUD regulations 24 CFR 203.605 and under the Consumer Financial protection bureau regulations 12 CFR 1024.38(A)(2).
7. And failed to provide me with face to face contact, nor did the Plaintiff provide me with its determination of my successor status.
8. I kept my end of the bargain, as SC housing made payments to the Plaintiff on my behalf, Upon notice of my Mother's passing away and then I began making the payments on my own and when I needed assistance, I contacted the Plaintiff and completed an application and provided the necessary documentation for loss mitigation
9. Starting in June of 2016 the Plaintiff, put me thru the entire process of loss mitigation only to provide me with a fraudulent decision. And due to the fact that the Plaintiff provided me with a fraudulent decision, no loss mitigation has been performed.
10. This is material as the Plaintiff has stated that there is a default in the payments and it is the Plaintiff's failure to make the proper loss mitigation decision that has caused the default.
11. The Plaintiff intended for me to believe that I did not qualify for FHA HAMP, as it issued a denial letter dated 9/8/2017, fraudulently representing to me that I did not qualify for FHA HAMP and stated "we were unable to calculate an acceptable payment".
12. I do qualify for FHA HAMP combination Loan Modification and Partial Claim,

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under the "Waterfall" guidelines and the acceptable/target payment is \$447.00.

13. Under the doctrine of unclean hands the Plaintiff cannot recover in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. *Arnold v. City of Spartanburg*, 201 S.C. 523, 23 S.E. (2d) 735 (1943).
14. I suffered benefit of the bargain damages, as I lost all money that was put into the loan from beginning to date and all appreciation/profits. I further suffer from mental anguish of public humiliation of being put into foreclosure and punitive damages and rescission is requested.

COUNT III

Violation of RESPA qualified written request
12 USC 2605(e)(1)(B)

1. I reiterate all statements above and further state that the Plaintiff failed to provide me with the requested complete escrow Analysis/statements from at 2015, as when I requested, in a letter dated . I requested during discovery that the Plaintiff admit to the documents escrow statements that the Plaintiff mailed to me and the Plaintiff failed to do so, therefore, I do not have the documentation that I requested via a qualified written request and the Plaintiff in in violation of 12 USC 2605(e)(1)(B).

COUNT IV, V & VI

**UNFAIR DEBT COLLECTION ARISING OUT OF A BREACH
CONTRACT ACCOMPANIED BY A FRAUDULENT ACT**

2. I reiterate all statements above and further state that a contract existed, as stated above and an Agency relationship (Principal/Agent) arose out of the contract and the Plaintiff owed me a duty to act in my best interest and loyalty in administering my escrow.

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3. The Plaintiff began servicing the loan in 2013 and it has provided annual statements, calculated estimated payments for the upcoming 12 months, sent notices of shortage and overages and has issued refunds.
4. Therefore I reposed trust and confidence in the Plaintiff, as I included enough with my payment to cover my taxes and insurance and the Plaintiff timely made those payments.
5. However, under 12 USC 2609(a)(2), the Plaintiff had a duty not to have me pay amounts in excess of one-twelfth of the total amount of the related insurances and property taxes.
6. After the Plaintiff unnecessarily over paid my property taxes at a non-owner occupied rate of 6%, causing a fraudulent escrow shortage of 2986.00, it sent me a statement, claiming that there was an escrow shortage and stated that I needed to pay this amount, which is in excess of the one-twelfth stated above.
7. I am the successor occupant of the property and am only required to pay a 4% tax assessment rate.
8. Therefore the Plaintiff breached its duty to act in my best interest.
9. The Plaintiff intended to fraudulently claim by its conduct that my property was non owner occupied and intended for me to believe that there was an escrow shortage.
10. This is material, as the Plaintiff is using a deceptive means (non owner occupancy) to collect a debt. (it should also be note here that the Plaintiff is further using this deceptive means to relieve itself of the HUD regulations that require the Plaintiff, to provide face to face contact and home retentions options of loss mitigation, as the Plaintiff is only required to provide these services, if the property is owner occupied. The Plaintiff is further, using this deceptive means to relieve itself of the state requirement to provide

foreclosure intervention, as the Plaintiff is only required to provide this service if the property is owner occupied)

DEBT COLLECTION

15. The Plaintiff collected a debt in the name of a third party, Rogers, Townsend and Thomas and used deceptive means to collect the mortgage debt.
16. The Plaintiff sent me a document titled "Certification of Non Owner Occupancy", which contains the following statement " Due to the death of the Mortgagor, the loan does not qualify for foreclosure intervention"
17. Here the Plaintiff is knowingly making a false statement and using a deceptive means to collect a debt, as I am the successor/owner occupant.
18. This is material, as the Plaintiff has claimed that there is a default in payments and when there is a default in the payments, the Plaintiff is required to provide loss mitigation prior to foreclosure and owner occupancy is a determining factor as to what loss mitigation option is required to be provided.
19. Due to the fact that the Plaintiff has not provided loss mitigation, the Plaintiff caused the default.
20. The Plaintiff's conduct is egregious and shows a reckless disregard of my rights, as a successor in interest, under the decent laws of South Carolina.
21. I hereby certify and make a correction to a previous statement that I did not receive the "Certificate of Non Owner occupancy, by mail, as a search has revealed that I had inadvertently placed the letter in a bag with letters for my Mother, which I had intended to review at a later date.

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22. I seek rescission, all money put into the loan, loss profits/property appreciation and benefit of the bargain damages, mental anguish and punitive damages.

NEGLIGENT SUPERVISION

23. I reiterate all statements above and state that the plaintiff had a duty under the law of agency, as stated above to have procedures in place whereby it determines, whether or not a potential successor in interest, is in fact a successor in interest.
24. The Plaintiff breached its duty when it failed to confirm me as a successor in interest to my Mother, Mrs. Ruth Witherspoon.
25. The Plaintiff was on inquiry notice, to confirm me as successor in interest when it received a copy of the my Mother's death certificate, and Court documents showing that I had been appointed, as the personal representative of the estate, coupled with receipt of my application for financial assistance, showing that I wanted to be responsible for the loan.
26. Despite the Plaintiff's receipt of notice, it failed in the procedures to confirm me as a successor in interest which lead to my emotional distress of the denial of the loan modification, payment of the property taxes at a non owner occupied rate and being put into foreclosure, which lead to my emotional distress
27. But for the Plaintiff's failure to confirm me as a successor in interest, I would not have suffered emotional distress.
28. The Plaintiff's action were reckless, as the Plaintiff could foresee that the lack of confirmation would cause overpayment of property taxes, denial of loan modification and being put into foreclosure.

WHEREFORE, having fully set forth my Counterclaims, Answer to the complaint and provided defenses, I pray that this Honorable Court will inquire into all matters and claims as stated above and I pray relief in my favor.

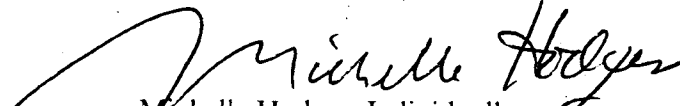
I pray that the court will look into the following

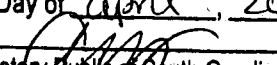
1. Whether or not the Plaintiff has standing
2. Whether or not the Plaintiff has invoked the courts jurisdiction
3. Whether or not the Plaintiff has clean hands
4. Whether or not the Plaintiff has abided by state law
5. Whether or not the Plaintiff failed to mitigate its losses
6. Whether or not the Plaintiff failed in its performance of the contract.
7. Look into the balance claimed by the Plaintiff.
8. Whether or not the Assignment renders the negotiable instrument a nullity.

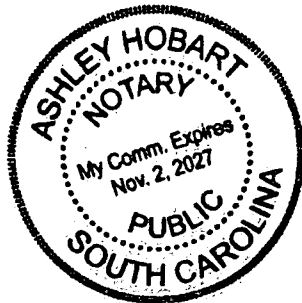
Exhibits ATTACHED

Respectfully submitted,

I hereby certify that the above statements are true and correct, under the penalty of perjury.


Michelle Hodges, Individually pro se
6 Young Harris Dr
Simpsonville, SC 29681
864-714-5263

Sworn to and Subscribed Before Me,
This 21 Day of April, 2019
Signed: 
Notary Public of South Carolina
My Commission Expires: 11/02/2027



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MICHELLE HODGES
6 Young Harris DR
Simpsonville, SC 29681
864-714-5263

10 JUL 30 04:11:13
Patterson-0004130

Greenville County Court of Common Pleas
Attn: Clerk of Court, Peter B. Wickensimer
305 E. North ST
Greenville, SC 29601

Dear Clerk of the Court:

Below is my – SIXTH AMENDED ANSWER, DEFENSES AND COUNTER CLAIM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE NO. 2017CP2308016
	)	
Wells Fargo Bank, NA	)	SIXTH AMENDED ANSWER,
	)	DEFENSES AND COUNTER CLAIMS
	)	DEFENDANT – Michelle Hodges
	)	(TRIAL BY JURY)
Plaintiff,	)	
Counterclaim Defendant	)	
v.	)	
	)	
Michelle Hodges, Individually: Michelle Hodges	)	
as Personal Representative of the Estate of Ruth	)	
Ladson Witherspoon: Stanley Witherspoon:	)	
SC Housing Corp.: Twin Creeks Homeowners	)	
Association, Inc.;	)	
	)	
Defendants,	)	
Michelle Hodges	)	
COUNTERCLAIM, Plaintiff	)	
	)	

NOTICE OF SIXTH AMENDED AND SIXTH AMENDED ANSWER 7/30

Defendant and Counterclaim Plaintiff, Michelle Hodges Individually, proceeding pro se and answering

the Complaint of the Plaintiff Wells Fargo Bank, NA alleges and states as follows:

1. Answering paragraphs 1 - Admit - This is a Fraudulent Foreclosure as it is a step in a

ENTERED COMPUTER

(32)

series of events in scheme to fraudulently take away my property, included failing to provide the court with an affidavit of service.

2. Answering paragraphs 2 - Denied – SC Code Section 33-15-101(b)(8) does not confirm the Plaintiff's allegations.
3. Answering paragraphs 3 - Denied – To the extent that the Plaintiff is claiming that the Note is a negotiable instrument, as Black's law dictionary defines a negotiable instrument as – An order signed by an endorser to pay the holder without conditions and the Note is full of conditions. Further deny that the Plaintiff has the right to enforce the Note, as the plaintiff did not attach a copy of the Note to the complaint demonstrating that it was the holder of the Note at the time of filing the complaint. 7/30
4. Answering paragraphs 4 Admit, this allegation is Fraudulent, as the Plaintiff is aware that it claimed to have considered me for the FHA HAMP program, in a letter dated 9/8/17. Further the plaintiff is aware that the program is available to this date.
5. Answering paragraphs 5 – Admit, I a 50% owner of subject property as a joint heir with Stanley Witherspoon and my mother, Ruth Ladson Witherspoon now deceased; conveyed to us by the original lender NVR, Inc., in a "Special Warranty" recorded on 3/29/12 in Book: DE 2403 and Page: 2222 - 2223.
6. Answering paragraph 6 – Denied – lack of sufficient information to form a belief.
7. Answering paragraph 7 – Admit that Ruth Ladson Witherspoon executed the said Note with NVR, being the lender and I am not obligated on the note and Plaintiff is not mentioned in the Note, nor is MERS
8. Answering paragraph 8 - Admit in part – The Note has conditions and MERS is not mentioned in the Note. Deny in part that the Plaintiff is the

successor in interest, to NVR, Inc. to the extent that the Plaintiff is claiming to be the successor in interest as the Plaintiff did not attach a copy of the Note to the complaint, nor did it claim possession in the complaint. Deny legal description as it does not appear to be accurate.

9. Answering paragraph 9 – Admit in part to Mortgage being signed, witnessed, recorded on 3/29/212 and book and page numbers and that an Assignment dated 1/17/2017 was recorded on 1/20/17. Deny in part that the Assignment, assigns any rights of the Mortgage to the Plaintiff, as the Assignment is “VOID” and Plaintiff has not demonstrated that it is the Holder of the Note, Mortgage or Assignment, by attaching them to the complaint.
10. Answering paragraphs 10 – Admit in part – This is a purchase money mortgage and the Mortgage states “This debt is evidence by the Borrower’s note” and the Plaintiff nor MERS are mentioned in the Note. Deny in part that any money was advanced to any owners.
- 7/30 ②
11. Answering paragraphs 11 – Admit
12. Answering paragraphs 12 – Deny that Plaintiff has disclosed all payments received and any remaining balance, as escrow credits are missing and evidenced by escrow statements.
13. Answering paragraphs 13 – Lack of enough information to form a belief.
14. Answering paragraph 14 – Denied, Plaintiff lacks any rights under the Mortgage, as the Plaintiff has not demonstrated that it is the Holder of the Mortgage and lack of enough information to form a belief regarding the Plaintiff’s hiring practices.

15. Answering paragraphs 15 – Lack of enough information to admit that Plaintiff may be forced to pay sums, according to the terms of the mortgage. Deny in part, as to any costs for securing the property, as this is not warranted, at this time, as I occupy the property. 7/30
16. Answering paragraph 16 – Denied – The Plaintiff does has not have any rights under the mortgage as it has not demonstrated that is holder of the Note and Mortgage by attaching them to the complaint and the Plaintiff has demonstrated that it has not followed state law by filing a Certificate of nonowner occupancy claiming exemption to providing Foreclosure Intervention committing the requisite fraud upon the court for dismissal of this action, as a nullity.
17. Answering paragraphs 17 - Admit in part to items A, B, C and D and that I have 50% ownership in the subject property. Deny in part – that the Plaintiff has any lien or Mortgage on the subject property.
18. I deny each and every allegation that the Plaintiff is the owner of any debt or mortgage securing the subject property and deny all allegations, unless expressly admitted to.
19. WHEREFORE, the complaint has been fully answered I pray this honorable Court will Inquire into the matters as set forth herein and: (4)
- (1) I pray the Court will rule in my favor of my counterclaims.
 - (2) I pray the Court will issue a sanction of dismissal with prejudice due to the Plaintiff's Attorneys' attempts at fraud upon the court via the filing of the "CERTIFICATE OF NON OWNER OCCUPANCY" and "CERTIFICATE OF EXEMPTION FROM ADR",
 - (3) Determine that the Assignment is not valid according to south Carolina code and MERS is not mentioned in the Note.

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FIRST DEFENSE – FAUD UPON THE COURT

20. Mr. Laney advised me that the Plaintiff objected to the production of the Pooling and Servicing Agreement, indicating there was one and then advising me that the plaintiff has now claimed there isn't one. Based upon the Plaintiffs first response there is a pooling and servicing agreement, which allows me to provide that the Mortgage Assignment is VOID and discovery of this docuent has been denied, so that I am prevented from presenting a case on the issue of the Void Mortgage Assignment dated 1/17/17, is fraud ^{7/20} upon the court.

SECOND DEFENSE – FRAUD UPON THE COURT

21. The South Carolina Supreme Court issued an Administrative Order 2011-05-02-01, which spells out under what circumstances an action may qualify for Foreclosure Intervention namely:
- A. Loans not owned, securitized or guaranteed by Fannie Mae or Freddie Mac and FHA and USDA loans are not securitized or guaranteed by Fannie Mae or Freddie Mac and I have an FHA loan. (2nd paragraph of the order)
 - B. Loans Subject to HAMP due to Lender/Servicer participation in the(HMP) aka HAMP program and the Plaintiff participates in the HAMP program (2nd paragraph of the order)
 - C. Owner Occupancy of any owner, under the note and mortgage (I am an owner under the Mortgage, as successor in interest.
22. The Plaintiff and Mr. Davis are aware that my loan was subject to HAMP, as the Plaintiff issued a letter dated 9/8/17, claiming to have considered me for the HAMP program. Therefore the Plaintiff participates in the HAMP program, as indicated in paragraph 4 of the complaint. Although, falsely claimed, in paragraph 4 of the complaint that the HAMP program did not apply because the program expired 12/31/16, never the

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less, paragraph 4 of the complaint indicates that he^{7/6,} was aware that I had a loan that was subject to HAMP, as required by the Supreme Court's Order.

23. Mr. Davis was and is aware that I am 50% ownership in the subject property, as he indicated in paragraph 5, 11 and 17A of the complaint. Mr. Davis was and is further aware that I occupy the subject property, as in paragraph 11, of the complaint Mr. Davis referred to me as an owner under the mortgage and referred to the Deed of Distribution, which is dated and recorded on 12/6/2016.
24. The only way that Mr. Davis would be aware of my ownership with my brother Stanley Witherspoon is by reviewing page 2 of the Deed of Distribution, which also shows that I occupy the subject property.
25. Therefore Mr. Davis was aware that I occupy the subject property.

THIRD DEFENSE PROTECTION FROM SALE DUE TO TRANSFER BY DESENT

26. Under the terms of the mortgage, I claim protection from sale due to transfer by descent item 9(b)(i) and item 9(b)(ii) as the plaintiff failed to consider me for the FHA HAMP program, evidenced by its failure to provide me with valid specific denial reasons, as shown under my counterclaim for actual fraud.

THIRD DEFENSE PLAINTIFF LACKS STANDING

27. I re plead my allegations in paragraphs 3,8,9,16 & 17 of this document and preceding paragraphs. The Plaintiff lacks standing, as it has not demonstrating that it has suffered the requisite injury, as it has demonstrated how it possibly acquired ownership of the debt for any consideration, as the plaintiff has not loaned any money to me or my Mother.

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redemption has been released. In this case the equity was released to a Ginnie Mae pool (REMIC TRUST), therefore the plaintiff lacks an injury for standing.

28. Nor has the plaintiff demonstrated that it purchased the debt for a valuable consideration, showing standing, under South Carolina Civil Code 30-7-60.

29. The Assignment that the Plaintiff seeks to establish its rights –

A. Is fraudulent as MERS cannot assignment rights of NVR, as NVR no longer owns the loan since 2012, per Wells Fargo letter.

11/3 B. The plaintiff lacks a valid assignment of mortgage according to 29-3-100, as NVR did not retain any rights to collect, apply revenues, rents, issues, or profits after assignment and prior to default and the Note cannot be separated from the Mortgage See *Carpenter v. Longan*, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872).

C. MERS is not accepted in South Carolina Courts Mortgage Electronic Registration Systems, Inc. v. Girdvainis, Sumter County, South Carolina Court of Common Pleas Case No. 2005-CP-43-0278 (Order dated January 19, 2006, citing to the representations of MERS and court findings in Mortgage Electronic Registration Systems, Inc. v. Nebraska Dept. of Banking and Finance, 270 Neb. 529, 704 NW 2d. 784). As such, ALL MERS assignments are suspect at best, and may in fact be fraudulent. The Court of Common Pleas of Sumter County, South Carolina also found that MERS' rights were not as they were represented to be; that MERS had no rights to collect on any debt because it did not extend any credit; none of the borrowers owe MERS any money; that MERS does not own the promissory notes secured by the mortgages; and that MERS does not acquire any loan or extension of credit secured by a lien on real property ①

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- D. The Assignment is "VOID", according to the pooling and servicing agreement.
- E. The Mortgage shows MERS as the Mortgagee and MERS is not showing on the

NOTE – this warranted Dismissal in

FOURTH DEFENSE FRAUD UPON THE COURT

30. Mr. Jason D. Wyman filed a document with the court entitled: 7/30
"CERTIFICATE OF NON-OWNER OCCUPANCY DUE TO DEATH OF MORTGAGOR"
- Where he claims he (the Attorney for the plaintiff) "has been informed and is of the belief that the Mortgagor, as defined by South Carolina Supreme Court Administrative Order 2011-05-02-01 ("the Oder"), is deceased, and as such, the loan is not eligible for foreclosure intervention as contemplated by the Order.
31. According to CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67,74, 716 S.E. 2D. 877, 881(2011) We must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous...(quoting Sate v. Sweat, 379 S.C. 367, 665 S.E. 2d 645, 650 9Ct. App. 2008). In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes If a rules's language is plain, unambiguous, and convey a clear meaning, interpretation is unnecessary and the stated meaning should be enforced."
32. Mr. Jason D. Wyman's claim is a misrepresentation of a material fact, that because the original mortgagor is deceased the loan is not eligible for foreclosure intervention as contemplated by the order. The Order is clear and is referencing any owner under the note and mortgage.
33. It is wellsettled in South Carolina that a Note and Mortgage cannot be separated according to Carpenter v. Longan, 83 U. S. 16 Wall. 271 271 (1872).

