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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
South Carolina Circuit Court Judge

Appellate Case No. 2020-001204

TEMISAN ETIKERENTSE and IJOEMA ETIKERENTSE .....Appellants,

v.

SPECIALIZED LOAN SERVICING, LLC .. .. Respondent.

RECORD ON APPEAL

Robert B. Varnado (S.C. Bar # 007085)
VARNADO LAW FIRM, LLC
36 Broad Street, Suite 200
Charleston, South Carolina 29401
(843) 737-7301
Attorneys for Appellants

July 26, 2021
Charleston, South Carolina

Temisan Etikerentse and Ijoema Etikerentse v. Specialized Loan Servicing, Inc.
APPELLATE CASE NO.: 2020-001204

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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

Plaintiff,

v.

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

Defendants.

Temisan Etikerentse a/k/a Temisan L. Etikerentse, and Ijeoma Etikerentse a/k/a Ijeoma Etkis,

Third-Party Plaintiffs,

v.

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

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2016-CP-10-1987

ORDER DENYING DEFENDANTS' MOTIONS, AND GRANTING PLAINTIFF'S MOTION

FILED
2017 MAY -1 AM 11:51
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before this Court on March 3, 2017 to hear oral arguments on the motions filed by Defendants, Temisan Etikerentse a/k/a Temisan L. Etikerentse, and Ijeoma Etikerentse a/k/a Ijeoma Etkis (Defendants), and Plaintiff, Wilmington Trust, National Association, as Successor Trustee to Citibank, NA as Trustee of Structured Asset Mortgage Investments II Inc.,

Bear Stearns ALT-A Trust II, Mortgage Pass-Through Certificates Series 2007-1 (Plaintiff). The following motions were before this Court:

(1) Defendants' Motion for Entry of Default and Default Judgment against Plaintiff pursuant to Rule 55, SCRCP (filed January 3, 2017);

(2) Plaintiff's Motion to Set Aside Entry of Default pursuant to Rule 55(c), SCRCP (filed January 6, 2017); and

(3) Defendants' Motion to Strike Plaintiff's Reply to Defendants' answer, counterclaims, and third-party complaint pursuant to Rule 12, SCRCP (filed January 10, 2017).

Present were Daniel McCoy representing the plaintiff, and Brian Knowles representing the defendants.

BACKGROUND

On April 18, 2016, Plaintiff initiated this action by filing its Summons and Complaint for foreclosure of a mortgage upon real estate in Charleston County which is Defendants' (T. Etikerentse and I. Etikerentse) primary residence. Service of Process was made on these Defendants herein on April 19, 2016 as indicated in the Affidavits of Service filed with the Charleston County Clerk of Courts on April 20, 2016. A Notice of Denial of Foreclosure Intervention was filed on September 20, 2016. Defendants requested a thirty day extension to file a responsive pleading, which was agreed to by Plaintiff. Defs.' Mot. for Default & For Default Judgment at 2. On November 17, 2016, Defendants filed a Summons, Answer, Counterclaims, and Third-Party Complaint naming Plaintiff as the Counterclaim Defendant. A Certificate of Service upon Riley Pope & Laney, LLC, attention Jayme L. Shy (Plaintiff's attorney), indicates service was made via U.S. Mail on November 17, 2016. A Certificate of Service upon Third-Party Defendant, Specialized Loan Servicing, LLC (SLS), indicates service was made via U.S. Certified

Mail upon SLS's registered agent, Capitol Corporate Services, Inc., on November 17, 2016. Proof of service upon SLS consisting of a domestic return receipt (PS Form 3811; "green card") was filed on November 28, 2016. SLS requested and was granted, by Defendants/Third-party Plaintiffs, a thirty day extension to file a responsive pleading. Defs.' Mot. for Default & For Default Judgment at 3.

On January 3, 2017, Defendants filed a Motion for Default and for Default Judgment requesting default be entered against Plaintiff and a hearing be scheduled to assess damages and enter a default judgment. Plaintiff filed both a Motion to Set Aside Entry of Default, and an Answer to Defendants' Counterclaims on January 6, 2017. Defendants filed a Motion to Strike Reply on January 10, 2017. Third-Party Defendant, SLS, filed an Answer to Defendants'/Third-Party Plaintiffs' Complaint on January 19, 2017.

DISCUSSION

I. Entry of Default.

"The plaintiff shall serve his reply to a counterclaim in the answer within 30 days after service of the answer or, if a reply is ordered by the court, within 30 days after service of the order, unless the order otherwise directs." Rule 12(a), SCRCP. "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book)." Rule 55(a), SCRCP. "The entry of default is the ministerial act recognizing that a party has not completed a required action in the time provided under the rules." JAMES F. FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE 451 (3d ed. 2010) (citing Beckham v. Durant, 300 S.C. 329, 331 n.2; 387 S.E.2d 701, 703 (Ct. App. 1989).

Plaintiff was served with Defendants' Summons, Answer, Counterclaims, and Third-Party Complaint naming Plaintiff as the Counterclaim Defendant on November 17, 2016. As such, plaintiff's reply was required to be served upon defendants no later than December 22, 2016.[1] On January 6, 2017, plaintiff filed its reply to defendants' counterclaim. This Court notes that the Clerk of Courts' records do not indicate whether plaintiff's reply was served on the defendants. While the plaintiff's proposed reply would normally be considered untimely, for the reasons stated below discussing the good cause standard to set aside default, this Court denies defendants' motion for entry of default against plaintiff.

II. Setting Aside Default.

"For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." Rule 55(c), SCRCP. "Determining whether to set aside an entry of default lies solely within the sound discretion of the circuit court and that decision will not be overturned absent a clear showing of an abuse of discretion." White Oak Manor, Inc. v. Lexington Ins. Co., 407 S.C. 1, 10; 753 S.E.2d 537, 542 (2014). Additionally, "Rule 55(c), SCRCP, should be liberally construed so as to promote justice and dispose of cases on the merits." In re Moore, 342 S.C. 1, 5 n.7; 536 S.E.2d 367, 369 (2000).

The good cause standard "requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." White Oak Manor, Inc. at 11; 753 S.E.2d at 542 (quoting Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607; 681 S.E.2d 885, 888 (2009)). Once the moving party "has put forth a satisfactory explanation for the default, the trial

[1] See Rules 5, 6, and 12, SCRCP.

court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." Sundown at 607-08; 681 S.E.2d at 888. "The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause." Id.

Here, Plaintiff's motion and oral arguments asserted that its answer to defendants' counterclaims was not timely filed due to confusion between plaintiff's attorney and third-party defendant's attorney regarding who would be responding to defendants' counterclaims. Pl.'s Mot. to Set Aside Default and Request for Expedited Hearing at 5. Additionally, plaintiff asserted a misunderstanding as to whether the extension of time to file a responsive pleading that was granted to SLS was also extended to Plaintiff. Id., Aff. of Damon C. Wlodarczyk. Plaintiff filed its motion for relief within three days of defendants' filing its motion for default. Additionally, plaintiff filed its answer to defendants' counterclaims on the same day it filed its motion for relief. Plaintiff had previously granted defendants' request for an extension of time to serve a responsive pleading. Similarly, defendants had granted third-party defendant's (SLS's) request for an extension of time to serve a responsive pleading which SLS served after plaintiff filed its responsive pleading.

Finally, the plaintiff has not shown how allowing the defendants to file a late answer would prejudice them. It is true that the plaintiff's attorney made a compelling argument that he was threatened by the defense attorney if he did not agree to allowing the filing, the defense attorney denied the statements were intended to intimidate anyone. More importantly, as to the merits of the defendants' motion, these accusations do not address the merits of the argument of prejudice. For the foregoing reasons, this Court finds that plaintiff has satisfied the "good cause" standard. Therefore, as stated in supra Part I, this Court denies defendants' motion to enter default.

III. Striking an Answer.

Defendants' Motion to Strike Reply requests this Court to strike plaintiff's untimely reply, enter default against plaintiff as to defendants' counterclaims, and set a hearing to enter default judgment against plaintiff as to defendants' counterclaims. Plaintiff's Motion to Set Aside Default requests leave to file an answer to defendants' counterclaims. For the reasons stated in supra Part II, concluding that plaintiff has satisfied the "good cause" standard, this Court denies defendants' motion to strike, and grants plaintiff leave to serve and file an answer to defendants' counterclaims within ten (10) days of the filing of this order.

CONCLUSION

After thoroughly considering the arguments of counsel, pleadings, affidavits, and other materials submitted by the parties, it is ordered that:

(1) Defendants' Motion for Entry of Default and Default Judgment against Plaintiff pursuant to Rule 55, SCRCP is DENIED;

(2) Defendants' Motion to Strike Plaintiff's Reply to Defendants' answer, counterclaims, and third-party complaint pursuant to Rule 12, SCRCP is DENIED; and

(3) Plaintiff must serve and file an answer to defendants' counterclaims within ten (10) days of the filing of this order.

AND IT IS SO ORDERED.

April 28, 2017
Charleston, South Carolina

Roger M. Young Sr.
Presiding Judge

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
C/A NO.: 2016-CP-10-01987

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

Plaintiff,

vs.

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

Defendants,

Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etkis,

Third-Party Plaintiffs,

vs.

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

Third-Party Defendant.,

Defendant(s).

(File No. 4035.05815)

MOTION INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	*Defendant's Attorney:*
Damon C. Wlodarczyk, SC Bar #70460 RILEY POPE & LANEY, LLC 2838 Devine Street Post Office Box 11412 (29211) Columbia, South Carolina 29205 (803) 799-9993/(803) 239-1414	Brian M. Knowles, Esquire Knowles Law Firm, PC PO Box 50201 Summerville, SC 29485 Robert B. Varnado, Esquire Alexis M. Wimberly, Esquire Brown & Varnado, LLC P.O. Box 1127 Mt. Pleasant, SC 29465 Daniel R. McCoy, Esquire Nelson Mullins Riley & Scarborough, LLP P.O. Box 3939 Myrtle Beach, SC 29578-3939

☐ **MOTION HEARING REQUESTED** ***(attach written motion and complete Sections I & 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:
Estimated Time Needed: Court Reporter Needed:

SECTION II: Motion Type

☒ Written Motion Attached
☐ Form Motion:

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

Signature of Attorney for Plaintiff

July 6, 2017
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 Report: _____
- ☐ 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:
(Print Name)

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

SCCA/233 (11-2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-10-01987

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

Plaintiff,

vs.

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

Defendants,

ORDER STRIKING CASE FROM GENERAL DOCKET PURSUANT TO RULE 40(j), SCRCP

Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etkis,

Third-Party Plaintiffs,

vs.

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

Third-Party Defendant.

FILED
2017 JUL 14 PM 3:30
JULIE J. ARMSTRONG
CLERK OF COURT

NOW, THEREFORE, on Motion of the parties,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above-captioned case is stricken from the docket as provided by Rule 40(j), SCRCP.

By consent of the parties, discovery shall continue until such time as more than one (1) year has passed since the date this Order is filed and no Motion to Restore has been made.

IT IS FURTHER ORDERED that the case shall be restored to the active docket upon motion by any party without the need for a hearing.

1 of 3

AND IT IS SO ORDERED.

July 13, 2017
Chicago, IL

Chief Administrative Judge

WE SO CONSENT:

Damon C. Wlodarczyk
Attorney for the Plaintiff

Brian M. Knowles
Robert B. Varnado
Attorneys for the Defendants/Third-Party
Plaintiffs Etikerentse

Daniel R. McCoy
Attorney for the Third-Party Defendant

AND IT IS SO ORDERED.

_____
Chief Administrative Judge

WE SO CONSENT:

_____
Damon C. Wlodarczyk
Attorney for the Plaintiff

_____
Brian M. Knowles
Robert B. Varnado
Attorneys for the Defendants/Third-Party Plaintiffs Etikerentse

_____
Daniel R. McCoy
Attorney for the Third-Party Defendant

3043

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-10-01987

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

Plaintiff,

vs.

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

Defendants,

Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etkis,

Third-Party Plaintiffs,

vs.

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

Third-Party Defendant.

(File No. 4035.05815)

FILED
2017 JUL 14 PM 3:30
JULIE J. ARMSTRONG
CLERK OF COURT

CERTIFICATE OF SERVICE

This is to certify that I, Monique W. Trifos, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the persons named below the attached **ORDER STRIKING CASE FROM GENERAL DOCKET PURSUANT TO RULE 40(J), SCRCP** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

Brian M. Knowles, Esquire
Knowles Law Firm, PC
PO Box 50201
Summerville, SC 29485

Robert B. Varnado, Esquire
Alexis M. Wimberly, Esquire
Brown & Varnado, LLC
P.O. Box 1127
Mt. Pleasant, SC 29465

Daniel R. McCoy, Esquire
Nelson Mullins Riley & Scarborough, LLP
P.O. Box 3939
Myrtle Beach, SC 29578-3939

Monique Trifos

Columbia, South Carolina

July 6, 2017

RILEY POPE & LANEY, LLC
ATTORNEYS AND COUNSELORS AT LAW

2838 DEVINE STREET
POST OFFICE BOX 11412 (29211)
COLUMBIA, SOUTH CAROLINA 29205

TELEPHONE (803) 799-9993 FACSIMILE (803) 239-1414

July 6, 2017

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401-2210

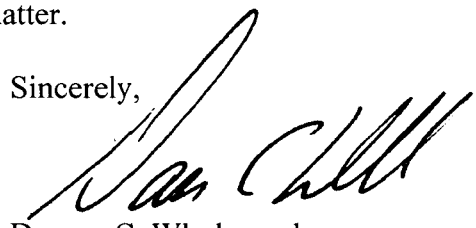
Re: Wilmington Trust, et al. v. Temisan Etikerentse a/k/a Temisan L. Etikerentse et al.
Case No.: 2016-CP-10-01987
Our File No.: 4035.05815

Dear Ms. Armstrong:

Enclosed herewith please find the original and one copy of Order Striking Case from General Docket Pursuant to 40(j), SCRP, in the above-captioned case. Please file same and return a clocked copy to me in the self-addressed stamped envelope provided.

Thank you for your kind assistance in this matter.

Sincerely,



Damon C. Wlodarczyk

DCW/mwt

Enclosures

cc: Brian M. Knowles, Esquire (w/enclosures)
Robert B. Varnado, Esquire (w/enclosures)
Alexis M. Wimberly, Esquire (w/enclosures)
Daniel R. McCoy, Esquire (w/enclosures)

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. **2018-CP-10-2762**

Wilmington Trust National Association et al., v. Temisan Etikerentse et al.,

PLAINTIFFS, DEFENDANTS.

FILED
2019 FEB 11 PM 4:21
JULIE J. ARMSTRONG
CLERK OF COURT

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **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 came before the Court on February 7, 2019 upon Third-Party Defendant Specialized Loan Servicing, LLC's Motion for Summary Judgment, filed August 30, 2018. "Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law." Evening Post Pub. Co. v. Berkeley County Sch. Dist., 392 S.C. 76, 81, 708 S.E.2d 745, 748 (2011); Rule 56(c), SCRCP. "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986)). In considering a motion for summary judgment, "the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." Id. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. . . Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). The Motion is heard and respectfully DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX **Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
N/A		
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

DL Jaffe — 2128 — 2/8/19

Circuit Court Judge | **Judge Code** | **Date**

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20___ and a copy mailed first class or placed in the appropriate attorney's box on this _____day of _____, 20___to attorneys of record or to parties (when appearing pro se) as follows:

Brian Knowles, Esq.

ATTORNEY FOR PLAINTIFFS

Daniel McCoy, Esq.

ATTORNEY FOR DEFENDANT

CLERK OF COURT

Court Reporter: Melissa Singletary

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiff,

vs.

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

Defendants,

Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etkis,

Third-Party Plaintiffs,

vs.

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

Third-Party Defendant.

(File No. 4035.05815)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-10-01987

2018-CP-10-2762

FILED
2018 JUN -1 AM 11:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY

ORDER RESTORING CASE TO THE ACTIVE DOCKET

WHEREAS, it appears on July 14, 2017, the above-captioned case was struck from the active docket pursuant to Rule 40(j), SCRCP. The Order provided that the case could be restored to the active docket by any party upon motion without the need for a hearing.

WHEREAS, it appears the Plaintiff is desirous of restoring this case to the general docket.

THEREFORE, it is Ordered that this case is restored to the general docket and shall be given a new case number.

IT IS SO ORDERED.

May 31, 2018

Kristi Lea Harrington
Chief Administrative Judge

STATE OF SOUTH CAROLINA COUNTY OF **CHARLESTON** Wilmington Trust, National Association as Successor Trustee to Citibank, N.A. et al. Plaintiff, vs. Temisan Etikerentse, et al. Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-02762 **MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
Damon C. Wlodarczyk 2338 Devine Street Columbia, SC 29205 Phone: 803-799-9993	Blake T. Williams, Esquire Address: Nelson Mullins Riley & Scarborough, LLP 1320 Main Street, Columbia, SC 29201 Phone: 803.255.9032 Fax: 803-255-9032 Email: blake.williams@nelsonmullins.com

☐ **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: Motion for Summary Judgment
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.

Blake T. Williams — October 11, 2019
Signature of Attorney for ☐ Plaintiff /☒ Defendant — 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.	JUDGE CODE _____
☐ Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1, Plaintiff, vs. Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, Suntrust Mortgage Inc., Capital Bank Corporation, Bank of America NA, Keybank National Association, and Olde Park Homeowners' Association Inc., Defendants.	)	Civil Action No. 2018-CP-10-02762 **CONSENT SCHEDULING ORDER**
Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, Third-Party Plaintiffs, vs. Specialized Loan Servicing LLC a/k/a SLS, Third-Party Defendant.	)	

2019 OCT 18 PM 4:03

Pursuant to Rule 16 of the South Carolina Rules of Civil Procedure, and with the consent of all parties, the Court hereby enters this consent Scheduling Order as follows:

1. **Dispositive Motions.** Dispositive motions shall be filed by January 31, 2020.

2. **Mediation.** Mediation shall take place on or before February 14, 2020.

3. **Trial.** This matter shall not appear for trial before April 6, 2020.

4. The parties may modify the mediation, motion, and trial deadlines by agreement of counsel.

IT IS SO ORDERED.

The Honorable Roger M. Young
Acting Chief Administrative Judge, 9th Circuit

Columbia, South Carolina

10/18, 2019

WE CONSENT:

RILEY POPE & LANEY, LLC

s/ Damon C. Wlodarczyk w/ permission
T. Lowndes Pope, SC Bar 66507
Heidi B. Carey, SC Bar 7020
Damon C. Wlodarczyk, SC Bar 70460
Jayme L. Shy, SC Bar 81551
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WE CONSENT:

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Attorney for Defendants/Third-Party Plaintiffs

WE CONSENT:

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

s/Blake T. Williams

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(803) 799-2000

Attorneys for Third-Party Defendant

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1,	)	Civil Action No. 2018-CP-10-02762
Plaintiff,	)	CERTIFICATE OF SERVICE
vs.	)	
Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, Suntrust Mortgage Inc., Capital Bank Corporation, Bank of America NA, Keybank National Association, and Olde Park Homeowners' Association Inc.,	)	
Defendants.	)	
Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis,	)	
Third-Party Plaintiffs,	)	
vs.	)	
Specialized Loan Servicing LLC a/k/a SLS,	)	
Third-Party Defendant.	)	

2018 OCT 18 PM 4:04

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Specialized Loan Servicing, LLC do hereby

certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Consent Scheduling Order

Counsel Served:

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Lillian S. Smith
Lillian Stowe Smith
Administrative Assistant

October 11, 2019.

NELSON MULLINS

NELSON MULLINS RILEY & SCARBOROUGH LLP
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October 11, 2019

The Honorable Julie J. Armstrong
CHARLESTON COUNTY CLERK OF COURT
100 Broad Street, Suite 106
Charleston, SC 29401-2258

RE: Wilmington Trust et al. v. Temisan Etikerentse et al. v. Specialized Loan Servicing LLC
Civil Action No. 2018-CP-10-02762
NMRS File No. 42753.01622

Dear Ms. Armstrong:

Enclosed for filing, please find the original and one copy of Consent Schedule Order. Please file the original and return a clocked-in copy to me in the enclosed self-addressed envelope.

By copy of this letter to opposing counsel, we are hereby serving a copy of this document upon them.

Please feel free to contact me should you have any questions.

Very truly yours,

Blake T. Williams

BMB:rd
Enclosures
cc: Brian M. Knowles, Esquire
Jayme L. Shy, Esquire
Robert B. Varnado, Esquire
Alexis M. Wimberly, Esquire
Damon C. Wlodarczyk, Esquire

ELECTRONICALLY FILED - 2020 Jul 22 10:23 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1002762

Wilmington Trust National Association As Successor Trustee et al
PLAINTIFF(S)

Temisan Etikerentse 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

The 3rd Party Defendant's Motion for Summary Judgment is granted. The Plaintiff's Motion to Strike is Denied. The Plaintiff's Motion for Summary Judgment as to Counterclaims is denied. If the parties would like formal orders they are welcome to submit them.

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 07/20/2020 .

Olde Park Homeowners Association Inc
Keybank National Association
Bank of America NA
Capital Bank Corporation
SunTrust Mortgage Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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), SCRCP.

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Charleston Common Pleas

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

Case Number: 2018CP1002762

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1002762

Wilmington Trust National Association As Successor Trustee et al
PLAINTIFF(S)

Temisan Etikerentse 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

The Motion to Reconsider is Denied. A hearing is not necessary.

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 08/05/2020 .

Olde Park Homeowners Association Inc
Keybank National Association
Bank of America NA
Capital Bank Corporation
SunTrust Mortgage Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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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), SCRCP.

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ELECTRONICALLY FILED - 2020 Aug 05 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762

Charleston Common Pleas

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

Case Number: 2018CP1002762

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

ELECTRONICALLY FILED - 2020 Aug 17 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1, Plaintiff, vs. Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, Suntrust Mortgage Inc., Capital Bank Corporation, Bank of America NA, Keybank National Association, and Olde Park Homeowners' Association Inc., Defendants.	)	Civil Action No. 2018-CP-10-02762 **ORDER**
Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, Third-Party Plaintiffs, vs. Specialized Loan Servicing LLC a/k/a SLS, Third-Party Defendant.	)	

BEFORE THE COURT is a Motion for Summary Judgment filed by Third-Party Defendant Specialized Loan Servicing LLC a/k/a SLS ("SLS") as to the third-party claims asserted by Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a

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Ijeoma Etkis ("Third-Party Plaintiffs") in the above-referenced matter. Hearings were held on July 13, 2020 and July 15, 2020, with Brian M. Knowles and Robert B. Varnado appearing for Third-Party Plaintiffs and Blake T. Williams appearing for SLS. After consideration of all arguments based on the pleadings, exhibits, the parties' written submissions, oral argument, and applicable authorities, the Court hereby **GRANTS** SLS's motion for summary judgment.[1]

PROCEDURAL BACKGROUND

1. On June 15, 2007, Temisan Etikerentse and Ijeoma Etikerentse executed a $1,402,500.00 adjustable rate note ("Note") in favor of Countrywide Home Loans, Inc. The Note was secured by a Mortgage (the "Mortgage") on real property located at 783 Navigators Run, Mount Pleasant, S.C. executed and delivered to Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for Countrywide.

2. MERS assigned the mortgage to Citibank N.A., as Trustee on behalf of the Holders of Bear Stearns Alt-A Trust II, Mortgage Pass-Through Certificates, Series 2007-1 ("Citibank") via assignment dated August 31, 2009.

3. Citibank then assigned the mortgage to Wilmington Trust, National Association, as Successor Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns Alt-A Trust II, Mortgage Pass-Through Certificates Series 2007-1 ("Wilmington Trust") via assignment dated November 4, 2014.

4. SLS services Third-Party Plaintiffs' loan on behalf of Wilmington Trust.

5. On April 8, 2015, Wilmington Trust filed this foreclosure action alleging that Third-Party Plaintiffs have been in default since December 1, 2008.

[1] The Court entered a Form 4 Order granting SLS's motion on July 22, 2020, and invited SLS to submit this formal Order.

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6. On November 17, 2016, Third-Party Plaintiffs filed their Answer, Counterclaims, and Third-Party Complaint. Third-Party Plaintiffs asserted counterclaims against Wilmington Trust and third party claims against SLS for: (1) breach of contract, (2) declaratory judgment, (3) violation of the South Carolina Unfair Trade Practices Act ("SCUTPA") and (4) violation of 12 C.F.R. § 1024.41.

7. By Order dated July 14, 2017, the case was stricken from the active docket pursuant to Rule 40(j), SCRCP. The case was restored to the active docket with a new civil action number by Order dated June 1, 2018.

8. SLS initially moved for summary judgment on August 30, 2018 while discovery was ongoing, relying solely on an affidavit of an SLS representative and supporting exhibits.

9. The Court denied this motion without prejudice via Form 4 Order dated February 11, 2018, finding that summary judgment was not appropriate because further inquiry into the facts was desirable.

10. SLS then proceeded to conduct additional discovery by deposing Dr. Etikerentse.

11. After the conclusion of discovery, SLS moved for summary judgment on all of the claims asserted against it by Third-Party Plaintiffs. SLS filed its motion on October 17, 2019. A hearing was scheduled for July 13, 2020. Third-Party Plaintiffs filed a response in opposition to SLS's motion on July 10, 2020.

12. The Court held hearings on this motion on July 13, 2020 and July 15, 2020.

STANDARD OF REVIEW

A motion for summary judgment should be granted where the Court is satisfied 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), SCRCP. A party opposing a motion for summary judgment must "do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial." *Hedgepath v. AT&T Co.*, 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001) (quoting *Baughman v. AT&T Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991)). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Id.* at 355, 559 S.E.2d at 336. Moreover, "[a] party cannot escape summary judgment on the mere hope that something may develop at trial." *Champion Int'l Corp. v. Eubanks*, 291 S.C. 395, 398, 353 S.E.2d 880, 882 (Ct. App. 1987).

UNDISPUTED FACTS IN RECORD

1. Third-Party Plaintiffs do not have a contract, either express or implied, with SLS and SLS is not a party to the Note or Mortgage.

2. Third-Party Plaintiffs were in default on the note as of December 1, 2008 and have remained in default through the present date.

3. Third-Party Plaintiffs submitted a loss mitigation application in 2014.

4. SLS evaluated the 2014 loss mitigation application for foreclosure intervention options.

5. Via letter dated December 12, 2014, SLS informed Third-Party Plaintiffs that they were approved for a standard loan modification.

6. SLS also evaluated Third-Party Plaintiffs for several other loss mitigation options, but Third-Party Plaintiffs were not approved for those options because the loan did not meet the necessary criteria.

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7. Despite the approval for SLS's standard modification program, the loan was not modified because Third-Party Plaintiffs did not accept the terms proposed by SLS.

8. During the second half of 2016, SLS again reviewed Third-Party Plaintiffs for loss mitigation options.

9. Via letter dated December 27, 2016, SLS informed Third-Party Plaintiffs that they were approved for a standard loan modification.

10. SLS also evaluated Third-Party Plaintiffs for several other loss mitigation options, but Third-Party Plaintiffs were not approved for those options because the loan did not meet the necessary criteria.

11. Despite the approval for SLS's standard modification program, the loan was not modified because Third-Party Plaintiffs did not accept the terms proposed by SLS.

CONCLUSIONS OF LAW

After thorough review and careful consideration of the pleadings, briefing, supporting exhibits, and oral argument of counsel at the hearing, the Court finds that there are no genuine issues of material fact and that SLS is entitled to judgment as a matter of law on all of Third-Party Plaintiffs' claims. More specifically, the Court finds as follows:

1. Breach of Contract. In their response in opposition to SLS's Motion for Summary Judgment, Third-Party Plaintiffs acknowledged that they do not have contractual privity with SLS and that this "undermines" their direct cause of action against SLS for breach of contract. (Third-Party Pltf. Memo in Opp'n at 6.) Under South Carolina law, the existence of a contract is a necessary element for proving a breach of contract claim. *See Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009) ("The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such

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breach."). In light of Third-Party Plaintiffs' concession that they lack privity of contract with SLS, the Court finds that there are no genuine issues of material fact and SLS is entitled to summary judgment on this claim.[2]

2. Declaratory Judgment. Third-Party Plaintiffs' second cause of action purports to state a claim for declaratory judgment. The Court finds that the gravamen of this claim seeks a declaration that SLS had an obligation to comply with the Home Affordable Modification Program ("HAMP") and that SLS failed to do so for Third-Party Plaintiffs' loan. This claim fails as a matter of law because HAMP does not provide a private right of action. *See Carrington v. Mnuchin*, No. CIV.A. 5:13-03422-JM, 2014 WL 4249876, at *10 (D.S.C. Aug. 27, 2014); *see also, e.g.*, *Grenadier v. BWW Law Grp.*, No. 1:14CV827 LMB/TCB, 2015 WL 417839, at *5 (E.D. Va. Jan. 30, 2015), *aff'd*, 612 F. App'x 190 (4th Cir. 2015) ("Although participating loan servicers are obligated to comply with HAMP guidelines in order to receive servicer benefits, 'HAMP does not create a private right of action for borrowers against lenders and servicers.'")). Litigants cannot evade the lack of a private right of action under HAMP by recharacterizing the claim by another name as Third-Party Plaintiffs have done in this case. *See*,

[2] In their Memorandum in Opposition, Third-Party Plaintiffs requested leave to amend their complaint to assert a claim for tortious interference with a contract instead of breach of contract. This action was originally filed over five years ago, and Third-Party Plaintiffs did not seek leave to amend their pleading to assert this new claim until the eve of the hearing on SLS's motion. SLS moved for summary judgment on October 17, 2019, and one of the grounds asserted in the motion was that the breach of contract claim failed because Third-Party Plaintiffs lacked privity of contract with SLS. Despite being on notice of this argument for several months, Third-Party Plaintiffs waited until only three days before the hearing on SLS's motion for summary judgment to request leave to amend to assert this entirely new cause of action.

The Court finds that SLS would be prejudiced if it permitted Third-Party Plaintiffs to amend their pleading to assert this new claim in light of: (1) the length of time this case has been pending, (2) the extensive discovery previously undertaken by the parties, (3) the lack of any significant factual developments warranting the untimely amendment, and (4) the fact that permitting the amendment would require SLS to introduce additional and different evidence to prevail. *See Holland ex rel. Knox v. Morbark, Inc.*, 407 S.C. 227, 236, 754 S.E.2d 714, 719 (Ct. App. 2014) (collecting cases). Therefore, leave to amend is **DENIED**.

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e.g., *Steffens v. Am. Home Mortg. Sevicing, Inc.*, No. CIV.A. 6:10-1788-JMC, 2011 WL 901812, at *2 (D.S.C. Jan. 5, 2011), *report and recommendation adopted* 2011 WL 901179 (D.S.C. Mar. 15, 2011) (dismissing claims due to lack of private right of action under HAMP, explaining that "[d]espite the fact that [plaintiff] did not label her claims as 'HAMP violations,' the underlying factual and legal basis for each is squarely based on HAMP").

Additionally, the Court finds that even Third-Party Plaintiffs could premise their declaratory judgment claim on HAMP, the unrebutted evidence supports that Third-Party Plaintiffs' loan did not qualify for that program. SLS attached two decision letters to its motion which explained that Third-Party Plaintiffs' loan was not eligible for HAMP because the current unpaid principal balance on the loan was higher than the program limit as defined by the applicable guidelines. Third-Party Plaintiffs did not provide any evidence to rebut this fact and, therefore, there is no genuine issue of fact for trial.

3. Violation of RESPA. The Court also finds there is no genuine issue of material fact regarding Third-Party Plaintiffs' claim for violation of RESPA, 12 C.F.R. § 1024.41. The undisputed facts are that SLS reviewed Third-Party Plaintiffs' loss mitigation application in 2014, provided an explanation of its decision as to a number of foreclosure intervention options, and approved Third-Party Plaintiffs for a loan modification. Therefore, the Court finds that SLS satisfied its obligations under RESPA. *See generally* 12 C.F.R. § 1024.41.

Third-Party Plaintiffs' pleading and briefing focused largely on allegations about SLS's actions during a second loss mitigation evaluation in 2016. The Court notes that SLS was under no obligation to evaluate Third-Party Plaintiffs for loss mitigation options for a second time, yet nevertheless reviewed their loan again and offered a second loan modification. Because SLS already reviewed Third-Party Plaintiffs for loss mitigation options in 2014 and notified them of

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its decision, SLS was entitled to proceed with filing this foreclosure action while continuing to engage in voluntary loss mitigation. Third-Party Plaintiffs cannot assert violations of the RESPA loss mitigation rules as to the 2016 review since they previously availed themselves of the loss mitigation process in 2014. 12 C.F.R. § 1024.41(i) (explaining that "[a] servicer is only required to comply with the requirements of this section for a single complete loss mitigation application for a borrower's mortgage loan account"); *Mangum v. First Reliance Bank*, No. 4:16-CV-02214-RBH, 2017 WL 1062534, at *3 (D.S.C. Mar. 21, 2017) ("In other words, a borrower may not bring an action for violation of the loss mitigation rule if that borrower has previously availed herself of the loss mitigation process.").

The Court also finds that Third-Party Plaintiffs have failed to establish any genuine issue of material fact because they have not provided any evidence of damages. To establish a claim for violation of RESPA, a claimant must show damages as a result of the violation. *See Wirtz v. Specialized Loan Servicing, LLC*, 886 F.3d 713, 719 (8th Cir. 2018) (noting that damages are an essential element of a RESPA claim and a plaintiff fails to prove actual damages where the failure to comply with RESPA did not cause the purported harm). The lack of even a scintilla of evidence supporting any damages to Third-Party Plaintiffs also warrants summary judgment.

In response to SLS's arguments, Third-Party Plaintiffs relied extensively on a recent consent order between SLS and the Consumer Financial Protection Bureau ("CFPB"). *See* Consent Order, *In re: Specialized Loan Servicing, LLC*, No. 2020-BCFP-0002, Doc. 1 (May 11, 2020), *available at* https://files.consumerfinance.gov/f/documents/cfpb_specialized-loan-servicing_consent-order_2020-05.pdf. The Court finds that this Consent Order has no bearing on this case. First, as the Court explained above, the unrebutted evidence shows that SLS complied with its obligations under RESPA for Third-Party Plaintiffs' loan. Therefore,

allegations of purported RESPA violations in unrelated matters are irrelevant to this case. Additionally, the Consent Order is not evidence of anything since it expressly provides that SLS consented to its terms "without admitting or denying any of the findings of facts or conclusions of law." *See id.* at ¶ 2.

The Court also finds that the Consent Order has no impact on its subject matter jurisdiction. The Court has carefully reviewed the language of the Consent Order and it does not deprive the Court of jurisdiction over this foreclosure action or Third-Party Plaintiffs' claims against SLS. The jurisdictional statute cited by Third-Party Plaintiffs is in the CFPB's enabling legislation and concerns the CFPB's own enforcement powers. *See generally* 12 U.S.C. § 5563. Subsection (d) gives the CFPB the power to seek enforcement of its orders through the court system but provides that otherwise no court has jurisdiction to affect the issuance or enforcement of the Consent Order or alter its terms. *See* 12 U.S.C. § 5563(d). Third-Party Plaintiffs acknowledged at the hearing that they are not seeking to enforce the terms of the Consent Order, but instead were relying on it as support for SLS's alleged bad acts. Therefore, the jurisdictional provisions are not implicated here.

4. **Violation of SCUTPA**. The Court finds that there is no genuine issue of material fact as to Third-Party Plaintiffs' claim for violation of SCUTPA either. In their response to SLS's motion, Third-Party Plaintiffs acknowledged that the gravamen of this claim is also that SLS failed to adhere to its loss mitigation obligations under RESPA. (Third-Party Pltf. Memo in Opp'n at 4.) Because Third-Party Plaintiffs failed to establish any genuine issues of material fact as to any RESPA violation by SLS or related damages, this claim also necessarily fails as a matter of law.

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The Court further holds that Third-Party Plaintiffs' SCUTPA claim fails as to each of the three essential elements. A SCUTPA claim requires that the Plaintiff show: "(1) that the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act." *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 815-16 (2013). Here, there is no evidence of any unfair or deceptive action by SLS since the unrebutted evidence supports that SLS complied with its obligations under RESPA. Additionally, Third-Party Plaintiffs cannot show an impact on the public interest. Third-Party Plaintiffs relied solely on the CFPB Consent Order to support this element. However, again, the Consent Order did not contain any admissions by SLS as to any of the findings of fact or conclusions of law. Finally, Third-Party Plaintiffs did not provide any evidence of damages. To establish a claim under SCUTPA, a claimant must allege and prove an "ascertainable loss of money or property" that is causally connected to purported unfair or deceptive act. *See* S.C. Code Ann. § 39-5-140(a); *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharm., Inc.*, 414 S.C. 33, 57-58, 777 S.E.2d 176, 189 (2015). Third-Party Plaintiffs have not provided any evidence supporting an ascertainable loss of money or property. Therefore, summary judgment is proper on this claim.

5. **Rule 14, SCRCP**. Finally, the Court notes that in addition to failing on the merits, Third-Party Plaintiffs claims against SLS are improper under Rule 14(a), SCRCP. Therefore, summary judgment is also proper on this separate, alternative basis.

Pursuant to Rule 14(a) of the South Carolina Rules of Civil Procedure, "a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim

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against him." Rule 14(a), SCRCP. "Under Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability," meaning the "outcome of the princi[pal] claim must impact the third-party defendant's liability." *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994).

The Court finds that Third-Party Plaintiffs' claims against SLS are not proper Rule 14(a) claims. This is a foreclosure action filed by Wilmington Trust against Third-Party Plaintiffs for their failure to satisfy their obligations under the Note and Mortgage. SLS is not a party to these instruments and cannot possibly be derivatively liable for Wilmington's foreclosure claim against Plaintiffs. *See Deutsche Bank National Trust Co. v. Stevenson*, No. 2:12-1854-CWH, 2013 WL 12241630, at *3 (D.S.C. Jan. 30, 2013) (explaining that third-party claims asserted against a loan servicer in a foreclosure action were improper because the "outcome of [plaintiff's] foreclosure claim would not impact the liability of [the servicer]"). The correct mechanism for asserting these claims would have been to either file a separate suit against SLS or join SLS as a defendant to the counterclaims. Summary judgment is also appropriate for this alternative basis.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, viewing the evidence in a light most favorable to the non-moving party, there are no genuine issues as to any material fact and SLS is entitled to judgment as a matter of law on all of Third-Party Plaintiffs' claims. Accordingly, SLS's Motion is **GRANTED**.

IT IS SO ORDERED, this ____ day of _____, 2020.

_____
The Honorable Bentley D. Price
Ninth Judicial Circuit

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Charleston Common Pleas

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

Case Number: 2018CP1002762

Type: Order/Summary Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-10-

2016CP101987

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

Plaintiff,

vs.

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

Defendants.

(File No. 4035.05815)

SUMMONS AND NOTICE

FILED
2016 APR 18 AM 11:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2838 Devine Street, Columbia, South Carolina 29205, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Plaintiff.

YOU WILL ALSO TAKE NOTICE that should you fail to answer the foregoing Summons, the Plaintiff will move for a general Order of Reference of this cause to the Master-in-Equity or a Special Referee for the aforesaid County, which Order shall, pursuant to Rule 53,

SCRCP, specifically provide that the said Master or Special Referee is authorized and empowered, to enter a final judgment in this case and any appeal from the final judgment entered herein to be made directly to the Supreme Court.

YOU WILL ALSO TAKE NOTICE that under the provisions of S.C. Code Ann. §29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the attached mortgage is perfected and Plaintiff hereby gives notice that all rents shall be payable directly to it by delivery to its undersigned attorneys from the date of default. In the alternative Plaintiff will move before a Judge of this Circuit on the 10th day after service hereof, or as soon thereafter as counsel may be heard, for an Order enforcing the assignment of rents, if any, and compelling payment of all rents covered by such assignment directly to the Plaintiff, which motion is to be based upon the original note and mortgage which is the subject of this action and the Complaint attached hereto.

THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION GAINED WILL BE USED FOR THAT PURPOSE.

RILEY POPE & LANEY, LLC

T. Lowndes Pope, SC Bar 66507
Heidi B. Carey, SC Bar 7020
Damon C. Wlodarczyk, SC Bar 70460
Jayme L. Shy, SC Bar 81551
Meredith M. Robertson, SC Bar 68322
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2838 Devine Street
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(803) 799-9993
Attorneys for Plaintiff

April 14, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-10-

2016CP 101 987

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

Plaintiff,

vs.

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

Defendants.

(File No. 4035.05815)

COMPLAINT

FOR A FIRST CAUSE OF ACTION –
Foreclosure of Real Estate Mortgage

FILED
2016 APR 18 AM 11:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff above-named, complaining of the Defendants above named, herein alleges:

GENERAL ALLEGATIONS

1. This is an action for the foreclosure of a mortgage upon real estate in Charleston County, South Carolina.

2. The Plaintiff is a corporation or other legal entity duly organized and existing under and by virtue of the laws of one of the States of The United States of America and is authorized to transact business in the State of South Carolina.

3. Plaintiff, directly or through an agent, has possession of the promissory note. The promissory note is either made payable to Plaintiff or has been duly endorsed. Plaintiff is either the original mortgagee, beneficiary, or the assignee of the security instrument for the subject loan. Plaintiff has the right to foreclose the subject note and security instrument.

4. Some lien on or right, title, or interest in the real estate, the subject of this action, may be claimed by the Defendants herein.

5. Based upon a search of the public records of Charleston County, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made Defendants.

6. The Defendants herein described, if any, as judgment creditors, have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of S.C. Code Ann. §15-35-840.

7. On or about June 15, 2007, Temisan L. Etikerentse, by and through her Attorney-in-Fact, Ijeoma Etikerentse made, executed and delivered unto Countrywide Home Loans, Inc. a certain Note ("Note") in the principal sum of One Million Four Hundred Two Thousand Five Hundred and 00/100 ($1,402,500.00) Dollars, with an interest rate of 7.000% per annum initially, payable in monthly installments of principal and interest of $8,181.25 beginning August 1, 2007, a copy of which is attached hereto as Exhibit "A" and made a part hereof by reference.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Temisan L. Etikerentse, by and through her Attorney-in-Fact, Ijeoma Etikerentse, and Ijeoma Etikerentse made, executed and delivered unto Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Countrywide Home Loans, Inc. a certain real estate mortgage ("Mortgage") covering the following described property:

> All that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, designated as "Lot 5, 17, 212 Sq. Ft. 0.395 AC" as more fully shown and delineated on a plat of survey made by Southeastern Surveying Inc., entitled "A final subdivision plat of Lots 1 thru 16 and Lots 70 thru 80 Phase III Olde Park Owned by GR, LLC located in the Town of Mount Pleasant, Charleston County, South Carolina," dated May 1, 2000, and recorded in Plat Book EE at Page 151-152, in the RMC Office for Charleston County, South Carolina.
>
> Being the same property conveyed unto Ijeoma Etikerentse by deed from New South Construction Co. Inc. of Pinopolis dated June 15, 2007 and recorded June 29, 2007 in Deed Book S630 at Page 808 in the ROD Office for Charleston County, South Carolina.
>
> TMS No. 535-07-00-049
> Property Address: 783 Navigators Run, Mount Pleasant, SC 29464

9. The Mortgage was signed, witnessed and probated; thereafter the Mortgage was recorded in the public records of Charleston County on June 29, 2007, in Book U630 at Page 215. Thereafter, by assignment recorded September 9, 2009 in Book 79 at Page 941, the mortgage was assigned to Citibank, N.A. as Trustee on behalf of the Holders of Bear Sterns Alt-A Trust, II, Mortgage Pass-Through Certificates, Series 2007-1; thereafter, by assignment recorded November 25, 2014 in Book 442 at Page 893, the mortgage was assigned to Wilmington Trust, National Association, as successor Trustee to Citibank, N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns Alt-A Trust II, Mortgage Pass-Through Certificates Series 2007-1. A copy of the Plaintiff's Mortgage and Assignments are collectively attached hereto as Exhibit "B" and made a part hereof by reference.

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

11. The hereinafter named Defendant(s) may have some interest in or lien upon the property which is the subject of this action by virtue of the matter and issues herein below alleged. In the event there is a surplus from the foreclosure sale of the subject property, the validity, priority and amount of such lien or claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c) SCRCP. These liens or interests are described as follows:

SunTrust Mortgage, Inc. by virtue of a Master's Order and Judgment of Foreclosure and Sale against Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etkis, et al. dated March 5, 2010 and recorded on March 8, 2010 in Civil Action No. 2009-CP-10-4244. Any such interest in or lien upon the property is junior and subordinate to Plaintiff's purchase money first mortgage.

Capital Bank Corporation, as successor in interest to First National Bank of the South, by virtue of a Foreclosure Decree filed by First National Bank of the South f/k/a First National Bank of Spartanburg, a Division of First National Bank of the South, against Temisan Etikerentse, et al. dated and recorded on April 1, 2010 in Civil Action No. 2009-CP-10-6481. Any such interest in or lien upon the property is junior and subordinate to Plaintiff's purchase money first mortgage.

Bank of America, NA successor by merger to Countrywide Bank, FSB, by virtue of a Master's Order and Judgment of Foreclosure and Sale against Temisan L. Etikerentse date June 18, 2010 and recorded on June 23, 2010 in Civil Action No. 2009-CP-10-3271. Any such interest in or lien upon the property is junior and subordinate to Plaintiff's purchase money first mortgage.

Bank of America, NA, as successor in interest to FIA Card Services N.A., by virtue of a Confession of Judgment held by FIA Card Services N.A. against Temisan L. Etikerentse in the amount of $41,955.93 dated December 2, 2011 and recorded on December 12, 2011 in Civil Action No. 11-CP-10-4166. Any such interest in or lien upon the property is junior and subordinate to Plaintiff's purchase money first mortgage.

Keybank National Association, as successor in interest to Key Equipment Finance Inc., by virtue of a judgment held by Key Equipment Finance Inc. against Temisan L. Etikerentse in the amount of $10,267.70 dated April 16, 2014 and recorded on April 23, 2014 in Civil Action No. 2014-CP-10-2649. Any such interest in or lien upon the property is junior and subordinate to Plaintiff's purchase money first mortgage.

Olde Park Homeowners Association, Inc. by virtue of any lien or enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions recorded herein, and any amendments thereto. Any such interest or lien upon the subject property is junior and subordinate to Plaintiff's purchase money first mortgage.

1403

12. The loan evidenced by the Note and Mortgage is serviced by a servicer participating in the Home Affordable Modification Program (HAMP). It is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac. The subject loan is not eligible for HAMP modification process because the mortgagor failed to supply required information to participate in the HAMP.

FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mortgage)

13. The Plaintiff incorporates the allegations of the preceding Paragraphs as if repeated verbatim.

14. With regard to the Note and/or Mortgage which are the subject matter of this suit, Plaintiff and its attorney have provided all applicable notices and rights to cure as required and otherwise have complied with all applicable Federal, State, and local statutes, laws, rules, regulations, orders or other government directives.

15. The installments of principal and interest which became due on December 1, 2008 have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the Note and Mortgage, elects to and does declare the entire balance of said principal and interest due and payable at once, and that there is now due and owing and unpaid upon the said Note and Mortgage the sum of One Million Three Hundred Ninety Two Thousand Two Hundred Ninety Eight and 51/100 ($1,392,298.51) Dollars as of December 1, 2008, with a current interest rate of 7.0000% per annum from November 1, 2008, together with reasonable attorney's fees and the costs and disbursements of this action, plus all moneys, if any, advanced by the Plaintiff under the terms of the Note and Mortgage for the payment of ad valorem taxes and/or insurance premiums, property maintenance, and securing thereof or otherwise.

16. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action, and under the terms of the Note and Mortgage, Plaintiff's counsel is entitled to reasonable attorney's fees and costs of this action.

17. Plaintiff may be forced to pay sums for taxes, 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.

18. Plaintiff's right to a personal or deficiency judgment pursuant to S.C. Code Ann. §29-3-650 and §29-3-660 is expressly waived.

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

(1) Ascertain and determine the amount due upon the Note and Mortgage held or being enforced by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a purchase money first mortgage lien on the subject property, and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, the costs of maintaining the property or securing and inspecting the property, if any, incurred as a result of this delinquency, and for the costs of this action.

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

(4) 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;

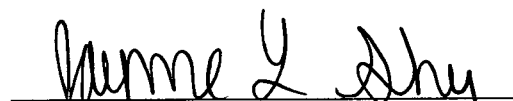
Second, to the payment and discharge of the amount due on the Note and Mortgage, together with attorney's fees as aforesaid; and

Third, to the distribution of any surplus pursuant to Rule 71, SCRCP.

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

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

RILEY POPE & LANEY, LLC



T. Lowndes Pope, SC Bar 66507
Heidi B. Carey, SC Bar 7020
Damon C. Wlodarczyk, SC Bar 70460
Jayme L. Shy, SC Bar 81551
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2838 Devine Street
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Columbia, South Carolina 29205
(803) 799-9993
Attorneys for Plaintiff

April 14, 2016
Columbia, South Carolina

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. Section 1601, As Amended

Temisan L. Etikerentse, by and through her Attorney-in-Fact, Ijeoma Etikerentse
783 Navigators Run, Mount Pleasant, SC 29464
File No. 4035.05815

1. Wilmington Trust, National Association, as successor Trustee to Citibank, N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns Alt-A Trust II, Mortgage Pass-Through Certificates Series 2007-1 is the Creditor to whom the debt is owed. Creditor has retained the law firm of Riley Pope & Laney, LLC, to collect the owed debt. Any written requests should be addressed to Riley Pope & Laney, LLC, Post Office Box 11412, Columbia, SC, 29211, (803) 799-9993 (Phone), (803) 239-1414 (Fax).

