

# 19453

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Robert A Smoak, Jr , Master-in-Equity for Aiken County

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Case No 2010-CP-02-172

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BAC Home Loan Servicing, L P ,  
f/k/a Countrywide Home Loan Servicing, L P ,  
successor in interest to Defendant  
Mortgage Electronic Registration Systems, Inc  
MIN # 100039032108093192,

Appellant,

v

Debra Kinder, Personal Representative of  
The Estate of George William Brelsford, IV  
a/k/a George W Brelsford, and Debra Kinder,  
Personal Representative of the Estate of  
Patricia M Brelsford,

Respondent(s)

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**RECORD ON APPEAL**

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Sean A O'Connor, Esquire  
Finkel Law Firm LLC  
P O Box 41489  
Charleston, South Carolina 29423  
Attorneys for Appellant

James Verenes, Esquire  
Fox and Verenes  
P O Drawer 328  
Aiken, South Carolina 29802-0328  
Attorneys for Respondent

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF Aiken )

IN THE COURT OF COMMON PLEAS

CITIZENS BANK OF EFFINGHAM )  
 )  
 )  
 PLAINTIFF )  
 )  
 =VS= )  
 )  
 DEBRA KINDER PERSONAL )  
 REPRESENTATIVE OF THE ESTATE )  
 OF GEORGE WILLIAM BRELSFORD )  
 IV a/k/a GEORGE W BRELSFORD )  
 DEBRA KINDER PERSONAL )  
 REPRESENTATIVE OF THE ESTATE )  
 OF PATRICIA M BRELSFORD )  
 DEBRA KINDER INDIVIDUALLY )  
 KATHLEEN BRELSFORD FRENCH )  
 ROBIN BRELSFORD LANDES )  
 MORTGAGE ELECTRONIC )  
 REGISTRATION SYSTEMS INC )  
 MIN# 100039032108093192 AND )  
 WOODSIDE PLANTATION PROPERTY )  
 OWNERS ASSOCIATION )  
 )  
 DEFENDANTS )

JUDGMENT OF FORFEITURE  
 AND SALE  
 Deficiency Judgment Waived  
 Non Jury  
 Case No 2010 CP 02 00172

June 15 10@  
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A hearing was held May 26 2010 at 2:30 P.M. The testimony was taken which is reported herewith and from the testimony and evidence I find and conclude as follows

FINDINGS OF FACT

- 1 The Lis Pendens was filed on February 4 2010 *Amended*
- 2 The Summons and Complaint were filed on February 4 2010 *Amended*
- 3 Service was made upon the Defendants named above as shown by the proofs of service filed herein
- 4 The Defendants are all in default as shown by Affidavit filed herein

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5 The Defendant and/or all attorneys of record were notified of the time, date and place of the hearing in this matter.

6 According to the affidavit filed herein, all Defendants are in default and that none of the Defendants are in the Military Service of the United States of America as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. Section 501 et seq.

7 For value received, I find that on July 2, 2004, the Defendant, George W. Brelsford, did deliver to the Citizens Bank of Effingham a certain Citizens Interest Only Home Equity Note in writing, wherein and whereby he promised to pay to the order of Citizens Bank of Effingham the principal sum of Thirty Thousand and No/100 Dollars (\$30,000.00) together with interest at the rate of prime plus 1% on the unpaid balance until the maturity date of July 15, 2009.

8 To better secure the payment of the Citizens Interest Only Home Equity Note described above, the Defendant, George W. Brelsford, made, executed and delivered to Citizens Bank of Effingham a certain real estate first mortgage in writing, dated July 2, 2004, covering real property in Aiken County, which is the same as that described in the Complaint. The first mortgage was filed on July 6, 2004, and recorded in REM Book 3588 at Page 89, office of the RMC for Aiken County, South Carolina.

9 This first Mortgage constitutes a first mortgage lien on the subject property, subject only to ad valorem or other liens/taxes given priority by statute.

10 The Plaintiff in this action is the owner and holder or nominee for the owner and holder of the Citizens Interest Only Home Equity Note and first Mortgage; it is seeking to foreclose.

11 Any notice required by the terms of the first mortgage or by state or federal statutes has been given to the applicable defendant prior to the commencement of this action.

12 Payment due on the Citizens Interest Only Home Equity Note has not been made as provided therein, and the Plaintiff, as the holder or nominee for the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Citizens Interest Only Home Equity Note and first Mortgage in the hands of the attorney herein for collection by foreclosure.

13 The sum of \$2,000.00 is a reasonable fee to allow as attorney fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Citizens Interest Only Home Equity Note and first Mortgage. These sums are likewise reasonable based on the time necessarily devoted to representation of the Plaintiff during the several month course of these proceedings. The services of counsel performed for the Plaintiff, including the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case, also support the amount awarded. The fees

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awarded herein are also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

14 After all payments received by the Plaintiff have been credited to the subject loan, the amount due and owing on the Citizens Interest Only Home Equity Note with interest at the rate provided in the Citizens Interest Only Home Equity Note and other costs and expenses of the within action, including an attorney's fee secured by the Fixed Rate Note and first Mortgage is as follows:

(a)	Principal	--	\$29,915.25
(b)	Interest from 7/14/09 to 4/7/2010 at 4.25%	-	\$ 1,076.34
(c)	Interest from 4/8/2010 7/6/2010 at 4.25%		\$ 313.49
(d)	Costs of collection prior to hearing (servicing filing etc.)	-- --	\$ <del>685.63</del> 810.00
(e)	Late Charges	----	\$ 35.27
(f)	Attorney's fee (Ed Reddick)		\$ 600.00
(g)	Attorney's fee	--	\$ 2,000.00
TOTAL debt secured by Citizens Interest Only Home Equity Line Note and first Mortgage including interest to date shown			-- -- \$34,625.98 \$34,750.78

Interest for the period from the date shown in (b) above through the date of this judgment at above stated rate to be added to the above stated Total Debt to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 4.25% per annum (pursuant to the terms of Citizens Interest Only Home Equity Line Note and first Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the first Mortgage through the date to which such interest is computed.

15 Plaintiff is seeking the usual foreclosure of the first mortgage and has in the Complaint (or subsequently thereto in writing) expressly waived the right to a personal or deficiency judgment.

16 The Defendant claims or may claim a lien upon or legal interest in the subject property and in the event there is a surplus from the sale of the subject property

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such Defendant may present any such lien or legal interest at a hearing subsequent to the sale in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. ~~The said Defendant and such liens or legal interests are as follows:~~

~~a None~~

**IT IS THEREFORE ORDERED**

17 There is due on the Citizens Interest Only Home Equity Note and first Mortgage set forth in the Complaint the sum of \$34,625.98 as set out in the Findings of Fact supra together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof

18 The amount due in the preceding paragraph (the Final Total Debt as set out in the Findings of Fact supra) shall accrue interest at the note rate per annum and together with such interest shall constitute the total judgment debt due the Plaintiff

19 The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs commissions and expenses not included in the minimum deposit previously made in compliance with S C Code Ann Sec 14 11 310 (1976) It may also increase to include supplemental compensation for attorney s services not contemplated by the initial fee award Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation Such additional costs commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing

20 The Defendant is liable for the aforesaid judgment debt of the Citizens Interest Only Home Equity Note and first Mortgage including interest at the rate of prime plus 1% on the unpaid balance shall on or before the date of sale of the property hereinafter described pay to the Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid together with the costs and disbursements of this action

21 On default of payment at or before the time herein indicated the mortgaged premises described in the Complaint as hereinafter set forth shall be sold by the Master in Equity at public auction at the Aiken County Courthouse in the City of Aiken County and State aforesaid on July 6 2010 at 11 00 A M or on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday then and in such event the sales day shall be on the next business day succeeding such holiday) on the following terms that is to say

a For cash The Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) by no later than 1 00 p m on the day of the sale to be applied to purchase price if compliance is made but in the event compliance is not made the deposit may be forfeited without further hearing and applied first to costs of the action and then to plaintiff's debt Should the successful bidder at the regularly conducted

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sale fail or refuse to either make the required deposit at time of bid or comply with the other terms of the bid within 20 days then the property may be re sold on the same terms and conditions on the same or some subsequent Sales Day but at the risk of the defaulting bidder

b Interest on the balance of the bid shall be paid through the day of compliance at the rate of prime plus 100% on the unpaid balance

c The Sale shall be subject to taxes and assessments existing easement and restrictions and easements and restrictions of record and any other senior encumbrances

d Purchaser to pay for any statutory commission on sale from the proceeds of the final bid amount

e Purchaser to pay for deed preparation costs of recording the deed and satisfaction of mortgage and transfer taxes on the deed

f Purchaser shall be entitled to possession of the premises only after the Purchaser fully complies with the bid amount and a deed is issued by the Court

22 A personal or deficiency judgment having been waived the bidding will not remain open after the date of sale and compliance with the bid may be made immediately

23 Plaintiff may waive any of its rights including its right to a deficiency judgment in accordance with Rule 71 South Carolina Rules of Civil Procedure prior to sale

24 The Master in Equity will by advertisement according to law give notice of the time and place of such sale and the terms thereof and will execute to the purchaser or purchasers a deed to the premises sold The Plaintiff or any other party to this action may become a purchaser at such sale and if upon such sale being made the purchaser or purchasers should fail to comply with the terms thereof within 20 days after date of sale then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured

25 In the event an agent of Plaintiff does not appear at the time of sale the within property shall be withdrawn from sale and sold at the next available sales date upon the same terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order

26 If Plaintiff be the successful bidder at the said sale for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness

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27 The Master in Equity will apply the proceeds of the sale as follows

FIRST To the payment of the amount of the costs and expenses of this action including any Guardian ad Litem fee or fees of attorneys appointed under Order of Court

NEXT To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same

NEXT Any surplus should be held pending further Order of this Court

28 In the event the successful bidder is other than the Defendant in possession herein the Sheriff of Aiken County is ordered and directed to eject and remove from the premises the occupant of the property sold together with all personal property located thereon and put the successful bidder or his assigns in full quiet and peaceable possession of said premises without delay and to keep said successful bidder or his assigns in such peaceable possession

29 In the event the successful bidder is other than the Defendants in possession herein and the occupants have voluntarily vacated the premises or have been ejected from the premises leaving furnishings fixtures and items not subject to the Plaintiff's Mortgage in said premises the Purchaser is authorized to remove therefrom all furnishings fixtures and items not subject to the lien of the Plaintiff's Mortgage which personal property being deemed abandoned shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means

30 The Defendant named herein and all persons whosoever claiming under Defendant is forever barred and foreclosed of all right title interest equity of redemption or lien in the said mortgages premises so sold or any part thereof

31 In accordance with Rule 77(d) SCRPC the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear herein

32 The deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder of the mortgaged property at the time of the filing of the notice of pendency of the within action and the name of the grantee and the RMC for Aiken County is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed

33 The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including but not limited to the issuance of a Writ of Assistance