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34. The order clearly covers me.
35. I never received a copy of Mr. Wyman's "Non Owner Occupied" certification and only learned of it by reviewing the public index.
36. Mr. Wyman an officer of the court filed this document and it is directed at the judicial machinery, so as to influence the court to his interpretation and agreement that the loan does not qualify for foreclosure intervention, due to death of the original mortgagor.
37. It further shows Mr. Wyman's intent not to provide foreclosure Intervention, which is exactly I was told by Diedra.
38. "We do not provide Foreclosure Intervention, contact your lender" "We only provide the Foreclosure Intervention Notice to satisfy a state requirement"
39. Whether or not the property is owner occupied is not a matter of opinion, it is a matter of fact and Mr. Wyamn made this statement with knowledge of the fact that I occupied the property from paragraph 11 of the complaint and with knowledge that the order 2011-05-02-01 covers any owner under the note and mortgage
40. Mr. Wyamans comments are not in the complaint but filed with the court, directed at the judicial machinery, in a attempt to have the court agree with his filing of a fake document, containing a fraudulent statement that the order would consider the property to be non owner occupied.

FIFTH – UNCLEAN HANDS RE: THE PLAINTIFF CLAIMED TO HAVE CONSIDERED MY APPLICATION FOR AN FHA HAMP LOAN MODIFICATION

41. The Plaintiff alleged in its 9/8/2017 letter, that it considered my application for financial assistance, under FHA HAMP. However, the letter is clear and convincing evidence that the Plaintiff could not have considered me for the program, as the letter of void of specific valid denial reasons, which the plaintiff had a duty to disclose, due to our

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Fiduciary relationship and by regulations under the US Consumer protection bureau, 12 CFR 1026.2(A)(27)(i), where the plaintiff is required to provide the specific reasons for each program considered.

42. Under the terms of the Mortgage page 5 9(d) operates as a bar to foreclosure, when the plaintiff, does not follow FHA guidelines and the Plaintiff did not provide any denial reasons under the "Waterfall" guidelines.
43. Further, the Plaintiff stated that it does not follow Wells Fargo guidelines, which is a willful violation of FHA HUD Guidelines and because the Plaintiff did not follow FHA guidelines.
44. Fraud upon the Court, as show above

SIXTH DEFENSE LACK OF JURISDICTION

45. The Plaintiff failed to invoke the court's jurisdiction, as it failed to attach a copy of the Note, Mortgage and Assignment to the complaint. *Carpener v. Logan* 83, US 271, 16 Wall 271, 21 L. Ed. 313 (1872) – Ninth judicial circuit court of common pleas of Charleston, SC Deutsche Bank and Trust National Trust Company.
46. **ADDITIONAL DEFENSES RESERVED**
47. To further challenge the Assigment as void according to the Pooling and Servicing Agreement.

COUNTERCLAIM

COUNT I

ACTUAL FRAUD

41

10

48. Between 7am and 8pm at Wells Fargo Loss Mitigation Department - 800 S. Jordan Creek Parkway, West Des Moines, IA 50266, on September 8 2017 the Plaintiff's Representative and Home Preservation Specialist, Axel Quinn issued a letter where he showed FHA HAMP was listed as the program, that I had been considered for , (1st page, paragraph 6), and then a statement that that I did not meet the qualifications of the program(1st page, paragraph 8).

7/23
49. The letter described above Therefore the plaintiff made fraudulent misrepresentation that I had been considered for the FHA HAMP loan modification. If I had been considered for the program the plaintiff would have been able to provide me with specific denial reasons.

50. The letter is clear and convincing evidence that the Plaintiff did not consider me for the program, as the letter is void of any specific denial reasons.

51. The fact that the Plaintiff did not consider me for FHA HAMP, shows the plaintiff's willing and wanton conduct to issue a denial, so that it could foreclose.

52. The further fact that that the Plaintiff did not consider me for the FHA HAMP program further shows the Plaintiffs willing and wanton conduct to committ fraud and both affected the out come of my situation, as, I sought to avoid foreclosure and I am now in foreclosure. It further affected the decision of the plaintiff's decision to go forward to put the loan in foreclosure.

53. The plaintiff had a reckless disregard of the truth or whether or not I had been considered for FHA HAMP. When I asked for the denial reasons, Axel Quinn, Josh and Hannah Clarkson, all had the same response we don't have any information we can share with you.

(11)

(42)

54. I believed that I had been considered for FHA HAMP, as I requested the denial reasons to no avail. I then reviewed what I had subitted with my application and saw that I needed to make a correction to my P & L and I did and appealed the decision with updated information and received a denial of the appeal, still with no specific reasons. I did what I could to help myself but without the denial reason I had to rely on the plaintiff's vague information. Since the plaintiff intentionally failed to provide me with the denial reasons, as a result I could not help myself further, where I sought to avoid foreclosure, I am now suffering from emotional distress in having to defend this foreclosure and not knowing if and when the Plaintiff will kick me out on the street.

COUNTER CLAIMII

Breach of Fiduciary duty

55. I intered into a realationship with the Plaintiff. The relationship was one of trust and confidence. I provided the Plaintiff with confidential information showing that I was the successor in interest and provided a loan modification application, and all personal documentation, which included my social security number, tax returns, bank statements, which put the in the position of being albe to advise of additional documentation needed and to analyzed the documentation to advise of the an FHA HAMP loan modification decision.

56. They provided me with information regarding my mother's loan. Once the Plaintiff had analyzed my documentation for a loan modification it had a duty to disclose the specific denial reasons and when the Plaintiff failed to provide me those reasons I suffered from emotional distress of not being able to help me self and fear of the inevitable foreclosure.

(12)

(13)

I am currently suffering from the fear of being put out on the street , which is manifesting itself in a bowel disorder and constant crying spells.

57. Plaintiff was the expert in Loan modifications with superior knowledge to mine and I trusted the Plaintiff to make the best decisions for me, I made and caused payments To be made to them.
58. We exchanged information causing a trusting relationship with personal information and disclosures and the Plaintiff breached it's duty when it failed to disclose the specific denial reasons. I asked Axel, Josh Hannah Clarkson and Debbie and I still have not received any specific denial reasons.
59. However, the Plaintiff just stated through its employees that we put your information in the system and you don't qualify for any of our programs *Bo*

COUNTER CLAIM III

INTENTIONAL INFLICTION OF EMOTION DISTRESS

60. The Plaintiff denial of the loan modification was reckless and has caused me severe emotional distress to hear that I did not qualify.
61. I immediately saw myself as homeless and a bag lady and have been unable to sleep waking up at night thinking the Plaintiff is at the door to put my things out on the street and I suffered from uncontrollable crying and was the direct and proximate cause of the Plaintiff's reckless conduct. *13*

44

COUNTER CLAIM IV - NEGLIGENCE

62. While in the plaintiff's private place of applying for a loan modification, where I was the under the care of the plaintiff, therefore the plaintiff owed me a duty of care to avoid harm, which was foreseeable by a reasonable person that failure to provide me with the Specific denial reason would cause harm.
63. The relationship between the plaintiff and my self was one of trust and confidence and failure to provide me with the denial reasons would cause me not to be able to avoid going into foreclosure and emotional distress, but for the plaintiffs beach of duty of care, I suffered proximate and direct injuries of emotional distress and I am now having to defend a foreclosure, which I tried to avoid 730

COUNTERCLA IV – DECEPTIVE BUSINESS PRACTICES ALL OF WHICH OCCURRED during the servicing of my loan, I deserved protection from foreclosure and unwarranted increases in my mortgage payment perpetrated by the Plaintiff and fraudulent statement made during the collection of a debt

64. The Plaintiff claimed to have considered me for an FHA Hamp loan, when the denial letter is void of denial reasons
65. The Plaintiff over paid the taxes to greenville county and began claiming an escrow shortage and increased my payment close to \$300.00, to ensure that I would not be able to make the payments
66. The Plaintiff has fraudulently claimed that the subject is non owner occupied to avoid providing foreclosure intervention 14
- 45

67. The above acts have the potential of repetition, which affects the public interest of the citizens of South Carolina, like myself.

68. I have lost wages of approximately \$700.00 in missed work 7/20/18

COUNTERCLAIM V FAIR DEBT COLLECTION PROHIBITED

69. During the debt collection process, the Plaintiff filed a Certificate of Non owner occupancy, and affidavit of mailing as if were a legal forms, requiring defense and loss of work and emotional distress.

EXHIBITS

Bank statements showing Bills Paid at 6 Young Harris dr with concurrent bills

Showing the property is owner occupied

FHA HAMP DENIAL LETTER – SHOWING IT IS VOID OF SPECIFIC DENIAL REASONS

Certificate of Non Owner Occupancy along Certificate of mailing

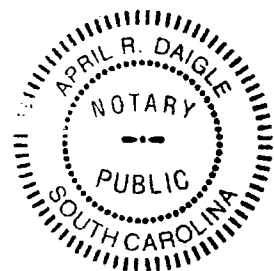
Escrow statements

Respectfully submitted,

I hereby certify that the above statements are true and correct, under the penalty of perjury.

Michelle Hodges 7/30/18
Michelle Hodges, Individually pro se
6 Young Harris Dr
Simpsonville, SC 29681
864-714-5263

State of South Carolina
County of Greenville



Subscribed and sworn (or affirmed) before me
this 30 day of July, 2018.

April R. Daigle
South Carolina Notary Public Commission Expires
September 12, 2022

6th Amendment Answer

IN THE COURT OF COMMON PLEAS

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Michelle Hodges, Defendant

Michelle Hodges 2/30/18

(47)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Wells Fargo Bank, NA,

Case No. 2017-CP-23-08016

Plaintiff,

v.

**REPLY TO MICHELLE HODGES'S
SIXTH AMENDED ANSWER,
DEFENSES AND COUNTERCLAIMS**

Michelle Hodges, Individually; Michelle Hodges, as Personal Representative of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon; SC Housing Corp.; Twin Creeks Homeowners Association, Inc.;

Defendants.

Wells Fargo Bank, National Association ("**Wells Fargo**") hereby replies to the Sixth Amended Answer, Defenses, and Counterclaims of Defendant Michelle Hodges, acting individually and as personal representative of the estate of Ruth Ladson Witherspoon ("**Ms. Hodges**"). Except as specifically admitted, modified or explained below, Wells Fargo denies each and every allegation contained in Ms. Hodges's Sixth Amended Answer and Counterclaims ("**Amended Answer**"). In addition, Wells Fargo restates and realleges each and every allegation contained in its Complaint, which was filed in this foreclosure action on December 22, 2017, as if fully set forth herein.

FOR A FIRST DEFENSE TO
DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIMS
(General Denial)

1. Pages 1-4 of Ms. Hodges's Amended Answer, containing 18 numbered paragraphs, consists of Ms. Hodges's Sixth Amended Answer to the Complaint and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond to

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the allegations set forth in the 18 numbered paragraphs contained in pages 1-4, Wells Fargo denies any response inconsistent with the allegations of its Complaint.

As to Ms. Hodges's Prayer for Relief

2. Responding to Ms. Hodges's prayer for relief, contained on pages 4, set forth in paragraph 19, with three subparts therein, of the Amended Answer, Wells Fargo denies the allegations of these paragraphs, including all subparts thereto, and specifically denies that Ms. Hodges is entitled to any of the relief specifically requested or to any other relief sought in the Amended Answer.

AS TO DEFENDANT'S FIRST DEFENSE
(Fraud Upon the Court)

3. Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

4. Paragraph 20 consists of Ms. Hodges's First Defense to the Complaint, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond to the allegations set forth in paragraphs 20, Wells Fargo denies any response inconsistent with the allegations of its Complaint. Wells Fargo further avers that it has fully and adequately responded to any discovery requests and fully stands by its responses. To the extent Ms. Hodges is making allegations against the undersigned and/or the law firm of Womble Bond Dickinson (US), LLP, this matter has been previously ruled upon by Judge Letitia H. Verdin on March 28, 2018 and is barred by the doctrine of res judicata.

AS TO DEFENDANT'S SECOND DEFENSE
(Fraud Upon the Court)

5. Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

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6. Paragraph 21, including the subparts therein, consists of Ms. Hodges's Second Defense to the Complaint and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond to the allegations set forth in paragraph 21, Wells Fargo asserts that the administrative order is a written document and denies any allegations inconsistent with the express, written terms thereof. By way of further response, allegations set forth in paragraph 21 contain legal conclusions to which no response is required. To the extent a response is required, Wells Fargo denies the remaining allegations set forth in paragraph 21.

7. Paragraph 22 consists of Ms. Hodges's Second Defense to the Complaint and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond, Wells Fargo denies all of the allegations set forth in paragraph 22.

8. Paragraph 23 consists of Ms. Hodges's Second Defense to the Complaint and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 23.

9. Paragraph 24 consists of Ms. Hodges's Second Defense to the Complaint and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 24.

10. Paragraph 25 consists of Ms. Hodges's Second Defense to the Complaint, and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 25.

AS TO DEFENDANT'S THIRD DEFENSE
(Protection from Sale Due to Transfer by Desent)

11. Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

12. Paragraph 26 consists of Ms. Hodges's Third Defense to the Complaint, and,

therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond, Wells Fargo denies all of the allegations set forth in paragraph 26.

AS TO DEFENDANT'S THIRD DEFENSE¹
(Plaintiff Lacks Standing)

13. Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

14. Paragraph 27 consists of Ms. Hodges's Third Defense to the Complaint and, therefore, requires no response from Wells Fargo. Further, Wells Fargo is informed and believes the allegations set forth in paragraph 27 contain legal conclusions to which no response is required. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 27.

15. Paragraph 28 consists of Ms. Hodges's Third Defense to the Complaint and, therefore, requires no response from Wells Fargo. Further, Wells Fargo is informed and believes the allegations set forth in paragraph 28 contain legal conclusions to which no response is required. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 28.

16. Paragraph 29, including the subparts thereto, consists of Ms. Hodges's Third Defense to the Complaint and, therefore, requires no response from Wells Fargo. Further, Wells Fargo is informed and believes the allegations set forth in paragraph 29 contain legal conclusions to which no response is required. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 29.

AS TO DEFENDANT'S FOURTH DEFENSE
(Fraud Upon the Court)

17. Wells Fargo incorporates by reference its responses to the allegations in the

¹ Defendant has names two of her defenses as "Third Defense".



preceding paragraphs as if set forth fully herein.

18. Paragraph 30 consists of Ms. Hodges's Fourth Defense to the Complaint and, therefore, requires no response from Wells Fargo. To the extent a response is required, Wells Fargo avers that the document to which Defendant refers is a written document, which speaks for itself, and denies any allegations inconsistent with the express, written terms thereof.

19. Paragraph 31 consists of Ms. Hodges's Fourth Defense to the Complaint and, therefore, requires no response from Wells Fargo. Further, Wells Fargo is informed and believes the allegations set forth in paragraph 31 contain legal conclusions to which no response is required. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 31.

20. Paragraph 32 consists of Ms. Hodges's Fourth Defense to the Complaint and, therefore, requires no response from Wells Fargo. Further, Wells Fargo is informed and believes the allegations set forth in paragraph 32 contain legal conclusions to which no response is required. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 32.

21. Paragraph 33 consists of Ms. Hodges's Fourth Defense to the Complaint and, therefore, requires no response from Wells Fargo. Further, Wells Fargo is informed and believes the allegations set forth in paragraph 33 contain legal conclusions to which no response is required. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 33.

22. Paragraph 34 consists of Ms. Hodges's Fourth Defense to the Complaint and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 34.



23. Paragraph 35 consists of Ms. Hodges's Fourth Defense to the Complaint and, therefore, requires no response from Wells Fargo. To the extent a response is required, Wells Fargo lacks the necessary information needed to affirm or deny the veracity of the allegations contained in paragraph 35 and, therefore, denies said allegations and demands strict proof thereof.

24. Paragraph 36 consists of Ms. Hodges's Fourth Defense to the Complaint and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 36.

25. Paragraph 37 consists of Ms. Hodges's Fourth Defense to the Complaint and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 37.

26. Paragraph 38 consists of Ms. Hodges's Fourth Defense to the Complaint and, therefore, requires no response from Wells Fargo. To the extent a response is required, Wells Fargo lacks the necessary information needed to affirm or deny the veracity of the allegations or the statements contained in paragraph 38 and, therefore, denies said allegations and demands strict proof thereof.

27. Paragraph 39 consists of Ms. Hodges's Fourth Defense to the Complaint and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 39.

28. Paragraph 40 consists of Ms. Hodges's Fourth Defense to the Complaint and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 40.

AS TO DEFENDANT'S FIFTH DEFENSE
**(Unclean Hands Re: The Plaintiff Claimed to Have Considered
my Application for an FMA HAMP Loan Modification)**

29. Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

30. Paragraph 41 consists of Ms. Hodges's Fifth Defense to the Complaint and, therefore, requires no response from Wells Fargo. Further, Wells Fargo is informed and believes the allegations set forth in paragraph 41 contain legal conclusions to which no response is required. By way of further response, Wells Fargo avers that the letter to which Defendant refers is a written document, which speaks for itself, and denies any allegations inconsistent with the express, written terms thereof. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 41.

31. Paragraph 42 consists of Ms. Hodges's Fourth Defense to the Complaint and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 42.

32. Paragraph 43 consists of Ms. Hodges's Fourth Defense to the Complaint and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 43.

33. Paragraph 44 consists of Ms. Hodges's Fourth Defense to the Complaint and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond, Wells Fargo denies all allegations set forth in paragraph 44.

AS TO DEFENDANT'S SIXTH DEFENSE
(Lack of Jurisdiction)

34. Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

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35. Paragraph 45 consists of Ms. Hodges's Sixth Defense to the Complaint and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond to the allegations set forth in paragraph 45, Wells Fargo denies any response inconsistent with the allegations of its Complaint.

AS TO DEFENDANT'S ADDITIONAL DEFENSES RESERVED

36. Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

37. Paragraph 46 consist of Ms. Hodges's heading, "Additional Defenses Reserved to the Complaint" and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond to the allegations set forth in paragraphs 46, Wells Fargo denies any response inconsistent with the allegations of its Complaint.

38. Paragraph 47 consists of Ms. Hodges's Additional Defenses Reserved to the Complaint and, therefore, requires no response from Wells Fargo. To the extent that Wells Fargo is required to respond to the allegations set forth in paragraph 47, Wells Fargo denies any response inconsistent with the allegations of its Complaint.

AS TO DEFENDANT'S FIRST COUNTERCLAIM
(Actual Fraud)

39. Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

40. Responding to paragraph 48, Wells Fargo avers that the letter to which Defendant refers is a written document, which speaks for itself, and denies any allegations inconsistent with the express, written terms thereof. All remaining allegations in paragraph 48 are denied, and Wells Fargo demands strict proof thereof.

41. Responding to paragraph 49, Wells Fargo avers that the letter to which Defendant

refers is a written document, which speaks for itself, and denies any allegations inconsistent with the express, written terms thereof. Wells Fargo further denies that it made any representations that were fraudulent. All remaining allegations in paragraph 49 are denied, and Wells Fargo demands strict proof thereof.

