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SC Court of Appeals Page 1

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

2 COUNTY OF DORCHESTER) Case No. 2010-CP-18-2652

3 CHASE HOME FINANCE, LLC,)

4 Plaintiff(s),)

5 -vs-)

6 R. DUNCAN JAENICKE,)

7 Defendant(s).)

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SC Court of Appeals

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Given before Molly C. Newton, Court
Reporter and Notary Public, at the Dorchester County
Courthouse, 5200 East Jim Bilton Boulevard, Saint
George, South Carolina, on Thursday, July 12th, 2012
commencing at 1:37 o'clock, p.m.

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A P P E A R A N C E S

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For the Plaintiff(s): Scott Law Firm
By: Erica Lybrand, Esquire
2712 Middleburg Drive, Suite 200
Columbia, SC 29204

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Plaintiff's Exhibits Marked for Identification:

1. Affidavit of Indebtedness 22

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THE COURT: Good afternoon, everyone; you may have a seat. Are the parties ready to proceed?

MS. LYBRAND: Yes, Your Honor.

THE COURT: You may proceed.

MS. LYBRAND: Thank you, Your Honor. We're here on a final merits hearing in the case currently captioned Chase Home Finance, LLC, Plaintiff, versus R. Duncan Jaenicke, Defendant. We do have a motion to amend the caption to hand up today which would amend the caption to reflect J.P. Morgan Chase Bank, N.A. as the Plaintiff since they are now the successor by merger with Chase Home Finance. Mr. Jaenicke, the Defendant, has contested this matter; the majority of the claims have been resolved as far as the counter claims and any motions to dismiss but it's my understanding that Mr. Jaenicke has filed some objections to written testimony to written testimony in affidavit in which case I have now brought a witness from Chase who can testify as to the debt and any other concerns Mr. Jaenicke may have.

THE COURT: All right; thank you. Is that

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correct, Mr. Jaenicke?

MR. JAENICKE: Yes. Is it my term to say sort of my position at this point?

THE COURT: Yes.

MR. JAENICKE: Thank you. Um, my main point, Your Honor, I think it's premature to have a hearing at this point since I recently applied for a mortgage adjustment from Chase. The opposing counsel informed me just now that the bank has received it and she's asked for expedited process but it has not been resolved so technically I argue that we're still under the stay from the South Carolina Supreme Court and that we shouldn't have a hearing today but that it should be referred under the stay while I get a yes or no answer on home modification.

THE COURT: The only thing on that, Mr. Jaenicke, is a note from -- This is a 2010 file and there was an original stay where the Chief Justice issued that order and I understand from the correspondence that is included in this file that you have been reported non-punitive for the home modification process. You're welcome to respond.

1 **MS. LYBRAND:** Sure. Yes, Your Honor. Um,
2 there is co-counsel in this file, Hamilton
3 Osborne, from Haynesworth, Sinkler, Boyd had
4 appeared with regard to the litigation in this
5 matter. That firm, prior to our firm taking the
6 foreclosure back over, filed a notice of
7 expiration of stay and that was sent for filing
8 January 31st, 2012. That is their form that they
9 send in to advise us to the fact that Mr.
10 Jaenicke failed to participate or voluntarily
11 elected not to participate in the foreclosure
12 intervention process. That was the result of
13 sending a loss mitigation application to Mr.
14 Jaenicke and neither the state or my office or
15 Haynesworth, Sinkler, Boyd received a loss
16 mitigation package within the 30 days.

17 **THE COURT:** Has your firm filed a
18 certificate of compliance?

19 **MS. LYBRAND:** We understood that this was
20 what he was doing here, the Notice of Expiration
21 Stay with his certification of compliance with
22 that order.

23 **THE COURT:** Do you have a copy of that?

24 **MS. LYBRAND:** Yes, Your Honor.

25 **THE COURT:** Please show Mr. Jaenicke.

1 **MS. LYBRAND:** I sure will. I have a copy
2 right here.

3 **MR. JAENICKE:** Your Honor, when you're
4 ready I have a comment, please.

5 **THE COURT:** You can go ahead.

6 **MR. JAENICKE:** Thank you. Um, this Notice
7 of Expiration of Stay was not established in our
8 last hearing before the judge and I filed an
9 objection to the written orders that followed
10 that hearing and it was entered by Ms. Ayers; I
11 have a copy of it here. It specifically has to
12 do with the fact that I had, how do I say it,
13 reasons for not having applied yet.

14 **THE COURT:** What are your reasons? This
15 case has been pending.

16 **MR. JAENICKE:** I know you're busy but if
17 you look at the results of the last hearing
18 before a judge we resolved the counter suit,
19 that was the main body of work, and the judge
20 asked the other attorney to prepare the orders
21 and I got a chance to review it and I was okay
22 on every point except the point that he said,
23 Oh, I gave him a 30 day deadline but he didn't
24 need it. So I objected to that and I have a copy
25 of that where I filed that objection; it hasn't

1 been heard as of yet.