2. As of April 6, 2016, the total debt you owe is $2,437,191.92. Because interest, late charges, attorney's fees and costs, and other charges as allowed by the Note and Mortgage continue to accrue from the date set forth above, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write or call as directed in Paragraph One (1) of this Notice.

3. Unless you, the Consumer, either orally or in writing within thirty (30) days after the receipt of this Notice, disputes the debt or any portion of the debt set forth in Paragraph Two (2) of this Notice and further described in the Complaint attached hereto, the validity of the debt will be assumed to be valid by the Creditor's law firm, Riley Pope & Laney, LLC.

4. If you, the Consumer, notify Riley Pope & Laney, LLC, at the address set forth in Paragraph One (1) of this Notice in writing within thirty (30) days of the receipt of this Notice that the debt or any portion thereof is disputed, Riley Pope & Laney, LLC, will obtain a verification of the debt, and a copy of the verification will be mailed to the Consumer by Riley Pope & Laney, LLC.

5. If you, the Consumer, make a written request to Riley Pope & Laney, LLC within thirty (30) days of the receipt of this Notice, Riley Pope & Laney, LLC, will provide you, the Consumer, the name and address of the original Creditor, if different from the current Creditor.

6. This notice should <u>not</u> be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

7. Please be advised that the time period in which you, the Consumer, have to dispute the amount of your debt and request additional information does not alter or affect the time period set forth in the South Carolina Rules of Civil Procedure for the filing of an answer or other responsive pleading to the Complaint.

8. Military service members on "active duty" or "active service," or a dependent of such a service member may be entitled to certain legal protections pursuant to the Service Member Civil Relief Act (50 USC App. Sec. 501-596 (SCRA). If you believe that you may be entitled to such protection, please contact our office immediately.

9. If you have been discharged in a bankruptcy proceeding, we are not seeking personal liability against you, but are pursing the rights against the property as provided in the security agreements.

THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Prepared by: BARBARA E. CHANDLER

[redacted]

InterestOnly℠ ADJUSTABLE RATE NOTE

(One-Year LIBOR Index (As Published in *The Wall Street Journal*) - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE AND FOR CHANGES IN MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

JUNE 15, 2007	MOUNT PLEASANT	SOUTH CAROLINA
[Date]	[City]	[State]

783 NAVIGATORS RUN, MOUNT PLEASANT, SC 29464-6620
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 1,402,500.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is
COUNTRYWIDE HOME LOANS, INC.
I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.000 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment on the first day of every month, beginning on AUGUST 01, 2007 . Before the First Principal and Interest Payment Due Date as described in Section 4 of this Note, my payment will consist only of the interest due on the unpaid principal balance of this Note. Thereafter, I will pay principal and interest by making a payment every month as provided below.

I will make my monthly payments of principal and interest beginning on the First Principal and Interest Payment Due Date as described in Section 4 of this Note. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date, and if the payment includes both principal and interest, it will be applied to interest before Principal. If, on JULY 01, 2037 , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at
P.O. Box 660694, Dallas, TX 75266-0694
or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

My monthly payment will be in the amount of U.S. $ 8,181.25 before the First Principal and Interest Payment Due Date, and thereafter will be in an amount sufficient to repay the principal and interest at the rate determined as described in Section 4 of this Note in substantially equal installments by the Maturity Date. The Note Holder will notify me prior to the date of change in monthly payment.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 or 5 of this Note.

[redacted]

[redacted]

EXHIBIT
tabbies
A

[redacted]

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of JULY, 2017, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market (LIBOR), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO & ONE-QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 12.000 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 12.000 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

Before the effective date of any change in my interest rate and/or monthly payment, the Note Holder will deliver or mail to me a notice of such change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

(G) Date of First Principal and Interest Payment

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment date after the first Change Date.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payments unless the Note Holder agrees in writing to those changes. If the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist of only interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, my partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of FIFTEEN calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest, during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

[redacted]

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am 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. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I 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 the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

> **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.
>
> If all or any part of the Property or any interest in it is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law.
>
> If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

> **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Temisan L Etikerentse by Jeoma Etiko (Seal)
TEMISAN L. ETIKERENTSE his/her attorney-in-fact -Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

PAY TO THE ORDER OF

WITHOUT RECOURSE
COUNTRYWIDE HOME LOANS, INC.

BY: Michele Sjolander
MICHELE SJOLANDER
EXECUTIVE VICE PRESIDENT

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

BK U630PG215

Prepared By:
BARBARA E. CHANDLER

[Space Above This Line For Recording Data]

[redacted]

MORTGAGE

[redacted]

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated JUNE 15, 2007 , together with all Riders to this document.
(B) "Borrower" is
TEMISAN L ETIKERENTSE And Ijeoma Etikerentse

Borrower is the mortgagor under this Security Instrument.
(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. 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.
(D) "Lender" is
COUNTRYWIDE HOME LOANS, INC.
Lender is a CORPORATION
organized and existing under the laws of NEW YORK
Lender's address is
4500 Park Granada MSN# SVB-314, Calabasas, CA 91302-1613
(E) "Note" means the promissory note signed by Borrower and dated JUNE 15, 2007 . The Note states that Borrower owes Lender
ONE MILLION FOUR HUNDRED TWO THOUSAND FIVE HUNDRED and 00/100

Dollars (U.S. $ 1,402,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JULY 01, 2037 .

[redacted]

[redacted]

EXHIBIT
B
tabbies
000056

[redacted]

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

[X] Adjustable Rate Rider	[ ] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[X] Planned Unit Development Rider	[ ] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[X] Other(s) [specify]
		LEGAL DESCRIPTION

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(L) "Escrow Items" means those items that are described in Section 3.
(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(O) "Periodic Payment" means the regularly scheduled amount due for (a) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) 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 assigns) and to the successors and assigns of MERS, the following described property located in the

COUNTY of CHARLESTON :
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: 535-07-00-049 which currently has the address of
783 NAVIGATORS RUN, MOUNT PLEASANT
[Street/City]
South Carolina 29464-6620 ("Property Address"):
[Zip Code]

[redacted]

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 and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to 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.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item.

Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all

sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the

notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. Release. Upon Payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

Temisan C Etikerentse by Ijeoma Etikerentse (Seal)
TEMISAN ~~his/her attorney-in-fact~~ -Borrower

Ijeoma Etikerentse (Seal)
IJEOMA ETIKERENTSE -Borrower

(Seal)
-Borrower

(Seal)
-Borrower

STATE OF SOUTH CAROLINA, [redacted] County ss: Charleston

I, William F. Cutch do hereby certify that

Tenisan L. Etikerentse by Ijeoma Etikerentse

his/her attorney-in-fact

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 15th day of June, 2007.

Witness

Notary Public for South Carolina

My Commission Expires: 08/04/09

Prepared by: BARBARA E. CHANDLER

COUNTRYWIDE HOME LOANS, INC.

Branch #: 0000186
3955 FABER PLACE DR STE 100
NORTH CHARLESTON, SC 29405
Phone: (843)740-6510
Br Fax No.: (843)554-6641

DATE: 06/15/2007
CASE #: [redacted]

BORROWER: TEMISAN L. ETIKERENTSE
PROPERTY ADDRESS: 783 NAVIGATORS RUN
MOUNT PLEASANT, SC 29464-6620

LEGAL DESCRIPTION EXHIBIT A

ALL that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, designated as "Lot 5, 17,212 SQ. FT 0.395 AC" as more fully shown and delineated on a plat of survey made by Southeastern Surveying Inc., entitled "A FINAL SUBDIVISION PLAT OF LOTS 1 THRU 16 AND LOTS 70 THRU 80 PHASE III OLDE PARK OWNED BY GR, LLC LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA," dated May 1, 2000, and recorded in Plat Book EE at Page 151-152, in the RMC Office for Charleston County, South Carolina.

Being the same property conveyed to the Mortgagors herein by Deed of New South Construction Co. Inc. of Pinopolis dated June 12, 2007 and recorded simultaneously herewith in the RMC Office for Charleston County.

Mortgagees' address: 10 Hidden Green Lane, Isle of Palms, SC 29451

TMS # 535-07-00-049

Lawyer Responsible _____

[redacted] [redacted]

[Space Above This Line For Recording Data]

FIXED/ADJUSTABLE RATE RIDER

(LIBOR One-Year Index (As Published In *The Wall Street Journal*) - Rate Caps)

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

Prepared By:
BARBARA E. CHANDLER

[redacted]

THIS FIXED/ADJUSTABLE RATE RIDER is made this FIFTEENTH day of JUNE, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to COUNTRYWIDE HOME LOANS, INC.
("Lender") of the same date and covering the property described in the Security Instrument and located at:
783 NAVIGATORS RUN, MOUNT PLEASANT, SC 29464-6620
[Property Address]

[redacted] [redacted]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 7.000 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of JULY, 2017 , and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in the *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO & ONE-QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 12.000 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 12.000 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

[redacted]

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

[redacted]

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.

Temisan L Etikerentse by Ijeoma Etiko
~~his/her attorney in fact~~ (Seal)
TEMISAN L. ETIKERENTSE - Borrower

Ijeoma Etiko (Seal)
IJEOMA ETIKERENTSE - Borrower

(Seal)
- Borrower

(Seal)
- Borrower

PLANNED UNIT DEVELOPMENT RIDER

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

Prepared By:
BARBARA E. CHANDLER

[redacted]

THIS PLANNED UNIT DEVELOPMENT RIDER is made this FIFTEENTH day of JUNE, 2007 , and is incorporated into and shall be deemed to amend and supplement the, Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to
COUNTRYWIDE HOME LOANS, INC.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

783 NAVIGATORS RUN
MOUNT PLEASANT, SC 29464-6620
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with

[redacted]

[redacted]

other such parcels and certain common areas and facilities, as described in
THE COVENANTS, CONDITIONS, AND RESTRICTIONS FILED OF RECORD
THAT AFFECT THE PROPERTY

(the "Declaration"). The Property is a part of a planned unit development known as
OLDE PARK

[Name of Planned Unit Development]
(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the

Initials: TL TE

express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

Temisan L Etikerentse by Ijeoma Etiks

_____ (Seal)
TEMISAN L. his/her attorney-in-fact - Borrower

Ijeoma Etiks _____ (Seal)
IJEOMA ETIKERENTSE - Borrower

_____ (Seal)
- Borrower

_____ (Seal)
- Borrower

BK U630PG234

RECORDER'S PAGE

NOTE: This page MUST remain with the original document



FILED

June 29, 2007

11:00:29 AM

BK U630PG215

Charlie Lybrand, Register
Charleston County, SC

Filed By:

Cutchin Law Firm

985-B Johnnie Dodds Blvd.
Mt. Pleasant SC 29464

Number of Pages: 20

DESCRIPTION	AMOUNT
	$ 25.00
Postage	
TOTAL	$ 25.00

DRAWER: C - slw

DO NOT STAMP BELOW THIS LINE

[redacted]

Return to: Finkel Law Firm LLC
PO Box 71727
N. Charleston, SC 29415

[redacted]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ASSIGNMENT OF MORTGAGE

FOR VALUE RECEIVED, the undersigned, Mortgage Electronic Registration Systems, Inc. as nominee for Countrywide Home Loans, Inc. does hereby transfer, assign, set over and convey to Citibank, N.A. as Trustee on behalf of the Holders of Bear Stearns Alt-A Trust II, Mortgage Pass-Through Certificates, Series 2007-1, its successors and assigns forever, that certain mortgage made and executed by Temisan L. Etikerentse by Ijeoma Etikerentse, his attorney-in-fact and Ijeoma Etikerentse to Mortgage Electronic Registration Systems, Inc. as nominee for Countrywide Home Loans, Inc., dated June 15, 2007, and duly recorded on June 29, 2007, in Mortgage Book U630, Page 215, in the Office of the Register of Deeds for Charleston County in the State of South Carolina.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed and delivered this _____ day of AUG 3 1 2009, 2009.

In the presence of:

Mortgage Electronic Registration Systems, Inc. as nominee for Countrywide Home Loans, Inc.

Witness #1 Gwendylon Spencer

By: _____
(Name of Officer)

Witness #2

Title: Ken Satsky-Assist. Vice President

STATE OF ~~TEXAS~~ COLLIN

COUNTY OF _____

ACKNOWLEDGMENT
S.C. CODE 30-5-30

The undersigned, a Notary Public for the State of Texas, does hereby certify that the within-named Officer of Mortgage Electronic Registration Systems, Inc. as nominee for Countrywide Home Loans, Inc. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal on this _____ day of AUG 3 1 2009, 2009.

Notary Public for Texas

My Commission Expires: NOV 1 6 2010

Azfar Siddiqui
Notary Public
STATE OF TEXAS
My Comm. Exp. Nov. 16, 2010

ASSIGNEE ADDRESS: Citibank, N.A. as Trustee on behalf of the Holders of Bear Stearns Alt-A Trust II, Mortgage Pass-Through Certificates, Series 2007-1
7105 Corporate Dr.
Mail Stop PTX-C35
Plano, TX 75024

RMC Bk 0079 Pg 941 : pg 1 *

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

FINKEL LAW FIRM

POST OFFICE BOX 71727
NORTH CHARLESTON, SC 29415

RECORDED

Date: September 9, 2009
Time: 9:07:23 AM

Book	Page	DocType
0079	941	Asgt

Charlie Lybrand, Register
Charleston County, SC

# of Pages: 2
# of Sats:
# of References:

MAKER:
MERS

Note:

RECIPIENT:
CITIBANK NA TR

Recording Fee	$ 6.00
Extra Reference Cost	$ -
Extra Pages	$ -
Postage	$ -
Chattel	$ -
TOTAL	$ 6.00

Original Book: U630

Original Page: 215

DRAWER Drawer 4
CLERK LRR

0079	941	09/09/2009	2
Book	Page	Recorded Date	# Pgs

U630	215	M	09:07:23
Original Book	Original Page	Doc Type	Recorded Time

RMC Bk 0079 Pg 941 : pg 2 *

BP0442893

PGS: 3

PREPARED BY AND RETURN TO.
M. E. Wileman
2860 Exchange Blvd # 100
Southlake, TX 76092

ASSIGNMENT OF MORTGAGE

Send Any Notices To Assignee

For Valuable Consideration, the undersigned, **CITIBANK, N.A. AS TRUSTEE ON BEHALF OF THE HOLDERS OF BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-1 7105 CORPORATE DR., PLANO, TX 75024 (Assignor)** by these presents does assign, and set over, without recourse, to **WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-1 C/O Specialized Loan Servicing LLC, 8742 LUCENT BLVD #300, HIGHLANDS RANCH, CO 80129 (Assignee)** the described mortgage with all interest, all liens, any rights due or to become due thereon, executed by **TEMISAN L ETIKERENTSE AND IJEOMA ETIKERENTSE** to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ('MERS') AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC. ITS SUCCESSORS AND ASSIGNS. Said mortgage **Dated: 6/15/2007** is recorded in the **State of SC, County of Charleston on 6/29/2007, as Book U630 Page 215 AMOUNT: $1,402,500.00** Property Address 783 NAVIGATORS RUN, MOUNT PLEASANT, SC 29464

IN WITNESS WHEREOF, the undersigned corporation/trust has caused this instrument to be executed by its proper officer Executed on· November 4, 2014

CITIBANK, N A. AS TRUSTEE ON BEHALF OF THE HOLDERS OF BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-I Specialized Loan Servicing LLC as Attorney-in-Fact

By· _____
Robin M. Mathews, Vice President

Witness: T Davis

[redacted]

Witness: S. Bryan

[redacted]

SC Charleston

SLS/ASM/BSAAT#358

PREPARED BY AND RETURN TO
M. E. Wileman
2860 Exchange Blvd. # 100
Southlake, TX 76092

ASSIGNMENT OF MORTGAGE

Send Any Notices To Assignee.

State of Texas, County of Tarrant
On 11/04/2014, before me, the undersigned, personally appeared Robin M. Mathews, who acknowledged that he/she is Vice President of/for WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A AS TRUSTEE OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-1 and that he/she executed the foregoing instrument and that such execution was done as the free act and deed of WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-1

C. LAFFERTY
MY COMMISSION EXPIRES
November 30, 2014

Notary public, C Lafferty
My commission expires November 30, 2014

[redacted] SC Charleston SLS/ASM/BSAAT#358[redacted]

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

ORION FINANCIAL GROUP INC
2860 EXCHANGE BLVD
SUITE 100
SOUTHLAKE TX 76092

RECORDED

Date: November 25, 2014
Time: 1:46:38 PM

Book	Page	DocType
0442	893	Asgt

Charlie Lybrand, Register
Charleston County, SC

MAKER:
CITIBANK NA TR ETC

RECIPIENT:
WILMINGTON TR ETC

Original Book: U630

Original Page: 215

# of Sats:

Note:

# of Pages: 3
# of References:

Recording Fee	$ 6 00
Extra Reference Cost	$ -
Extra Pages	$ 1 00
Postage	$ -
Chattel	$ -
TOTAL	$ 7 00

DRAWER Drawer 5
CLERK ANF

0442 Book

893 Page

11/25/2014 Recorded Date

3 # Pgs

U630 Original Book

215 Original Page

M Doc Type

13 46 38 Recorded Time

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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

Plaintiff

vs.

Temisan Etikerentse a/k/a Temisan L. Etikerentse, et al.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

15-CP - 2016 CP 10 1 987

Submitted By:
T. Lowndes Pope, SC Bar #66507
Heidi B. Carey, SC Bar #7020
Damon C. Wlodarczyk, SC Bar #70460
Jayme L. Shy, SC Bar #81551
Meredith M. Robertson, SC Bar #68322
Peter M. Balthazor, SC Bar #68244
Christopher M. Wasson, SC Bar #101890
Louise M. Johnson, SC Bar 16586
RILEY POPE & LANEY, LLC
Attorneys for Plaintiff

Address: Post Office Box 11412, Columbia, SC 29211
Telephone #: (803) 799-9993
Fax #: (803) 239-1414
E-mail: http://rplfirm.lawoffice.com

FILED
2016 APR 18 AM 11:
JULIE J. ARNOLD
CLERK OF COURT
BY: BS

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply)*
**If Action is Judgment/Settlement do not complete*

☐ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below)*

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☒ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)_____
- ☐ Sexual Predator (510)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799) _____
- ☐ Other (999) _____

Submitting Party Signature: Jayme L. Shy **Date:** 4/14/16

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (12/2015)

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiff,

vs.

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

Defendants.

(File No. 4035.05815)

IN THE CIRCUIT COURT
FOR THE NINTH
JUDICIAL CIRCUIT

CERTIFICATE OF EXEMPTION FROM ADR

Docket No. 2016-CP-10-

2016CP 10 1 987

FILED
2016 APR 18 AM 11:17
JULIE J. ARMSTRONG
CLERK OF COURT

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ADR BECAUSE:

- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
- ☐ this action is appellate in nature;
- ☐ this is a post-conviction relief matter;
- ☐ this is a contempt of court proceeding.
- ☐ this is a forfeiture proceeding brought by the State;
- ☒ this is a case involving a mortgage foreclosure; or
- ☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

RILEY POPE & LANEY, LLC

Jayme L. Shy

T. Lowndes Pope, SC Bar 66507
Heidi B. Carey, SC Bar 7020
Damon C. Wlodarczyk, SC Bar 70460
Jayme L. Shy, SC Bar 81551
Meredith M. Robertson, SC Bar 68322
Peter M. Balthazor, SC Bar 68244
Christopher M. Wasson, SC Bar 101890
Louise M. Johnson, SC Bar 16586
Attorneys for Plaintiff

April 14, 2016
Columbia, South Carolina

NOTE: Motion must be presented to the court, a hearing held, and a finding made, for exemption or withdrawal from arbitration for "strong and compelling reason" sought pursuant to Rule 1(d), Rules of Circuit Court Arbitration.

4-18-16
11:36 am

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-LP-10-

2016CP 101987

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

Plaintiff,

vs.

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

Defendants.

(File No. 4035.05815)

LIS PENDENS

FILED
2016 APR 18 AM 11:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced and is now or will be pending in this Court upon complaint of the above-named Plaintiff against the above-named Defendants for the foreclosure of a certain mortgage of real estate given by Temisan L. Etikerentse, by and through her Attorney-in-Fact, Ijeoma Etikerentse, and Ijeoma Etikerentse to Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Countrywide Home Loans, Inc. dated June 15, 2007, and recorded in the public records of Charleston County on June 29, 2007, in Book U630 at Page 215. Thereafter, by assignment recorded September 9, 2009 in Book 79 at Page 941, the mortgage was assigned to Citibank, N.A. as Trustee on behalf of the Holders of Bear Sterns Alt-A Trust, II, Mortgage Pass-Through Certificates, Series 2007-1; thereafter, by assignment recorded November 25, 2014 in Book 442 at Page 893, the mortgage was assigned to Wilmington Trust, National Association, as successor Trustee to Citibank, N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns Alt-A Trust II, Mortgage Pass-Through Certificates Series 2007-1.

The premises covered and affected by the Plaintiff's mortgage and the foreclosure thereof, were, at the time of the making thereof, and at the time of the filing of this notice, described as follows:

> All that lot, piece, or parcel of land, including any and all improvements thereon, situate, lying, and being in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, designated as "Lot 5, 17, 212 Sq. Ft. 0.395 AC" as more fully shown and delineated on a plat of survey made by Southeastern Surveying Inc., entitled "A final subdivision plat of Lots 1 thru 16 and Lots 70 thru 80 Phase III Olde Park Owned by GR, LLC located in the Town of Mount Pleasant,

Charleston County, South Carolina," dated May 1, 2000, and recorded in Plat Book EE at Page 151-152, in the RMC Office for Charleston County, South Carolina.

Being the same property conveyed unto Ijeoma Etikerentse by deed from New South Construction Co. Inc. of Pinopolis dated June 15, 2007 and recorded June 29, 2007 in Deed Book S630 at Page 808 in the ROD Office for Charleston County, South Carolina.

TMS No. 535-07-00-049

Property Address: 783 Navigators Run, Mount Pleasant, SC 29464

RILEY POPE & LANEY, LLC

T. Lowndes Pope, SC Bar 66507
Heidi B. Carey, SC Bar 7020
Damon C. Wlodarczyk, SC Bar 70460
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Attorneys for Plaintiff

April 14, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
2016-CP-10-1987

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-1,

Plaintiff,

vs.

TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE, IJEOMA ETIKERENTSE a/k/a IJEOMA ETKIS, SUNTRUST MORTGAGE, INC., CAPITAL BANK CORPORATION, BANK OF AMERICA, NA, KEYBANK NATIONAL ASSOCIATION, AND OLDE PARK HOMEOWNERS ASSOCIATION, INC.,

Defendants.

TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE AND IJEOMA ETIKERENTSE a/k/a IJEOMA ETKIS,

Third-Party Plaintiffs,

vs.

SPECIALIZED LOAN SERVICING, LLC a/k/a SLS,

Third-Party Defendant.

ANSWER, COUNTERCLAIMS, AND THIRD-PARTY COMPLAINT

JURY TRIAL DEMANDED

FILED
2016 NOV 17 PM 4:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMES NOW the Defendants Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etkis, denying each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained, demanding strict proof thereof. Specifically reserving and without waiving all objections, defenses, and rights responds to the Plaintiff's Complaint as follows:

1. The Defendants, on information and belief, admit the allegations contained in Paragraph 1.

2. The Defendants are without sufficient information to either admit or deny the allegations contained in Paragraphs 2 and 3 of the Plaintiff's Complaint, and therefore deny the remaining allegations and demand strict proof thereof.

3. The Defendants, on information and belief, admit the allegations contained in Paragraphs 4, 5, and 6.

4. The Defendants, on information and belief, deny the allegations contained in Paragraphs 7 and 8, and further deny that Defendant Temisan L. Etikerentse is a female, as indicated "by and through *her* Attorney-in-Fact" (emphasis added) and demand strict proof thereof.

5. The Defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 9 of the Plaintiff's Complaint, and therefore deny the remaining allegations and demand strict proof thereof.

6. The allegations contained in Paragraphs 10 and 11 of the Plaintiff's Complaint, which are legal conclusions, require neither an admission nor a denial from the Defendants, and the Defendants deny all remaining allegations of said Paragraphs and demand strict proof thereof.

7. The Defendants, on information and belief, deny the allegations contained in Paragraphs 12, 13, 14, 15, 16, and 17 and demand strict proof thereof.

8. The Defendants, on information and belief, admit the allegations contained in Paragraph 18.

9. The Defendants, on information and belief, deny the allegations contained in the WHEREFORE clause, including subparts (1), (2), (3), (4), (5), and (6) and demand strict proof thereof.

FURTHER ANSWERING SAID COMPLAINT AND AS FURTHER AND AFFIRMATIVE DEFENSES, THE DEFENDANTS ALLEGE AND SAY:

FOR A FIRST AFFIRMATIVE DEFENSE
(Laches)

10. The Defendants plead the doctrine of laches as a complete bar to the Plaintiff's claims.

FOR A SECOND AFFIRMATIVE DEFENSE
(Waiver)

11. The Defendants plead the doctrine of waiver as a complete bar to the Plaintiff's claims.

FOR A THIRD AFFIRMATIVE DEFENSE
(Estoppel)

12. That by the Plaintiff's actions, it is estopped and/or has waived any rights it has against the Defendants.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Mitigation of Damages)

13. The Plaintiff has failed to exercise reasonable diligence in mitigating the damages it claims to have suffered at the hands of the Defendants.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Incorrect Accounting)

14. Defendants would show that if any sums are owed to Plaintiff then the amount owed is other than as stated in the Complaint; consequently, this Court should make a complete accounting of all sums allegedly due under the instruments referenced in the Complaint.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Standing)

15. The Plaintiff lacks standing to assert claims against the Defendants.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Comparative Negligence)

16. Upon information and belief, the injuries, damages, and/or losses, if any, which the Defendants strictly deny, sustained by Plaintiff was directly and proximately caused by and contributed to by Plaintiff's own negligence and comparative fault, and therefore its recovery, if any, which the Defendants strictly deny, should be diminished, reduced, offset, or barred in accordance with the principles of comparative fault.

FOR A EIGHTH AFFIRMATIVE DEFENSE
(Unclean Hands)

17. The Defendants plead the doctrine of unclean hands as a defense and bar to all of Plaintiff's claims.

FOR A NINTH AFFIRMATIVE DEFENSE
(Lack of Control)

18. The Defendants would show upon information and belief that any damages or injuries, if any, which the Defendants strictly deny, are due to acts and/or omissions not within the employ or control of the Defendants, and therefore, the Plaintiff cannot recover from the Defendants in any sum whatsoever.

FOR A TENTH AFFIRMATIVE DEFENSE
(Negligence of Others)

19. That the Defendants would allege and show that any injury and damage, if any, which the Defendants strictly deny, was proximately caused by the intervening and superseding acts of negligence, willfulness, and gross negligence of parties and/or non-parties other than these Defendants.

FOR A ELEVENTH AFFIRMATIVE DEFENSE
(Sole Negligence)

20. That whatever injuries or damages incurred by the Plaintiff, if any, which the Defendants strictly deny, were due to, caused by and were the direct and proximate result of the sole negligence, recklessness, willfulness, and wantonness of the Plaintiff.

FOR A TWELFTH AFFIRMATIVE DEFENSE
(Reservation/Non-Waiver)

21. Defendants specifically reserve and do not waive any additional or further defenses as may be revealed by additional information obtained in discovery or otherwise.

FURTHER ANSWERING SAID COMPLAINT AND AS COUNTERCLAIMS AND THIRD-PARTY COMPLAINT, THE DEFENDANTS ALLEGE AND SAY:

ALLEGATIONS COMMON TO COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

PARTIES

COUNTERCLAIM/THIRD-PARTY PLAINTIFFS

22. Upon information and belief, Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etkis are citizens and residents of Charleston County.

COUNTERCLAIM DEFENDANT

23. Upon information and belief, Wilmington Trust, National Association, as successor Trustee to Citibank, N.A. as Trustee of Structured Asset Mortgage Investements II Inc., Bear Stearns Alt-A Trust II, Mortgage Pass-Through Certificates Series 2007-1 is a banking institution conducting business in the State of South Carolina.

THIRD-PARTY DEFENDANT

24. Upon information and belief, Specialized Loan Servicing, LLC a/k/a SLS is a Delaware limited liability company with its principal office located at 8742 Lucent Blvd., Suite 300, Highlands Ranch, Colorado 80129-2386, and it is a mortgage loan servicer conducting business in the State of South Carolina.[1]

1 Upon information and belief, SLS is one of the nation's leading mortgage servicers, and SLS has received more than 100 complaints from consumers to the United States Consumer Financial Protection Bureau (hereinafter "CFPB") with regard to SLS's mishandling of loan modification applications.

JURISDICTION/VENUE

25. The Counterclaims and Third-Party Complaint arise within the jurisdiction of this Court pursuant to the applicable subparts of South Carolina Code §§ 15-7-30, 36-2-803, 12 U.S.C. §§ 2605(f), 2614, and 12 C.F.R. § 1024.41(a).

26. The Charleston County Court of Common Pleas, Ninth Judicial Circuit, is the proper venue for this matter.

COMMON FACTS TO COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

PROCEDURAL HISTORY

27. On September 8, 2009, Citibank, N.A. as Trustee of Structured Asset Mortgage Investements II Inc., Bear Stearns Alt-A Trust II, Mortgage Pass-Through Certificates Series 2007-1 filed a foreclosure lawsuit related to the subject matter property in the Charleston County Court of Common Pleas and bearing civil action number 2009-CP-10-5635 (hereinafter "the Citibank action"), and said case was dismissed on or about November 3, 2015.

28. On April 8, 2016, approximately five months following the dismissal of the Citibank action, the Plaintiff filed another foreclosure lawsuit related to the subject matter property, being the above-captioned matter, and claimed it received assignment of the Mortgage on or about November 4, 2015, being one day following the dismissal of the Citibank action.

THE NEW RESPA REGULATIONS

29. Congress originally enacted the Real Estate Settlement Procedures Act of 1974 (RESPA) based on findings that reforms to the real estate settlement process were necessary to ensure that consumers were provided with greater information on the settlement process and to protect consumers against unwarranted settlement charges. The law was amended in 1990 to cover persons responsible for servicing federally-related mortgage loans, and to impose certain obligations on such servicers.

30. A federally-related mortgage loan is any loan that is secured by a first or subordinate lien on residential real property and that *inter alia* is made in whole or in part by any lender that is either regulated by or whose deposits or accounts are insured by any agency of the Federal Government or is made in whole or in part by a creditor that makes or invests in residential real estate loans aggregating more than $1,000,000 per year. *See* 12 C.F.R. § 1024.2

31. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") transferred rulemaking authority for RESPA to the CFPB. The Dodd-Frank Act also added a section to RESPA giving the CFPB the authority to establish prohibitions on servicers of federally-related mortgage loans for the purpose of carrying out the consumer protection goals of RESPA.

32. In January 2013, the CFPB issued several final rules to address the systemic problems in the mortgage servicing industry and to implement protections for borrowers with regard to mortgage servicing. These rules amended 12 C.F.R. Part 1024, RESPA (Regulation X). The new rules became effective on January 10, 2014.

33. Specifically, the new rules implemented procedural protections for borrowers with regard to the process of obtaining an evaluation for loss mitigation options, and restrictions on the foreclosure process while a borrower is being evaluated for a loss mitigation option. *See* 12 C.F.R. § 1024.41.

34. Under the new rules, "[l]oss mitigation option means any alternative to foreclosure offered by the owner or assignee of a mortgage loan that is made available through the servicer to the borrower." 12 C.F.R. § 1024.31. This definition was intended to be expansive, encompassing not just loan modifications, but also forbearance plans, short sale agreements, and deed-in-lieu of foreclosure programs.

35. "Loss mitigation application means any oral or written request for a loss mitigation option that is accompanied by any information required by a servicer for evaluation for a loss mitigation option." *Id.*

36. Under RESPA, "[s]ervicer means a person responsible for servicing a federally related mortgage loan (including the person who makes or holds such loan if such person also services the loan)." *Id.*

37. "Servicing means receiving any scheduled periodic payments from a borrower pursuant to the terms of any federally related mortgage loan, including amounts for escrow accounts [. . .] and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or contract." *Id.*

38. If a servicer receives a loss mitigation application from a borrower 45 days or more before a scheduled foreclosure sale for the borrower's property, then the servicer is required to promptly review the application and determine whether it is complete. Although the timing of servicer obligations in response to a loss mitigation application under RESPA is calculated based on when a foreclosure sale for the borrower's property is scheduled to take place, there is no requirement that the borrower be delinquent on his or her loan in order to submit a loss mitigation application.

39. The servicer must notify the borrower within 5 days after receiving the loss mitigation application that the servicer acknowledges receipt of the loss mitigation application and that the servicer has determined that the application is either complete or incomplete. 12 C.F.R. § 1024.41(b)(2).

40. If a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale for the borrower's property, then within 30 days of receiving the borrower's loss mitigation application the servicer must: "(i) [e]valuate the borrower for all loss mitigation options available to the borrower; and (ii) [p]rovide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage loan." *Id.* at § 1024.41(c)(1).

41. If a borrower's loss mitigation application is denied for any trial or permanent loan modification

option, then the servicer shall state in the notice sent to the borrower pursuant to 12 C.F.R. § 1024.41(c) "[t]he specific reasons for the servicer's determination for each such trial or permanent loan modification option[.]" *Id.* at § 1024.41(d)(1).

42. Importantly, any determination not to offer a loan modification option constitutes a denial of the borrower for that loan modification option whether or not the servicer offers the borrower a different loan modification option or other loss mitigation option. 12 C.F.R. § 1024, Supp. I, § 41(d) cmt. 4. In other words, the servicer must still provide notice under 12 C.F.R. § 1024.41(c) explaining the specific reasons for denying a borrower a loan modification option, even if the servicer offers the borrower a different loan modification or loss mitigation option or no loan modification option at all.

43. Furthermore, with regard to the content of the notice under § 1024.41(c), if the loan modification is denied because of a requirement of the owner or assignee of the borrower's mortgage loan, then the denial notice must identify the owner or assignee of the mortgage loan and state the requirement that is the basis of the denial. It is not sufficient to just state that denial of a loan modification option is "based on an investor requirement." The servicer must specifically identify the relevant investor and the specific requirement that purportedly constitutes the basis for the denial. 12 C.F.R. § 1024, Supp. I, § 41(d) cmt. 1.

44. Additionally, if a trial or permanent loan modification is denied because of a net present value calculation, then the denial notice under § 1024.41(c) must include all the inputs used in the net present value calculation. *Id.* at cmt. 2.

45. Finally, if a trial or permanent loan modification is denied, then the denial notice must state that the borrower has the right to appeal the servicer's determination. 12 C.F.R. § 1024.41(d)(2).

46. The appeal must be reviewed by different personnel than those responsible for evaluating the borrower's application. And within 30 days of the borrower making an appeal, the servicer must provide

a notice to the borrower stating the servicer's determination of whether the servicer will offer the borrower a loss mitigation option based on the appeal. *Id.* at § 1024.41(h).

47. RESPA also prohibits the practice of "dual tracking" while the loss mitigation process is under way. That is, a servicer is precluded from initiating foreclosure proceedings while a loss mitigation application is being processed. *Id.* at § 1024.41(f), (g).

48. The new RESPA regulations also prohibit a servicer from instituting foreclosure proceedings until a borrower's mortgage loan is more than 120 days delinquent. *Id.* at § 1024.41(f)(1).

49. Furthermore, if a borrower submits a loss mitigation application before the servicer has started the foreclosure process, then the servicer is prohibited from going forward with foreclosure proceedings until the servicer has sent the borrower the notice required by 12 C.F.R. § 1024.41(c)(1)(ii) and the borrower either did not appeal the notice or the borrower's appeal has been denied. *Id.* at § 1024.41(f)(2), (g).

50. A borrower may enforce the requirements of 12 C.F.R. § 1024.41 through a private right of action under section 6(f) of RESPA, 12 U.S.C. § 2605(f). *Id.* at 1024.41(a). Under this provision, whoever fails to comply with any portion of 12 C.F.R. § 1024.41, shall be liable to the borrower for each such failure. In the case of an individual claim, a person is liable for any actual damages to the borrower as a result of the failure, as well as statutory penalties in an amount not to exceed $2,000. There is no cap on actual damages. Further and pursuant to 12 U.S.C. § 2605(f)(3), a borrower is entitled to attorneys' fees and costs.

SLS'S/PLAINTIFF'S FAILURE TO COMPLY WITH THE NEW RESPA REGULATIONS AND VIOLATIONS OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT

51. SLS is a leading residential mortgage loan servicer and is engaged in the servicing of residential mortgage loans on behalf of third-party securitization vehicles and other investors. As of June 2016, SLS managed a portfolio of more than 274,000 performing and non-performing loans, totaling more than

$29.6 billion in unpaid balances.

52. SLS services mortgage loans in all 50 states, including South Carolina.

53. Like all mortgage loan servicers, SLS's servicing primarily involves the calculation, collection, and remittance of principal and interest payments, the administration of mortgage escrow accounts, and administration of foreclosure procedures on behalf of owners of the loans. Upon information and belief, SLS earns fee-based revenues based upon contractually established servicing fees that consist of an amount based on either the unpaid principal balance of the loans serviced or a per loan fee amount. SLS also generates revenue from ancillary fees, such as late fees and fees for administering foreclosure proceedings. In addition, SLS earns float income, which is interest income on amounts deposited in escrow accounts for property taxes and insurance.

54. SLS and Plaintiff also purport to utilize loss mitigation tools to decrease borrower delinquencies and defaults, and increase borrower repayment performance with a goal of homeownership preservation.

55. As a servicer of federally-related mortgage loans, SLS and Plaintiff are subject to the new RESPA regulations described above. Notwithstanding this fact, SLS and Plaintiff have engaged in a pattern and practice of violating these regulations in numerous ways.

56. SLS and Plaintiff do not notify borrowers within 5 days after receiving a loss mitigation application that it has received the loss mitigation application and that it has determined that the application is either complete or incomplete, as required by 12 C.F.R. § 1024.41(b)(2).

57. Nor does SLS and Plaintiff (i) evaluate borrowers for all available loss mitigation options or (ii) provide borrowers with a notice in writing stating its determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage loan within 30 days of receiving the borrower's loss mitigation application, as required by 12 C.F.R. § 1024.41(c)(1).

58. SLS and Plaintiff do not state in the notice sent to borrowers pursuant to 12 C.F.R. § 1024.41(c)

the specific reasons for the servicer's determination for each such trial or permanent loan modification option as required by 12 C.F.R. § 1024.41(d)(1).

59. SLS and Plaintiff do not state in the notice sent to borrowers pursuant to 12 C.F.R. § 1024.41(c) that the borrower may appeal its determination for any such trial or permanent loan modification option or set forth the deadline for the borrower to make an appeal and any requirements for making an appeal.

60. SLS and Plaintiff also do not refrain from instituting foreclosure proceedings while a loss mitigation application still being processed or while an appeal is pending as required by 12 C.F.R. § 1024.41(f)(2), (g). Nor does SLS and Plaintiff refrain from instituting foreclosure proceedings, before issuing the notice required by § 1024.41(c)(1)(ii).

61. SLS's and the Plaintiff's conduct with respect to its loss mitigation programs also violates the South Carolina Unfair Trade Practice Act, South Carolina Code § 39-5-10, *et seq.*, because SLS and Plaintiff offers loss mitigation options to consumers without intending to provide them as offered and without intending to supply reasonably expected public demand.

THE DEFENDANTS/THIRD-PARTY PLAINTIFFS' MORTGAGE NOTICE PROVISION

62. Pursuant to paragraph 22 of the subject matter Mortgage recorded in the Charleston County RMC Office in Book U630, Page 215 and related to this present action, SLS and/or Plaintiff and/or the legal owner of the subject matter note and mortgage, was required prior to acceleration of the loan to send the borrower/debtor, Defendants/Third-Party Plaintiffs, a letter/notice containing the following information, which includes but may not be limited to: "(a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property."

ADDITIONAL FACTS

63. Additionally and pursuant to the Home Affordable Modification Program (hereinafter "HAMP") and due to the fact that SLS participates in HAMP and other loss mitigation, SLS and Plaintiff failed to properly engage in a loan modification with Defendants, including, but not limited to, losing, misplacing, and continuously requesting the same paperwork supplied by Defendants to the former Plaintiff's (Citibank, N.A.'s) and current Plaintiff's servicer, SLS, on numerous and multiple occasions for over the span of six years. All the while, the subject matter loan continued to accrue interest, penalties, attorneys' fees, and costs that per SLS' Motion to Modify Stay or for Adequate Protection filed on June 22, 2015 in *In Re: Temisan Leslie Etikerentse*, Bankruptcy Case No.: 14-04497-DD (D.S.C. 2014), totaled $2,317,911.59, representing close to $1,000,000.00 more than the Defendant's initial loan and mortgage amount.

64. Since 2010 and during pending litigation in the Citibank action and the above-captioned action, Defendants attempted and have been attempting to obtain a loan modification via HAMP from the former and current Plaintiffs via SLS, which has allegedly acted as the loan servicer for both Plaintiffs.

65. In the above-captioned action, Plaintiff alleged in Paragraph 12 of its' Complaint that "[t]he subject loan is not eligible for HAMP modification process because the mortgagor failed to supply required information to participate in the HAMP."

66. In the Citibank action, Plaintiff alleged in Paragraph 10 of its' Complaint that "the loan that is subject of this action is held by a participant in the Home Affordable Modification Program (HMP), however the loan is not subject to modification based upon the principal balance of the loan is greater than $729,750.00."

67. On September 26, 2016, Plaintiff's counsel sent Defendants' counsel an e-mail that contained a loan modification approval package from SLS dated December 12, 2014. Neither Defendants nor

Defendants' counsel had ever received a copy of the alleged loan modification approval package, but only continued to receive requests for the production of additional documents or resupplying of documents already provided.

68. Defendants/Third-Party Plaintiffs are in possession of certain letters from SLS, including but not limited to the following:

(i) SLS letter dated 11/14/2014 stating, "[we] currently show that we have the documentation needed to continue our evaluation."
(ii) SLS letter dated 10/22/2015 stating, "[we] currently show there are additional documents needed to complete your application."
(iii) SLS letter dated 11/27/2015 denying any loan modification due to Defendants' alleged failure to provide requested documents.
(iv) SLS letter dated 12/29/2015 stating that SLS "previously established a Relationship Manager as your single point of contact. We find it necessary to re-assign a new contact to your account. We will continue to assist you through the process of resolving your potential or existing delinquency."
(v) SLS letter dated 1/8/2016 stating, "[w]e have received your request for assistance including the additional documents you've submitted. We are currently in the process of reviewing your documentation. If we determine the application to be incomplete or need additional clarification, we may contact you or send an additional notice."
(vi) SLS letter dated 2/29/2016 stating, "[w]e've enclosed a copy of a valuation report that was prepared for your property."
(vii) SLS letter signed by Defendant Temisan Etikerentse dated 3/16/2016 and who checked a box on the letter stating, "I would like to keep the property ... Options may include a repayment plan to pay back your past due payments or modification to create a more affordable payment. No other documents will be required if all income documents provided are valid and dated within 90 days."
(viii) SLS letter dated 4/5/2016 stating that SLS "previously established a Relationship Manager as your single point of contact. We find it necessary to reassign a new contact to your account. Your new contact will continue to assist you through the process of resolving your potential or existing delinquency."
(ix) SLS letter dated 9/2/2016 stating that SLS "has received the documentation you have sent as part of your request for mortgage assistance. This letter includes a list of the document(s) we have already received, the required document(s) we still need, the status of each document and your next steps. Your application isn't complete. We need to receive all of the required document(s) by 10/01/2016 so we can review your application."

69. On April 8, 2016, Plaintiff filed the above-captioned case against the Defendants.

70. On April 19, 2016, Defendants were served with the Complaint in the above-captioned case.

71. On or about September 15, 2016, Plaintiff, by and through its' counsel, served Defendants and filed a Notice of Denial of Foreclosure Intervention and Attorney Certification, even though SLS indicated in its' letter to Defendants dated September 2, 2016 that it was awaiting further documents for review to be received no later than October 1, 2016.

72. The above-mentioned Plaintiff's Notice of Denial Foreclosure Intervention dated September 15, 2016 incorrectly and improperly states that "the Plaintiff in this action has denied foreclosure intervention and intends to proceed with the referenced foreclosure action."

73. The above-mentioned Plaintiff's Attorney Certification dated September 15, 2016 incorrectly and improperly states the following:

> [...] The Plaintiff made a good faith effort to obtain the required documentation from the Mortgagors to participate in the foreclosure intervention process, but the Mortgagors failed to submit the requested documents. Therefore, the Plaintiff could not evaluate the Mortgagors' eligibility for foreclosure intervention.
>
> Because the Mortgagors did not cooperate with the foreclosure intervention process, the Plaintiff could not determine the Mortgagors' qualifications for loan modification or other means of loss mitigation, in accordance with any standards, rules or guidelines applicable to the mortgage loan, and the parties have been unable to reach any other agreement concerning the foreclosure process.

74. This above-mentioned certification by Plaintiff's counsel is incorrect and improper, because of SLS' own letter dated September 2, 2016 requesting additional documents and giving borrowers until October 1, 2016 to provide said documents.

FOR A FIRST COUNTERCLAIM AND CAUSE OF ACTION
(Breach of Contract)

75. The Defendants/Third-Party Plaintiffs re-allege and incorporate herein by reference the allegations set forth above.

76. Countrywide entered into a loan with Defendant Temisan L. Etikerentse via various loan documents/contracts, including but not limited to a Promissory Note and Mortgage.

77. Defendant Temisan L. Etikerentse, by and through his duly authorized attorney-in-fact, accepted the loan of Countrywide in return for a Mortgage to purchase Defendants' primary residence.

78. Plaintiff and SLS have breached the Mortgage, in particular paragraphs 20 and 22, by failing to provide the required notices to the Defendants/Third-Party Plaintiffs.

79. As a result of the Plaintiff's and SLS's breach of contract/mortgage, the Defendants/Third-Party Plaintiffs have suffered damages.

80. Defendants/Third-Party Plaintiffs are entitled to actual and punitive damages, attorney's fees, and court costs and expenses from the Plaintiff and SLS, due to the Plaintiff's and SLS's breach of contract, all in amount to be determined by the Court.

FOR A SECOND COUNTERCLAIM AND CAUSE OF ACTION
(Declaratory Judgment)

81. The Defendants/Third-Party Plaintiffs re-allege and incorporate herein by reference the allegations set forth above.

82. HAMP is a program designed to assist qualifying homeowners in restructuring notes and mortgages.

83. Upon information and belief, Plaintiff and/or SLS received money/incentives from the federal government for participating in the HAMP program.

84. Upon information and belief, Plaintiff's and SLS's participation in the HAMP program requires the Plaintiff and SLS to follow policies and procedures and federal regulations related to the loss mitigation of Defendants'/Third-Party Plaintiffs' note and mortgage.

85. The Plaintiff and SLS has a duty to comply with policies and procedures and federal regulations and breached this duty by failing to comply with the same.

FOR A THIRD COUNTERCLAIM AND CAUSE OF ACTION
(South Carolina Unfair Trade Practices Act)

86. The Defendants/Third-Party Plaintiffs re-allege and incorporate herein by reference the allegations set forth above.

87. The Plaintiff's and SLS's conduct constitutes unfair and deceptive trade practices and is a violation of the South Carolina Unfair Trade Practices Act, SC Code Ann. § 39-5-10, *et seq.* Furthermore, the Plaintiff's and SLS's conduct was willful.

88. At all times relevant herein, the Plaintiff and SLS engaged in the servicing of the subject matter note and mortgage in the stream of commerce.

89. The Plaintiff and SLS were engaged in commerce as defined by the South Carolina Unfair Trade Practices Act, SC Code Ann. § 39-5-10, *et seq.*

90. The Plaintiff's and SLS's above-mentioned activities, including failing to comply with federal regulations related to loss mitigation and other acts to be shown through the course of discovery and at trial, constitute unfair and deceptive trade practices.

91. The Plaintiff's and SLS's conduct is capable of repetition and has been repeated, as above-cited, more than 100 times.

92. The Plaintiff's and SLS's conduct affects the public interest.

93. The Plaintiff and SLS knew or should have known that its actions constituted unfair and deceptive trade practices.

94. As a direct, foreseeable, and proximate result of the Plaintiff's and SLS's unfair and deceptive trade practices, the Defendants/Third-Party Plaintiffs have suffered an ascertainable loss of money and property.

95. The Defendants/Third-Party Plaintiffs are entitled to recover their actual damages, which amount should be trebled, together with interest and attorneys' fees.