42. Responding to paragraph 50, Wells Fargo avers that the letter is a written document, which speaks for itself, and denies any allegations inconsistent with the express, written terms thereof. By way of further response, Wells Fargo is informed and believes the allegations set forth in paragraph 50 contain legal conclusions to which no response is required. All remaining allegations in paragraph 50 are denied, and Wells Fargo demands strict proof thereof.

43. Wells Fargo denies the allegations set forth in paragraph 51 of the Amended Answer and demands strict proof thereof.

44. Wells Fargo denies the allegations set forth in paragraph 52 of the Amended Answer and demands strict proof thereof.

45. To the extent the allegations in paragraph 53 refer to a letter or other document, Wells Fargo avers that the letter is a written document, which speaks for itself, and denies any allegations inconsistent with the express, written terms thereof. All remaining allegations in paragraph 53 are denied, and Wells Fargo demands strict proof thereof.

46. Wells Fargo lacks the necessary information needed to affirm or deny the veracity of the allegations contained in paragraph 54 of the Amended Answer, including the beliefs, reactions, or knowledge of Ms. Hodges, and, therefore, Wells Fargo denies said allegations and demands strict proof thereof. To the extent the allegations in paragraph 54 refer to a letter or other document, Wells Fargo avers that the letter is a written document, which speaks for itself,

and denies any allegations inconsistent with the express, written terms thereof. All remaining allegations in paragraph 54 are denied, and Wells Fargo demands strict proof thereof.

AS TO DEFENDANT'S SECOND COUNTERCLAIM
(Breach of Fiduciary Duty)

47. Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

48. Wells Fargo denies the allegations set forth in paragraph 55 of the Amended Answer and demands strict proof thereof.

49. In responding to paragraph 56 of the Amended Answer, Wells Fargo lacks the necessary information needed to affirm or deny the veracity of the allegations contained in paragraph 56 of the Amended Answer, including the beliefs, reactions, or knowledge of Ms. Hodges, and, therefore, Wells Fargo denies said allegations and demands strict proof thereof. To the extent the allegations in paragraph 56 refer to a letter or other document, Wells Fargo avers that the letter is a written document, which speaks for itself, and denies any allegations inconsistent with the express, written terms thereof. All remaining allegations in paragraph 56 are denied, and Wells Fargo demands strict proof thereof.

50. In responding to paragraph 57 of the Amended Answer, Wells Fargo lacks the necessary information needed to affirm or deny the veracity of the allegations contained in paragraph 57 of the Amended Answer, including the beliefs of Ms. Hodges, and, therefore, Wells Fargo denies said allegations and demands strict proof thereof. All remaining allegations in paragraph 57 are denied.

51. Wells Fargo denies the allegations set forth in paragraph 58 of the Amended Answer and demands strict proof thereof.

52. Wells Fargo admits the allegations of paragraph 59 only to the extent that Ms.

Hodges did not qualify for loan modification. Wells Fargo denies the remaining allegations of paragraph 59 and demands strict proof thereof.

AS TO DEFENDANT'S THIRD COUNTERCLAIM
(Intentional Infliction of Emotional Distress)

53. Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

54. In responding to paragraph 60 of the Amended Answer, Wells Fargo lacks the necessary information needed to affirm or deny the veracity of the allegations contained in paragraph 60 of the Amended Answer, including the beliefs and reactions of Ms. Hodges, and, therefore, Wells Fargo denies said allegations and demands strict proof thereof. All remaining allegations in paragraph 60 are denied.

55. In responding to paragraph 61 of the Amended Answer, Wells Fargo lacks the necessary information needed to affirm or deny the veracity of the allegations contained in paragraph 61 of the Amended Answer, including the beliefs and reactions of Ms. Hodges, and, therefore, Wells Fargo denies said allegations and demands strict proof thereof. All remaining allegations in paragraph 61 are denied.

AS TO DEFENDANT'S FOURTH COUNTERCLAIM
(Negligence)

56. Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

57. Wells Fargo denies the allegations set forth in paragraph 62 of the Amended Answer and demands strict proof thereof. By way of further response, Wells Fargo denies it owed any duty to Ms. Hodges and avers it adhered to any duty that may have been owed to her.

58. Wells Fargo is informed and believes the allegations set forth in Paragraph 63

contain legal conclusions to which no response is required. All remaining allegations in Paragraph 63 are denied, and Wells Fargo demands strict proof thereof.

AS TO DEFENDANT'S FOURTH COUNTERCLAIM²
(Deceptive Business Practices All of which Occurred)

59. Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

60. Wells Fargo responds to the allegations set forth in the unnumbered paragraph, under the heading "COUNTERCLA IV – DECEPTIVE BUSINESS PRACTICES ALL OF WHICH OCCURRED", on page 14 of Ms. Hodges's Amended Answer, as follows: Wells Fargo denies the allegations and demands strict proof thereof.

61. Responding to paragraph 64, Wells Fargo avers that the letter is a written document, which speaks for itself, and denies any allegations inconsistent with the express, written terms thereof. All remaining allegations in paragraph 64 are denied, and Wells Fargo demands strict proof thereof.

62. Wells Fargo denies the allegations set forth in paragraph 65 of the Amended Answer and demands strict proof thereof.

63. Wells Fargo denies the allegations set forth in paragraph 66 of the Amended Answer and demands strict proof thereof.

64. Wells Fargo denies the allegations set forth in paragraph 67 of the Amended Answer and demands strict proof thereof.

65. Wells Fargo denies the allegations set forth in paragraph 68 of the Amended Answer and demands strict proof thereof.

² Defendant has two "Fourth" Counterclaims.

AS TO DEFENDANT'S FIFTH COUNTERCLAIM
(Fair Debt Collection Prohibited)

66. Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

67. In responding to paragraph 69 of the Amended Answer, Wells Fargo lacks the necessary information needed to affirm or deny the veracity of the allegations contained in paragraph 69 of the Amended Answer, including the beliefs, reactions, or knowledge of Ms. Hodges, and, therefore, Wells Fargo denies said allegations and demands strict proof thereof. To the extent the allegations in paragraph 69 refer to a letter or other document, Wells Fargo avers that the letter is a written document, which speaks for itself, and denies any allegations inconsistent with the express, written terms thereof. All remaining allegations in paragraph 69 are denied, and Wells Fargo demands strict proof thereof.

68. Responding to Ms. Hodges's notation regarding exhibits to her Amended Answer, Wells Fargo avers that the exhibits are written documents, which speak for themselves, and denies any allegations inconsistent with the express, written terms thereof.

FOR A SECOND DEFENSE TO
DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIM
(Failure to State a Claim)

69. Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

70. Ms. Hodges's counterclaims fail to state facts sufficient to constitute a cause of action against Wells Fargo, and therefore must be dismissed in their entirety with prejudice.

FOR A THIRD DEFENSE TO
DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIM
(Compliance with Note and Mortgage)

71. Wells Fargo incorporates by reference all of the terms, conditions, exclusions,



exceptions, and limitations of the Note and Mortgage, which is the subject of Wells Fargo's Complaint, and would show that it performed all of its obligations under any alleged loan contract and/or in procuring any alleged loan contract. Wells Fargo further pleads the terms and conditions of any alleged loan contract as a complete defense and bar to Ms. Hodges's counterclaims. Therefore, Wells Fargo requests that the Court dismiss Ms. Hodges's counterclaims in their entirety with prejudice.

FOR A FOURTH DEFENSE TO
DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIM
 (Good Faith)

72. With respect to Ms. Hodges, Wells Fargo has at all times acted in good faith and in compliance with any contractual obligations and/or duties.

FOR A FIFTH DEFENSE TO
DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIM
 (Prior Breach)

73. Wells Fargo would show that some or all of Ms. Hodges's counterclaims are barred by Ms. Hodges's prior breach. Therefore, Wells Fargo requests that the Court dismiss Ms. Hodges's counterclaims in their entirety with prejudice.

FOR A SIXTH DEFENSE TO
DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIM
 (Consent)

74. Wells Fargo would show that Ms. Hodges's counterclaims are barred by the doctrine of consent. Therefore, Wells Fargo requests that the Court dismiss Ms. Hodges's counterclaims in their entirety with prejudice.

FOR A SEVENTH DEFENSE TO
DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIM
 (Waiver)

75. Wells Fargo would show that the claims asserted in Ms. Hodges's Amended

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Answer and Counterclaims are barred by the doctrine of waiver. Therefore, Wells Fargo requests that the Court dismiss Ms. Hodges's counterclaims in their entirety with prejudice.

FOR AN EIGHTH DEFENSE TO
DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIM
(Estoppel)

76. Wells Fargo would show that the claims asserted in Ms. Hodges's Amended Answer and Counterclaims are barred by the doctrine of estoppel. Therefore, Wells Fargo requests that the Court dismiss Ms. Hodges's counterclaims in their entirety with prejudice.

FOR A NINTH DEFENSE TO
DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIM
(Punitive Damages)

77. Ms. Hodges claim for punitive damages violates the Due Process Clause of the Fourteenth Amendment and the laws of the State of South Carolina. Therefore, Wells Fargo requests that the Court dismiss Ms. Hodges's counterclaims in their entirety with prejudice.

FOR A TENTH DEFENSE TO
DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIMS
(Set off/Recoupment)

78. Wells Fargo would show that the borrower was advanced a sum of money, and the borrower promised to repay the money in full, with interest at a standard rate. Wells Fargo shows that Ms. Hodges has no basis whatsoever for the affirmative relief she seeks in the Amended Answer and Counterclaim, but if the court were to grant such relief, Wells Fargo would be entitled to repayment of the sum advanced, plus interest, as a recoupment and/or setoff against such relief, and Wells Fargo would also be entitled to an order of this Court recognizing and declaring Wells Fargo's equitable right to repayment in full, plus interest. Therefore, Wells Fargo requests that the Court dismiss Ms. Hodges's counterclaims in their entirety with prejudice.

FOR AN ELEVENTH DEFENSE TO
DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIM
(Compliance with Applicable Law)

79. Wells Fargo would show that any actions taken and/or procedures followed concerning Ms. Hodges were taken in good faith, in a reasonable manner and that said actions and/or procedures were authorized by contract or law, reasonable in time and manner, and Ms. Hodges is therefore precluded from recovery against Wells Fargo on her Counterclaims.

FOR A TWELFTH DEFENSE TO
DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIM
(Res Judicata)

80. To the extent Ms. Hodges is raising claims that have already been ruled upon by this Court, those claims should be barred under the doctrine of res judicata.

FOR A THIRTEENTH DEFENSE TO
DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIM
(Leave to Add Additional Defenses)

81. Wells Fargo reserves its right to set forth further affirmative defenses as needed.

WHEREFORE, having fully replied to Ms. Hodges's Sixth Amended Answer and Counterclaims, Wells Fargo prays that Ms. Hodges's counterclaims be dismissed with prejudice and that it be accorded such other and further relief as the Court may deem just and proper

/s/ S. Sterling Laney, III
S. Sterling Laney, III (S.C. Bar #6933)
Email: Sterling.Laney@wbd-us.com
Womble Bond Dickinson (US) LLP
Post Office Box 10208
Greenville, SC 29603-0208
Telephone: (864) 255-5400
Fax: (864) 239-5852

Counsel for Plaintiff Wells Fargo Bank, N.A.

August 10, 2018
Greenville, South Carolina

63

MICHELLE HODGES
6 Young Harris DR
Simpsonville, SC 29681
864-714-5263
4 12 2018

26 pages total

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) CIVIL CASE #.
Wells Fargo Bank, NA) 2017CP2308016
Plaintiff,)
v.)
Michelle Hodges, Individually: Michelle Hodges)
as Personal Representative of the Estate of Ruth)
Ladson Witherspoon: Stanley Witherspoon : SC)
Housing Corp.: Twin Creeks Homeowners)
Association, Inc.;)
Defendants,)

AFFIDAVIT OF OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Based on my information and belief of case law and my pleading concerning jurisdiction the court lack authority to make a decision the plaintiff's claim, as the Plaintiff failed to file a Creditor's claim in the probate court prior to expiration and therefore the Plaintiff's claim is barred and the Plaintiff does not have acclain against the Estate, me as the Personal Representative nor the Heirs of the Estate.

Based on my information and belief the Note nor Mortgage allowed the Plaintiff to accelerate the debt or Foreclose, as stated in both documents without proper loss mitigation.

SCANNED

1
64

ENTERED COMPUTER

FILED
CLERK OF COURT
JAN 12 2018
GREENVILLE, SC

Based on my information and belief the Plaintiff breached its fiduciary duty in making a determination as to whether or not I am the successor in interest and its application of the promulgated rules of the Code of Federal Regulations for loss mitigation.

Based on my information and belief the Plaintiff's case should be dismissed base on Fraud upon the Court and Discovery abuse.

Attached is a copy of the creditor's claim from the Greenville County Probate Court's website showing tht is was stamped and received by the Court and it is void of any claims by the Plaintiff.

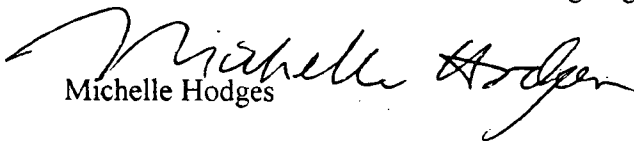
Copy of Warranty Deed I am in possession of the Original, officially recorded at the County recorders office

Certified copies the Mortgage and Deed of Distribution – admissible public records

Official copy of my Mother's Death Certificate from the Business Records of the State of South Carolina

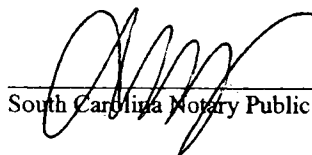
Web page published by HUD, from HUD's official website, showing loss Mitigation required prior to Foreclosure.

I hereby certify that I have made the foregoing statements on my information and belief


Michelle Hodges

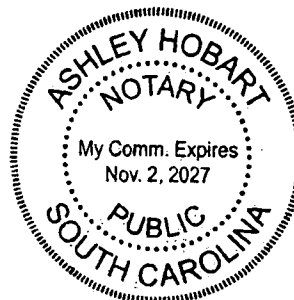
State of South Carolina, Count of Greenville Subscribed and sworn (or affirmed) before me

This 12th day of July, ~~2018~~ 2019
at.


South Carolina Notary Public

110212027
Commission expiration





19 JUL 12 PM 12:40
Paul Wickensinner COC-GVL SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)
Wells Fargo Bank, NA)
Plaintiff)
Michelle Hodges, Individually: Michelle Hodges)
as Personal Representative of the Estate of Ruth)
Ladson Witherspoon: Stanley Witherspoon : SC)
Housing Corp.: Twin Creeks Homeowners)
Association, Inc.;)
Defendants,)
CASE O. 2017CP208016
CERTIFICATE OF SERVICE
COUNTERCLAIM
Michelle Hodges,
Counterclaim Plaintiff
Wells Fargo Bank, NA
Counterclaim Defendants

I the undersigned defendant, Michelle Hodges, do certify that I have served the below parties, via first class mail as shown below.

Jamile J. Francis III (accepts service)
Womble Bond Dickinson
550 S. Main ST #400
Greenville, SC 29601

Robert P. Wood (accepts service)
Rogers, Townsend & Thomas
1221 S. Main ST 14th Floor
Columbia, SC 29201

Certified Mail
S. Sterling Laney, III Partner
Womble Bond Dickinson
550 S. Main Street #400
Columbia, SC 29601

H. Guyton Murrel
Tracey C. Easton
SC Housing Corp
300-C Outlet Pointe Blvd
Columbia, SC 29210

Michelle Hodges, Defendant
7 12 19

3

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Redacted

NOTE

Witherspoon

Multistate

FHA Case No.

Redacted

March 28, 2012

[Date]

6 Young Harris Dr
Simpsonville, SC 29681
[Property Address]

1. PARTIES

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means NVR Mortgage Finance, Inc. Lic. 1127

and its successors and assigns.

2. BORROWER'S PROMISE TO PAY; INTEREST

In return for a loan received from Lender, Borrower promises to pay the principal sum of One Hundred Fifty Eight Thousand Four Hundred Fourteen And Zero/100

Dollars (U.S. \$158,414.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of Three and three quarters

percent (3.750 %) per year until the full amount of principal has been paid.

3. PROMISE TO PAY SECURED

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

4. MANNER OF PAYMENT

(A) Time

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on May 01, 2012. Any principal and interest remaining on the first day of April, 2042, will be due on that date, which is called the "Maturity Date."

(B) Place

Payment shall be made at 121 Hillpointe Drive, Suite 100, Canonsburg, PA 15317

or at such place as Lender may designate in writing by notice to Borrower.

(C) Amount

Each monthly payment of principal and interest will be in the amount of U.S. \$ 733.64. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

(D) Allonge to this Note for payment adjustments

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box]

☐ Graduated Payment Allonge ☐ Growing Equity Allonge ☐ Other [specify]

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5. BORROWER'S RIGHT TO PREPAY

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

6. BORROWER'S FAILURE TO PAY**(A) Late Charge for Overdue Payments**

If Lender has not received the full monthly payment required by the Security Instrument, as described in Paragraph 4(C) of this Note, by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of ~~Four~~

percent (**4.000 %**) of the overdue amount of each payment.

(B) Default

If Borrower defaults by failing to pay in full any monthly payment, then Lender may, except as limited by regulations of the Secretary in the case of payment defaults, require immediate payment in full of the principal balance remaining due and all accrued interest. Lender may choose not to exercise this option without waiving its rights in the event of any subsequent default. In many circumstances regulations issued by the Secretary will limit Lender's rights to require immediate payment in full in the case of payment defaults. This Note does not authorize acceleration when not permitted by HUD regulations. As used in this Note, "Secretary" means the Secretary of Housing and Urban Development or his or her designee.

(C) Payment of Costs and Expenses

If Lender has required immediate payment in full, as described above, Lender may require Borrower to pay costs and expenses including reasonable and customary attorneys' fees for enforcing this Note to the extent not prohibited by applicable law. Such fees and costs shall bear interest from the date of disbursement at the same rate as the principal of this Note.

7. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Lender to demand payment of amounts due. "Notice of dishonor" means the right to require Lender to give notice to other persons that amounts due have not been paid.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the property address above or at a different address if Borrower has given Lender a notice of Borrower's different address.

Any notice that must be given to Lender under this Note will be given by first class mail to Lender at the address stated in Paragraph 4(B) or at a different address if Borrower is given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. Lender may enforce its rights under this Note against each person individually or against all signatories together. Any one person signing this Note may be required to pay all of the amounts owed under this Note.

Le9

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Note.

Ruth Witherspoon

Ruth Witherspoon

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

[Sign Original Only]

☐ Refer to the attached *Signature Addendum* for additional parties and signatures.

WITHOUT RECOURSE

Pay to the order of

Wells Fargo Bank, N.A.
NVR Mortgage Finance, Inc.

By Carol Rhodes Asst. Secretary

016

PAY TO THE ORDER OF

WITHOUT RECOURSE

By

Lori K. Venegonia

Lori K. Venegonia
Vice President Loan Documentation
Wells Fargo Bank, N.A.

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BY: COURT REPORTER
FOR: COURT REPORTER
WITHOUT RECOURSE
Pay to the order of
HAWK MORTGAGE FINANCIAL, INC.

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Wells Fargo Bank, NA,

Plaintiff,

v.

Michelle Hodges, Individually; Michelle
Hodges, as Personal Representative of the
Estate of Ruth Ladson Witherspoon; Stanley
Witherspoon; SC Housing Corp.; Twin
Creeks Homeowners Association, Inc.;

Defendants.