2 **THE COURT:** Right. I see that in the
3 record. Can I see what you have? You're
4 referring to Judge Newsome's order granting
5 summary judgement?

6 **MR. JAENICKE:** That's right. I agree on
7 every point except the stay point.

8 **THE COURT:** What you handed me is just the
9 notice of the hearing today.

10 **MR. JAENICKE:** Oh, it had that blue -- can
11 I see it again, please. From Ms. Ayers it had
12 the notes so --

13 **THE COURT:** Right. She did file it as an
14 objection and I do have a copy of that.

15 **MR. JAENICKE:** Oh, you have a copy of the
16 objection?

17 **THE COURT:** I do have a copy of what
18 you're referring to.

19 **MR. JAENICKE:** My basic rationale that I
20 explained to Judge Dixon was when the note was
21 sold from one corporation to another I figured
22 the new creditor, the new holder of the note,
23 would contact me and they never did so I put,
24 you know, mortgage modification on hold until I
25 heard from the new party.

1 **THE COURT:** Well, Mr. Jaenicke, and I
2 understand you're representing yourself in this
3 difficult situation that you find yourself in
4 not being able to afford an attorney, however,
5 you are held to the same standards as if you
6 were an attorney when you represent yourself so
7 you have to file the motions. What Judge
8 Dixon's order is the law of the case, those
9 points that he has already ruled upon. What he
10 has not ruled upon is a foreclosure hearing that
11 is performed today. So you know, as far as an
12 objection, I understand your objection but his
13 ruling as far as the partial summary judgement
14 allows the case to go forward and that is the
15 law of the case on those points.

16 **MR. JAENICKE:** So you're saying that
17 Judge Dixon has ruled that I have run out of my
18 stay?

19 **THE COURT:** No, sir. He granted partial
20 summary judgement, and again, not being an
21 attorney you're still held to the same standards
22 and I can't give you advice from the bench.

23 **MR. JAENICKE:** I'm just asking of finding
24 of fact. I'm asking, this document that she
25 handed me, what does that mean?

1 **THE COURT:** The document changing the
2 caption.

3 **MR. JAENICKE:** Oh, changing the caption.
4 That's nothing.

5 **THE COURT:** And I understand you didn't
6 have an objection to that?

7 **MR. JAENICKE:** Right. That's fine.

8 **THE COURT:** Let's take one step at a time.
9 If you don't mind let's go ahead and hand that
10 one up and we'll cross that one off the list.
11 And Mr. Jaenicke, you may not realize this, but
12 even if the foreclosure hearing goes forward
13 today and everything goes forward and an order
14 of foreclosure is signed that does not prevent
15 you from still going through the modification
16 process until the property is actually sold.
17 Just because an order is signed you can still go
18 through the modification prior to the property
19 being sold.

20 **MR. JAENICKE:** I don't understand the
21 logic there, Your Honor. The bank, at it's
22 option, could allow me to stay in the home if
23 they approve me?

24 **THE COURT:** Sure. Until it's sold it's
25 still your house but today's hearing would set a

1 notice of sale date so you have some time to
2 work within that time period to still try to
3 modify your loan. Their position is they sent
4 you the documents and you didn't respond to the
5 documents. Your misunderstanding of somebody
6 else contacting you, unfortunately that was your
7 misunderstanding. They sent you the documents,
8 apparently you didn't respond to the loan
9 modification documents; is that correct?

10 **MS. LYBRAND:** Yes, Your Honor.

11 **THE COURT:** So that was their position,
12 based on what they sent you for loan
13 modification that you're time had expired. That
14 doesn't mean you're precluded from exploring
15 other options.

16 **MR. JAENICKE:** I understand what you're
17 saying.

18 **THE COURT:** Hold on a second. The other
19 thing is there are other programs that might
20 help you modify even though an order of
21 foreclosure has been sent and I'm not saying it
22 has been yet today but we'll get you a couple of
23 brochures so you still have some options to try
24 to modify the loan before the property is sold,
25 okay?

1 **MR. JAENICKE:** I understand but let me ask
2 this question, the objection that I filed on the
3 orders that Mr. Osborne created, does that not
4 get adjudicated?

5 **THE COURT:** Which objections? List them
6 specifically.

7 **MR. JAENICKE:** You said you had a copy of
8 it.

9 **THE COURT:** Well, an objection is different
10 from a motion.

11 **MR. JAENICKE:** Can you explain? Maybe
12 that's where I'm lacking understanding.

13 **THE COURT:** No, sir. I can't give you
14 legal advice; I can't give you technical advice;
15 I can't give you procedural advice. When you
16 choose to represent yourself you do so at your
17 own peril. I can't --

18 **MR. JAENICKE:** You can't even talk about
19 the procedure?

20 **THE COURT:** No, sir.

21 **MR. JAENICKE:** That's surprising to me. I
22 understand about not giving legal advice but not
23 even explaining the rules of the road seems
24 unfair.