FOR A FOURTH COUNTERCLAIM AND CAUSE OF ACTION
(Violation of 12 C.F.R. § 1024.41)

96. The Defendants/Third-Party Plaintiffs re-allege and incorporate herein by reference the allegations set forth above.

97. SLS and/or Plaintiff is a mortgage loan servicer within the meaning of 12 C.F.R. §1024.31.

98. Defendants/Third-Party Plaintiffs are borrowers of federally-related mortgage loans within the meaning of 12 C.F.R. § 1024.31.

99. Defendants/Third-Party Plaintiffs submitted loss mitigation applications within the meaning of 12 C.F.R. § 1024.31.

100. By virtue of the acts described above, SLS and/or Plaintiff engaged in a pattern and practice of violating and failing to comply with the requirements of 12 C.F.R. § 1024.41 with respect to Defendants/Third-Party Plaintiffs.

101. SLS and/or Plaintiff violated 12 C.F.R. § 1024.41 by failing to notify borrowers within 5 days after receiving a loss mitigation application that SLS and/or Plaintiff acknowledges receipt of the loss mitigation application and that it has determined that the application is either complete or incomplete.

102. SLS and/or Plaintiff violated 12 C.F.R. § 1024.41 by failing to (i) evaluate Defendants/Third-Party Plaintiffs for all available loss mitigation options or (ii) provide Defendants/Third-Party Plaintiffs with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the Defendants/Third-Party Plaintiffs on behalf of the owner or assignee of the mortgage loan within 30 days of receiving the Defendants/Third-Party Plaintiffs' loss mitigation application.

103. SLS and/or Plaintiff violated 12 C.F.R. § 1024.41 by failing to state in the notice sent to Defendants/Third-Party Plaintiffs pursuant to 12 C.F.R. § 1024.41(c) the specific reasons for the servicer's determination for each such trial or permanent loan modification option.

104. SLS and/or Plaintiff violated 12 C.F.R. § 1024.41 by failing to refrain from instituting

foreclosure proceedings while a loss mitigation application or appeal is still being processed or until SLS and/or Plaintiff has sent the Defendants/Third-Party Plaintiffs the notice required by 12 C.F.R. § 1024.41(c)(1)(ii).

105. As a result of SLS and/or Plaintiff's above-mentioned violations, Defendants/Third-Party Plaintiffs suffered actual damages and incurred attorneys' fees and costs.

WHEREFORE having answered the Plaintiff's Complaint, the Defendants/Third-Party Plaintiffs, demanding a trial by jury, pray for the following:

A. An order of this Court dismissing the Complaint of the Plaintiff with prejudice and entering a judgment in favor of the Defendants/Third-Party Plaintiffs;

B. Awarding the Defendants/Third-Party Plaintiffs reasonable costs and attorney's fees;

C. Assessing all costs of this action to the Plaintiff and Third-Party Defendant;

D. On the Counterclaims and Third-Party Complaint, award the Defendants/Third-Party Plaintiffs any and all appropriate damages, including actual, treble, and punitive;

E. And for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

KNOWLES LAW FIRM, PC

Brian M. Knowles, Esquire
S.C. Bar No. 73018
1212 Wappoo Road, Charleston, SC 29407
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brian@knowlesinternational.com
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November 17, 2016
Charleston, South Carolina

Attorney for Defendants/Third-Party Plaintiffs Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etkis

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	2016-CP-10-1987
WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-1,)	
Plaintiff,)	
vs.)	
TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE, IJEOMA ETIKERENTSE a/k/a IJEOMA ETKIS, SUNTRUST MORTGAGE, INC., CAPITAL BANK CORPORATION, BANK OF AMERICA, NA, KEYBANK NATIONAL ASSOCIATION, AND OLDE PARK HOMEOWNERS ASSOCIATION, INC.,)	
Defendants.)	
TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE AND IJEOMA ETIKERENTSE a/k/a IJEOMA ETKIS,)	
Third-Party Plaintiffs,)	
vs.)	
SPECIALIZED LOAN SERVICING, LLC a/k/a SLS,)	
Third-Party Defendant.)	

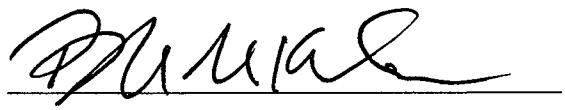
FILED
2016 NOV 17 PM 4:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY

CERTIFICATE OF SERVICE

I, Brian M. Knowles, on behalf of Knowles Law Firm, PC, hereby certify that I have on November 17, 2016, served a copy of the Answer, Counterclaims, and Third-Party Complaint upon all parties of record via U.S. First Class Mail with proper postage prepaid to the following:

Riley Pope & Laney, LLC
Attention: Jayme L. Shy, Esquire
2838 Devine Street
Columbia, SC 29205

Attorney for Plaintiff



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-10-01987

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

Plaintiff,

vs.

Temisan Etikerentse *et al.*,

Defendants.

Temisan Entikerentse *et al.*,

Third-Party Plaintiffs,

vs.

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

Third-Party Defendant.

Specialized Loan Servicing LLC a/k/a SLS's Answer to Defendants/Third-Party Plaintiffs' Complaint

FILED
2017 JAN 19 AM 11:00
JULIE J. ARMSTRONG
CLERK OF COURT

Specialized Loan Servicing LLC a/k/a SLS (hereinafter "Defendant" or "SLS"), by and through its undersigned counsel, submits this Answer to the defendants/third-party plaintiffs' complaint unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. That the claims fail to allege facts sufficient to constitute a cause of action against Defendant and, therefore, this case should be dismissed pursuant to Rule 12, SCRCP.

FOR A SECOND DEFENSE

2. That Defendant denies each and every allegation contained in the counterclaims/third-party complaint not hereinafter specifically admitted or explained.

3. That paragraphs 1 through 21 do not require a response. To the extent the court would deem a response was required, Defendant would crave reference to the allegations set forth in the Third-Party Complaint and denies any paragraph inconsistent with the allegations set forth in the Complaint. Defendant expressly denies any paragraph that seeks to impose liability against it and strict proof is demanded thereof.

4. Defendant admits the allegations set forth in paragraph 22 but only to the extent that this Honorable Court has jurisdiction over this matter. Any remaining allegations are denied.

5. Defendant admits the allegations set forth in paragraph 23 but only to the extent that this Honorable Court has jurisdiction over this matter. Any remaining allegations are denied.

6. Defendant admits the allegations set forth in paragraph 24 but only to the extent that this Honorable Court has jurisdiction over this matter. Defendant specifically denies the allegations set forth in the footnote of paragraph 24. Any remaining allegations are denied.

7. Defendant admits the allegations set forth in paragraph 25 but only to the extent that this Honorable Court has jurisdiction over this matter. Any remaining allegations are denied.

8. Defendant admits the allegations set forth in paragraph 26 but only to the extent that this Honorable Court has jurisdiction over this matter. Any remaining allegations are denied.

9. Answering paragraph 27, Defendant craves reference to the pleadings and other filings in the asserted Citibank action. Any allegation inconsistent with those pleadings and other filings is denied. Any remaining allegations are denied.

10. Answering paragraph 28, Defendant craves reference to the pleadings and other filings in the asserted Citibank action. Any allegation inconsistent with those pleadings and other filings is denied. Any remaining allegations are denied.

11. That paragraphs 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 are legal conclusions to which no responses are required. To the extent the court would deem a response required, Defendant craves reference to the statutes, regulations, and publications identified in the aforementioned paragraphs and denies any allegation inconsistent with the express written language of those statutes, regulations, and publications. Any remaining allegations are denied.

12. Answering paragraph 51, Defendant admits that it is a mortgage loan servicer engaged in the business of servicing mortgage loans. Further answering, Defendant craves reference to the portfolio and/or loan documents referred to in paragraph 51. Any allegations inconsistent with the express written terms of said documents are denied. Defendant denies any allegations of wrongdoing. Any remaining allegations are denied.

13. Answering paragraph 52, Defendant admits that it services mortgage loans in all 50 states. Any remaining allegations are denied.

14. Answering paragraph 53, the loan servicing agreement between Defendant and Plaintiff Wilmington Trust speaks for itself. Defendant craves reference to the contracts or loan servicing agreements referred to in paragraph 63. Any allegations inconsistent with the express written terms of said contracts or agreements are denied. Any remaining allegations are denied.

15. Answering paragraph 54, the loan servicing agreement between Defendant and Plaintiff Wilmington Trust speaks for itself. Defendant craves reference to the loan servicing agreement and the loss mitigation tools referred to in paragraph 54. Any allegations inconsistent

with the express written terms of said agreement or mitigation tools are denied. Any remaining allegations are denied.

16. In response to paragraphs 55, 56, 57, 58, 59, 60 and 61, to the extent Third-Party Plaintiffs allege Defendant is subject to any federal or state statute or regulation, those allegations are legal conclusions to which no response is required. If a response is deemed necessary, Defendant denies the allegations set forth in paragraphs 55, 56, 57, 58, 59, 60 and 61. To the extent the paragraphs allege Defendant has engaged in the violation of any statute or regulation, those allegations are specifically denied. Any remaining allegations are denied.

17. Answering paragraph 62, Defendant craves reference to the Mortgage referenced in paragraph 62. Any allegations inconsistent with the express written terms of said Mortgage are denied. Any remaining allegations are denied.

18. Defendant denies the allegations set forth in paragraph 63.

19. Answering paragraph 64, Defendant admits that Third-Party Plaintiffs attempted to obtain a loan modification. All remaining allegations are denied.

20. Answering paragraph 65, Defendant craves reference to the Complaint referenced in paragraph 65. Any allegations inconsistent with the express written language of said Complaint are denied. Any remaining allegations are denied.

21. Answering paragraph 66, Defendant craves reference to the Complaint referenced in paragraph 66. Any allegations inconsistent with the express written language of said Complaint are denied. Any remaining allegations are denied.

22. In response to paragraph 67, upon information and belief, Defendant admits that a copy of a previously extended December 12, 2014 loan modification approval offer was e-mailed to the third-party plaintiffs' counsel. All remaining allegations are denied.

23. Defendant is without sufficient knowledge or information to admit or deny the allegations in paragraph 68 and, therefore, those allegations are denied and strict proof is demanded thereof.

24. Answering paragraphs 69 and 70, Defendant craves reference to the filings and certificates of service referenced in paragraphs 69 and 70. Any allegation inconsistent with the express written language of said filings and certificates of service are denied. Any remaining allegations are denied.

25. Paragraphs 71, 72, 73, and 74 are directed to a party other than Defendant and, therefore, no response is required. To the extent a response is deemed necessary, Defendant denies the allegations set forth in paragraph 71 and demands strict proof thereof. Any remaining allegations are denied.

26. In response to paragraph 75, Defendant repeats and realleges all preceding paragraphs as if fully restated herein.

27. Defendant admits so much of paragraph 76 that alleges Third-Party Plaintiff Temisan Etikerentse, by and through her attorney-in-fact, executed and delivered unto Countrywide Home Loans, Inc., a promissory Note and Mortgage secured by real property. All remaining allegations are denied.

28. Defendant admits paragraph 77 upon information and belief.

29. Defendant denies the allegations set forth in paragraphs 78, 79 and 80.

30. In response to paragraph 81, Defendant repeats and realleges all preceding paragraphs as if fully restated herein.

31. Paragraph 82 is a legal conclusion to which no response is required. In the event a response is deemed necessary, Defendant craves reference to the HAMP program referenced in

paragraph 82. Any allegations inconsistent with said express written language of said HAMP program are denied. Any remaining allegations are denied.

32. Answering paragraph 83, Defendant admits that the participation in HAMP provides the opportunity to receive financial incentives for qualified loans. All remaining allegations are denied.

33. Answering paragraph 84, Defendant craves reference to the HAMP program requirements, policies, procedures, and federal regulations referenced in paragraph 84. Any allegations inconsistent with the express written terms of said HAMP program requirements, policies, procedures, and federal regulations are denied. Any remaining allegations are denied.

34. Paragraph 85 asserts a legal conclusion as fact and, therefore, no response is required. To the extent a response is deemed necessary, Defendant denies the allegations set forth in paragraph 85.

35. In response to paragraph 86, Defendant repeats and realleges all preceding paragraphs as if fully restated herein.

36. Defendant denies the allegations set forth in paragraph 87.

37. Paragraph 88 asserts a legal conclusion as fact and, therefore, no response is required. To the extent a response is deemed necessary, Defendant admits that it is the loan servicer for the property at issue. All remaining allegations set forth in paragraph 87 are denied.

38. Paragraph 89 asserts a legal conclusion as fact and, therefore, no response is required. To the extent a response is deemed necessary, Defendant denies the allegations set forth in paragraph 89.

39. Defendant denies the allegations set forth in paragraph 90.

40. Defendant denies the allegations set forth in paragraph 91.

41. Paragraph 92 asserts a legal conclusion as fact and, therefore, no response is required. To the extent a response is deemed necessary, Defendant denies the allegations set forth in paragraph 92.

42. Defendant denies the allegations set forth in paragraph 93. Defendant specifically denies performing any actions that could constitute an unfair or deceptive trade practice.

43. Defendant denies the allegations set forth in paragraph 94.

44. Defendant denies the allegations set forth in paragraph 95.

45. In response to paragraph 96, Defendant repeats and realleges all preceding paragraphs as if fully restated herein.

46. Paragraph 97 asserts a legal conclusion as fact and, therefore, no response is required. To the extent a response is deemed necessary, Defendant denies the allegations set forth in paragraph 97.

47. Paragraph 98 asserts a legal conclusion as fact and, therefore, no response is required. To the extent a response is deemed necessary, Defendant denies the allegations set forth in paragraph 98.

48. Defendant denies the allegations set forth in paragraphs 99, 100, 101, 102, 103, 104 and 105.

FOR A THIRD DEFENSE

49. That the Third-Party Plaintiffs' claims are barred by the Economic Loss Doctrine.

FOR A FOURTH DEFENSE

50. That the Defendant pleads the terms of the contract (Note and Mortgage) as a complete bar to the Third-Party Plaintiffs' claims.

FOR A FIFTH DEFENSE

51. That Third-Party Plaintiffs have failed to suffer an ascertainable loss and, therefore, a condition precedent to the counterclaim has not been met and the counterclaim should be dismissed.

FOR A SIXTH DEFENSE

52. To the extent the Third-Party Plaintiffs' claims would seek any equitable relief; the Defendant would plead the doctrines of unclean hands, laches, and equitable estoppel.

FOR A SEVENTH DEFENSE

53. Defendant cannot be held vicariously liable or liable in any way for any alleged acts or omissions of any other party or a predecessor in interest.

FOR AN EIGHTH DEFENSE

54. Any damage allegedly sustained by the third-party plaintiff, the same being denied, was only caused by the acts or omissions of entities or persons other than Defendant, which acts or omissions constitute the intervening and superseding cause of the plaintiff's alleged damages and bar the plaintiff's claims against Defendant.

FOR A NINTH DEFENSE

55. Any alleged acts or omissions as alleged, the same being denied, would not have been intentional and would have resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such errors.

FOR A TENTH DEFENSE

56. Third-Party Plaintiffs have failed to plead any causes of action giving rise to a trial by jury and, therefore, the jury demand should be struck.

FOR AN ELEVENTH DEFENSE

57. One or more of Third-Party Plaintiffs' claims are barred by the applicable statutes of limitations.

FOR A TWELFTH DEFENSE

58. Third-Party Plaintiffs' claims for relief are barred in whole or in part since permitting the imposition of punitive damages would violate Defendant's rights to due process under the Fifth and Fourteenth Amendments to the United States Constitution, Defendant's right to equal protection under the Fourteenth Amendment to the United States Constitution, and under similar provisions of the South Carolina Constitution.

FOR A THIRTEENTH DEFENSE

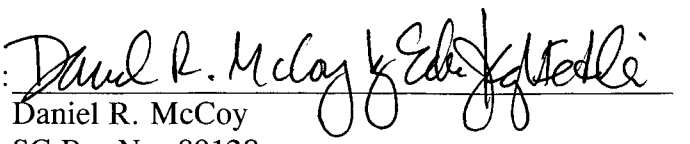
59. HAMP does not provide for a private right of action and, therefore, Third-Party Plaintiffs' cause of action asserting their rights under HAMP is improper and must be dismissed.

FOR A FOURTEENTH DEFENSE

60. Defendant hereby gives notice that it intends to rely upon such other defenses as may become available or appear during discovery in this case or otherwise and hereby reserves the right to amend this answer to assert such defenses.

WHEREFORE, having fully responded to Third-Party Plaintiffs' Complaint, Defendant prays that the same be dismissed with prejudice with costs, that the Defendant be awarded a judgment of foreclosure and sale against the Plaintiffs with attorney's fees and costs, and for such other and further relief as this Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Daniel R. McCoy
SC Bar No. 80128
E-Mail: dan.mccoy@nelsonmullins.com
3751 Robert M. Grissom Parkway / Suite 300
Post Office Box 3939 (29578-3939)
Myrtle Beach, SC 29577-6412
(843) 448-3500

Attorney for Specialized Loan Servicing LLC

Myrtle Beach, South Carolina

January 19, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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

Plaintiff,

vs.

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

Defendants.

Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis,

Third-Party Plaintiffs,

vs.

Specialized Loan Servicing LLC a/k/a SLS,

Third-Party Defendant.

Civil Action No. 2016-CP-10-01987

CERTIFICATE OF SERVICE

FILED
2017 JAN 19 AM 11:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Specialized Loan Servicing, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s)

hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Defendant Specialized Loan Servicing, LLC's Answer to Defendants/Third-Party Plaintiffs' Complaint

Counsel Served:

Brian M. Knowles, Esquire
KNOWLES LAW FIRM PC
1212 Wappoo Road
Charleston, SC 29407
brian@knowlesinternational.com
Attorney Defendants Third-Party Plaintiffs Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis

Ashley Logan
Administrative Assistant

January 19, 2017

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
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Daniel R. McCoy
Tel: 843.946.5670
dan.mccoy@nelsonmullins.com

January 19, 2017

Hand Delivered

The Honorable Julie J. Armstrong
CHARLESTON COUNTY CLERK OF COURT
100 Broad Street, Suite 106
Charleston, SC 29401

RE: Wilmington Trust et al. v. Temisan Etikerentse et al. v. Specialized Loan Servicing LLC
Civil Action No. 2016-CP-10-01987
NMRS File No. 42753.01622

Dear Ms. Armstrong:

Enclosed please find an original and one copy of Defendant Specialized Loan Servicing, LLC's Answer to Defendants/Third Party Plaintiffs' Complaint in the above referenced matter. Please file the original and return a clocked in copy to our courier.

By copy of this letter I am hereby serving Plaintiff counsel a copy of same. Please contact me should you have any questions.

Very truly yours,

Daniel R. McCoy

DRM:dp
Enclosures
cc: Brian M. Knowles, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-10-01987

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

Plaintiff,

vs.

Temisan Etikerentse *et al.*,

Defendants.

Temisan Entikerentse *et al.*,

Third-Party Plaintiffs,

vs.

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

Third-Party Defendant.

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

FILED
2017 MAY -8 PM 4:00
JULIE J. ARMSTRONG
CLERK OF COURT

Wilmington Trust, National Association, as Successor Trustee to Citibank, N.A., as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II, Mortgage Pass-Through Certificates Series 2007-1 (hereinafter "Plaintiff" or "Wilmington Trust"), by and through its undersigned counsel, submits this Answer to the defendants' counterclaims unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. That the counterclaims fail to allege facts sufficient to constitute a cause of action against the Plaintiff and, therefore, this case should be dismissed pursuant to Rule 12, SCRCP.

FOR A SECOND DEFENSE

2. That the Plaintiff denies each and every allegation contained in the counterclaims not hereinafter specifically admitted or explained.

3. That paragraphs 1 through 21 do not require a response. To the extent the court would deem a response was required, Plaintiff would crave reference to the allegations set forth in the Complaint and denies any paragraph inconsistent with the allegations set forth in the Complaint. Plaintiff expressly denies any paragraph that seeks to impose liability against it and strict proof is demanded thereof.

4. Paragraph 22 is admitted upon information and belief.

5. Paragraph 23 is denied.

6. Paragraph 24 is directed to the Third-Party Defendant and, therefore, no response is required. If a response is deemed required, Plaintiff denies the allegations set forth in paragraph 24.

7. Plaintiff admits the allegations set forth in paragraphs 25 and 26 but only to the extent that this Honorable Court has jurisdiction over this matter. Any remaining allegations are denied.

8. Answering paragraph 27, Plaintiff craves reference to the pleadings and other filings in the asserted Citibank action. Any allegation inconsistent with those pleadings and other filings is denied. Any remaining allegations are denied.

9. Paragraph 28 is admitted insofar as it can be construed to allege Plaintiff filed the above captioned foreclosure action on April 18, 2016, concerning the property that was subject to the 2009 action referenced in paragraph 27 of the Answer and Counterclaims. Plaintiff further

admits it received an assignment of mortgage dated November 4, 2015, said assignment being recorded November 25, 2014 in Book 442 at Page 893. All remaining allegations are denied.

10. That paragraphs 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 are legal conclusions to which no responses are required. To the extent the court would deem a response required, Plaintiff craves reference to the statutes, regulations, and publications identified and denies any allegation inconsistent with the express written language of those statutes, regulations, and publications. Any remaining allegations are denied.

11. Paragraphs 51, 52, and 53 are directed to the Third-Party Defendant and, therefore, no response is required. If a response is deemed required, Plaintiff denies the allegations set forth in paragraphs 51, 52 and 53.

12. Plaintiff is not a loan servicer and, therefore, denies the allegations set forth in paragraph 54.

13. In response to paragraphs 55, 56, 57, 58, 59, 60 and 61, to the extent Defendants allege Plaintiff is subject to any federal or state statute or regulation, those allegations are legal conclusions to which no response is required. Plaintiff is not a loan servicer and, therefore, those allegations are denied. To the extent the paragraphs allege Plaintiff has engaged in the violation of any statute or regulation, those allegations are specifically denied and strict proof is demanded thereof. Any remaining allegations are denied.

14. Answering paragraph 62, Plaintiff craves reference to the Mortgage referenced in paragraph 62. Any allegations inconsistent with the express written terms of said Mortgage are denied. Any remaining allegations are denied.

15. Plaintiff denies the allegations set forth in paragraph 63.

16. Answering paragraph 64, Plaintiff admits that Defendants attempted to obtain a loan modification. All remaining allegations are denied.

17. Answering paragraph 65, Plaintiff craves reference to the Complaint referenced in paragraph 65. Any allegations inconsistent with the express written language of said Complaint are denied. Any remaining allegations are denied.

18. Answering paragraph 66, Plaintiff craves reference to the Complaint referenced in paragraph 66. Any allegations inconsistent with the express written language of said Complaint are denied. Any remaining allegations are denied.

19. In response to paragraph 67, Plaintiff admits that a copy of a previously extended December 12, 2014 loan modification approval offer was e-mailed to Defendants' counsel. All remaining allegations are denied.

20. Plaintiff is without sufficient knowledge or information to admit or deny the allegations in paragraph 68 and, therefore, those allegations are denied and strict proof is demanded thereof.

21. That paragraphs 69 and 70 are admitted.

22. That paragraph 71 is admitted insofar as it can be construed to allege a Notice of Denial of Foreclosure Intervention and Attorney Certification were filed on September 20, 2016. The remaining allegations are directed to the Third-Party Defendant and, therefore, no response is required. If a response is deemed necessary, Plaintiff denies the allegations set forth in paragraph 71. Any remaining allegations are denied.

23. Plaintiff denies the allegations set forth in paragraphs 72, 73 and 74.

24. In response to paragraph 75, Plaintiff repeats and realleges all preceding paragraphs as if fully restated herein.

25. That Plaintiff admits so much of paragraph 76 that alleges Defendant Temisan Etikerentse, by and through her attorney-in-fact, executed and delivered unto Countrywide Home Loans, Inc., a promissory Note and Mortgage secured by real property. All remaining allegations are denied.

26. Plaintiff admits paragraph 77 upon information and belief.

27. Plaintiff denies the allegations set forth in paragraphs 78, 79 and 80.

28. In response to paragraph 81, Plaintiff repeats and realleges all preceding paragraphs as if fully restated herein.

29. Paragraph 82 is a legal conclusion to which no response is required. In the event a response is deemed necessary, Plaintiff craves reference to the HAMP program referenced in paragraph 82. Any allegations inconsistent with said express written language of said HAMP program are denied. Any remaining allegations are denied.

30. As to Plaintiff, the allegations in paragraph 83 are admitted insofar as they can be construed to allege that the participation in HAMP provides the opportunity to receive financial incentives for qualified loans. All remaining allegations are denied.

31. Answering paragraph 84, Plaintiff craves reference to the HAMP program requirements, policies, procedures, and federal regulations referenced in paragraph 84. Any allegations inconsistent with the express written terms of said HAMP program requirements, policies, procedures, and federal regulations are denied. Any remaining allegations are denied.

32. Paragraph 85 asserts a legal conclusion as fact and, therefore, no response is required. To the extent a response is deemed necessary, Plaintiff denies the allegations set forth in paragraph 85.

33. In response to paragraph 86, Plaintiff repeats and realleges all preceding paragraphs as if fully restated herein.

34. Plaintiff denies the allegations set forth in paragraph 87.

35. Plaintiff denies the allegations set forth in paragraph 88.

36. Paragraph 89 asserts a legal conclusion as fact and, therefore, no response is required. To the extent a response is deemed necessary, Plaintiff denies the allegations set forth in paragraph 89.

37. Plaintiff denies the allegations set forth in paragraph 90.

38. Plaintiff denies the allegations set forth in paragraph 91.

39. Paragraph 92 asserts a legal conclusion as fact and, therefore, no response is required. To the extent a response is deemed necessary, Plaintiff denies the allegations set forth in paragraph 92.

40. Plaintiff denies the allegations set forth in paragraph 93.

41. Plaintiff denies the allegations set forth in paragraph 94.

42. Plaintiff denies the allegations set forth in paragraph 95.

43. In response to paragraph 96, Plaintiff repeats and realleges all preceding paragraphs as if fully restated herein.

44. Plaintiff denies the allegations set forth in paragraph 97.

45. Paragraph 98 asserts a legal conclusion as fact and, therefore, no response is required. To the extent a response is deemed necessary, Plaintiff denies the allegations set forth in paragraph 98.

46. Plaintiff denies the allegations set forth in paragraphs 99, 100, 101, 102, 103, 104 and 105.

FOR A THIRD DEFENSE

47. That the Defendants' counterclaims are barred by the Economic Loss Doctrine.

FOR A FOURTH DEFENSE

48. That the Plaintiff pleads the terms of the contract (Note and Mortgage) as a complete bar to the Defendants' claims, including but not limited to Defendants' failure to provide written notice of any alleged breach of the contracts at issue.

FOR A FIFTH DEFENSE

49. That Defendants' have failed to suffer an ascertainable loss and, therefore, a condition precedent to the counterclaim has not been met and the counterclaim should be dismissed.

FOR A SIXTH DEFENSE

50. To the extent the Defendants' counterclaims would seek any equitable relief; the Plaintiff would plead the doctrines of unclean hands, laches, and equitable estoppel.

FOR A SEVENTH DEFENSE

51. Plaintiff cannot be held vicariously liable or liable in any way for any alleged acts or omissions of any other party or a predecessor in interest.

FOR AN EIGHTH DEFENSE

52. At all times relevant to this action, Plaintiff was acting as a holder in due course as defined by the laws of the State of South Carolina and therefore Plaintiff is not subject to any of the defenses or counterclaims raised by the Defendants which relate to the acts or omissions of parties other than Plaintiff.

FOR A NINTH DEFENSE

53. Any alleged acts or omissions as alleged, the same being denied, would not have been intentional and would have resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such errors.

FOR A TENTH DEFENSE

54. Defendants have failed to plead any causes of action giving rise to a trial by jury and, therefore, the jury demand should be struck.

FOR AN ELEVENTH DEFENSE

55. One or more of Defendants' claims are barred by the applicable statutes of limitations.

FOR A TWELFTH DEFENSE

56. Defendants' claims for relief are barred in whole or in part since permitting the imposition of punitive damages would violate Plaintiff's rights to due process under the Fifth and Fourteenth Amendments to the United States Constitution, Plaintiff's right to equal protection under the Fourteenth Amendment to the United States Constitution, and under similar provisions of the South Carolina Constitution.

FOR A THIRTEENTH DEFENSE

57. HAMP does not provide for a private right of action and, therefore, Borrowers' cause of action asserting their rights under HAMP is improper and must be dismissed.

FOR A FOURTEENTH DEFENSE

58. Plaintiff hereby gives notice that it intends to rely upon such other defenses as may become available or appear during discovery in this case or otherwise and hereby reserves the right to amend this answer to assert such defenses.

WHEREFORE, having fully responded to the Defendant's counterclaims, the Plaintiff prays that the same be dismissed with prejudice with costs, that the Plaintiff be awarded a judgment of foreclosure and sale against the Defendants with attorney's fees and costs, and for such other and further relief as this Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Daniel R. McCoy
SC Bar No. 80128
E-Mail: dan.mccoy@nelsonmullins.com
3751 Robert M. Grissom Parkway / Suite 300
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Attorney for Wilmington Trust, National Association, as Successor Trustee to Citibank, N.A., as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II, Mortgage Pass-Through Certificates Series 2007-1

Myrtle Beach, South Carolina

May 5, 2017

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1, Plaintiff, vs. Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, Suntrust Mortgage Inc., Capital Bank Corporation, Bank of America NA, Keybank National Association, and Olde Park Homeowners' Association Inc., Defendants.	)	Civil Action No. 2016-CP-10-01987 CERTIFICATE OF SERVICE
Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, Third-Party Plaintiffs, vs. Specialized Loan Servicing LLC a/k/a SLS, Third-Party Defendant.	)	

FILED
2017 MAY -8 PM 4:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Wilmington Trust National

Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1 do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1's Answer to Defendant's Counterclaims

Counsel Served:

Brian M. Knowles, Esquire
KNOWLES LAW FIRM PC
1212 Wappoo Road
Charleston, SC 29407
AND
Robert B. Varnado, Esquire
Alexis M. Wimberly, Esquire
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Foreclosure Counsel for Wilmington Trust

Tereasa Nelson
Administrative Assistant

May 5, 2017

Nelson Mullins

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May 5, 2017

The Honorable Julie J. Armstrong
Clerk of Court
Charleston County Courthouse
100 Broad Street, Suite106
Charleston, SC 29401

RE: Wilmington Trust et al. v. Temisan Etikerentse et al. v. Specialized Loan Servicing LLC
Civil Action No. 2016-CP-10-01987
NMRS File No. 42753.01622

Dear Ms. Armstrong:

Enclosed are the original and one copy of plaintiff Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1's Answer to Defendant's Counterclaims in the above-referenced matter. We would appreciate it if you would file the original document and return a clocked in copy to us in the envelope provided.

By copy of this letter to all counsel, we are hereby serving them with copies of plaintiff Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1's Answer to Defendant's Counterclaims.

Very truly yours,

Daniel R. McCoy

DRM:tn
Enclosure
cc: Brian M. Knowles, Esquire

Jayme L. Shy, Esquire
Robert B. Varnado, Esquire
Alexis M. Wimberly, Esquire

ELECTRONICALLY FILED - 2020 Aug 27 10:57 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
South Carolina Circuit Court Judge

CASE NO. 2018-CP-10-2792

TEMISAN ETIKERENTSE and IJOEMA ETIKERENTSE .....Appellants,

v.

SPECIALIZED LOAN SERVICING, LLC .. .. Respondent.

NOTICE OF APPEAL

Temisan Etikerentse and Ijoema Etikerentse ("Appellants") hereby appeal: **(I) the Form Oder** of the Honorable Bentley D. Price, dated July 07, 2020 [filed and written notice received by Appellant the same day], attached herewith as Exhibit "A"; **(II) the Form Oder (Denying Appellant's Motion to Reconsider)** of the Honorable Bentley D. Price**,** dated August 5, 2020 [filed and written notice received by Appellant the same day], attached herewith as Exhibit "B"; and **(III) the Order (Granting SLS's Motion for Summary Judgment),** dated August 16, 2020 [filed and written notice received by Appellant the same day], attached herewith as Exhibit "C".

Respectfully submitted,

/s Robert B. Varnado

Robert B. Varnado (S.C. Bar # 007085)
BROWN & VARNADO LLC
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7300
Attorneys for Appellants

August 26, 2020
Mt. Pleasant, South Carolina

ELECTRONICALLY FILED - 2020 Aug 27 10:57 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
South Carolina Circuit Court Judge

CASE NO. 2018-CP-10-2792

TEMISAN ETIKERENTSE and IJOEMA ETIKERENTSE .....Appellants,

v.

SPECIALIZED LOAN SERVICING, LLC ..... Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the ***Notice of Appeal*** the above referenced case has been served upon counsel of record by mailing a copy in an envelope properly addressed with postage prepaid on this day to the following:

Blake T. Williams, Esquire
Nelson Mullins Riley & Scarborough, LLP
BNC Bank Corporate Center, Suite 300
3751 Robert M. Grissom Parkway
Myrtle Beach, SC 29577
Attorneys for Respondent

/s Robert B. Varnado
_____
Robert B. Varnado (S.C. Bar # 0007850)
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Mount Pleasant, South Carolina 29465
(843) 737-7300
Attorneys for Appellants

August 26, 2020
Mt. Pleasant, South Carolina

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Exhibit "A"

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1002762

Wilmington Trust National Association As Successor Trustee et al
PLAINTIFF(S)

Temisan Etikerentse 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

The 3rd Party Defendant's Motion for Summary Judgment is granted. The Plaintiff's Motion to Strike is Denied. The Plaintiff's Motion for Summary Judgment as to Counterclaims is denied. If the parties would like formal orders they are welcome to submit them.

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 07/20/2020 .

Olde Park Homeowners Association Inc
Keybank National Association
Bank of America NA
Capital Bank Corporation
SunTrust Mortgage Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2020 Aug 27 10:57 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762
ELECTRONICALLY FILED - 2020 Jul 22 10:23 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762

ELECTRONICALLY FILED - 2020 Aug 27 10:57 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762

ELECTRONICALLY FILED - 2020 Jul 22 10:23 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762

Charleston Common Pleas

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

Case Number: 2018CP1002762

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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Exhibit "B"

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1002762

Wilmington Trust National Association As Successor Trustee et al
PLAINTIFF(S)

Temisan Etikerentse 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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:

The Motion to Reconsider is Denied. A hearing is not necessary.

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 08/05/2020 .

Olde Park Homeowners Association Inc
Keybank National Association
Bank of America NA
Capital Bank Corporation
SunTrust Mortgage Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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ELECTRONICALLY FILED - 2020 Aug 05 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762

ELECTRONICALLY FILED - 2020 Aug 27 10:57 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762

ELECTRONICALLY FILED - 2020 Aug 05 2:16 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762

Charleston Common Pleas

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

Case Number: 2018CP1002762

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

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Exhibit "C"

ELECTRONICALLY FILED - 2020 Aug 27 10:57 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762
ELECTRONICALLY FILED - 2020 Aug 17 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1, Plaintiff, vs. Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, Suntrust Mortgage Inc., Capital Bank Corporation, Bank of America NA, Keybank National Association, and Olde Park Homeowners' Association Inc., Defendants.	)	Civil Action No. 2018-CP-10-02762 **ORDER**
Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, Third-Party Plaintiffs, vs. Specialized Loan Servicing LLC a/k/a SLS, Third-Party Defendant.	)	

BEFORE THE COURT is a Motion for Summary Judgment filed by Third-Party Defendant Specialized Loan Servicing LLC a/k/a SLS ("SLS") as to the third-party claims asserted by Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a

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Ijeoma Etkis ("Third-Party Plaintiffs") in the above-referenced matter. Hearings were held on July 13, 2020 and July 15, 2020, with Brian M. Knowles and Robert B. Varnado appearing for Third-Party Plaintiffs and Blake T. Williams appearing for SLS. After consideration of all arguments based on the pleadings, exhibits, the parties' written submissions, oral argument, and applicable authorities, the Court hereby **GRANTS** SLS's motion for summary judgment.[1]

PROCEDURAL BACKGROUND

1. On June 15, 2007, Temisan Etikerentse and Ijeoma Etikerentse executed a $1,402,500.00 adjustable rate note ("Note") in favor of Countrywide Home Loans, Inc. The Note was secured by a Mortgage (the "Mortgage") on real property located at 783 Navigators Run, Mount Pleasant, S.C. executed and delivered to Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for Countrywide.

2. MERS assigned the mortgage to Citibank N.A., as Trustee on behalf of the Holders of Bear Stearns Alt-A Trust II, Mortgage Pass-Through Certificates, Series 2007-1 ("Citibank") via assignment dated August 31, 2009.

3. Citibank then assigned the mortgage to Wilmington Trust, National Association, as Successor Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns Alt-A Trust II, Mortgage Pass-Through Certificates Series 2007-1 ("Wilmington Trust") via assignment dated November 4, 2014.

4. SLS services Third-Party Plaintiffs' loan on behalf of Wilmington Trust.

5. On April 8, 2015, Wilmington Trust filed this foreclosure action alleging that Third-Party Plaintiffs have been in default since December 1, 2008.

[1] The Court entered a Form 4 Order granting SLS's motion on July 22, 2020, and invited SLS to submit this formal Order.

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6. On November 17, 2016, Third-Party Plaintiffs filed their Answer, Counterclaims, and Third-Party Complaint. Third-Party Plaintiffs asserted counterclaims against Wilmington Trust and third party claims against SLS for: (1) breach of contract, (2) declaratory judgment, (3) violation of the South Carolina Unfair Trade Practices Act ("SCUTPA") and (4) violation of 12 C.F.R. § 1024.41.

7. By Order dated July 14, 2017, the case was stricken from the active docket pursuant to Rule 40(j), SCRCP. The case was restored to the active docket with a new civil action number by Order dated June 1, 2018.

8. SLS initially moved for summary judgment on August 30, 2018 while discovery was ongoing, relying solely on an affidavit of an SLS representative and supporting exhibits.

9. The Court denied this motion without prejudice via Form 4 Order dated February 11, 2018, finding that summary judgment was not appropriate because further inquiry into the facts was desirable.

10. SLS then proceeded to conduct additional discovery by deposing Dr. Etikerentse.

11. After the conclusion of discovery, SLS moved for summary judgment on all of the claims asserted against it by Third-Party Plaintiffs. SLS filed its motion on October 17, 2019. A hearing was scheduled for July 13, 2020. Third-Party Plaintiffs filed a response in opposition to SLS's motion on July 10, 2020.

12. The Court held hearings on this motion on July 13, 2020 and July 15, 2020.

STANDARD OF REVIEW

A motion for summary judgment should be granted where the Court is satisfied that "there is no genuine issue as to any material fact and that the moving party is entitled to a

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judgment as a matter of law." Rule 56(c), SCRCP. A party opposing a motion for summary judgment must "do more than simply show that there is some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial." *Hedgepath v. AT&T Co.*, 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001) (quoting *Baughman v. AT&T Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991)). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Id.* at 355, 559 S.E.2d at 336. Moreover, "[a] party cannot escape summary judgment on the mere hope that something may develop at trial." *Champion Int'l Corp. v. Eubanks*, 291 S.C. 395, 398, 353 S.E.2d 880, 882 (Ct. App. 1987).

UNDISPUTED FACTS IN RECORD

1. Third-Party Plaintiffs do not have a contract, either express or implied, with SLS and SLS is not a party to the Note or Mortgage.

2. Third-Party Plaintiffs were in default on the note as of December 1, 2008 and have remained in default through the present date.

3. Third-Party Plaintiffs submitted a loss mitigation application in 2014.

4. SLS evaluated the 2014 loss mitigation application for foreclosure intervention options.

5. Via letter dated December 12, 2014, SLS informed Third-Party Plaintiffs that they were approved for a standard loan modification.

6. SLS also evaluated Third-Party Plaintiffs for several other loss mitigation options, but Third-Party Plaintiffs were not approved for those options because the loan did not meet the necessary criteria.

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7. Despite the approval for SLS's standard modification program, the loan was not modified because Third-Party Plaintiffs did not accept the terms proposed by SLS.

8. During the second half of 2016, SLS again reviewed Third-Party Plaintiffs for loss mitigation options.

9. Via letter dated December 27, 2016, SLS informed Third-Party Plaintiffs that they were approved for a standard loan modification.

10. SLS also evaluated Third-Party Plaintiffs for several other loss mitigation options, but Third-Party Plaintiffs were not approved for those options because the loan did not meet the necessary criteria.

11. Despite the approval for SLS's standard modification program, the loan was not modified because Third-Party Plaintiffs did not accept the terms proposed by SLS.

CONCLUSIONS OF LAW

After thorough review and careful consideration of the pleadings, briefing, supporting exhibits, and oral argument of counsel at the hearing, the Court finds that there are no genuine issues of material fact and that SLS is entitled to judgment as a matter of law on all of Third-Party Plaintiffs' claims. More specifically, the Court finds as follows:

1. Breach of Contract. In their response in opposition to SLS's Motion for Summary Judgment, Third-Party Plaintiffs acknowledged that they do not have contractual privity with SLS and that this "undermines" their direct cause of action against SLS for breach of contract. (Third-Party Pltf. Memo in Opp'n at 6.) Under South Carolina law, the existence of a contract is a necessary element for proving a breach of contract claim. *See Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009) ("The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such

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breach."). In light of Third-Party Plaintiffs' concession that they lack privity of contract with SLS, the Court finds that there are no genuine issues of material fact and SLS is entitled to summary judgment on this claim.[2]

2. **Declaratory Judgment**. Third-Party Plaintiffs' second cause of action purports to state a claim for declaratory judgment. The Court finds that the gravamen of this claim seeks a declaration that SLS had an obligation to comply with the Home Affordable Modification Program ("HAMP") and that SLS failed to do so for Third-Party Plaintiffs' loan. This claim fails as a matter of law because HAMP does not provide a private right of action. *See Carrington v. Mnuchin*, No. CIV.A. 5:13-03422-JM, 2014 WL 4249876, at *10 (D.S.C. Aug. 27, 2014); *see also, e.g.*, *Grenadier v. BWW Law Grp.*, No. 1:14CV827 LMB/TCB, 2015 WL 417839, at *5 (E.D. Va. Jan. 30, 2015), *aff'd*, 612 F. App'x 190 (4th Cir. 2015) ("Although participating loan servicers are obligated to comply with HAMP guidelines in order to receive servicer benefits, 'HAMP does not create a private right of action for borrowers against lenders and servicers.'")). Litigants cannot evade the lack of a private right of action under HAMP by recharacterizing the claim by another name as Third-Party Plaintiffs have done in this case. *See*,

---

[2] In their Memorandum in Opposition, Third-Party Plaintiffs requested leave to amend their complaint to assert a claim for tortious interference with a contract instead of breach of contract. This action was originally filed over five years ago, and Third-Party Plaintiffs did not seek leave to amend their pleading to assert this new claim until the eve of the hearing on SLS's motion. SLS moved for summary judgment on October 17, 2019, and one of the grounds asserted in the motion was that the breach of contract claim failed because Third-Party Plaintiffs lacked privity of contract with SLS. Despite being on notice of this argument for several months, Third-Party Plaintiffs waited until only three days before the hearing on SLS's motion for summary judgment to request leave to amend to assert this entirely new cause of action.

The Court finds that SLS would be prejudiced if it permitted Third-Party Plaintiffs to amend their pleading to assert this new claim in light of: (1) the length of time this case has been pending, (2) the extensive discovery previously undertaken by the parties, (3) the lack of any significant factual developments warranting the untimely amendment, and (4) the fact that permitting the amendment would require SLS to introduce additional and different evidence to prevail. *See Holland ex rel. Knox v. Morbark, Inc.*, 407 S.C. 227, 236, 754 S.E.2d 714, 719 (Ct. App. 2014) (collecting cases). Therefore, leave to amend is **DENIED**.

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e.g., *Steffens v. Am. Home Mortg. Sevicing, Inc.*, No. CIV.A. 6:10-1788-JMC, 2011 WL 901812, at *2 (D.S.C. Jan. 5, 2011), *report and recommendation adopted* 2011 WL 901179 (D.S.C. Mar. 15, 2011) (dismissing claims due to lack of private right of action under HAMP, explaining that "[d]espite the fact that [plaintiff] did not label her claims as 'HAMP violations,' the underlying factual and legal basis for each is squarely based on HAMP").

Additionally, the Court finds that even Third-Party Plaintiffs could premise their declaratory judgment claim on HAMP, the unrebutted evidence supports that Third-Party Plaintiffs' loan did not qualify for that program. SLS attached two decision letters to its motion which explained that Third-Party Plaintiffs' loan was not eligible for HAMP because the current unpaid principal balance on the loan was higher than the program limit as defined by the applicable guidelines. Third-Party Plaintiffs did not provide any evidence to rebut this fact and, therefore, there is no genuine issue of fact for trial.

3. **Violation of RESPA.** The Court also finds there is no genuine issue of material fact regarding Third-Party Plaintiffs' claim for violation of RESPA, 12 C.F.R. § 1024.41. The undisputed facts are that SLS reviewed Third-Party Plaintiffs' loss mitigation application in 2014, provided an explanation of its decision as to a number of foreclosure intervention options, and approved Third-Party Plaintiffs for a loan modification. Therefore, the Court finds that SLS satisfied its obligations under RESPA. *See generally* 12 C.F.R. § 1024.41.

Third-Party Plaintiffs' pleading and briefing focused largely on allegations about SLS's actions during a second loss mitigation evaluation in 2016. The Court notes that SLS was under no obligation to evaluate Third-Party Plaintiffs for loss mitigation options for a second time, yet nevertheless reviewed their loan again and offered a second loan modification. Because SLS already reviewed Third-Party Plaintiffs for loss mitigation options in 2014 and notified them of

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its decision, SLS was entitled to proceed with filing this foreclosure action while continuing to engage in voluntary loss mitigation. Third-Party Plaintiffs cannot assert violations of the RESPA loss mitigation rules as to the 2016 review since they previously availed themselves of the loss mitigation process in 2014. 12 C.F.R. § 1024.41(i) (explaining that "[a] servicer is only required to comply with the requirements of this section for a single complete loss mitigation application for a borrower's mortgage loan account"); *Mangum v. First Reliance Bank*, No. 4:16-CV-02214-RBH, 2017 WL 1062534, at *3 (D.S.C. Mar. 21, 2017) ("In other words, a borrower may not bring an action for violation of the loss mitigation rule if that borrower has previously availed herself of the loss mitigation process.").

The Court also finds that Third-Party Plaintiffs have failed to establish any genuine issue of material fact because they have not provided any evidence of damages. To establish a claim for violation of RESPA, a claimant must show damages as a result of the violation. *See Wirtz v. Specialized Loan Servicing, LLC*, 886 F.3d 713, 719 (8th Cir. 2018) (noting that damages are an essential element of a RESPA claim and a plaintiff fails to prove actual damages where the failure to comply with RESPA did not cause the purported harm). The lack of even a scintilla of evidence supporting any damages to Third-Party Plaintiffs also warrants summary judgment.

In response to SLS's arguments, Third-Party Plaintiffs relied extensively on a recent consent order between SLS and the Consumer Financial Protection Bureau ("CFPB"). *See* Consent Order, *In re: Specialized Loan Servicing, LLC*, No. 2020-BCFP-0002, Doc. 1 (May 11, 2020), *available at* https://files.consumerfinance.gov/f/documents/cfpb_specialized-loan-servicing_consent-order_2020-05.pdf. The Court finds that this Consent Order has no bearing on this case. First, as the Court explained above, the unrebutted evidence shows that SLS complied with its obligations under RESPA for Third-Party Plaintiffs' loan. Therefore,

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allegations of purported RESPA violations in unrelated matters are irrelevant to this case. Additionally, the Consent Order is not evidence of anything since it expressly provides that SLS consented to its terms "without admitting or denying any of the findings of facts or conclusions of law." *See id.* at ¶ 2.

The Court also finds that the Consent Order has no impact on its subject matter jurisdiction. The Court has carefully reviewed the language of the Consent Order and it does not deprive the Court of jurisdiction over this foreclosure action or Third-Party Plaintiffs' claims against SLS. The jurisdictional statute cited by Third-Party Plaintiffs is in the CFPB's enabling legislation and concerns the CFPB's own enforcement powers. *See generally* 12 U.S.C. § 5563. Subsection (d) gives the CFPB the power to seek enforcement of its orders through the court system but provides that otherwise no court has jurisdiction to affect the issuance or enforcement of the Consent Order or alter its terms. *See* 12 U.S.C. § 5563(d). Third-Party Plaintiffs acknowledged at the hearing that they are not seeking to enforce the terms of the Consent Order, but instead were relying on it as support for SLS's alleged bad acts. Therefore, the jurisdictional provisions are not implicated here.

4. **Violation of SCUTPA**. The Court finds that there is no genuine issue of material fact as to Third-Party Plaintiffs' claim for violation of SCUTPA either. In their response to SLS's motion, Third-Party Plaintiffs acknowledged that the gravamen of this claim is also that SLS failed to adhere to its loss mitigation obligations under RESPA. (Third-Party Pltf. Memo in Opp'n at 4.) Because Third-Party Plaintiffs failed to establish any genuine issues of material fact as to any RESPA violation by SLS or related damages, this claim also necessarily fails as a matter of law.