34 The following is a description of the premises herein ordered to be sold

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ALL That certain piece parcel or lot of land with improvements thereon situate lying and being in the City Limits of Aiken in the County of Aiken State of South Carolina being known and designated as Unit D 3, Club Villas at Woodside as shown on a plat prepared for Barbara B Filson by Tripp Land Surveying Inc RLS dated October 25 1995 and recorded November 2 1995 in Plat Book 34 at Page 128 2 records of the RMC for Aiken County South Carolina Reference being made to said plat for a more complete description as to the metes and bounds thereof

THIS being the same property conveyed to George W Breisford by deed of Barbara B Filson dated March 16 1999 and recorded March 18 1999 in Title Book 1861 at Page 239 records of the RMC for Aiken County South Carolina

TMS# 107 12 09 009



Robert A Smoak Jr,  
Master in Equity for Aiken County  
South Carolina

Aiken South Carolina

June 15, 2010

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claimed BAC Home Loan Servicing L P f/w/a Countrywide Home Loan Servicing L P successor in interests to Mortgage Electronic Registration Systems Inc MIN #100039032108093192 filed a timely claim in the form prescribed by the Rule in the amount of \$144 157 94

The Court held a hearing concerning the surplus on October 28 2010 at which counsel for the claimant appeared as did counsel for several of the defendants opposing the claim

The claimant was not a party to this foreclosure action although its predecessor in interest Mortgage Electronic Registration Systems Inc etc (hereafter MERS ) was MERS was duly served with the Amended Summons and Complaint herein but did not respond and was held to be in default in the Judgment of Foreclosure and Sale The amended complaint alleged that the mortgage held by this defendant was junior to the mortgage being foreclosed herein

As required by Rule 71 (c) the verified claim submitted by the claimant states the date the claim arose which is represented to be January 1 2010 Date of Default As further required by the rule concerning the nature of the claim the claim states that the subject mortgage was assigned to the claimant herein by assignment recorded August 20 2010 in Book 4320 at Page 1877 (which may be found in the Office of the R M C for Aiken County) This document being relevant to the issue at hand and being of public record the Court has examined same and finds that the date of execution of this assignment is July 30 2010 and (as stated hereinabove) it was recorded August 20 2010 The undersigned sold the subject property on July 6 2010 some 24 days before the execution of the assignment and 45 days before the assignment was recorded As quoted hereinabove the rule permits a person who had a lien on the mortgage premises at the time of sale to make a claim A lien is a creature of statute As to the world at large a mortgagee does not have a lien on property in this state until he files his mortgage in the appropriate filing office It is

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uncontroverted that the mortgage which is the basis for the claimant's claim was filed but was filed and remained in the name of MFRS at all pertinent times herein. No one examining the public records of Aiken County at the time of the sale or for two months thereafter could have ascertained that the claimant herein claimed to be the lienholder. As stated above the lienholder of record at the time of sale had been properly made a party and served with the suit papers but had made no response nor did it attempt to protect its interest by bidding at the sale. The Court has even attempted to give the claimant the benefit of the doubt by ascertaining the actual date of the mortgage assignment as opposed to its date of recordation but even the execution date postdates the date of sale.

For the foregoing reasons the Court finds and holds that the Claim for Surplus filed on September 6, 2010 was not made by a qualified claimant and is therefore void.

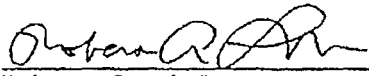
The Court notes that there was considerable discussion at the surplus funds hearing concerning the possibility that the mortgage loan which forms the subject of the claimant's claim may have been closed without any participation therein by a South Carolina licensed attorney in violation of South Carolina law. Since there was insufficient evidence at the hearing for the Court to make a conclusive finding as to this issue and because the Court has ruled herein on other grounds the Court declines to rule on this issue at this time. Should however a motion under Rule 59 (c) be made on any ground the Court proposes to re-visit this issue and on its own motion will notify counsel to be prepared to submit evidence as to the circumstances of the closing at that motion hearing.

The Court therefore finds that the persons entitled to the surplus funds in the amount of \$79,405.25 are the defendants Debra Kinder, Personal Representative of The Estate of George William Brelsford IV a/k/a George W. Brelsford, Debra Kinder, Personal Representative of the

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Estate of Patricia M Brelsford Debra Kinder Individually Kathleen Brelsford French and Robin Brelsford Landes and the Court is hereby directed to disburse these funds to them through their attorney after the time(s) for filing Rule 59 (e) motions and/or appeal have expired

December 6 2010  
Aiken South Carolina

  
\_\_\_\_\_  
Robert A Smoak Jr  
Master in Equity

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**Settlement Statement**  
**Optional Form for**  
**Transactions without Sellers**

U.S. Department of Housing  
 and Urban Development

EXHIBIT # | ESTATE

B Approval No 2502 04

Name & Address of Borrower

George W Brelsford

4 Old South Court 14H  
 Bluffton SC 29910

Property Location (if different from above)  
 117 Club Villa Drive  
 Aiken SC 29803

Name & Address of Lender

Quicken Loans Inc (Lender) 1800 620-453  
 20555 Victor Parkway  
 Livonia MI 48152

Settlement Agent

LSI (LENDER S SERVICES INC)

Place of Settlement 4 Old South Ct 14 H  
 Bluffton, SC 29910

Settlement Date 03/21/07

Disbursement Date

03/21/07

Loan Number

3210809319

Debit		Credit		
801	Loan originator fee % to Quicken Loans	0 00	1301 Survey	
802	Loan discount 1.25% to Quicken Loans	1 852 50	1302 Post in person	
803	Appraisal DON TOOLE AND ASSOC (Lender) (4) 2000	315 00	1303 Sub Agent	
804	Credit report to KFD (Kroll Factual Data)	7 37	1304 Tax Related Service Fee	
805	Inspection fee to	0 00	1305 Document Preparation	
806	Wire Fee	0 00	1306	
807	Flood Mitigation Co of First American	5 00	1307 Express Mail/Courier Fee	
808	Flood Cert Fee First American Flood	10 50	1308 Debts to be paid (per addendum)	
809	Underwriting fee to Quicken Loans Inc	495 00	1309 Taxes Owed	
810	Processing Fee to Quicken Loans Inc	575 00	1310 Escrow Holdback	
811	CLO Fee to Lending Tree (LPOC) 700 00*	0 00	1311 VOD/VOH/VOR to	
812				
813				
814				
888	TSI Approval Service	80 00	1501 COUNTRYWIDE HOME LOANS	
901	Int from 03/21/2007 to 04/01/2007 @ 26.90 per day 11 days	295 90	1502 CITIZENS BANK	
902	Mortgage insurance premium for		1503	
903	Hazard insurance premium for 1 State Farm	0 00	1504	
904	Flood insurance	0 00	1505	
905			1506	
1001	Mortgage insurance 9 mo @ 74.67 per mo	672 03	1507	
1002	Mortgage		1508	
1003	City/County	1 358 72	1509	
1004	County property		1510	
1005	Annual taxes		1511	
1006			1512	
1007			1513	
1008	Agreement Adjustment	74 74	1514	
1101	Settlement or closing fee to LSI (LENDER S SERVICE)	525 00	* LPOC Fee has been paid by Quicken Loans	
1102	Abstract or file fee to LSI (LENDER S SERVICE)	235 00		
1103	Title examination to LSI (LENDER S SERVICE)	0 00		
1104	Title insurance binder to LSI (LENDER S SERVICE)	0 00		
1105	Doc Prep on	0 00		
1106	Deed Preparation to	0 00		
1107	Notary fee to	0 00		
1108	Attorney fee to (includes above item number)	0 00	1600	Loan Amount
1109	Title insurance to LSI (LENDER S SERVICE) (includes above item number)	190 88	1601	Plus Deposit Previously Recorded
1110	Land's coverage \$ 149 000 00	0 00	1602	Minus Total Settlement Charges (in 1400) * POC not in Total
1111	Owner's closing fee	0 00	1603	Minus Total Disbursement (in 1520)
1112	Additional Closing Fee	0 00	1604	Equals Disbursement to Borrower (after explicit net payable exclusion per addendum)
1113	Coordination/Binder Fee to LSI (LENDER S SERVICES INC)	0 00	Borrower(s) Signature(s)	
1114	Additional Disbursement Fee	75 00	George W Brelsford	
1201	Recording fees	28 00		
1202	City/County taxes	0 00		
1203	State tax/stamps	0 00		
1204	Assignment Fee	0 00		
1205	(Misc) Rec/Trans Cost	0 00		
1206				
1207				
1208				
1209				

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

JUDGMENT IN A CIVIL CASE  
CASE NO 2010CP0200172

**Citizens Bank Of Effingham vs Debra Kinder**

CHECK ONE

- JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON)**  Rule 12(b) SCRPC  Rule 41(a)  
SCRPC (Vol Nonsuit)  Rule 43(k) SCRPC (Settled)  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON)**  Rule 40(j) SCRPC  Bankruptcy  
 Binding arbitration subject to right to restore to confirm vacate or modify arbitration award  
 Other \_\_\_\_\_
- 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  Statement of Judgment by the Court

Dated at Aiken South Carolina this 7th day of December 2010

Cour Reporter

\_\_\_\_\_  
PRESIDING JUDGE -

This judgment was entered on the 7th day of December 2010 and a copy mailed first class this 7th day of December 2010 to attorneys of record or to parties (when appearing pro se) as follows

Bradley L Bond P O Box 652 Aiken SC 29802

James L. Verenes Fox & Verenes P O Drawer 328  
Aiken SC 29802-0328  
Joseph T. Merrill Finkel Law Firm P O Box 71727  
North Charleston SC 29415  
Master

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

*Liz Godard by W. Snapper*

Liz Godard - Clerk of Court

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS

Citizens Bank Of Effingham )  
 )  
Plaintiff/s )

CASE NO 2010-CP 02 00172

Vs )

ORDER

Debra Kinder, Personal Representative of )  
The Estate of George William Brelsford, IV )  
a/k/a George W Brelsford, Debra Kinder, )  
Personal Representative of the Estate of )  
Patricia M Brelsford, Debra Kinder )  
Individually Kathleen Brelsford French )  
Robin Brelsford Landes Mortgage )  
Electronic Registration Systems, Inc )  
MIN# 100039032108093192 and )  
Woodside Plantation Property Owners )  
Association )  
Defendant/s )

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Lee Godard, Clerk of Court of Common Pleas and General  
Sessions for Aiken County, South Carolina do hereby certify  
that the foregoing constitutes a true and correct copy of the  
original documents which have been filed in my office this  
4 day of February 2011  
Lee Godard  
C.C.P. & G.S. Aiken County S.C.  
Angel Miles  
Deputy Clerk

FILED 3 February 2011  
Lee Godard  
C.C.P. & G.S.  
3:10pm Angel Miles  
Deputy Clerk

Before the Court at this time is a motion made pursuant to Rule 59 (e) of the S C Rules of Civil Procedure wherein BAC Home Loan Servicing LP *W/a* Countrywide Home Loan Servicing LP ( BAC ) successor in interest to defendant Mortgage Electronic Registration Systems Inc MIN# 100039032108093192 ( MERS ) seeks the alteration or amendment of this Court's Order Disposing of Surplus Funds dated December 6 2010 Present at the motion hearing were Sean A O'Connor of the Finkel Law Firm, LLC attorney for the movant and James L Verenes attorney for the defendants opposing the motion

After reviewing the articulate arguments made at the hearing for and against, the motion and the appropriate matters referenced therein the Court finds holds and orders as follows

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In the above referenced Order of December 6 2010, the Court ruled that the claimant BAC was not qualified to make a valid claim for the surplus because BAC was not a party to the action or a person who had a lien on the mortgaged premises at the time of sale as specifically required by Rule 71 (c) of the South Carolina Rules of Civil Procedures which governs the disposition of surplus funds resulting from foreclosure sales. The Court further noted that there had been considerable discussion at the initial surplus funds hearing concerning the possibility that the mortgaged loan had been closed without any participation therein by a South Carolina licensed attorney, in violation of state law a subject which has attracted intense scrutiny from our appellate courts in the past few months. The subject order stated that since it was based on other grounds and that the court felt that there was insufficient evidence in the record at that time to rule on the attorney issue the court proposed to revisit this issue only in the event that any Rule 59 (e) motion were to be made on any ground and that counsel would be afforded the opportunity to supplement the record accordingly. The present motion was timely made after the subject Order and both issues are back before the Court at this time.