Case No. 2017-CP-23-08016

Exhibit C

to

**WELLS FARGO BANK, NA'S REPLY IN SUPPORT
OF ITS MOTION FOR SUMMARY JUDGMENT**

ELECTRONICALLY FILED - 2019 Jul 18 4:17 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2308016

73

Legal Residence (4%) Special Assessment Application
 Greenville County Real Property Services
 301 University Ridge, Suite 1000
 Greenville, SC 29601
 Telephone (864) 467-7300

DO NOT FAX

DO NOT E-MAIL

Name and Mailing Address	Property Location and Legal Description			
HODGES MICHELLE YWITHERSPOON STA	Map #	0550.24-01-169.00	Acreage	0.206
6 YOUNG HARRIS DR	Legal Desc	83	Area	003
SIMPSONVILLE, SC 29681	Location	6 YOUNG HARRIS DR	Dist	892
			Year	2017

****YOU MUST ANSWER ALL QUESTIONS ON THIS APPLICATION AND PROVIDE ALL REQUIRED PROOF****My Mailing address is correct () Yes () No Correct Address is P.O. Box 95 - Mauldin, SC 29662Marital Status: () Widowed () Never Married; () Married ☒ Divorced; () Legally Separated - *Attach Court Ordered Legal Separation

- The property, which is the subject of this application, is my legal residence and where I am domiciled.
 () No - you may disregard this application ☒ Yes - *Must List date of Occupancy 3/21/17
- Type of Residence: () Single Family; () Duplex; () Townhouse; () Condo; () Separate Parcel as Yard;
 () Mobile Home located here - Permit # _____
- Is any part of the property rented or used by someone other than the owner? ☒ No () Yes - Explain _____
- Is this property held in Trust? ☒ No () Yes - Is the property occupied as a residence by the current income beneficiary of the trust?
 () No () Yes - *Certification of Trust with Current Income Beneficiary Must be Attached
- Is the property being purchased under Bond for Title or Installment Contract? ☒ No () Yes - *Attach Copy of Recorded BFT
- Is the property owned by a Single Member LLC or a Family LLC? ☒ No () Yes - Attach Operating Agreement (Listing all members)
 AND "Certificate of Existence" from SC Secretary of State.
- Previous Address 490 WENWOOD Rd #A101 - Greenville, SC 29607
 () Parent's House; () Renter; () Owner - If Owner, do you still own? () Yes () No - Date Sold _____
 *If still owned, provide letter from previous taxing jurisdiction stating the exemption was removed and the effective date.
- Do you or your spouse or any of your dependents maintain a residence in another County, State or Country? ☒ No () Yes
 If yes, List All Addresses _____
 Is or was the property receiving an exemption () No () Yes - *Must provide letter from previous taxing jurisdiction stating the exemption was removed and the effective date.
- Do you file a South Carolina Resident state income tax return? ☒ Yes () No - (Attach Explanation)
- Are your vehicles registered in Greenville County? ☒ Yes () No - (Attach Explanation)

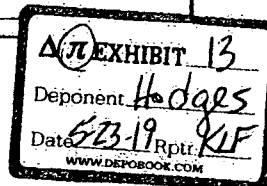
Please Provide: A copy of your current South Carolina Driver's License/SC Identification Card AND South Carolina Motor Vehicle Registration for all owner occupants (and spouses) are required for eligibility of the 4% special assessment ratio. Veh OK

*******Residence address and license address must match*******

"Under penalty of perjury, I certify that the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application; that neither I nor any other member of my household claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and that neither I nor a member of my household claim the special assessment ratio allowed by this section on another residence." A member of my household means: (a) the owner occupant's spouse, except when the spouse is legally separated from the owner-occupant; and (b) any child of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal tax returns. INITIAL MA INITIAL _____ INITIAL _____ INITIAL _____ INITIAL _____

*******All Owner-occupants MUST INITIAL indicating they understand the above Certification*******SCDL # Redacted 3704 iss 10/7/15

Required: Owner's Signature <u>Michelle Hodges</u> Date <u>5/31/17</u> Phone <u>864-504-9900</u> Email <u>mhodges@scdl.com</u>	Required: Owner's Spouse () or Co-Owner () Signature: _____ SSN: _____ Date: _____ Phone: _____ Email: _____
---	---



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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Wells Fargo Bank, NA,

Plaintiff,

v.

Michelle Hodges, Individually; Michelle
Hodges, as Personal Representative of the
Estate of Ruth Ladson Witherspoon; Stanley
Witherspoon; SC Housing Corp.; Twin
Creeks Homeowners Association, Inc.;

Defendants.

Case No. 2017-CP-23-08016

Exhibit D

to

**WELLS FARGO BANK, NA'S REPLY IN SUPPORT
OF ITS MOTION FOR SUMMARY JUDGMENT**

ELECTRONICALLY FILED - 2019 Jul 18 4:17 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2308016

75

2016-12-13 16:36

Wells Fargo

8642889912 >>

P 22/24

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE MATTER OF:

RUTH LADSON WITHERSPOON

(Decedent)

IN THE PROBATE COURT

DEED OF DISTRIBUTION

(Real Property Only)

NOT A WARRANTY DEED

CASE NUMBER: 2015ES2301615

The undersigned states as follows:

Decedent died on July 5, 2015 and probate of the Estate is being administered in the Probate Court for Greenville County, South Carolina, in File # 2015ES2301615.I/We was/were appointed Personal Representative (s) on August 4, 2015.

Decedent owned real property described as follows:

Tax Map Number:

See Attached

Street/Property Address:

6 Young Harris Dr. Simpsonville, SC2968

Legal Description:

See Attached

2016098133
 DEED/DIST Book: DE 2501 Page: 5396 - 5398 3 Pgs
 December 6, 2016 04:44:25 PM
 Fee: \$10.00

FILED IN GREENVILLE COUNTY, SC T. S. & H. S.☐ Additional sheet(s) for additional property(ies) is/are attached (check is applicable).

This transfer is made pursuant to:

- ☐ Decedent's Will
☒ Intestacy Statute: SCPC 62-2-103
☐ Private Family Agreement SCPC 62-3-912
☐ Disclaimer by: _____
☐ Probate Court Order issued on _____
☐ Other: _____



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 e

In accordance with the laws of the State of South Carolina, the Personal Representative(s) does/do hereby release all of the Personal Representative's(s') right, title and interest, including statutory and/or testamentary powers, over the real property described to the beneficiaries named below:

% (or fraction inherited from the estate) 50%
 To Name: Michelle Y. Hodges
 Address: 6 Yangtze Island Dr
Simpsonville SC 29681

% (or fraction inherited from the estate) _____
 To Name: _____
 Address: _____

% (or fraction inherited from the estate) 50%
 To Name: Stanley G. Witherspoon
 Address: 945 College St
Charlotte, NC 28206

% (or fraction inherited from the estate) _____
 To Name: _____
 Address: _____

☐ Additional sheet(s) for names of additional beneficiaries is attached (check, if applicable)

IN WITNESS WHEREOF the undersigned, as Personal Representative(s) of the above Estate, has executed this Deed of Distribution, on this 6th day of December, 2016.

SIGNED, SEALED AND DELIVERED
 IN THE PRESENCE OF:

Jennifer A. Johnson
 (Witness Signature)

Estate of: RUTH LADSON WITHERSPOON

Michelle Hodges
 (Personal Representative Signature)

Jennifer Ann Johnson
 (Print Name)

MICHELLE HODGES
 (Print Name)

Alan N. Grover Jr.
 (Witness Signature)

Alan N. Grover Jr.
 (Print Name)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

ACKNOWLEDGMENT

I, Jennifer Ann Johnson, Notary Public, a notary for the State of South Carolina do hereby certify that MICHELLE HODGES, as Personal Representative(s) of the Estate of RUTH LADSON WITHERSPOON, personally appeared before me this day and acknowledged the due execution of the foregoing Deed of Distribution.

Witness my hand and seal this the 6 day of December, 2016.



Jennifer A. Johnson (SEAL)
 (Signature of Notary Public)

Jennifer A. Johnson
 (Print name of Notary Public)
 Notary Public for State of South Carolina
 My Commission Expires: 09-08-2025

Note: It is recommended that an attorney prepare this document and determine if a title examination is necessary.

2016-12-13 16:37

Wells Fargo

8642889912 >>

P 24/24

ALL that certain piece, parcel or lot or land situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as Lot 83 of TWIN CREEKS, PHASE II, SHEET 1 OF 2, on plat thereof, prepared by Landmark Surveying, Inc. dated February 12, 2007 and recorded March 22, 2007 in the Register of Deeds Office for Greenville County, SC in Plat Book 1034, page 19, and more recently shown on plat prepared by Landmark Surveying, Inc., entitled "Closing Survey for Ruth Witherspoon" dated March 14, 2012 and recorded herewith in the Register of Deeds Office for Greenville County, SC in Plat Book 1135 at Page 12. Reference to said latter plat is hereby made for a more complete metes and bounds description thereof.

THIS being a portion of the same property conveyed unto the Grantor herein by deed of Mark III Properties, Inc., dated December 28, 2011 and recorded January 27, 2012 in the Register of Deeds Office for Greenville County, SC in Deed Book 2400 at Page 1834.

This conveyance is made subject to all rights of way, easements, conditions, public roads and restrictive covenants reserved on plats and other instruments of public record and actually existing on the ground affecting said property.

ADDRESS OF GRANTEE(S): 6 Young Harris Drive, Simpsonville, SC 29681

TAX MAP REFERENCE: 0550.24-01-169.00

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold, all and singular, the premises before mentioned unto the grantees as joint tenants and not as tenants in common, their heirs and assigns forever in fee simple. And, the grantor does hereby bind the grantor and the grantor's heirs or successors, executors and administrators to warrant and forever defend all and singular, said premises unto the grantees and the grantees' heirs or successors only. the same or any part thereof but no others.

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STATE OF SOUTH CAROLINA

~~Greenville County~~
Probate Court

IN THE PROBATE COURT

COUNTY OF GREENVILLE

2016 APR 26 PM 5:07

PROOF OF DELIVERY

IN THE MATTER OF:

RUTH LADSON WITHERSPOON

CASE NUMBER: 2015ES2301615

(Decedent)

On the 2 day of April, 2016, I mailed or delivered the following document(s):

Notice of Allowance/Disallowance of Claim form

- ☐ A copy of which is attached hereto and incorporated herein, or
☒ The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

- ☐ personal delivery
☐ certified mail
☐ commercial delivery
☒ ordinary first-class mail
☐ registered mail

to each of the following persons at the address shown:

NAME

ADDRESS

THI of S.C. at Magnolia Place at
Greenville, LLC

Hospital Physician Services SE, PC

Ascension Point Recovery Systems, LLC
on behalf of Synchrony Bank

Greenville Federal Credit Union

Greenville Health System

C/O Jeff Kahn

920 Ridgebrook Road, Sparks MD 21152

C/O DCM Services, 7601 Penn Avenue S. Suite A600
Minneapolis MN 55423-5004

200 Coon Rapids Blvd. Suite 200

Coon Rapids MN 55433

1501 Wade Hampton Blvd., Greenville SC 29609

255 Enterprise Blvd. Suite 210, Greenville SC 29615

SWORN to before me this 04 day of
April, 2016Kimberly [Signature]
Notary Public for South Carolina
My commission expires: 5/30/17Signature: [Signature]

Print Name: MICHELLE HODGES

Address: 6 YOUNG HARRIS DRIVE
SIMPSONVILLE, SC 29681

Telephone (Work): N/A

(Home): (864) 263-3534

(Cell): (864) 509-4420

Email: N/A

Relationship to Decedent/Estate: PERSONAL REPRESENTATIVE

FORM #120PC (1/2014)
62-1-401, 62-3-706, 62-3-1001, SCRPC 4(d)(9)

IMAGED

CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER : 139-15-024036 AMENDED

DECEDENT'S NAME: *RUTH LADSON WITHERSPOON*

AKA's: NA

ARMED FORCES: NO

DATE OF BIRTH: [REDACTED] 1937

TYPE OF PLACE OF DEATH: HOSPITAL- INPATIENT

NAME AND ADDRESS OF PLACE OF DEATH: ST. FRANCIS DOWNTOWN, GREENVILLE, SC 29601

PLACE OF DISPOSITION: RESTHAVEN MEMORIAL GARDENS

DISPOSITION LOCATION: PIEDMONT, SOUTH CAROLINA

METHOD OF DISPOSITION: BURIAL

DECEDENT'S RESIDENCE: 6 YOUNG HARRIS DRIVE, SIMPSONVILLE, GREENVILLE COUNTY, SC, 29681

PLACE OF BIRTH: SOUTH CAROLINA

SEX: FEMALE

SOCIAL SECURITY NUMBER: [REDACTED]

AGE: 77 YEARS

COUNTY OF DEATH: GREENVILLE

MARITAL STATUS: DIVORCED (AND NOT REMARRIED)

SURVIVING SPOUSE'S NAME: NA

FATHER'S NAME: PAUL LADSON

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: CARRIE STEWART

INFORMANT'S NAME: MICHELLE HODGES

MAILING ADDRESS: PO BOX 95, MAULDIN, SC, 29662

FUNERAL HOME: WATKINS, GARRETT & WOODS MORTUARY, INC., 1011 AUGUSTA STREET, GREENVILLE, SC, 29605-3998

FUNERAL DIRECTOR: FRED D. GARRETT JR.

EMBALMER'S NAME: EDWARD RUFFIN

ACTUAL OR PRESUMED DATE OF DEATH: JULY 05, 2015

ACTUAL OR PRESUMED TIME OF DEATH: 1052

CAUSE OF DEATH - PART I

METASTATIC UTERINE CANCER

LIVER FAILURE

MALIGNANT PLEURAL EFFUSION

RELATIONSHIP: DAUGHTER

LICENSE NUMBER: 1962

LICENSE NUMBER: 3686

MANNER OF DEATH: NATURAL

OTHER SIGNIFICANT CONDITIONS - PART II:

HYPERTENSION, PNEUMONIA

CORONER CONTACTED? NO

AUTOPSY PERFORMED? NO

AUTOPSY AVAILABLE? NA

DATE OF INJURY: NA

TIME OF INJURY: NA

INJURY AT WORK? NA

PLACE OF INJURY: NA

LOCATION OF INJURY: NA

HOW THE INJURY OCCURRED?

NA

CERTIFIER NAME AND TITLE: MD KERISEA S. MCPHERSON

LICENSE NUMBER: 25098

CERTIFIER'S ADDRESS: ONE ST. FRANCIS DRIVE, GREENVILLE, SC, 29601

DATE FILED: JULY 10, 2015

DATE OF ISSUANCE: AUGUST 14, 2015

SPECIAL INSTRUCTIONS:

DECEDENT'S FATHER LAST NAME AMENDED ON 08/10/2015, DECEDENT'S RESIDENCE TOWN AMENDED ON 08/10/2015, DECEDENT'S

RESIDENCE ZIP ID AMENDED ON 08/10/2015

(Handwritten signature)

SC04463965

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine Templeton

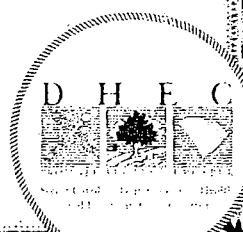
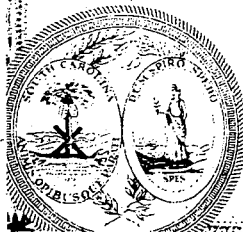
Catherine Templeton
Director and State Registrar

Barbara E. Derrick

Barbara E. Derrick
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 09/10/2014



4044 (80)

Return To:



2012025003

MTG
13 PGS

Book MO 5155

Page 5354-5365

March 29, 2012 03:16:31 PM

Rec \$19 00

Cnty Tax \$0 00

State Tax \$0 00

FILED IN GREENVILLE COUNTY, SC

Prepared By:

Brittany Binnie

10706 Sikes Place

Suite 350

Charlotte, NC 28277

MAY 02 2019

[Space Above This Line For Recording Data]

State of South Carolina

MORTGAGE

FHA Case No

461-5472518-703

MTN 100027611110903219

THIS MORTGAGE ("Security Instrument") is given on March 28, 2012
The Mortgagor is Ruth Witherspoon

("Borrower"). This Security Instrument is given to Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns), as mortgagee. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS. NVR Mortgage Finance, Inc. Lic. 1127

("Lender") is organized and existing under the laws of The State of Virginia, and has an address of 121 Hillpointe Dr., Suite 100, Canonsburg, PA 15317

Borrower owes Lender the principal sum of
One Hundred Fifty Eight Thousand Four Hundred Fourteen And Zero/100
Dollars (U.S. \$ 158,414.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on April 01, 2042

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and

1111090321

FHA South Carolina Mortgage with MERS - 4/96

Wolters Kluwer Financial Services

VMP®-4N(SC) (0409) 01

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Amended 2/01

Initials R.W.

1111090321

NW Unique Identifier 1127/260097

assigns), and to the successors and assigns of MERS the following described property located in Greenville County, South Carolina:

Parcel ID Number:

which has the address of 6 Young Harris Dr.

Simpsonville

[City], South Carolina 29681

[Street]

[Zip Code]

("Property Address");

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns), and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

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

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures 1111090321

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Initials *R. W.* 1111090321

NMLS Unique Identifier 1127/260097

Exhibit A***Legal Description***

ALL that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as ***Lot 83 of TWIN CREEKS, PHASE II, SHEET 1 OF 2***, on plat thereof, prepared by Landmark Surveying, Inc. dated February 12, 2007 and recorded March 22, 2007 in the Register of Deeds Office for Greenville County, SC in Plat Book 1034, page 19, and more recently shown on plat prepared by Landmark Surveying, Inc., entitled "Closing Survey for Ruth Witherspoon" dated March 14, 2012 and recorded herewith in the Register of Deeds Office for Greenville County, SC in Plat Book 1135 at Page 12. Reference to said latter plat is hereby made for a more complete metes and bounds description thereof.

This being the same property conveyed unto the mortgagor herein by deed from ***NVR, Inc.*** of even date to be recorded herewith.



being made to Wells Fargo and that she was trying to obtain a loan modification from Wells Fargo. (Hodges Dep. Tr. 45:2-5, 86:5-15.) Therefore, as it is undisputed that Wells Fargo is the party with standing to bring this action, Defendant's affirmative defense for lack of standing should be dismissed with prejudice.

4. Unclean Hands

- a. Defendant's affirmative defense of unclean hands fails as a matter of law and should be dismissed. Defendant bases this defense on being denied for a loan modification. See Sixth Amended Answer and Counterclaims ¶41. "The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." *Wachovia Bank, N.A. v. Coffey* 389 S.C. 68, 75, 698 S.E.2d 244, 247 (Ct. App. 2010). "The rule must be understood to refer to some misconduct concerning the matter in litigation of which the opposing party can, in good conscience, complain in a court of equity." *Id.* Defendant has failed to come forward with any evidence that Plaintiff acted unfairly towards her or that Defendant was prejudiced as a result. Indeed as evidenced by the holding of *Weber* cited below, the mere denial of a loan modification does not indicate that one is treated unfairly.
- b. Further undermining Defendant's defense of unclean hands is the fact that there are no private causes of action under Administrative Order 2011-05-02-01, under HAMP, or under any similar modification program. See, e.g., *Weber v. Bank of America, N.A.*, No. 0:13-cv-01999-JFA, 2013 WL 4820446,

at *4-5 (D.S.C. Sept. 10, 2013). Accordingly, any allegations that Wells Fargo did not duly consider Defendant for a loan modification (which is expressly denied) would not give rise to a private cause of action and therefore should not support Defendant's defense of unclean hands in this matter. Therefore, Defendant's affirmative defense of unclean hands should be dismissed with prejudice.

5. Lack of Jurisdiction

- a. This court has jurisdiction over the parties and subject matter in this action because it involves real property located in Greenville County and Defendant lives in Greenville County. Accordingly, this affirmative defense should be dismissed with prejudice.