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The Court further holds that Third-Party Plaintiffs' SCUTPA claim fails as to each of the three essential elements. A SCUTPA claim requires that the Plaintiff show: "(1) that the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act." *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 815-16 (2013). Here, there is no evidence of any unfair or deceptive action by SLS since the unrebutted evidence supports that SLS complied with its obligations under RESPA. Additionally, Third-Party Plaintiffs cannot show an impact on the public interest. Third-Party Plaintiffs relied solely on the CFPB Consent Order to support this element. However, again, the Consent Order did not contain any admissions by SLS as to any of the findings of fact or conclusions of law. Finally, Third-Party Plaintiffs did not provide any evidence of damages. To establish a claim under SCUTPA, a claimant must allege and prove an "ascertainable loss of money or property" that is causally connected to purported unfair or deceptive act. *See* S.C. Code Ann. § 39-5-140(a); *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharm., Inc.*, 414 S.C. 33, 57-58, 777 S.E.2d 176, 189 (2015). Third-Party Plaintiffs have not provided any evidence supporting an ascertainable loss of money or property. Therefore, summary judgment is proper on this claim.

5. **Rule 14, SCRCP**. Finally, the Court notes that in addition to failing on the merits, Third-Party Plaintiffs claims against SLS are improper under Rule 14(a), SCRCP. Therefore, summary judgment is also proper on this separate, alternative basis.

Pursuant to Rule 14(a) of the South Carolina Rules of Civil Procedure, "a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim

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against him." Rule 14(a), SCRCP. "Under Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability," meaning the "outcome of the princi[pal] claim must impact the third-party defendant's liability." *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994).

The Court finds that Third-Party Plaintiffs' claims against SLS are not proper Rule 14(a) claims. This is a foreclosure action filed by Wilmington Trust against Third-Party Plaintiffs for their failure to satisfy their obligations under the Note and Mortgage. SLS is not a party to these instruments and cannot possibly be derivatively liable for Wilmington's foreclosure claim against Plaintiffs. *See Deutsche Bank National Trust Co. v. Stevenson*, No. 2:12-1854-CWH, 2013 WL 12241630, at *3 (D.S.C. Jan. 30, 2013) (explaining that third-party claims asserted against a loan servicer in a foreclosure action were improper because the "outcome of [plaintiff's] foreclosure claim would not impact the liability of [the servicer]"). The correct mechanism for asserting these claims would have been to either file a separate suit against SLS or join SLS as a defendant to the counterclaims. Summary judgment is also appropriate for this alternative basis.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, viewing the evidence in a light most favorable to the non-moving party, there are no genuine issues as to any material fact and SLS is entitled to judgment as a matter of law on all of Third-Party Plaintiffs' claims. Accordingly, SLS's Motion is **GRANTED**.

IT IS SO ORDERED, this ____ day of _____, 2020.

_____
The Honorable Bentley D. Price
Ninth Judicial Circuit

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Charleston Common Pleas

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

Case Number: 2018CP1002762

Type: Order/Summary Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2020-08-16 13:25:17 page 12 of 12

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Wilmington Trust, National Association,)
Plaintiff,)
vs.)
)
Temisan Etikerentse, et al.,)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-10-1987

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
Jayme L. Shy, Bar No. _____	Brian M. Knowles, Bar No. 73108
Address:	Address:
2838 Devine Street, Columbia, SC 29205	1212 Wappoo Road, Charleston, SC 29407
Phone: _____ Fax _____	Phone: 843-810-7596 Fax877-408-1078
E-mail: _____ Other: _____	E-mail: brian@knowlesinternational.comOther: _____

☒ **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: Motion for Entry of Default and for Default Judgment
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order

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

_____ _____
Signature of Attorney for ☐ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (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.	JUDGE CODE _____
☐ Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-1,

Plaintiff,

vs.

TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE, IJEOMA ETIKERENTSE a/k/a IJEOMA ETKIS, SUNTRUST MORTGAGE, INC., CAPITAL BANK CORPORATION, BANK OF AMERICA, NA, KEYBANK NATIONAL ASSOCIATION, AND OLDE PARK HOMEOWNERS ASSOCIATION, INC.,

Defendants.

TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE AND IJEOMA ETIKERENTSE a/k/a IJEOMA ETKIS,

Third-Party Plaintiffs,

vs.

SPECIALIZED LOAN SERVICING, LLC a/k/a SLS,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
2016-CP-10-1987

MOTION FOR DEFAULT AND FOR DEFAULT JUDGMENT

FILED
2017 JAN -3 PM 12:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: JAYME L. SHY, ESQUIRE, ATTORNEY FOR PLAINTIFF:

COME NOW Defendants Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etkis (hereinafter collectively "Defendants"), by and through their undersigned counsel, and move for entry of default and default judgment against Plaintiff Wilmington Trust, National Association, as Successor Trustee to Citibank, N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns Alt-A Trust II, Mortgage Pass-Through Certificates Series 2007-1 (hereinafter "Wilmington Trust"), pursuant to Rule 55 of the South Carolina Rules of Civil Procedure. On September 8, 2009, Citibank, N.A. as Trustee of Structured Asset Mortgage Investements II Inc., Bear Stearns Alt-A Trust II, Mortgage Pass-Through Certificates Series 2007-1 filed a foreclosure lawsuit related to the Defendants' primary residence in the Charleston County Court of Common Pleas and bearing civil action number 2009-CP-10-5635, and said case was dismissed on or about November 3, 2015. On November 4, 2015, Citibank assigned ownership of subject matter note and mortgage to Plaintiff. On April 8, 2016, Plaintiff initiated this action by filing its Summons and Complaint for foreclosure of the Defendants' primary residence. On April 19, 2016, Defendants were served with the Summons and Complaint. On April 21, 2016, counsel for the Plaintiff indicated via e-mail that a new foreclosure intervention form was not required (attached hereto as Exhibit A). On or about September 15, 2016, Plaintiff, by and through its' counsel, served Defendants and filed a Notice of Denial of Foreclosure Intervention and Attorney Certification. Counsel for Defendants requested a thirty day extension (by November 20, 2016) to file a responsive pleading, which was agreed to by counsel for Plaintiff by way of Plaintiff's counsel's e-mail dated October 26, 2016 (attached hereto as Exhibit B). On November 17, 2016, Defendants filed their Answer, Counterclaims, and Third-Party Complaint, and served Plaintiff via U.S. First Class Mail and e-mail on the same day. On December 13, 2016, Defendants' counsel was contacted by counsel for Third-Party Defendant, Specialized Loan Servicing,

LLC a/k/a SLS, requesting a thirty day extension (to January 20, 2017) to file a responsive pleading, which was granted via e-mails dated December 13 and 14, 2016 (attached hereto as Exhibit C). Pursuant to the Affidavit of Default, as of the date of the filing of this motion, Plaintiff has not filed a Reply to Defendants' Counterclaims, and Plaintiff is in default (attached hereto as Exhibit D).

Defendants are entitled to an entry of default against Plaintiff on Defendants' Counterclaims pursuant to Rule 55(a) of the South Carolina Rules of Civil Procedure. Upon the hearing of this motion, Defendants further request that this Court schedule a default judgment hearing in this matter pursuant to Rule 55(b) of the South Carolina Rules of Civil Procedure.

Defendants will file a memorandum of law in support of this Motion in advance of any hearing thereon.

WHEREFORE, Defendants pray that this Honorable Court:

A. Enter Plaintiff's default on Defendants' Counterclaims;

B. After proper notice and hearing, enter default judgment upon Defendants' Counterclaims in an amount to be proven at the hearing thereon; and

C. Granting such other and further relief as the Court may deem just and proper.

-Signature on Following Page-

Respectfully submitted,

KNOWLES LAW FIRM, PC

Brian M. Knowles, Esquire
S.C. Bar No. 73018
1212 Wappoo Road, Charleston, SC 29407
P.O. Box 50201, Summerville, SC 29485
T: 843-810-7596
F: 877-408-1078
brian@knowlesinternational.com
www.knowlesinternational.com

Attorney for Defendants/Third-Party Plaintiffs Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etkis

January 3, 2017
Charleston, South Carolina

EXHIBIT A

Gmail Brian Knowles <bknowles.lawfirm@gmail.com>

Wilmington Trust v. Etikerentse (File No. 4035.05815)

Jayme Shy <JShy@rplfirm.com> Thu, Apr 21, 2016 at 9:51 AM
To: Brian Knowles <bknowles.lawfirm@gmail.com>

Brian,

Good morning. Yes, we will not require the Etikerentses to sign a new foreclosure intervention. Your email suffices as notice that they are attempting to pursue foreclosure alternatives. We will follow-up with our client and try to get some information on our end regarding the current review. We are fine with the 30-day extension to file an Answer.

Thank you,

Jayme

Jayme L. Shy

Attorney and Counselor at Law

Riley Pope & Laney, LLC

2838 Devine Street

P.O. Box 11412 (29211)

Columbia, SC 29205

(803)799-9993

(803)239-1414 (fax)

jshy@rplfirm.com

www.rplfirm.com

This e-mail message is confidential. It may contain information that is privileged or subject to other confidentiality requirements

EXHIBIT B

Gmail Brian Knowles <bknowles.lawfirm@gmail.com>

Fw: Scan Data from [XRX9C934E2683E4]

Jayme Shy <JShy@rplfirm.com> Wed, Oct 26, 2016 at 5:30 PM
To: Brian Knowles <bknowles.lawfirm@gmail.com>
Cc: Sherry Rampey <srampey@rplfirm.com>

Brian,

I received your voicemail. Under the civ pro rules, I can only grant a 30-day extension without court approval. That stops us at November 20, 2016: FIT denial mailed Sept. 15, 2016 + mailbox rule, so original deadline would have been on or about Oct. 20. Let me know if you calculate differently.

Have a good evening,

Jayme

Jayme L. Shy

Attorney and Counselor at Law

Riley Pope & Laney, LLC

2838 Devine Street

P.O. Box 11412 (29211)

Columbia, SC 29205

(803)799-9993

(803)239-1414 (fax)

jshy@rplfirm.com

www.rplfirm.com

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EXHIBIT C

Print | Close Window

Subject: RE: Wilmington Trust v. Etikerentse v. Specialized Loan Servicing (2016-CP-10-1987)
From: brian@knowlesinternational.com
Date: Wed, Dec 14, 2016 9:44 pm
To: "Dan McCoy" <dan.mccoy@nelsonmullins.com>
Cc: "Deia Patsel" <Deia.Patsel@nelsonmullins.com>

Hey Dan. Good speaking with, as well. Extension is granted until January 20, 2017. Have a good holiday. Brian

-

Brian M. Knowles, Esquire*
1212 Wappoo Road, Charleston, SC USA 29407
P.O. Box 50201, Summerville, SC USA 29485
T: 1 843 810 7596
F: 1 877 408 1078
brian@knowlesinternational.com
www.knowlesinternational.com

*Licensed in SC and Washington, DC; Admitted Solicitor of the Senior Courts of England and Wales

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> -------- Original Message --------
> Subject: Wilmington Trust v. Etikerentse v. Specialized Loan Servicing (2016-CP-10-1987)
> From: Dan McCoy <dan.mccoy@nelsonmullins.com>
> Date: Tue, December 13, 2016 3:07 pm
> To: "brian@knowlesinternational.com" <brian@knowlesinternational.com>
> Cc: Deia Patsel <Deia.Patsel@nelsonmullins.com>
>
> Brian,
>
> Thank you for speaking to me about the above referenced matter. Per our conversation, please respond to this email confirming the 30 extension you have provided me to answer your third-party complaint served on Specialized Loan Servicing. This extension would make the new answer deadline Jan. 20, 2016. Thank you for your consent to the extension and please let me know if you need anything at all.
>
> Thanks,
>
> Dan

Nelson Mullins

Daniel R. McCoy
Attorney at Law
dan.mccoy@nelsonmullins.com

Nelson Mullins Riley & Scarborough LLP
BNC Bank Corporate Center, Suite 300
3751 Robert M. Grissom Parkway
Myrtle Beach, SC 29577
Tel: 843.946.5670 Fax: 843.448.3500

www.nelsonmullins.com
(View Bio)

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EXHIBIT D

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	2016-CP-10-1987
	)	
WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-1,	)	
	)	**AFFIDAVIT OF DEFAULT**
Plaintiff,	)	
	)	
vs.	)	
	)	
TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE, IJEOMA ETIKERENTSE a/k/a IJEOMA ETKIS, SUNTRUST MORTGAGE, INC., CAPITAL BANK CORPORATION, BANK OF AMERICA, NA, KEYBANK NATIONAL ASSOCIATION, AND OLDE PARK HOMEOWNERS ASSOCIATION, INC.,	)	
	)	
Defendants.	)	
	)	
TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE AND IJEOMA ETIKERENTSE a/k/a IJEOMA ETKIS,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
vs.	)	
	)	
SPECIALIZED LOAN SERVICING, LLC a/k/a SLS,	)	
	)	
Third-Party Defendant.	)	
	)	

I, Brian M. Knowles, counsel for the Defendants Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etkis (hereinafter collectively "Defendants") being first duly sworn, depose and say:

1. I filed Defendants' Answer, Counterclaims, and Third-Party Complaint on November 17, 2016.

2. Plaintiff's counsel, Jayme L. Shy, was served with a copy of the Answer, Counterclaims, and Third-Party Complaint pursuant to Rule 5 of the South Carolina Rules of Civil Procedure, on November 17, 2016. *See* Certificate of Service attached to Answer, Counterclaims, and Third-Party Complaint filed November 17, 2016 and incorporated herein by reference.

3. Plaintiff has failed to plead or otherwise defend within thirty days of service of the Answer, Counterclaims, and Third-Party Complaint, plus five days for service by mail, as required by Rule 6 of the South Carolina Rules of Civil Procedure.

4. Plaintiff never asked me for any extension of time to Reply to Defendants' Counterclaims.

5. Plaintiff never attempted to obtain a time extension to file a Reply to the Defendants' Counterclaims as required by Rule 6(b) of the South Carolina Rules of Civil Procedure, either by written consent from me for a thirty day extension or a Consent Order from the Court before the time for replying to the Counterclaims expired.

6. Plaintiff did not file a Motion for Extension of time after expiration of the specified period for serving and filing the Reply had lapsed.

7. Having not replied to the Defendants' Counterclaims within the specified time, nor obtained consent or an Order allowing it to do so, the Plaintiff has violated Rule 6 of the South Carolina Rules of Civil Procedure, and Plaintiff is in default of Defendants' Counterclaims.

FURTHER AFFIANT SAYETH NOT.

Brian M. Knowles

Sworn to before me this 3rd day of January, 2017.

Notary Public for the State of South Carolina
My Commission Expires: 10/13/2026

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	2016-CP-10-1987
WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-1,)	
Plaintiff,)	
vs.)	
TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE, IJEOMA ETIKERENTSE a/k/a IJEOMA ETKIS, SUNTRUST MORTGAGE, INC., CAPITAL BANK CORPORATION, BANK OF AMERICA, NA, KEYBANK NATIONAL ASSOCIATION, AND OLDE PARK HOMEOWNERS ASSOCIATION, INC.,)	
Defendants.)	
TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE AND IJEOMA ETIKERENTSE a/k/a IJEOMA ETKIS,)	
Third-Party Plaintiffs,)	
vs.)	
SPECIALIZED LOAN SERVICING, LLC a/k/a SLS,)	
Third-Party Defendant.)	

FILED
2017 JAN -3 PM 12:22
JULIE J. ARMSTRONG
CLERK OF COURT
BY

CERTIFICATE OF SERVICE

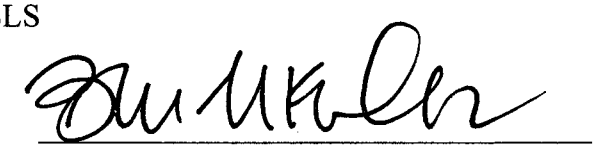
I, Brian M. Knowles, on behalf of Knowles Law Firm, PC, hereby certify that I have on January 3, 2017, served a copy of the Motion for Default and for Default Judgment upon all parties of record via U.S. First Class Mail with proper postage prepaid to the following:

Riley Pope & Laney, LLC
Attention: Jayme L. Shy, Esquire
2838 Devine Street
Columbia, SC 29205

Attorney for Plaintiff

Nelson Mullins Riley & Scarborough, LLP
Attention: Daniel R. McCoy, Esquire
BNC Bank Corporate Center, Suite 300
3751 Robert M. Grissom Parkway
Myrtle Beach, SC 29577

Attorney for Third-Party Defendant Specialized Loan Servicing, LLC a/k/a SLS



KNOWLESLAW FIRM, PC

BRIAN M. KNOWLES, ATTORNEY AT LAW & SOLICITOR
1212 WAPPOO RD., CHARLESTON, SC 29407
P.O. BOX 50201, SUMMERVILLE, SC 29485

T: 843.810.7596
F: 877.408.1078

www.knowlesinternational.com
brian@knowlesinternational.com

LICENSED IN SOUTH CAROLINA & WASHINGTON, DC

ADMITTED SOLICITOR OF THE SENIOR COURTS
OF ENGLAND AND WALES

January 3, 2017

VIA HAND DELIVERY
The Honorable Julie J. Armstrong
Charleston County, Clerk of Court
Court of Common Pleas
100 Broad Street, Suite 106
Charleston, SC 29401

RE: Wilmington Trust, National Association, as Successor Trustee to Citibank, N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns Alt-A Trust II, Mortgage Pass Through Certificates Series 2007-1 v. Temisan Etikerentse a/k/a Temisan L. Etikerentse, *et al.*
Civil Action No.: 2016-CP-10-1987

Dear Julie:

Enclosed for filing, please find the original and a copy of the Motion for Entry of Default and for Default Judgment and Certificate of Service for the same in the above-captioned case.

Please file this document and return the filed copies to me via courier. By copy of this letter to all parties below, I am serving them with the same on today's date.

If you have any questions and/or concerns, do not hesitate to contact me.

All the best,

Brian M. Knowles

Encl.

cc: Jayme L. Shy, Esquire
Daniel R. McCoy, Esquire
Temisan L. Etikerentse
Ijeoma Etikerentse

STATE OF SOUTH CAROLINA COUNTY OF **CHARLESTON** Wilmington Trust, National Association as Successor Trustee to Citibank, N.A. et al. Plaintiff, vs. Temisan Etikerentse, et al. Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2016-CP-10-01987 **MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
Daniel R. McCoy, Esquire Bar No. 80128 Address: Nelson Mullins PO Box 3939, Myrtle Beach, SC 29578 Phone: 843.946.5670 Fax843.448.3437 E-mail: dan.mccoy@nelsonmullins.com	Brian M. Knowles, Esquire Address: Knowles Law Firm PC 1212 Wappo Road, Charleston, SC 29407 Phone: 843.810.7596 Fax: 877.408.1078 Email: brian@knowlesinternational.com

☒ **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: Motion to Set Aside Entry of Default
Estimated Time Needed: 30 Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

Signature of Attorney for ☒ Plaintiff /☐ Defendant — January 6, 2017 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: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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

Plaintiff,

vs.

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

Defendants.

Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis,

Third-Party Plaintiffs,

vs.

Specialized Loan Servicing LLC a/k/a SLS,

Third-Party Defendant.

Civil Action No. 2016-CP-10-01987

Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1's Motion to Set Aside Entry of Default and Request For Expedited Hearing

FILED
2017 JAN -6 PM 3:10
JULIE J. ARMSTRONG
CLERK OF COURT

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

Trust"), by and through its undersigned attorneys, will move before the Court at such time and a place where counsel may be heard for an Order Setting Aside the Entry of Default in this case and for an expedited hearing. This Motion is made pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure.

This Motion is based upon the pleadings, affidavits, arguments of counsel, memoranda, and/or such other and further supporting documents to be presented to the Court at the time of the hearing. Counsel for Wilmington Trust certifies that they consulted with opposing counsel regarding this matter and opposing counsel refused to agree to set aside the entry of default and allow this case to proceed on the merits.

This motion should be granted for the reasons set forth below:

I. FACTS AND PROCEDURAL HISTORY

On or around June 15, 2015, Countrywide Home Loans, Inc. loaned Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etkis (the "Borrowers") One Million Four Hundred Two Thousand Five Hundred and 00/100 Dollars ($1,402,500.00). The loan was secured by a mortgage on Borrowers' property located at 783 Navigators Run, Mount Pleasant, South Carolina 29464 (the "Property"). The mortgage was subsequently assigned to Citibank, NA in September, 2009 and then to Wilmington Trust in November, 2015. Wilmington Trust is the current noteholder and its loan servicer is Third-Party Defendant Specialized Loan Servicing, LLC ("SLS").

On April 8, 2016, Wilmington Trust filed this foreclosure action related to the Property due to Borrowers' failure to make timely payments. Borrowers were served with the Summons and Complaint and, thereafter, requested a thirty (30) day extension to file a responsive pleading. As a common courtesy, counsel for Wilmington Trust agreed to Borrowers' requested extension.

Based on that extension, Borrowers filed and served their Answer on November 17, 2016 that included counterclaims against Wilmington Trust and a third-party claim against SLS. SLS retained Nelson Mullins Riley & Scarborough LLP and the undersigned counsel contacted Borrowers' Counsel to request a thirty (30) day extension to serve a reply, which was granted. During that call, Borrowers' counsel also expressed his clients' desire to be considered for a loan modification. Based upon that conversation, the undersigned counsel recommended to his client that they consider the Borrowers for a loan modification and attempted to expedite the modification process for Borrowers during the extension period. Based on those efforts, a loan modification was approved for Borrowers on December 27, 2016. (See Exhibit A). An email confirming that approval was sent to Borrowers' Counsel on December 28, 2016. (See Exhibit B). On January 2, 2017, an email was sent to Borrowers' Counsel attempting to set a time to discuss the loan modification offer. (See Exhibit B). In response, on January 4, 2017, Borrowers' Counsel sent an email indicating that he filed a Motion for Entry of Default and for Default Judgment on Borrowers' counterclaims against Wilmington Trust. (See Exhibit B). Upon being notified of that motion, foreclosure counsel for Wilmington Trust immediately reached out to Borrowers' Counsel and Nelson Mullins as counsel for SLS. It is apparent that there was confusion as to who was filing a reply to the counterclaims resulting in the mistake at issue. After working to clarify the confusion, requests were made to Borrowers' Counsel to withdraw the motion and for an extension to file an answer on behalf of Wilmington Trust. Borrowers' Counsel has denied those requests. Wilmington Trust now respectfully asks that the entry of default be set aside.

II. LEGAL STANDARD

Rule 55(c) of the South Carolina Rules of Civil Procedure provides, "For good cause shown the court may set aside an entry of default." The South Carolina Supreme Court has stated Rule 55 should be applied in accordance with South Carolina's strong public policy in favor of deciding cases on the merits, rather than due to a procedural error by a party. *In re Moore*, 342 S.C. 1, 5, 536 S.E.2d 367, 369 (2000) ("Rule 55(c) . . . should be liberally construed so as to promote justice and dispose of cases on the merits."); *see also Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) ("South Carolina's policy favor[s] the disposition of issues on their merits rather than on technicalities."); *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986) (vacating a default judgment and stating the court "favor[s] trial of issues on merit over securing judgment by slight technicalities").

The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause," which is a significantly lower standard than that for relief from a default judgment under Rule 60(b), SCRCP. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). In *Sundown*, the Supreme Court stated, "We take this opportunity to reassert the basic legal premise that the standard for granting relief under Rule 60(b) is more rigorous than under Rule 55(c), and that an entry of default may be set aside for reasons that would be insufficient to relieve a party from a default judgment." *Id.* The Rule 55(c) good cause standard requires a party seeking to set aside an entry of default to "provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Id.* After the party in default provides a satisfactory explanation for the default, the court must consider the following factors in deciding whether to set aside the entry of default: (1)

the timing of the motion for relief, (2) whether the defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff if relief is granted. *Id.* at 607–08, 681 S.E.2d at 888 (citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501–02 (Ct. App. 1989)).

III. DISCUSSION

Good cause exists to set aside the entry of default against Wilmington Trust, and this court should grant Wilmington Trust's motion.

A. Wilmington Trust's reason for failing to respond weighs in favor of setting aside the entry of default

After investigating the current situation giving rise to the motion, it now appears that there was confusion between Wilmington Trust and SLS as to who would be filing a response to the counterclaims asserted against Wilmington Trust. Wilmington Trust's foreclosure counsel was told by their client that, in addition to filing an answer for SLS, Nelson Mullins would also be filing an answer to the counterclaims for Wilmington Trust. (See Exhibit C (affidavit)). Based on that discussion, Wilmington Trust's foreclosure counsel ceased working on a responsive pleading and removed the deadline from their calendars. (*Id.*). However, Nelson Mullins had only been retained by SLS and was not told to respond on behalf of Wilmington Trust as well. Otherwise, an extension to answer for both SLS and Wilmington Trust would have been requested. In an attempt to remedy the issue, foreclosure counsel and the undersigned counsel reached out to Borrowers' Counsel to explain the confusion and request an extension for Wilmington Trust to answer. Borrowers' Counsel has denied that request.

Since service of the foreclosure complaint, Borrowers' Counsel has been aware that Wilmington Trust has representation, has been in contact with Wilmington Trust's foreclosure counsel, and served the answer and counterclaim by mail and email to Wilmington Trust's

foreclosure counsel. In addition to numerous other correspondence and communications, Borrowers' Counsel requested an extension to file an answer to the foreclosure complaint. However, without reaching out to Wilmington Trust's counsel to discuss the delay in responding and extending the same courtesy extension that was granted to his client, Borrowers' Counsel is attempting to avoid resolving the case on the merits and win by a technicality. Other courts have set aside defaults for this exact reason. As noted by Professors Wright, Miller and Kane in their treatise on the similar Federal Rules:

> An additional consideration that may be of considerable importance in influencing the court's exercise of discretion is its assessment of the parties' good faith or lack thereof. This factor may color the court's attitude toward the particular grounds offered for excusing the default. **When a party appears unduly anxious to win by default for example, if the party fails to notify his opponent of the default –the court may be generous toward the party moving for relief under Rule 55(c)**.

Wright, Miller & Kane, *Federal Practice and Procedure: Civil 3d* § 2693 at 106 (emphasis added); *citing Insurance Co. of North America v. S/S Hellenic Patriot*, 87 F.R.D. 136, 139 (S.D.N.Y. 1980) (setting aside default judgment and stating that "common courtesy" required plaintiff to notify the defendant that the deadline for answering had passed and that it intended to proceed to enter default where the defendant had previously extended the plaintiff's time to commence the action and that "the rush to enter judgment" without such notice "smacks too much of 'the sporting theory of justice'"); *Directv, Inc. v. Meyers*, 214 F.R.D. 504 (N.D.Iowa 2003) (granting motion to set aside entry of default where the default occurred as a result of a misunderstanding between counsel regarding an informal extension of the deadline to answer the complaint); *Stuski v. U.S. Lines*, 31 F.R.D. 188 (E.D.Pa. 1962) (granting motion to set aside entry of default made two years after default was entered where there was no evidence of plaintiff attempting to notify defendant of its lapse); *Schram v. O'Connor*, 2. F.R.D. 192

(E.D.Mich. 1941) (setting aside default entry when plaintiff failed to notify defendant of the default and took other actions that may have been misleading).

Because Wilmington Trust has provided a satisfactory explanation for the default, the court should consider the three additional factors enumerated in *Sundown*: (1) the timing of Wilmington Trust's motion for relief, (2) whether Wilmington Trust has a meritorious defense, and (3) the degree of prejudice to Plaintiff [Borrowers] if the court grants the relief requested in this motion. *Id.*

B. Wilmington Trust acted quickly to defend its position after receiving notice of the entry of default

This motion for relief from the entry of default is timely. Wilmington Trust was served the counterclaims on November 17, 2016 making its answer due by December 17, 2017. Borrowers' Counsel sought an entry of default on January 4, 2017. Wilmington Trust worked to immediately clear up the confusion as to the delay and retained counsel to begin preparing this motion for relief from the default entry. Therefore, the court should find the timing of this motion weighs in favor of granting relief from the entry of default. *See Shannon v. McGee*, No. 2007-UP-543, 2007 WL 7273650, at *3 (S.C. Ct. App. Nov. 30, 2007) (finding the timing of a party's motion for relief weighed in favor of setting aside an entry of default because "[o]nly two months elapsed between the time [the party] was served with the summons and complaint and when he moved for relief").

C. Wilmington Trust has meritorious defenses to the counterclaims

To establish a meritorious defense, a party is not required to show an absolute defense. *Thompson v. Hammond*, 299 S.C. 116, 120, 382 S.E.2d 900, 903 (1989). A meritorious defense does not need to be one that is guaranteed to prevail at trial. *Graham v. Town of Loris*, 272 S.C. 442, 453, 248 S.E.2d 594, 599 (1978). It is only a defense "which is worthy of a hearing or

judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence." *Id.*

Here, Wilmington Trust has meritorious defenses to the counterclaims as there are questions of law and real controversies as to the facts. The controversies as to the facts can be seen by comparing the Foreclosure Complaint with Borrowers counterclaims. When taking all of the pleadings into consideration, the allegations of Borrowers' counterclaims have previously been denied in Wilmington Trust's Foreclosure Complaint. The counterclaims assert three causes of action against Wilmington Trust: breach of contract, violation of the South Carolina Unfair Trade Practices Act, and violation of 12 C.F.R. section 1024.41. The breach of contract allegation asserts that Wilmington Trust violated the Mortgage by failing to provide the required notices to Borrowers. The SCUTPA claim asserts that Wilmington Trust committed an unfair trade practices by failing to comply with federal regulations and other acts. The 12 C.F.R. allegation asserts that Wilmington trust failed to comply with the federal notification requirements. (See Borrowers' counterclaims). However, in its Foreclosure Complaint, Wilmington Trust expressly stated that it has "provided all applicable notices and rights to cure as required and otherwise have complied with all applicable Federal, State, and local statutes, laws, rules, regulations, orders or other government directives." (See Foreclosure Complaint ¶ 14). In addition to the causes of action, Borrowers have asserted a claim for a declaratory judgment to determine Borrowers' rights under the HAMP program. (See Borrowers' counterclaims ¶ 81-85). Wilmington Trust's Foreclosure Complaint addresses that assertion by stating, "The subject loan is not eligible for HAMP modification process because the mortgagor failed to supply required information to participate in the HAMP." (See Foreclosure Complaint

¶ 12). Wilmington Trust expects to support its positions through documentation and witness testimony. In taking all pleadings into consideration, Wilmington Trust has effectively denied the allegation of the counterclaim and is now only seeking to remedy an honest mistake.

In addition to the factual controversies, there are questions of law that merit investigation. Borrowers have asserted that Wilmington Trust violated the South Carolina Unfair Trade Practices Act by "failing to comply with federal regulations related to loss mitigation ..." (See Borrowers' counterclaims ¶ 90). However, the South Carolina Unfair Trade Practices Act expressly excludes actions within a regulated industry. See S.C. Code Ann. § 39-5-40(a). Because Borrowers' SCUTPA cause of action specifically asserts that Wilmington Trust's actions and/or omissions fall within a regulated aspect of the lending industry, it cannot survive. Borrowers have also asserted a declaratory judgment cause of action under HAMP. However, HAMP does not provide a private right of action and does not mandate that any particular loan be modified.

Wilmington Trust believes it will be able to prove that it provided all required notices, followed all federal and state mandates, and has acted in good faith in handling the modification and foreclosure process and, therefore, has meritorious defenses to Borrowers' counterclaims.

D. Borrowers have suffered no prejudice from Wilmington Trust's delay in answering

Finally, there is no prejudice to Borrowers in setting aside the entry of default. Borrowers served their answer and counterclaims on Wilmington Trust on November 17, 2016. The answer also included a third-party complaint against SLS with identical facts and legal assertions. Borrowers' Counsel granted SLS a thirty (30) day extension to file its answer making it due on January 20, 2017. Having realized the current issue, Wilmington Trust immediately filed this motion and Answer. SLS has not yet filed its answer. The proceedings are in the very

early stages and have not been delayed. Consequently, the Court should grant the present motion and decide this case on the merits. *Moore*, 342 S.C. at 5, 536 S.E.2d at 369 ("Rule 55(c) . . . should be liberally construed so as to promote justice and dispose of cases on the merits.").

IV. CONCLUSION

For these reasons, Wilmington Trust respectfully requests the Court set aside the entry of default, grant leave to file an answer to the counterclaims, and grant such other and further relief as the Court deems just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Daniel R. McCoy
SC Bar No. 80128
E-Mail: dan.mccoy@nelsonmullins.com
3751 Robert M. Grissom Parkway / Suite 300
Post Office Box 3939 (29578-3939)
Myrtle Beach, SC 29577-3165
(843) 448-3500

Attorneys for Wilmington Trust

Myrtle Beach, South Carolina

January 7, 2017

SLS

8742 Lucent Boulevard · Suite 300 · Highlands Ranch, CO 80129 · 800-306-6059

December 27, 2016

TEMISAN L ETIKERENTSE
KNOWLES LAW FIRM PC
1212 WAPPOO ROAD
CHARLESTON, SC 29407

RE: Loan Number: [redacted]
Property Address:
783 NAVIGATORS RUN
MOUNT PLEASANT, SC 29464

Dear TEMISAN L ETIKERENTSE,

Specialized Loan Servicing LLC ("SLS") has conducted a review of your application submitted for a foreclosure prevention option.

Below is a list of the foreclosure alternatives you were evaluated for and the result of each:

Congratulations! You have been approved for a Foreclosure Prevention Option: Standard Modification Program. Please see enclosed documentation for terms of the extended offer. You have until January 11, 2017 to accept this offer.

Please note, if you are currently in a bankruptcy proceeding, approval of any foreclosure prevention option for which you may be eligible is contingent on approval of the bankruptcy court in your bankruptcy case. If an Order is entered denying the foreclosure prevention option, that Order supersedes any agreement contained herein. If you have any questions or concerns regarding the process to obtain court approval, please contact your attorney.

- **Standard Modification Program - Approved**

- **Standard Repayment Plan - Denied**
  - Based on your current monthly gross income we could not create an affordable payment within the guidelines of this program. Our records show that your current monthly income before taxes and other deductions is [redacted]

- **Home Affordable Modification Program Tier 2 - Denied**
  - Your loan is not eligible for the Home Affordable Modification Program because the current unpaid principal balance on your loan is higher than the program limit as defined by Making Home Affordable (MHA) guidelines. ($729,750 for a one unit property, $934,200 for a two unit property, $1,129,250 for a three unit property and $1,403,400 for a four unit property).

Dan McCoy

From:	brian@knowlesinternational.com
Sent:	Tuesday, January 3, 2017 10:48 PM
To:	Dan McCoy
Cc:	Deia Patsel
Subject:	RE: RE: Wilmington Trust v. Etikerentse v. Specialized Loan Servicing (2016-CP-10-1987)
Attachments:	LTR to Clerk Motion for Entry of Default (Wilmington v. Etikerentse v. SLS).pdf

Hello Dan. I have attached a Motion for Entry of Default and for Default Judgment on my counterclaims against the bank that was filed today with the Clerk. I will not be dismissing your client. In short, my client is not inclined to accept a loan modification based on the terms that was sent which includes over $1,000,000.00 in alleged accrued interest and fees. I have some real questions as to the legitimacy of some of the calculations utilized, along with the property valuation, which is in contradiction to an earlier valuation performed by your client. Please contact me to discuss, if you would like. Happy New Year. Brian

-

Brian M. Knowles, Esquire*
1212 Wappoo Road, Charleston, SC USA 29407
P.O. Box 50201, Summerville, SC USA 29485
T: 1 843 810 7596
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-------- Original Message --------
Subject: RE: RE: Wilmington Trust v. Etikerentse v. Specialized Loan Servicing (2016-CP-10-1987)
From: Dan McCoy <dan.mccoy@nelsonmullins.com>
Date: Mon, January 02, 2017 3:12 pm
To: "brian@knowlesinternational.com" <brian@knowlesinternational.com>
Cc: Deia Patsel <Deia.Patsel@nelsonmullins.com>

Brian,

I hope all is well and that you had a happy New Years. I wanted to follow up on the below to see if you had a chance to review it. Based on the approval, I assume you will be dismissing the third party complaint against SLS. Is that correct? Please let me know your thoughts.

Thanks,

1 **EXHIBIT B**

Dan

From: Dan McCoy
Sent: Wednesday, December 28, 2016 3:29 PM
To: 'brian@knowlesinternational.com' <brian@knowlesinternational.com>
Cc: Deia Patsel <Deia.Patsel@nelsonmullins.com>
Subject: RE: Wilmington Trust v. Etikerentse v. Specialized Loan Servicing (2016-CP-10-1987)

Brian,

I re-attached the modification approval. Hopefully it comes through this time. Have a nice vacation and let me know when you have time to discuss.

Thanks,

Dan

Nelson Mullins

Daniel R. McCoy
Attorney at Law
dan.mccoy@nelsonmullins.com

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(View Bio)

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Wilmington Trust, National Association, as successor Trustee to Citibank, N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns Alt-A Trust II, Mortgage Pass-Through Certificates Series 2007-1, Plaintiff, vs. Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, SunTrust Mortgage, Inc., Capital Bank Corporation, Bank of America, NA, Keybank National Association, and Olde Park Homeowners Association, Inc., Defendants, --- Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etkis, Third-Party Plaintiffs, vs. Specialized Loan Servicing, LLC a/k/a SLS, Third-Party Defendant. (File No. 4035.05815)	IN THE COURT OF COMMON PLEAS C/A NO.: 2016-CP-10-01987 **AFFIDAVIT**

Now comes Damon C. Wlodarczyk, being first duly sworn deposes and states as follows:

1. I am employed as an attorney at Riley, Pope & Laney, LLC, and am a member in good standing of the South Carolina Bar. The statements made in this Affidavit are based on my personal knowledge.

2. My firm was retained by Specialized Loan Servicing, LLC ("SLS") to bring an action for foreclosure on behalf of the Plaintiff.

3. The Lis Pendens, Summons, Complaint, and Notice of Foreclosure Intervention were served on the Defendants Etikerentse on April 19, 2016, as evidenced by the Affidavit of Service filed with the court.

4. The Etikerentses, through their counsel, timely requested foreclosure intervention pursuant to the S.C. Administrative Order, which stayed the time to file and serve a responsive pleading.

5. On September 16, 2016, a Notice of Denial of Foreclosure Intervention was served on counsel for the Etikerentses, which was filed with the court on September 20, 2016. Pursuant to the S.C. Administrative Order, a responsive pleading was due thirty days from the date of service plus an additional five days as allowed under Rule 6(e), SCRCP, which would be October 21, 2016.

6. On October 21, 2016, Etikerentses' counsel contacted my office and an extension to file a responsive pleading was granted until October 30, 2016. On October 26, 2016, Etikerentes' counsel contacted my office and requested a second extension until the 15th or 30th of November, 2016. On October 27, 2016, an attorney at my office granted counsel a second extension until November 21, 2016, to file a responsive pleading.

7. On November 17, 2016, Etikerentses' counsel served an Answer, Counterclaims and Third-Party Complaint, a responsive pleading to the counterclaims being due on or before December 22, 2016.

8. On December 14, 2016, the undersigned was notified that the Third-Party Complaint would be defended by Nelson, Mullins, Riley & Scarborough. The undersigned was under the impression at the time that I would be defending the counterclaims.

9. A Reply to the counterclaim was prepared on December 20-21, 2016, for filing and timely service. However, on December 20, 2016, SLS notified the undersigned's paralegal that

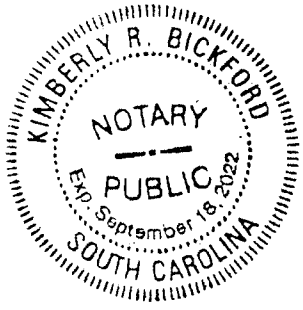
Nelson Mullins would also be defending the counterclaims, which was brought to my attention on December 21, 2016. Additionally, the undersigned was under the impression that a request for a thirty-day extension to file a responsive pleading to the counterclaims was granted as of December 21, 2016. Accordingly, the file was placed on hold and the Reply, which was ready to be timely served and filed, was not served or filed as evidenced by Exhibit 1.

AFFIANT FURTHER SAYETH NOT.

Damon C. Wlodarczyk

Subscribed and sworn to before me this
6 day of January, 2017 by
Kimberly R. Bickford, Notary Public

State of South Carolina
My commission expires: 9/18/2022



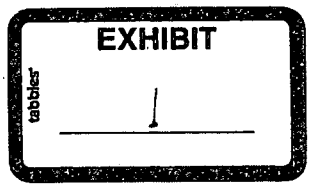
Damon Wlodarczyk

From: Damon Wlodarczyk
Sent: Wednesday, December 21, 2016 10:07 AM
To: Kim Bickford
Subject: FW: SLS v. Etikerentse

Now you can put the file on hold. Don't serve file or serve the reply.

Damon C. Wlodarczyk
Attorney and Counselor at Law
Riley Pope & Laney, LLC
2838 Devine Street
Post Office Box 11412 (29211)
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Office: 803-799-9993
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Web: www.rplfirm.com

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1,	)	Civil Action No. 2016-CP-10-01987
Plaintiff,	)	CERTIFICATE OF SERVICE
vs.	)	
Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, Suntrust Mortgage Inc., Capital Bank Corporation, Bank of America NA, Keybank National Association, and Olde Park Homeowners' Association Inc.,	)	
Defendants.	)	
Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis,	)	
Third-Party Plaintiffs,	)	
vs.	)	
Specialized Loan Servicing LLC a/k/a SLS,	)	
Third-Party Defendant.	)	

FILED
2017 JAN -6 PM 3:09
JULIE J. ARMSTRONG
CLERK OF COURT

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset

Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Plaintiff's Answer to Defendants' Counterclaims

Plaintiff's Motion to Set Aside Default

Counsel Served:

Brian M. Knowles, Esquire
KNOWLES LAW FIRM PC
1212 Wappoo Road
Charleston, SC 29407
brian@knowlesinternational.com
Attorney Defendants Third-Party Plaintiffs Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis

Ashley Logan
Administrative Assistant

January 7, 2017

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
3751 Robert M. Grissom Parkway / Suite 300 / Myrtle Beach, SC 29577-6412
Tel: 843.448.3500 Fax: 843.448.3437
www.nelsonmullins.com

Daniel R. McCoy
Tel: 843.946.5670
dan.mccoy@nelsonmullins.com

January 6, 2017

Hand Delivered

The Honorable Julie J. Armstrong
CHARLESTON COUNTY CLERK OF COURT
100 Broad Street, Suite 106
Charleston, SC 29401

RE: Wilmington Trust et al. v. Temisan Etikerentse et al. v. Specialized Loan Servicing LLC
Civil Action No. 2016-CP-10-01987
NMRS File No. 42753.01622

Dear Ms. Armstrong:

Enclosed please find an original and one copy of Plaintiff's Answer to Defendant's Counterclaims and Plaintiff's Motion to Set Aside Default Entry along with our firm's filing fee in the above referenced matter. Please file the originals and return clocked in copies to our courier.

By copy of this letter I am hereby serving counsel for the defendants a copy of same. Please contact me should you have any questions.

Very truly yours,

for DRM

Daniel R. McCoy

DRM:dp
Enclosures
cc: Brian M. Knowles, Esquire

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Wilmington Trust, National Association, Plaintiff, vs. Temisan Etikerentse, et al., Defendant.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2016-CP-10-1987 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
Daniel R. McCoy, Bar No. 80128	Brian M. Knowles, Bar No. 73108
Address:	Address:
PO Box 3939, Myrtle Beach, SC 29578	1212 Wappoo Road, Charleston, SC 29407
Phone: 843-946-5670 Fax 843-448-3437	Phone: 843-810-7596 Fax 877-408-1078
E-mail: dan.mccoy@nelsonmullins.com Other:	E-mail: brian@knowlesinternational.com 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: Motion to Strike Reply
Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order

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

_____ _____
Signature of Attorney for ☐ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (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.	JUDGE CODE _____
☐ Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
2016-CP-10-1987

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-1,

Plaintiff,

vs.

TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE, IJEOMA ETIKERENTSE a/k/a IJEOMA ETKIS, SUNTRUST MORTGAGE, INC., CAPITAL BANK CORPORATION, BANK OF AMERICA, NA, KEYBANK NATIONAL ASSOCIATION, AND OLDE PARK HOMEOWNERS ASSOCIATION, INC.,

Defendants.

TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE AND IJEOMA ETIKERENTSE a/k/a IJEOMA ETKIS,

Third-Party Plaintiffs,

vs.

SPECIALIZED LOAN SERVICING, LLC a/k/a SLS,

Third-Party Defendant.

MOTION TO STRIKE REPLY

FILED
2017 JAN 10 PM 3:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: DAMON C. WLODARCYZK AND DANIEL R. MCCOY, ATTORNEYS FOR PLAINTIFF:

COME NOW Defendants Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etkis (hereinafter collectively "Defendants"), by and through their undersigned counsel, and move to strike Plaintiff's Wilmington Trust, National Association, as Successor Trustee to Citibank, N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns Alt-A Trust II, Mortgage Pass-Through Certificates Series 2007-1 (hereinafter "Wilmington Trust") untimely Reply to Defendants' Answer, Counterclaims, and Third-Party Complaint, pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

On September 8, 2009, Citibank, N.A. as Trustee of Structured Asset Mortgage Investements II Inc., Bear Stearns Alt-A Trust II, Mortgage Pass-Through Certificates Series 2007-1 filed a foreclosure lawsuit related to the Defendants' primary residence in the Charleston County Court of Common Pleas and bearing civil action number 2009-CP-10-5635, and said case was dismissed on or about November 3, 2015. On November 4, 2015, Citibank assigned ownership of subject matter note and mortgage to Plaintiff. On April 8, 2016, Plaintiff initiated this action by filing its Summons and Complaint for foreclosure of the Defendants' primary residence. On April 19, 2016, Defendants were served with the Summons and Complaint. On April 21, 2016, counsel for the Plaintiff indicated via e-mail that a new foreclosure intervention form was not required (attached hereto as Exhibit A). On or about September 15, 2016, Plaintiff, by and through its' counsel, served Defendants and filed a Notice of Denial of Foreclosure Intervention and Attorney Certification. Counsel for Defendants requested a thirty day extension (by November 20, 2016) to file a responsive pleading, which was agreed to by counsel for Plaintiff by way of Plaintiff's counsel's e-mail dated October 26, 2016 (attached hereto as Exhibit B). On November 17, 2016, Defendants filed their Answer, Counterclaims, and Third-Party Complaint, and served Plaintiff via U.S. First Class Mail and e-mail on the same day, incorporated herein by reference.

On December 13, 2016, Defendants' counsel was contacted by counsel for Third-Party Defendant, Specialized Loan Servicing, LLC a/k/a SLS, requesting a thirty day extension (to January 20, 2017) to file a responsive pleading, which was granted via e-mails dated December 13 and 14, 2016 (attached hereto as Exhibit C). On January 3, 2017, Defendants filed a Motion for Entry of Default and for Default Judgment against Plaintiff, incorporated herein by reference. As evidenced by the Affidavit of Default filed with the aforementioned Motion for Entry of Default and for Default Judgment, and incorporated herein by reference, as of the date of the filing of that motion on January 3, 2017, Plaintiff had not filed a Reply to Defendants' Counterclaims, and Plaintiff was in default. On January 4, 2017, counsel for Plaintiff, Damon Wlodarczyk through Riley, Pope & Laney, LLC, sent counsel for Defendants an e-mail requesting that Defendants withdraw their Motion for Entry of Default and "allow ***me*** to file and serve the Reply" (emphasis added) (attached hereto as Exhibit D). On January 6, 2017, Nelson Mullins, ***not*** Riley, Pope & Laney, LLC, filed Plaintiff's Reply to Defendants' Answer, Counterclaims, and Third-Party Complaint, incorporated herein by reference.

Pursuant to Rule 11(b) of the South Carolina Rules of Civil Procedure, "[a]n attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon application, by order of the Court, ***and not otherwise***. Written notice of change of attorney must be served as provided by Rule 5" (emphasis added). "In all actions, it is of vital importance, not only to the parties involved but to the court as well, that the correct attorneys are listed as the attorneys of record. The best way to achieve this is by strict adherence to Rule 11(b), which was designed to eliminate any confusion regarding which attorneys are representing parties by requiring that any changes by made by application to the court." *Culbertson v. Clemens*, 322 S.C. 20, 25, 471 S.E.2d 163, 165 (1996). Of note, no motion to substitute counsel or notice of appearance for Nelson Mullins has been filed with this Court, and counsel has not complied with Rule 11(b).

As Attorney Wlodarcyzk states and concedes on his law firm's website profile, "I find the practice of law as an involved game of professional chess: each side is playing to win; ***there are time limits involved*** [...]" (emphasis added) (attached hereto as Exhibit E). "A lawyer shall act with reasonable diligence and promptness in representing a client." Rule 1.3, South Carolina Rules of Professional Conduct. Such Reply is untimely under Rule 12(a) of the South Carolina Rules of Civil Procedure, which allows thirty days for replies.

No good cause or excuse exists as required by Rule 6(b)(2) of the South Carolina Rules of Civil Procedure to justify Plaintiff's delay in replying.