BAC's arguments against the Court's Rule 71 (c) ruling that BAC lacked the standing to make a claim under the Rule may be summarized as follows. First BAC's predecessor in interest did hold a valid lien against the mortgaged property at the time of sale (which is uncontroverted because the predecessor in interest MERS was made a party to the foreclosure for that very reason and its lien was known to all of the other parties). Second it was not necessary for the assignment of the mortgage to have been recorded (citing the Union National Bank of Columbia case, etc and the recording statutes which are meant to cut off the rights of subsequent creditors or purchasers and the failure to record does not give rise to any defense on the part of debtors or obligors. Those defendants opposing BAC's claim are the personal representative, devisees and/or

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descendants of the original debtor/obligor who is deceased) Third citing from S C U C C Section 36 3 201 and case law based thereon BAC asserts that it stepped into the shoes of the predecessor in interest when the assignment was finally effected, which presumably included the right to file a claim for the surplus in this case

As to the unauthorized practice of law issue BAC seeks to distinguish the present case from the two extremely important decisions made in 2010 by our appellate courts, the Coffey and Matrix cases on the ground that in each of those cases the party held to be in violation of the unclean hands doctrine was the original lender whereas in the present case BAC is the assignee of the original lender which insulates BAC from any defense of a party to the instrument with whom it has not dealt, citing the Rosemond v. Campbell case In support of this position BAC further asserts that it is a holder in due course of the note giving rise to its claim and declares that this status means that it took the note free from all defenses of any party to the instrument with whom the holder has not dealt subject to (inter alia) an exception if the transferee is a party to any fraud or illegality affecting the instrument.

At this time it will be helpful to review the chronology of events pertinent to this matter The underlying foreclosure action was commenced by the filing of the Lis Pendens and Summons and Complaint on January 8 2010 The judicial sale pursuant to the foreclosure took place on July 6, 2010 at which a third party was the high bidder The bidder made his required deposit on the day of sale and paid the remaining balance due on July 19 2010 at which time the Court executed and delivered a Master s Deed (Title to Real Estate) to the subject property to the bidder On July 30 2010 MERS the predecessor in ownership of the loan which forms the basis for BAC s claim purported to assign the subject mortgage and the note which it secured to BAC This assignment was recorded on August 20 2010

#3  
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A review of the above dates will reveal that at no time did BAC ever own or hold a lien on the subject property. The lien of its mortgage (and that of the first mortgage being foreclosed in this action) were extinguished on July 19, 2010 upon the Court's execution and delivery of its deed to the purchaser. There was no lien to assign in the purported subsequent assignment dated July 30, 2010. Since a mortgage is merely an instrument which creates a lien on specific property to secure an indebtedness, all the assignment transferred, as to the mortgage, was an empty shell since the lien no longer existed. As mentioned hereinabove, BAC claims to be the holder in due course of the note which the mortgage once secured. The note itself is not of record herein and there is little or no evidence that it is in fact a negotiable instrument and if so, that it was properly negotiated to BAC. Nevertheless, assuming that the subject note is a negotiable instrument and that BAC is the holder in due course thereof, BAC took the note together with such rights as the transferor had therein, per § 36-3-201, including possibly the right to apply for ownership of some or all of the surplus funds herein to apply to the indebtedness.

However, as mentioned hereinabove, in its prior Order, this Court gave notice that in the event of a Rule 59 (e) motion, the Court intended to revisit the issue concerning the possible unauthorized practice of law in association with the closing of BAC's loan and would afford counsel the opportunity to supplement the record concerning this aspect of the matter. No one has proffered any further evidence concerning the circumstances of the closing (the original mortgagor, of course, is deceased) and the Court accordingly finds and holds based on the only evidence in the record (a copy of the HUD-1 closing statement) that no attorney participated in the closing. This clearly brings the matter under the recent Coffey and Matrix cases which hold that creditors in such cases are barred from enforcing any equitable or legal remedies therein because of unclean hands.

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(See paragraph at foot of page 6 and top of page 7 below)

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not a

As stated hereinabove BAC asserts that its holder in due course status protects it from any defense as to this issue because any unclean hands were those of its predecessor in ownership of the subject loan and not its own. In support of this assertion as stated above, BAC claims that §36 3 305 contains few exceptions to the basic rule that a holder in due course takes the instrument free from all defenses of any party to the instrument with whom the holder has not dealt one of the exceptions being (quoting from BAC's motion) (1) if the transferee is a party to any fraud or illegality affecting the instrument ) The language in the motion does not accurately reflect the language in the statute of which the pertinent part reads ' the right to enforce the obligation of a party to pay an instrument is subject to the following

(1) a defense of the obligation based on

(ii) – duress lack of legal capacity or illegality of the transaction which under other law nullifies the obligation of the obligor' )

The 2008 revision of the statute substantially rewrote it and among other things eliminated the language in the prior version including defense of any party to the instrument with whom the holder has not dealt Even the prior version of the statute which included language as to the illegality of the transaction being an exception, does not limit the illegality to illegality to which the transferee is a party

The recent Coffey and Matrix decisions have sent a resounding message to mortgage lenders and originators that the Buyer's case and subsequent cases mean what they say and violations thereof may carry severe consequences

Both of the cases state unequivocally that such violations constitute not only unclean hands but unlawful acts (emphasis added) As stated above, §36 3 305 (a) (1) (ii) preserves as a defense against a holder in due course the illegality of a transaction which renders the obligation of the

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party a nullity. The words illegal and unlawful are synonymous. Accordingly, the Court finds that the subject closing was conducted illegally and that this defense was properly raised by the parties opposing the motion. The Court notes that Chapter 3 of Title 36 does not contain a definition of the word obligor (the defense referenced above is reserved to obligors). The parties opposing the motion herein admittedly are not debtors under the subject note because they did not obligate themselves to pay it, either originally or by assumption, and therefore are not obligors per se. Nevertheless, it is inconceivable that the General Assembly in revising §36-3-305 intended to cut off a valid defense owned by an obligor at the time of his death upon his death, thus depriving his beneficiaries from raising same in order to preserve their interests in property belonging to him at his death.

Finally, as to this issue, the Court finds that the movants' reliance on the language extracted from the Rosemond case is unwarranted. A review of the cases cited in Rosemond in support of the language shows that the only South Carolina cases cited precede the implementation in South Carolina of the U.C.C. by several decades. Furthermore, the Rosemond case actually arose out of a credit sale transaction governed by the Consumer Protection Code and not the U.C.C. since the note in the Rosemond case was non-negotiable and the holder was not a holder in due course.

In summary, the Court denies the motion herein and continues in effect its Order dated December 6, 2010 as supplemented herein.

As to the first issue, the standing of BAC to file a claim, the Court reiterates its finding and holding in its Order Disposing of Surplus Funds as if set forth verbatim herein, and further finds that not only is there no evidence that BAC's predecessor in interest, MERS, specifically assigned its right to pursue the surplus funds under Rule 71(c) SCRPC, to BAC, it does not appear that the drafters of the civil procedure rules ever contemplated such an assignment after the

#6  
MS


extinguishment of the lien BAC never held a lien on the property, the sale of which generated the surplus funds it is now seeking

As to the second issue unauthorized practice of law/unclean hands, the Court finds that the loan was closed unlawfully, or illegally as stated in §36 3-305 (a) (1) (ii) that this defense penetrates the holder in due course armor claimed by BAC and this defense survived the death of the obligor and was properly raised by his beneficiaries who are entitled to the surplus funds

The court is again ordered to disburse the surplus funds herein as directed in its Order dated December 6 2010

IT IS SO ORDERED

February 3 2011  
Aiken, South Carolina

  
Robert A. Smoak Jr  
Master-in Equity

#7  
MS

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

JUDGMENT IN A CIVIL CASE  
CASE NO 2010CP0200172

**Citizens Bank Of Effingham vs Debra Kinder**

CHECK ONE

- JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON)**  Rule 12(b) SCRPC  Rule 41(a)  
SCRPC (Vol Nonsuit)  Rule 43(k) SCRPC (Settled)  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON)**  Rule 40(j) SCRPC  Bankruptcy  
 Binding arbitration subject to right to restore to confirm vacate or modify arbitration award  
 Other \_\_\_\_\_
- 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  Statement of Judgment by the Court

Dated at Aiken South Carolina this 4th day of February 2011

Court Reporter

\_\_\_\_\_  
PRESIDING JUDGE

This judgment was entered on the 3rd day of February 2011 and a copy mailed first class this 4th day of February 2011 to attorneys of record or to parties (when appearing pro se) as follows

Bradley L Bonn P O Box 652 Aiken SC 29802

Copy to Master

James L Verenes Fox & Verenes P O Drawer 328 Aiken  
SC 29802 0328  
Joseph T Merll Finkel Law Firm P O Box 71727 North  
Charleston, SC 29415  
Sean A O Connor Turner Padgett Graham & Laney PA P O  
Box 22129 Charleston SC 29413 2129

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

*Liz Godard by Angel Miles*  
\_\_\_\_\_  
Liz Godard Clerk of Court



09-410

Citizens Bank of Effingham )  
 Plaintiff )  
 Vs )  
 Debra Kinder, Personal Representative of the )  
 Estate of George William Brelsford, IV, et al )  
 Defendant )