Counterclaims

1. Actual Fraud

- a. Defendant failed to state or plead with particularity the circumstances constituting fraud as required by Rule 9(b), SCRCP. (See Sixth Amended Answer and Counterclaims ¶¶ 48-54); See also *Bookhart v Central Elec. Power Cooperative, Inc.*, 222 S.C. 289, 72 S.E.2d 576 (1952).
- b. Defendant's claim for fraud should be dismissed with prejudice because she has no evidence that any alleged representations made by Wells Fargo were false at the time they were made. See *Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 105, 439 S.E.2d 283, 285 (Ct. App. 1993).
- c. Defendant has also failed to show that she relied on Wells Fargo's alleged misrepresentation that Defendant was considered and denied for a loan

modification. *See Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 445 (Ct. App. 2003) (holding that in order to prove fraud, the hearer's reliance on the truth of a statement must be shown). Instead, it is clear from Defendant's own allegations that she recognized this to be a "fraudulent misrepresentation" based on her (false) assertion that the denial letter did not contain a reason for her denial. (See Sixth Amended Answer and Counterclaims ¶¶ 48-49); (Hodges Dep. Tr. 79:7-14, 81:6-12, 94:23-95:3.)

- d. Similarly, no representations were made by Wells Fargo to Defendant which proximately caused Defendant to suffer any injury.
- e. Further, even if Defendant could satisfy the elements of fraud above, which is denied, the underlying transaction was arms-length, such that no fiduciary or confidential relationship was formed. Therefore, Defendant had no right to rely on Wells Fargo's alleged statements. *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 445 (Ct. App. 2003) ("[T]here is no right to rely, as required to establish fraud, where there is no confidential or fiduciary relationship and there is an arm's length transaction between mature, educated people. This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests.").
- f. Finally, since the only alleged misrepresentation made to Defendant was that she was considered and did not qualify for a loan modification, this claim fails as a matter of law because there are no private causes of action under Administrative Order 2011-05-02-01, under HAMP, or under any similar

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modification program. *See, e.g., Weber v. Bank of America, N.A.*, No. 0:13-cv-01999-JFA, 2013 WL 4820446, at *4-5 (D.S.C. Sept. 10, 2013).

2. Breach of Fiduciary Duty

- a. A fiduciary duty arises “when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence.” *O’Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992). Whether a relationship rises to that of a fiduciary is a question of law for the Court. *Spence v. Wingate*, 395 S.C. 148, 160, 716 S.E.2d 920, 926 (2011).
- b. Defendant presented no evidence in her deposition that a fiduciary relationship existed. Instead, she appears to argue that a fiduciary duty was created through the signing of the Mortgage contract and her act of providing documents in the loan modification process. (Hodges Dep. Tr. 67:3-68:9, 87:7-13.)
- c. At most, Wells Fargo’s relationship with Defendant was that of a creditor and a debtor. There is certainly no evidence other than Defendant’s own naked allegation that Defendant had a relationship based on “confidence and trust” with Wells Fargo. (Hodges Dep. Tr. 84:17-20, 85:20-86:5, 87:7-13.) Instead, Defendant is simply a person who is in possession of the subject property and refused to make payments on the subject loan and Wells Fargo was simply a lender—a lender who had a contractual right, if it so chose, to take steps to preserve the collateral securing its loan following default. Under such circumstances, South Carolina law does not recognize a fiduciary relationship.

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See, e.g., Regions Bank, 354 S.C. at 671 (Ct. App. 2003) (“South Carolina holds the normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature.”); *Burwell v. South Carolina Nat’l Bank*, 288 S.C. 34, 40, 340 S.E.2d 786, 790 (1986) (holding there is no fiduciary relationship between a mortgagee and mortgagor).

- d. Nor can Defendant salvage this claim by suggesting that the parties’ conduct somehow created a fiduciary relationship. South Carolina law does not permit a fiduciary relationship to be created unilaterally and without the awareness of the supposed fiduciary. *See Regions Bank*, 354 S.C. at 671 (Ct. App. 2003) (“Yet, no fiduciary relationship between a bank and its depositor exists when the bank is unaware of any special trust reposed in it.”). Instead, there must be evidence showing that the fiduciary actually accepted the “confidence” that was being placed in it. *Wired Fox Techs., Inc. v. Estep*, Case No. 6:15-331-BHH, 2017 U.S. Dist. LEXIS 43993, at *32 (D.S.C. Mar. 27, 2017). Here, though, there is no evidence that Wells Fargo accepted any type of relationship with Defendant beyond that of a creditor and a debtor.
- e. Finally, no duty could have been breached since Defendant was in fact considered for a loan modification. *See Weber*, 2013 WL 4820446 at *3 (D.S.C. Sept. 10, 2013).

3. Intentional Infliction of Emotional Distress

- a. Defendant has presented no evidence of intentional or reckless extreme and outrageous conduct by Wells Fargo that was so severe that no reasonable person could be expected to endure it, as required for a claim of intentional

infliction of emotional distress. See *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Sols.*, 388 S.C. 394, 697 S.E.2d 551 (2010).

- b. Additionally, there is nothing in the record to suggest that Defendant has even experienced “severe emotional distress.” But the gravamen of this claim is to recover “damages for purely mental anguish.” *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007). Here, Defendant has not presented anything other than a naked allegation in the amended complaint that she suffered emotional distress. (See Sixth Amended Complaint ¶¶ 60-61.) This is insufficient as a matter of law. The South Carolina Supreme Court has specifically addressed this exact situation: To permit a plaintiff to legitimately state a cause of action by simply alleging, “I suffered emotional distress” would be irreconcilable with this Court’s development of the law in this area. In the words of Justice Littlejohn, the court must look for something “more”—in the form of third party witness testimony and other corroborating evidence—in order to make a prima facie showing of “severe” emotional distress. *Hansson*, 374 S.C. at 358–59, 650 S.E.2d at 72.

4. Negligence

- a. Defendant’s negligence claim fails at the outset because Wells Fargo’s complained of conduct—failing to modify the loan and paying taxes which it should not have—was expressly governed by a contract. “Under South Carolina law, ‘if the cause of action is predicated on the alleged breach, or even a negligent breach, of a contract between the parties, an action in tort will not lie.’” *Toney v. Lasall Bank Nat’l Ass’n*, 896 F. Supp. 2d 455, 480



(D.S.C. 2012) (quoting *Enhance-It, LLC v. Am. Access Techs., Inc.*, 413 F. Supp. 2d 626, 631 (D.S.C. 2006)).

- b. This exact standard has been used to dismiss claims like Defendant's where a borrower asserts that its lender has engaged in negligence, but the acts forming the basis of the claim trace their roots to a contract between the borrower and the lender. *See, e.g., Weber v. Bank of Am.*, Case No. 0:13-cv-01999-JFA, 2013 U.S. Dist. LEXIS 128863, at *14-15 (D.S.C. Sept. 10, 2013) (dismissing a negligence claim that arose out of the bank's treatment of the borrower's attempts to modify the parties' loan agreement); *Land v. Green Tree Servicing, LLC*, Case No. 8:14-1165-TMC, 2014 U.S. Dist. LEXIS 154879, at *12-13 (D.S.C. Oct. 31, 2014) (dismissing a claim of negligence where the borrower died of a heart attack shortly after his loan servicer sent personnel to his property to notify him that foreclosure and eviction proceedings were to begin because all of the servicer's actions were taken pursuant to the loan agreement); *Toney v. LaSalle Bank Nat. Ass'n*, 896 F. Supp. 2d 455, 480 (D.S.C. 2012)(dismissing a claim for gross negligence brought by a borrower against a bank because "Plaintiff's negligence claim appears to arise from the mortgage contract such that she cannot establish a claim for gross negligence").
- c. Moreover, at all times relevant to this lawsuit, the relationship between Defendant and Wells Fargo was that of debtor-creditor, and therefore no special duty arose between the two parties which could give rise to a claim for negligence.

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- d. Finally, no duty could have been breached since Defendant was in fact considered for a loan modification. *See Weber*, 2013 WL 4820446 at *3 (D.S.C. Sept. 10, 2013).

5. Deceptive Business Practices All of Which Occurred

- a. Defendant's counterclaim for violation of the South Carolina Unfair Trade Practices Act ("SCUTPA") fails as a matter of law and cannot withstand summary judgment in this case because Defendant cannot establish an "adverse impact on the public interest," one of the requisite elements for an actionable SCUTPA claim. *See Jeffries v. Phillips*, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1994) ("To be actionable under the UTPA, an unfair or deceptive practice or act must adversely affect the public interest."). An adverse effect or impact on the public interest is shown by demonstrating that the acts or practices have the potential for repetition. *See, e.g., Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 351 S.E.2d 347 (Ct. App. 1986). The South Carolina Supreme Court has held that "[t]he potential for repetition may be shown in two ways: 1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence, or 2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts." *Crary v. Djebelli*, 329 S.C. 385, 388, 496 S.E.2d 21, 23 (1998).
- b. Because conduct must "adversely affect the public interest" and demonstrate a "potential for repetition" to be actionable, "conduct which only affects the

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parties to the transaction provides no basis for a UTPA claim.” *Jeffries*, 316 S.C. at 527, 451 S.E.2d at 23; see also *Key Co., Inc. v. Fameco Distributors, Inc.*, 292 S.C. 524, 357 S.E.2d 476 (Ct. App. 1987) (holding that a breach of a contract cannot constitute a violation of the UTPA). The dispute at issue in this foreclosure action is between two parties concerning a private contract—the Note and Mortgage and the conduct alleged only affects Defendant and not anyone else. Defendant’s complaint is centered on the loan modification review process—primarily the fact that she was denied for a loan modification and the reasons therefor—which is unique to the facts and circumstances of Defendant’s situation and the subject loan and the extent of her participation and/or cooperation in the modification process. Defendant confirmed in her deposition testimony that her claims are based solely on the loan modification process. (Hodges Dep. Tr. 68:23-69:4, 94:23-95:1.) She also admitted that her damages for the SCUTPA claim are unspecified, have not been ascertained, and are no different from her damages resulting from her other claims which are based on the subject Promissory Note, Mortgage, and the alleged implied contract between the parties governing the loan modification process. (Hodges Dep. Tr. 97:9-14, 139:13-18, 140:2-23.) Because Defendant’s allegations are contract-based and affect only her and Wells Fargo, there is no impact on the public interest, and, consequently, there is no basis for a SCUTPA counterclaim.

- c. Furthermore, for an action brought by an individual under the SCUTPA, there is a requirement that the person suffer an “ascertainable loss of money or

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property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice.” *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharm., Inc.*, No. 2012-206987, 2015 WL 4112411, at *8 (S.C. July 8, 2015) (citing S.C. Code Ann. Section 39-5-140(a)). “Thus, SCUTPA requires that a private claimant suffer an actual loss, injury, or damage, and requires a causal connection between the injury-in-fact and the complained of unfair or deceptive acts or practices.” *Id.* (emphasis added). Defendant, in her deposition, could not and did not articulate any damage that would amount to an “ascertainable” loss of money or property as required by the statute. (Hodges Dep. Tr. 138:8-139:18.) For the reasons set forth above, Defendant’s SCUTPA counterclaim fails as a matter of law and should be dismissed with prejudice.

6. Fair Debt Collection Prohibited

- a. Wells Fargo, a national bank in the business of lending money, is not a debt collector as defined by 15 U.S.C. § 1692a when it is collecting its own loan and therefore is not subject to the provisions of the Fair Debt Collection Practices Act (“FDCPA”), codified as 15 U.S.C. § 1692 et seq. *See, e.g. Davis v. Dillard Nat’l Bank*, 1:02 CV 00546, 2003 WL 21297331, *4 (M.D.N.C. June 4, 2003) (“Crediting institutions, such as banks, are not debt collectors under section 1692a(6)(A) because they collect their own debts and are in the business of lending money to consumers.”). The only evidence before this Court is that Wells Fargo was at all times collecting a debt in its own name.

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CONCLUSION

Based on the foregoing, Defendant has failed to state facts sufficient to constitute an affirmative defense or cause of action as to each of the counterclaims asserted. Furthermore, there is no genuine issue of material fact and Wells Fargo is entitled to judgment as a matter of law dismissing the Defendants' counterclaims *with prejudice*. This motion will be supported by the pleadings, interrogatory answers, depositions, affidavits on file and such memoranda as may be submitted at the hearing on this matter.

/s/ S. Sterling Laney, III
S. Sterling Laney, III (S.C. Bar #6933)
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Counsel for Plaintiff Wells Fargo Bank, N.A.

June 10, 2019
Greenville, South Carolina

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MICHELLE HODGES
6 Young Harris DR
Simpsonville, SC 29681
864-714-5263

19 JUL 12 PM 12:39
Paul Wickensimer 000 801 SC

Greenville County Court of Common Pleas
Attn: Clerk of Court, Peter B. Wickensimer
305 E. North ST
Greenville, SC 29601

Dear Clerk of the Court:

17 pages to trial

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE NO. 2017CP2308016
	)	
Wells Fargo Bank, NA	)	MEMORANDUM IN OPPOSITOIN
	)	TO PLAINTIFF'S MOTION FOR
	)	SUMMARY JUDGEMENT
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Michelle Hodges, Individually: Michelle Hodges	)	
as Personal Representative of the Estate of Ruth	)	
Ladson Witherspoon: Stanley Witherspoon:	)	
SC Housing Corp.: Twin Creeks Homeowners	)	
Association, Inc.;	)	
	)	
Defendants,	)	
	)	

Defendant, Michelle Hodges, proceeding Pro Se submits this Memorandum in Opposition to

Plaintiff's Motion for Summary Judgment. In opposition to said motion, I state the following:

IMPORTANT PROCEDURAL HISTORY

1/22/17 Foreclosure action filed by Robert P. Davis of Rogers, Townsend & Thomas

1/02/18 Certificate of Non Owner Occupancy filed by Jason D. Wyman of Rogers, Townsend

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and Thomas

1/05/18 Answer filed by Defendant SC Housing

1/25/18 Answer and Counterclaim filed by Michelle Hodges

2/01/18 First Amended Answer by right filed by Michelle Hodges

2/13/18 New Firm answering Counterclaim Womble, Bond & Dickinson – Sterling Laney III

2/19/18 Plaintiff's Attorney Robert Paul Davis – ceased representation of Plaintiff

2/26/18 Defendant's motion to amend answer filed by Michelle Hodges

3/15/18 Defendant's motion to amend answer (Third Amended Answer)

3/28/19 Leave granted to amend answer (Third & Fourth Amended Answer

4/27/18 Motion for enlargement of time (Michelle Hodges)

5/07/18 Defendant's motion to amend answer (Fifth Amended Answer

5/10/18 Motion for Dismissal and Sanctions (removed – Michelle Hodges) no discovery

5/21/18 Plaintiff responses to Defendants 4th Amended answer and counterclaims

6/05/18 Defendant's motion for leave to file Fifth Amended Answer (Mistake says 4th Amended)

7/18/18 Motion granted for leave to amended Fifth Amended Answer

7/30/18 Sixth Amended Answer filed

1/08/19 Plaintiff's Motion for Status Conference

1/10/10 Defendant's opposition to plaintiff's Scheduling order

1/22/19 Plaintiff's Motion to Compel

1/28/19 Order denying Plaintiff's Motion to Compel denied no hearing requested

3/15/19 Defendant's Motion for leave to Amend 6th A. Answer with Seventh A. Answer

4/26/19 Order Denying Motion leave to Amend 6th A. Answer with Seventh A. Answer

6/10/19 Plaintiff file Motion for Summary Judgment

(7)

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LOSS MITIGATION HISTORY

12/01/16 I completed a loss mitigation application with the Plaintiff and withdrew application, due to change in my financial situation and lack of information.

06/14/17 Homeownership counselor with Greenville County Human relations completed a loss mitigation and application denied 9/8/17, appealed and finally denied 10/8/17.

However, the Plaintiff's determination was not accurate and accuracy is required by Promulgated rules under the Code of Federal Regulations.

LEGAL STANDARD

Summary judgment is a drastic remedy, "[t]he purpose of [which] is to expedite the disposition of cases which do not require the services of a fact finder." Singleton v. Sherer, 377 S.C. 185, 198, 659 S.E.2d 196, 203 (Ct. App. 2008) (internal quotations omitted). To overcome summary judgment in cases applying the preponderance of the evidence burden of proof, the nonmoving party need only present a scintilla of evidence creating a genuine issue of material fact. Zurich Am. Ins. Co. v. Tolbert, 387 S.C. 280, 283, 692 S.E.2d 523, 524 (2010); Hancock v. MidSouth Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In determining whether any triable issue of fact exists, the evidence and all inferences reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 504 S.E.2d 117 (1998); Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997); Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 511 S.E.2d 699 (Ct. App. 1999), aff'd, 341 S.C. 320, 534 S.E.2d 672 (2000). All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Young v. South Carolina Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999). even when there is no dispute as to evidentiary facts, but

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only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Id.

STANDARD OF REVIEW

Summary judgment is only appropriate when there is “no genuine issue as to any material fact and [...] the moving party is entitled to judgment as a matter of law.” Rule 56, SCRC P (emphasis added). “The party moving for summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 729 (Ct.App. 2005). “In determining whether any triable issues of fact exist, the evidence and all inferences which can reasonably be drawn from the evidence must be viewed in the light most favorable to the non-moving party.” Koester v. Carolina Rental Center, Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Additionally, “[e]ven when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” Id. Moreover, “[s]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” Miller at 200. Finally, “because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues.” Id.

1. ARGUMENT

- A. The Plaintiff’s motion for summary judgment as to the Defendant’s Affirmative Defense of Fraud upon the court, is still a disputed material fact. This claim is not compulsory per se, however it is material as to whether or not the Plaintiff’s claim is vitiated and whether or not the Plaintiff will be allowed to maintain this action.**
- B. The Plaintiff has not met its burden, in showing the summary judgment is proper concerning fraud upon the court and the issue of Mr. Davis’ scienter of willful**

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ignorance as to whether or not the HAMP program had expired and his intent to deceived is still a disputed material issue of fact.

- C. Mr. Robert P. Davis of Rogers, Townsend and Thomas, whom is an officer of the court, filed the complaint on behalf of the Plaintiff on 1/22/2017. Mr. Davis electronically signed the complaint, indicating that he had investigated the matter and he made the following misrepresentation:
- D. "The Home Affordable Modification Program does not apply as it expired on December 31, 2016. See Exhibit copy of Complaint, paragraph 4.

It is on my information and belief that Mr. Davis' committed Fraud upon the court by seeking to subvert the integrity of the judicial process in this Foreclosure action; because the evidence shows that Mr. Davis' misrepresentation is a complete fabrication, as it is factually untrue and fraudulently dishonest.

- E. It is further on my information and belief that Mr. Davis' is attacking the South Carolina Supreme Order 2011-05-02-01, in order to avoid following the state procedures set out in the order, which encompasses the HAMP program.

The evidence shows that the loan associated with this complaint is an FHA loan. See Exhibit which is a copy of the Promissory Note see page 1 and in the upper right corner showing FHA case number and page 2 item 6(B) last sentence shows that this loan is governed by HUD regulations. Also see Exhibit , which is the official HUD web page showing that HAMP has not expired.

- F. In *Chewning v. Ford Motor Co.*, 354 S.C 72, 78-79, 579 S.E. 2d 605, 608-09 (2003) the Court held that when there is no intent to deceive, misrepresentations made to a court are not sufficient to constitute fraud on the court. However, it is on my information and belief that

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(121)

Mr. Davis' misrepresentation is made with the intent to deceive the Court into believing that the HAMP program had expired and therefore Foreclosure Intervention is not required. It is a material misrepresentation as to whether or not I would be allowed to participate in the program.