This Court may strike a defective pleading under Rule 12(f) of the South Carolina Rules of Civil Procedure. Because Plaintiff's untimely Reply is defective, Defendants are entitled to have Plaintiff's Reply struck and an entry of default against Plaintiff on Defendants' Counterclaims pursuant to Rule 55(a) of the South Carolina Rules of Civil Procedure. Upon the hearing of this motion and that of Defendants' Motion for Entry of Default and for Default Judgment, Defendants further request that this Court schedule a default judgment hearing in this matter pursuant to Rule 55(b) of the South Carolina Rules of Civil Procedure.

Defendants will file a memorandum of law in support of this Motion in advance of any hearing thereon.

WHEREFORE, Defendants pray that this Honorable Court:

A. Strike Plaintiff's untimely filed Reply;

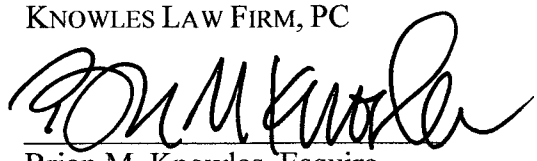
B. Enter Plaintiff's default on Defendants' Counterclaims;

B. After proper notice and hearing, enter default judgment upon Defendants' Counterclaims in an amount to be proven at the hearing thereon; and

C. Granting such other and further relief as the Court may deem just and proper.

Respectfully submitted,

KNOWLES LAW FIRM, PC



Brian M. Knowles, Esquire
S.C. Bar No. 73018
1212 Wappoo Road, Charleston, SC 29407
P.O. Box 50201, Summerville, SC 29485
T: 843-810-7596
F: 877-408-1078
brian@knowlesinternational.com
www.knowlesinternational.com

Attorney for Defendants/Third-Party Plaintiffs Temisan Etikerentse a/k/a Temisan L. Etikerentse and Ijeoma Etikerentse a/k/a Ijeoma Etkis

January 10, 2017
Charleston, South Carolina

EXHIBIT A

Gmail [redacted]

Wilmington Trust v. Etikerentse (File No. 4035.05815)

Jayme Shy <JShy@rplfirm.com> Thu, Apr 21, 2016 at 9:51 AM
To: Brian Knowles <bknowles.lawfirm@gmail.com>

Brian,

Good morning. Yes, we will not require the Etikerentses to sign a new foreclosure intervention. Your email suffices as notice that they are attempting to pursue foreclosure alternatives. We will follow-up with our client and try to get some information on our end regarding the current review. We are fine with the 30-day extension to file an Answer.

Thank you,

Jayme

Jayme L. Shy

Attorney and Counselor at Law

Riley Pope & Laney, LLC

2838 Devine Street

P.O. Box 11412 (29211)

Columbia, SC 29205

(803)799-9993

(803)239-1414 (fax)

jshy@rplfirm.com

www.rplfirm.com

This e-mail message is confidential. It may contain information that is privileged or subject to other confidentiality requirements

EXHIBIT B

Gmail

Fw: Scan Data from [XRX9C934E2683E4]

Jayme Shy <JShy@rplfirm.com> Wed, Oct 26, 2016 at 5:30 PM
To: Brian Knowles <bknowles.lawfirm@gmail.com>
Cc: Sherry Rampey <srampey@rplfirm.com>

Brian,

I received your voicemail. Under the civ pro rules, I can only grant a 30-day extension without court approval. That stops us at November 20, 2016: FIT denial mailed Sept. 15, 2016 + mailbox rule, so original deadline would have been on or about Oct. 20. Let me know if you calculate differently.

Have a good evening,

Jayme

Jayme L. Shy

Attorney and Counselor at Law

Riley Pope & Laney, LLC

2838 Devine Street

P.O. Box 11412 (29211)

Columbia, SC 29205

(803)799-9993

(803)239-1414 (fax)

jshy@rplfirm.com

www.rplfirm.com

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EXHIBIT C

Print | Close Window

Subject: RE: Wilmington Trust v. Etikerentse v. Specialized Loan Servicing (2016-CP-10-1987)
From: brian@knowlesinternational.com
Date: Wed, Dec 14, 2016 9:44 pm
To: "Dan McCoy" <dan.mccoy@nelsonmullins.com>
Cc: "Deia Patsel" <Deia.Patsel@nelsonmullins.com>

Hey Dan. Good speaking with, as well. Extension is granted until January 20, 2017. Have a good holiday. Brian

-

Brian M. Knowles, Esquire*
1212 Wappoo Road, Charleston, SC USA 29407
P.O. Box 50201, Summerville, SC USA 29485
T: 1 843 810 7596
F: 1 877 408 1078
brian@knowlesinternational.com
www.knowlesinternational.com

*Licensed in SC and Washington, DC; Admitted Solicitor of the Senior Courts of England and Wales

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> -------- Original Message --------
> Subject: Wilmington Trust v. Etikerentse v. Specialized Loan Servicing (2016-CP-10-1987)
> From: Dan McCoy <dan.mccoy@nelsonmullins.com>
> Date: Tue, December 13, 2016 3:07 pm
> To: "brian@knowlesinternational.com" <brian@knowlesinternational.com>
> Cc: Deia Patsel <Deia.Patsel@nelsonmullins.com>
>
> Brian,
>
> Thank you for speaking to me about the above referenced matter. Per our conversation, please respond to this email confirming the 30 extension you have provided me to answer your third-party complaint served on Specialized Loan Servicing. This extension would make the new answer deadline Jan. 20, 2016. Thank you for your consent to the extension and please let me know if you need anything at all.
>
> Thanks,
>
> Dan

Nelson Mullins

Daniel R. McCoy
Attorney at Law
dan.mccoy@nelsonmullins.com

Nelson Mullins Riley & Scarborough LLP
BNC Bank Corporate Center, Suite 300
3751 Robert M. Grissom Parkway
Myrtle Beach, SC 29577
Tel: 843.946.5670 Fax: 843.448.3500

www.nelsonmullins.com
(View Bio)

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EXHIBIT D

Print | Close Window

Subject: RE: Wilmington Trust v. Etikerentse v. SLS
From: brian@knowlesinternational.com
Date: Thu, Jan 05, 2017 3:18 pm
To: "Damon Wlodarczyk" <damonW@rplfirm.com>
Cc: "Jayme Shy" <JShy@rplfirm.com>, "Kim Bickford" <kbickford@rplfirm.com>
Bcc: "Brian Knowles" <bknowles.lawfirm@gmail.com>

Hello Damon. I am sorry, but after careful consideration and consultation with my clients, I do not have the authority to agree to withdraw the motion for entry of default and for default judgment. Brian

-

Brian M. Knowles, Esquire*
1212 Wappoo Road, Charleston, SC USA 29407
P.O. Box 50201, Summerville, SC USA 29485
T: 1 843 810 7596
F: 1 877 408 1078
brian@knowlesinternational.com
www.knowlesinternational.com

*Licensed in SC and Washington, DC; Admitted Solicitor of the Senior Courts of England and Wales

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> -------- Original Message --------
> Subject: RE: Wilmington Trust v. Etikerentse v. SLS
> From: Damon Wlodarczyk <damonW@rplfirm.com>
> Date: Wed, January 04, 2017 9:35 am
> To: "brian@knowlesinternational.com" <brian@knowlesinternational.com>
> Cc: Jayme Shy <JShy@rplfirm.com>, Kim Bickford <kbickford@rplfirm.com>
>
> Brian:
>
> I received your motion for entry of default against the Plaintiff. I prepared a Reply to be filed and timely served and was informed that Nelson Mullins would be handling both the Third-Party Complaint and Reply to the counterclaims. Additionally, I was informed that Nelson Mullins obtained an extension to answer and I could remove the matter from my calendar. After receiving your motion, apparently, there was some miscommunication between me and the attorney at Nelson Mullins, who has informed me that he was only retained to answer the third party complaint.
>
> Since the default resulted from a miscommunication and there would be no prejudice in allowing a Reply to be filed, I would appreciate if you would withdraw the motion and allow me

to file and serve the Reply that has already been prepared.

Please feel free to call me to discuss. Thanks,

Damon

Damon C. Wlodarczyk
Attorney and Counselor at Law
Riley Pope & Laney, LLC
2838 Devine Street
Post Office Box 11412 (29211)
Columbia, South Carolina 29205
Office: 803-799-9993
Facsimile: 803-239-1414
E-mail: damonw@rplfirm.com
Web: www.rplfirm.com

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From: [mailto:brian@knowlesinternational.com]
Sent: Tuesday, January 03, 2017 10:51 PM
To: Jayme Shy
Cc: Andrew Knitz
Subject: Wilmington Trust v. Etikerentse v. SLS

Hello Jayme. Hope you had a Happy New Years. Please see the attached that was filed today with the Clerk. Brian

-

Brian M. Knowles, Esquire*
1212 Wappoo Road, Charleston, SC USA 29407
P.O. Box 50201, Summerville, SC USA 29485
T: 1 843 810 7596
F: 1 877 408 1078
brian@knowlesinternational.com
www.knowlesinternational.com

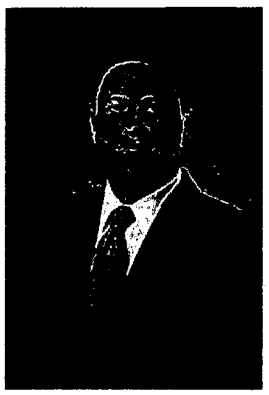
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EXHIBIT E

RILEY POPE & LANEY, LLC
Attorneys and Counselors at Law

(803) 799-9993 info@rplfirm.com Maps and Directions



Contact Information

Office: (803) 799-9993
Fax: (803) 239-1414
Email: damonW@rplfirm.com
Download vCard

"I find the practice of law as an involved game of professional chess: each side is playing to win; there are time limits involved; strategy and preparation are paramount. I welcome and embrace every legal challenge presented and look forward to vigorously and successfully representing my clients in every legal forum presented".

Damon Wlodarczyk

Damon C. Wlodarczyk represents clients in the areas of insurance defense and coverage disputes, government litigation, general civil litigation and foreclosure litigation at the administrative, trial, and appellate levels. Damon enlisted in the United States Marine Corps upon graduating from high school. Damon received an honorable discharge after four years of service in the Marines. He then attended the University of South Carolina – Aiken, where he graduated Magna Cum Laude with a Bachelor's Degree in Political Science. Damon attended law school at the University of North Carolina. Damon earned his Juris Doctor from the University of North Carolina in 2002. Prior to joining the firm, Damon was a staff attorney for the Supreme Court of South Carolina and a Partner at McDonald, McKenzie, Ruben, Miller & Lybrand, LLP, where he had an active trial and appellate practice which focused on tort litigation, insurance defense, insurance coverage, products liability, construction litigation and insurance subrogation. Damon is admitted to practice before all state and federal courts in South Carolina, the United States Court of Appeals for the Fourth Circuit, and the United States Court of Appeals for the Federal Circuit. He is a member of the South Carolina Bar, the Richland County Bar Association, and he is also a former council member for the South Carolina Bar Trial and Appellate Advocacy Section. Damon also volunteers as a mentor for the Lawyer Mentoring Program and as a panel member for the Richland County Fee Dispute Resolution Board. Damon, his wife Christine, and their two children reside in West Columbia, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	2016-CP-10-1987
	)	
WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-1,	)	
Plaintiff,	)	
vs.	)	
TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE, IJEOMA ETIKERENTSE a/k/a IJEOMA ETKIS, SUNTRUST MORTGAGE, INC., CAPITAL BANK CORPORATION, BANK OF AMERICA, NA, KEYBANK NATIONAL ASSOCIATION, AND OLDE PARK HOMEOWNERS ASSOCIATION, INC.,	)	
Defendants.	)	
TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE AND IJEOMA ETIKERENTSE a/k/a IJEOMA ETKIS,	)	
Third-Party Plaintiffs,	)	
vs.	)	
SPECIALIZED LOAN SERVICING, LLC a/k/a SLS,	)	
Third-Party Defendant.	)	

2016-CP-10-1987

CERTIFICATE OF SERVICE

I, Brian M. Knowles, on behalf of Knowles Law Firm, PC, hereby certify that I have on January 10, 2017, served a copy of the Motion to Strike upon all parties of record via U.S. First Class Mail with proper postage prepaid to the following:

Riley Pope & Laney, LLC
Attention: Damon C. Wlodarcyzk, Esquire
2838 Devine Street
Columbia, SC 29205

Attorney for Plaintiff

Nelson Mullins Riley & Scarborough, LLP
Attention: Daniel R. McCoy, Esquire
BNC Bank Corporate Center, Suite 300
3751 Robert M. Grissom Parkway
Myrtle Beach, SC 29577

Attorney for Plaintiff and Third-Party Defendant Specialized Loan Servicing, LLC a/k/a SLS

FILED
2017 JAN 10 PM 3:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY

KNOWLESLAW FIRM, PC

BRIAN M. KNOWLES, ATTORNEY AT LAW & SOLICITOR
1212 WAPPOO RD., CHARLESTON, SC 29407
P.O. BOX 50201, SUMMERVILLE, SC 29485

T: 843.810.7596
F: 877.408.1078

www.knowlesinternational.com
brian@knowlesinternational.com

LICENSED IN SOUTH CAROLINA & WASHINGTON, DC

ADMITTED SOLICITOR OF THE SENIOR COURTS OF ENGLAND AND WALES

January 10, 2017

VIA HAND DELIVERY
The Honorable Julie J. Armstrong
Charleston County, Clerk of Court
Court of Common Pleas
100 Broad Street, Suite 106
Charleston, SC 29401

RE: **Wilmington Trust, National Association, as Successor Trustee to Citibank, N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns Alt-A Trust II, Mortgage Pass Through Certificates Series 2007-1 v. Temisan Etikerentse a/k/a Temisan L. Etikerentse, *et al.***
Civil Action No.: 2016-CP-10-1987

Dear Julie:

Enclosed for filing, please find the originals and copies of the Motion to Strike Reply and Certificate of Service for the same in the above-captioned case.

Please file these documents and return the filed copies to me via courier. By copy of this letter to all parties below, I am serving them with the same on today's date.

If you have any questions and/or concerns, do not hesitate to contact me.

All the best,

Brian M. Knowles

Encl.

cc: Damon C. Wlodarcyzk, Esquire
Daniel R. McCoy, Esquire
Temisan L. Etikerentse
Ijeoma Etikerentse

STATE OF SOUTH CAROLINA COUNTY OF **CHARLESTON** Wilmington Trust, National Association as Successor Trustee to Citibank, N.A. et al. Plaintiff, vs. Temisan Etikerentse, et al. Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-02762 **MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
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☒ **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: Third-party Defendant Specialized Loan Servicing LLC;s Motion for Summary Judgment and Memorandum in Support

Estimated Time Needed: 30 minutes 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.

Blake T. Williams
Signature of Attorney for ☐ Plaintiff /☒ Defendant

October 16, 2019
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: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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

Plaintiff,

vs.

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

Defendants.

Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis,

Third-Party Plaintiffs,

vs.

Specialized Loan Servicing LLC a/k/a SLS,

Third-Party Defendant.

Civil Action No. 2018-CP-10-02762

THIRD-PARTY DEFENDANT SPECIALIZED LOAN SERVICING LLC'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT

2019 OCT 17 AM 11:40

Third-Party Defendant Specialized Loan Servicing, LLC ("SLS"), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, submits this motion and memorandum in support for

summary judgment against the third-party claims asserted against it in this suit by Third-Party Plaintiffs Temisan Etikerentse ("Dr. Etikerentse") and Ijeoma Etikerentse (together, "Plaintiffs").

This is a foreclosure action brought by Plaintiff Wilmington Trust ("Wilmington"), the holder of Plaintiffs' loan. In response to Wilmington's complaint, Defendants/Third-Party Plaintiffs ("Plaintiffs") asserted counterclaims against Wilmington and third-party claims against SLS, which is the servicer of Plaintiffs' loan. SLS moves for summary judgment on each of Plaintiffs' third-party claims, as there are no genuine issues of material fact and those claims fail as a matter of law. As Dr. Etikerentse acknowledged in his deposition, Plaintiffs' primary goal in asserting claims against SLS was to obtain a loan modification to try to keep the house. However, the plain fact is that SLS offered a loan modification on ***two previous occasions*** (despite being under no obligation to conduct the second review) and neither was accepted by Plaintiffs. This alone should be fatal to Plaintiffs' claims.

Specifically, SLS is entitled to summary judgment on all of Plaintiffs' claims because:

- Plaintiffs' claims are not proper third-party claims, as SLS does not share any potential for liability on Wilmington's foreclosure claim against Plaintiffs.

- Plaintiff's breach of contract claim fails because no contract exists between Plaintiffs and SLS and, in any event, there is no evidence of any breach of the Mortgage Loan.

- The Home Affordable Modification Program ("HAMP") does not provide a private right of action and Plaintiffs' declaratory judgment claim is merely an attempt to circumvent this fact.

- Plaintiffs' claim for violation of the South Carolina Unfair Trade Practices Act ("SCUTPA") fails because they cannot establish the required elements of an unfair/deceptive act, impact on the public interest, or resulting ascertainable monetary loss.

- Plaintiffs' claim for violation of the Real Estate Settlement Procedures Act ("RESPA") fails because there is no evidence of a RESPA violation or any resulting damages.

- Plaintiff Temisan Etikerentse's claims are barred in their entirety to the extent they arose prior to his bankruptcy filing in August of 2014.

BACKGROUND

On June 15, 2007, Temisan Etikerentse and Ijeoma Etikerentse executed a $1,402,500.00 adjustable rate note ("Note") with Countrywide Home Loans, Inc. (*See* Note, Ex. A to Compl.) This Note was secured by a Mortgage (the "Mortgage" together with the Note, the "Mortgage Loan") on real property located at 783 Navigators Run, Mount Pleasant, S.C. (*See* Mortgage, Ex. B to Compl.) Wilmington is the current holder of the Mortgage Loan.

SLS is not, and has never been, a party to the Note or Mortgage at issue in this action. SLS merely services the Mortgage Loan on behalf of the holder. (*See* Affidavit of Mark McCloskey ("Aff.") at ¶ 8, attached as **Exhibit A**.) Plaintiffs defaulted on the note on December 1, 2008 and have remained in default through the present. (*Id.* at ¶ 9.)

Wilmington filed this action on April 16, 2016. Defendants/Third-Party Plaintiffs filed their Answer, Counterclaims, and Third-Party Claims against SLS on November 17, 2016. The case was dismissed pursuant to Rule 40(j) on July 14, 2017 but restored on June 1, 2018.

SLS initially filed a motion for summary judgment on August 30, 2018 relying primarily on a supporting affidavit from a representative of SLS. (*See* Ex. A, Aff.) The Court issued a short Form 4 Order denying that motion without prejudice so that the parties could complete discovery

SLS then proceeded with conducting additional discovery by deposing Dr. Etikerentse. Discovery is now complete, and Plaintiffs' testimony demonstrates that there are no genuine issues of material fact and therefore SLS is entitled to summary judgment.

LEGAL STANDARD

A motion for summary judgment should be granted where "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), SCRCP. A party opposing a motion for summary judgment must "'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a ***genuine issue for trial.***'" *Hedgepath v. AT&T Co.*, 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001) (emphasis in original). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Id.* at 355, 559 S.E.2d at 336. Reliance on self-serving allegations in a pleading is insufficient to overcome a motion for summary judgment. *See* Rule 56(e), SCRCP; *see also Singletary v. Wachovia Mortg. Corp.*, No. 2:11-0484-RMG-BM, 2013 WL 1194863, at *7 (D.S.C. Jan. 28, 2013) (unsubstantiated allegations in plaintiff's verified complaint did not create an issue of fact where record evidence established that bank provided notices at issue). Finally, "[a] party cannot escape summary judgment on the mere hope that something may develop at trial." *Champion Int'l Corp. v. Eubanks*, 291 S.C. 395, 398, 353 S.E.2d 880, 882 (Ct. App. 1987).

ARGUMENT

I. SLS is Not a Proper Third-Party Defendant under Rule 14(a).

Pursuant to Rule 14(a) of the South Carolina Rules of Civil Procedure, "a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action ***who is or may be liable to him for all or part of the plaintiff's claim against him***." Rule 14(a), SCRCP (emphasis added). Thus, "[u]nder Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant founded upon ***derivative*** liability," meaning the "outcome of the princi[pal] claim must impact the third-party defendant's liability."

First Gen. Servs. of Charleston, Inc. v. Miller, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994) (emphasis added). In other words, would the claim of the third-party plaintiff "impose liability upon [the third-party defendant] for all or part of [the plaintiff's] claim." *Id.*

Plaintiffs are not proper third-party plaintiffs under Rule 14(a). This is a foreclosure action filed by Wilmington against Plaintiffs for their failure to satisfy their obligations under the Mortgage Loan. SLS, which is not a party to the Mortgage Loan, is not and cannot possibly be liable, in whole or in part, for Wilmington's ***foreclosure*** claim against Plaintiffs. Plaintiffs do not allege that they are entitled to contractual or common law indemnity from SLS. The District of South Carolina addressed this exact issue in *Deutsche Bank National Trust Co. v. Stevenson*, No. 2:12-1854-CWH, 2013 WL 12241630, at *3 (D.S.C. Jan. 30, 2013) under the nearly identical federal Rule 14(a). In *Stevenson*, the defendant asserted third-party claims against the servicer were for violation of SCUTPA and breach of the duty of good faith premised on the servicer's failure to meaningfully engage in loss mitigation. *See id.* The District Court agreed with the servicer that "[t]he outcome of [plaintiff's] foreclosure claim would not impact the liability of [the servicer]." *Id.* Thus, the third-party complaint was not valid as it "seeks no indemnification, and there is no relationship to the plaintiff's claim against the third-party plaintiff." *Id.*

This is precisely what occurred here—Wilmington filed a foreclosure claim against Plaintiffs, which requires it only to prove that it holds the Mortgage Loan and that Plaintiffs are in default. (*See generally* Compl.) SLS cannot possibly be liable for Wilmington's foreclosure claim against Plaintiff and, therefore, the Plaintiffs' third-party claims fail as a matter of law. *See* Rule 14(a), SCRCP; *see also Stevenson*, 2013 WL 12241630, at *3.

II. Plaintiffs' breach of contract claim fails because there is no contract between SLS and Plaintiffs and, in any event, there is no evidence supporting a breach of an alleged contract.

A. There is no contract between Plaintiffs and SLS.

Plaintiff's Count I, alleging that SLS breached the Mortgage, fails for a fundamental reason: SLS is not a party to the Mortgage, or a successor thereto.[1] Thus, there is no contract between Plaintiffs and SLS. In his deposition, Dr. Etikerentse acknowledged that he never signed a contract with SLS. (*See* Dep. of Dr. Temisan Etikerentse ("Dep.") at 40:20-41:7, excerpts and relevant exhibits attached as **Exhibit B**.) He further acknowledged that the Mortgage Loan was a contract between him and Countrywide, not SLS. (*Id.* at 48:12-25.)

A necessary element of a breach of contract claim is, of course, the existence of a contract. *See Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009) ("The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach."). Courts that have considered the issue have repeatedly held that loan servicers are not parties to a loan contract and cannot be liable for a breach of contract claim brought by a borrower. *See, e.g., Englert v. Nationstar Mortg., Inc.*, No. 1:15-cv-303-GBL-MSN, 2015 WL 9275662, at *4 (E.D. Va. Dec. 18, 2015) ("As the loan servicer, Nationstar acts on behalf of BONY to collect payments on the loan; but lacking evidence of a contract creating legal obligations between Plaintiff and Nationstar, Nationstar is not in contractual privity with Plaintiff and therefore cannot be liable for breach of contract."); *Edwards v. Ocwen Loan Serv., LLC*, 24 F. Supp. 3d 21, 28 (D.D.C. 2014) ("Judges around the country . . . have held that a loan servicer, as

[1] In their response to SLS's initial motion for summary judgment, Plaintiffs acknowledged that there was no contract between them and SLS and that this "undermined" this cause of action.

a lender's agent, has no contractual relationship or privity with the borrower and therefore cannot be sued for breach of contract.").

Therefore, Plaintiffs' breach of contract claim fails as a matter of law due to a lack of privity. SLS is entitled to summary judgment on this claim.

B. There is no evidence of any breach of the Mortgage Loan.

Plaintiffs' claim also fails because there is no evidence to establish a breach. In his deposition, Dr. Etikerentse could not identify any provisions of the Mortgage Loan that he contended were breached. (*See* Ex. B, Dep. at 48:12-49:16.) Instead, he simply noted that he would have to "leave that to the lawyers." (*Id.*)

In their Third-Party Complaint, Plaintiffs appeared to base their breach of contract claim on the allegation that the that the Mortgage Loan was breached because they never received a Notice of Default and Intent to Foreclose pursuant to Paragraph 22 of their Mortgage. (*See* Third-Party Complaint, ¶¶ 62, 78.) However, in his deposition, Dr. Etikerentse acknowledged receiving the Notice and understanding that it meant he was in default. (*See* Ex. B, Dep. at 31:19-32:9; Notice Letter, Ex. 5 to Dep.) Therefore, there is no support for the Third Party Complaint's allegation that Plaintiffs did not receive the notice and, in fact, it is directly contradicted by the record. Thus, Plaintiffs have not established a breach of contract. Summary judgment is proper.

III. Plaintiffs' declaratory judgment claim is an improper attempt to evade the bar on private rights of action under HAMP.

Plaintiffs' second cause of action purports to seek a declaratory judgment based on the allegation that SLS had "a duty to comply with policies and procedures and federal regulations and breached this duty by failing to comply with the same." (Third Party Compl. at ¶¶ 84, 85.)

This claim is an improper attempt to circumvent the established legal principal that HAMP does not provide a private right of action.

As the District of South Carolina and Fourth Circuit have recognized, "the denial of a loan modification under HAMP [or other similar program] does not create a private cause of action." *Weber v. Bank of America, N.A.*, 2013 U.S. Dist. LEXIS 128863, at *12 (D.S.C. Sep. 10, 2013). *see also Spaulding v. Wells Fargo Bank, N.A.*, 714 F.3d 769, 775, 776 n.4 (4th Cir. 2013) (noting there is no private right of action under HAMP or HAMP Guidelines). Moreover, litigants cannot evade the lack of a private right of action under HAMP by asserting statutory or common law claims based on an alleged violation of HAMP. *See, e.g., Steffens v. Am. Home Mortg. Sevicing, Inc.*, No. CIV.A. 6:10-1788-JMC, 2011 WL 901812, at *2 (D.S.C. Jan. 5, 2011), *report and recommendation adopted* 2011 WL 901179 (D.S.C. Mar. 15, 2011) ("[T]he denial of a loan modification under HAMP does not create a private cause of action. . . . Despite the fact that [plaintiff] did not label her claims as 'HAMP violations,' the underlying factual and legal basis for each is squarely based on HAMP."); *Grenadier v. BWW Law Grp.*, No. 1:14CV827 LMB/TCB, 2015 WL 417839, at *8 (E.D. Va. Jan. 30, 2015), *aff'd*, 612 F. App'x 190 (4th Cir. 2015) (rejecting claims based on alleged HAMP violations that were restyled as, *inter alia*, claims for "wrongful foreclosure" because HAMP provided no private right of action). This is particularly true for Plaintiffs' declaratory judgment claim because South Carolina law provides that "[a] suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue." *Doe v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n*, 347 S.C. 642, 645, 557 S.Ed.2d 670, 672 (2001); *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct. App. 2000) (courts look to the essential character of the cause of action in reviewing declaratory judgment claims).

Accordingly, stripped of its declaratory judgment label, Plaintiffs' claim is no more than an improper attempt to assert a private right of action under HAMP where none exists. *See Spaulding*, 714 F.3d at 775, 776 n.4. Therefore, this claim fails as a matter of law and the Court should grant summary judgment in SLS's favor.

IV. Plaintiffs' SCUTPA claim fails to satisfy any of the three elements.

The SCUTPA prohibits "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. Code Ann. § 39-5-20. To prove a claim for violation of the SCUTPA, the plaintiff must show "(1) that the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act." *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 815-16 (2013) (internal citations omitted). Plaintiffs' claim fails as to each element.

A. Plaintiffs have not identified any unfair or deceptive act.

Plaintiffs did not allege, and Dr. Etikerentse did not identify, any conduct that was ***unfair*** or ***deceptive*** within the meaning of the act. An act is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive." *Gentry v. Yonce*, 337 S.C. 1, 12, 522 S.E.2d 137, 143 (1999). "An act is 'deceptive' when it has a tendency to deceive." *Id.*

The supposed "bad acts" of SLS that Dr. Etikerentse identified in his deposition were its failure to offer him a loan modification on terms that he could afford and not sending the notice of intent to foreclose. (*See* Ex. B, Dep. at 42:12-43:16, 56:23-58:17.) Thus, at most Plaintiffs have asserted a violation of HAMP and breach of contract by SLS, neither of which is insufficient to support a SCUTPA claim. *See Weber v. Bank of Am. NA*, No. 0:13-CV-01999-JFA, 2013 WL

4820446, at *5 (D.S.C. Sept. 10, 2013) (finding no unfair or deceptive act where the alleged SCUTPA violation was premised on the lender's failure to offer a loan modification pursuant to, *inter alia*, HAMP); *Columbia E. Assoc. v. Bi-Lo, Inc.*, 299 S.C. 515, 386 S.E.2d 259, 263 (Ct. App. 1989) (noting that even "a ***deliberate*** or ***intentional*** breach of a valid contract, without more, does not constitute a violation of the Unfair Trade Practices Act" (emphasis added)). There is no evidence of any ***unfair*** or ***deceptive*** conduct.

Additionally, Dr. Etikerentse's assertions about SLS's "bad acts" are belied by the record. First, Dr. Etikerentse ***acknowledged*** receiving the Notice of Intent to Foreclose and that it meant he was in default. (*See* Ex. B, Dep. at 31:19-32:9; Notice Letter, Ex. 5 to Dep.) Second, SLS ***did*** offer two loan modifications, neither of which were accepted. (*See* Ex. A, Aff. at ¶ 8; Modification Approval Letter, Ex. 3 to Dep.; Modification Approval and Loan Modification, Exs. 6 & 7 to Dep.) Thus, there is simply no evidence satisfying the statutory definitions and, therefore, Plaintiffs have not established the first element of their SCUTPA claim.

B. Plaintiffs cannot show impact on the public interest.

"To be actionable, under [SC]UTPA, the unfair or deceptive act or practice must have an impact upon the public interest." *Crary v. Djebelli*, 329 S.C. 385, 387, 496 S.E.2d 21, 22-23 (1998) (emphasis added). "Unfair or deceptive acts or practices have an impact upon the public interest if the acts or practices have the potential for repetition." *Id.* Generally, to establish the potential for repetition requirement, the claimant must make a "(1) showing the same kind of actions occurred in the past, thus making it likely they will occur absent deterrence, or (2) . . . showing the company's procedures create a potential for repetition of the unfair and deceptive acts." *Daisy Outdoor Adver. Co. v. Abbott*, 322 S.C. 489, 496, 473 S.E.2d 47, 51 (1996).

Plaintiffs cannot show any genuine issue of material fact on this element. During his deposition, Dr. Etikerentse was unable to articulate how SLS's actions had an impact on the public interest. He acknowledged that he does not know anybody else who has a loan being serviced by SLS, anyone that is suing SLS, or anyone that has any other specific claims against SLS. (*See* Ex. B, Dep. at 52:14-22.) At most, Plaintiffs have shown acts or practices affecting the parties to this commercial transaction. This is insufficient to support a SCUTPA violation. *See Ardis v. Cox*, 314 S.C. 512, 519, 431 S.E.2d 267, 271 (Ct. App. 1993) ("An unfair or deceptive act or practice that affects only the parties to a trade or commercial transaction is beyond the Act's embrace."). Therefore, there is no evidence supporting this element and Plaintiffs' claim fails as a matter of law.

C. There is no genuine issue of material fact regarding the existence of any damages.

The SCUTPA requires a Plaintiff to allege and prove an "***ascertainable*** loss of money or property" as required by the Act. *See* S.C. Code Ann. § 39-5-140(a) (emphasis added). "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." *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharm., Inc.*, 414 S.C. 33, 57-58, 777 S.E.2d 176, 189 (2015) (emphasis in original). Summary judgment is appropriate where the claimant has not demonstrated that he has suffered any actual loss. *See Wogan v. Kunze*, 366 S.C. 583, 609, 623 S.E.2d 107, 121 (Ct. App. 2005) (affirming grant of summary judgment where plaintiff did not demonstrate an ascertainable loss). Moreover, damages may not be awarded based on speculative proof. *See Woodson v. DLI Props., LLC*, 406 S.C. 517, 531, 753 S.E.2d 428, 435 (2014).

Plaintiffs' Third-Party Complaint sets does not identify any specific loss of money or property, but rather alleges only that they have suffered "an ascertainable loss of money." (*See*

Third-Party Complaint at ¶ 94.) In his deposition, Dr. Etikerentse specifically contradicted this assertion. When asked to identify how he and his wife had been harmed, for himself he only identified inability to access credit issues and "having this cloud hanging over my head." (*See* Ex. B, Dep. at 47:20-48:21; 50:20-51:18.) For his wife, he only identified the uncertainty regarding the foreclosure. (*See id.*) When asked if he was seeking money from SLS, he responded that "[m]y main goal is [keeping] the house." (*See id.* at 48:1-11.) He did not identify ***any*** pecuniary harm. Not receiving a loan modification on the terms that he desired is not an ascertainable loss of money or property since Plaintiffs were never entitled to a loan modification at all under the Mortgage Loan or applicable law. Additionally, the inability to access credit is unsurprising in light of the foreclosure. Wilmington was fully justified in filing the foreclosure action, as Dr. Etikerentse acknowledged that he has been in default since 2008. (*See id.* at 24:20-25:11.) In any event, this assertion relates to ***Wilmington's*** actions, not SLS. Thus, plaintiffs have not set forth any evidence supporting an actual loss or damage tied to a purported unfair or deceptive act by SLS.

Therefore, because there is no genuine issue of material fact as to any element of the SCUTPA claim, SLS is entitled to summary judgment on this cause of action as well.

V. Plaintiffs cannot show any evidence of a RESPA violation.

Finally, Plaintiffs' RESPA claim also fails as a matter of law. First, there is no genuine issue of material fact because SLS previously reviewed and approved Dr. Etikerentse for a loan modification in 2014. (*See* Ex. A, Aff. at ¶¶ 10-11.) This rendered all subsequent requests duplicative requests under RESPA, and thus SLS had no obligations with respect to any further requests. *See* 12 C.F.R. § 1024.41(i) (explaining that "[a] servicer is only required to comply with the requirements of this section for a single complete loss mitigation application for a borrower's

mortgage loan account"); *see also Mangum v. First Reliance Bank*, No. 4:16-CV-02214-RBH, 2017 WL 1062534, at *3 (D.S.C. Mar. 21, 2017) ("A servicer is only required to follow the loss mitigation rule procedures for a single, complete loss mitigation application. . . . In other words, a borrower may not bring an action for violation of the loss mitigation rule if that borrower has previously availed herself of the loss mitigation process."). RESPA does not require a servicer to offer a borrower any modification, let alone the modification of their choosing. *See* 12 C.F.R. § 1024.41(a) ("Nothing in § 1024.41 imposes a duty on a servicer to provide any borrower with any specific loss mitigation option."). Therefore, the mere fact that Plaintiffs did not like the terms of the 2014 modification does not change the result. Their RESPA claim fails as a matter of law.

Second, Plaintiffs' RESPA claim fails because they have not articulated the basis for it. In his deposition, Dr. Etikerentse could not explain the substance of his RESPA claim. (*See* Ex. C, Dep. at 52:23-53:12.) He could not identify a loss mitigation application that the RESPA claim supposedly related to, any notice that he claimed SLS should have given him that it did not, or any other communication to which he believed SLS did not provide a timely response. (*See id.* at 53:13-54:16.) Plaintiffs have not provided any other evidence that would support a claim for violation of RESPA. Therefore, the claim fails as a matter of law for this reason as well.

Finally, Plaintiffs have not produced any evidence of damages. To establish a claim for a RESPA violation, Plaintiffs ***must*** show damages ***as a result of*** the violation. *See Renfroe v. Nationstar Mortg., LLC*, 822 F.3d 1241, 1246 (11th Cir. 2016) ("We join our sister Circuits in recognizing that damages are an essential element in pleading a RESPA claim."); *see also Wirtz v. Specialized Loan Servicing, LLC*, 886 F.3d 713, 719 (8th Cir. 2018) (noting that damages are an essential element of a RESPA claim and a plaintiff fails to prove actual damages where the failure to comply with RESPA did not cause the purported harm). Dr. Etikerentse did identify any

damages as a result of any RESPA violation by SLS. Moreover, the undisputed record evidence shows that Plaintiffs defaulted on the loan in 2008 and have not made a full payment since that date. (*See* Ex. A, Aff. at ¶ 9.) Although Plaintiffs were not even entitled to a modification review, much less to receive a modification, SLS twice offered loan modifications that were rejected. Finally, Plaintiffs have not provided any other evidence of harm. Therefore, Plaintiffs cannot show damages and their RESPA claim also fails as a matter of law.

VI. To the extent they accrued prior to their bankruptcy discharge in 2014, Dr. Etikerentse's claims are barred.

When a debtor initiates a bankruptcy action, a bankruptcy estate is created, which includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). "The property of the estate includes causes of action, both active and potential, that exist at the time the bankruptcy action is commenced." *O'Neal v. Quicken Loans, Inc.*, No. 1:15-CV-03712-JMC, 2016 WL 3569402, at *3-4 (D.S.C. June 30, 2016). "In a Chapter 7 case, those causes of action, unless abandoned by the trustee or successfully exempted by the debtor, belong to the estate and can only be prosecuted by the trustee." *Evans v. Allied Air Enters., Inc.*, No. 5:10-2029-MBS, 2011 WL 4548307, at *2 (D.S.C. Sept. 30, 2011); *see also Wilson v. Dollar General Corp.*, 717 F.3d 337, 342 (4th Cir. 2013) ("In a Chapter 7 action, 'which requires liquidation and distribution of assets by the trustee . . . if a cause of action is part of the estate of the bankrupt then the trustee alone has standing to bring that claim.'").

"A debtor may pursue a claim belonging to the bankruptcy estate ***only*** if the trustee abandons it pursuant to 11 U.S.C. § 554(a) or if the bankruptcy court exempts it." *O'Neal*, 2016 WL 3569402, at *4 (emphasis added); *see also Steyr-Daimler-Puch of Am. Corp. v. Pappas*, 852 F.2d 132, 136 (4th Cir. 1998) (stating that "before the debtor or a creditor may pursue a claim,

there must be a judicial determination that the trustee in bankruptcy has abandoned the claim"). The bankruptcy trustee may "abandon any property of the estate after notice and a hearing." *Id.* "Alternatively, the debtor may request a court to order the trustee to abandon the property of the estate, but a hearing is required before the court may issue such order." *Id.* "If the debtor fails to disclose a claim, it remains part of the bankruptcy estate even after the bankruptcy case has closed, and the trustee's failure to pursue the nondisclosed claim does not constitute abandonment by the trustee." *In re DeWayne*, No. 18-80041-DD, 2018 WL 4056986, at *3 (Bankr. D.S.C. Aug. 24, 2018).

Dr. Etikerentse filed a voluntary bankruptcy petition pursuant to Chapter 7 of the Bankruptcy Code on August 7, 2014. The Bankruptcy Court entered its Order discharging Dr. Etikerentse on November 12, 2014. Upon Dr. Etikerentse's bankruptcy filing, any existing or potential causes of action at that time became part of the bankruptcy estate. He did not list any legal claims in his bankruptcy schedules. *See* Bankruptcy Schedules, *In re: Etikerentse*, No. 14-04497-dd (Bankr. D.S.C. Sept. 2, 2014), ECF No. 13. Because the claims were not disclosed and not abandoned by the Trustee, they remain part of the bankruptcy estate even though it is closed. As such, Dr. Etikerentse lacks standing to assert these claims. *In re: DeWayne*, No. AP 18-80041-DD, 2018 WL 4056986, at *3; *see also Bank of Am. v. Koola*, No. 2016-WP-071, 2016 WL 640530, at *1 (S.C. Ct. App. 2016) (same). Summary judgment is proper as to any claim asserted by Dr. Etikerentse based on allegations arising before November 12, 2014.

CONCLUSION

Plaintiffs' third-party claims were not properly brought pursuant to Rule 14(a) and must be dismissed for that reason alone. To the extent they are considered on the merits, they are belied

by the governing law or undisputed facts. Judgment should enter in favor of SLS, and SLS should be dismissed from this foreclosure action between mortgagee and mortgagor.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Blake T. Williams

Brian M. Barnwell
SC Bar No. 78249
E-Mail: brian.barnwell@nelsonmullins.com
Blake T. Williams
SC Bar No. 100794
E-Mail: blake.williams@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Specialized Loan Servicing, LLC

Columbia, South Carolina

October 16, 2019.

Exhibit A

(Affidavit of Mark McCloskey)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1,	)	Civil Action No. 2016-CP-10-01987
Plaintiff,	)	
vs.	)	
Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, Suntrust Mortgage Inc., Capital Bank Corporation, Bank of America NA, Keybank National Association, and Olde Park Homeowners' Association Inc.,	)	
Defendants.	)	
Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis,	)	
Third-Party Plaintiffs,	)	
vs.	)	
Specialized Loan Servicing LLC a/k/a SLS,	)	
Third-Party Defendant.	)	

AFFIDAVIT OF MARK MCCLOSKEY IN SUPPORT OF THIRD-PARTY DEFENDANT SPECIALIZED LOAN SERVICING LLC'S MOTION FOR SUMMARY JUDGMENT

I, Mark McCloskey, do hereby states as follows:

1. I am over the age of 18, of sound mind, and able to make this Affidavit.

2. Upon information and belief, the matters set forth in this Affidavit are true and accurate based on business records kept by Specialized Loan Servicing LLC ("SLS") in the ordinary course of business relating to a promissory note issued to borrower Temisan Etikerentse ("Etikerentse"), secured by a mortgage granted by Etikerentse and Ijeoma Etikerentse, which are at issue in this case.

3. I am a current employee of SLS. I hold the position of Assistant Vice President..

4. I have personal knowledge of the matters set forth in this Affidavit based upon my review of the business records kept by SLS relating to the mortgage loan at issue.

5. SLS is the servicer of Etikerentse's loan on behalf of the holder of the loan and Plaintiff in this action, Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1 ("Wilmington").

6. I submit this Affidavit and attached exhibits in support of SLS's Motion for Summary Judgment.

7. As part of its business practice, SLS keeps records of all correspondence it had as servicer with Etikerentse, including correspondence relating to Etikerentse's default on the note, and any requests by Etikerentse for loss mitigation assistance.

8. According to the electronic books and records of SLS, SLS is not and has never been a party to the note or mortgage at issue in this action, or a successor thereto. Rather, at all times, SLS has acted only as servicer of the note and mortgage on behalf of the holder of the same, which is Wilmington.

9. According to the electronic books and records of SLS, Etikerentse defaulted on the note on December 1, 2008 and continuing to the present. On August 23, 2015, SLS sent to Etikerentse a Notice of Default and Notice of Intent to Foreclose, pursuant to Paragraph 22 of the mortgage. A true and accurate copy of the August 23, 2015, Notice is attached hereto as Exhibit 1.

10. According to the electronic books and records of SLS, SLS reviewed Etikerentse's request for a loan modification in 2014. On December 12, 2014, SLS informed Etikerentse that he had been approved for a Standard Modification Program. A true and accurate copy of the December 12, 2014, Letter is attached hereto as Exhibit 2.

11. According to the electronic books and records of SLS, the loan was not modified despite the approval because Etikerentse failed to return the fully executed modification documents. SLS informed Etikerentse of the same by letter dated March 16, 2015. A true and accurate copy of the March 16, 2015, Letter is attached hereto as Exhibit 3.

12. According to the electronic books and records of SLS, SLS reviewed Etikerentse for another possible loan modification in late 2016. On December 27, 2016, SLS informed Etikerentse that he had been approved for a Standard Modification Program. A true and accurate copy of the December 27, 2016, Letter is attached hereto as Exhibit 4

13. According to the electronic books and records of SLS, Etikerentse, through his counsel in this action, rejected the December 27, 2016 modification offer.

Signed under the pains and penalties of perjury this 12th day of February, 2018.

Mark McCloskey
Assistant Vice President
Specialized Loan Servicing LLC

STATE OF Colorado COUNTY OF Douglas

On this 12th day of February, 2018, before me, the undersigned notary public, personally appeared the above-named Mark McCloskey, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily in said capacity for its stated purpose.

Notary Public Susan Lemerand
My commission expires: 05/03/2021

Susan Lemerand

SUSAN LEMERAND
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20174018735
MY COMMISSION EXPIRES 05/03/2021

EXHIBIT 1

SLS
8742 Lucent Blvd., Suite 300
Highlands Ranch, CO 80129-2386
1-800-315-4SLS (4757)

USPS CERTIFIED MAIL™

9307 1200 1910 0028 7171 67

+ 0575035 000000032 09SCN2 0068423
TEMISAN L ETIKERENTSE
783 NAVIGATORS RUN
MOUNT PLEASANT SC 29464-6620

August 23, 2015

Re: SLS Loan Number: [redacted]
Property Address: 783 Navigators Run
Mount Pleasant, SC 29464

Notice of Default and Notice of Intent to Foreclose

Dear Temisan L Etikerentse,

The Note on the above-referenced loan is now in default as a result of your failure to pay the 12/01/08 payment and the payments due each month thereafter, as provided for in said Note. You are hereby notified that to cure such default you are required to pay to this office all past due payments plus late charges and any payments that may become due between the date of this notice and the date the default is cured. The amount required to cure the arrears as of 08/23/15 is $971,025.67. You have thirty-three (33) days from the date of this letter to cure the default. We urge you to immediately, upon receipt of this letter, contact our Customer Assistance Department at the number provided below to obtain the updated amount required to reinstate your loan.

This notice does not affect your ability to apply for or be evaluated for a foreclosure prevention option or any pending loss mitigation option that may have been extended.

K006KO

Failure to pay the total amount due under the terms and conditions of your Deed of Trust/Mortgage by 09/25/15 may result in acceleration of the entire balance outstanding under the Note including, but not limited to, the principal, interest and all other outstanding charges and costs, and commencement of foreclosure of the Trust Deed/Mortgage which is security for your Note. Please be advised that any extension of time or forbearance in the exercising of any right or remedy as provided for in the Deed of Trust/Mortgage shall not constitute a waiver of or preclude the exercising of any right or remedy.

You have the right to reinstate the Note after acceleration as provided by law and you have the right to bring court action to assert the nonexistence of default or any other defense you have to acceleration and sale.

If your loan is not brought current, inspections of your property will be made and you will be assessed fees for that purpose as permitted under state law. Additionally, if your property is found to be vacant and unsecured, the mortgage holder will have it secured and will charge you for the cost of securing. You may also be liable for reasonable attorney fees and costs incurred in connection with any proceedings on the Note and Trust Deed and such other costs as may be allowed by law. In addition, you may be liable for any deficiency that may be established as a result of the foreclosure action unless precluded by a bankruptcy discharge.

In accordance with the Fair Debt Collection Practices Act, you are hereby given notice of the following:

1. Although you are not required to pay the total debt (or balance) of the Account prior to its maturity or acceleration, federal law requires Specialized Loan Servicing LLC to provide you with the amount of the debt. As of 08/23/15, the amount of the unpaid principal balance is $1,392,298.51. This letter is in no way intended as a payoff statement and you must not rely upon this letter for purposes of paying off your mortgage.

2. Specialized Loan Servicing LLC is the current servicer for the current owner of the loan. If you request in writing within thirty (30) days after you receive this notice, we will provide you with the name and address of the original owner if different than the current owner.

3. Unless within 30 days after you receive this notice you dispute the validity of the debt or a portion thereof, the debt will be assumed to be valid. If you notify us in writing within 30 days after you receive this notice that you dispute the debt or a portion thereof, we will obtain and mail to you verification of the debt.

4. **THIS COMMUNICATION IS FROM A DEBT COLLECTOR. PLEASE BE ADVISED THAT THIS LETTER IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

IF YOU ARE A CUSTOMER IN BANKRUPTCY OR A CUSTOMER WHO HAS RECEIVED A BANKRUPTCY DISCHARGE OF THIS DEBT, PLEASE BE ADVISED THAT THIS LETTER CONSTITUTES NEITHER A DEMAND FOR PAYMENT OF THE CAPTIONED DEBT NOR A NOTICE OF PERSONAL LIABILITY TO ANY RECIPIENT HEREOF WHO MIGHT HAVE RECEIVED A DISCHARGE OF SUCH DEBT IN ACCORDANCE WITH APPLICABLE BANKRUPTCY LAWS OR WHO MIGHT BE SUBJECT TO THE AUTOMATIC STAY OF SECTION 362 OF THE UNITED STATES BANKRUPTCY CODE.

If you believe that you are entitled to the benefits as outlined in the Servicemembers' Civil Relief Act, you should promptly provide us with evidence of your active duty status.

Specialized Loan Servicing LLC would like you to be aware that if you are unable to make payments or resume payments within a reasonable period of time due to a reduction in your income resulting from a loss or reduction in your employment, you may be eligible for Homeownership Counseling. Please contact the HUD toll free number (800-569-4287) to obtain a list of HUD approved nonprofit organizations serving your area.