C/A NO 2010-CP 02 00172

HIGH BIDDER MATTHEW B FRY	CREDIT	COUNTY FEES DISBURS	OTHER DISBURS	CHECK NO
<b>AMOUNT BID \$116,000 00</b>				
<b>AMOUNT COSTS</b>				
PLAINTIFF'S ATTORNEY				
BRADLEY L BONI, LLC				
DEFENDANT'S ATTORNEY				
MASTER PARTIES TO ACTION		\$100 00		10980
DEPOSIT BY ATTORNEY 5/5/10	\$125 00			
MASTER S DEED		\$25 00		10980
COMMISSION ON SALE		\$1 160 00		10980
Amt Rec from High Bidder 7/6 & 7/19/10 (Includes Bid 13 days int & deed prep)	\$116,191 79			
<b>JUDGMENT + COSTS</b>				
Judgment	\$34,750 98			
Int from 7/7-7/19/10	\$52 60			
Additional Costs	\$797 96			
Deed Reimbursement	\$25 00			
<b>TOTAL JUDGMENT</b>	<b>\$35 626 54</b>			
Sale proceeds to Bradley L Boni, LLC Attorney for Plaintiff			\$35,626 54	10983
<b>TOTAL</b>	<b>\$116,316 79</b>	<b>\$1,285 00</b>	<b>\$35,626 54</b>	
<b>SURPLUS</b>	<b>\$79,405 25</b>	<b>-0</b>		

FILED *[Signature]* 2010  
*[Signature]*  
 Plaintiff's Attorney CA

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

JUDGMENT IN A CIVIL CASE  
CASE NO 2010CP0200172

**Citizens Bank Of Effingham vs Debra Kinder**

CHECK ONE

- JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON)**  Rule 12(b) SCRPC,  Rule 41(a) SCRPC (Vol Nonsuit)  Rule 43(k) SCRPC (Settled)  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON)**  Rule 40(j) SCRPC  Bankruptcy  
 Binding arbitration subject to right to restore to confirm vacate or modify arbitration award  
 Other \_\_\_\_\_
- 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  Statement of Judgment by the Court

Dated at Aiken South Carolina this 21ST DAY OF JULY, 2010

Court Reporter

\_\_\_\_\_  
PRESIDING JUDGE

This judgment was entered on the 21ST DAY OF JULY 2010 and a copy mailed first class this 21ST DAY OF JULY 2010 to attorneys of record or to parties (when appearing pro se) as follows

\_\_\_\_\_  
Bradley L. Boul P O Box 652 Aiken SC 29802

\_\_\_\_\_  
James L. Verenes Fox & Verenes P O Drawer 328  
Aiken, SC 29802-0328

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CPFORM4M  
SCCA SCRPC Form 4 Revised 06/2008

Liz Godard by Crystal Andrews  
Liz Godard Clerk of Court

STATE OF SOUTH CAROLINA, )  
 )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS

CITIZENS BANK OF EFFINGHAM, )

PLAINTIFF, )

=VS= )

DEBRA KINDER, PERSONAL )  
REPRESENTATIVE OF THE ESTATE )  
OF GEORGE WILLIAM BRELSFORD, )  
IV, a/k/a GEORGE W BRELSFORD, )  
DEBRA KINDER, PERSONAL )  
REPRESENTATIVE OF THE ESTATE )  
OF PATRICIA M BRELSFORD )  
DEBRA KINDER, INDIVIDUALLY, )  
KATHLEEN BRELSFORD FRENCH, )  
ROBIN BRELSFORD LANDES, )  
MORTGAGE ELECTRONIC )  
REGISTRATION SYSTEMS, INC )  
MIN# 100039032108093192, AND )  
WOODSIDE PLANTATION PROPERTY )  
OWNERS ASSOCIATION )

DEFENDANTS )

AMENDED SUMMONS  
(NON-JURY)  
FORECLOSURE OF REAL  
ESTATE MORTGAGE  
Case No 2010-CP-02 00172


COPY  
ORIGINAL FILED  
FEB 04 2010  
AIKEN COUNTY  
CLERK OF COURT

TO THE DEFENDANT(S) ABOVE NAMED,

YOU ARE HEREBY SUMMONED and required to appear and defend by  
answering the Complaint in this action of which a copy is herewith served upon you, and  
to serve a copy of your Answer on the subscriber at his office, 208 Newberry Street, NW  
Aiken South Carolina 29801 Post Office Box 652 Aiken, South Carolina 29802 within  
thirty (30) days 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.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an Order of Reference or that the Court may issue a general Order of Reference of this action to a Master in Equity pursuant to Rule 53 of the South Carolina Rules of Civil Procedure

Aiken, South Carolina  
February 4, 2010

  
Bradley L. Boni, S.C. Bar #68443  
Attorney for the Plaintiff  
P.O. Box 652  
Aiken, SC 29802  
(803) 644-4460  
(803) 644-4469 (Fax)

STATE OF SOUTH CAROLINA, )  
 )  
 COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS

CITIZENS BANK OF EFFINGHAM, )

PLAINTIFF, )

=VS= )

AMENDED COMPLAINT  
Case Number 2010-CP 02-00172  
Non-Jury

DEBRA KINDER, PERSONAL )  
REPRESENTATIVE OF THE ESTATE )  
OF GEORGE WILLIAM BRELSFORD )  
VI, a/k/a GEORGE W BRELSFORD, )  
DEBRA KINDER, PERSONAL )  
REPRESENTATIVE OF THE ESTATE )  
OF PATRICIA M BRELSFORD )  
DEBRA KINDER, INDIVIDUALLY )  
KATHLEEN BRELSFORD FRENCH, )  
ROBIN BRELSFORD LANDES )  
MORTGAGE ELECTRONIC )  
REGISTRATION SYSTEMS, INC., )  
MIN# 100039032108093192, AND )  
WOODSIDE PLANTATION PROPERTY )  
OWNERS ASSOCIATION, )

DEFENDANTS )

COPY ORIGINAL FILED  
FEB 04 2010  
AIKEN COUNTY CLERK OF COURT

The Plaintiff above named, complaining of the Defendants above named, herein alleges that

1 Upon information and belief, the Defendant, Debra Kinder, Personal Representative of the Estate of George W Brelsford and Personal Representative of the Estate of Patricia M Brelsford, and individually, is a resident of the State of South Carolina, the Defendant Kathleen Brelsford French, is a resident of the State of Virginia, the Defendant, Robin Brelsford Landes, is a resident of the State of Florida, the Defendant, MERS is a Delaware Corporation, the Defendant, Woodside Plantation Property Owners Association is a South Carolina non-profit corporation, and is located in Aiken South Carolina, and the subject of this action is real property located in the County of Aiken State of South Carolina.

2 Heretofore on July 2, 2004 the said decedent, George W Brelsford, did make, execute and deliver to the Citizens Bank of Effingham a certain Citizens Interest only Home Equity Note in writing wherein and whereby he promised to pay to the order of Citizens Bank of Effingham the principal sum of Thirty Thousand and No/100 Dollars

of Citizens Bank of Effingham the principal sum of Thirty Thousand and No/100 Dollars (\$30 000 00) together with interest at the rate of prime plus 1% on the unpaid balance, until the maturity date of July 15, 2009, and among other things the said Note provides as follows

I will be in default if any of the following occur (a) Payments I fail to make a payment as required by the Agreement. (b) Property My action or inaction adversely affects the Property or your rights in the Property, (c) Fraud I engage in fraud or material misrepresentation in connection with this line of credit.

3 In order to secure said Citizens Interest only Home Equity Note the decedent, George W Brelsford, did on July 2, 2004, make execute and delivered to Citizens Bank of Effingham a certain mortgage covering the premises located in the County and State aforesaid and described as follows

ALL That certain picce, parcel or lot of land, with improvements thereon, situate lying and being in the City Limits of Aiken, in the County of Aiken State of South Carolina, being known and designated as Unit D-3, Club Villas at Woodside as shown on a plat prepared for Barbara B Filson by Tripp Land Surveying, Inc RLS, dated October 25 1995, and recorded November 2, 1995 in Plat Book 34, at Page 128-2 records of the RMC for Aiken County, South Carolina. Reference being made to said plat for a more complete description as to the metes and bounds thereof

THIS being the same property conveyed to George W Brelsford by deed of Barbara B Filson dated March 16, 1999, and recorded March 18, 1999 in Title Book 1861 at Page 239, records of the RMC for Aiken County South Carolina

TMS# 107-12-09-009

4 Paragraph 18 of the Citizens Interest Only Equity Line Note erroneously listed property located at 4 Old South Court 6 H, Bluffton, South Carolina 29910 but the mortgage securing said Equity Line has property set forth in Paragraph 2 above

5 On July 6, 2004 said Mortgage was recorded in the Office of the Register of Mesne Conveyance for Aiken County in REM Book 3588, at Page 89

6 Subject mortgage constitutes a first lien on the subject property

7 That George William Brelsford, VI, a/k/a George W Brelsford died on August 11, 2009, as is evidenced by his estate filed in Probate Court for Aiken County as Probate File Number 2009 ES 02 0728 and now the loan is in default There is now due and owing on this note and mortgage the sum of Twenty-Nine Thousand Nine Hundred Fifteen and 25/100 Dollars (\$29,915 25) together with interest thereon from July 14, 2009 at the rate of prime plus 1% of the unpaid balance, together with advances late charges, a reasonable sum as attorney's fees and the costs of this action.

8 Among other things, said mortgage provided as follows. This Security Instrument secures to Lender. At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the terms of the Secured Debt, this Security Instrument and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it constitutes or happens again.

9 If Plaintiff secures the premises being foreclosed herein, Plaintiff's costs of securing said premises should be added to any judgment rendered on its behalf. If Plaintiff pays any utility charges constituting a lien on said premises, Plaintiff's costs should be added to any judgment rendered on its behalf.

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

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

A. Mortgage Electronic Registration Systems, Inc. (MERS) (MN 100039032108093192), by virtue of a mortgage given by George W. Brelsford in the amount of \$149,000.00 dated March 21, 2007, and recorded April 20, 2007, in Record Book 4131, at Page 1308.

B. Woodside Plantation Property Owners Association by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions and Restrictions recorded herein, and any amendments thereto.

C. Debra Brelsford Kunder, as Personal Representative of the Estate of Patricia M. Brelsford, the sole devisee under the Last Will and Testament of George William Brelsford, VI and Debra Brelsford Kunder as Personal Representative of the Estate of George William Brelsford, VI and Debra Brelsford Kunder, Robin Brelsford Landes and Kathleen Brelsford French, the sole devisees under the Last Will and Testament of Patricia M. Brelsford.

