THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely
The Honorable Robin B. Stilwell
Circuit Court Judges

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Appellate Case No. 2019-01565
Circuit Court Case No. 2017-CP-23-8016

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Wells Fargo Bank, N.A..... Respondent,

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.

of whom

Michelle Hodges, Individually and as the Personal Representative of the Estate of Ruth Ladson Witherspoon is the..... Appellant.

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# BRIEF OF RESPONDENT

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WOMBLE BOND DICKINSON (US) LLP

S. Sterling Laney, III
sterling.laney@wbd-us.com
M. Todd Carroll
todd.carroll@wbd-us.com
Bryant S. Caldwell
bryant.caldwell@wbd-us.com
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
(803) 454-6504

Attorneys for Respondent Wells Fargo Bank, N.A.

Columbia, South Carolina
March 30, 2021

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## STATEMENT OF ISSUES ON APPEAL

1. Summary Judgment on Defective Claims: In opposing this foreclosure action, the Appellant asserted a series of counterclaims and affirmative defenses, none of which had any support in law or in fact. The core of Appellant's position was that she was entitled to modify the loan at issue in this case, an argument that has uniformly been rejected as the basis of any type of claim. Because there was neither law nor evidence to support the Appellant's argument, the circuit court granted summary judgment in Wells Fargo's favor. Was that ruling correct?

2. Defective Procedural Defenses: When opposing summary judgment on her counterclaims, the Appellant sought an opportunity to amend her pleading for a seventh time. She also asserted a conclusory argument that discovery was incomplete and that she was entitled to a jury trial. The circuit court rejected these claims, as the undisputed facts rendered Appellant's claims legally defective. Was the circuit court correct to refuse additional litigation regarding futile claims?

## COUNTER-STATEMENT OF THE CASE

This is a mortgage foreclosure action that Wells Fargo initiated on December 22, 2017. This appeal asks whether the circuit court rightly granted summary judgment in favor of Wells Fargo. As explained below, the circuit court's ruling is correct as a matter of law, and Appellant should not be permitted to resuscitate defective claims by amending her answer for a ***seventh time*** and by generically asking this Court for more discovery.

### I. Wells Fargo entered into a mortgage loan with the Appellant's late mother, on which the Appellant ceased making payment following her mother's death.

The loan in question was entered into between the Appellant's mother, Ruth Witherspoon, and NVR Mortgage Finance, Inc., in March 2012. When the loan was established, it was immediately transferred to Wells Fargo, who remains the loan's owner and servicer. (R. pp. 67–72; Promissory Note dated March 28, 2012 endorsed to Wells Fargo.) The Appellant apparently moved into the property securing the loan in March 2012 as well.

Ms. Witherspoon passed away in July 2015. (R. p. 80; Death Certificate.) Appellant served as the personal representative of her mother's estate, and in December 2016 received a 50% ownership stake in the subject property via a deed of distribution. (R. pp. 76–78; Deed of Distribution.)

Shortly thereafter, Appellant applied for a loan modification. (Supp. App. p. 27; Hodges Dep. 45:3–5.) Because she was not the original borrower, Wells Fargo considered Appellant for a

simultaneous loan assumption and modification. However, in early 2017, she withdrew her request for a loan modification. (Supp. App. p. 28; Hodges Dep. 47:1–4.)

In May 2017, after all payments received by Wells Fargo were applied and credited to the subject loan, the loan was in default and due, and the conditions of the Note and Mortgage were broken. (R. p. 159; Compl. ¶ 12.)

**II. Appellant sought another loan modification, which was denied.**

In June 2017, due to the loan's delinquency, Appellant re-applied for a simultaneous loan assumption and modification "to try and get help with the mortgage." (Supp. App. p. 28; Hodges Dep. 47:8–9.) Wells Fargo notified her that she was denied for a modification via letter in September 2017. (Supp. App. pp. 21–23; Denial Letter.) Appellant appealed the denial, and her appeal was also subsequently denied. (Supp. App. pp. 24–26; Appeal Denial Letter.)

**III. Wells Fargo commenced foreclosure, during which the Appellant attempted to assign tort liability to the bank for its denial of her request for a loan modification.**

Wells Fargo filed its Complaint for Foreclosure of Real Estate on December 22, 2017. In response, Appellant filed a series of answers, amended answers, counterclaims, and amended counterclaims. All told, she filed seven such amended pleadings, the final one of which was filed on July 30, 2018.