25 **THE COURT:** And I understand where it's

1 difficult for you because you can't afford an
2 attorney but The Court can't explain the
3 procedure. Like I said, you're held to the same
4 standards as an attorney when you choose to
5 represent yourself.

6 **MR. JAENICKE:** I understand. Let me make
7 this point, it's number four in my affidavit of
8 today.

9 **THE COURT:** Which affidavit of today?

10 **MR. JAENICKE:** The one I submitted on July
11 6th, 2012.

12 **MS. LYBRAND:** And Your Honor, I have a note
13 where my office did receive a copy of this
14 affidavit through litigation counsel but the
15 copy I received was not signed or dated or
16 notarized.

17 **MR. JAENICKE:** Mine is but I wanted to
18 mail it before I got it notarized. I sent it
19 out last Friday to Mr. Osborne.

20 **THE COURT:** Is this something you've filed
21 in the court records with the Clerk of Court?

22 **MR. JAENICKE:** Yes. It arrived on
23 Monday of this week.

24 **THE COURT:** It might have not made it to
25 the actual file yet. Do you have an extra copy?

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MR. JAENICKE: I do. Could you make another copy of that because I'm not sure I have another copy at home?

THE COURT: Okay.

MR. JAENICKE: Your Honor, while we're waiting I have a question about what we just spoke about.

THE COURT: Okay.

MR. JAENICKE: Remember I said I objected to the one on the order about stay and not responded in time, the charge from the other side. I have here my objection but are you saying I needed to file a motion or something?

THE COURT: Your objection is noted and is part of the record. I explained to you based on your explanation of your objection to me I'm overruling your objection and by that I'm explaining to you that you still have other options.

MR. JAENICKE: I see.

THE COURT: Does that make sense?

MR. JAENICKE: Now it's made clear.

THE COURT: Counsel, are you ready to proceed with your case?

MS. LYBRAND: Yes, Your Honor.

1 **THE COURT:** Did you have anything else
2 before we get started, Mr. Jaenicke?

3 **MR. JAENICKE:** Yes. The most outright part
4 of my affidavit today. Will we do that later
5 when the copy comes back?

6 **THE COURT:** Sure. And your affidavit is
7 addressing what?

8 **MR. JAENICKE:** Uh, that the South Carolina
9 Supreme Court order, this one, states in section
10 B, there it is, it's point number four on this
11 affidavit, Your Honor, that this case cannot be
12 argued on the merits unless and until
13 Plaintiff's attorney has filed with The Court a
14 certificate of compliance as described to the
15 South Carolina Supreme Court administrative
16 order 2011-05-01, Section B, which is Procedure
17 and Foreclosure Actions, Section One, Actions
18 Pending on May 9th, 2011, and sub-point A, that
19 the mortgagor has been served -- In other words,
20 the certificate of compliance has not been
21 served by the attorney.

22 **THE COURT:** And that's what this is.

23 **MR. JAENICKE:** This what?

24 **THE COURT:** The document that she handed me
25 a copy of. When was that filed?

1 **MS. LYBRAND:** I, unfortunately, don't have
2 a filed copy but I know that it has been filed,
3 I believe, February 2012; it was submitted to
4 The Court in January.

5 **MR. JAENICKE:** Oh, my goodness.
6 February? I would have gotten a copy of that?

7 **THE COURT:** Mr. Hamilton Osborne would have
8 provided it to you if he was the counsel
9 appearing at the time.

10 **MR. JAENICKE:** Oh.

11 **THE COURT:** It's been filed with The Court
12 February 2nd, 2012 so that's what this is. If
13 you want this copy back you can have it because
14 I have one in the records.

15 **MR. JAENICKE:** Thank you. I would.

16 **MS. LYBRAND:** And I apologize, Your Honor,
17 I don't have the filed copy.

18 **THE COURT:** That's okay. It's actually in
19 the file.

20 **MR. JAENICKE:** This is what you're calling
21 the Certificate of Compliance?

22 **THE COURT:** Right.

23 **MR. JAENICKE:** The Notice of Expiration of
24 Stay?

25 **THE COURT:** Correct. They address in

1 there what you're referring to, the Chief
2 Justice's order.

3 **MR. JAENICKE:** Again, Your Honor, this is
4 signed by Mr. Hamilton Osborne; he's not the law
5 to me.

6 **THE COURT:** Mr. Osborne is co-counsel.

7 **MR. JAENICKE:** I know but the law is the
8 judge, The Court. I don't see why this stands;
9 this, to me, is a proposal by opposing counsel.
10 Where is the judge's signature?

11 **THE COURT:** No, sir. It does not have to
12 be signed by a judge. The Chief Justice is
13 requiring counsel to submit that document to The
14 Court so The Court knows that you've been given
15 those documents in attempt of foreclosure.

16 **MR. JAENICKE:** I see. So it doesn't
17 require what I'm calling adjudication?

18 **THE COURT:** No, sir.

19 **MR. JAENICKE:** Approval?