WHEREFORE, Plaintiff prays judgment

(1) That the amount due upon said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with any advances thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and the costs of this action

(2) That the said Plaintiff's mortgage be declared a first lien and that said Plaintiff have 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, and for the costs of this action

(3) That the mortgaged premises be sold under the direction of this Court, the equity or redemption be barred, and that the proceeds of sale be applied as follows

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

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

Third the surplus if any be distributed according to law


(4) Plaintiff have judgment against the Estate of George W Brelsford, VI for the full amount found to be due Plaintiff on the note and mortgage with the right to enter a personal judgment against the Estate of George W Brelsford, VI, for any deficiency in this action remaining after the sale of the mortgaged premises

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

(6) For such other and further relief as may be just and property

Aiken, South Carolina

February 4, 2010

  
Bradley L. Boni S C Bar #68443  
Attorney for the Plaintiff  
P O Box 652  
Aiken, SC 29802  
(803) 644-4460  
(803) 644-4469 (Fax)

STATE OF SOUTH CAROLINA, )  
 )  
COUNTY OF AIKEN )

2010CP0200083

IN THE COURT OF COMMON PLEAS

CITIZENS BANK OF EFFINGHAM, )

PLAINTIFF, )

=VS= )

DEBRA KINDER, PERSONAL )  
REPRESENTATIVE OF THE ESTATE )  
OF GEORGE WILLIAM BRELSFORD, )  
IV, a/k/a GEORGE W BRELSFORD, )  
DEBRA KINDER, PERSONAL )  
REPRESENTATIVE OF THE ESTATE )  
OF PATRICIA M BRELSFORD, )  
DEBRA KINDER, INDIVIDUALLY, )  
KATHLEEN BRELSFORD FRENCH, )  
ROBIN BRELSFORD LANDES, )  
MORTGAGE ELECTRONIC )  
REGISTRATION SYSTEMS, INC, )  
MIN# 100039032108093192, AND )  
WOODSIDE PLANTATION PROPERTY )  
OWNERS ASSOCIATION )

DEFENDANTS )

AMENDED  
LIS PENDENS  
Case No 2010 CP 02-00172  
Non-Jury

COPY  
ORIGINAL FILED  
FEB 04 2010 4:50  
AIKEN COUNTY  
CLERK OF COURT

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in the Court of Common Pleas for Aiken County South Carolina, upon the Complaint of the above named Plaintiff against the above named Defendants for the purpose of foreclosing that certain real estate mortgage made by the decedent, George W Brelsford, to the Plaintiff in the original amount of Thirty Thousand and No/100 Dollars (\$30 000 00) dated July 2, 2004 and recorded on July 6, 2004 in Real Estate Mortgage Book 3588 at Page 89, in the office of the R M C for Aiken County, South Carolina.


The description of the real estate covered by the aforesaid real estate mortgage is  
as follows

ALL That certain piece parcel or lot of land, with improvements thereon situate, lying and being in the City Limits of Aiken, in the County of Aiken State of South Carolina, being known and designated as Unit D-3, Club Villas at Woodside as shown on a plat prepared for Barbara B Filson by Tripp Land Surveying, Inc, RLS, dated October 25, 1995, and recorded November 2 1995, in Plat Book 34, at Page 128-2, records of the RMC for Aiken County South Carolina. Reference being made to said plat for a more complete description as to the metes and bounds thereof

THIS being the same property conveyed to George W Brelsford by deed of Barbara B Filson dated March 16, 1999, and recorded March 18, 1999, in Title Book 1861, at Page 239 records of the RMC for Aiken County South Carolina.

TMS# 107-12-09 009

Aiken, South Carolina  
February 4, 2010

  
Bradley L. Boni  
Attorney for the Plaintiff  
P O Box 652  
Aiken, SC 29802  
(803) 644-4460  
(803) 644-4469 (Fax)

33620 F34474

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

BAC Home Loans Servicing, L P fka  
Countrywide Home Loans Servicing, L P

PLAINTIFF

vs

Matthew B Fry and Citizens Bank of  
Effingham

DEFENDANT(S)

TO THE ABOVE NAMED DEFENDANT(S)

IN THE COURT OF COMMON PLEAS  
C/A NO 2010 CP 02 -01951

SUMMONS AND NOTICES

(NON JURY MORTGAGE FORECLOSURE)

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein a copy of which is herewith served upon you or to otherwise appear and defend and to serve a copy of your Answer to said Complaint upon the plaintiff's attorneys at their office 3955 Faber Place Suite 200 P O Box 71727 North Charleston South Carolina 29415 or to otherwise appear and defend the action pursuant to applicable court rules within thirty (30) days after 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 such service and if you fail to answer the Complaint or otherwise appear and defend within the time aforesaid the Plaintiff in this action will apply to the Court for relief demanded therein, and 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) RESIDE(S), 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 the Plaintiff

YOU WILL ALSO TAKE NOTICE that pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure as amended effective September 1 2002 the Plaintiff will move for a general Order of Reference to the Master in Equity for Aiken County which Order shall pursuant to Rule 53(b) of the

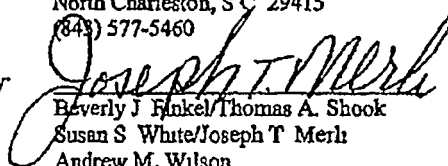
**COPY  
ORIGINAL FILED**

AUG 18 2010  
1843  
AIKEN COUNTY  
CLERK OF COURT

SCRCP, specifically provide that the said Master in Equity is authorized and empowered to enter a final judgment in this action.

FINKEL LAW FIRM LLC  
P O Box 71727  
North Charleston, S C 29415  
(843) 577-5460

By

A handwritten signature in cursive script, appearing to read "Joseph T. Merl", is written over a horizontal line.

Beverly J Finkel/Thomas A. Shook  
Susan S White/Joseph T Merl  
Andrew M. Wilson  
Attorneys for Plaintiff

August 12, 2010

33129.F34474

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

BAC Home Loans Servicing L P fka  
Countrywide Home Loans Servicing, L P

PLAINTIFF,

vs.

Matthew B Fry and Citizens Bank of  
Effingham,

DEFENDANT(S)

IN THE COURT OF COMMON PLEAS  
C/A NO 2010 CP 02 01951

COMPLAINT

(NON JURY MORTGAGE FORECLOSURE)

The Plaintiff alleges as follows

- 1 The Plaintiff is a corporation or other legal entity doing business in the State of South Carolina
- 2 The Plaintiff is the owner and holder of the note and mortgage covering real property which is the subject of the foreclosure action herein located in the County of Aiken State of South Carolina
- 3 The defendant(s) named herein may have an interest in the property that is the subject of this action
- 4 Any defendant(s) described herein as Judgment Creditor(s) have by filing judgment(s) designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of §15 35 840 of the South Carolina Code of Laws (1976 as amended)
- 5 Upon information and belief the defendant(s) Matthew B Fry and is not in the military service of the United States of America pursuant to the provisions of the Servicemembers Civil Relief Act (2003)
- 6 On or about March 21 2007, for value received George W Brelsford executed and delivered to Quicken Loans Inc a certain promissory note in the sum of \$149 000 00 together with interest thereon at the rate of 6 50% per annum.
- 7 To secure the payment of the said note and debt, secured thereby, and in accordance with the terms and conditions thereof on March 21 2007 George W Brelsford executed and delivered to Mortgage Electronic Registration Systems Inc its nominee for Quicken Loans Inc its successors and assigns a mortgage covering the following described property

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AUG 18 2010  
AIKEN COUNTY  
CLERK OF COURT

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being located in the City of Aiken, in Aiken County, South Carolina, being shown and designated as UNIT 3 3, CLUB VILLAS AT WOODSIDE, upon a plat prepared for Barbara B Filson by Tripp Land Surveying, Inc, under date of October 25, 1995 and recorded in Plat Book 34, Page 128 2, records of Aiken County, South Carolina. Reference being made to said plat for a more complete and accurate description as to the metes, bounds and location of the subject premises

TMS # 107 12-09-009

Property Address 117 Club Villa Drive, Aiken, SC

8 Thereafter the mortgage was recorded in the Office of the Register of Deeds for Aiken County in book 4131 at page 1308 on April 20, 2007

9 The mortgage constitutes a first mortgage lien on the subject property

10 Subsequently the subject note and mortgage were assigned or otherwise transferred to BAC Home Loans Servicing, L P fka Countrywide Home Loans Servicing, L P the present lienholder and Plaintiff herein

11 By deed filed July 19 2010 in Book 4316 at Page 190 the subject property was conveyed to Matthew B Fry leaving him as the sole title holder of record at the time of the filing of the Lis Pendens in this action Any interest in the subject property held by Defendant Matthew B Fry is subsequent junior and subordinate to the plaintiff's first mortgage lien.

12 Due to an inadvertence and scrivener's error, the legal description on the Plaintiff's Mortgage referred to the Unit for the subject parcel as being Unit 3 3 instead of D 3, the correct unit number

13 The plaintiff is informed and believes that it is entitled to reformation of the description in the Plaintiff's Mortgage to accurately reference the unit number for the subject parcel as being Unit D 3 to comport with the public records

14 Pursuant to the Administrative Order of the Chief Justice, 2009-05 22-01 the loan that is subject of this action is held by a participant in the Home Affordable Modification Program (HAMP) However, the loan is not subject to modification because the borrower is deceased

15 Pursuant to the terms of the mortgage any sums paid by the plaintiff for inspecting and securing the subject property for fire and other hazard insurance taxes and assessments for the mortgaged premises, and any costs of collection including reasonable attorney's fees are secured by the mortgage

16 According to the terms of said mortgage, and as additional security, George W Brelsford assigned all rents, issues and profits of the mortgaged premises from and after any default thereunder, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors and

assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits towards the debt secured by said mortgage

17 The monthly payments due on said note and mortgage are in default since January 1 2010 although demand for payment thereof has been made and the plaintiff, as the holder of the said note and mortgage, after providing all required notices, elects to, and does declare the entire balance of said indebtedness due and payable and that there is due on said note and mortgage as of January 1, 2010, the sum of \$144,157.94, together with interest at the rate of 6.50% per annum, from December 1, 2009, and also for the costs and disbursements of this action, including attorney's fees

18 Pursuant to Sections 37-3-105, South Carolina Code of Laws (1976 as amended), the mortgage lien, which is the subject of this action, is a first lien on real estate and is not a 'consumer loan' for the purposes of the South Carolina Consumer Protection Code. Any notice of right to cure has been given as required

19 The Plaintiff does not demand a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due unto the plaintiff, including costs and attorney's fees

20 Citizens Bank of Effingham, claims or may claim an interest in the subject property by virtue of a mortgage from George W. Brelsford, dated July 2, 2004 and recorded July 6, 2004 in Book 3538 at Page 89 in the amount of \$30,000.00

The above mortgage no longer constitutes a lien against the subject property

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

1 The amount due upon the said note and mortgage held by Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action

2 The said Plaintiff's Mortgage be declared a first mortgage lien and that the said Plaintiff have 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 and for the costs of this action.