In her "Sixth Amended Answer and Counterclaim," Appellant 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. Appellant 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.

After discovery was completed, Wells Fargo filed a motion for summary judgment on June 10, 2019, as to Appellant's counterclaims and defenses. On August 7, 2019, the circuit court granted Wells Fargo's Motion for Summary Judgment dismissing Appellant's counterclaims, striking various defenses, striking the Appellant's request for jury trial and referring the matter to the Master-in-Equity. On August 16, 2019, Appellant filed a second motion to alter or amend.[1] The circuit court denied Appellant's motion to alter or amend in a Form 4 order, and this appeal followed.

## STANDARD OF REVIEW

"When reviewing the trial court's decision to grant summary judgment, an appellate court applies the same standard applied by the circuit court." *Oblachinski v. Reynolds*, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (2011). Summary judgment is appropriate when the evidence collectively shows that "there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP.

## ARGUMENTS AND AUTHORITIES

### I. Appellant has waived several issues that were resolved in the order granting Wells Fargo's motion for summary judgment.

As a threshold matter, it is important to note that Appellant's Statement of Issues on Appeal and her arguments do not coincide. Specifically, she makes several arguments in the body of her brief which are not included in the Statement of Issues on Appeal. The issues are: breach of

[1] Appellant initially filed a motion to alter or amend on August 5, 2019, prior to the Circuit Court's order granting summary judgment in favor of Wells Fargo.

fiduciary duty (Ap. Br. at 13–14), lack of standing (Ap. Br. at 15), lack of subject matter jurisdiction (Ap. Br. at 16–17), and the equitable doctrine of unclean hands. Since these issues are not included in the Statement of Issues on Appeal they are not preserved for appellate review. *See* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.").

Moreover, Appellant's discussions are, at best cursory, the end result of which is they should be declared abandoned. *See Fields v. Monroe Ltd. P'ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993) ("An issue raised on appeal but not argued in the brief is deemed abandoned."); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 515 (1994) (stating an issue is abandoned where the appellant fails to provide argument or supporting authority).

Regardless, even if these issues were properly before the Court, they fail on their individual merits:

- **Breach of Fiduciary duty (App. Br. at 13–14):** The circuit court's grant of summary judgment for Wells Fargo on Appellant's counterclaim should be affirmed because there is no private cause of action for denial of a loan modification and, even if a cause of action existed, Appellant failed to produce any evidence to support any element of a claim for breach of fiduciary duty. (R. p. 10–11; August 7, 2019 Order); *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) (stating denial of a loan modification does not create a private cause of action).

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 not 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, Appellant testified during her deposition that the mortgage contract forms the basis for her breach of fiduciary duty claim. (Supp. App. pp. 30, 35; Hodges Dep. 67:7–9; 84:2–5.) She further testified that she had no other relationship with Wells Fargo. (Supp. App. p. 36; Hodges Dep. 85:12–17.) Appellant also asserted that a fiduciary relationship was formed the instant she submitted a loan modification application to Wells Fargo. (R. p. 43. Answer and Countercl. ¶ 55.) At the end of the day, Appellant was—at most—a customer of Wells Fargo and her attempt to unilaterally create a fiduciary relationship is without merit. Thus, under *Regions Bank*, it is clear that the facts of this case do not support the existence of a fiduciary relationship and the circuit court was correct in granting summary judgment for Wells Fargo on this counterclaim.

- **Lack of Standing (Ap. Br. at 15)**: The circuit court correctly determined that Appellant's lack of standing defense 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. (R. p. 14–15; August 7, 2019 Order).

Under Article 3 of the Uniform Commercial Code, S.C. Code Ann. § 36-3-301, possession of the original note endorsed in blank is prima facie evidence of ownership. *See 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 (Bankr. D.S.C. 2011) (holding that 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). Thus, Wells Fargo indisputably has standing here.

- **Unclean Hands (Ap. Br. at 15-16):** No matter how Appellant couches these counterclaims—whether unclean hands or breach of fiduciary duty—they are based on the denial of a loan modification.

The doctrine of unclean hands is an equitable claim. *Wachovia Bank, N.A. v. Coffey*, 389 S.C. 68, 75, 698 S.E.2d 244, 247 (Ct. App. 2010) (noting 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").