20 **THE COURT:** I obviously review it and make
21 sure that they have it, that they have filed it.

22 **MR. JAENICKE:** All right, Your Honor.
23 Thank you.

24 **THE COURT:** Mr. Jaenicke, you can have a
25 seat while they are presenting their case.

1 **MR. JAENICKE:** Thank you.

2 **MS. LYBRAND:** Thank you, Your Honor. I
3 would like to call Darrell Atkins to the stand
4 for testimony.

5 **THE COURT:** Okay, Mr. Atkins, would you
6 please come up here to the witness box?

7 (Darrell Atkins, being duly sworn,
8 testified as follows:)

9 **THE COURT:** Have a seat and state your full
10 name for the record.

11 **MR. ADKINS:** Darrell Atkins, D-A-R-R-E-L-L,
12 Atkins, A-D-K-I-N-S.

13 **THE COURT:** Your witness, Counsel.

14 **MS. LYBRAND:** Thank you, Your Honor. Mr.
15 Atkins, thank you for coming today. I
16 understand you flew in from Ohio this morning
17 and I appreciate that. Who are you employed by?

18 **MR. ADKINS:** J. P. Morgan Chase Bank, N.A.

19 **MR. LYBRAND:** And your place of employment
20 at J. P. Morgan Chase Bank, what city and state
21 is it located in?

22 **MR. ADKINS:** Columbus, Ohio.

23 **MS. LYBRAND:** And what is your title at
24 Chase?

25 **MR. ADKINS:** Home Lending Research

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1 Officer.

2 **MS. LYBRAND:** And what does that involve?

3 **MR. ADKINS:** I use different capacities
4 from acting as a corporate liaison, mediations,
5 to authenticating documents, records, for The
6 Court.

7 **MS. LYBRAND:** So precisely what you're
8 doing here is what your main job is at Chase,
9 you testify as to the records of Chase at
10 hearings?

11 **MR. ADKINS:** That's correct.

12 **MS. LYBRAND:** How long have you been
13 employed in this position?

14 **MR. ADKINS:** Approximately three years.

15 **MS. LYBRAND:** Does your position as
16 liaison and as a witness for Chase, does it
17 provide you reason to review the documents,
18 business records of Chase, as to specific
19 foreclosure files?

20 **MR. ADKINS:** Yes.

21 **MS. LYBRAND:** And we're here today on the
22 matter of J. P. Morgan Chase Bank versus R.
23 Duncan Jaenicke, loan number ending in 7160;
24 have you had a chance to review Mr. Jaenicke's
25 file prior to this hearing?

1 **MR. ADKINS:** I have.

2 **MS. LYBRAND:** Okay. So, first of all, let'
3 start with the note; have you had a chance to
4 review the note?

5 **MR. ADKINS:** I have.

6 **MS. LYBRAND:** If I might pass up a copy of
7 the note. This note, Your Honor, is also
8 included in the record of hearing which would be
9 submitted today as part of the written
10 testimony.

11 **THE COURT:** Has Mr. Jaenicke seen a copy
12 of this?

13 **MS. LYBRAND:** I can give him one.

14 **MR. JAENICKE:** What is this?

15 **MS. LYBRAND:** A copy of the note.

16 **MR. JAENICKE:** Oh, fine. I know about the
17 note. Thank you.

18 **MS. LYBRAND:** Can you please state for the
19 record that date the note was entered into?

20 **MR. ADKINS:** It's dated August 1st of 2007.

21 **MS. LYBRAND:** And who is the note maker on
22 that note?

23 **MR. ADKINS:** Chase Bank USA, N.A.

24 **MS. LYBRAND:** And who executed this?

25 **MR. ADKINS:** It was signed by R. Duncan

1 Jaenicke.

2 **MS. LYBRAND:** Thank you. And what is the
3 original principal amount of the note?

4 **MR. ADKINS:** \$125,000.

5 **MS. LYBRAND:** Okay. Chase Bank N.A. is
6 the original note maker, correct?

7 **MR. ADKINS:** Correct.

8 **MS. LYBRAND:** Are you familiar with Chase
9 Bank N.A.'s history with J. P. Morgan Chase?

10 **MR. ADKINS:** Yes.

11 **MS. LYBRAND:** Can you testify as to how
12 J.P. Morgan Chase acquired that note?

13 **MR. ADKINS:** I don't know the legal
14 assimilation but it merged with Chase Home
15 Finance. Chase Home Finance has merged into
16 J.P. Morgan Bank N.A.

17 **MS. LYBRAND:** And it's your understanding,
18 for the record, that J.P. Morgan Chase Bank N.A.
19 is now the holder of that note?

20 **MR. ADKINS:** That is correct.

21 **MS. LYBRAND:** According to the business
22 records of the Plaintiff is this note in
23 default?

24 **MR. ADKINS:** Yes.

25 **MS. LYBRAND:** And do you know the date of

1 the default?