3 The Court grant reformation of the description in the Plaintiff's Mortgage to correct reference the unit number for the subject parcel as being Unit D 3, to comport with the intentions of the parties and the public records

4 The mortgage recorded in book 3538 at page 89, held by Defendant Citizens Bank of Effingham, be declared paid and satisfied but not satisfied of record, and that it does not constitute a lien against the subject property

5 The mortgaged premises be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows

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

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

Third the surplus, if any be distributed according to law

6 An Order be entered directing and empowering the Sheriff of Aiken County South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary

7 An Order be entered for the ejectment of the defendants in possession herein and all persons claiming thereunder and the removal therefrom of all furnishings fixtures and items not subject to the lien of the plaintiff's mortgage which personal property if not removed shall be deemed abandoned and shall be removed by the plaintiff or its agents from the subject property by placing said property on the public street or highway or by any other means

8 An Order be entered granting the appointment of a Receiver to secure and supervise the rental of the property sought to be foreclosed with authority to take possession thereof and collect rents issues and profits thereon during the pendency of this action and to hold the same as further security for Plaintiff's debt

9 An Order be entered for reimbursement of all costs for inspecting and securing the property incurred by the plaintiff as a result of the delinquency

10 An Order be entered for such other and further relief as may be just and proper

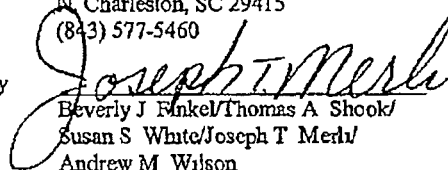
FINKEL LAW FIRM LLC

P O Box 71727

N. Charleston, SC 29415

(843) 577-5460

By



Beverly J Finkel/Thomas A Shook/

Susan S White/Joseph T Merli/

Andrew M Wilson

Attorneys for Plaintiff

August 12, 2010

**NOTICE REQUIRED BY THE FAIR DEBT  
COLLECTION PRACTICES ACT, (THE 'ACT')  
15 U.S.C. SECTION 1601, AS AMENDED**

1 As of September 19, 2010, you owe \$153,740.47. Because of interest, late charges and other charges that may vary from day to day, 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 6 of this Notice.

2 BAC Home Loans Servicing, L.P. fka Countrywide Home Loans Servicing, L.P. is the Creditor to whom the debt is owed.

3 The debt described in this Notice will be assumed to be valid by the Creditor's law firm unless you, the Debtor, within thirty (30) days after receipt of this notice, dispute the validity of the debt or some portion thereof.

4 If you, the Debtor, notify the Creditor's law firm in writing, within thirty (30) days from receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will cease all collection activities until it obtains and provides to you a verification of the debt, and a copy of the verification will be mailed to you the debtor by the Creditor's law firm.

5 If the Creditor named in the attached letter is not the original Creditor and if you make a written request to the Creditor's law firm within thirty (30) days, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.

6 Written requests should be addressed to Finkel Law Firm LLC, Post Office Box 71727 N Charleston, SC 29415, or call (843) 577-5460.

7 Please be advised that the time period in which you 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.

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

JJ320 F34474

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

BAC Home Loans Servicing L P fka  
Countrywide Home Loans Servicing L P

PLAINTIFF,

vs

Matthew B Fry and Citizens Bank of  
Effingham,

DEFENDANT(S)

IN THE COURT OF COMMON PLEAS,  
C/A NO 2010 CP 02-01951

LIS PENDENS

2010-LP-02-00605

(NON JURY MORTGAGE FORECLOSURE)

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this court upon Complaint of the above named Plaintiff against the above named Defendant(s) for foreclosure of a certain mortgage of real estate given by George W Brelsford to Mortgage Electronic Registration Systems, Inc as nominee for Quicken Loans Inc in the amount of \$149 000 00 dated March 21 2007 and recorded in the Office of the Register of Deeds for Aiken County in Book 4131 at Page 1308 on April 20, 2007

The premises covered and affected by the said mortgage as by 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 certain piece parcel or lot of land with improvements thereon situate, lying and being located in the City of Aiken in Aiken County South Carolina being shown and designated as UNIT D 3 CLUB VILLAS AT WOODSIDE upon a plat prepared for Barbara B Filson by Tripp Land Surveying, Inc under date of October 25 1995 and recorded in Plat Book 34 Page 128 2, records of Aiken County South Carolina Reference being made to said plat for a more complete and accurate description as to the metes bounds and location of the subject premises

TMS# 107 12 09 009

Property Address 117 Club Villa Drive Aiken, SC

FINKEL LAW FIRM LLC  
Post Office Box 71727  
North Charleston South Carolina 29415  
(843) 577 5460

By

*Joseph T Merli*  
Beverly J Finkel/Thomas A Shook  
Susan S White/Joseph T Merli  
Andrew M Wilson  
Attorneys for Plaintiff

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AUG 18 2010  
10:43  
AIKEN COUNTY  
CLERK OF COURT

August 12 2010

33520 B4474

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

BAC Home Loans Servicing LP fka  
Countrywide Home Loans Servicing LP

PLAINTIFF,

vs

Matthew B Fry *et al*

DEFENDANT(S)

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO 2010 CP 02-01951

**CERTIFICATE OF  
EXEMPTION/WITHDRAWAL FROM  
ARBITRATION AND MEDIATION**

I CERTIFY THAT THIS ACTION IS EXCMPT FROM ARBITRATION BECAUSE

- Monetary relief requested in this case exceeds \$25 000
- This is a class action
- There is a substantial claim for injunction or declaratory relief requested in this case
- This case involves (check one or more of the following )
  - Title to real estate
  - Wills trusts and decedents estates
  - Mortgage foreclosure
  - Partition
- This is a special proceeding or action seeking extraordinary relief such as mandamus habeas corpus or prohibition
- Monetary relief requested in this case is unspecified but exceeds \$25 000
- This case is a companion or related to similar actions pending in other courts with which the action might be consolidated but for lack of jurisdiction or venue
- This action is appellate in nature
- This is a post-conviction relief matter
- This is a forfeiture proceeding brought by the State or
- This is a contempt of Court proceeding

FINKEL LAW FIRM LLC  
P O Box 71727  
North Charleston, SC 29415  
(843) 577 5460

By

*Joseph T Merit*

Beverly J Finkel/Thomas A Shook  
Susan S White/Joseph T Merit  
Andrew M Wilson  
Attorneys for Plaintiff

August 12 2010

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AUG 18 2010  
11:30  
AIKEN COUNTY  
CLERK OF COURT

**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,  
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

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

**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 210<sup>th</sup> 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. (Medical malpractice mediation is mandatory statewide.)
- 4 Cases are exempt from the 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 had 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.**

SCCA/234 (01/2010)

3382034474  
STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Citizens Bank of Effingham

PLAINTIFF,

vs

Debra Kinder Personal Representative of the  
Estate of George William Brelsford IV *a/k/a/*  
George W Brelsford, Debra Kinder, Personal  
Representative of the Estate of Patricia M  
Brelsford, Debra Kinder, Individually Kathleen  
Brelsford French Robin Brelsford Landes  
Mortgage Electronic Registration Systems Inc ,  
MIN# 100039032108093192, and Woodside  
Plantation Property Owners Association,

DEFENDANTS

IN THE COURT OF COMMON PLEAS  
C/A NO 10 CP 02 00172

(NON JURY MORTGAGE FORECLOSURE)

CLAIM FOR SURPLUS

**CLAIM OF ENTITLEMENT TO SURPLUS FUNDS**  
Rule 71(c) of the South Carolina Rules of Civil Procedure

Pursuant to rule 71(c) of the South Carolina Rules of Civil Procedure that BAC Home Loan Servicing LP fka Countrywide Home Loan Servicing LP successor in interests to Mortgage Electronic Registration Systems Inc MIN# 100039032108093192 hereby makes claim to any entitlement it may have to the surplus funds in the above foreclosure action, as follows

Name of Claimant	BAC Home Loan Servicing LP fka Countrywide Home Loan Servicing LP successor in interests to Mortgage Electronic Registration Systems Inc MIN# 100039032108093192
Nature of Claim	Note and Mortgage
Mortgage Originally to	Mortgage Electronic Registration System, Inc
From.	George W Brelsford
Dated	March 21 2007
Recorded	April 20, 2007 Book 4131 Page 1308
Assigned to	BAC Home Loan Servicing LP fka Countrywide Home Loan Servicing LP
Assignment recorded	August 20 2010 Book 4320 at Page 1877

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AIKEN COUNTY  
CLERK OF COURT

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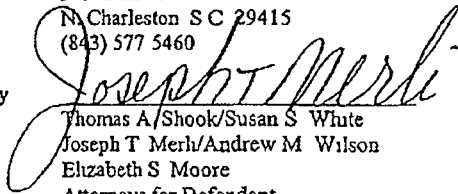
Date Claim Arose                      January 1 2010 Date of Default

Outstanding Principal Balance on Loan  
With interest accruing at 6.50% pursuant  
to the terms of the Note    \$144,157.94

WHEREFORE BAC Home Loan Servicing, L P , fka Countrywide Home Loan Servicing L P respectfully requests that this court protect its interest in the said surplus funds

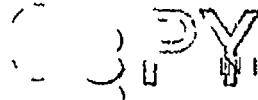
FINKEL LAW FIRM LLC  
P O Box 71727  
N Charleston S C 29415  
(843) 577 5460

By



Thomas A/Shook/Susan S White  
Joseph T Merli/Andrew M Wilson  
Elizabeth S Moore  
Attorneys for Defendant  
BAC Home Loan Servicing L P fka Countrywide  
Home Loan Servicing L P

STATE OF SOUTH CAROLINA



COURT OF COMMON PLEAS

COUNTY OF AIKEN

Citizens Bank Of Lflingham

Plaintiff

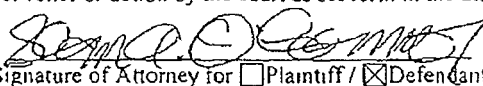
v

Debra Kinder et al

Defendant

CASE NO  
2010 CP 02 172

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney Bradley L. Bond Esquire Bar No Address P O Box 652, Aiken, SC 29802 phone (803) 644 4460 fax (803) 644 4469 e mail _____ other _____	Defendant's Attorney Sean A. O'Connor Esquire Bar No 68382 Address Post Office Box 225 Charleston SC 29402 phone (843) 577 5460 fax (843) 577 5135 e mail _____ other _____										
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)											
<b>SECTION I Hearing Information</b> Nature of Motion Rule 59(e) SCRPC Motion to Alter or Amend Judgment Estimated Time Needed 30 M A Court Reporter Needed <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO											
<b>SECTION II Motion/Order Type</b> <input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order <div style="text-align: center;">             Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant         </div> <div style="text-align: right;">           December 17, 2010            Date submitted         </div>											
<b>SECTION III Motion Fee</b> <input checked="" type="checkbox"/> PAID - AMOUNT 25.00 <input type="checkbox"/> EXEMPT (check reason) <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> <td><input type="checkbox"/> State Agency v Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> <td><input type="checkbox"/> Sexually Violent Predator Act</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status</td> <td><input type="checkbox"/> Post Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> <td><input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)</td> </tr> <tr> <td><input type="checkbox"/> Motion for Publication</td> <td><input type="checkbox"/> Proposed order submitted at request of the court or reduced to writing from motion made in open court per judge's instructions</td> </tr> </table> Name of Court Reporter _____ <input type="checkbox"/> Other _____		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> State Agency v Indigent Party	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Sexually Violent Predator Act	<input type="checkbox"/> Indigent Status	<input type="checkbox"/> Post Conviction Relief	<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)	<input type="checkbox"/> Motion for Publication	<input type="checkbox"/> Proposed order submitted at request of the court or reduced to writing from motion made in open court per judge's instructions
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> State Agency v Indigent Party										
<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Sexually Violent Predator Act										
<input type="checkbox"/> Indigent Status	<input type="checkbox"/> Post Conviction Relief										
<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)										
<input type="checkbox"/> Motion for Publication	<input type="checkbox"/> Proposed order submitted at request of the court or reduced to writing from motion made in open court per judge's instructions										
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order <input type="checkbox"/> Other _____	JUDGE _____  CODE _____ Date _____										
<b>CLERK'S VERIFICATION</b> Collected by _____ <input type="checkbox"/> MOTION FEE COLLECTED _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE _____											