If you have any questions, regarding this letter, please contact SLS at 800-306-6062 Monday through Friday, from 6:00 a.m. to 6:00 p.m. (MT). TDD number 800-268-9419 Monday - Friday, from 8:00 a.m. to 5:00 p.m. (MT).

Specialized Loan Servicing LLC requests that all payments be made in **certified funds, cashier's check or money order(s)** payable to Specialized Loan Servicing LLC and mailed to: **Attention: Customer Assistance Department** at one of the below addresses **(always include your Loan Number with your payment)**:

VIA Regular Mail	**VIA Over Night Address**	**VIA Western Union Quick Collect**
Specialized Loan Servicing LLC	Specialized Loan Servicing LLC	Code City: PAYSLS
PO Box 105219	8742 Lucent Blvd, Suite 300	Code State: CO
Atlanta, GA 30348-5219	Highlands Ranch, CO 80129	Reference: Loan Number

The matters discussed herein are of extreme importance. We trust you will give them appropriate attention. It is the practice and policy of Specialized Loan Servicing LLC to work with customers that have experienced a hardship. We have many alternative programs available to assist customers in avoiding a foreclosure action. Please visit our website address **www.sls.net** for options or feel free to contact our Customer Assistance area at 800-306-6062 where one of our experienced and skilled Agents may assist you. Do not delay. There is help available for most customers. We cannot assist you if you do not contact us. We are committed to providing you with professional and courteous service. We respect our customers, especially those that are having difficulties and will always strive to treat you with the dignity you deserve.

SPECIALIZED LOAN SERVICING LLC
Customer Assistance Department

EXHIBIT 2

SLS

8742 Lucent Boulevard ▪ Suite 300 ▪ Highlands Ranch, CO 80129

800-306-6059
720-241-7526

December 12, 2014

TEMISAN L ETIKERENTSE

783 NAVIGATORS RUN
MOUNT PLEASANT, SC 29464

RE: Loan Number: [redacted]
Property Address:
783 NAVIGATORS RUN
MOUNT PLEASANT, SC 29464

THIS IS FOR INFORMATIONAL PURPOSES ONLY. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

Dear TEMISAN L ETIKERENTSE,

Specialized Loan Servicing LLC ("SLS") has conducted a review of your application submitted for a foreclosure prevention option.

Below is a list of the foreclosure alternatives you were evaluated for and the result of each:

Congratulations! You have been approved for a Foreclosure Prevention Option: Standard Modification Program. Please see enclosed documentation for terms of the extended offer.

Please note, if you are currently in a bankruptcy proceeding, approval of any foreclosure prevention option for which you may be eligible is contingent on approval of the bankruptcy court in your bankruptcy case. If an Order is entered denying the foreclosure prevention option, that Order supersedes any agreement contained herein. If you have any questions or concerns regarding the process to obtain court approval, please contact your attorney.

- **Standard Modification Program - Approved**

- **Home Affordable Modification Program Tier 2 - Denied**
  - Your loan is not eligible for the Home Affordable Modification Program because the current unpaid principal balance on your loan is higher than the program limit as defined by Making Home Affordable (MHA) guidelines. ($729,750 for a one unit property, $934,200 for a two unit property, $1,129,250 for a three unit property and $1,403,400 for a four unit property).

- **Home Affordable Modification Program Tier 1 - Denied**
  - Your loan is not eligible for the Home Affordable Modification Program because the current unpaid principal balance on your loan is higher than the program limit as defined by Making Home Affordable (MHA) guidelines. ($729,750 for a one unit property, $934,200 for a two unit property, $1,129,250 for a three unit property and $1,403,400 for a four unit property).

SLS

8742 Lucent Boulevard ▪ Suite 300 ▪ Highlands Ranch, CO 80129

800-306-6059
720-241-7526

- **Disaster Modification Program - Denied**
  - Your loan does not meet the delinquency requirements for this program.
  - Your property was not impacted by the declared disaster in your area.
  - We do not show that your property is located in a federally declared disaster area.
  - Your loan is an active foreclosure.
- **Home Affordable Modification Unemployment Program - Denied**
  - Your loan is not eligible for the Home Affordable Modification Program because the current unpaid principal balance on your loan is higher than the program limit as defined by Making Home Affordable (MHA) guidelines. ($729,750 for a one unit property, $934,200 for a two unit property, $1,129,250 for a three unit property and $1,403,400 for a four unit property).
  - The total delinquency at the time of your request for a forbearance plan exceeds 12 months of your scheduled monthly mortgage payment (including taxes and insurance, if applicable).
  - We are unable to offer you forbearance plan under the Home Affordable Unemployment Program because according to the information you provided you were not unemployed at the time of your request.
- **Standard Repayment Plan - Denied**
  - Based on your current monthly gross income we could not create an affordable payment within the guidelines of this program. Our records show that your current monthly income before taxes and other deductions is $29,493.39.
- **Extension - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.
- **Forbearance Extension - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.
- **Forbearance Program - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.

SLS

8742 Lucent Boulevard ▪ Suite 300 ▪ Highlands Ranch, CO 80129

800-306-6059
720-241-7526

- **Short Negotiated Payoff - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.
- **Refinance with Short Payoff - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.

Second Independent Review of Modification Denial

If the property is your primary residence and this is your first evaluation, you have the right to request a second independent review to determine your eligibility for a loan modification. To request a second review you must send us your request in writing which must be received by us no later than January 11, 2015. Please include a copy of this letter with your request including any supporting documentation. If the property is your primary residence, this is your first evaluation and your request is received in the disclosed time frame, we will not initiate or continue with foreclosure during the review process. Your written request must either be mailed or faxed to us as follows:

Mail	Fax
Specialized Loan Servicing LLC P.O. Box 636005 Littleton, CO 80163	**1-720-241-7218** (Page limit per transmission is 25 pages)

ENCLOSURES:

- Change of Intent Form and additional information on foreclosure prevention options.

The requirements for this evaluation were set forth and performed in accordance with the Pooling and Servicing Agreement between Specialized Loan Servicing LLC and WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-1 .

If you have questions concerning this letter or need further assistance, you may contact me or our Customer Resolution Department at 1-800-306-6059 Monday through Friday, 6:00 a.m. until 9:00 p.m. MT, Saturday 6:00 a.m. until 12 p.m. MT or TDD 1-800-268-9419 Monday through Friday, 8:00 a.m. until 5:00 p.m. MT.

If you have other questions about foreclosure prevention alternatives that cannot be answered by us, please call the Homeowner's HOPE™ Hotline at 1-888-995-HOPE (4673). This Hotline can help with questions about the program and offers access to free HUD-certified counseling services in English and Spanish.

SLS

8742 Lucent Boulevard ▪ Suite 300 ▪ Highlands Ranch, CO 80129

800-306-6059
720-241-7526

Sincerely,

Matthew, 12080
Customer Resolution Department
Specialized Loan Servicing LLC

SPECIALIZED LOAN SERVICING LLC IS REQUIRED BY LAW TO INFORM YOU THAT THIS COMMUNICATION IS FROM A DEBT COLLECTOR. HOWEVER, THE PURPOSE OF THIS COMMUNICATION IS TO OFFER YOU LOSS MITIGATION ASSISTANCE THAT MAY HELP YOU BRING OR KEEP YOUR LOAN CURRENT THROUGH AFFORDABLE PAYMENTS. IF YOU ARE CURRENTLY IN A BANKRUPTCY PROCEEDING OR HAVE PREVIOUSLY OBTAINED A DISCHARGE OF THIS DEBT UNDER APPLICABLE BANKRUPTCY LAW, THIS NOTICE IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT AN ATTEMPT TO COLLECT THE DEBT, A DEMAND FOR PAYMENT OR AN ATTEMPT TO IMPOSE PERSONAL LIABILITY FOR THAT DEBT. YOU ARE NOT OBLIGATED TO DISCUSS YOUR HOME LOAN WITH US OR ENTER INTO A LOAN MODIFICATION OR OTHER LOAN-ASSISTANCE PROGRAM. YOU SHOULD CONSULT WITH YOUR BANKRUPTCY ATTORNEY OR OTHER ADVISOR ABOUT YOUR LEGAL RIGHTS AND OPTIONS. IF YOU HAVE QUESTIONS, PLEASE CONTACT US AT 1-800-306-6057.

Federal ECOA Notice
The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is Bureau of Consumer Financial Protection, 1700 G Street NW., Washington DC, 20552.

Important Notice To Servicemembers And Their Dependents
If you or any occupant of your home are or recently were on active duty or active service, you may be eligible for benefits and protections under the federal Servicemembers Civil Relief Act (SCRA). This includes protection from foreclosure or eviction. You may also be eligible for benefits and protections under state law or investor policy. SCRA and state Military benefits and protections also may be available if you are the dependent of an eligible Servicemember.

Eligible service may include:

- Active duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard, or
- Active service as a commissioned officer of the National Oceanic and Atmospheric Administration, or
- Active service as a commissioned officer of the Public Health Service, or
- Service with the forces of a nation with which the United States is allied in a war or Military action, or
- Service with the National Guard of a state militia under a state call of duty, or
- Any period when you are absent from duty because of sickness, wounds, leave, or other lawful cause.

For more information, please call SLS at 1-800-306-6059.

SLS

8742 Lucent Boulevard ▫ Suite 300 ▫ Highlands Ranch, CO 80129

800-306-6059
F2 720-241-7526

FCRA Disclosure

Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agencies. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right to receive a free copy of your report from these reporting agencies, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the applicable reporting agency by contacting that agency at the number provided below:

Equifax: P.O. Box 740241
Atlanta, GA 30374-0241
1-800-685-1111

We also obtained your credit scores from the consumer reporting agencies and used them in making our credit decision. Your credit score is a number that reflects the information in your credit report. Your credit score can change, depending on how the information in your credit report changes.

Your credit score: 620
Date: 10/5/2014

Scores range from a low of 280 to a high of 850.

SLS

8742 Lucent Boulevard • Suite 300 • Highlands Ranch, CO 80129

800-306-6059

720-241-7526

Foreclosure Prevention Change of Intent Form

RE: Loan Number: [redacted]

If you would like to be considered for other foreclosure prevention options and are willing to change your intent with the property, please mark your new intent with the subject property below (Please only select one):

Intent Selection (SELECT ONE)	Description	Additional Detail
☐ I would like to keep the property. I no longer wish to sell the property or complete a deed-in-lieu of foreclosure.	**Retain Property:** Options may include a repayment plan to pay back your past due payments or modification to create a more affordable payment.	No other documents will be required if all income documents provided are valid and dated within 90 days. We will notify you if your documentation has become outdated or if we need additional information.
☐ I would like to sell my home. I no longer wish to keep the property or complete a deed-in-lieu of foreclosure.	**Short Sale:** Sell your home and pay off a portion of your mortgage balance when you owe more on the home than it is worth.	By selecting this option you will need to provide the following documentation in order to consider the request: • Valid Listing Agreement • A market value offer and documentation to support the offer, including; Executed Sales Contract, Proposed HUD-1 and Buyer Proof of Funds or Qualification. • Access for an interior valuation. • You may also be required to provide offer approval from any additional lien holders on the property, where applicable.
☐ I would like to deed my property back to the investor. I no longer wish to sell the property or keep the property.	**Deed-in-Lieu:** Transfer the ownership of your property to us.	By selecting this option we will need to obtain the following in order for us to consider the request: • Clear and Marketable Title. • Access for an interior inspection.

Borrower Signature: _____ **Date:** _____

Please return this completed and signed form via one of the following:

Mail	Fax	Secure Email	Secure Web
8742 Lucent Blvd, Suite 300 Highlands Ranch, CO 80129	1-720-241-7526 (Page limit per transmission is 25 pages)	crdocs@sls.net	www.sls.net

This form and any supporting documentation must be submitted at least 37 days before a scheduled foreclosure sale to be considered.

Setting the Standard

www.sls.net

EXHIBIT 3

SLS

8742 Lucent Boulevard ▪ Suite 300 ▪ Highlands Ranch, CO 80129

800-306-6059
720-241-7526

March 16, 2015

TEMISAN L ETIKERENTSE

783 NAVIGATORS RUN
MOUNT PLEASANT, SC 29464

RE: Loan Number: [redacted]
Property Address:
783 NAVIGATORS RUN
MOUNT PLEASANT, SC 29464

THIS IS FOR INFORMATIONAL PURPOSES ONLY. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

Dear TEMISAN L ETIKERENTSE,

Specialized Loan Servicing LLC ("SLS") has conducted a review of your application submitted for a foreclosure prevention option.

Below is a list of the foreclosure alternatives you were evaluated for and the result of each:

Unfortunately, we are unable to offer you a Retention option at this time. You may qualify for another program. Please see the Change of Intent Form attached for additional details about the other foreclosure prevention options available.

- **Standard Modification Program - Denied**
  - We are unable to finalize your modification because you have failed to comply with the terms of the offer by not returning the fully executed modification documents.

Second Independent Review of Modification Denial

If the property is your primary residence and this is your first evaluation, you have the right to request a second independent review to determine your eligibility for a loan modification. To request a second review you must send us your request in writing which must be received by us no later than April 15, 2015. Please include a copy of this letter with your request including any supporting documentation. If the property is your primary residence, this is your first evaluation and your request is received in the disclosed time frame, we will not initiate or continue with foreclosure during the review process. Your written request must either be mailed or faxed to us as follows:

Mail	Fax
Specialized Loan Servicing LLC P.O. Box 636005 Littleton, CO 80163	**1-720-241-7218** (Page limit per transmission is 25 pages)

SLS

8742 Lucent Boulevard ▫ Suite 300 ▫ Highlands Ranch, CO 80129

800-306-6059
720-241-7526

ENCLOSURES:

- Change of Intent Form and additional information on foreclosure prevention options.

The requirements for this evaluation were set forth and performed in accordance with the Pooling and Servicing Agreement between Specialized Loan Servicing LLC and WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-1 .

If you have questions concerning this letter or need further assistance, you may contact me or our Customer Resolution Department at 1-800-306-6059 Monday through Friday, 6:00 a.m. until 9:00 p.m. MT, Saturday 6:00 a.m. until 12 p.m. MT or TDD 1-800-268-9419 Monday through Friday, 8:00 a.m. until 5:00 p.m. MT.

If you have other questions about foreclosure prevention alternatives that cannot be answered by us, please call the Homeowner's HOPE™ Hotline at 1-888-995-HOPE (4673). This Hotline can help with questions about the program and offers access to free HUD-certified counseling services in English and Spanish.

Sincerely,

Greg, 12075
Customer Resolution Department
Specialized Loan Servicing LLC

SPECIALIZED LOAN SERVICING LLC IS REQUIRED BY LAW TO INFORM YOU THAT THIS COMMUNICATION IS FROM A DEBT COLLECTOR. HOWEVER, THE PURPOSE OF THIS COMMUNICATION IS TO OFFER YOU LOSS MITIGATION ASSISTANCE THAT MAY HELP YOU BRING OR KEEP YOUR LOAN CURRENT THROUGH AFFORDABLE PAYMENTS. IF YOU ARE CURRENTLY IN A BANKRUPTCY PROCEEDING OR HAVE PREVIOUSLY OBTAINED A DISCHARGE OF THIS DEBT UNDER APPLICABLE BANKRUPTCY LAW, THIS NOTICE IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT AN ATTEMPT TO COLLECT THE DEBT, A DEMAND FOR PAYMENT OR AN ATTEMPT TO IMPOSE PERSONAL LIABILITY FOR THAT DEBT. YOU ARE NOT OBLIGATED TO DISCUSS YOUR HOME LOAN WITH US OR ENTER INTO A LOAN MODIFICATION OR OTHER LOAN-ASSISTANCE PROGRAM. YOU SHOULD CONSULT WITH YOUR BANKRUPTCY ATTORNEY OR OTHER ADVISOR ABOUT YOUR LEGAL RIGHTS AND OPTIONS. IF YOU HAVE QUESTIONS, PLEASE CONTACT US AT 1-800-306-6057.

Federal ECOA Notice
The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is Bureau of Consumer Financial Protection, 1700 G Street NW., Washington DC, 20552.

SLS

8742 Lucent Boulevard ▪ Suite 300 ▪ Highlands Ranch, CO 80129

800-306-6059
F 720-241-7526

Important Notice To Servicemembers And Their Dependents
If you or any occupant of your home are or recently were on active duty or active service, you may be eligible for benefits and protections under the federal Servicemembers Civil Relief Act (SCRA). This includes protection from foreclosure or eviction. You may also be eligible for benefits and protections under state law or investor policy. SCRA and state Military benefits and protections also may be available if you are the dependent of an eligible Servicemember.

Eligible service may include:

- Active duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard, or
- Active service as a commissioned officer of the National Oceanic and Atmospheric Administration, or
- Active service as a commissioned officer of the Public Health Service, or
- Service with the forces of a nation with which the United States is allied in a war or Military action, or
- Service with the National Guard of a state militia under a state call of duty, or
- Any period when you are absent from duty because of sickness, wounds, leave, or other lawful cause.

For more information, please call SLS at 1-800-306-6059.

FCRA Disclosure

Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agencies. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right to receive a free copy of your report from these reporting agencies, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the applicable reporting agency by contacting that agency at the number provided below:

Equifax: P.O. Box 740241
Atlanta, GA 30374-0241
1-800-685-1111

We also obtained your credit scores from the consumer reporting agencies and used them in making our credit decision. Your credit score is a number that reflects the information in your credit report. Your credit score can change, depending on how the information in your credit report changes.

Your credit score: 620
Date: 10/5/2014

Scores range from a low of 280 to a high of 850.

SLS

8742 Lucent Boulevard ▪ Suite 300 ▪ Highlands Ranch, CO 80129

800-306-6059
720-241-7526

Foreclosure Prevention Change of Intent Form

RE: Loan Number: [redacted]

If you would like to be considered for other foreclosure prevention options and are willing to change your intent with the property, please mark your new intent with the subject property below (Please only select one):

Intent Selection (SELECT ONE)	Description	Additional Detail
☐ I would like to keep the property. I no longer wish to sell the property or complete a deed-in-lieu of foreclosure.	**Retain Property:** Options may include a repayment plan to pay back your past due payments or modification to create a more affordable payment.	No other documents will be required if all income documents provided are valid and dated within 90 days. We will notify you if your documentation has become outdated or if we need additional information.
☐ I would like to sell my home. I no longer wish to keep the property or complete a deed-in-lieu of foreclosure.	**Short Sale:** Sell your home and pay off a portion of your mortgage balance when you owe more on the home than it is worth.	By selecting this option you will need to provide the following documentation in order to consider the request: • Valid Listing Agreement • A market value offer and documentation to support the offer, including; Executed Sales Contract, Proposed HUD-1 and Buyer Proof of Funds or Qualification. • Access for an interior valuation. • You may also be required to provide offer approval from any additional lien holders on the property, where applicable.
☐ I would like to deed my property back to the investor. I no longer wish to sell the property or keep the property.	**Deed-in-Lieu:** Transfer the ownership of your property to us.	By selecting this option we will need to obtain the following in order for us to consider the request: • Clear and Marketable Title. • Access for an interior inspection.

Borrower Signature: _____ **Date:** _____

Please return this completed and signed form via one of the following:

Mail	Fax	Secure Email	Secure Web
8742 Lucent Blvd, Suite 300 Highlands Ranch, CO 80129	1-720-241-7526 (Page limit per transmission is 25 pages)	crdocs@sls.net	www.sls.net

This form and any supporting documentation must be submitted at least 37 days before a scheduled foreclosure sale to be considered.

Setting the Standard
www.sls.net

EXHIBIT 4

8742 Lucent Boulevard ▪ Suite 300 ▪ Highlands Ranch, CO 80129 800-306-6059

December 27, 2016

TEMISAN L ETIKERENTSE

KNOWLES LAW FIRM PC 1212 WAPPOO ROAD
CHARLESTON, SC 29407

RE: Loan Number: [redacted]
Property Address:
783 NAVIGATORS RUN
MOUNT PLEASANT, SC 29464

Dear TEMISAN L ETIKERENTSE,

Specialized Loan Servicing LLC ("SLS") has conducted a review of your application submitted for a foreclosure prevention option.

Below is a list of the foreclosure alternatives you were evaluated for and the result of each:

Congratulations! You have been approved for a Foreclosure Prevention Option: Standard Modification Program. Please see enclosed documentation for terms of the extended offer. You have until January 11, 2017 to accept this offer.

Please note, if you are currently in a bankruptcy proceeding, approval of any foreclosure prevention option for which you may be eligible is contingent on approval of the bankruptcy court in your bankruptcy case. If an Order is entered denying the foreclosure prevention option, that Order supersedes any agreement contained herein. If you have any questions or concerns regarding the process to obtain court approval, please contact your attorney.

- **Standard Modification Program - Approved**

- **Standard Repayment Plan - Denied**
  - Based on your current monthly gross income we could not create an affordable payment within the guidelines of this program. Our records show that your current monthly income before taxes and other deductions is $60,075.00.

- **Home Affordable Modification Program Tier 2 - Denied**
  - Your loan is not eligible for the Home Affordable Modification Program because the current unpaid principal balance on your loan is higher than the program limit as defined by Making Home Affordable (MHA) guidelines. ($729,750 for a one unit property, $934,200 for a two unit property, $1,129,250 for a three unit property and $1,403,400 for a four unit property).

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- **Home Affordable Modification Program Tier 1 - Denied**
  - After evaluation of your loan we have determined there is an insufficient monthly payment reduction. Your payment reduction was insufficient in order to qualify for a modification under the Making Home Affordable Modification program and after review, you do not meet that requirement.
  - Your current monthly housing expense, which includes the monthly principal and interest payment on your first lien mortgage loan plus property taxes, hazard insurance and homeowner's dues (if any) is less than or equal to 31% of your gross monthly income (your income before taxes and other deductions) which, we verified as $60,075.00. Your housing expense must be greater than 31% of your gross monthly income to be eligible for a Home Affordable Modification. If you believe this verified income is incorrect, please contact us.
  - Your loan is not eligible for the Home Affordable Modification Program because the current unpaid principal balance on your loan is higher than the program limit as defined by Making Home Affordable (MHA) guidelines. ($729,750 for a one unit property, $934,200 for a two unit property, $1,129,250 for a three unit property and $1,403,400 for a four unit property).
- **Disaster Modification Program - Denied**
  - Your loan does not meet the delinquency requirements for this program.
  - We do not show that your property is located in a federally declared disaster area.
  - Your loan is an active foreclosure.
- **Home Affordable Modification Unemployment Program - Denied**
  - Your loan is not eligible for the Home Affordable Modification Program because the current unpaid principal balance on your loan is higher than the program limit as defined by Making Home Affordable (MHA) guidelines. ($729,750 for a one unit property, $934,200 for a two unit property, $1,129,250 for a three unit property and $1,403,400 for a four unit property).
  - The total delinquency at the time of your request for a forbearance plan exceeds 12 months of your scheduled monthly mortgage payment (including taxes and insurance, if applicable).
  - We are unable to offer you forbearance plan under the Home Affordable Unemployment Program because according to the information you provided you were not unemployed at the time of your request.
- **Extension - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.
- **Forbearance Extension - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.

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- **Forbearance Program - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.
- **Short Negotiated Payoff - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.
- **Refinance with Short Payoff - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.
- **Cooperative Short Sale Program - Denied**
  - Your loan is not eligible because we service your loan on behalf of an investor or group of investors that has not given us the contractual authority to complete this transaction.

Second Independent Review of Modification Denial

If the property is your primary residence and this is your first evaluation, you have the right to request a second independent review to determine your eligibility for a loan modification. To request a second review you must send us your request in writing which must be received by us no later than January 26, 2017. Please include a copy of this letter with your request including any supporting documentation. If the property is your primary residence, this is your first evaluation and your request is received in the disclosed time frame, we will not initiate or continue with foreclosure during the review process. Your written request must either be mailed or faxed to us as follows:

Mail	Fax
Specialized Loan Servicing LLC P.O. Box 636005 Littleton, CO 80163	**1-720-241-7218** (Page limit per transmission is 25 pages)

ENCLOSURES:

- Change of Intent Form and additional information on foreclosure prevention options.

The requirements for this evaluation were set forth and performed in accordance with the Pooling and Servicing Agreement between Specialized Loan Servicing LLC and WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-1 .

If you have questions concerning this letter or need further assistance, you may contact me or our Customer Resolution Department at 1-800-306-6059 Monday through Friday, 6:00 a.m. until 9:00 p.m. MT, Saturday 6:00 a.m. until 12 p.m. MT. SLS accepts calls from relay services on behalf of hearing impaired borrowers.

8742 Lucent Boulevard ▪ Suite 300 ▪ Highlands Ranch, CO 80129 800-306-6059

If you have other questions about foreclosure prevention alternatives that cannot be answered by us, please call the Homeowner's HOPE™ Hotline at 1-888-995-HOPE (4673). This Hotline can help with questions about the program and offers access to free HUD-certified counseling services in English and Spanish.

Sincerely,

Mick, 30989
Customer Resolution Department
Specialized Loan Servicing LLC

PLEASE SEE IMPORTANT DISCLOSURES ON THE FOLLOWING PAGE

8742 Lucent Boulevard ▫ Suite 300 ▫ Highlands Ranch, CO 80129 800-306-6059

SPECIALIZED LOAN SERVICING LLC IS REQUIRED BY FEDERAL LAW TO ADVISE YOU THAT THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

BANKRUPTCY NOTICE - IF YOU ARE A CUSTOMER IN BANKRUPTCY OR A CUSTOMER WHO HAS RECEIVED A BANKRUPTCY DISCHARGE OF THIS DEBT: PLEASE BE ADVISED THAT THIS NOTICE IS TO ADVISE YOU OF THE STATUS OF YOUR MORTGAGE LOAN. THIS NOTICE CONSTITUTES NEITHER A DEMAND FOR PAYMENT NOR A NOTICE OF PERSONAL LIABILITY TO ANY RECIPIENT HEREOF, WHO MIGHT HAVE RECEIVED A DISCHARGE OF SUCH DEBT IN ACCORDANCE WITH APPLICABLE BANKRUPTCY LAWS OR WHO MIGHT BE SUBJECT TO THE AUTOMATIC STAY OF SECTION 362 OF THE UNITED STATES BANKRUPTCY CODE. HOWEVER, IT MAY BE A NOTICE OF POSSIBLE ENFORCEMENT OF THE LIEN AGAINST THE COLLATERAL PROPERTY, WHICH HAS NOT BEEN DISCHARGED IN YOUR BANKRUPTCY. IF YOU HAVE QUESTIONS, PLEASE CONTACT US AT 1-800-306-6057.

Federal ECOA Notice
The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is Bureau of Consumer Financial Protection, 1700 G Street NW., Washington DC, 20552.

Important Notice To Servicemembers And Their Dependents
If you or any occupant of your home are or recently were on active duty or active service, you may be eligible for benefits and protections under the federal Servicemembers Civil Relief Act (SCRA). This includes protection from foreclosure or eviction. You may also be eligible for benefits and protections under state law or investor policy. SCRA and state Military benefits and protections also may be available if you are the dependent of an eligible Servicemember.

Eligible service may include:
- Active duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard, or
- Active service as a commissioned officer of the National Oceanic and Atmospheric Administration, or
- Active service as a commissioned officer of the Public Health Service, or
- Service with the forces of a nation with which the United States is allied in a war or Military action, or
- Service with the National Guard of a state militia under a state call of duty, or
- Any period when you are absent from duty because of sickness, wounds, leave, or other lawful cause.

For more information, please call SLS at 1-800-306-6059.

8742 Lucent Boulevard ▪ Suite 300 ▪ Highlands Ranch, CO 80129 800-306-6059

FCRA Disclosure

Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agencies. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right to receive a free copy of your report from these reporting agencies, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the applicable reporting agency by contacting that agency at the number provided below:

Equifax: P.O. Box 740241
Atlanta, GA 30374-0241
1-800-685-1111

We also obtained your credit scores from the consumer reporting agencies and used them in making our credit decision. Your credit score is a number that reflects the information in your credit report. Your credit score can change, depending on how the information in your credit report changes.

Your credit score: 620
Date: 10/5/2014

Scores range from a low of 280 to a high of 850.

NOTICES OF ERROR AND REQUESTS FOR INFORMATION (INCLUDING QUALIFIED WRITTEN REQUESTS), MUST BE SUBMITTED IN WRITING TO: SPECIALIZED LOAN SERVICING LLC, P.O. BOX 630147, LITTLETON, CO 80163-0147

8742 Lucent Boulevard • Suite 300 • Highlands Ranch, CO 80129 800-306-6059

The NPV input values we used in your NPV evaluation are listed in the NPV Data Input Fields and Values chart below. The data below is for informational purposes only.

NPV INPUT DATA FIELDS AND VALUES

Input Data Fields	Explanation	Value used in NPV calculation to determine the HAMP eligibility of your mortgage
	I. Borrower Information	
1. Current Borrower Credit Score	This field identifies your credit score as provided by one or more of the three national credit reporting agencies.	620
2. Current Co-borrower Credit Score	If a co-borrower is listed on the mortgage, this field identifies the co-borrower's credit score as provided by one or more of the three national credit reporting agencies.	N/A
3. Monthly Gross Income	This field identifies the monthly gross income of all borrowers on your loan before any payroll deductions or taxes	$60,075.00
4. Total Monthly Expenses	Amount of the total monthly expenses for the household.	**$11,653.74**
5. Principal Residence Total Housing Expense	The amount of the total monthly housing expense (i.e., principal, interest, taxes, insurance, and association fees, if any) for your primary residence, and the primary residence(s) of any co-borrowers (s). This field only applies if your modification request is for a mortgage loan on a property that isn't your primary residence.	N/A
	II. Property Information	
6. Property - State	This field identifies the two letter state code of the property securing your mortgage.	SC
7. Property - Zip Code	This field identifies the zip code of the property securing your mortgage.	29464
8. Property - Monthly Gross Rental Income	The monthly gross rental income from the property securing the mortgage loan for which you are requesting a modification. This field only applies if you modification request is for a loan on a property that isn't your primary residence.	N/A
9. Property Value	This field identifies the estimated fair market value of your property used by us, your servicer for this analysis.	$1,710,000.00

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10. Property Valuation Type	This field identifies the method by which your property was valued (as noted in Field 6, Property Value) 1 – Automated Valuation Model (AVM) 2 – Exterior Broker Price Opinion (BPO) / Appraisal (as is value) 3 – Interior BPO / Appraisal (as is value)	2 - Exterior BPO/Appraisal
11. Occupancy Status	Codes to identify the occupancy of the property securing the mortgage loan for which you are requesting a modification. The servicer will use a code of 1, 3, or 4 for owner-occupied properties and a code of 2 for non-owner occupied properties.	1 - Owner Occupied
III. Mortgage Information		
12. Data Collection Date	This field identifies the date on which the Unpaid Principal Balance and other data used in the NPV analysis was collected by us, your servicer.	12/23/2016
13. Imminent Default Flag	This field indicates your default status at the time you asked to be evaluated for HAMP. If you have not missed any payments or less than two payments are due and unpaid by the end of the month in which they are due, you are considered to be in imminent default and the value in this field is "Y". If two or more payments are due and unpaid by the end of the month in which they are due at the time of application, the value in this field is "N".	N
14. Investor Code	This field identifies the owner of your mortgage. 1-Fannie Mae 2-Freddie Mac 3-Owned by a private investor other than us, your servicer 4-Owned by us, your servicer or an affiliated company 5-Ginnie Mae	3 - Private
15. Unpaid Principal Balance at Origination	This field identifies the amount of your mortgage at the time it was originated (i.e., the amount you borrowed).	$1,402,500.00
16. First Payment Date at Origination	This field identifies the date the first payment on your mortgage was due after it was originated.	08/01/2007

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17. Product Before Modification	This field uses codes to identify the type of mortgage you held prior to applying for a HAMP modification: 1. Adjustable Rate Mortgage (ARM) and/or Interest Only mortgage loan 2. Fixed Rate 3. Step Rate 4. One Step Variable 5. Two Step Variable 6. Three Step Variable 7. Four Step Variable 8. Five Step Variable 9. Six Step Variable 10. Seven Step Variable 11. Eight Step Variable 12. Nine Step Variable 13. Ten Step Variable 14. Eleven Step Variable 15. Twelve Step Variable 16. Thirteen Step Variable 17. Fourteen Step Variable	1 - ARM
18. Adjustable Rate Mortgage (ARM) Reset Date	This field applies only to Adjustable Rate Mortgage (ARM) loans. If you do not have an ARM loan this field will be blank. This field identifies the date on which the next Adjustable Rate Mortgage (ARM) reset was due to occur, as of the Data Collection Date (Field 8).	07/01/2017
19. Next Adjustable Rate Mortgage (ARM) Reset Rate	This field identifies the rate at which your mortgage was expected to change based on when the next reset date (Field 14) is scheduled to occur. Please look to your mortgage loan documentation for information on how your mortgage's rate is recalculated at its reset date. If the reset date on your ARM loan is within 120 days of the Data Collection Date, this value in this field is the expected interest rate on your mortgage at the next reset date. If the reset date on your ARM loan is more than 120 days from the Data Collection Date, the value in this field is your current interest rate at the time of NPV evaluation.	0.00000
20. Unpaid Principal Balance Before Modification	This field identifies the unpaid amount of principal (money you borrowed) on your mortgage as of the Data Collection Date. It does not include any unpaid interest or other amounts that you may owe.	$1,392,298.51
21. Interest Rate Before Modification	This field identifies the interest rate on your mortgage as of the Data Collection Date.	7.00000%

22. Remaining Term (# of Payment Months Remaining)	This field identifies the remaining number of months you have left to pay under the original term of your mortgage as of the Data Collection Date.	344
23. Principal and Interest Payment Before Modification	This field is the amount of principal and interest you were scheduled to pay each month as of the Data Collection Date. A. If your loan had an adjustable rate scheduled to reset within 120 days, this field will reflect the principal and interest payment associated with the new interest rate. B. If your mortgage is an Interest Only loan and your loan was in the interest only period, the value in this field is the interest payment that was due each month. C. If your mortgage is a negative-amortization loan, the value in this field is the greater of: a) the principal and interest payment you sent on the most recent payment date; or b) the minimum payment required on your loan.	$8,121.74
24. Monthly Real Estate Taxes	This field identifies the monthly cost of your real estate taxes. If your taxes are paid annually this amount will be 1/12th of the annual cost.	$2,394.02
25. Monthly Hazard and Flood Insurance	This field identifies the monthly cost of your hazard and flood insurance coverage. If your insurance is paid annually this amount will be 1/12th of the annual cost.	$923.67
26. Homeowners Association Dues/Fees	This field identifies your monthly homeowner's or condominium association fee payments, if any, and/or any future monthly escrow shortages. If your homeowner's or condominium association fee payments are paid annually, this will be 1/12th of the annual cost. If your property has no association fee payments, this field is blank.	$1,000.00
27. Special Assessment	The temporary monthly increase of Homeowners Association dues/fees caused by a Special Assessment which is prorated over a time period of greater than nine months.	$0.00

28. FHA - Mortgage Insurance	The amount of monthly premiums for mortgage insurance coverage provided by the Federal Housing Administration (FHA) on your loan. If you do not have FHA mortgage insurance this field is blank.	$0.00
29. Months Past Due	This field identifies the number of mortgage payments you would have had to make in order to make your mortgage current, as of the Data Collection Date.	98
30. Mortgage Insurance Coverage Percent	This field identifies the percentage of private mortgage insurance coverage on your loan. If you do not have private mortgage insurance this field is blank.	
31. Ground Rent	The monthly amount of Ground Rent or Land Lease payment of the property securing your mortgage.	$0.00
32. Payment Due Date	The date your monthly mortgage payments are due.	12/01/2016
33. Foreclosure Status	The status of foreclosure, if your mortgage loan has been referred to foreclosure.	SERVICE COMPLETE
IV. Proposed Modification Information		
The fields below describe the proposed HAMP modification that was calculated by your servicer according to the HAMP program guidelines (subject to investor restrictions) that were used in your Net Present Value (NPV) evaluation.		
34. NPV Date	This field identifies the date that the Net Present Value evaluation was conducted on your mortgage	12/23/2016
35. Unpaid Principal Balance of the Proposed HAMP Modification (Net of Forbearance & Principal Reduction)	This field identifies the beginning principal balance on which you would have been required to pay interest if you had received a HAMP modification. It is likely to be different than your current principal balance because it includes amounts you owe for missed mortgage payments and unpaid expenses that are allowed to be added (capitalized) to your principal balance. Additionally, it may be reduced by proposed principal forbearance (Field 36) or proposed principal forgiveness (Field 37).	N/A
36. Interest Rate of the Proposed HAMP Modification	This field identifies the starting interest rate of the proposed HAMP modified mortgage. This rate is fixed for at least the first 5 years after modification.	N/A
37. Amortization Term of the Proposed HAMP Modification	This field identifies the number of months left to pay the proposed HAMP modified mortgage.	N/A

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38. Principal and Interest Payment of the Proposed HAMP Modification	This field identifies the amount of the monthly principal and interest payment on the proposed HAMP modified mortgage.	N/A
39. Principal Forbearance Amount of the Proposed HAMP Modification	This field identifies the amount of principal your investor was willing to forbear on the proposed HAMP modified mortgage. You would have still owed this amount, but you would not be charged interest on it and no payments would have been due on this amount until you paid off your loan.	N/A
40. Principal Forgiveness Amount of the Proposed HAMP Modification	This field identifies the amount of principal your investor was willing to forgive under the proposed HAMP modified mortgage.	N/A
41. Mortgage Insurance Partial Claim Amount of the Proposed HAMP Modification	This field identifies any mortgage insurance payout amount as part of the proposed HAMP modified mortgage, which is, at the discretion of your mortgage insurance company. This should be zero if you were not approved for a trial period plan or permanent HAMP modification for reason of negative NPV.	$0.00

If you believe that the Property Value input used in the NPV evaluation differs from the fair market value of your home, you must provide us with a recent estimate of the property value and a reasonable basis for that estimate at the same time that you provide evidence of any other disputed NPV value inputs. We will then perform a test NPV using your estimated value. If the test provides an NPV positive outcome, you have the right to request that we obtain an appraisal to confirm the value of your home and use that appraised value to conduct a new NPV evaluation.

The estimated cost of an appraisal in your community is $400.00 to $900.00. If you wish to exercise this option we must, within 30 calendar days of the date of this notice, receive a written request that includes your estimate of property value and a reasonable basis for that estimate, along with any other input values you wish to dispute, and a check for $200 as a deposit against the full cost of the appraisal. If the test NPV is negative we will notify you of that result. We will not order an appraisal and your deposit will be applied to your account. If the test NPV is positive, we will order an appraisal and your account will be charged for the difference between your deposit and the actual cost of the appraisal whether or not any change in property value changes in NPV outcome.

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Foreclosure Prevention Change of Intent Form

RE: Loan Number: [redacted]

If you would like to be considered for other foreclosure prevention options and are willing to change your intent with the property, please mark your new intent with the subject property below (Please only select one):

Intent Selection (SELECT ONE)	Description	Additional Detail
☐ I would like to keep the property. I no longer wish to sell the property or complete a deed-in-lieu of foreclosure.	**Retain Property:** Options may include a repayment plan to pay back your past due payments or modification to create a more affordable payment.	No other documents will be required if all income documents provided are valid and dated within 90 days. We will notify you if your documentation has become outdated or if we need additional information.
☐ I would like to sell my home. I no longer wish to keep the property or complete a deed-in-lieu of foreclosure.	**Short Sale:** Sell your home and pay off a portion of your mortgage balance when you owe more on the home than it is worth.	By selecting this option you will need to provide the following documentation in order to consider the request: • Valid Listing Agreement • A market value offer and documentation to support the offer, including; Executed Sales Contract, Proposed Settlement Statement and Buyer Proof of Funds or Qualification. • Access for an interior valuation. • You may also be required to provide offer approval from any additional lien holders on the property, where applicable.
☐ I would like to deed my property back to the investor. I no longer wish to sell the property or keep the property.	**Deed-in-Lieu:** Transfer the ownership of your property to us.	By selecting this option we will need to obtain the following in order for us to consider the request: • Clear and Marketable Title. • Access for an interior inspection.

Borrower Signature: _____ **Date:** _____

Please return this completed and signed form via one of the following:

Mail	Fax	Secure Email	Secure Web
8742 Lucent Blvd, Suite 300 Highlands Ranch, CO 80129	1-720-241-7526 (Page limit per transmission is 25 pages)	crdocs@sls.net	www.sls.net

This form and any supporting documentation must be submitted at least 37 days before a scheduled foreclosure sale to be considered.

Exhibit B

(Deposition of Dr. Temisan Etikerentse at 40:20-41:7, Excerpts and Relevant Exhibits)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

WILMINGTON TRUST NATIONAL ASSOCIATION AS SUCCESSOR TRUSTEE TO CITIBANK N.A. AS TRUSTEE OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST II MORTGAGE PASS-THROUGH CERTIFICATE SERIES 2007-1,
Plaintiffs

vs.

CASE NO. 2018-CP-10-02762

TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE a/k/a IJEOMA ETKIS, SUNTRUST MORTGAGE INC., CAPITAL BANK CORPORATION, BANK OF AMERICA N.A., KEYBANK NATIONAL ASSOCIATION, AND OLDE PARK HOMEOWNERS' ASSOCIATION,
Defendants.

TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE a/k/a IJEOMA ETKIS,
Third-Party Plaintiff

vs.

SPECIALIZED LOAN SERVICING LLC a/k/a SLS,
Third-Party Defendant.

DEPOSITION OF: TEMISAN LESLIE ETIKERENTSE

DATE: August 8, 2019

TIME: 2:00 p.m.

LOCATION: 151 Meeting Street
Charleston, SC

TAKEN BY: Counsel for the Third-Party Defendant

REPORTED BY: Roxanne Easterwood, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES
Fast, Accurate & Friendly

Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
(843) 722-8414	(843) 785-3263	(843) 839-3376
Columbia, SC	Greenville, SC	Charlotte, NC
(803) 731-5224	(864) 234-7030	(704) 573-3919
	Asheville, NC	
	(828) 785-5699	

AWR

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THIRD-PARTY PLAINTIFF TEMISAN ETIKERENTSE a/k/a TEMISAN L. ETIKERENTSE a/k/a IJEOMA ETKIS:

BROWN & VARNADO, LLC
BY: ROBERT B. VARNADO
103 Ronnie Boals Boulevard
Mount Pleasant, SC 29464
(843) 737-7300
rvarnado@brown-varnado.com

ATTORNEYS FOR THE THIRD-PARTY DEFENDANT SPECIALIZED LOAN SERVICING LLC a/k/a SLS:

NELSON, MULLINS, RILEY & SCARBOROUGH
BY: BLAKE T. WILLIAMS
1320 Main Street, 17th Floor
Meridian Bldg.
Columbia, SC 29201
(803) 799-2000
blake.williams@nelsonmullins.com

(INDEX AT REAR OF TRANSCRIPT)

P R O C E E D I N G S

* * * * * *

TEMISAN ETIKERENTSE

being first duly sworn, testified as follows:

EXAMINATION

BY MR. WILLIAMS:

Q. Will you please state your full name for the court reporter and spell it out?

A. Temisan, T-E-M-I-S-A-N. Middle name is Leslie, L-E-S-L-I-E. Last name, Etikerntse, E-T-I-K-E-R-E-N-T-S-E.

Q. We met a minute ago. My name is Blake Williams. I work for Nelson Mullins. I represent Specialized Loan Service in this action, the third-party defendant. What is your current home address?

A. 783 Navigators Run, Mount Pleasant 29464.

Q. Have you ever had your deposition taken before?

A. Yes.

Q. When was that?

A. I've had a couple over the years. I believe the last was probably about maybe four or five years ago.

A. That's correct.

Q. Now, going back to your wife's signature. You permitted her to sign on your behalf?

A. Yes, I did.

Q. What was your understanding as to the effect of letting her do that?

A. She was representing me.

Q. So you understood that if you signed it, it would be as if you signed it yourself?

A. Correct.

Q. You're charged with having read and understood the documents?

A. Yes, I did.

Q. I believe I already asked this. But do you remember if you were present, or is that why you --

A. I probably was not present. I think that's why I gave her power of attorney.

Q. On this note and mortgage, are you current on that loan, or are you in default?

A. I'm not current on the loan.

Q. Do you recall when you went into default?

A. I can't quite remember.

Q. After you took it out, though, did you make the monthly payments?

A. Up to a certain time, yes.

Q. Do you remember about when you started having trouble with the loan?

A. It may have been about 2008 or '9. I had a significant economic downturn, like I said. And as much as I tried, I had to -- like I said, I had to let go of one of my practices. I had a much reduction in my income at that time. So it was probably about that time frame.

Q. Do you happen to remember specifically when you first missed a payment maybe?

A. No.

Q. Is that economic downturn why you eventually decided to file bankruptcy?

A. Yes.

Q. You felt like you had no choice?

A. The bank said it would close my practice.

Q. So during -- after you had some trouble with the loan, during that process were you trying to get assistance through the servicer? Sorry. Let me start -- that was a terrible question.

remember the exact conversation. It was a different person each time.

Q. After you received this letter and talked to them, what happened next, if you could tell me?

A. I think the same process. I was asked to submit papers again, which I did again through the lawyers. And essentially I sort of -- I used the lawyers intermediary to show those records were there.

Q. I'm not asking anything that you told your lawyers. But when did you get your lawyers involved, if you remember?

A. I'm not sure of the exact date.

Q. Was it in this 2015 time frame of this letter?

A. It might have been before then or right about that time.

(Defendant EXH. 5, 8/23/15 Letter to Temisan Etikerentse from SLS, marked for identification.)

BY MR. WILLIAMS:

Q. If you will take a look at this one as well, and let me know what that is.

A. This says: Notice of default, notice

of intent to foreclosure.

Q. Have you seen this before? Do you recall?

A. I think I recall seeing this letter.

Q. What was your understanding of what this letter meant?

A. It was a notice of default, notice of intent to foreclosure. I was also had the option of getting the loss mitigation program.

Q. Did you understand that this meant that SLS could file a foreclosure action?

MR. VARNADO: Objection to form.

BY MR. WILLIAMS:

Q. You can answer.

A. I believe I sent this to the lawyer, and, like I expressed, that essentially my goal was to get the loss mitigation program, which I had been trying to get since, I guess -- back then was probably I don't know many years now.

Q. Bear with me a second. Had you ever received anything like this before, a prior notice of default?

A. No.

Q. Had you missed payments on the loan before this time that you can recall?

BY MR. WILLIAMS:

Q. What is your understanding about what that trust does?

A. I'm not exactly sure, to be honest with you.

Q. Are you contending that the trust harmed you in any way?

A. Well, one of the reasons why I sort of filed bankruptcy was the amount that, you know, was on it, and it's been sort of -- I've been sort of living under a cloud, you know, since then. It was resolved, everything else but this. It's had some effect on -- I'm not sure how -- the effect it might, you know, credit and also family life, but it's been a cloud kind of hanging over.

Q. You're talking about from the foreclosure action that they filed, the trust filed, or just these proceedings in general?

A. All of -- all of that.

Q. All of the financial issues?

A. I resolved everything else. This is the only thing I have not been able to resolve. I have been trying to resolve this for a couple of years now.

Q. I know this mortgage stuff is

convoluted. But are you saying that the plaintiff trust, so not SLS, that they have caused you any specific harm?

A. I'm not sure whether it's SLS or -- the people I have interacted the most with was SLS.

Q. That's fine. That answers my question. I've asked you this a little bit already. But do you known what a loan servicer does exactly?

A. Not really. I guess they check the loans, though.

Q. What is SLS, as far as you know?

A. Specialized Loan Servicing. I guess they were hired by whoever had the notes to manage it.

Q. Are they your loan servicer, though?

A. Yes. That's what -- that's the only person I hear from.

Q. Do you believe you have any contract with SLS, the entity, though? So not the trust, not Countrywide, but just SLS?

A. I think that's probably a question for the lawyer. SLS is the only one that contacts me or that contacted me. So I don't know who --

without a contract why they would have contacted me.

Q. Have you ever signed any contract with SLS that you're aware of?

A. The mortgage was signed with Countrywide, but it was SLS that contacted me. So I didn't sign anything directly with SLS.

Q. Right. Okay. That answers my question. Who services your loan today?

A. I believe it's still SLS.

Q. Has the servicer always been SLS, or did you have a different servicer before?

A. I think at beginning it was Countrywide. I don't think I heard of anyone other before SLS.

MR. VARNADO: Bank of America.

THE WITNESS: Bank of America. I think that was secondary loan.

BY MR. WILLIAMS:

Q. When was that time frame, do you know, when it switched over to SLS? Do you remember?

A. The hardship letter was also -- so it may have been somewhere 2010 I believe.

Q. So the prior -- Bank of America was the servicer before. Did you have any direct

dealings with them, or did you just send them your mortgage payment?

A. I just sent payment.

Q. I have asked you this I believe. But you are not current on your loan as we stand today?

A. No.

Q. I'll switch to the claims that you have asserted in the complaint. You do understand that you have filed claims against SLS, correct?