2 **MR. ADKINS:** From my recollection it was
3 due for it's July 2009 payment, I believe.

4 **MS. LYBRAND:** Okay, thank you. Your
5 Honor, I'd like to enter a copy of the Affidavit
6 of Indebtedness into the record. It's also
7 going to be included as part of the record of
8 hearing.

9 **MR. JAENICKE:** Is this statement from the
10 witness?

11 **THE COURT:** Correct. That is what he is
12 testifying.

13 **MR. JAENICKE:** I see.

14 **MS. LYBRAND:** Your Honor, for
15 clarification, it was executed by a member of
16 J.P. Morgan Chase Bank's staff; Mr. Adkins is
17 going to testify based on his knowledge and
18 review of the business records of the Plaintiff
19 regarding these numbers and their accuracy.

20 **MR. JAENICKE:** No objection, Your Honor.

21 **THE COURT:** Thank you. That will be
22 Plaintiff's Number One.

23 **(AFFIDAVIT OF INDEBTEDNESS MARKED AS**
24 **PLAINTIFF'S EXHIBIT NUMBER ONE FOR**
25 **IDENTIFICATION.)**

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1 **MS. LYBRAND:** Mr. Adkins, based on your
2 review of the Plaintiff's records and your
3 review of the Affidavit of Indebtedness I have
4 provided can you please state the current
5 principal balance owed as of the date of
6 default?

7 **MR. ADKINS:** \$123,053.50.

8 **MS. LYBRAND:** And this is an adjustable
9 rate note; based on your review of the records
10 what is the current interest rate?

11 **MR. ADKINS:** 10.5%.

12 **MS. LYBRAND:** And based on that current
13 interest rate and the interest rate that is due
14 and owing on this note what is the current
15 amount of interest due through today?

16 **MR. ADKINS:** \$40,263.43.

17 **MS. LYBRAND:** Thank you. Has Chase had to
18 pay any monies into the escrow account in order
19 to defray the cost of any taxes and insurance on
20 the account?

21 **MR. ADKINS:** Yes. There have been escrow
22 advances.

23 **MS. LYBRAND:** And is that account in
24 default as well?

25 **MR. ADKINS:** That is correct.



1 **MS. LYBRAND:** And can you please testify as
2 to the amount that is currently due and in
3 default on that escrow account?

4 **MR. ADKINS:** \$9,447.80.

5 **MS. LYBRAND:** Thank you. Additionally, I
6 understand that there may have been some of what
7 the banks usually refer to as corporate
8 advances, which are additional charges or
9 credits that may have been added to the account
10 after the default; are there any corporate
11 advances that have been paid out on this
12 account?

13 **MR. ADKINS:** There have been.

14 **MS. LYBRAND:** Okay. And what corporate
15 advances were they?

16 **MR. ADKINS:** What you call a BPO.

17 **MS. LYBRAND:** And what is that used for?

18 **MR. ADKINS:** Like an appraisal.

19 **MS. LYBRAND:** And is that in default?

20 **MR. ADKINS:** It is.

21 **MS. LYBRAND:** How much is that charge?

22 **MR. ADKINS:** \$156.00

23 **MS. LYBRAND:** And is there any credits or
24 balances or suspense balance on this account?

25 **MR. ADKINS:** This account does have a

1 suspense balance or a credit in this case of
2 \$883.27.

3 **MS. LYBRAND:** And so for the total current
4 debt owed on the account including the unpaid
5 principal balance and the interest through
6 today, corporate advances, minus any attorneys
7 fees and costs, what is the total debt owed on
8 this note?

9 **MR. ADKINS:** \$172,311.90.

10 **MS. LYBRAND:** Thank you. I'd like to move
11 on to loss mitigation on this account just for
12 your testimony. Have you had a chance to review
13 the loss mitigation information on Mr.
14 Jaenicke's account?

15 **MR. ADKINS:** I have.

16 **MS. LYBRAND:** When did you last review that
17 information?

18 **MR. ADKINS:** I believe it was Monday
19 evening.

20 **MS. LYBRAND:** And upon your review did you
21 note any active loss mitigation on this account?

22 **MR. ADKINS:** There was no active loss
23 mitigation on this account done by the
24 underwriters and processors but there was a loss
25 mitigation or residential mortgage application

1 received, I believe through outside counsel.

2 **MS. LYBRAND:** Okay. And that was
3 received; do you recall what date that was noted
4 that it was received?

5 **MR. ADKINS:** I don't know the date we
6 received it but it was dated July 6th, 2012.

7 **MS. LYBRAND:** So it is your understanding
8 that based on that information that Chase has,
9 in fact, received the loss mitigation
10 application from Mr. Jaenicke?

11 **MR. ADKINS:** Yes.

12 **MS. LYBRAND:** But that there is no current
13 packet in loss mitigation in underwriting at
14 this time?

15 **MR. ADKINS:** That's correct.

16 **MS. LYBRAND:** Okay. I have no more
17 questions for him.