- G. The Plaintiff has stated that I have already participated in the Foreclosure intervention. I did go through the process but the evidence shows that the program was not properly administered see my statement of facts on fraud in the performance of the contract. (fraud in the performance of loss mitigation), Breach of Fiduciary Duty and Negligence Per Se.
- H. It is further on my information and belief that Mr. Robert P. Davis committed fraud upon the court by breaching his duty of candor to the tribunal in violation of the Rules of Professional conduct, rule 8.4(d) and e. conduct that is prejudicial to the administration of justice.
- I. *Chewning v. Ford Motor Co.*, 354 S.C 72, 78-79, 579 S.E. 2d 605, 608-09 (2003) (Holding that when there is no intent to deceive, misrepresentations made to a court are not sufficient to constitute fraud on the court and that "only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court").
- J. Mr. Jason D. Wyman created a Certificate of Non Owner occupancy, which he stated upon his belief and information that because my Mother was deceased the loan did not qualify for Foreclosure Intervention and the Certification of Occupancy has no bases in fact or law, it is a sham document. Per the South Carolina Supreme Court Administrative Memorandum dated 10/18/16 a sham document is not legal, therefore a sham document would be fraud upon the court

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K. And as stated in Chewning above fabrication of evidence of evidence is fraud upon the court and the Certificate of Non Owner Occupancy is Fraud upon the Court and a Frivolous Please

L. In Evans, fraud upon the court has been defined as "that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."

M. Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (1988) (quoting H. Lightsey, J. Flanagan, South Carolina Civil Procedure, 408 (2nd ed. 1985)) (emphasis added

2. ARGUMENT PROTECTION FROM SALE

A. (a) Plaintiff's motion for Summary Judgment as to Defendant's AffirmativDefense Protection from Sale due to Transfer by Descent is still a disputed material fact.

However, it is part of my claim for Negligence per Se and will addressed accordingly.

3. ARGUMENT LACK OF STANDING

A. (a) The Plaintiff's motion for summary judgment as to the Defendant's Affirmative Defense for Lack of Standing, remains a disputed material fact and therefore summary judgment should be denied. The Complaint is void of any claims or an attachment of a copy demonstrating that the Plaintiff is in possession of the original note. I requested to see the original and via appointment and on 9/12/18 and on 5/23/19 during the deposition, Mr. Laney requested that a look a Note the he purported to be the original and, I again found that Mr. Laney was not in possession of the original. Because the Plaintiff is not the original lender and the evidence shows that the Plaintiff claimed to be the new owner of the debt via a letter dated 4/28/12 and the complaint states that the Mortgage was assigned to it on 1/17/17, without any

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mention of the Note being transferred, would make the Note a nullity due to bifurcation. These issues raise a question of material fact, along with the fact that the Plaintiff as objected to other discovery requests to demonstrate that the Plaintiff is currently in possession of the original Note. According to the UCC item the Plaintiff is not the holder in due course, when the Note is taken when the loan is in default, the original note is required. And on 1/17/17 the loan was in default for the 12/1/16 and 1/1/17 payments. Confirmation of the Plaintiff's standing would also settle the issue, as to whether or not I would be required to pay the Plaintiff and possibly be faced with a future claim from someone else.

4. ARGUMENT UNCLEAN HANDS

- A. **The Plaintiff's motion for summary judgment as to the Defendant's Affirmative Defense of Unclean Hands, remains a disputed material fact, therefore summary judgment should be denied.**
- B. "The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." Wachovia Bank, N.A. v. Coffey 389 S.C. 68, 75, 698 S.E.2d 244, 247 (Ct. App. 2010). A question of material fact as to whether or not the Plaintiff should recover in equity when the plaintiff must do equity to get equity.
- C. Both the Note and Mortgage state in each document that it is subject to HUD regulations under promulgated rules 24 CFR 203.605 requires loss mitigation and the consumer Financial protection bureau requires that the loss mitigation be accurate. However, when the Plaintiff had the opportunity to be equitable the plaintiff failed to provide me with an accurate loan modification decision under title 12 CFR 1024.38(A)(2) and .
- D. In fact the Plaintiff stated that I had to formally qualify for a loan assumption and if the loan



assumption was denied the loan modification would be denied. See attached Exhibit according to promulgated rules/Code of Federal Regulations Title 24 CFR 203.512 free assumability. Because the Plaintiff was not equitable there is a dispute as to a material fact, as to whether the Plaintiff is entitled to equity.

- E. Under the doctrine of unclean hands the Plaintiff cannot recover in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.

Arnold v. City of Spartanburg, 201 S.C. 523, 23 S.E. (2d) 735 (1943).

5. ARGUMENT LACK OF JURISDICTION

- A. **The Plaintiff's motion for summary judgment as to the Defendant's Affirmative Defense for Lack of jurisdiction remains a disputed material fact and therefore s Summary judgment should be denied See attached copy of Credit Claims filed with the Greenville Probate Court.**
- B. Plaintiff's motion for summary judgment as to Defendants affirmative defense of lack of jurisdiction remains a disputed material fact and Plaintiff's motion for summary judgment should be denied, with prejudice, pursuant to SCRCF Rule 12(h), as the Plaintiff failed to timely file a creditor's claim.
- B. Section 62-3-803 provides in relevant part: (a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following dates: (1) one year after the decedent's death; or (2) within the time provided by Section 62-3-801(b) for

(9)

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creditors who are given actual notice, and within the time Allowance of the Creditor's Claim, alleging the claim was timely presented under section 62-3-803(b)(2).

attached is Exhibit showing that Plaintiff never filed a creditor's claim.

C. If the secured creditor fails to timely present a claim in compliance with the non-claim statute, the creditor's right of action against the estate is barred. *See In re Estate of Tollison*, 320 S.C. 132, 135, 463 S.E.2d 611, 613 (Ct. App. 1995)

D. "[j]urisdiction is generally defined as 'the authority to decide a given case one way or the other. Without jurisdiction, a court cannot proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.'" *Id.* at 104, 744 S.E.2d at 572 (quoting 32A Am. Jur. 2d *Federal Courts* § 581 (2007) (footnotes omitted)). "Specifically, '[j]urisdiction is composed of three elements: (1) personal jurisdiction; (2) subject matter jurisdiction; and (3) the court's power to render the particular judgment requested.'" *Id.* (quoting *Indep. Sch. Dist. No. 1 of Okla. County v. Scott*, 15 P.3d 1244, 1248 (Okla. Civ. App. 2000)).

E. Although section 62-3-806(c) provides that "[a] judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim," this provision does not eliminate the requirement that the claim must be timely filed in probate court. *See Ocean Nat'l Bank v. Spang*, 675 A.2d 983, 984 (Me. 1996) (recognizing that judgment constitutes an allowance of a probate claim, but stating that "[w]e would eliminate the time limits of the Probate Code if we were to conclude that a judgment obtained without presentment of a timely claim or commencement of a timely action is likewise allowed").

F. Therefore a dispute of a material fact exists and the Plaintiff's Motion for summary judgment must be denied and the action dismissed with prejudice.

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6. ACTUAL FRAUD/FRAUD IN THE PERFORMANCE OF A CONTRACT

- A. The Plaintiff's motion for summary judgment as to the Defendant's Counterclaim for Actual Fraud/Fraud in the performance of a contract remains a disputer material fact and therefore summary judgment should be denied.
- B. I sent the Plaintiff a qualified written request under TITLE 12 USC 2605(e)1(B) in the form of a loss mitigation application The Note is governed by HUD regulations, as this is an FHA loan, as shown on page 1 in the upper right corner of Plaintiff's exhibit "B" and according to item 6(B) "This Note does not authorize acceleration when not permitted by HUD regulations."
- C. HUD regulations state that the Plaintiff has a duty to mitigate under prior to Foreclosure, see the attached document from HUD official website, which is supported by the code of federal regulations at
- D. The attached Mortgage, item 9(d) **Regulations of HUD Secretrary** also states – "This Security Instrument does not authorize acceleration" item 9(d) further includes "This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.
- E Where an agreement is clear and capable of legal construction, the court's only function is to interpret its lawful meaning as expressed within the agreement. The court is without authority to alter an unambiguous agreement by construction, or to make new agreements for the parties.
- F. The construction of a clear and unambiguous contract presents a question of law for the court. South Carolina Dep't of Transp. V. M&T Enterps. Of Mt. Pleasant, LLC, S. C. 645, 667 S.E.2d7 (Ct. App. 2008). Under HUD regulation the Plaintiff had a duty to Mitigate

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prior to foreclosure under title 24 CFR 203.605. and title 12 CFR 1024.38(b)(1) and (2) the information must be accurate. The Plaintiff advised me that I had to formally assume the loan.

- G. See Exhibit Letter dated 7/12/17 under What you need to know, second bullet point "If you are approved to assume the loan we'll add you name to the loan" and "If you are approved for payment assistance, but not approved to assume the loan, we'll cancel the payment assistance and return any trial paymen you made."
- F TILA SECTION 129C(B)(2) AN 15 USC 1639c(b)2 once you have a qualified mortgage, you don't have to requalify a loan modification is a work out agreement. According to 1026.20(6) in the situation where a successor is seeking to be the oligor, a creditor may rely on this interpretation as a safe harbor under section of 130f of TILA.
- G. Under 1026.20(b) the transaction is not an assumption to a successor. Under 1024.38(b)(1)(vii) servicers are required to maintain policies and procedures reasonably designed to ensure the servicer can promptly identify and facilitate communication with the success-in-interest of a deceased borrower upon notification of the death of the borrower.
- H. A transfer by descent is a protected transfer, where the creditor cannot require the loan all due and payable and is reflected in the Mortgage contract and under the interpretive regulation 1026.43.
- I. Further, a transaction concerning a successor in interest does not meet the definition of a refinance 1026.20(a) nor does it meet the definition of an assumption 1026.20(b) and in the situation of a successor a change of the obligor does not trigger the Ability to Repay rule, therefore the Plaintiff's requirement for me to formally qualify for an assumption is

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fraudulent according to the above codes of federal regulations. The Plaintiff's is responsible for the actions of its agents under the doctrine of respondeat superior.

J. FRAUD IN THE PERFORMANCE OF THE CONTRACT

The Plaintiff/s agent Clarissa Meza, informed me in the first modification that I applied for that I must formally qualify for an assumption before the Plaintiff could add my name to the loan and proceed with a loan modification.

K. When I applied the second time through a Home Ownership counselor in June of 2017, I received a letter from the Plaintiff stating the same. See Exhibit Those statements were false, according to the code of federal regulation under title 12 CFR 1026.20(a) and (b), as the definition of a refinance or a loan assumption does not trigger the ability to rule, as to a successor in interest.

L. Therefore the Plaintiff's statements were false and are material to the loss mitigation decision, which is material to the defaulted balance on the loan, as loss mitigation is a requirement of the contract see Exhibit page and of the HUD regulations titler 24 CFR 203.15 and separate and apart for the contract the determination as to whether or not I qualified for a loan modification must be accurate under title 12 CFR 1024.38a(2).

M. The Plaintiff knew or should have known that its statements concerning a loan assumption were false, as the Plaintiff is required under the same 12 CFR 1024.38a(2), as the lender /servicer is required to main procedures whereby it can provide an accurate determination concerning loss mitigation. In both instances the Plaintiff intended for me to rely on its false statements as the Plaintiff acted with knowledge as to the false statements, as the Plaintiff is required to have procedures in place to make accurate loss mitigation decision.

In the first instance,

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- N. I had a substantial increase in my financial obligations, as I had to purchase a new car, so believing that I would not qualify for the assumption, I withdrew my application. In the second instance, when I received the denial. I believed that the Plaintiff could deny my application and I began to attack the denial reasons and tried to appeal the decision. In the first instance, I would not have withdrawn my application and in both instances, if I had known the regulations, I would have addressed the regulations with the plaintiff.
- O. The Plaintiff's conduct caused the loan to be behind in payments, as I did not receive the benefit of the Plaintiff utilizing the Waterfall guidelines that were available by reducing my principal balance, therefore I loss the reduction of my principal balance in the amount of \$
- P. But for the Plaintiff's failure to utilize the Waterfall guidelines , I suffered the loss of the principal reductions and now I am in foreclosure due to the Plaintiff's fraudulent conduct. The Plaintiff's conduct was foreseeable that I would not receive the principal reduction and that its conduct would result in a foreclosure. Attached is a copy of the waterfall guidelines, showing the amount of principal reduction I which would have been the benefit of the bargain of the required loss mitigation, due to my reliance of the Plaintiff misrepresentation that I had to qualify for an assumption consequential damages/compensatory payments and loss of work..
- Q. Punitive damages due to the Plaintiffs willful, wanton and reckless coduct, as the Plaintiff is required to have procedures in place and the Plaintiff willfully and recklessly, despite my rights in the contract and under the CFPB regulations I had been entitled to. . And the delinquent mortgage payments. and the delinquent balance. both due to the Plaintiff lack of providing the correct loss mitigation procedures, resulting from its fraud. Loss of income from the job in having to take time off from work to fight the Foreclosure.

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Discovery is not complete and therefore the Plaintiff motion for summary judgment must be denied

R. . BREACH OF FIDUCIARY DUTY UNDER THE MORTGAGE CONTRACT 36-3-307

- A. The Plaintiff's motion for summary judgment as to the Defendant's Affirmative Defense for Lack of Standing, remains a disputed material fact and therefore summary judgment should be denied**
- B. The Fiduciary/Agency relationship was formed out of the contract between my Mother and NVR. The contract shows that there would be a collection of additional funds for the escrow account and that there would be an adherence to HUD regulations. See attached copy of the mortgage
- C. My Mother Mrs. Ruth Ladson Witherspoon passed away on 7/5/15 and via the transfer by descent and distribution I am the owner occupant with a 50% interest and my brother, Stanley G. Witherspoon, whom also has a 50% Interest in the property. After I contacted SC Housing to inform them that my Mother had passed away, I still occupy the property and that I was not working they stated they would continue the program, since a family member occupies the home.
- D. The existing fiduciary relationship with me as the Principal and the Plaintiff as the Agent continued, as far as payments for taxes and insurance being properly made to the proper entities, from the escrow account.
- E. I continued to certify my status with SC Housing and this caused the payments to continue to go to the Plaintiff. When my financial situation changed, I completed and signed a loss mitigation application and provided all of the required documents for a determination of my eligibility to participate in loss mitigation options. By doing all of

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the above, I reposed a special trust in the Plaintiff, so that later, in equity and good conscience the Plaintiff would be bound to act in good faith and with due regard to my interests. "*Davis v. Greenwood Sch. Dist.* 50, 365 S.C. 629, 635, 620 S.E.2d 65, 68 (2005) a confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the later, in equity and good conscience is bound to act in good faith and with due regard to the interests of the one imposing the confidence.

- F. The Plaintiff breached its Fiduciary Duty, when it failed to provide me with accurate information concerning my Loss Mitigation application and based its decision on inaccurate information.
- G. The Plaintiff informed me that I had to qualify for a formal assumption and if the assumption was not approved and I would not be able to get a loan modification. According to as a successor in interest, a successor does not have to qualify for an assumption and the decision that the Plaintiff provided for on the denial letter was fraudulent, as the Waterfall guidelines are explicit in how the plaintiff was to calculate the payment. Under title 12 CFR 1024.38(b)(1) and (2) the information must be accurate.

8. FAIR DEBT COLLECTION PRACTICES ACT UNDER S. C. Code ann. 3905-20(a)

And Federal Fair Debt Collects Practices Act under 15 USC 1692, the Plaintiff's motion for summary judgment as to the Defendant's Counterclaim of a violation of the Fair Debt Collection Practices Act remains a disputed material fact and therefore summary judgment should be denied

- A. The Plaintiff participated in Deceptive Business Practice when it sent me a collection notice, Informing me that the loan did not qualify for Foreclosure Intervention, due to the death of the borrower.

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B. The Deceptive act affects the public, as when I checked the Public Index in 99.9% of the cases that received this deceptive notice, failed to respond to the foreclosure action.

See attached list of cases affected.

C. I noted over 20 case in where this sham document had been filed, so that potential repetition is therefore demonstrated See attached Exhibit

D. I suffered Monetary loss, as I had to missed work to fight this frivolous action.

See attached Exhibit

10. DISCOVERY IS NOT COMPLETE

A. Discovery is not complete, due to the Plaintiff's constant and unfair delays therefore the Plaintiff's motion for Summary Judgment must be denied.

Michelle Hodge

Sworn to and Subscribed Before Me,
This 2nd Day of July, 2019
Signed: [Signature]
Notary Public of South Carolina
My Commission Expires: 11/02/2027



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STATE OF SOUTH CAROLINA
COUNTY OF Greenville

IN THE COURT OF COMMON PLEAS
13th JUDICIAL CIRCUIT
CASE NO. 2017-CP-22-08016

19 AUG 10 PM 12:51
Paul Wickens - 00060690

Wells Fargo Bank N.A.
Plaintiff,
vs.
Michelle Hodge et al.
Defendant.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: <u>Michelle Hodge</u> _____, Bar No. _____ Address: <u>6 Tang Harris Dr.</u> <u>Simpsonville 29681</u> 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: Alter or Amend

Estimated Time Needed: _____ 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.

Michelle Hodge
Signature of Attorney for ☐ Plaintiff ☒ Defendant

6/18/19
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ 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 CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Wells Fargo Bank, NA,

Plaintiff,

Case No. 2017-CP-23-08016

v.

Michelle Hodges, Individually; Michelle Hodges, as Personal Representative of the Estate of Ruth Ladson Witherspoon; Stanley Witherspoon; SC Housing Corp.; Twin Creeks Homeowners Association, Inc.;

Defendants.

**WELLS FARGO BANK, NA'S REPLY
IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

Each of Defendant Michelle Hodges's ("Hodges" and/or "Defendant") counterclaims in this mortgage foreclosure action is contrary to well-settled South Carolina law and should be dismissed in their entirety with prejudice. In her affidavit and memorandum in opposition to Wells Fargo's Motion for Summary Judgment, Defendant attempts to create a genuine issue of material fact by repetitively stating the unsubstantiated phrase "disputed material issue of fact." Unfortunately for her, Defendant's self-serving affidavit is "not enough" to defeat Wells Fargo's Motion for Summary Judgment. *See Nat'l Enters. v. Barnes*, 201 F.3d 331, 335 (4th Cir. 2000) (holding that a self serving affidavit was "not enough" to defeat summary judgment). Due to the fact that each of Defendant's counterclaims fail as a matter of law, this Court should grant summary judgment in Wells Fargo's favor and dismiss each of the counterclaims with prejudice.¹

¹ Wells Fargo also believes it is entitled to summary judgment as to Defendant's affirmative defenses of fraud upon the court, protection from sale due to transfer by descent (sic), lack of standing, and lack of jurisdiction.

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INTRODUCTION / PROCEDURAL HISTORY

This is a mortgage foreclosure action that was initiated on December 22, 2017. The loan in question was entered into on March 28, 2012 between Defendant's mother, Ruth Witherspoon, and NVR Mortgage Finance, Inc. The loan was immediately transferred to Wells Fargo, who has been the owner and servicer of the loan ever since. (See Promissory Note dated March 28, 2012 endorsed to Wells Fargo and attached hereto as Exhibit A.) In July 2015, Ms. Witherspoon passed away. (See Death Certificate attached hereto as Exhibit B.) Defendant apparently moved into the subject real property in March 2012. (See Legal Residence (4%) Special Assessment Application attached hereto as Exhibit C.) Defendant served as the personal representative for her mother's estate and in December 2016 received a 50% ownership in the subject real property via a deed of distribution. (See Deed of Distribution attached hereto as Exhibit D.) In late 2016, Defendant applied for a loan modification with Wells Fargo. (See Hodges Dep. 45:3-5. The cited portions of Defendant's deposition are attached hereto, collectively, as Exhibit E.) Given that Defendant was not the original borrower, she was considered for a simultaneous loan assumption and modification. Defendant withdrew her initial request for assistance in early 2017. (Hodges Dep. 47:1-4.) In June 2017, Defendant re-applied for a simultaneous loan assumption and modification "to try and get help with the mortgage." (Hodges Dep. 47:8-9.) In September 2017, Defendant was informed that she was not eligible for the loan modification. (See Denial Letter attached hereto as Exhibit F.) Defendant appealed this decision and her appeal was denied in October 2017. (See Appeal Denial Letter attached hereto Exhibit G.)