In the circuit court, as well as in her brief, Appellant has failed to put forth any evidence that Wells Fargo acted unfairly towards her or that she was prejudiced as a result of an unfair act by Wells Fargo. Indeed, as evidenced by the holding of *Weber* cited above, the mere denial of a loan modification does not indicate that one has been treated unfairly.

Moreover, Appellant has made a handful of other assertions in her brief for which she has failed to provide, or cite to, any supporting authority: (1) that her due process rights were violated[2] (Appellant's Issue III; Ap. Br. at 13); (2) that the circuit court erred in determining that Wells

[2] This appears to be a new argument, and thus is not preserved. Regardless, Wells Fargo is not a government entity. *See Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004) (to prove denial of substantive due process, the party must show that a government actor deprived her of a cognizable property interest).

Fargo was "the Holder in due Course" (Ap. Br. at 15); (3) that the circuit court erred in awarding summary judgment, "as it appears that there is no evidence that [Appellant defaulted on the loan]" (Appellant's Issue VIII; Ap. Br. at 16;); and (4) that the circuit court erred in referring the case to the Master-in-Equity (Appellant's Issue VII; Ap. Br. at 19).

Accordingly, these arguments should be deemed abandoned. *See McLean*, 314 S.C. at 363, 444 S.E.2d at 514 (finding that where an appellant fails to provide arguments or supporting authority for his assertion, he is deemed to have abandoned the issue); *see also Ellie, Inc. v. Miccichi*, 358 S.C. 78, 99, 594 S.E.2d 485, 496 (Ct. App. 2004) (stating that where an issue is "not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal").

In her brief, Appellant essentially submits one argument for fraud and unclean hands (Ap. Br. at 15–18) and a handful of procedural arguments—a request to amend her answer yet again, a claim that the foreclosure action can only be brought against Appellant's mother's estate, a request to have her equitable defense heard by a jury, and a conclusory allegation that discovery is outstanding—to support legally invalid claims. Notably, she never explains what new evidence additional discovery inquiries would reveal and, to the extent she may have done so, she fails to explain the relevance of any new such evidence. For the reasons discussed below, the circuit court's ruling should be affirmed.

## II. Wells Fargo did not commit a fraud on the court, and Appellant has failed to provide any evidence to the contrary.

On appeal, Appellant maintains the circuit court erred in granting summary judgment on her claim for fraud on the court because, as Appellant alleges, counsel for Wells Fargo intentionally withheld admissions, provided unverified responses, and prevented her from being

heard. (Ap. Br. at 16, 18) This outrageous claim fails because Appellant has not put forth any evidence to support it, nor does any exist.

"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. *Id.* at 78–79, 579 S.E.2d at 608–09 ("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)).

There simply is no evidence to support any notion that extrinsic fraud exists in this case. Though her brief is somewhat unclear, Appellant appears to base her appellate argument on the fact that Wells Fargo responded to written discovery with a verification that contained a different date than the date on which the responses were served. In Appellant's view, that mismatch must equate to fraud of some type. However, it does not. Importantly, Appellant never identifies any untruthful statement. Further she never identifies any misleading statement. Appellant never identifies anything other than a mismatch of dates in support of her over-the-top allegations that a fraud on the court occurred. When presented with her arguments on fraud, the circuit court rightfully concluded that the verification was not defective, and was properly within the South

Carolina Rules of Civil Procedure, even if the date of the verification was before the date responses were received by counsel and served on Appellant. (R. p. 5; July 24, 2019 Order.)

Notably, even if a witness's verification of discovery responses prior to the date they were served could possibly amount to fraud—again, it does not—such "fraud" would be ***intrinsic*** fraud, which is not actionable. *See Ford Motor Co.*, 354 S.C. at 81, 579 S.E.2d at 610 (stating fraud on the court is not granted for "fraud which was presented and considered during trial"). As a result, the Court should affirm the circuit court's grant of summary judgment on this claim.

## III. Appellant's remaining procedural arguments are defective as a matter of law.

### A. Appellant's request to amend her pleading for a seventh time is futile.

Rule 15(a), SCRCP, vests the circuit court with discretion to permit a party to amend its pleadings when doing so "does not prejudice any other party," and when doing so would not be futile. *See, e.g.*, *Higgins v. Med. Univ. of S.C.*, 326 S.C. 592, 604, 486 S.E.2d 269, 275 (Ct. App. 1997) (refusing to permit amendment of pleadings when the amendment "ultimately would be futile").