A. Correct.

Q. What exactly, in your own words, do you believe that SLS has done wrong here, if you can lay that out?

A. Well, I did not get offered, I guess, an opportunity to do a loan modification. I sent -- I communicated with them on multiple occasions back and forth. To my understanding, there is an option for that. I never received the letter for intent to foreclose. I did not receive the, I guess, decision on the loan modification. And in my experience, like I said, all of the outstanding issues that I had, either with the bank or the mortgage, the equipment out on lease, those that I signed when I did the bankruptcy when all of this

was happening, I was able to resolve this in a way and in a timely manner that enabled me to come up with a plan. The only entity that kept going back and forth was with SLS.

So that was the only thing. And I have not been able to access credit, you know. Most of the other liens are more business related than personal related. So this was until this. That's why I took a personal loan, because I couldn't get a loan from the bank. I'm still having to have high interest rate loans to be able to run my business and do other things because I have this big unresolved cloud hanging over me.

I still today do not know how it will be resolved. I was able to resolve the others years ago except for this.

Q. If you were able to get rid of this cloud by doing a deed in lieu, would you do that?

A. My aim is to get a loan modification depending on terms, if it's something that I can afford. This was a house I built for myself and my family. That's my number one thing. If the terms are such that it's not affordable, then I'm willing to consider a deed in lieu. At least I will have a way forward.

Q. When did you first come to the belief that SLS had done something wrong that you needed to -- that you thought might could justify filing a claim against them?

A. It was probably -- it seemed probably about 2014, '15. It seemed to me was systematic. Every time they asked me to send the documents, I sent the documents. They say have to do it 30 to 90 days, and always towards the -- seemed like it was always towards the end of the time period they said, well, we didn't receive the documents. So, therefore, you didn't submit the document.

I would call, and it was a different person. It seemed to be a consistent pattern. It seemed to be a consistent pattern whereby I sent all the information that they require. I do it again. I do it again. I do it again. And each time close to the deadline, oh, we didn't receive this. Oh, you didn't send this. Oh, you didn't do this. I did it. That's when I decided, look, I have to have independent, a lawyer on my side, I have to have a lawyer on my side to document all those things because each time was a different person. Each time was a different person. And each time was the same thing.

It's kind of tough when people just come knock on your door and give you -- you know. So I think it was about then, because after multiple times, multiple times over and over, the same information over and over again, and each time it's not received, it's not there, it's not there, and typically it was towards the end. I felt it was towards the end of the time period they send me a letter, you didn't meet the requirement.

Q. Is there a reason you didn't go ahead and file a lawsuit against SLS or waited until they filed the foreclosure? Is there any particular reason?

A. No, because if common sense, do a loan modification, then, you know, it was a matter of documenting the issues. I did that. But the same time you finally get frustrated when you've done it multiple times.

Q. But, again, are you aware of anything that would have required SLS to give you a loan modification? I understand the difficulties you had, you said you had in sending them documents and the back and forth. Is there anything that you know of that would have required them to

accept?

MR. VARNADO: Objection to form.

BY MR. WILLIAMS:

Q. You can answer.

A. SLS sent me a letter telling me I had three options. I had deed in lieu, a loan modification, or I guess last was foreclosure, whatever that is. So I don't know, but they sent me that information and said these are the options that I had. So based on the letter they sent me, I believe that was the options that I had.

Q. When did you receive that letter? Do you know?

A. I believe last letter was probably 2010. That's when I stopped writing the hardship letter.

Q. That's the letter that you said gave you the three options back in 2010?

A. Yes, I believe so.

Q. This is a similar question. But how have you been specifically damaged by SLS? What is the harm?

A. Like I said, two things: one, credit. I been able to -- unable to access, you know, credit on reasonable terms. Secondly, like I

said, just having this cloud hanging over my head for the past nine years now.

Q. How about your wife? Would you say -- how would you say she's been damaged as well since?

A. My wife is very emotional, as you're aware. I'm the primary financial provider, but still the parents of five children. One of the reasons why she sort of chose modification, we do the same program here longer, was to get away a little bit. We got calls from friends saying, oh -- you know, they're on Zillow and see your house is on foreclosure. That was -- the last call was probably about May or something this year. I had a friend say, oh, I'm just calling to tell you, I'm sorry, I don't know what's going on. Today we still get those calls, you know, that your house is on foreclosure.

So hers really is more not knowing whether we're going or coming, but that's the way I think it has probably affected her.

Q. Are either you or your wife seeing any physicians for any sort of distress?

A. No. No.

Q. We've covered this a little bit as

well. What are you hoping to get out of the lawsuit, the claims that you have asserted against SLS? What is your goal?

A. My main goal is to have this sort of wrapped up, you know, one way or the other, hopefully in a manner that is agreeable to all parties.

Q. Are you seeking money from SLS?

A. My main goal is really the house. Not -- to settle the house in a way that is good to all parties.

Q. I'm going to ask about those specific claims that your attorneys have asserted on your behalf against SLS, and then I shouldn't be too much longer. So the first claim was contract related. And just to confirm, the note and mortgage represent a contract between you and who?

A. Countrywide.

Q. Then its successors on that?

A. Correct.

Q. But not SLS?

A. Not SLS.

Q. What provision or provisions of this contract do you contend have been breached here?

A. I leave that to the lawyers.

Q. Well, you filed the claim. So you have to articulate what you believe was breached.

MR. VARNADO: Objection to form.

THE WITNESS: I believe that I'm not sure of the law. That's why I call the lawyers. But I never had opportunity for loan modification. I never had opportunity to have notice of foreclosure. And I know those things should have been done in a timely manner. I believe that I submitted all of the required documentation in time on multiple occasions, and through no fault of mine where -- it's not because of lack of production on my part that we've not been able to resolve this. So I believe it was -- had to do with their not living up to the end of what they proposed to me for this to have been resolved.

BY MR. WILLIAMS:

Q. To go back to this document, the notice of intent. It's this one.

MR. VARNADO: Number 3.

THE WITNESS: Yes. That is 2015?

MR. WILLIAMS: Yes.

MR. VARNADO: Well, I have December 12, 2014, March 16, 2015.

THE WITNESS: It's this one?

BY MR. WILLIAMS:

Q. Yes, number 5.

MR. VARNADO: Number 5. Excuse me.

BY MR. WILLIAMS:

Q. So you said part of your contract claim was not receiving the notice of intent to foreclose. Clarify this for me. Did you receive this letter or not?

A. No, I did not.

Q. You have never seen that before?

A. No.

Q. Back to the contract claims. It sounds like there were two pieces. You're saying you never received a notice of intent?

A. Uh-huh.

Q. The other part was that you believe that you satisfied everything for a loan mod and didn't receive it?

A. Yes.

Q. What are your damages that were -- what do you think your damages were for those two things? How were you harmed?

MR. VARNADO: Objection to form.

THE WITNESS: I said the same two things that I've said. I've been able to resolve

every other debtor that I've had except this. Nothing else hampers my -- I've been able to get my credit score up, been able to do everything else. I've been able to slowly get loans at -- my current is 10 percent and 7 percent to date, while I was at 3 percent or 4 percent prior to that. This has sort of stayed with me since then, not being able to resolve this. Even when I'm filling out forms, I don't know how to fill out the forms whether I have a mortgage or not.

The second thing, like I said, is not knowing to date whether or not I have a home. Not knowing to date whether or not I have equity in the home. Knowing that it's a home that I built to live, you know, for a long time. So those are the two things that I've said. Also the fact that, you know, we're going through this repeated times without any sort of resolution.

BY MR. WILLIAMS:

Q. Do you know what HAMP is, the Home Affordable Modification Program?

A. I don't know the details, but I know that, I guess during the home mortgage crisis that there was a law or something that was passed that gave homeowners opportunity that were in default

to have an opportunity to have a home modification on the process.

Q. You have alleged that you were harmed because SLS failed to comply with HAMP. Explain again how you were harmed for that.

A. Simply because we've not been able to get that loan modification on process. I have tried since -- first letter, hardship letter, I was asked to write was in 2010.

Q. Do you think that HAMP requires SLS to give you a loan mod?

A. I think they're required to give an opportunity to get a home loan modification.

Q. Do you know anybody else that had a loan being serviced by SLS?

A. No.

Q. Are you aware of anybody else that's suing SLS?

A. No.

Q. Are you aware of anybody that has any other specific claims against SLS?

A. No.

Q. The other claim is violation of the Real Estate Settlement Procedure Act, RESPA. Do you know what that is?

A. I don't know the details, no.

Q. I believe the allegation relates to a qualified written request. Do you know what that is?

A. No, I don't.

Q. Can you explain the basis for this RESPA claim?

A. I have to defer that to the lawyers.

Q. Do you know which loss mitigation application this RESPA claim relates to?

A. No. I have to defer that to the lawyer.

Q. What type of notice are you claiming that SLS did not give you that they were required to give you?

A. I'm not sure I understand the questions.

Q. RESPA requires certain notices under its rules and regulations. What specific notices under RESPA are you saying that SLS should have given you that they did not?

A. I have to defer that to the lawyer.

Q. Are there any specific communications that you contend SLS did not provide a timely response to?

A. Under RESPA?

Q. RESPA is specific about what a qualified written request is. Is there a specific communication qualifying as a qualified written request that you're saying SLS did not timely --

MR. VARNADO: Objection to form.

THE WITNESS: I defer that to the lawyer.

BY MR. WILLIAMS:

Q. But is your understanding that the claims that you have asserted against SLS, they relate to this loss mitigation process? Is that your understanding?

MR. VARNADO: Objection to form.

THE WITNESS: I have to defer that to the lawyer. I'm not really that versed on RESPA.

BY MR. WILLIAMS:

Q. Not just in RESPA. Is it your understanding all of the claims that you have asserted, they relate to the loss mitigation back and forth?

A. Yes.

MR. WILLIAMS: Let's take a quick break. I'm about done. Off the record.

(A recess was taken.)

MR. WILLIAMS: Back on the record.

BY MR. WILLIAMS:

Q. I'm almost done. Just a couple more questions. Again, I just want to make sure I'm clear on this. So on the RESPA claim, one more time, describe any specifics that you have that you're aware for the basis for that claim.

MR. VARNADO: Objection. Asked and answered.

THE WITNESS: I'll have to defer that to the lawyer. I don't know what RESPA -- the full name of RESPA means. I have to defer that to the lawyer.

BY MR. WILLIAMS:

Q. I have one more document I'd like to ask about.

(Defendant EXH. 7, Undated Letter to Temisan Etikerentse from SLS, marked for identification.)

BY MR. WILLIAMS:

Q. Can you look over this one and tell me if you recognize it?

MR. VARNADO: Do you have a date on this?

MR. WILLIAMS: It is on the third page

at the top.

(The witness reads the document, as requested.)

THE WITNESS: 2017.

MR. VARNADO: 2016, I think. Flip the page. Have I got the same?

THE WITNESS: Oh, 2016.

BY MR. WILLIAMS:

Q. Have you seen that before?

A. No, I haven't.

Q. Who was it sent to?

A. Knowles Law Firm.

Q. Who is that?

A. That's my lawyer.

Q. Were you aware of this communication? I know you said you haven't seen it, but were you told anything about this? Not specifics, but are you aware of this specific -- of this letter?

A. I'm not aware of this particular letter. I may have had a conversation with a lawyer about a loan modification, but I haven't seen this letter before.

Q. Did you know that you were approved for a loan modification?

A. No.

Q. So you weren't aware of any modification terms or anything?

A. No.

Q. You never knew that you were approved?

A. No.

Q. Did you know that your lawyer rejected a loan modification on your behalf?

A. I have to defer to the lawyer on that.

Q. In early 2017?

A. I can't remember right now.

Q. So you never -- I'm trying to -- I'm being careful with my words because I don't want to get into what you and your lawyer actually discussed. But you weren't aware of a modification, and then you weren't aware that a modification had been rejected?

A. Yes. I definitely didn't pay $17,000 a month.

Q. Did you ever talk about the terms of a potential modification around this time?

A. I may have discussed with the lawyer rough terms of what I would be able to afford if we did a loan modification and also the amount that the loan modification would have been based on, but it may have been, you know -- so sort of

parameters I thought something I could afford, and that might be the extent of what I may have discussed, but no specifics in terms of a particular sort of, like, monthly amount or anything along those lines.

Q. Would it have been surprising to you that you were approved for a loan mod?

A. At 17,000 a month?

Q. No. Just that you were approved. Not the terms, but just that you were approved.

A. It wouldn't surprise me because I said I've sort of been going through -- I made my wishes kind of known. I made my wishes kind of known that I plan to keep the house.

Q. Did you give your lawyer permission to reject a modification offer on your behalf?

A. Depending on the terms, yes.

Q. So you would not have been surprised if it was unfavorable terms that the lawyer might have rejected?

A. If the term was unfavorable, yes.

Q. What would you define as a favorable term? What would be reasonable to you?

MR. VARNADO: Objection. Asked and answered. Speculation.

SLS

8742 Lucent Boulevard ▪ Suite 300 ▪ Highlands Ranch, CO 80129

800-306-6059
F 720-241-7526

December 12, 2014

TEMISAN L ETIKERENTSE

783 NAVIGATORS RUN
MOUNT PLEASANT, SC 29464

RE: Loan Number: [redacted]
Property Address:
783 NAVIGATORS RUN
MOUNT PLEASANT, SC 29464

THIS IS FOR INFORMATIONAL PURPOSES ONLY. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

Dear TEMISAN L ETIKERENTSE,

Specialized Loan Servicing LLC ("SLS") has conducted a review of your application submitted for a foreclosure prevention option.

Below is a list of the foreclosure alternatives you were evaluated for and the result of each:

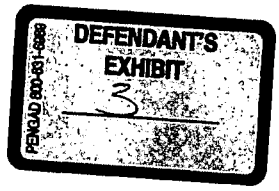
Congratulations! You have been approved for a Foreclosure Prevention Option: Standard Modification Program. Please see enclosed documentation for terms of the extended offer.

Please note, if you are currently in a bankruptcy proceeding, approval of any foreclosure prevention option for which you may be eligible is contingent on approval of the bankruptcy court in your bankruptcy case. If an Order is entered denying the foreclosure prevention option, that Order supersedes any agreement contained herein. If you have any questions or concerns regarding the process to obtain court approval, please contact your attorney.

- **Standard Modification Program - Approved**

- **Home Affordable Modification Program Tier 2 - Denied**
  - Your loan is not eligible for the Home Affordable Modification Program because the current unpaid principal balance on your loan is higher than the program limit as defined by Making Home Affordable (MHA) guidelines. ($729,750 for a one unit property, $934,200 for a two unit property, $1,129,250 for a three unit property and $1,403,400 for a four unit property).

- **Home Affordable Modification Program Tier 1 - Denied**
  - Your loan is not eligible for the Home Affordable Modification Program because the current unpaid principal balance on your loan is higher than the program limit as defined by Making Home Affordable (MHA) guidelines. ($729,750 for a one unit property, $934,200 for a two unit property, $1,129,250 for a three unit property and $1,403,400 for a four unit property).



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- **Disaster Modification Program - Denied**
  - Your loan does not meet the delinquency requirements for this program.
  - Your property was not impacted by the declared disaster in your area.
  - We do not show that your property is located in a federally declared disaster area.
  - Your loan is an active foreclosure.
- **Home Affordable Modification Unemployment Program - Denied**
  - Your loan is not eligible for the Home Affordable Modification Program because the current unpaid principal balance on your loan is higher than the program limit as defined by Making Home Affordable (MHA) guidelines. ($729,750 for a one unit property, $934,200 for a two unit property, $1,129,250 for a three unit property and $1,403,400 for a four unit property).
  - The total delinquency at the time of your request for a forbearance plan exceeds 12 months of your scheduled monthly mortgage payment (including taxes and insurance, if applicable).
  - We are unable to offer you forbearance plan under the Home Affordable Unemployment Program because according to the information you provided you were not unemployed at the time of your request.
- **Standard Repayment Plan - Denied**
  - Based on your current monthly gross income we could not create an affordable payment within the guidelines of this program. Our records show that your current monthly income before taxes and other deductions is $29,493.39.
- **Extension - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.
- **Forbearance Extension - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.
- **Forbearance Program - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.

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- **Short Negotiated Payoff - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.
- **Refinance with Short Payoff - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.

Second Independent Review of Modification Denial

If the property is your primary residence and this is your first evaluation, you have the right to request a second independent review to determine your eligibility for a loan modification. To request a second review you must send us your request in writing which must be received by us no later than January 11, 2015. Please include a copy of this letter with your request including any supporting documentation. If the property is your primary residence, this is your first evaluation and your request is received in the disclosed time frame, we will not initiate or continue with foreclosure during the review process. Your written request must either be mailed or faxed to us as follows:

Mail	Fax
Specialized Loan Servicing LLC P.O. Box 636005 Littleton, CO 80163	**1-720-241-7218** (Page limit per transmission is 25 pages)

ENCLOSURES:

- Change of Intent Form and additional information on foreclosure prevention options.

The requirements for this evaluation were set forth and performed in accordance with the Pooling and Servicing Agreement between Specialized Loan Servicing LLC and WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-1 .

If you have questions concerning this letter or need further assistance, you may contact me or our Customer Resolution Department at 1-800-306-6059 Monday through Friday, 6:00 a.m. until 9:00 p.m. MT, Saturday 6:00 a.m. until 12 p.m. MT or TDD 1-800-268-9419 Monday through Friday, 8:00 a.m. until 5:00 p.m. MT.

If you have other questions about foreclosure prevention alternatives that cannot be answered by us, please call the Homeowner's HOPE™ Hotline at 1-888-995-HOPE (4673). This Hotline can help with questions about the program and offers access to free HUD-certified counseling services in English and Spanish.

SLS

8742 Lucent Boulevard « Suite 300 » Highlands Ranch, CO 80129

800-306-6059
720-241-7526

Sincerely,

Matthew, 12080
Customer Resolution Department
Specialized Loan Servicing LLC

SPECIALIZED LOAN SERVICING LLC IS REQUIRED BY LAW TO INFORM YOU THAT THIS COMMUNICATION IS FROM A DEBT COLLECTOR. HOWEVER, THE PURPOSE OF THIS COMMUNICATION IS TO OFFER YOU LOSS MITIGATION ASSISTANCE THAT MAY HELP YOU BRING OR KEEP YOUR LOAN CURRENT THROUGH AFFORDABLE PAYMENTS. IF YOU ARE CURRENTLY IN A BANKRUPTCY PROCEEDING OR HAVE PREVIOUSLY OBTAINED A DISCHARGE OF THIS DEBT UNDER APPLICABLE BANKRUPTCY LAW, THIS NOTICE IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT AN ATTEMPT TO COLLECT THE DEBT, A DEMAND FOR PAYMENT OR AN ATTEMPT TO IMPOSE PERSONAL LIABILITY FOR THAT DEBT. YOU ARE NOT OBLIGATED TO DISCUSS YOUR HOME LOAN WITH US OR ENTER INTO A LOAN MODIFICATION OR OTHER LOAN-ASSISTANCE PROGRAM. YOU SHOULD CONSULT WITH YOUR BANKRUPTCY ATTORNEY OR OTHER ADVISOR ABOUT YOUR LEGAL RIGHTS AND OPTIONS. IF YOU HAVE QUESTIONS, PLEASE CONTACT US AT 1-800-306-6057.

Federal ECOA Notice
The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is Bureau of Consumer Financial Protection, 1700 G Street NW., Washington DC, 20552.

Important Notice To Servicemembers And Their Dependents
If you or any occupant of your home are or recently were on active duty or active service, you may be eligible for benefits and protections under the federal Servicemembers Civil Relief Act (SCRA). This includes protection from foreclosure or eviction. You may also be eligible for benefits and protections under state law or investor policy. SCRA and state Military benefits and protections also may be available if you are the dependent of an eligible Servicemember.

Eligible service may include:

- Active duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard, or
- Active service as a commissioned officer of the National Oceanic and Atmospheric Administration, or
- Active service as a commissioned officer of the Public Health Service, or
- Service with the forces of a nation with which the United States is allied in a war or Military action, or
- Service with the National Guard of a state militia under a state call of duty, or
- Any period when you are absent from duty because of sickness, wounds, leave, or other lawful cause.

For more information, please call SLS at 1-800-306-6059.

SLS

8742 Lucent Boulevard • Suite 300 • Highlands Ranch, CO 80129

800-306-6059
720-241-7526

FCRA Disclosure

Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agencies. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right to receive a free copy of your report from these reporting agencies, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the applicable reporting agency by contacting that agency at the number provided below:

Equifax: P.O. Box 740241
Atlanta, GA 30374-0241
1-800-685-1111

We also obtained your credit scores from the consumer reporting agencies and used them in making our credit decision. Your credit score is a number that reflects the information in your credit report. Your credit score can change, depending on how the information in your credit report changes.

Your credit score: 620
Date: 10/5/2014

Scores range from a low of 280 to a high of 850.

SLS

8742 Lucent Boulevard ▪ Suite 300 ▪ Highlands Ranch, CO 80129

800-306-6059
720-241-7526

Foreclosure Prevention Change of Intent Form

RE: Loan Number: [redacted]

If you would like to be considered for other foreclosure prevention options and are willing to change your intent with the property, please mark your new intent with the subject property below (Please only select one):

Intent Selection (SELECT ONE)	Description	Additional Detail
☐ I would like to keep the property. I no longer wish to sell the property or complete a deed-in-lieu of foreclosure.	**Retain Property:** Options may include a repayment plan to pay back your past due payments or modification to create a more affordable payment.	No other documents will be required if all income documents provided are valid and dated within 90 days. We will notify you if your documentation has become outdated or if we need additional information.
☐ I would like to sell my home. I no longer wish to keep the property or complete a deed-in-lieu of foreclosure.	**Short Sale:** Sell your home and pay off a portion of your mortgage balance when you owe more on the home than it is worth.	By selecting this option you will need to provide the following documentation in order to consider the request: • Valid Listing Agreement • A market value offer and documentation to support the offer, including; Executed Sales Contract, Proposed HUD-1 and Buyer Proof of Funds or Qualification. • Access for an interior valuation. • You may also be required to provide offer approval from any additional lien holders on the property, where applicable.
☐ I would like to deed my property back to the investor. I no longer wish to sell the property or keep the property.	**Deed-in-Lieu:** Transfer the ownership of your property to us.	By selecting this option we will need to obtain the following in order for us to consider the request: • Clear and Marketable Title. • Access for an interior inspection.

Borrower Signature: _____ **Date:** _____

Please return this completed and signed form via one of the following:

Mail	Fax	Secure Email	Secure Web
8742 Lucent Blvd, Suite 300 Highlands Ranch, CO 80129	1-720-241-7526 (Page limit per transmission is 25 pages)	crdocs@sls.net	www.sls.net

This form and any supporting documentation must be submitted at least 37 days before a scheduled foreclosure sale to be considered.

SLS
8742 Lucent Blvd., Suite 300
Highlands Ranch, CO 80129-2386
1-800-315-4SLS (4757)

USPS CERTIFIED MAIL™

9307 1200 1910 0028 7171 67

+ 0575035 000000032 09SCN2 0068423
TEMISAN L ETIKERENTSE
783 NAVIGATORS RUN
MOUNT PLEASANT SC 29464-6620

August 23, 2015

Re: SLS Loan Number: [redacted]
Property Address: 783 Navigators Run
Mount Pleasant, SC 29464

Notice of Default and Notice of Intent to Foreclose

Dear Temisan L Etikerentse,

The Note on the above-referenced loan is now in default as a result of your failure to pay the 12/01/08 payment and the payments due each month thereafter, as provided for in said Note. You are hereby notified that to cure such default you are required to pay to this office all past due payments plus late charges and any payments that may become due between the date of this notice and the date the default is cured. The amount required to cure the arrears as of 08/23/15 is $971,025.67. You have thirty-three (33) days from the date of this letter to cure the default. We urge you to immediately, upon receipt of this letter, contact our Customer Assistance Department at the number provided below to obtain the updated amount required to reinstate your loan.

This notice does not affect your ability to apply for or be evaluated for a foreclosure prevention option or any pending loss mitigation option that may have been extended.

Failure to pay the total amount due under the terms and conditions of your Deed of Trust/Mortgage by 09/25/15 may result in acceleration of the entire balance outstanding under the Note including, but not limited to, the principal, interest and all other outstanding charges and costs, and commencement of foreclosure of the Trust Deed/Mortgage which is security for your Note. Please be advised that any extension of time or forbearance in the exercising of any right or remedy as provided for in the Deed of Trust/Mortgage shall not constitute a waiver of or preclude the exercising of any right or remedy.

You have the right to reinstate the Note after acceleration as provided by law and you have the right to bring court action to assert the nonexistence of default or any other defense you have to acceleration and sale.

If your loan is not brought current, inspections of your property will be made and you will be assessed fees for that purpose as permitted under state law. Additionally, if your property is found to be vacant and unsecured, the mortgage holder will have it secured and will charge you for the cost of securing. You may also be liable for reasonable attorney fees and costs incurred in connection with any proceedings on the Note and Trust Deed and such other costs as may be allowed by law. In addition, you may be liable for any deficiency that may be established as a result of the foreclosure action unless precluded by a bankruptcy discharge.

DEFENDANT'S EXHIBIT

In accordance with the Fair Debt Collection Practices Act, you are hereby given notice of the following:

1. Although you are not required to pay the total debt (or balance) of the Account prior to its maturity or acceleration, federal law requires Specialized Loan Servicing LLC to provide you with the amount of the debt. As of 08/23/15, the amount of the unpaid principal balance is $1,392,298.51. This letter is in no way intended as a payoff statement and you must not rely upon this letter for purposes of paying off your mortgage.

2. Specialized Loan Servicing LLC is the current servicer for the current owner of the loan. If you request in writing within thirty (30) days after you receive this notice, we will provide you with the name and address of the original owner if different than the current owner.

3. Unless within 30 days after you receive this notice you dispute the validity of the debt or a portion thereof, the debt will be assumed to be valid. If you notify us in writing within 30 days after you receive this notice that you dispute the debt or a portion thereof, we will obtain and mail to you verification of the debt.

4. **THIS COMMUNICATION IS FROM A DEBT COLLECTOR. PLEASE BE ADVISED THAT THIS LETTER IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

IF YOU ARE A CUSTOMER IN BANKRUPTCY OR A CUSTOMER WHO HAS RECEIVED A BANKRUPTCY DISCHARGE OF THIS DEBT, PLEASE BE ADVISED THAT THIS LETTER CONSTITUTES NEITHER A DEMAND FOR PAYMENT OF THE CAPTIONED DEBT NOR A NOTICE OF PERSONAL LIABILITY TO ANY RECIPIENT HEREOF WHO MIGHT HAVE RECEIVED A DISCHARGE OF SUCH DEBT IN ACCORDANCE WITH APPLICABLE BANKRUPTCY LAWS OR WHO MIGHT BE SUBJECT TO THE AUTOMATIC STAY OF SECTION 362 OF THE UNITED STATES BANKRUPTCY CODE.

If you believe that you are entitled to the benefits as outlined in the Servicemembers' Civil Relief Act, you should promptly provide us with evidence of your active duty status.

Specialized Loan Servicing LLC would like you to be aware that if you are unable to make payments or resume payments within a reasonable period of time due to a reduction in your income resulting from a loss or reduction in your employment, you may be eligible for Homeownership Counseling. Please contact the HUD toll free number (800-569-4287) to obtain a list of HUD approved nonprofit organizations serving your area.

If you have any questions, regarding this letter, please contact SLS at 800-306-6062 Monday through Friday, from 6:00 a.m. to 6:00 p.m. (MT). TDD number 800-268-9419 Monday - Friday, from 8:00 a.m. to 5:00 p.m. (MT).

4006C2

Specialized Loan Servicing LLC requests that all payments be made in **certified funds, cashier's check or money order(s)** payable to Specialized Loan Servicing LLC and mailed to: **Attention: Customer Assistance Department** at one of the below addresses **(always include your Loan Number with your payment)**:

VIA Regular Mail	**VIA Over Night Address**	**VIA Western Union Quick Collect**
Specialized Loan Servicing LLC	Specialized Loan Servicing LLC	Code City: PAYSLS
PO Box 105219	8742 Lucent Blvd, Suite 300	Code State: CO
Atlanta, GA 30348-5219	Highlands Ranch, CO 80129	Reference: Loan Number

The matters discussed herein are of extreme importance. We trust you will give them appropriate attention. It is the practice and policy of Specialized Loan Servicing LLC to work with customers that have experienced a hardship. We have many alternative programs available to assist customers in avoiding a foreclosure action. Please visit our website address **www.sls.net** for options or feel free to contact our Customer Assistance area at 800-306-6062 where one of our experienced and skilled Agents may assist you. Do not delay. There is help available for most customers. We cannot assist you if you do not contact us. We are committed to providing you with professional and courteous service. We respect our customers, especially those that are having difficulties and will always strive to treat you with the dignity you deserve.

SPECIALIZED LOAN SERVICING LLC
Customer Assistance Department

SLS

8742 Lucent Boulevard • Suite 300 • Highlands Ranch, CO 80129 800-306-6059

December 27, 2016

TEMISAN L ETIKERENTSE

KNOWLES LAW FIRM PC 1212 WAPPOO ROAD
CHARLESTON, SC 29407

RE: Loan Number: [redacted]
Property Address:
783 NAVIGATORS RUN
MOUNT PLEASANT, SC 29464

Dear TEMISAN L ETIKERENTSE,

Specialized Loan Servicing LLC ("SLS") has conducted a review of your application submitted for a foreclosure prevention option.

Below is a list of the foreclosure alternatives you were evaluated for and the result of each:

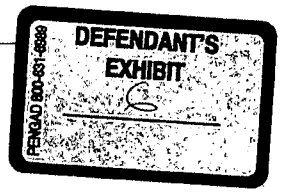
Congratulations! You have been approved for a Foreclosure Prevention Option: Standard Modification Program. Please see enclosed documentation for terms of the extended offer. You have until January 11, 2017 to accept this offer.

Please note, if you are currently in a bankruptcy proceeding, approval of any foreclosure prevention option for which you may be eligible is contingent on approval of the bankruptcy court in your bankruptcy case. If an Order is entered denying the foreclosure prevention option, that Order supersedes any agreement contained herein. If you have any questions or concerns regarding the process to obtain court approval, please contact your attorney.

- **Standard Modification Program - Approved**

- **Standard Repayment Plan - Denied**
  - Based on your current monthly gross income we could not create an affordable payment within the guidelines of this program. Our records show that your current monthly income before taxes and other deductions is $60,075.00.

- **Home Affordable Modification Program Tier 2 - Denied**
  - Your loan is not eligible for the Home Affordable Modification Program because the current unpaid principal balance on your loan is higher than the program limit as defined by Making Home Affordable (MHA) guidelines. ($729,750 for a one unit property, $934,200 for a two unit property, $1,129,250 for a three unit property and $1,403,400 for a four unit property).



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- **Home Affordable Modification Program Tier 1 - Denied**
  - After evaluation of your loan we have determined there is an insufficient monthly payment reduction. Your payment reduction was insufficient in order to qualify for a modification under the Making Home Affordable Modification program and after review, you do not meet that requirement.
  - Your current monthly housing expense, which includes the monthly principal and interest payment on your first lien mortgage loan plus property taxes, hazard insurance and homeowner's dues (if any) is less than or equal to 31% of your gross monthly income (your income before taxes and other deductions) which, we verified as $60,075.00. Your housing expense must be greater than 31% of your gross monthly income to be eligible for a Home Affordable Modification. If you believe this verified income is incorrect, please contact us.
  - Your loan is not eligible for the Home Affordable Modification Program because the current unpaid principal balance on your loan is higher than the program limit as defined by Making Home Affordable (MHA) guidelines. ($729,750 for a one unit property, $934,200 for a two unit property, $1,129,250 for a three unit property and $1,403,400 for a four unit property).
- **Disaster Modification Program - Denied**
  - Your loan does not meet the delinquency requirements for this program.
  - We do not show that your property is located in a federally declared disaster area.
  - Your loan is an active foreclosure.
- **Home Affordable Modification Unemployment Program - Denied**
  - Your loan is not eligible for the Home Affordable Modification Program because the current unpaid principal balance on your loan is higher than the program limit as defined by Making Home Affordable (MHA) guidelines. ($729,750 for a one unit property, $934,200 for a two unit property, $1,129,250 for a three unit property and $1,403,400 for a four unit property).
  - The total delinquency at the time of your request for a forbearance plan exceeds 12 months of your scheduled monthly mortgage payment (including taxes and insurance, if applicable).
  - We are unable to offer you forbearance plan under the Home Affordable Unemployment Program because according to the information you provided you were not unemployed at the time of your request.
- **Extension - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.
- **Forbearance Extension - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.

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- **Forbearance Program - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.
- **Short Negotiated Payoff - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.
- **Refinance with Short Payoff - Not Evaluated**
  - We didn't review your loan for this option because we've approved you for Standard Modification Program.
- **Cooperative Short Sale Program - Denied**
  - Your loan is not eligible because we service your loan on behalf of an investor or group of investors that has not given us the contractual authority to complete this transaction.

Second Independent Review of Modification Denial

If the property is your primary residence and this is your first evaluation, you have the right to request a second independent review to determine your eligibility for a loan modification. To request a second review you must send us your request in writing which must be received by us no later than January 26, 2017. Please include a copy of this letter with your request including any supporting documentation. If the property is your primary residence, this is your first evaluation and your request is received in the disclosed time frame, we will not initiate or continue with foreclosure during the review process. Your written request must either be mailed or faxed to us as follows:

Mail	Fax
Specialized Loan Servicing LLC P.O. Box 636005 Littleton, CO 80163	**1-720-241-7218** (Page limit per transmission is 25 pages)

ENCLOSURES:

- Change of Intent Form and additional information on foreclosure prevention options.

The requirements for this evaluation were set forth and performed in accordance with the Pooling and Servicing Agreement between Specialized Loan Servicing LLC and WILMINGTON TRUST, NATIONAL ASSOCIATION, AS SUCCESSOR TRUSTEE TO CITIBANK, N.A. AS TRUSTEE OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST II, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2007-1 .

If you have questions concerning this letter or need further assistance, you may contact me or our Customer Resolution Department at 1-800-306-6059 Monday through Friday, 6:00 a.m. until 9:00 p.m. MT, Saturday 6:00 a.m. until 12 p.m. MT. SLS accepts calls from relay services on behalf of hearing impaired borrowers.

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If you have other questions about foreclosure prevention alternatives that cannot be answered by us, please call the Homeowner's HOPE™ Hotline at 1-888-995-HOPE (4673). This Hotline can help with questions about the program and offers access to free HUD-certified counseling services in English and Spanish.

Sincerely,

Mick, 30989
Customer Resolution Department
Specialized Loan Servicing LLC

PLEASE SEE IMPORTANT DISCLOSURES ON THE FOLLOWING PAGE

SLS

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SPECIALIZED LOAN SERVICING LLC IS REQUIRED BY FEDERAL LAW TO ADVISE YOU THAT THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

BANKRUPTCY NOTICE - IF YOU ARE A CUSTOMER IN BANKRUPTCY OR A CUSTOMER WHO HAS RECEIVED A BANKRUPTCY DISCHARGE OF THIS DEBT: PLEASE BE ADVISED THAT THIS NOTICE IS TO ADVISE YOU OF THE STATUS OF YOUR MORTGAGE LOAN. THIS NOTICE CONSTITUTES NEITHER A DEMAND FOR PAYMENT NOR A NOTICE OF PERSONAL LIABILITY TO ANY RECIPIENT HEREOF, WHO MIGHT HAVE RECEIVED A DISCHARGE OF SUCH DEBT IN ACCORDANCE WITH APPLICABLE BANKRUPTCY LAWS OR WHO MIGHT BE SUBJECT TO THE AUTOMATIC STAY OF SECTION 362 OF THE UNITED STATES BANKRUPTCY CODE. HOWEVER, IT MAY BE A NOTICE OF POSSIBLE ENFORCEMENT OF THE LIEN AGAINST THE COLLATERAL PROPERTY, WHICH HAS NOT BEEN DISCHARGED IN YOUR BANKRUPTCY. IF YOU HAVE QUESTIONS, PLEASE CONTACT US AT 1-800-306-6057.

Federal ECOA Notice
The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is Bureau of Consumer Financial Protection, 1700 G Street NW., Washington DC, 20552.

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Eligible service may include:

- Active duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard, or
- Active service as a commissioned officer of the National Oceanic and Atmospheric Administration, or
- Active service as a commissioned officer of the Public Health Service, or
- Service with the forces of a nation with which the United States is allied in a war or Military action, or
- Service with the National Guard of a state militia under a state call of duty, or
- Any period when you are absent from duty because of sickness, wounds, leave, or other lawful cause.

For more information, please call SLS at 1-800-306-6059.

8742 Lucent Boulevard ▫ Suite 300 ▫ Highlands Ranch, CO 80129 800-306-6059

FCRA Disclosure

Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agencies. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You have a right to receive a free copy of your report from these reporting agencies, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the applicable reporting agency by contacting that agency at the number provided below:

Equifax: P.O. Box 740241
Atlanta, GA 30374-0241
1-800-685-1111

We also obtained your credit scores from the consumer reporting agencies and used them in making our credit decision. Your credit score is a number that reflects the information in your credit report. Your credit score can change, depending on how the information in your credit report changes.

Your credit score: 620
Date: 10/5/2014

Scores range from a low of 280 to a high of 850.

NOTICES OF ERROR AND REQUESTS FOR INFORMATION (INCLUDING QUALIFIED WRITTEN REQUESTS), MUST BE SUBMITTED IN WRITING TO: SPECIALIZED LOAN SERVICING LLC, P.O. BOX 630147, LITTLETON, CO 80163-0147

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The NPV input values we used in your NPV evaluation are listed in the NPV Data Input Fields and Values chart below. The data below is for informational purposes only.

NPV INPUT DATA FIELDS AND VALUES

Input Data Fields	Explanation	Value used in NPV calculation to determine the HAMP eligibility of your mortgage
I. Borrower Information		
1. Current Borrower Credit Score	This field identifies your credit score as provided by one or more of the three national credit reporting agencies.	620
2. Current Co-borrower Credit Score	If a co-borrower is listed on the mortgage, this field identifies the co-borrower's credit score as provided by one or more of the three national credit reporting agencies.	N/A
3. Monthly Gross Income	This field identifies the monthly gross income of all borrowers on your loan before any payroll deductions or taxes	$60,075.00
4. Total Monthly Expenses	Amount of the total monthly expenses for the household.	**$11,653.74**
5. Principal Residence Total Housing Expense	The amount of the total monthly housing expense (i.e., principal, interest, taxes, insurance, and association fees, if any) for your primary residence, and the primary residence(s) of any co-borrowers (s). This field only applies if your modification request is for a mortgage loan on a property that isn't your primary residence.	N/A
II. Property Information		
6. Property - State	This field identifies the two letter state code of the property securing your mortgage.	SC
7. Property - Zip Code	This field identifies the zip code of the property securing your mortgage.	29464
8. Property - Monthly Gross Rental Income	The monthly gross rental income from the property securing the mortgage loan for which you are requesting a modification. This field only applies if you modification request is for a loan on a property that isn't your primary residence.	N/A
9. Property Value	This field identifies the estimated fair market value of your property used by us, your servicer for this analysis.	$1,710,000.00

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10. Property Valuation Type	This field identifies the method by which your property was valued (as noted in Field 6, Property Value) 1 – Automated Valuation Model (AVM) 2 – Exterior Broker Price Opinion (BPO) / Appraisal (as is value) 3 – Interior BPO / Appraisal (as is value)	2 - Exterior BPO/Appraisal
11. Occupancy Status	Codes to identify the occupancy of the property securing the mortgage loan for which you are requesting a modification. The servicer will use a code of 1, 3, or 4 for owner-occupied properties and a code of 2 for non-owner occupied properties.	1 - Owner Occupied
III. Mortgage Information		
12. Data Collection Date	This field identifies the date on which the Unpaid Principal Balance and other data used in the NPV analysis was collected by us, your servicer.	12/23/2016
13. Imminent Default Flag	This field indicates your default status at the time you asked to be evaluated for HAMP. If you have not missed any payments or less than two payments are due and unpaid by the end of the month in which they are due, you are considered to be in imminent default and the value in this field is "Y". If two or more payments are due and unpaid by the end of the month in which they are due at the time of application, the value in this field is "N".	N
14. Investor Code	This field identifies the owner of your mortgage. 1-Fannie Mae 2-Freddie Mac 3-Owned by a private investor other than us, your servicer 4-Owned by us, your servicer or an affiliated company 5-Ginnie Mae	3 - Private
15. Unpaid Principal Balance at Origination	This field identifies the amount of your mortgage at the time it was originated (i.e., the amount you borrowed).	$1,402,500.00
16. First Payment Date at Origination	This field identifies the date the first payment on your mortgage was due after it was originated.	08/01/2007

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17. Product Before Modification	This field uses codes to identify the type of mortgage you held prior to applying for a HAMP modification: 1. Adjustable Rate Mortgage (ARM) and/or Interest Only mortgage loan 2. Fixed Rate 3. Step Rate 4. One Step Variable 5. Two Step Variable 6. Three Step Variable 7. Four Step Variable 8. Five Step Variable 9. Six Step Variable 10. Seven Step Variable 11. Eight Step Variable 12. Nine Step Variable 13. Ten Step Variable 14. Eleven Step Variable 15. Twelve Step Variable 16. Thirteen Step Variable 17. Fourteen Step Variable	1 - ARM
18. Adjustable Rate Mortgage (ARM) Reset Date	This field applies only to Adjustable Rate Mortgage (ARM) loans. If you do not have an ARM loan this field will be blank. This field identifies the date on which the next Adjustable Rate Mortgage (ARM) reset was due to occur, as of the Data Collection Date (Field 8).	07/01/2017
19. Next Adjustable Rate Mortgage (ARM) Reset Rate	This field identifies the rate at which your mortgage was expected to change based on when the next reset date (Field 14) is scheduled to occur. Please look to your mortgage loan documentation for information on how your mortgage's rate is recalculated at its reset date. If the reset date on your ARM loan is within 120 days of the Data Collection Date, this value in this field is the expected interest rate on your mortgage at the next reset date. If the reset date on your ARM loan is more than 120 days from the Data Collection Date, the value in this field is your current interest rate at the time of NPV evaluation.	0.00000
20. Unpaid Principal Balance Before Modification	This field identifies the unpaid amount of principal (money you borrowed) on your mortgage as of the Data Collection Date. It does not include any unpaid interest or other amounts that you may owe.	$1,392,298.51
21. Interest Rate Before Modification	This field identifies the interest rate on your mortgage as of the Data Collection Date.	7.00000%

22. Remaining Term (# of Payment Months Remaining)	This field identifies the remaining number of months you have left to pay under the original term of your mortgage as of the Data Collection Date.	344
23. Principal and Interest Payment Before Modification	This field is the amount of principal and interest you were scheduled to pay each month as of the Data Collection Date. A. If your loan had an adjustable rate scheduled to reset within 120 days, this field will reflect the principal and interest payment associated with the new interest rate. B. If your mortgage is an Interest Only loan and your loan was in the interest only period, the value in this field is the interest payment that was due each month. C. If your mortgage is a negative-amortization loan, the value in this field is the greater of: a) the principal and interest payment you sent on the most recent payment date; or b) the minimum payment required on your loan.	$8,121.74
24. Monthly Real Estate Taxes	This field identifies the monthly cost of your real estate taxes. If your taxes are paid annually this amount will be 1/12th of the annual cost.	$2,394.02
25. Monthly Hazard and Flood Insurance	This field identifies the monthly cost of your hazard and flood insurance coverage. If your insurance is paid annually this amount will be 1/12th of the annual cost.	$923.67
26. Homeowners Association Dues/Fees	This field identifies your monthly homeowner's or condominium association fee payments, if any, and/or any future monthly escrow shortages. If your homeowner's or condominium association fee payments are paid annually, this will be 1/12th of the annual cost. If your property has no association fee payments, this field is blank.	$1,000.00
27. Special Assessment	The temporary monthly increase of Homeowners Association dues/fees caused by a Special Assessment which is prorated over a time period of greater than nine months.	$0.00

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28. FHA - Mortgage Insurance	The amount of monthly premiums for mortgage insurance coverage provided by the Federal Housing Administration (FHA) on your loan. If you do not have FHA mortgage insurance this field is blank.	$0.00
29. Months Past Due	This field identifies the number of mortgage payments you would have had to make in order to make your mortgage current, as of the Data Collection Date.	98
30. Mortgage Insurance Coverage Percent	This field identifies the percentage of private mortgage insurance coverage on your loan. If you do not have private mortgage insurance this field is blank.	
31. Ground Rent	The monthly amount of Ground Rent or Land Lease payment of the property securing your mortgage.	$0.00
32. Payment Due Date	The date your monthly mortgage payments are due.	12/01/2016
33. Foreclosure Status	The status of foreclosure, if your mortgage loan has been referred to foreclosure.	SERVICE COMPLETE
IV. Proposed Modification Information		
The fields below describe the proposed HAMP modification that was calculated by your servicer according to the HAMP program guidelines (subject to investor restrictions) that were used in your Net Present Value (NPV) evaluation.		
34. NPV Date	This field identifies the date that the Net Present Value evaluation was conducted on your mortgage	12/23/2016
35. Unpaid Principal Balance of the Proposed HAMP Modification (Net of Forbearance & Principal Reduction)	This field identifies the beginning principal balance on which you would have been required to pay interest if you had received a HAMP modification. It is likely to be different than your current principal balance because it includes amounts you owe for missed mortgage payments and unpaid expenses that are allowed to be added (capitalized) to your principal balance. Additionally, it may be reduced by proposed principal forbearance (Field 36) or proposed principal forgiveness (Field 37).	N/A
36. Interest Rate of the Proposed HAMP Modification	This field identifies the starting interest rate of the proposed HAMP modified mortgage. This rate is fixed for at least the first 5 years after modification.	N/A
37. Amortization Term of the Proposed HAMP Modification	This field identifies the number of months left to pay the proposed HAMP modified mortgage.	N/A

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38. Principal and Interest Payment of the Proposed HAMP Modification	This field identifies the amount of the monthly principal and interest payment on the proposed HAMP modified mortgage.	N/A
39. Principal Forbearance Amount of the Proposed HAMP Modification	This field identifies the amount of principal your investor was willing to forbear on the proposed HAMP modified mortgage. You would have still owed this amount, but you would not be charged interest on it and no payments would have been due on this amount until you paid off your loan.	N/A
40. Principal Forgiveness Amount of the Proposed HAMP Modification	This field identifies the amount of principal your investor was willing to forgive under the proposed HAMP modified mortgage.	N/A
41. Mortgage Insurance Partial Claim Amount of the Proposed HAMP Modification	This field identifies any mortgage insurance payout amount as part of the proposed HAMP modified mortgage, which is, at the discretion of your mortgage insurance company. This should be zero if you were not approved for a trial period plan or permanent HAMP modification for reason of negative NPV.	$0.00

If you believe that the Property Value input used in the NPV evaluation differs from the fair market value of your home, you must provide us with a recent estimate of the property value and a reasonable basis for that estimate at the same time that you provide evidence of any other disputed NPV value inputs. We will then perform a test NPV using your estimated value. If the test provides an NPV positive outcome, you have the right to request that we obtain an appraisal to confirm the value of your home and use that appraised value to conduct a new NPV evaluation.

The estimated cost of an appraisal in your community is $400.00 to $900.00. If you wish to exercise this option we must, within 30 calendar days of the date of this notice, receive a written request that includes your estimate of property value and a reasonable basis for that estimate, along with any other input values you wish to dispute, and a check for $200 as a deposit against the full cost of the appraisal. If the test NPV is negative we will notify you of that result. We will not order an appraisal and your deposit will be applied to your account. If the test NPV is positive, we will order an appraisal and your account will be charged for the difference between your deposit and the actual cost of the appraisal whether or not any change in property value changes in NPV outcome.

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Foreclosure Prevention Change of Intent Form

RE: Loan Number: [redacted]

If you would like to be considered for other foreclosure prevention options and are willing to change your intent with the property, please mark your new intent with the subject property below (Please only select one):

Intent Selection (SELECT ONE)	Description	Additional Detail
☐ I would like to keep the property. I no longer wish to sell the property or complete a deed-in-lieu of foreclosure.	**Retain Property:** Options may include a repayment plan to pay back your past due payments or modification to create a more affordable payment.	No other documents will be required if all income documents provided are valid and dated within 90 days. We will notify you if your documentation has become outdated or if we need additional information.
☐ I would like to sell my home. I no longer wish to keep the property or complete a deed-in-lieu of foreclosure.	**Short Sale:** Sell your home and pay off a portion of your mortgage balance when you owe more on the home than it is worth.	By selecting this option you will need to provide the following documentation in order to consider the request: • Valid Listing Agreement • A market value offer and documentation to support the offer, including; Executed Sales Contract, Proposed Settlement Statement and Buyer Proof of Funds or Qualification. • Access for an interior valuation. • You may also be required to provide offer approval from any additional lien holders on the property, where applicable.
☐ I would like to deed my property back to the investor. I no longer wish to sell the property or keep the property.	**Deed-in-Lieu:** Transfer the ownership of your property to us.	By selecting this option we will need to obtain the following in order for us to consider the request: • Clear and Marketable Title. • Access for an interior inspection.