Now, improperly, Defendant attempts to assign tort liability to Wells Fargo based on her unhappiness with Wells Fargo's decision to deny her request for a loan modification. Defendant's current pleading, which is the subject of this motion, is her "Sixth Amended Answer

and Counterclaim.”² In this pleading, Defendant asserts the following counterclaims against Wells Fargo: (1) Actual Fraud; (2) Breach of Fiduciary Duty; (3) Intentional Infliction of Emotional Distress; (4) Negligence; (5) Deceptive Business Practices All of Which Occurred; and (6) Fair Debt Collection Prohibited. Defendant also asserts the following affirmative defenses: (1) Fraud Upon the Court; (2) Protection from Sale Due to Transfer by Desent (sic); (3) Lack of Standing; (4) Unclean Hands; and (5) Lack of Jurisdiction.

After discovery, including taking Defendant’s deposition on May 23, 2019, Wells Fargo filed this motion for summary judgment.

STANDARD OF REVIEW

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *George v. Fabri*, 345 S.C. 440, 452 (2001) (citations omitted). To this end, summary judgment must be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. “In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences that can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.” *Cunningham ex rel. Grice v. Helping Hands, Inc.*, 352 S.C. 485, 491 (2003). However, “when a motion for summary judgment is made and supported as provided by the rule, an adverse party may not rest upon the mere allegations or denials of his pleadings.” *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 497 (1990) (quoting Rule 56(e), SCRPC). Rather,

² Since Wells Fargo filed its complaint on December 22, 2017, Defendant has amended her answer and counterclaims no less than four times. An attempt to amend her answer a fifth time was denied by Judge Stillwell on April 29, 2019. Defendant has also filed multiple motions to compel and/or for sanctions.

“[t]he adverse party’s response, including affidavits or as otherwise provided by the rule, must set forth specific facts showing there is a genuine issue for trial.” *Id.*

ARGUMENT / LEGAL ANALYSIS

In regards to each of her counterclaims as well as the affirmative defenses of fraud on the court, protection from sale due to transfer by desent (sic), lack of standing, and lack of jurisdiction, Defendant has failed to demonstrate that there is a genuine issue of material fact through her recent submissions and this Court should grant summary judgment in Wells Fargo’s favor on each of her counterclaims and the aforementioned affirmative defenses.

We will begin with addressing Defendant’s argument that this Court does not have subject matter jurisdiction since the Court must be satisfied with the answer to this question before addressing the other issues raised by the motion for summary judgment.

I. Subject Matter Jurisdiction

Defendant’s recent filings in opposition to Wells Fargo’s motion for summary judgment presents a new argument that this Court lacks subject matter jurisdiction. The basis for Defendant’s claim is that Wells Fargo did not file a claim in her mother’s probate estate, which, according to her, deprives this Court of subject matter jurisdiction to hear this foreclosure case. Defendant is incorrect. Under the South Carolina Probate Code, a secured creditor is not required to file a claim against the probate estate if it is solely seeking to foreclose the mortgage and is not attempting to hold the estate liable for the deficiency following the foreclosure sale. S.C. Code Ann. §62-3-104. (“This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.”); S.C. Code Ann. §62-3-803(d)(1) (“Nothing in this section shall be construed as placing a limitation on time for commencing a proceeding to enforce a mortgage, pledge, lien, or other security interest upon property of the estate.”); S.C. Code Ann.

§62-3-804(7)(b) ("Pursuant to Section 62-3-104, this subsection does not apply to a proceeding by a secured creditor of a decedent to enforce the secured creditor's right to its security.") See also *Beach First Nat'l Bank v. Gurnham (In re Estate of Gurnham)*, 407 S.C. 194, 205, 754 S.E.2d 875, 881 (2014) (discussing intersection of probate law and mortgage foreclosure actions and holding that, "the secured creditor may pursue foreclosure proceedings on the security for the mortgage without presenting a claim against the estate."). It is hornbook South Carolina law that the court of common pleas in the county where the property affected by the foreclosure action is located has subject matter jurisdiction. *Meaders Bros. v. Skelton*, 234 S.C. 134, 107 S.E.2d 1 (1959). See also 27 S.C. Jur. Mortgages §105.

In the present case, Wells Fargo has indicated it is not seeking a deficiency judgment against the estate. (See Complaint at ¶13.) Accordingly, Wells Fargo was not required to file a claim in Defendant's mother's probate estate. Therefore, this Court has subject matter jurisdiction over this foreclosure action because the property at issue is located at 6 Young Harris Drive, Simpsonville, South Carolina 29681, which is located in Greenville County, South Carolina.

It should be noted that Defendant initially plead lack of jurisdiction in her Sixth Amended Answer and Counterclaim based upon Wells Fargo's failure to attach a copy of the subject Promissory Note, Mortgage and Assignment of Mortgage to the Complaint. Rule 9(i), SCRCF does not require that a copy of the subject Promissory Note, Mortgage and Assignment of Mortgage be attached to a foreclosure complaint. Further, Defendant has inspected the original of the subject Promissory Note, Mortgage, and Assignment of Mortgage which are the subject of this lawsuit. Therefore, to the extent Defendant is still relying on this argument, her defense of lack of subject matter jurisdiction should still be dismissed with prejudice.



II. Counterclaims

As will be discussed below, each of Defendant's counterclaims fails as a matter of law.

a. Actual Fraud and Fraud in Performance of the Contract

Wells Fargo is entitled to summary judgment on Defendant's counterclaims for "Actual Fraud and Fraud in the Performance of the Contract" for multiple reasons. First, Defendant failed to properly plead the elements necessary to satisfy a fraud claim which is fatal to her claim. Defendant also has not brought forth any facts which create a genuine issue of material fact as to the requisite elements of her fraud claim. Finally, there is no private cause of action for the failure to obtain a loan modification, which Defendant has acknowledged is the basis for her fraud claims. (See Hodges Dep. 77:3-13.)

"In order to prove fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of the falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 444 (Ct. App. 2003). A review of Defendant's pleadings indicates that Defendant fails to state or plead with particularity the nine requisite elements constituting fraud as required by Rule 9(b), SCRCP. (Def.'s Sixth Am. Answer and Countercl. ¶¶ 48-54.) This omission is fatal to Defendant's counterclaims for fraud. "Failure to allege all elements is fatal to a claim of fraud." *Hansen v. DHL Labs., Inc.*, 316 S.C. 505, 511, 450 S.E.2d 624, 628 (Ct. App. 1994).

Moreover, even if Defendant were allowed to cure her pleading deficiencies, she is still unable to set forth any evidence supporting her naked allegations that certain representations

made by Wells Fargo were false at the time they were made.³ This failure is also fatal to her fraud claims. *See Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 105, 439 S.E.2d 283, 285 (Ct. App. 1993) (holding that representation must be false at the time was made in order to be actionable). Rather than being untrue, the undisputed facts of this case show that each allegedly false statement was, in fact, true, when it was made. For instance, the HAMP program expired in December 2016. *See Wells Fargo Bank Nat'l Ass'n v. Wolcott*, 2018 NY Slip Op 48866(U), ¶ 7 n.10 (Sup. Ct.) (noting that "HAMP expired at the close of 2016"). Further, by her own admission, Defendant admits that she applied for a loan modification and received a denial letter in response to this application. (Hodges Dep. Tr. 47:19-48:12.) A review of the denial letter indicates it provides a specific reason for the denial, which was the inability to create an affordable monthly payment. (See Denial Letter attached hereto as Exhibit E).

Defendant also is unable to show that she relied on any allegedly false representation from Wells Fargo's. *See Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 445 (Ct. App. 2003) (holding that in order to prove fraud, the hearer's **reliance** on the truth of a statement must be shown) (emphasis added). Instead, it is clear from Defendant's own allegations that she believes Wells Fargo's allegations in its complaint to be a "fraudulent misrepresentation" based on her (false) assertion that the denial letter did not contain a reason for her denial. (Def.'s Sixth Am. Answer and Countercl. ¶¶ 48-49; Hodges Dep. Tr. 79:7-14, 81:6-12, 94:23-95:3.) Similarly, the record is devoid of any representation made to Defendant by Wells Fargo which proximately caused Defendant to suffer any injury.

³ Defendant bases her fraud counterclaims on the following representations:

- (1) that she was considered for a FHA HAMP modification. (Def.'s Sixth Am. Ans. and Countercl. ¶49.)
- (2) that Wells Fargo did not provide a specific denial reason. (Def.'s Sixth Am. Ans. and Countercl. ¶54.)
- (3) that the Complaint contains a false allegation about the expiration of HAMP. (See Hodges Dep. 78:1-3)
- (4) that the Certificate of Non-Owner Occupancy filed January 2, 2018 was false. (See Hodges Dep. 82:10-13.)
- (5) that there was an escrow shortage. (See Hodges Dep. 82:10-13.)

Defendant's fraud claims are also based on Wells Fargo's consideration of and denial of her request for a loan modification. (See Hodges Dep. 77:9-11.) No matter how she couches her counterclaims – whether as fraud or as breach of contract with fraudulent intent – they fail as a matter of law. In *Weber v. Bank of America, N.A.*, No. 0:13-cv-01999-JFA, 2013 Lexis 128863, at *7 (D.S.C. Sep. 10, 2013), the borrowers sued the bank following their failure to be approved for a loan modification. *Id.* at *11. The borrowers argued that the bank's failure to consider them and/or approve them for a loan modification was negligence per se because it violated the 2011 South Carolina Supreme Court's Administrative Order regarding Foreclosure Intervention (the "Administrative Order") or federal loss mitigation guidelines, such as HAMP. *Id.* at *7. The court in *Weber* granted the bank's motion to dismiss holding that, "the 'denial of a loan modification under HAMP [or other similar programs] does not create a private cause of action.'" *Id.* at *12. The court in *Weber* concluded that "the [Toal] Administrative Order does not impose a duty on Defendant to provide a loan modification, and neither the [Toal] Administrative Order nor the 'other federal programs' create a private cause of action for failure to provide a loan modification or meaningful process through which to petition Defendant for a loan modification." *Id.* at *17. Several South Carolina courts since *Weber* have addressed these same types of claims and agreed that the denial of a loan modification does not create a private cause of action. See *Carrington v. Mnuchin*, Civil Action No. 5:13-03422-JMC, 2014 U.S. Dist. LEXIS 119430, at *28-29 (D.S.C. Aug. 27, 2014) (dismissing claims for fraud and breach of contract for fraudulent based on alleged failure to evaluate and approve the borrowers for a loan modification). See also *Thomas v. Enter. Bank of S.C.*, Civil Action No. 1:16-cv-02793-JMC, 2018 U.S. Dist. LEXIS 47958, at *4 (D.S.C. Mar. 23, 2018) (dismissing claims for fraud, misrepresentation, and breach of contract based on the loan modification process).

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It is unclear if Defendant is asserting that Wells Fargo's payment of the 2016 real property tax bill also supports her fraud counterclaims. Regardless, Wells Fargo is still entitled to summary judgment on this counterclaim. First, Defendant cannot show that Wells Fargo did not in fact pay the 2016 real property tax bill, which was represented by Greenville County to be the amount due and owing. (See 2016 Greenville County Consolidated Tax Notice attached hereto as Exhibit H.) Second, Defendant cannot show any reliance on Wells Fargo statement as she went to Greenville County and submitted a Legal Residence (4%) Special Assessment Application to reduce the tax rate from 6% to 4% on May 31, 2017. (See Legal Residence (4%) Special Assessment Application attached hereto as Exhibit C.) Finally, Defendant admits that she received a refund from Greenville County for the amount of taxes paid pursuant to the 2016 real property tax bill and kept a portion of it for herself. (See Hodges Dep. 115:9-23.) Accordingly, Defendant cannot show she suffered any damages as a result of the payment of 2016 real property taxes at the rate of 6%.

In her memorandum in opposition to Wells Fargo's Motion for Summary Judgment, Defendant now also appears to argue that her fraud claims are based on Wells Fargo's alleged failure to follow the applicable FHA/HUD Regulations, violation of RESPA, and violation of the Truth in Lending Act. Importantly, none of these claims appear in her Sixth Amended Answer and Counterclaim, which is the only pleading before the Court. Accordingly, it would be improper for the Court to consider them now. See *Cotter v. James L. Tapp Co.*, 267 S.C. 647, 657, 230 S.E.2d 715, 719 (1976) (refusing to consider affidavit in opposition to summary judgment when it raised matters not contained in the pleadings).⁴

⁴ Even if the Court were to consider these arguments, they still do not constitute a claim for fraud because there is still no reliance on the statement and there is no private cause of action for failure to provide a loan modification. *Weber v. Bank of America, N.A.*, No. 0:13-cv-01999-JFA, 2013 Lexis 128863 (D.S.C. Sep. 10, 2013).

In summary, Defendant's counterclaims for actual fraud or fraud in the performance of the contract fail as a matter of law. First, Defendant has failed to plead her claims with the specificity required by Rule 9(b), SCRCF. Next, she has not presented any evidence by way of affidavit or otherwise to show: (a) the statements were false; (b) she relied on the statements; or (c) she suffered any harm as a result of a representation. Given her wholesale failure to provide any admissible evidence on these elements, there is no issue of material fact and her counterclaim for fraud should be dismissed with prejudice. Finally, Ms. Hodges's fraud and fraud in the performance of the contract claims are based on the loan modification process and pursuant to the holdings of *Weber* and its progeny, fail as a matter of law because there is not a private cause of action for failure to provide a loan modification. Wells Fargo is, therefore, entitled to judgment as a matter of law and Defendant's counterclaims for actual fraud and fraud in the performance of the contract should be dismissed with prejudice.

b. Breach of Fiduciary Duty

Defendant's counterclaim for breach of fiduciary duty fails as a matter of law because there is no evidence to support any element of a claim for breach of fiduciary duty. A fiduciary duty arises "when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." *O'Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992). Whether a relationship rises to that of a fiduciary is a question of law for the court. *Spence v. Wright*, 395 S.C. 148, 160, 716 S.E.2d 920, 926 (2011). It is well-established in South Carolina that, "the normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature." *Regions Bank v. Schmauch*, 354 S.C. 648, 671, 582 S.E.2d 432, 444 (Ct. App. 2003). Moreover, a fiduciary relationship cannot be created by the unilateral act of one party. *Id.* Finally, the mere submission and review of a loan modification application does create a

fiduciary relationship. *See Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 574 (7th Cir. 2012) (“In light of the weight of Illinois authority, Wells Fargo’s role as a HAMP servicer was not sufficient to find a special trust relationship with Wigod with respect to negotiating any modification.”)

In the present case, Defendant testified during her deposition that the mortgage contract forms the basis for her fiduciary duty claim. (Hodges Dep. 67:7-9; 84:2-5.) She further testified that she had no other relationship with Wells Fargo. (Hodges Dep. 85:12-17.) Defendant also asserts that a fiduciary relationship was formed the instant she submitted a loan modification application to Wells Fargo. (See Def.’s Sixth Am. Answer and Countercl. ¶ 55.) None of these events can form the basis of a fiduciary relationship under South Carolina law. First, Defendant did not execute the mortgage. Instead, her mother was the mortgagor. Indeed, it is unclear under what theory she could have entered in to a fiduciary relationship with Wells Fargo based on a document to which she is not a party. Second, her attempt to unilaterally create a fiduciary relationship is not recognized under South Carolina law as set forth in *Regions Bank*. *Regions Bank*, 354 S.C. at 671; 582 S.E.2d at 444. At the end of the day, Defendant was – at most – a customer of Wells Fargo. Under the holding of the holding of the *Regions Bank* case, it is clear that the facts of this case do not support the existence of a fiduciary relationship and summary judgment is appropriate for Wells Fargo on this counterclaim.

c. Intentional Infliction of Emotional Distress

Defendant’s intentional infliction of emotional distress counterclaim also fails as a matter of law. Defendant has failed to provide any evidence of extreme and outrageous conduct or her own severe emotional distress. Defendant claims that Wells Fargo’s “denial of the loan modification was reckless and has caused [her] severe emotional distress to hear that [she] did not qualify.” (Def.’s Sixth Am. Answer and Countercl. ¶ 60.)

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Several times in her deposition, Defendant testified that her tort claims, including this counterclaim, were based on the mortgage and the loan modification review. (See Hodges Dep. 87:25-88:1-3.) As previously argued, South Carolina law provides there is no private cause of action due to the denial of a loan modification. *Weber v. Bank of America, N.A.*, No. 0:13-cv-01999-JFA, 2013 Lexis 128863, at *7 (D.S.C. Sep. 10, 2013). Further, “Under South Carolina law, ‘if the cause of action is predicated on the alleged breach, or even a negligent breach, of a contract between the parties, an action in tort will not lie.’” *Toney v. Lasalle Bank Nat’l Ass’n*, 896 F. Supp. 2d 455, 480 (D.S.C. 2012) (quoting *Enhance-It, LLC v. Am. Access Techs., Inc.*, 413 F. Supp. 2d 626, 631 (D.S.C. 2006)). In addition, Defendant has presented no evidence of intentional or reckless extreme and outrageous conduct by Wells Fargo that was so severe that no reasonable person could be expected to endure it, as required for a claim of intentional infliction of emotional distress. *See Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Sols.*, 388 S.C. 394, 697 S.E.2d 551 (2010) (holding summary judgment was appropriate on intentional infliction of emotional distress claim because plaintiff was not owed a duty of care). There is nothing in the record to suggest that Wells Fargo owed Defendant a duty of care in connection with her request for a loan modification. Nor is there any evidence that Defendant has even experienced “severe emotional distress.” Defendant candidly admitted in her deposition that she has not seen a doctor due to any emotional issues she has allegedly suffered. (See Hodges Dep. 88:25-89:1-2.) Accordingly, Defendant’s counterclaim for intentional infliction of emotional distress, which is based solely on being denied for a loan modification, fails as a matter of law and should be dismissed with prejudice.

d. Negligence

Defendant’s counterclaim for negligence is also based on the denial of her request for a loan modification. (See Def.’s Sixth Answer and Countercl. ¶62. See also Hodges Dep. 90:6-8.)

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As discussed above, this counterclaim fails because there is no private cause of action for the denial of a loan modification. *Weber v. Bank of Am.*, Case No. 0:13-cv-01999-JFA, 2013 U.S. Dist. LEXIS 128863, at *14-15 (D.S.C. Sept. 10, 2013) (dismissing negligence claim based on alleged violation of 2011 Administrative Order). *See Carrington v. Mnuchin*, Civil Action No. 5:13-03422-JMC, 2014 U.S. Dist. LEXIS 119430, at *28-29 (D.S.C. Aug. 27, 2014) (dismissing claims for fraud and breach of contract for fraudulent based on alleged failure to evaluate and approve the borrowers for a loan modification). *See also Thomas v. Enter. Bank of S.C.*, Civil Action No. 1:16-cv-02793-JMC, 2018 U.S. Dist. LEXIS 47958, at *4 (D.S.C. Mar. 23, 2018) (dismissing claims based on the loan modification process).

Further, Defendant's counterclaim for negligence fails as a matter of law because she cannot establish that Wells Fargo owed her a duty in regards to her request for a loan modification and/or breached any such duty. Based on these facts, Wells Fargo is entitled to summary judgment and Defendant's counterclaim for negligence should be dismissed with prejudice.