**COPY ORIGINAL FILED**

Date DEC 21 2010

**AIKEN COUNTY CLERK OF COURT**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 Citizens Bank Of Effingham )  
 )  
 Plaintiff )  
 )  
 vs )  
 )  
 Debra Kinder Personal Representative of )  
 The Estate of George William Brelsford, IV )  
 a/k/a George W Brelsford, Debra Kinder )  
 Personal Representative of the Estate of )  
 Patricia M Brelsford Dedra Kinder )  
 Individually, Kathleen Brelsford French )  
 Robin Brelsford Landes Mortgage )  
 Electronic Registration Systems Inc )  
 MIN# 100039032108093192 and )  
 Woodside Plantation Property Owners )  
 Association )  
 )  
 Defendants )  
 )

IN THE COURT OF COMMON PLEAS  
 FOR THE SECOND JUDICIAL CIRCUIT  
 CASL NO 2010 CP 02 172

RULE 59(e), SCRCP  
 MOTION TO ALTER OR  
 AMEND JUDGMENT

**COPY**  
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**DEC 21 2010**  
 AIKEN COUNTY  
 CLERK OF COURT

BAC Home Loan Servicing LP f/k/a Countrywide Home Loan Servicing LP ('BAC') successor in interest to Defendant Mortgage Electronic Registration Systems Inc MIN # 100039032108093192 (MERS) by its undersigned counsel, moves this Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to alter or amend the judgment rendered in this action to wit the Order of The Honorable Robert A. Smoak Jr Master in-Equity for the County of Aiken, filed December 7 2010

The basis for this motion is that the judgment rendered was in error, in that the Court should have awarded the surplus funds in the amount of \$79,405.25 (Seventy Nine Thousand Four Hundred Five and 25/100 Dollars) to BAC. The Court's Order erred in the following particulars

1 Execution/Recording of assignment subsequent to the sale date does not prevent recovery of the surplus funds by BAC

The instant foreclosure sale took place on July 6, 2010. The assignment of the subject mortgage from MERS into BAC Home Loan Servicing, L.P., f/w/a Countrywide Home Loan Servicing, L.P. was executed on July 30, 2010 and filed with the Aiken County Register of Mesne Conveyance on August 20, 2010. There is no dispute that the subject assignment did occur and was recorded more than two months prior to the October 28, 2010 hearing regarding the surplus funds.

Importantly, there is no requirement in South Carolina that a party in a foreclosure action have a recorded assignment in place prior to a final disposition and sale. The note is the principal and the mortgage is the incident and follows the note in its delivery from one person to another. When a negotiable note payable to order is indorsed generally by the payee, the note and its incident pass in the commercial world by delivery. [t]here is no law in this state that requires assignments of mortgages to be recorded. Union Nat'l Bank of Columbia v. Cook, 110 S.C. 99, 96 S.E. 484, 486, 87 (1918); accord Williams & Co. v. Paysinger, 15 S.C. 171 (1881).

This comports with S.C. Code Ann. § 30-7-10 which makes clear that an instrument is only required to be recorded "so as to affect the rights of subsequent creditors (whether lien creditors or simple contract creditors) or purchasers for valuable consideration without notice. Thus, the statute protects subsequent creditors or purchasers of an instrument who record an assignment. However, it does not require the current holder of a note to record an assignment of mortgage to receive the benefits of the security instrument. Moreover, the statute is designed, and explicitly states that it is for the protection of subsequent creditors, not debtors or obligors.

Therefore it cannot provide a claim or advantage to an obligor or a basis to deny relief to a creditor who is the note holder

Further, while a mortgage is an interest in real property and is not governed by our UCC, the note itself is a negotiable instrument and is covered by UCC Article 3 S.C. Code Ann. § 36-3-201(1) states in part "Transfer of an instrument vests in the transferee such rights as the transferor has therein." See also Twelfth RMA Partners, L.P. v. National Safe Corp. 335 S.C. 635, 518 S.E.2d 44 (Ct. App. 1999) ("In South Carolina it is well established that an assignee stands in the shoes of its assignor. When a contract is assigned the assignee should have *all the same rights and privileges* including the right to sue on the contract as the assignor. Under the UCC in South Carolina a [t]ransfer of an instrument vests in the transferee such rights as the transferor has therein. S.C. Code Ann. § 36-3-201 (1976) ") (internal citations omitted)(emphasis added)

In accordance with the case and statutory law outlined here it is not necessary nor is it required that the holder of a note secured by a mortgage record an assignment in the public records in order to recover surplus funds as a junior lienholder. The Court's order is therefore in error and provides no basis to deny BAC recovery of the surplus funds.

2 The existence of the subject mortgage lien held by BAC was a matter of public record.

The existence of the subject mortgage lien held by BAC was made a matter of public record as the MERS mortgage was specifically identified in the Complaint at Paragraph 11 A. Further, Paragraph 16 of this Court's Judgment of Foreclosure and Sale dated June 15, 2010 which identified "Mortgage Electronic Registration Systems, Inc. MIN # 100039032108093192" as a Defendant, states "The Defendant's claim or may claim a lien upon on legal interest in subject property and in the event there is a surplus from the sale of the

subject property such Defendant may present any such lien or legal interest at a hearing subsequent to the sale in accordance with Rule 71(c) South Carolina Rules of Civil Procedure

Accordingly no person or entity was prejudiced in any manner by the fact that the assignment of the subject mortgage from MERS into BAC was executed on July 30 2010 and filed with the Aiken County RMC August 20 2010, some nine weeks prior to the October 28 2010 hearing regarding the surplus funds, as the subject lien which was later assigned to BAC was a matter of public record not only upon its original recording in 2007 but also as referenced in the pleadings and foreclosure judgment in the instant action. The Court's order is therefore in error and provides no basis to deny BAC recovery of the surplus funds

3 Coffey and Frazer are both distinguishable and do prevent recovery of the surplus funds by BAC.

The subject Order of December 7 2010 stated: The Court notes that there was considerable discussion at the surplus funds hearing concerning the possibility that the mortgage loan which forms the subject of the claimant's claim may have been closed without any participation therein by a South Carolina licensed attorney in violation of South Carolina law. BAC notes that the Court has not ruled on this issue and is willing to present evidence regarding same upon to the Court's invitation and instruction.

However BAC wishes to point out here that even if it were to be ultimately determined by this Court that the original lender on the subject loan Quicken Loans, Inc. completed the subject closing without participation by a licensed South Carolina attorney, that would not bar recovery by BAC in this instance.

The two recent South Carolina appellate opinions which barred a lienholder from recovering in either law or equity after a mortgage loan was closed without participation by a

licensed South Carolina attorney Wachovia Bank, N.A. v Coffey 389 S C 68 698 S E 2d 244 (Ct App, May 6 2010) and Matrix Financial Svcs Corp v Frazer Op No 26859, 2010 WL 3219472 (S C Aug 16 2010), are both plainly distinguishable from the instant case. In both Coffey and Frazer the Courts' decisions were based upon the equitable doctrine of unclean hands.

Here Wachovia's employees processed the home equity loan to Dr Coffey without the supervision of an attorney. The unauthorized practice of law is inherently prejudicial to not only the parties involved in the instant transaction but also to the public at large. We therefore reach the inescapable conclusion that Wachovia has come to court with unclean hands and is barred from seeking equitable relief. Wachovia's legal causes of action are barred as well.

Coffey 389 S C 76 698 S E 2d 248

[I]n this case Matrix comes to the court with unclean hands and is thus barred from seeking equitable relief. Matrix hired LandAmerica OneStop to perform the title search, prepare the documents, and close the refinance loan, all admittedly without the supervision of a licensed attorney. Thus Matrix has committed the unauthorized practice of law in closing the refinance mortgage, clearly violating South Carolina law. The dissent's protestations aside, a party cannot violate the law and expect not to bear the consequences of its actions. This Court will not grant a discretionary equitable remedy to a party who refused to follow the laws of this state. Therefore, even if Matrix were able to satisfy the requirements for equitable subrogation, Matrix would not be entitled to that equitable remedy because it has unclean hands.

Frazer Op No 26859, 2010 WL 3219472 (S C, Aug 16 2010)

In both cases, the party held to have had unclean hands was the *original lender*. It is not in dispute that BAC was not the original lender and was not involved in any way in the original loan transaction. Neither Coffey nor Frazer has been extended to apply to a situation, as here, in which a subsequent purchaser for value who was not a party to the loan transaction is seeking to recover on its lien. Such an extension of the rule in Coffey and Frazer would be improper, not only because there can be no finding in this case that BAC had unclean hands, but also because such a ruling would be repugnant to applicable law regarding holders in due course.