Borrower Signature: _____ **Date:** _____

Please return this completed and signed form via one of the following:

Mail	Fax	Secure Email	Secure Web
8742 Lucent Blvd, Suite 300 Highlands Ranch, CO 80129	1-720-241-7526 (Page limit per transmission is 25 pages)	crdocs@sls.net	www.sls.net

This form and any supporting documentation must be submitted at least 37 days before a scheduled foreclosure sale to be considered.

SLS

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Loan Number: [redacted]
TEMISAN L ETIKERENTSE
KNOWLES LAW FIRM PC 1212 WAPPOO ROAD, CHARLESTON, SC 29407

Property Address: 783 NAVIGATORS RUN , MOUNT PLEASANT, SOUTH CAROLINA 29464

Specialized Loan Servicing LLC (SLS)
8742 Lucent Blvd, Ste 300, Highlands Ranch, CO 80129
Phone: 1-800-306-6059

Dear TEMISAN L ETIKERENTSE,

Congratulations! You are eligible for a Modification Program. There are tremendous benefits of a loan modification, some of which may include a lower or fixed interest rate and a lower monthly payment, which will result in a current loan status.

Additionally, an escrow account for payment of real estate taxes and insurance premiums may be required in conjunction with your loan modification. If required, an estimated monthly escrow amount is included below. The initial estimated amount is calculated based upon the tax and insurance information obtained while in the modification process, and may change. An escrow analysis statement referencing the actual payment and effective date will be mailed to you within four weeks of the modification being completed. SLS will draw on the escrow account to pay your real estate taxes and insurance premiums as they come due. Please note that your escrow payment amount will adjust if your taxes, insurance premiums and/or assessment amounts change, so the amount of your monthly payment that SLS must place in escrow will also adjust, as permitted by law. This means that your monthly payment may change. An analysis of this account will be performed annually.

Due to the timing of your tax and insurance payments, we have determined that there is a shortage of funds in your escrow account in the amount of **$9,953.08**. You may pay this amount over a 5-year (60 months) period. If you wish to pay the total shortage now in a lump sum, please contact us. Paying this amount now in a lump sum will reduce your new monthly mortgage payment.

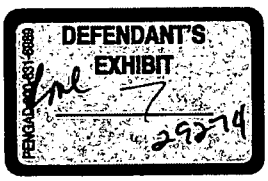
How to accept this offer:

STEP 1 COMPLETE AND RETURN THE ENCLOSED AGREEMENT BY THE DUE DATE

To accept this offer, you must sign and return both originals of the Modification Agreement. You must return the originally signed Modification Agreement as previously indicated on the first page of the Decision package. If the Modification Agreement has notary provisions at the end or attached, you must sign the original Modification Agreement before an notary public and return the notarized original Modification Agreement to us. We encourage you to make a copy of all documents for your records. If you do not send this signed original Modification Agreement by the above date, you must contact us if you still wish to be considered for this program and have your loan modified.

You may wish to consult your attorney or financial advisor to review the terms of the modification; we encourage you to return it to us as soon as possible. Please contact us at 1-800-306-6059 if you have any questions.

As a result of this Modification Offer, debt under your Mortgage Note may have/has been forgiven and there may be tax consequences to you. Please consult your tax advisor.



STEP 2 CONTINUE TO MAKE YOUR TRIAL PERIOD PAYMENTS ON TIME

Be certain to make any remaining trial period payments on or before the dates they are due. If the trial period payments are made after their due dates or in amounts different from the amount required, your loan may not be modified.

To better understand the proposed terms of your modified mortgage, please read the attached summary of your modified mortgage and the Modification Agreement.

Sincerely,

Loan Resolution Department
Specialized Loan Servicing LLC (SLS)
8742 Lucent Blvd, Ste 300
Highlands Ranch, CO, 80129
Ph: 1-800-306-6059
Fax: 1-720-241-7526

In accordance with the Fair Debt Collection Practices Act, you are hereby given notice of the following:

Please be advised that we are attempting to collect a debt and any information obtained will be used for that purpose. Calls will be monitored and recorded for quality assurance purposes. If you do not wish for your call to be recorded, please notify the Customer Assistance Associate when calling.

Please be advised that if the Agreement is altered in any way that the modification agreement will be rejected and the offer to modify your mortgage loan will be voided. All terms of the original Note and Deed of Trust will be immediately effective, including any default status of the loan.

If you are a customer in bankruptcy or a customer who has received a bankruptcy discharge of this debt, please be advised this letter constitutes neither a demand for payment of the captioned debt nor a notice of personal liability to any recipient hereof who might have received a discharge of such debt in accordance with applicable bankruptcy laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code. However, it may be a notice of possible enforcement of the lien against the collateral property, which has not been discharged in your bankruptcy. If you have questions, please contact our Customer Care Center at 1-800-306-6057.

Date: December 23, 2016

Summary	Here's a summary of your modified mortgage.

NEW PRINCIPAL BALANCE. Any past due amounts as of the end of the trial period, including unpaid interest, real estate taxes, insurance premiums, and certain assessments paid on your behalf to a third party, will be added to your mortgage loan balance. In addition, your mortgage insurance premium may increase as a result of the higher mortgage loan balance. **If you fulfill the terms of the trial period including, but not limited to, making any remaining trial period payments, we will waive ALL late charges that have accrued and remain unpaid at the end of the trial period.**

INTEREST RATE. The interest rate on your modified loan will be adjusted as noted in the attached Modification Agreement in Section 3.C.

TERM EXTENSION. To reduce your mortgage payment, we will extend the term of your mortgage. This means we will spread your payments over a longer period.

DEFERRAL OF PRINCIPAL. To further reduce your mortgage payment, we will defer collection of and not collect interest on $0.00 of your outstanding principal. You will not be required to make monthly payments on that portion. This portion of principal will be due when you pay off the modified loan, which will be when you sell or transfer an interest in your house, refinance the loan, or when the last scheduled payment is due.

PRINCIPAL FORGIVENESS. To further reduce your mortgage payment, we will forgive a portion of your outstanding principal equal to $0.00. You will never be required to repay this amount. However, there could be income tax consequences related to this forgiveness, and you should consult a tax advisor.

ESCROW ACCOUNT. The terms of your Modification Agreement require the servicer to set aside a portion of your new monthly payment in an escrow account for payment of your property taxes, insurance premiums and other required fees. Any prior waiver of escrows by your lender is no longer in effect. The initial estimated amount is calculated based upon the tax and insurance information obtained while in the modification process, and may change. An escrow analysis statement referencing the actual payment and effective date will be mailed to you within four weeks of the modification being completed. Specialized Loan Servicing LLC (SLS) will draw on this account to pay your real estate taxes and insurance premiums as they come due. Please note that your escrow payment amount will adjust if your taxes, insurance premiums and/or assessment amounts change, so the amount of your monthly payment that Specialized Loan Servicing LLC (SLS) must place in escrow will also adjust as permitted by law. This means that your monthly payment may change. Your initial monthly escrow payment is estimated to be $3,483.57. This amount is included in the loan payment noted in Section 3.C. of the enclosed Modification Agreement; you do not need to remit this amount separately.

ESCROW SHORTAGE. Due to the timing of your tax and insurance payments, we have determined that there is a shortage of funds in your escrow account in the amount of $9,953.08. You may pay this amount over a 5-year (60 months) period. **If you wish to pay the total shortage now in a lump sum, please contact us. Paying this amount now in a lump sum will reduce your new monthly mortgage payment.**

PAYMENT SCHEDULE. The enclosed Modification Agreement includes a payment schedule in Section 3.C. showing your payment plan for the life of your modified loan after the trial period.

FEES. There are no fees or other charges for this modification .

REPRESENTATIONS. Please read the enclosed Modification Agreement carefully and make sure that you understand it and that the statements set forth in the "My Representations" section are true and accurate. If you have any questions, please contact us at 1-800-306-6059 or Email .

Please be advised that if the Agreement is altered in any way that the modification agreement will be rejected and the offer to modify your mortgage loan will be voided. All terms of the original Note and Deed of Trust will be immediately effective, including any default status of the loan.

If you are a customer in bankruptcy or a customer who has received a bankruptcy discharge of this debt, please be advised this letter constitutes neither a demand for payment of the captioned debt nor a notice of personal liability to any recipient hereof who might have received a discharge of such debt in accordance with applicable bankruptcy laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code. However, it may be a notice of possible enforcement of the lien against the collateral property, which has not been discharged in your bankruptcy. If you have questions, please contact our Customer Care Center at 1-800-306-6057.

After Recording Return To:
Specialized Loan Servicing LLC
8742 Lucent Blvd, Ste 300, Highlands Ranch, CO 80129
Attn: Loan Resolution Department
Tax/Map/Parcel ID Number:

[Space Above This Line For Recording Data]

Investor Loan Number: [redacted] Investor Number: 358 Borrower: TEMISAN L ETIKERENTSE

MODIFICATION AGREEMENT
(Step Two of Two-Step Documentation Process)

Borrower ("I"): TEMISAN L ETIKERENTSE whose address is KNOWLES LAW FIRM PC 1212 WAPPOO ROAD, CHARLESTON, SC 29407 ("Borrower").
If more than one Borrower or Mortgagor is executing this document, each is referred to as "I." For purposes of this document words signifying the singular (such as "I") shall include the plural (such as "we") and vice versa where appropriate.

Lender or Servicer ("Lender"): Specialized Loan Servicing LLC a whose principal place of business and mailing address is 8742 Lucent Blvd. Ste 300, Highlands Ranch, CO 80129 ("Lender").

Date of first lien mortgage, deed of trust, or security deed ("Mortgage") recorded in Book or Liber See Original Instrument , of the Records of CHARLESTON County, SOUTH CAROLINA and Note ("Note"): June 15, 2007

Loan Number: [redacted]

Property Address ("Property"): 783 NAVIGATORS RUN , MOUNT PLEASANT, SOUTH CAROLINA 29464

See Legal description referenced in the original security instrument.

If my representations in Section 1 continue to be true in all material respects, then this Modification Agreement ("Agreement") will, as set forth in Section 3, amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage. The Mortgage and Note together, as they may previously have been amended, are referred to as the "Loan Documents." Capitalized terms used in this Agreement and not defined have the meaning given to them in Loan Documents.

This Agreement will not take effect unless the preconditions set forth in Section 2 have been satisfied.

1. **My Representations.** I certify, represent to Lender, covenant and agree:

A. I am experiencing a financial hardship, and as a result, (i) I am in default under the Loan Documents or my default is imminent, and (ii) I do not have sufficient income or access to sufficient liquid assets to make the monthly mortgage payments now or in the near future;

B. Property Type: Single Family

C. There has been no impermissible change in the ownership of the Property since I signed the Loan Documents. A permissible change would be any transfer that the lender is required by law to allow, such as a transfer to add or remove a family member, spouse or domestic partner of the undersigned in the event of a death, divorce or marriage;

D. I have provided documentation for **all** income that I receive (and I understand that I am not required to disclose child support or alimony unless I chose to rely on such income when requesting to qualify for the Modification Program ("Program"));

E. Under penalty of perjury, all documents and information I have provided to Lender in connection with this Agreement, including the documents and information regarding my eligibility for the Program, are true and correct;

F. If Lender requires me to obtain credit counseling in connection with the Program, I will do so; and

G. I have made or will make all payments required under a trial period plan.

H. I was discharged in a Chapter 7 bankruptcy proceeding subsequent to the execution of the Loan Documents. Based on this representation, Lender agrees that I will not have personal liability on the debt pursuant to this Agreement.

2. **Acknowledgements and Preconditions to Modification.** I understand and acknowledge that:

A. If prior to the Modification Effective Date as set forth in Section 3 the Lender determines that any of my representations in Section 1 are no longer true and correct or any covenant in Section 1 has not been performed, the Loan Documents will not be modified and this Agreement will terminate. In that event, the Lender will have all of the rights and remedies provided by the Loan Documents; and

B. I understand that the Loan Documents will not be modified unless and until the Modification Effective Date (as defined in Section 3) has occurred. I further understand and agree that the Lender will not be obligated or bound to make any modification of the Loan Documents if I fail to meet any one of the requirements under this Agreement.

3. **The Modification**. If my representations and covenants in Section 1 continue to be true in all material respects and all preconditions to the modification set forth in Section 2 have been met, the Loan Documents will automatically become modified on January 1, 2017 (the "Modification Effective Date") and all unpaid late charges that remain unpaid will be waived. I understand that if I have failed to make any payments as a precondition to this modification under a trial period plan, this modification will not take effect. The first modified payment will be due on February 1, 2017.

A. The new Maturity Date will be: September 25, 2047.

B. The modified Principal balance of my Note will include all amounts and arrearages that will be past due as of the Modification Effective Date (including unpaid and deferred interest, fees, escrow advances and other costs, but excluding unpaid late charges) and deferred principal and other deferred amounts from a prior modification, collectively, "Unpaid Amounts") less any amounts paid to Lender but not previously credited to my Loan. The new Principal balance of my Note will be $2,551,284.16 (the 'New Principal Balance'). I understand that by agreeing to add the Unpaid Amounts to the outstanding principal balance, the added Unpaid Amounts accrue interest based on the interest rate in

effect under this Agreement. I also understand that this means interest will now accrue on the unpaid Interest that is added to the outstanding principal balance, which would not happen without this Agreement.

C. Interest at the rate of 6 % will begin to accrue on the New Principal Balance as of 1/1/2017 and the first new monthly payment on the New Principal Balance will be due on 2/1/2017. My payment schedule for the modified Loan is as follows:

Years	Interest Rate	Interest Rate Change Date	Monthly P&I Payment Amount	Monthly Escrow Payment Amount*	Total Monthly Payment*	Payment Begins On	Number of Monthly Payments
1-30	6.000%	1/1/2017	$14,037.51	$3,483.57 May adjust periodically	$17,521.08 May adjust periodically	2/1/2017	368

Borrower promises to make monthly payments of principal and interest of U.S. $ 14,037.51 beginning on February 1, 2017, and continuing thereafter on the same day of each succeeding month until principal and interest are paid in full.

I will make these payments every month, in addition to 1 final balloon payment in the amount of $ 1,209,582.07 . The Balloon payment amount stated is if all monthly payments have been made as scheduled. At the end of the term, any balance remaining will have to be paid.

*The escrow payments may be adjusted periodically in accordance with applicable law and therefore my total monthly payment may change accordingly.

The above terms in this Section 3.C. shall supersede any provisions to the contrary in the Loan Documents, including but not limited to, provisions for an adjustable, step or simple interest rate.

I understand that, if I have a pay option adjustable rate mortgage loan, upon modification, the minimum monthly payment option, the interest-only or any other payment options will no longer be offered and that the monthly payments described in the above payment schedule for my modified Loan will be the minimum payment that will be due each month for the remaining term of the Loan. My modified Loan will not have a negative amortization feature that would allow me to pay less than the interest due resulting in any unpaid interest to be added to the outstanding principal balance.

D. I will be in default if I do not comply with the terms of the Loan Documents, as modified by this Agreement.

E. If a default rate of interest is permitted under the Loan Documents, then in the event of default under the Loan Documents, as amended, the interest that will be due will be the rate set forth in Section 3.C.

F. If on September 25, 2047, ('Balloon' or 'Modified Balloon Date'), Borrower still owes amounts under the Note and the Security Instrument, as amended by this Agreement, the Borrower will pay these amounts in full on the Balloon Date.

4. **Additional Agreements**. I agree to the following:

A. That all persons who signed the Loan Documents or their authorized representative(s) have signed this Agreement, unless (i) a borrower or co-borrower is deceased; (ii) the borrower and co-borrower are divorced and the property has been transferred to one spouse in the divorce decree, the spouse who no longer has an interest in the property need not sign this Agreement (although the non-signing spouse may continue to be held liable for the obligation under the Loan Documents); or (iii) the Lender has waived this requirement in writing.

B. That this Agreement shall supersede the terms of any modification, forbearance, trial period plan or other workout plan that I previously entered into with Lender.

C. To comply, except to the extent that they are modified by this Agreement, with all covenants, agreements, and requirements of Loan Documents including my agreement to make all payments of taxes, insurance premiums, assessments, Escrow Items, impounds, and all other payments, the amount of which may change periodically over the term of my Loan.

D. Funds for Escrow Items. I will pay to Lender on the day payments are due under the Loan Documents as amended by this Agreement, until the Loan is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over the Mortgage as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under the Loan Documents; (d) mortgage insurance premiums, if any, or any sums payable to Lender in lieu of the payment of mortgage insurance premiums in accordance with the Loan Documents; and (e) any community association dues, fees, and assessments that Lender requires to be escrowed. These items are called "Escrow Items." I shall promptly furnish to Lender all notices of amounts to be paid under this Section 4.D. I shall pay Lender the Funds for Escrow Items unless Lender waives my obligation to pay the Funds for any or all Escrow Items.
Lender may waive my obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, I shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. My obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in the Loan Documents, as the phrase "covenant and agreement" is used in the Loan Documents. If I am obligated to pay

Escrow Items directly, pursuant to a waiver, and I fail to pay the amount due for an Escrow Item, Lender may exercise its rights under the Loan Documents and this Agreement and pay such amount and I shall then be obligated to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with the Loan Documents, and, upon such revocation, I shall pay to Lender all Funds, and in such amounts, that are then required under this Section 4.D.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under the Real Estate Settlement Procedures Act ("RESPA"), and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge me for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays me interest on the Funds and applicable law permits Lender to make such a charge. Unless an agreement is made in writing or applicable law requires interest to be paid on the Funds, Lender shall not be required to pay me any interest or earnings on the Funds. Lender and I can agree in writing, however, that interest shall be paid on the Funds. Lender shall provide me, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to me for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify me as required by RESPA, and I shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify me as required by RESPA, and I shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by the Loan Documents, Lender shall promptly refund to me any Funds held by Lender.

E. That the Loan Documents as modified by this Agreement are duly valid, binding agreements, enforceable in accordance with their terms and are hereby reaffirmed.

F. That all terms and provisions of the Loan Documents, except as expressly modified by this Agreement, remain in full force and effect; nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents; and that except as otherwise specifically provided in, and as expressly modified by, this Agreement, the Lender and I will be bound by, and will comply with, all of the terms and conditions of the Loan Documents.

G. That, as of the Modification Effective Date, notwithstanding any other provision of the Loan Documents, if all or any part of the Property or any interest in it is sold or transferred without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by the Mortgage. However, Lender shall not exercise this option if state or federal law, rules or regulations prohibit the exercise of such option as of the date of such sale or transfer. If Lender exercises this option, Lender shall give me notice of acceleration. The notice shall provide a period of not less than 30

days from the date the notice is delivered or mailed within which I must pay all sums secured by the Mortgage. If I fail to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by the Mortgage without further notice or demand on me.

H. That, as of the Modification Effective Date, I understand that the Lender will only allow the transfer and assumption of the Loan, including this Agreement, to a transferee of my property as permitted under the Garn St. Germain Act, 12 U.S.C. Section 1701j-3. A buyer or transferee of the Property will not be permitted, under any circumstance, to assume the Loan. Except as noted herein, this Agreement may not be assigned to, or assumed by, a buyer or transferee of the Property.

I. That, as of the Modification Effective Date, if any provision in the Note or in any addendum or amendment to the Note allowed for the assessment of a penalty for full or partial prepayment of the Note, such provision is null and void.

J. That, I will cooperate fully with Lender in obtaining any title endorsement(s), or similar title insurance product (s), and/ or subordination agreement (s) that are necessary or required by the Lender's procedures to ensure that the modified mortgage Loan is in first lien position and/ or is fully enforceable upon modification and that if, under any circumstance and not withstanding anything else to the contrary in this Agreement, the Lender does not receive such title endorsement (s), title insurance product (s) and/ or subordination agreement(s), then the terms of this Agreement will not become effective on the Modification Effective Date and the Agreement will be null and void.

K. That I will execute such other documents as may be reasonably necessary to either (i) consummate the terms and conditions of this Agreement; or (ii) correct the terms and conditions of this Agreement if an error is detected after execution of this Agreement. I understand that either a corrected Agreement or a letter agreement containing the correction will be provided for my signature. At Lender's option, this Agreement will be void and of no legal effect upon notice of such error. If I elect not to sign any such corrective documentation, the terms of the original Loan Documents shall continue in full force and effect, such terms will not be modified by this Agreement, and I will not be eligible for a modification under the Modification program.

L. Mortgage Electronic Registration Systems, Inc. ("MERS") is a separate corporation organized and existing under the laws of Delaware and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, for mailing address, where applicable, 1901 E. Voorhees Street, Suite C, Danville, IL 61834, (888) 679-MERS. In cases where the loan has been registered with MERS who has only legal title to the interests granted by the borrower in the mortgage and who is acting solely as nominee for Lender and Lender's successors and assigns, MERS 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 and canceling the mortgage loan.

M. That Lender will collect and record personal information, including, but not limited to, my name, address, telephone number, social security number, credit score, income, payment history, government monitoring information, and information about account balances and activity. In addition, I understand and consent to the disclosure of my personal information and the terms of the trial period plan and this Agreement by Lender to (i) the U.S. Department of the Treasury; (ii) Fannie Mae and Freddie Mac in connection with their responsibilities under the Home Affordability and Stability Plan; (iii) any investor, insurer, guarantor or servicer that owns, insures, guarantees or services my first lien or subordinate lien (if applicable) mortgage loan (s); (iv) companies that

perform support services for the Modification Program and the Second Lien Modification Program; and (v) any HUD certified housing counselor.

N. That if any document related to the Loan Documents and/or this Agreement is lost, misplaced, misstated, inaccurately reflects the true and correct terms and conditions of the loan as modified, or is otherwise missing, I will comply with the Lender's request to execute, acknowledge, initial and deliver to the Lender any documentation the Lender deems necessary. If the original promissory note is replaced, the Lender hereby indemnifies me against any loss associated with a demand on the original note. All documents the Lender requests of me under this Section 4.N. shall be referred to as "Documents." I agree to deliver the Documents within ten (10) days after I receive the Lender's written request for such replacement.

O. That the mortgage insurance premiums on my Loan, if applicable, may increase as a result of the capitalization which will result in a higher total monthly payment. Furthermore, the date on which I may request cancellation of mortgage insurance may change as a result of the New Principal Balance.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

In Witness Whereof, the Lender and I have executed this Agreement.

Specialized Loan Servicing LLC
As Servicer

By: _____ (Seal)

Name: _____

Its: _____

Date: _____

_____ (Seal) Date: _____

TEMISAN L ETIKERENTSE

If the borrower is an inter vivos revocable trust, we require each of the trustees to sign this document in the signature blocks below.

_____, *Trustee if the* _____ *Trust instrument dated*

_____, *for the benefit of* _____ *(Borrower)*

_____, *Trustee if the* _____ *Trust instrument dated*

_____, *for the benefit of* _____ *(Borrower)*

After Recording Return To:
Specialized Loan Servicing LLC
8742 Lucent Blvd, Ste 300, Highlands Ranch, CO 80129
Attn: Loan Resolution Department
Tax/Map/Parcel ID Number:

[Space Above This Line For Recording Data]

Investor Loan Number: [redacted] Investor Number: 358 Borrower: TEMISAN L ETIKERENTSE

MODIFICATION AGREEMENT
(Step Two of Two-Step Documentation Process)

Borrower ("I"): TEMISAN L ETIKERENTSE whose address is KNOWLES LAW FIRM PC 1212 WAPPOO ROAD, CHARLESTON, SC 29407 ("Borrower").
If more than one Borrower or Mortgagor is executing this document, each is referred to as "I." For purposes of this document words signifying the singular (such as "I") shall include the plural (such as "we") and vice versa where appropriate.

Lender or Servicer ("Lender"): Specialized Loan Servicing LLC a whose principal place of business and mailing address is 8742 Lucent Blvd. Ste 300, Highlands Ranch, CO 80129 ("Lender").

Date of first lien mortgage, deed of trust, or security deed ("Mortgage") recorded in Book or Liber See Original Instrument , of the Records of CHARLESTON County, SOUTH CAROLINA and Note ("Note"): June 15, 2007

Loan Number: [redacted]

Property Address ("Property"): 783 NAVIGATORS RUN , MOUNT PLEASANT, SOUTH CAROLINA 29464

See Legal description referenced in the original security instrument.

If my representations in Section 1 continue to be true in all material respects, then this Modification Agreement ("Agreement") will, as set forth in Section 3, amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage. The Mortgage and Note together, as they may previously have been amended, are referred to as the "Loan Documents." Capitalized terms used in this Agreement and not defined have the meaning given to them in Loan Documents.

This Agreement will not take effect unless the preconditions set forth in Section 2 have been satisfied.

1. **My Representations.** I certify, represent to Lender, covenant and agree:

   A. I am experiencing a financial hardship, and as a result, (i) I am in default under the Loan Documents or my default is imminent, and (ii) I do not have sufficient income or access to sufficient liquid assets to make the monthly mortgage payments now or in the near future;

B. Property Type: Single Family

C. There has been no impermissible change in the ownership of the Property since I signed the Loan Documents. A permissible change would be any transfer that the lender is required by law to allow, such as a transfer to add or remove a family member, spouse or domestic partner of the undersigned in the event of a death, divorce or marriage;

D. I have provided documentation for **all** income that I receive (and I understand that I am not required to disclose child support or alimony unless I chose to rely on such income when requesting to qualify for the Modification Program ("Program"));

E. Under penalty of perjury, all documents and information I have provided to Lender in connection with this Agreement, including the documents and information regarding my eligibility for the Program, are true and correct;

F. If Lender requires me to obtain credit counseling in connection with the Program, I will do so; and

G. I have made or will make all payments required under a trial period plan.

H. I was discharged in a Chapter 7 bankruptcy proceeding subsequent to the execution of the Loan Documents. Based on this representation, Lender agrees that I will not have personal liability on the debt pursuant to this Agreement.

2. **Acknowledgements and Preconditions to Modification.** I understand and acknowledge that:

A. If prior to the Modification Effective Date as set forth in Section 3 the Lender determines that any of my representations in Section 1 are no longer true and correct or any covenant in Section 1 has not been performed, the Loan Documents will not be modified and this Agreement will terminate. In that event, the Lender will have all of the rights and remedies provided by the Loan Documents; and

B. I understand that the Loan Documents will not be modified unless and until the Modification Effective Date (as defined in Section 3) has occurred. I further understand and agree that the Lender will not be obligated or bound to make any modification of the Loan Documents if I fail to meet any one of the requirements under this Agreement.

3. **The Modification**. If my representations and covenants in Section 1 continue to be true in all material respects and all preconditions to the modification set forth in Section 2 have been met, the Loan Documents will automatically become modified on January 1, 2017 (the "Modification Effective Date") and all unpaid late charges that remain unpaid will be waived. I understand that if I have failed to make any payments as a precondition to this modification under a trial period plan, this modification will not take effect. The first modified payment will be due on February 1, 2017.

A. The new Maturity Date will be: September 25, 2047.

B. The modified Principal balance of my Note will include all amounts and arrearages that will be past due as of the Modification Effective Date (including unpaid and deferred interest, fees, escrow advances and other costs, but excluding unpaid late charges) and deferred principal and other deferred amounts from a prior modification, collectively, "Unpaid Amounts") less any amounts paid to Lender but not previously credited to my Loan. The new Principal balance of my Note will be $2,551,284.16 (the 'New Principal Balance'). I understand that by agreeing to add the Unpaid Amounts to the outstanding principal balance, the added Unpaid Amounts accrue interest based on the interest rate in

effect under this Agreement. I also understand that this means interest will now accrue on the unpaid Interest that is added to the outstanding principal balance, which would not happen without this Agreement.

C. Interest at the rate of 6 % will begin to accrue on the New Principal Balance as of 1/1/2017 and the first new monthly payment on the New Principal Balance will be due on 2/1/2017. My payment schedule for the modified Loan is as follows:

Years	Interest Rate	Interest Rate Change Date	Monthly P&I Payment Amount	Monthly Escrow Payment Amount*	Total Monthly Payment*	Payment Begins On	Number of Monthly Payments
1-30	6.000%	1/1/2017	$14,037.51	$3,483.57 May adjust periodically	$17,521.08 May adjust periodically	2/1/2017	368

Borrower promises to make monthly payments of principal and interest of U.S. $ 14,037.51 beginning on February 1, 2017, and continuing thereafter on the same day of each succeeding month until principal and interest are paid in full.

I will make these payments every month, in addition to 1 final balloon payment in the amount of $ 1,209,582.07 . The Balloon payment amount stated is if all monthly payments have been made as scheduled. At the end of the term, any balance remaining will have to be paid.

*The escrow payments may be adjusted periodically in accordance with applicable law and therefore my total monthly payment may change accordingly.

The above terms in this Section 3.C. shall supersede any provisions to the contrary in the Loan Documents, including but not limited to, provisions for an adjustable, step or simple interest rate.

I understand that, if I have a pay option adjustable rate mortgage loan, upon modification, the minimum monthly payment option, the interest-only or any other payment options will no longer be offered and that the monthly payments described in the above payment schedule for my modified Loan will be the minimum payment that will be due each month for the remaining term of the Loan. My modified Loan will not have a negative amortization feature that would allow me to pay less than the interest due resulting in any unpaid interest to be added to the outstanding principal balance.

D. I will be in default if I do not comply with the terms of the Loan Documents, as modified by this Agreement.

E. If a default rate of interest is permitted under the Loan Documents, then in the event of default under the Loan Documents, as amended, the interest that will be due will be the rate set forth in Section 3.C.

F. If on September 25, 2047, ('Balloon' or 'Modified Balloon Date'), Borrower still owes amounts under the Note and the Security Instrument, as amended by this Agreement, the Borrower will pay these amounts in full on the Balloon Date.

4. **Additional Agreements**. I agree to the following:

A. That all persons who signed the Loan Documents or their authorized representative(s) have signed this Agreement, unless (i) a borrower or co-borrower is deceased; (ii) the borrower and co-borrower are divorced and the property has been transferred to one spouse in the divorce decree, the spouse who no longer has an interest in the property need not sign this Agreement (although the non-signing spouse may continue to be held liable for the obligation under the Loan Documents); or (iii) the Lender has waived this requirement in writing.

B. That this Agreement shall supersede the terms of any modification, forbearance, trial period plan or other workout plan that I previously entered into with Lender.

C. To comply, except to the extent that they are modified by this Agreement, with all covenants, agreements, and requirements of Loan Documents including my agreement to make all payments of taxes, insurance premiums, assessments, Escrow Items, impounds, and all other payments, the amount of which may change periodically over the term of my Loan.

D. Funds for Escrow Items. I will pay to Lender on the day payments are due under the Loan Documents as amended by this Agreement, until the Loan is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over the Mortgage as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under the Loan Documents; (d) mortgage insurance premiums, if any, or any sums payable to Lender in lieu of the payment of mortgage insurance premiums in accordance with the Loan Documents; and (e) any community association dues, fees, and assessments that Lender requires to be escrowed. These items are called "Escrow Items." I shall promptly furnish to Lender all notices of amounts to be paid under this Section 4.D. I shall pay Lender the Funds for Escrow Items unless Lender waives my obligation to pay the Funds for any or all Escrow Items.
Lender may waive my obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, I shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. My obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in the Loan Documents, as the phrase "covenant and agreement" is used in the Loan Documents. If I am obligated to pay

Escrow Items directly, pursuant to a waiver, and I fail to pay the amount due for an Escrow Item, Lender may exercise its rights under the Loan Documents and this Agreement and pay such amount and I shall then be obligated to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with the Loan Documents, and, upon such revocation, I shall pay to Lender all Funds, and in such amounts, that are then required under this Section 4.D.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under the Real Estate Settlement Procedures Act ("RESPA"), and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge me for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays me interest on the Funds and applicable law permits Lender to make such a charge. Unless an agreement is made in writing or applicable law requires interest to be paid on the Funds, Lender shall not be required to pay me any interest or earnings on the Funds. Lender and I can agree in writing, however, that interest shall be paid on the Funds. Lender shall provide me, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to me for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify me as required by RESPA, and I shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify me as required by RESPA, and I shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by the Loan Documents, Lender shall promptly refund to me any Funds held by Lender.

E. That the Loan Documents as modified by this Agreement are duly valid, binding agreements, enforceable in accordance with their terms and are hereby reaffirmed.

F. That all terms and provisions of the Loan Documents, except as expressly modified by this Agreement, remain in full force and effect; nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents; and that except as otherwise specifically provided in, and as expressly modified by, this Agreement, the Lender and I will be bound by, and will comply with, all of the terms and conditions of the Loan Documents.

G. That, as of the Modification Effective Date, notwithstanding any other provision of the Loan Documents, if all or any part of the Property or any interest in it is sold or transferred without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by the Mortgage. However, Lender shall not exercise this option if state or federal law, rules or regulations prohibit the exercise of such option as of the date of such sale or transfer. If Lender exercises this option, Lender shall give me notice of acceleration. The notice shall provide a period of not less than 30

days from the date the notice is delivered or mailed within which I must pay all sums secured by the Mortgage. If I fail to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by the Mortgage without further notice or demand on me.

H. That, as of the Modification Effective Date, I understand that the Lender will only allow the transfer and assumption of the Loan, including this Agreement, to a transferee of my property as permitted under the Garn St. Germain Act, 12 U.S.C. Section 1701j-3. A buyer or transferee of the Property will not be permitted, under any circumstance, to assume the Loan. Except as noted herein, this Agreement may not be assigned to, or assumed by, a buyer or transferee of the Property.

I. That, as of the Modification Effective Date, if any provision in the Note or in any addendum or amendment to the Note allowed for the assessment of a penalty for full or partial prepayment of the Note, such provision is null and void.

J. That, I will cooperate fully with Lender in obtaining any title endorsement(s), or similar title insurance product (s), and/ or subordination agreement (s) that are necessary or required by the Lender's procedures to ensure that the modified mortgage Loan is in first lien position and/ or is fully enforceable upon modification and that if, under any circumstance and not withstanding anything else to the contrary in this Agreement, the Lender does not receive such title endorsement (s), title insurance product (s) and/ or subordination agreement(s), then the terms of this Agreement will not become effective on the Modification Effective Date and the Agreement will be null and void.

K. That I will execute such other documents as may be reasonably necessary to either (i) consummate the terms and conditions of this Agreement; or (ii) correct the terms and conditions of this Agreement if an error is detected after execution of this Agreement. I understand that either a corrected Agreement or a letter agreement containing the correction will be provided for my signature. At Lender's option, this Agreement will be void and of no legal effect upon notice of such error. If I elect not to sign any such corrective documentation, the terms of the original Loan Documents shall continue in full force and effect, such terms will not be modified by this Agreement, and I will not be eligible for a modification under the Modification program.

L. Mortgage Electronic Registration Systems, Inc. ("MERS") is a separate corporation organized and existing under the laws of Delaware and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, for mailing address, where applicable, 1901 E. Voorhees Street, Suite C, Danville, IL 61834, (888) 679-MERS. In cases where the loan has been registered with MERS who has only legal title to the interests granted by the borrower in the mortgage and who is acting solely as nominee for Lender and Lender's successors and assigns, MERS 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 and canceling the mortgage loan.

M. That Lender will collect and record personal information, including, but not limited to, my name, address, telephone number, social security number, credit score, income, payment history, government monitoring information, and information about account balances and activity. In addition, I understand and consent to the disclosure of my personal information and the terms of the trial period plan and this Agreement by Lender to (i) the U.S. Department of the Treasury; (ii) Fannie Mae and Freddie Mac in connection with their responsibilities under the Home Affordability and Stability Plan; (iii) any investor, insurer, guarantor or servicer that owns, insures, guarantees or services my first lien or subordinate lien (if applicable) mortgage loan (s); (iv) companies that

perform support services for the Modification Program and the Second Lien Modification Program; and (v) any HUD certified housing counselor.

N. That if any document related to the Loan Documents and/or this Agreement is lost, misplaced, misstated, inaccurately reflects the true and correct terms and conditions of the loan as modified, or is otherwise missing, I will comply with the Lender's request to execute, acknowledge, initial and deliver to the Lender any documentation the Lender deems necessary. If the original promissory note is replaced, the Lender hereby indemnifies me against any loss associated with a demand on the original note. All documents the Lender requests of me under this Section 4.N. shall be referred to as "Documents." I agree to deliver the Documents within ten (10) days after I receive the Lender's written request for such replacement.

O. That the mortgage insurance premiums on my Loan, if applicable, may increase as a result of the capitalization which will result in a higher total monthly payment. Furthermore, the date on which I may request cancellation of mortgage insurance may change as a result of the New Principal Balance.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

In Witness Whereof, the Lender and I have executed this Agreement.

Specialized Loan Servicing LLC
As Servicer

By: _____ (Seal)
Name: _____
Its: _____
Date: _____

_____ (Seal) Date: _____
TEMISAN L ETIKERENTSE

If the borrower is an inter vivos revocable trust, we require each of the trustees to sign this document in the signature blocks below.

_____, *Trustee if the* _____ *Trust instrument dated*

_____, *for the benefit of* _____ *(Borrower)*

_____, *Trustee if the* _____ *Trust instrument dated*

_____, *for the benefit of* _____ *(Borrower)*

_____ **[Space Below This Line For Acknowledgment]** _____

State of SOUTH CAROLINA
County of _____

I _____, do hereby certify that TEMISAN L ETIKERENTSE , personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the ____ day of _____.

All Signatures signed, sealed and delivered in the presence of:

WITNESS(ES) (as to all signatures).

_____
First Witness

_____
Second Witness

[Seal]

_____
Notary Public

_____
Printed Name

My commission expires on _____

SLS/Etikerentse000341

State of COLORADO
County of _____

The foregoing instrument was acknowledged before me this _____by _____, _____ of Specialized Loan Servicing LLC, a , on behalf of said entity.

[Seal]

_____
Notary Public

_____
Printed Name

My commission expires on_____

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1,	)	Civil Action No. 2018-CP-10-02762
Plaintiff,	)	CERTIFICATE OF SERVICE
vs.	)	
Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, Suntrust Mortgage Inc., Capital Bank Corporation, Bank of America NA, Keybank National Association, and Olde Park Homeowners' Association Inc.,	)	
Defendants.	)	
Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis,	)	
Third-Party Plaintiffs,	)	
vs.	)	
Specialized Loan Servicing LLC a/k/a SLS,	)	
Third-Party Defendant.	)	

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Specialized Loan Servicing, LLC do hereby

certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: *Third-party Defendant Specialized Loan Servicing LLC's Motion for Summary Judgment and Memorandum in Support*

Counsel Served:

Brian M. Knowles, Esquire
KNOWLES LAW FIRM, PC
768 St. Andrews Blvd.
Charleston, SC 29407
brian@knowlesinternational.com

AND

Robert B. Varnado, Esquire
Alexis M. Wimberly, Esquire
BROWN & VARNADO LLC
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Attorney Defendants Third-Party Plaintiffs Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis

Damon C. Wlodarczyk, Esquire
Jayme L. Shy, Esquire
RILEY POPE & LANEY LLC
2838 Devine Street
Columbia, SC 29205
jshy@rplfirm.com
Foreclosure Counsel for Wilmington Trust

Kelli D. Martin
Kelli Diamond Martin
Administrative Assistant

October 16th, 2019.

NELSON MULLINS

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

1320 Main Street | 17th Floor
Columbia, SC 29201
T 803.799.2000 F 803.256.7500
nelsonmullins.com

Blake T. Williams
T 803.255.9597 F 803.255.9032
blake.williams@nelsonmullins.com

October 16, 2019

The Honorable Julie J. Armstrong
Clerk of Court
Charleston County Courthouse
100 Broad Street, Suite106
Charleston, SC 29401

RE: Wilmington Trust et al. v. Temisan Etikerentse et al. v. Specialized Loan Servicing LLC
Civil Action No. 2016-CP-10-01987
NMRS File No. 42753.01622

Dear Ms. Armstrong:

Enclosed are the original and one copy of *Third-party Defendant Specialized Loan Servicing, LLC's Motion for Summary Judgment and Memorandum in Support* in the above-referenced matter. We would appreciate it if you would file the original and return a clocked copy to us in the return envelope provided.

By copy of this letter to all counsel, we are hereby serving them with a copy of the above referenced pleading.

Very truly yours,

Blake T. Williams

BTW:kdm
Enclosures
cc: Brian M. Knowles, Esquire
Jayme L. Shy, Esquire
Robert B. Varnado, Esquire
Alexis M. Wimberly, Esquire

ELECTRONICALLY FILED - 2020 Jul 10 4:15 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762

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

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

ELECTRONICALLY FILED - 2020 Jul 10 4:15 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762

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

RELEVANT FACTS

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

SLS'S MOTION FOR SUMMARY JUDGMENT

A.. Rule 14 Argument.

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

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

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

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

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

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

B. Breach of Contract/Lack of Privity Argument.

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

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

C. HAMP/SCUTPA/RESPA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Bankruptcy Argument

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

WILMINGTON TRUST'S MOTION FOR SUMMARY JUDGMENT

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

CONCLUSION

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

(signature on next page)

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

BROWN & VARNADO LLC

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July 10, 2020
Mount Pleasant, South Carolina

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CERTIFICATE OF SERVICE

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

Via Email
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/s Robert B. Varnado
Robert B. Varnado

July 10, 2020
Mount Pleasant, South Carolina

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

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

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

A.. Rule 14 Argument.

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

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

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

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

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

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

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

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

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

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

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

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

C. HAMP/SCUTPA/RESPA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. SLS's Bankruptcy Argument

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

CONCLUSION

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

(signature on following page)

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July 29, 2020
Mount Pleasant, South Carolina

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CERTIFICATE OF SERVICE

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

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Mount Pleasant, South Carolina

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STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Wilmington Trust National Association as Successor Trustee to Citibank N.A. as Trustee of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust II Mortgage Pass-Through Certificates Series 2007-1, Plaintiff, vs. Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, Suntrust Mortgage Inc., Capital Bank Corporation, Bank of America NA, Keybank National Association, and Olde Park Homeowners' Association Inc., Defendants.	Civil Action No. 2018-CP-10-02762 **Specialized Loan Servicing's Motion to Alter or Amend and/or Revise the Judgment to Include Findings of Fact and Conclusion of Law**
Temisan Etikerentse a/k/a Temisan L. Etikerentse, Ijeoma Etikerentse a/k/a Ijeoma Etkis, Third-Party Plaintiffs, vs. Specialized Loan Servicing LLC a/k/a SLS, Third-Party Defendant.	

Third-Party Defendant Specialized Loan Servicing, LLC ("SLS") respectfully moves the Court pursuant to Rule 59(e) and Rule 54(b) to amend and revise its Order granting summary judgment in SLS's favor to include findings of fact and conclusions of law. As detailed below,

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SLS files this motion out of an abundance of caution. Although formal findings are not necessarily required, Third-Party Plaintiffs have indicated they will appeal at the appropriate time. Therefore, to assist the Court of Appeals with its analysis, SLS respectfully requests the Court issue a formal order.

SLS moved for summary judgment as to the third-party claims asserted against it on October 17, 2019. After hearings on July 13, 2020 and July 15, 2020, the Court granted SLS's motion on July 22, 2020 via Form 4 Order. The Court invited SLS to submit a formal order if it desired. That same day, SLS informed the Court's law clerk that it would like the Court to issue a formal order. The clerk requested that SLS submit its proposed order by July 31, 2020.

On July 29, 2020, before SLS was able to submit its proposed order, however, Third-Party Plaintiffs filed a motion to reconsider pursuant to Rule 59(e). SLS submitted its proposed formal order granting summary judgment to the Court's clerk the following day, on July 30, 2020. The Court denied Third-Party Plaintiff's motion to reconsider via Form 4 order dated August 5, 2020. The undersigned inquired with the Court's clerk about the status of the formal order and she asked that it be e-filed, which the undersigned did that same day.

Although not necessarily a requirement under South Carolina law, the Supreme Court has stated it agrees "it is better practice—and in most cases common practice—as well as beneficial to the judicial process for a trial judge to articulate relevant findings and conclusions of law in an order granting summary judgment." *Woodson v. DLI Properties, LLC*, 406 S.C. 517, 526–27, 753 S.E.2d 428, 433 (2014). In *Woodson*, however, the circuit court's reasoning was "clear from the order, as it plainly referenced the evidence the circuit court considered in making its decision." *Id.* The court cited *Porter v. Labor Depot*, 372 S.C. 560, 643 S.E.2d 96 (Ct. App. 2007) for the proposition that "not all situations require a detailed order, and the circuit court's form order may

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be sufficient if the appellate court can ascertain the basis for the circuit court's ruling from the record on appeal." *Id.* at 568, 643 S.E.2d at 100.

As noted above, Third-Party Plaintiffs have indicated that they will appeal. Therefore, out of an abundance of caution and to assist the Court of Appeals in its review of the case, SLS respectfully requests that the Court enter a formal order setting forth its findings of fact and legal analysis.[1] SLS attaches the proposed order that it e-filed on August 5, 2020 for the Court's consideration to this motion as **Exhibit A**.

Rule 54(b) provides that when an order adjudicates the rights and liabilities of fewer than all the parties, it is "subject to revision ***at any time*** before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." Rule 54(b), SCRCP. Under this provision, the Court has the inherent power to enter the formal order at any time prior to the adjudication of the remainder of the claims at issue in this case. Nevertheless, South Carolina courts do not appear to have addressed the interplay between this provision of Rule 54(b) and Rule 59(e)'s ten day limitation for moving to amend an order, which has been interpreted as a jurisdictional. *See Leviner v. Sonoco Prod. Co.*, 339 S.C. 492, 530 S.E.2d 127 (2000). Therefore, SLS is filing this motion today as a precaution, since the ten day period for filing a motion to alter or amend the Court's August 5, 2020 Order expires Monday, August 17, 2020.

Signature on Following Page

[1] By making this request, SLS in no waives, and expressly preserves, any and all arguments that the Court's Form 4 orders are sufficient to permit meaningful appellate review.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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August 14, 2020

ELECTRONICALLY FILED - 2020 Aug 14 3:27 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002762

STATE OF SOUTH CAROLINA | COURT OF COMMON PLEAS

COUNTY OF CHARLESTON | 2018-CP-10-02762

Wilmington Trust,

Plaintiff

-vs-

Temisan Etikerentse,

Defendant

TRANSCRIPT OF RECORD

July 13, 2020

Charleston, South Carolina (Via Zoom)

B E F O R E:

The Honorable Bentley Price, Judge

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

Damon Wlodarczyk, Esquire
Attorney for the Plaintiff

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

Reported By:

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

EXHIBITS

NO EXHIBITS INTRODUCED

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

is it?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and I'll get into that in a second.

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

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

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

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

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

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

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

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

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

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

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

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

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

administrative action.

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

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

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

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

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

argument should be dismissed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

contract action is money damages.

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

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

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

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

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

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

THE COURT: All right. Mr. Knowles.

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: All right.

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

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

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

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

MR. KNOWLES: Right.

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

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

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

MR. VARNADO: That's correct, sir.

THE COURT: All right.

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

MR. WILLIAMS: In the complaint ---

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

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

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

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

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

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

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

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

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

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

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

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

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

right to a jury trial be allowed to go forward.

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

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

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

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

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

THE COURT: All right.

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

THE COURT: Right.

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

THE COURT: Sure.

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

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

And then my client is getting the bad side

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

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

MR. KNOWLES: Thank you, Your Honor.

MR. VARNADO: Thank you, Your Honor.

THE COURT: All right. Thank you very much.

MR. KNOWLES: Thank you.

THE COURT: Yes, sir.

(End of Transcript of Record)

CERTIFICATE OF REPORTER

State of South Carolina)
County of Charleston)

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

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

September 30, 2020



Yvestre Torres
Circuit Court Reporter

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

B E F O R E:

THE HONORABLE BENTLEY D. PRICE

A P P E A R A N C E:

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Original transcript ordered by:
Brian Morris Knowles

Stenographically recorded and transcribed by:

Karen V. Andersen, RMR, CRR, CSR

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

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

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

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

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

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

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

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

lawyers and bring a foreclosure action against the doctor.

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

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

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

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

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

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

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

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

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

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

THE COURT: All right.

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

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

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

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

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

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

foreclose on the loan. Correct, or no?

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

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

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

THE COURT: Who do you want --

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

THE COURT: So who do you allege has jurisdiction?

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

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

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

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

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

THE COURT: Well --

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

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

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

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

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

MR. VARNADO: That's what they said.

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

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

Anyway, sorry, Your Honor.

THE COURT: That's fine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Why would they not --

MR. VARNADO: Because they are the servicer.

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

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

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

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

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

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

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

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

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

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

MR. VARNADO: I didn't hear you.

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

MR. VARNADO: That's right.

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

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

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

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

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

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

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

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

CERTIFICATE OF REPORTER

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

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



Karen V. Andersen
Registered Merit Reporter
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
South Carolina Circuit Court Judge

Appellate Case No. 2020-001204

TEMISAN ETIKERENTSE and IJOEMA ETIKERENTSE .....Appellants,

v.

SPECIALIZED LOAN SERVICING, LLC ..... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the ***Record on Appeal*** contains all material proposed to be included by any of the parties, not any other material.

/s Robert B. Varnado

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July 26, 2021
Charleston, South Carolina