18 **THE COURT:** Mr. Jaenicke, do you have any
19 questions?

20 **MR. JAENICKE:** I do, Your Honor.

21 **THE COURT:** Okay.

22 **MR. JAENICKE:** Sir, how do I pronounce your
23 last name?

24 **MR. ADKINS:** Adkins.

25 **MR. JAENICKE:** So this Anthony Marentic is

1 someone else?

2 **MR. ADKINS:** Yes.

3 **MR. JAENICKE:** All right. Mr. Adkins, do
4 you know why I received two different sets of
5 correspondences from Chase Bank, the entity that
6 holds the note; do you know why I received two
7 sets of notices with two different deadlines on
8 submission of documents for the first time I
9 applied for mortgage modification?

10 **MR. ADKINS:** Were these documents from
11 outside counsel or from Chase directly?

12 **MR. JAENICKE:** From Chase. I was
13 mystified; I was working with one set of
14 instructions from Chase looking for a deadline
15 and before that deadline came I got another set
16 of documents from Chase giving me another
17 deadline beyond that and I got the distinct
18 impression that Chase, as the Bible says, the
19 left hand doesn't always know what the right
20 hand is doing. Do you have any idea why that
21 happened?

22 **MR. ADKINS:** I'm not familiar with either
23 set of documents you're referring to.

24 **MR. JAENICKE:** Has Chase been in trouble
25 with the Department of Justice for insufficient

1 care exercised in tracking the various
2 foreclosure actions that you know of?

3 **MR. ADKINS:** I don't know if Chase has
4 been in trouble with the Department of Justice.

5 **MR. JAENICKE:** Are you unaware of the
6 Department of Justice's settlement with Chase
7 and the other five banks that has to do with
8 robo signing and insufficient care exercised;
9 surely you are, sir?

10 **MS. LYBRAND:** Your Honor, I would object to
11 this line of questioning; it's irrelevant to
12 this note and mortgage and the default.

13 **THE COURT:** What is the relevance, Mr.
14 Jaenicke?

15 **MR. JAENICKE:** The relevance is that when
16 I started getting two sets of signals from the
17 same creditor I lost my confidence in them that
18 they knew what the correct numbers were of what
19 I owed and therefore I suspended payment based
20 on that lack of confidence. As The Court may be
21 aware Chase and other large extenders of
22 mortgages made a settlement with the Department
23 of Justice last year. It was a record setting
24 fine; only the big tobacco settlement exceeded
25 it, for lack of care and fraud and affidavits

1 that weren't true and robo signing. The heart of
2 the matter was that Chase, being faced with a
3 flood of processing hired outside vendors to
4 process and wasn't doing it with adequate legal
5 care. I'm asking if he was aware of it.

6 **THE COURT:** I'm asking how that is relevant
7 to your particular case. I understand that your
8 counter claim, if I recall correctly, has been
9 dismissed in summary judgement.

10 **MR. JAENICKE:** Right. I'm not referring
11 to that.

12 **THE COURT:** Okay.

13 **MR. JAENICKE:** I'm referring to a case that
14 I would bring if I could afford to hire an
15 attorney.

16 **THE COURT:** But that is not before The
17 Court today.

18 **MR. JAENICKE:** Yes. That's right, Your
19 Honor, but the relevance to today's hearing is
20 Mr. Adkins is testifying that the numbers are
21 correct but I have, in my eight inch pile here,
22 two sets of directives from Chase Bank and I am
23 asking him if he knows why I got two sets of
24 communications.

25 **THE COURT:** And he's answered that he's not

1 familiar with --

2 **MR. JAENICKE:** But then I asked him if he
3 was aware of the DOJ settlement and I don't
4 believe he even testified truthfully; all he had
5 to say was, Yes, I'm aware or I'm not.

6 **THE COURT:** Tell me how that is relevant;
7 she objected to that question. How is that
8 relevant to your particular case?

9 **MR. JAENICKE:** It's tangentially relevant;
10 maybe not 100 percent.

11 **THE COURT:** I don't think it's relevant so
12 I'm going to sustain her objection.

13 **MR. JAENICKE:** All right. Mr. Adkins,
14 what was the \$800 credit about?

15 **MR. ADKINS:** The \$800 in the suspense
16 account?

17 **MR. JAENICKE:** Yes.

18 **MR. ADKINS:** Typically, the expense
19 account is where a payment comes in that is less
20 than what the amount to cure the default would
21 be so the amount is put in what they call a
22 suspense account until there are enough funds
23 received to make a whole payment on the account.
24 It appears there has not been sufficient funds
25 after the 800 was applied.

1 **MR. JAENICKE:** So it represents a payment,
2 a credit. The only other question is, Your
3 Honor, and I don't know if I can ask it now or
4 later, you tell me, but do I have the right to
5 file a lawsuit to link together an attorney to
6 bring it after this hearing?