Here, Appellant states that she should have been allowed to amend her answer for a seventh time because, as she alleges, it would not have prejudiced Wells Fargo. (Ap. Br. at 11.) Critically, Appellant never explains what new facts or claims, if any, her seventh amended complaint would add. In her brief she claims that she purported to include that "Wells Fargo was not the holder in due course." (Ap. Br. at 12.) However, this is an iteration of Appellant's "lack of standing" claim that, as mentioned above, the circuit court correctly dismissed. Next, Appellant claims her seventh amended answer added allegations regarding joint tenancy to support her claim that the circuit court lacked subject matter jurisdiction due to Wells Fargo's failure to file a deficiency judgment against her mother's estate. (Ap. Br. at 12.) Not only did the circuit correctly find this argument

meritless, by Appellant's own admission she raised the allegation in her third amended answer. (Ap. Br. at 16.) As such, she cannot claim any entitlement to revise her pleading ***for a seventh time*** to add unknown and previously raised amendments, and the circuit court was well within its discretion to reject this futile exercise. *Id.*

**B. 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.**

On appeal, Appellant seems to take issue with the fact that the subject Promissory Note was presented as evidence in this foreclosure action and, from this evidence, concludes that Wells Fargo is seeking a deficiency judgment against her mother's estate. (Ap. Br. at 16–17.) Appellant further argues that the alleged deficiency judgment is time-barred. (Ap. Br. at 17). However, Appellant is incorrect because Wells Fargo expressly waived its right to a deficiency judgment in its pleadings. (R. p. 159; Compl. ¶ 13.)

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. *See* 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 the 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.").

Wells Fargo waived its right to seek a deficiency judgment in its complaint. (R. p. 159; Compl. ¶ 13.) As such, the circuit court correctly held that subject matter jurisdiction was proper

because Wells Fargo "is not seeking a deficiency judgment against the estate." (R. p. 10; August 7, 2019 Order.) Based on these findings, it is clear Wells Fargo was not required to file a claim in Appellant's mother's probate estate, and the Court should reject Appellant's argument to the contrary.

**C. Appellant is not entitled to a trial by jury on her equitable defense.**

On appeal, Appellant states that the circuit court erred because Wells Fargo's motion to strike did not address her breach of fiduciary duty claim. (Ap. Br. at 18–19.) However, as stated above, the circuit court correctly found that no such duty exists as a matter of law; and, because Appellant's remaining unclean hands defense was based on allegations that Wells Fargo acted unfairly in denying the loan modification, the court granted the motion to strike Appellant's jury demand. (R. p. 16; August 7, 2019 Order).

As a threshold matter, Appellant fails to cite any case whatsoever that has reversed a motion to strike a jury demand based on her theory. *See McLean*, 314 S.C. at 363, 444 S.E.2d at 514 (finding that where an appellant fails to provide arguments or supporting authority for his assertion, he is deemed to have abandoned the issue).

The doctrine of unclean hands is an equitable claim. *Wachovia Bank, N.A.*, 389 S.C. at 75, 698 S.E.2d at 247. Furthermore, equitable claims are not entitled to a jury trial. *See, e.g., Mortg. Elec. Sys., Inc., v. White*, 384 S.C. 606, 614–615, 682 S.E.2d 498, 502 (Ct. App. 2009) (noting that appellants were not entitled to a jury trial because they sought only equitable relief). Finally, "[i]f the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial." *Wachovia Bank, Nat. Asss'n*, v. *Blackburn*, 407 S.C. 321, 330, 755 S.E.2d 437, 441 (2014). If the counterclaim does not affect the lender's right to enforce the note and the mortgage, the counterclaim is permissive. *See Advance Intern, Inc. v. N.C. Nat'l Bank of S.C.*, 316

S.C. 266, 269–70, 449 S.E.2d 580, 582 (Ct. App. 1994), *aff'd in part, vacated in part on other grounds*, 320 S.C. 532, 466 S.E.2d 367 (1996).

Here, Appellant undoubtedly seeks equitable relief as she alleges that Wells Fargo acted unfairly in denying her requested loan modification. Nonetheless, even if this Court finds that Appellant's claim was legal in nature, neither the loan modification nor the filing of a Certificate of Non Owner Occupancy are logically related to Wells Fargo's right to enforce the note. Therefore, because Appellant's remaining claim is equitable and permissive, the circuit court properly granted Wells Fargo's motion to strike jury demand.