It is unclear if Defendant is asserting that Wells Fargo's payment of the 2016 real property tax bill supports her negligence counterclaim. Even if this is the case, Wells Fargo is still entitled to summary judgment. First, Defendant cannot show that Wells Fargo owed her a duty to investigate and not pay the 2016 real property tax bill, which was represented by Greenville County to be the amount due and owing. (See 2016 Greenville County Consolidated Tax Notice attached hereto as Exhibit H.) Quite the contrary, Wells Fargo would have exposed itself to liability if it did not pay the 2016 real property tax bill as presented. *See* 12 U.S.C. §2605(g) (discussing administration of escrow accounts and requirement that servicer make payments "when payments become due"). Finally, she admits that she received a refund from Greenville County and kept a portion of it for herself. (See Hodges Dep. 115:9-23.)

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Accordingly, Defendant cannot show she suffered any damages as a result of any breach of a duty by Wells Fargo.

e. Deceptive Business Practices All of Which Occurred

Liberally construed, Defendant alleges a violation of the South Carolina Unfair Trade Practices Act. Defendant's counterclaim for a violation of the South Carolina Unfair Trade Practices Act ("UTPA") fails as a matter of law because Defendant has presented no evidence that an unfair or deceptive act affected public interest or that the Defendant suffered monetary or property loss as a result of Wells Fargo's alleged unfair or deceptive acts. Defendant claims that Wells Fargo is liable under this counterclaim for: (a) not providing her with a denial reason in her loan modification denial letter; (b) paying taxes at a 6% assessment rate to Greenville County, and (c) filing the Certificate of Non-Owner Occupancy. (Def's Sixth Am. Answer and Countercl. ¶¶ 64-66; and Hodges Dep. 95:3-13.)

To be actionable under the UTPA, an unfair or deceptive practice or act must "adversely affect the public interest." *Jefferies v. Phillips*, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1994). An adverse effect or impact on the public interest is shown by demonstrating that the acts or practices have the potential for repetition. *See, e.g., Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 351 S.E.2d 347 (Ct. App. 1986). "[C]onduct which only affects the parties to the transaction provides no basis for a UTPA claim." *Jefferies*, 316 S.C. at 527, 451 S.E.2d at 23; *see also Key Co., Inc. v. Fameco Distributors, Inc.*, 292 S.C. 524, 357 S.E.2d 476 (Ct. App. 1987) (holding that a breach of a contract cannot constitute a violation of the UTPA).

During her deposition, Defendant testified that she did not know of another case that presented the same issues as hers. (See Hodges Dep. 97:15-25; 98:1-19.) Defendant attempts to create a genuine issue of material fact by referencing other foreclosure actions in her

memorandum in opposition but fails to put forth any competent evidence to suggest that those cases involved similar claims. At the end of the day, this case is about Defendant's unhappiness following the denial of her request for a loan modification, which is unique to the facts and circumstances of Defendant's situation. Because Defendant's allegations are limited solely to the conduct that "affects the parties", namely her own loan modification review and Wells Fargo's payment of the 2016 real property taxes, which are a unique set of facts, there is no impact on the public interest; consequently, there is no basis for a SCUTPA counterclaim. *See Jeffries*, 316 S.C. at 527, 451 S.E.2d at 23. Accordingly, there is no genuine issue of material fact as to Defendant's counterclaim for violation of the SCUPTA and Wells Fargo is entitled to judgment as a matter of law.

f. Fair Debt Collection Prohibited

Defendant's counterclaim for violation of the Fair Debt Collection Practices Act fails as a matter of law. A review of each of Defendant's pleadings reveals that she has not cited to a single section of the Fair Debt Collection Practices Act in her counterclaim which Wells Fargo allegedly violated. In her deposition, Defendant was asked to elaborate on the basis for her claim. Her response was, "The cause of action is for fair debt collection. I don't know." (See Hodges Dep. 100:15-16.) In addition to her failure to specifically plead this cause of action and be able to articulate what the basis for her claim is, Defendant's counterclaim for violation of the Fair Debt Collection Practices Act fails as a matter of law because Wells Fargo is a "creditor" and not a "debt collector." 15 U.S.C. §1692a(4) and (6)(F). *See, e.g. Davis v. Dillard Nat'l Bank*, 1:02 CV 00546, 2003 WL 21297331, *4 (M.D.N.C. June 4, 2003) ("Crediting institutions, such as banks, are not debt collectors under section 1692a(6)(A) because they collect their own debts and are in the business of lending money to consumers.") Additionally, "Loan servicers are not 'debt collectors' under the FDCPA unless the debt being serviced was in default at the

time the servicer obtained it.” *Taggart v. Wells Fargo Home Mortg., Inc.*, No. 10-cv-00843, 2010 U.S. Dist. LEXIS 102747, at *34 (E.D. Pa. Sep. 27, 2010).

In the present case, the only evidence before this Court is that Wells Fargo was at all times collecting a debt in its own name. (See Promissory Note attached hereto as Exhibit A.) Further, Wells Fargo was at the very least the loan servicer prior to the loan being in default. Defendant admits as much by the fact that she applied for assistance directly with Wells Fargo before the loan was put in default. (See Hodges Dep. 45:4-6; 47:5-11 and Complaint at ¶12). Accordingly, Wells Fargo cannot be considered a debt collector; therefore, Defendant’s Fair Debt Collection Practices Act claim fails as a matter of law and Wells Fargo is entitled to summary judgment.

III. Affirmative Defenses

As discussed below, the Defendant’s affirmative defenses of (1) fraud on the court, (2) protection from sale due to transfer by descent (sic), and (3) lack of standing are wholly without merit and fail as a matter of law. Accordingly, Wells Fargo is entitled to summary judgment as to each of these affirmative defenses.

a. Fraud on the Court

Defendant argues that certain statements made during the course of this litigation constitute fraud on the court. First, Wells Fargo submits that any statements made during the course of this litigation, including the pleadings, are entitled to an absolute privilege and cannot form the basis of a fraud on the court claim. *See Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002) (holding that filing of *lis pendens* could not form basis for action for slander of title because filing enjoyed absolute privilege).

Additionally, “Fraud on the court” claims are reserved for the “most egregious misconduct.” *Chewing v. Ford Motor Co.*, 354 S.C. 72, 579 S.E.2d 605 (2003). “Attorney

fraud”, as alleged in this case, goes to the heart of the judicial system. *Id.* at 83; 579 S.E.2d at 611. Counsel takes great issue with the Defendant’s unfounded allegations that they are perpetrating a fraud on the court and respectfully submit such allegations are wholly without merit.

Even if the Court were to find that the pleadings in this case can form a basis for a fraud on the court claim, as seen above, there was nothing false or fraudulent about the statements at dispute. Defendant takes issue with two pleadings filed by Wells Fargo’s original counsel. First, she alleges that the Complaint contains a fraudulent statement because it alleges that the HAMP Program expired on December 31, 2016. In South Carolina, a foreclosure complaint must contain a statement about the applicability of the Home Affordable Modification Program (the “HAMP Program”) pursuant to the South Carolina Supreme Court’s 2009 Administrative Order.

The 2009 Administrative Order applied to loans owned by Freddie Mac, Fannie Mae, and other loan types where the servicer was a participant under the Making Home Affordable Program (the “MHA Program”). The HAMP Program is no longer available. *See Wells Fargo Bank Nat’l Ass’n v. Wolcott*, 2018 NY Slip Op 48866(U), ¶ 7 n.10 (Sup. Ct.) (noting that “HAMP expired at the close of 2016”). FHA loans, as the one at issue in this case, were exempt from the MHA program and the HAMP Program referred to in the 2009 Administrative Order does not apply to the subject loan. *See Rutledge v. Wells Fargo Bank, N.A. (In re Rutledge)*, 510 B.R. 491, 500 n.5 (Bankr. M.D.N.C. 2014) (“A distinction should be made between FHA-HAMP and HAMP loan modifications, both of which were promulgated as a result of the Emergency Economic Stabilization Act in October 2008. FHA-HAMP applies to mortgages insured by the FHA, like the Debtor’s, whereas HAMP applies to mortgages serviced by participating companies.”).

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Defendant mistakenly (and perhaps understandably) believes that the HAMP program and the FHA-HAMP program are one and the same. This is simply not the case. Accordingly, there is nothing false or fraudulent with paragraph 4 of the Complaint. First, it was directed at the 2009 Administrative Order, which must be addressed in every foreclosure complaint. Second, the complaint is like the filing of a *lis pendens*, and just as in *Pond Place*, cannot form the basis for a cause of action or defense. Finally, the HAMP program expired in December 2016 making the statement in the complaint true.

Defendant also takes issue with the Certificate of Non-Owner Occupancy due to Death of Mortgagor filed on January 2, 2018 because she is the owner and occupies the property. (See Def.'s Sixth Am. Answer and Countercl. ¶ 39.) On May 2, 2011, then Chief Justice Toal issued an Administrative Order regarding Mortgage Foreclosure Actions (the "2011 Administrative Order"). A foreclosure action may not proceed unless the attorney for the mortgagee certifies compliance with the 2011 Administrative Order. The 2011 Administrative Order applies to foreclosure proceedings concerning "Owner-Occupied dwellings." An "Owner-Occupied dwelling" is mortgaged property that is principal residence of any mortgagor. Mortgagor is defined as "every owner, mortgagor, and debtor under the note and mortgage at issue." In situations where the original notemaker and mortgagor is deceased, such as this case, the loan is not eligible for foreclosure intervention as defined by the 2011 Administrative Order due to the fact that an heir does not meet all three requirements for the definition of Mortgagor, namely that they are not a debtor nor a mortgagor. Regardless of the legal conclusion set forth in the Certificate of Non-Owner Occupancy Due to Death of Mortgagor filed on January 2, 2018, this issue is moot. During the course of this litigation, Defendant has indicated to counsel for Wells Fargo that she did not wish to participate in the foreclosure intervention process. (See Certificate of Compliance with Administrative Order No. 2011-05-02-01 filed on July 16, 2019.) As

discussed above, neither of the pleadings which Defendant complains about were false. Additionally, again regardless of the legal conclusions set forth in the pleadings, Defendant cannot show reliance on the statement in order to support her fraud on the court affirmative defense.

Defendant's affirmative defense for fraud on the court should also be dismissed because fraud on the court claims are only allowed where extrinsic fraud exists. *Chewning v. Ford Motor Co.*, 354 S.C. 72, 78-79, 579 S.E.2d 605, 608-09 (2003) ("Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action."). On the other hand, intrinsic fraud is "fraud which was presented and considered in trial." *Id.* "Relief is granted for extrinsic but not intrinsic fraud on the theory that the latter deceptions should be discovered during the litigation itself, and to permit such relief undermines the stability of all judgments." *Id.* at 82; 579 S.E.2d at 610 (quoting *Mr. G. v. Mrs. G.*, 320 S.C. 305, 308, 465 S.E.2d 101, 103 (Ct. App. 1995)).

Each of Defendant's fraud on the court claims regard filings or statements being made during the course of this litigation. Defendant is free to contest the truth and veracity of these filings and statements and is, in fact, doing so. Accordingly, in no way has Defendant been prevented from fully trying and presenting her case based on these allegedly false or fraudulent pleadings and/or statements. Therefore, Defendant's fraud on the court claims, at most, concern intrinsic fraud and do not support an affirmative defense of fraud on the court. For this reason, alone, Wells Fargo is entitled to summary judgment as to this affirmative defense.

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b. Protection from Sale Due to Transfer by Desent (sic)

Defendant argues that Wells Fargo is prohibited from declaring the loan in default based on the “due on sale” provision contained in the mortgage. The due on sale provision is typically triggered when the original mortgagor transfers their interest in the property without the consent of the mortgagee. However, the Garn-St. Germain Depository Act of 1982, 12 U.S.C. §1701j-3, prohibits a mortgagee from declaring a default based on the due on sale provision when the transfer is the result of the death of the mortgagor.

In the present case, Wells Fargo declared a default under the terms of the loan due to lack of payment. (See Complaint at ¶12.) In fact, the complaint is devoid of any mention of a default due to the transfer of the subject property. Accordingly, Defendant’s affirmative defense on this point is irrelevant and should be denied as a matter of law.

c. Lack of Standing

Defendant’s affirmative defense, claiming lack of standing, fails as a matter of law because the subject Promissory Note is endorsed in blank and Wells Fargo is in possession of the original Promissory Note. (See Promissory Note attached hereto as Exhibit A). Under the South Carolina’s version of Article 3 of the UCC, S.C. Code Ann. § 36-3-301, possession of the original note endorsed in blank is *prima facie* evidence of ownership. *In re Woodberry*, 383 B.R. 373, 377 (Bankr. D.S.C. 2008) “(Possession of a bearer instrument is *prima facie* evidence of ownership”). *See also In re Neals*, 459 B.R. 612, 619 (holding where the original note has been presented and there is undisputed evidence the person trying to enforce the note was also the loan servicer responsible for collecting payments on and enforcing the terms of the note, then such entity has the right of a holder, including the right to enforce the note under South Carolina’s version of Article 3 of the UCC).

Defendant admits that she has had the opportunity to inspect the original promissory note on multiple occasions. Rather than retain a handwriting or document expert to address the authenticity of the original promissory note, Defendant attempts to create a genuine issue of material fact by conclusively stating, "I again found that Mr. Laney was not in possession of the original." Def.'s Mem. In Opp'n, Pg. 7. This self-serving and conclusory allegation is insufficient to create a question of fact as to Wells Fargo's standing to proceed with the foreclosure.

Additionally, Wells Fargo has indisputably been the loan servicer at all times relevant to this lawsuit. Indeed, the crux of Defendant's entire defense in this case is the denial of a loan modification by Wells Fargo. It is well-established that a loan servicer has standing in a mortgage foreclosure action. *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 224, 746 S.E.2d 478, 483 (Ct. App. 2013). Defendant testified at her deposition that payments were made to Wells Fargo and that she applied directly with Wells Fargo for a loan modification. (See Hodges Dep. Tr. 45:2-5, 86:5-15.) Accordingly, based on either Wells Fargo's possession of the original note or its status a loan servicer, there is no genuine issue of material fact as to Wells Fargo's standing to initiate this foreclosure action.

CONCLUSION

For the reasons set forth above, and those in its motion for summary judgment, Wells Fargo respectfully submits that there are no genuine issues of material fact and Wells Fargo is entitled to judgment as a matter of law.

[SIGNATURE PAGE TO FOLLOW]

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Respectfully Submitted:

s/ S. Sterling Laney, III

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Dated: July 18, 2019
Greenville, South Carolina

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Wells Fargo Bank, NA ,

Plaintiff,

v.

Michelle Hodges, Individually ; Michelle Hodges,
as Personal Representative of the Estate of Ruth
Ladson Witherspoon ; Stanley Witherspoon ; SC
Housing Corp.; Twin Creeks Homeowners
Association, Inc. ;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO.

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE
MORTGAGE

Deficiency Judgment Waived

(013263-10210)

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Greenville County, South Carolina.
2. Pursuant to S.C. Code Section 33-15-101(b)(8) Plaintiff is a corporation or other legal entity collecting debts and / or enforcing mortgages, security interests or other rights in property securing debts.
3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.
4. The Home Affordable Modification Program does not apply as it expired on December 31, 2016, prior to the referral of the loan for foreclosure.
5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
6. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of

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process under the provisions of South Carolina Code Section 15-35-840.

7. Heretofore, on or about March 28, 2012, Ruth Witherspoon made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of \$158,414.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Ruth Witherspoon made, executed and delivered unto Mortgage Electronic Registration Systems, Inc., as nominee for NVR Mortgage Finance, Inc., its successors and assigns a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

ALL that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as Lot 83 of TWIN CREEKS, PHASE II, SHEET 1 OF 2, on plat thereof, prepared by Landmark Surveying, Inc. dated February 12, 2007 and recorded March 22, 2007 in the Register of Deeds Office for Greenville County, SC in Plat Book 1034, page 19, and more recently shown on plat prepared by Landmark Surveying, Inc., entitled "Closing Survey for Ruth Witherspoon" dated March 14, 2012 and Worded herewith in the Register of Deeds Office for Greenville County, SC in Plat Book 1135 at Page 12. Reference to said latter plat is hereby made for a more complete metes and bounds description thereof.

This being the same subject property conveyed to Ruth Witherspoon by deed of NVR, Inc., a Virginia Corporation dated March 28, 2012 and recorded March 29, 2012 in Deed Book DE 2403 at Page 2222 in the Office of Register Deeds for Greenville County. Subsequently, Ruth Ladson Witherspoon died intestate on July 5, 2015, leaving the subject property to her heirs or devisees, namely, Michelle Hodges and Stanley G. Witherspoon, as is more fully preserved in the Probate records for Greenville County, in Case No. 2015-ES-23-01615; also by Deed of Distribution dated December 6, 2016 and recorded December 6, 2016 in Deed Book DE 2501 at Page 5396.

Property Address: 6 Young Harris Dr
Simpsonville, SC 29681

TMS# 0550.24-01-169.00

9. The Mortgage was signed, witnessed and probated March 28, 2012; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Greenville County on March 29, 2012, in Mortgage Book MO 5155 at Page 5354. This mortgage was assigned to Wells Fargo Bank, N.A. by assignment dated January 17, 2017 and recorded January 20, 2017 in Book MO 5375 at Page 4081.

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

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11. Subsequently, Ruth Ladson Witherspoon died intestate on July 5, 2015, leaving the subject property to her heirs or devisees, namely, Michelle Hodges and Stanley Witherspoon, as is more fully preserved in the Probate records for Greenville County, in Case No. 2015-ES-23-01615; also by Deed of Distribution dated December 6, 2016 and recorded December 6, 2016 in Deed Book DE 2501 at Page 5396. .

12. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for May 1, 2017, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of May 1, 2017, the principal sum of \$142,695.08, with interest from April 1, 2017, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

13. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly waived.

14. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

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

16. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

17. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. Michelle Hodges and Stanley Witherspoon, as heir(s) or devisees of the Estate of Ruth Ladson Witherspoon

B. Michelle Hodges, as personal representative(s) of the Estate of Ruth Ladson Witherspoon in such fiduciary capacity as representative of any

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person or entity that may be a creditor or claimant against such Estate, and by virtue of the powers granted by decedent's Will or by statute.

C. SC Housing Corp., by virtue of a mortgage given by Ruth Witherspoon in the amount of \$36,000.00, dated September 24, 2014, and recorded November 6, 2014 in Book MO 5274 at Page 1624. Also including any other liens they may have.

D. Twin Creeks Homeowners Association, Inc. by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions recorded herein, and any amendments thereto. Also including any other liens they may have.

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

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a purchase money first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

(3) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

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

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

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

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

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Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

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

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

s/ Robert P. Davis

Rogers Townsend & Thomas, PC

ATTORNEYS FOR PLAINTIFF

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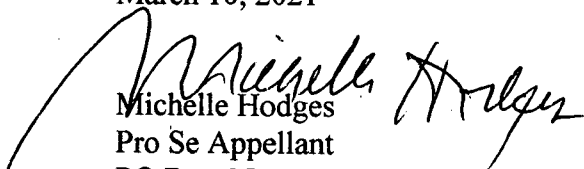
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CERTIFICATE OF APPELLANT

The undersigned hereby certifies that this Record contains all material proposed by the Appellant and not any other material. I further, hereby certify, that I left several messages for Mr. Laney, in order to provide a mutually agreeable combine Record, but none of my calls were returned.

March 10, 2021


Michelle Hodges
Pro Se Appellant
PO Box 95
Mauldin, SC 29962
864-714-5263

RECEIVED

MAR 12 2021

SC Court of Appeals

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