7 **THE COURT:** Sir, I can't give you legal
8 advice. I urge you to talk to these folks as
9 far as the modification process is concerned and
10 consult an attorney as to whether or not you can
11 file a lawsuit. I can't tell you that not
12 knowing exactly what you're looking to do. What
13 I can do is what is performing today, your
14 foreclosure hearing. We have to keep it to
15 that.

16 **MR. JAENICKE:** I wasn't asking for advice,
17 Your Honor; I was just saying if this door is
18 closed, if this comes to fruition for the
19 opposing side, is the door forever closed for
20 further action on this matter or do I have a
21 right to file a lawsuit.

22 **THE COURT:** Sir --

23 **MR. JAENICKE:** It doesn't seem like an
24 answer would prejudice yourself, Your Honor

25 **THE COURT:** You need to consult legal

1 counsel as to what your other avenues are.

2 **MR. JAENICKE:** That's all my questions,
3 Mr. Adkins.

4 **THE COURT:** Any redirect?

5 **MS. LYBRAND:** No, Your Honor.

6 **THE COURT:** Mr. Adkins, you may step down.

7 **MS. LYBRAND:** We have no further testimony
8 other than the written testimony.

9 **THE COURT:** And have you provided a copy of
10 that written testimony to Mr. Jaenicke?

11 **MS. LYBRAND:** I have a copy for him right
12 here.

13 **MR. JAENICKE:** This represents what, what
14 you're submitting today?

15 **MS. LYBRAND:** Correct. Written testimony
16 as to all of the facts and matters of the case
17 including a copy of the note, the mortgage and
18 the affidavit.

19 **MR. JAENICKE:** So what you just handled in
20 live action.

21 **THE COURT:** Mr. Jaenicke, I just have to
22 review these documents; feel free to go ahead
23 and review your copy and I'll make sure
24 everything is in order and then you will have
25 your opportunity to present any evidence if you

1 wish to do so.

2 **MR. JAENICKE:** All right.

3 **THE COURT:** Mr. Jaenicke, I've had an
4 opportunity to review all the documents
5 submitted by the Plaintiff in this matter and
6 everything appears to be in order; do you have
7 anything to present on your behalf?

8 **MR. JAENICKE:** No, Your Honor.

9 **THE COURT:** Did you include a proposed
10 notice of sale?

11 **MS. LYBRAND:** Was it not included in that?
12 It appears that it got left out, Your Honor.

13 **MR. JAENICKE:** What is that, Your Honor?

14 **THE COURT:** What it is, Mr. Jaenicke, is
15 after an order of foreclosure is signed the next
16 step is the notice of sale that is published in
17 a newspaper as to when the property will be
18 auctioned and sold. This actually gives you an
19 extra bit of time because there will be two
20 sales dates. There will be the first sale date
21 and then one 30 days after that so you still
22 have time to be working on your modification.

23 **MR. JAENICKE:** I see.

24 **THE COURT:** And this is just one of the
25 documents that goes with that.



1 **MS. LYBRAND:** It's likely that it was held
2 out for reasons that we were not sure of what
3 sale date would be set for Mr. Jaenicke in this
4 case. I believe that we were originally
5 requesting an August 6th sale.

6 **THE COURT:** Too late for that. It would
7 have to be September.

8 **MS. LYBRAND:** Okay.

9 **THE COURT:** So September 4th.

10 **MS. LYBRAND:** Okay.

11 **THE COURT:** If you don't mind send a copy
12 to The Court.

13 **MS. LYBRAND:** Will do.

14 **MR. JAENICKE:** This auction that is in the
15 paper, is that the one that often times the bank
16 steps up and buys the property?

17 **THE COURT:** Many times. Yes, sir.

18 **MR. JAENICKE:** When does an eviction
19 happen? I'm new to this process.

20 **THE COURT:** Like I said, you have to get
21 advice from others but once the property is no
22 longer yours, if it's sold and it's purchased
23 and the deed is signed, if you're still there
24 and refuse to leave then you will be evicted.

25 **MR. JAENICKE:** So after a sale?

1 **THE COURT:** Yes.

2 **MR. JAENICKE:** And from your interchange
3 about the scheduling docket and all that -- What
4 was it on September 4th, what did that represent?

5 **THE COURT:** That is the actual initial
6 sale date here in this courtroom at 11 a.m. It
7 will be open for bids from the public. That's
8 why it's advertised in the paper.

9 **MR. JAENICKE:** Right. And what was that
10 deficiency that you said about 30 days; could
11 you explain that, please?

12 **THE COURT:** 30 days after the initial sale
13 it's open for another sale so there could be a
14 second sale 30 days after that if anybody else
15 bids on it.

16 **MR. JAENICKE:** Why would they sell it
17 twice?

18 **THE COURT:** You need to talk to counsel
19 about that. Since they are requesting a
20 deficiency judgement for you to have a judgement
21 against you for the difference in what it sells
22 for and what you owe, it's actually good for you
23 and gives you an opportunity for a higher bid to
24 come in.

25 **MR. JAENICKE:** Okay. Thank you.