Additionally, Appellant asserts that the circuit court erred in granting the motion to strike because the determination of an agency relationship is a question of fact for the jury to determine. (Ap. Br. at 19.) However, Appellant fails to recognize that summary judgment is proper where, as here, the party fails to present facts tending to prove an agency relationship existed. *Bank of New York Mellon Tr. Co. v. Grier*, 416 S.C. 63, 71, 785 S.E.2d 208, 212 (Ct. App. 2016) (stating that the question of agency becomes one for the jury if facts are presented that tend to prove an agency relationship). Here, Appellant's agency theory stems from her meritless breach of fiduciary duty claim, and Appellant has failed to point to any facts in her brief that tend to prove an agency relationship existed. As such, the circuit court did not err in granting Wells Fargo's motion to strike jury demand.

## IV. No additional discovery is needed, and Appellant has not identified any undiscovered material facts.

Finally, Appellant attempts to evade summary judgment by arguing that discovery is not yet complete. (Ap. Br. at 18) The Court should reject this argument for three reasons.

First, Appellant's argument is conclusory and should be deemed abandoned as a result. *See Miccichi*, 358 S.C. at 99, 594 S.E.2d at 496 (stating that where an issue is "not argued within the

body of the brief but is only a short conclusory statement, it is abandoned on appeal").

Second, Rule 56(f), SCRCP, specifically requires a party who seeks to avoid summary judgment due to the lack of discovery to identify in an affidavit what additional information he or she needs in order to respond to a dispositive motion. The Appellant provided no such affidavit requesting information necessary to respond to this foreclosure action and, therefore, waived this argument.[3]

Third, and finally, summary judgment can be forestalled only when the additional requested discovery bears on dispositive issues. *See, e.g., Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) ("[T]he nonmoving party must demonstrate the likelihood that further discovery will uncover additional ***relevant*** evidence and that the party is 'not merely engaged in a "fishing expedition"'" (quoting *Baughman v. AT&T Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991))) (emphasis added); *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54–55, 677 S.E.2d 32, 36 (Ct. App. 2009) (affirming summary judgment despite the appellant's claim for more discovery because "on appeal, Guinan fails to demonstrate further discovery would uncover additional ***relevant*** evidence or create a genuine issue of material fact") (emphasis added); *see also Wieters v. Roper Hosp., Inc.*, 58 F. App'x 40, 44 (4th Cir. 2003) (affirming summary judgment despite the submission of a Rule 56(f) affidavit because the nonmovant had failed to explain how the additional requested discovery "will be useful in resisting summary judgment").

[3] In her August 16, 2019, motion to alter or amend the circuit court's summary judgment order, Appellant appears to claim that additional discovery was necessary to secure an escrow review statement. (Supp. App. pp. 4–5; Motion to Alter or Amend) But, she seeks to use that document to support her disagreement with the loan modification—a claim which fails as a matter of law. *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) (stating denial of a loan modification does not create a private cause of action).

Appellant has failed to identify any material facts that have not yet been discovered that could somehow resuscitate her defective claims and defenses. She has not identified any on appeal, nor did she identify any to the circuit court. Accordingly, her argument for additional discovery fails as a matter of law, and the Court should reject it. *See, e.g.*, *Fields*, 354 S.C. at 69, 580 S.E.2d at 439 (stating that the party requesting additional discovery must demonstrate the likelihood that further discovery will uncover additional relevant evidence). For those reasons, the Court should affirm summary judgment in favor of Wells Fargo as a result.

## CONCLUSION

The circuit court properly granted judgment in Wells Fargo's favor, as the Appellant's claims against the bank are defective as a matter of law, and nothing in her request for additional discovery can overcome these defects. Accordingly, Wells Fargo respectfully requests that the Court affirm judgment in Wells Fargo's favor.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll
S. Sterling Laney, III
S.C. Bar No. 6933
Sterling.laney@wbd-us.com
M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
Bryant S. Caldwell
S.C. Bar No. 102206
bryant.caldwell@wbd-us.com
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
(803) 454-6504

Attorneys for Respondent

Columbia, South Carolina
March 30, 2021

## CERTIFICATE OF COMPLIANCE

The undersigned hereby certify that this Final Brief complies with Rule 211(b), SCACR.

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll

M. Todd Carroll
S.C. Bar No. 74000
Bryant S. Caldwell
S.C. Bar No. 102206
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
(803) 454-6504

Attorneys for Respondent

Columbia, South Carolina
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