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THE COURT: Good luck to you, Mr. Jaenicke.
I hope it works out for your modification.

MR. JAENICKE: Thank you, Your Honor.

MS. LYBRAND: Thank you, Your Honor.

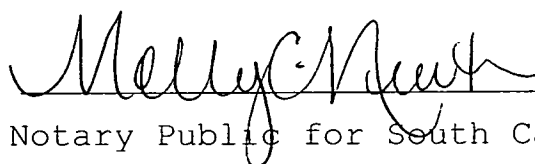
(Hearing was concluded at 2:20 o'clock, p.m.)

1 STATE OF SOUTH CAROLINA)
2 : C-E-R-T-I-F-I-C-A-T-E
3 COUNTY OF BERKELEY)
4

5 I, Molly C. Newton, Court Reporter and Notary Public,
6 certify that I did have the aforementioned parties to
7 appear before me at 1:37 o'clock, p.m. at the Dorchester
8 County Courthouse, 5200 East Jim Bilton Boulevard, Saint
9 George, South Carolina; that the witness was sworn and
10 cautioned to tell the truth, the pages constitute a true
11 and accurate transcript of the testimony given at that
12 time and place.

13 I further certify that I am not of counsel or kin to any
14 of the parties to this cause of action, nor am I
15 interested in any manner in its outcome.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal this the 2nd day of August, 2012.

18
19
20 

21 Notary Public for South Carolina

22 My Commission Expires: March 4, 2019

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Chase Home Finance LLC,

PLAINTIFF,

VS.

R. Duncan Jaenicke

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-18-2652

AFFIDAVIT OF INDEBTEDNESS

(SLF No. 091003.00148)

STATE OF Ohio

Franklin COUNTY

Anthony Marentic, being first duly sworn on oath, deposes and states as follows:

1. I am authorized to execute this affidavit on behalf of JPMorgan Chase Bank, National Association ("Chase"). The statements made in this Affidavit are based on my personal knowledge.

2. For convenience, the following party or parties listed on the Note are referred herein as "Borrower": R. Duncan Jaenicke.

3. In my capacity as Vice President, I have access to Chase's business records, including the business records for and relating to the Borrower's loan. These records include the historic records of Chase Home Finance LLC, which merged with Chase effective May 1, 2011. I make this affidavit based upon my review of those records relating to the Borrower's loan and from my own personal knowledge of how they are kept and maintained. The loan records for the Borrower are maintained by Chase in the course of its regularly conducted business activities.

4. Borrower executed a Note dated 8/1/07, for \$125,000.00 secured by a Mortgage on a property located at 127 Jigsaw Rd, Summerville, SC 29485. Chase is the servicer of the loan and holds the note ; or Chase is the servicer of the loan and is authorized to act on behalf of the holder of the note .

5. The Borrower has defaulted on his/her payment under the Borrower's loan documents. The Borrower's default on the Note and Mortgage has not been cured, and the loan balance has been accelerated making the entire balance due and owing pursuant to the terms of the loan documents.

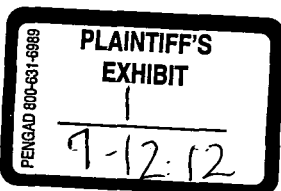
6. As a result of the Borrower's default, the Borrower owes, as of 7/12/12, the following itemized sums of money, exclusive of fees and costs:

Principal Balance

\$ 123,053.50

Interest Due from 6/1/09 through

\$ 40,263.43



D

7/12/12 at variable %

Pre-Acceleration Late Charges

\$ 274.44

Escrow

Escrow Deficiency - Real Estate Taxes for the year 2012

\$ 0.00

Escrow Deficiency - Real Estate Taxes for the year 2011

\$ 977.54

Escrow Deficiency - Real Estate Taxes for the year 2010

\$ 977.54

m Previous years taxes

\$ 953.73

Hazard Insurance

\$ 6,538.00

Mortgage Insurance Premium/Private

Mortgage Insurance

\$ 0.00

Credits

\$ 0.99

Total Escrow

\$ 9,447.80

Broker's Price Opinion/Appraisals

\$ 156.00

Property Preservation

\$ 0.00

Previous Bankruptcy Fees/Costs

\$ 0.00

Property Inspections

\$ 0.00

Suspense

\$ (883.27)

Miscellaneous Charges/Credits as follows:

\$ 0.00

\$ 0.00

\$ 0.00

TOTAL

\$ 172,311.90

By: Anthony Marentic
AFFIANT **Anthony Marentic**
Vice President

Date: 6/28/12

m JPMorgan Chase Bank, NA,
S/B/M Chase Home Finance LLC

Subscribed and sworn to before me this 28th day of June, 2012, by

Anthony Marentic

Cheryl A. Arnold, Notary Public

State of Ohio

My Commission expires: 5/23/2016

Personally Known OR
Produced Identification

Type of Identification Produced: _____



CHERYL A. ARNOLD
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Franklin County
My Comm. Exp. 5/23/16