A holder in due course is a person or entity who is a holder of a negotiable instrument who took it for value, in good faith without notice that it is overdue or has been dishonored or any defense or claim to it on the part of any person Rosemond v Campbell 288 S C 516, 524 (S C App 1986) A holder in due course of a negotiable instrument takes it free from all claims to it on the part of any person and free from all defenses, including fraud in the inducement and failure of consideration of a party to the instrument with whom the holder has not dealt Id at 523

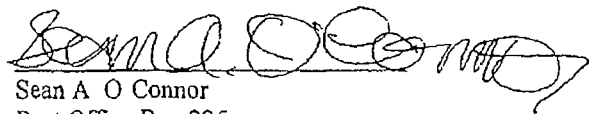
If the holder is a holder in due course the holder takes the instrument free from all claims to it on the part of any other person and free from all defenses of any party to the instrument with whom the holder has not dealt subject to limited exceptions S C Code Ann. § 36 3 305 The exceptions are (1) if the transferee is a party to any fraud or illegality affecting the instrument or (2) as a prior holder the transferee had notice of a defense or claim against it

Accordingly, Coffey and Frazer are both distinguishable and do prevent recovery of the surplus funds by BAC

For these and all the foregoing reasons the Master in Equity should alter its Order of December 7 2010 by awarding to BAC the surplus funds in the amount of \$79 405 25

Respectfully submitted

FINKEL LAW FIRM LLC



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December 17 2010

6 of 6

00052

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS )  
FOR THE SECOND JUDICIAL CIRCUIT )  
CASE NO 2010 CP 02 172 )

Citizens Bank Of Effingham, )  
 )  
Plaintiff )

vs )

Debra Kinder Personal Representative of )  
The Estate of George William Brelsford IV )  
a/k/a George W Brelsford Debra Kinder, )  
Personal Representative of the Estate of )  
Patricia M Brelsford, Dedra Kinder )  
Individually Kathleen Brelsford French )  
Robin Brelsford Landes, Mortgage )  
Electronic Registration Systems Inc )  
MIN# 100039032108093192 and )  
Woodside Plantation Property Owners )  
Association )

Defendants )

CERTIFICATE OF SERVICE

COPY  
ORIGINAL FILED

DEC 21 2010

AIKEN COUNTY  
CLERK OF COURT

I hereby certify that, on this the 17<sup>th</sup> day of December 2010 a copy of the *Rule 59(e) SCRCF Motion to Alter or Amend Judgment* was served upon the following individual(s) via regular United States mail with sufficient first class postage affixed thereto and addressed as follows

Bradley L. Boni, Esquire  
P O Box 652  
Aiken SC 29802

James L. Verenes  
Fox & Verenes  
P O Drawer 328  
Aiken SC 29802

Finkel Law Firm LLC



Latonya Small  
Post Office Box 225  
Charleston South Carolina 2940  
843 577 5460

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM AIKEN COUNTY

Robert A. Smoak, Jr., Master In Equity

Case No 2010 CP 02-172

**60PY**  
**ORIGINAL FILED** *830*  
**APR 28 2011** *ak*  
**AIKEN COUNTY**  
**CLERK OF COURT**

BAC Home Loan Servicing, L P  
f/k/a Countrywide Home Loan Servicing, L P ,  
successor in interest to Defendant  
Mortgage Electronic Registration Systems, Inc  
MIN # 100039032108093192,

Appellant

v

Debra Kinder, Personal Representative of  
The Estate of George William Brelsford IV  
a/k/a George W Brelsford, and Debra Kinder  
Personal Representative of the Estate of  
Patricia M Brelsford

Respondent(s)

NOTICE OF APPEAL

BAC Home Loan Servicing, L P f/k/a Countrywide Home Loan Servicing, L P  
("BAC") successor in interest to Defendant Mortgage Electronic Registration Systems, Inc ,  
MIN # 100039032108093192 ("MERS ) by and through its undersigned counsel, appeals the  
order of the Honorable Robert A. Smoak Jr dated Dec 7 2010 which had denied BAC's claim  
to the surplus funds of \$79,405.25 following a foreclosure by Citizens Bank of Effingham and

BAC Home Loan Servicing, L P v Debra Kinder et al  
Case No 2010 CP 02 172  
NOTICE OF APPEAL

sale to a third party bidder, and instead awarded those funds to the estate of the borrower, and appeals the order dated Feb 4, 2011, denying BAC s timely motion under Rule 59(e), SCRCP, which sought to alter, amend or set aside Judge Smoak s above referenced earlier order of Dec 7, 2010

Appellant first received written or any notice of the Feb 4 2011 order on Tuesday, March 22 2011, when it was e mailed to Attorney Sean A O Connor by Respondents counsel James L Verenes Neither Attorney O Connor nor Appellant received a copy of the Feb 4 2011 order from the court

(SIGNATURE ON FOLLOWING PAGE)

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BAC Home Loan Servicing, L P v Debra Kinder et al  
Case No 2010 CP 02 172  
NOTICE OF APPEAL

Respectfully submitted,

April 21, 2010

  
Sean A O Connor (SC Bar # 68382)  
FINKEL LAW FIRM LLC  
Post Office Box 225  
Charleston, South Carolina 29402  
Telephone (843) 577-5460  
Facsimile (843) 577 5135  
soconnor@finkellaw.com

Defendants counsel

James L Verenes  
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Aiken, S C 29802  
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803 641-1216 (fax)  
jimverenes@aol.com

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Robert A. Smoak Jr., Master-in Equity for Aiken County

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Case No 2010 CP 02 172

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BAC Home Loan Servicing, L P  
f/k/a Countrywide Home Loan Servicing L P ,  
successor in interest to Defendant  
Mortgage Electronic Registration Systems, Inc ,  
MIN # 100039032108093192, Appellant,

v

Debra Kinder Personal Representative of  
The Estate of George William Brelsford, IV  
a/k/a George W Brelsford, and Debra Kinder,  
Personal Representative of the Estate of  
Patricia M Brelsford, Respondent(s)

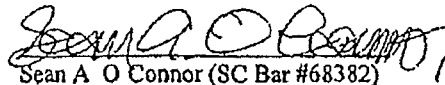
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PROOF OF SERVICE

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I certify that I have served the Notice of Appeal on Respondent(s) by depositing a copy of same in the United States Mail postage prepaid on April 21 2011 addressed to Respondents' attorney of record James L Verenes, 322 Laurens Street, N W , Aiken, South Carolina 29801

BAC Home Loan Servicing, L P v Debra Kinder et al  
Case No 2010 CP-02-172  
PROOF OF SERVICE



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soconnor@finkellaw.com  
*Attorney for Appellant*

April 21, 2011

1 STATE OF SOUTH CAROLINA  
 2 COUNTY OF AIKEN ) IN THE COURT OF COMMON PLEAS  
 3 CITIZENS BANK OF EYINGHAM Co. No. 10-CP-02-00172  
 4 Plaintiff HEARING  
 5 v  
 6 DEBRA HENDER, Personal  
 7 Defendant  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15 Defendant

16 Given before Panel A of the Court Reporter and  
 17 Notary Public at the Aiken County Meets in Equity at  
 18 109 Park Avenue SE Aiken South Carolina on Thursday  
 19 October 28 2010 commencing at 10:00 a.m.

20  
 21 RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA  
 22 Prof. Trial Court Report  
 23 8 Irving Ave. 1st Floor, Suite 101  
 24 1800-822-8711  
 25  
 26 Debra Canda Chilton C. Lumb  
 27 Filmer & Co. Vill. Greenwood Ballton Head  
 28 Lexington Myrtle Beach H. Berry Orangeburg  
 29 RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1800-822-8711

APPEARANCES

1  
 2 For the Plaintiff: FINKEL LAW FIRM  
 3 By: Andrew Wilson, Esquire  
 4 1905 F. de Place B, Suite 200  
 5 Charleston SC 29403  
 6  
 7 For the Defendant(s): FOX & VERMIZE  
 8 By: James L. Vanecko, Esquire  
 9 P.O. Box 328  
 10 Aiken SC 29802-0328  
 11  
 12  
 13  
 14  
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RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1800-822-8711

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IN RE: EXHIBITS.  
 Plaintiff Exhibit F-1-D  
 (None yet produced)

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1800-822-8711

1 THE COURT this is a hearing to  
 2 71-c of 5 the rules of civil procedure  
 3 pertinent to 10-cp-02-172. I believe that  
 4 you are both present for the purpose of  
 5 the hearing is to determine the disposition of  
 6 the exhibits from a civil suit in  
 7 this case which are being held in  
 8 and which are being held in  
 9 custody of the clerk of court who has filed a  
 10 judgment in this case.  
 11 James L. Vanecko representing the personal  
 12 representative of the defendant  
 13 individually in this matter and the  
 14 legal representative of the plaintiff are not required to file  
 15 formal claims they were under rule 71-c of the  
 16 rules of civil procedure. I am going to do  
 17 that today. I am going to ask you both  
 18 from both sides of this thing.  
 19 MR. WILSON, I don't believe we have any  
 20 preliminary matters but I am going to give the  
 21 floor to Mr. Vanecko. He will be able to see  
 22 on it. I will hear from him.  
 23 THE COURT, in your hearing, your firm  
 24 filed formal claims. I am not sure why do you  
 25 go back and forth.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1800-822-8711

1 MR WILSON Yes Sir Your Honor as you et ted  
 2 my name I Ardr w Mil on I m be e on beb lf f BAC  
 3 home loans servicing LP They are the sure swors in  
 4 inter st to MERS mortgage electronic regist tion  
 5 systems inc MIN number 10003932108093132 They are  
 6 named o def d t i the tio in this action  
 7 th t we o bef e you today M re making clain  
 8 fr r th p cod e are a valid co d y lien  
 9 holder BAC is the succes or in intere t t MERS who  
 10 I aned In thi acti n they r notifi d by MERS  
 11 of the action and I hav th t o c pondence that  
 12 w nt olve I have a payment or some account  
 13 inf rmation showi g the payments were being made to  
 14 BAC 3 recd t November of 2009 or cu e me  
 15 January 2010 We do make a claim that the  
 16 mo ty ge is v lid nd t o dad gainst the p pe ty  
 17 g in it w s named i th ti and pur u t to  
 18 rule 71 - C we do mak cl in fr those s plus  
 19 p ocs ds I b e nothi g fr rth r t this time  
 20 THE COURT: Mr V c pes  
 21 MR VERENESI You Honor well si t of all M  
 22 Mil on s clie t i not party to thi p o di g  
 23 MERS i the po cy and that n w d th pa ty  
 24 s i l 71 c ter that p rty to the action or  
 25 ary pot o h h d lien the wa to ge i

1 I the time of le and I think that last phres is  
 2 rol ant because MERS th t r I mo ty ge o record  
 3 that tart d with Outcken lo end then was  
 4 sign d to MERS At th time of th s l MERS w e  
 5 n cotu Mr Wilson olient a signment w not  
 6 r o d d until A gu t 20 of this year after the  
 7 s l o I w ld so that n ity did t have a li n  
 8 at the time of th l o by not bei g a party d  
 9 by not havi g a li n at the time I don t think rule  
 10 71-C llows her to i th s plus p oced  
 11 from the sale that w ont point The second point i  
 12 would mak Your Ho r is that thi loe w lo ed  
 13 on March 20 107 and the settl e t eq t w s  
 14 Lende s rvi I not n attorney lic need t  
 15 practice law in South Carolina so und r th i  
 16 would argue that under th v hovi case and the on  
 17 c e p cooling it that lead up to tha Mr  
 18 Wilco If t comes in und c th langu ge of the  
 19 M hovi c e with uncle h ds because it w s not  
 20 thi lo n w not cl red by an attorney authori d  
 21 to p ti l w i the t t of 30 th e olin d  
 22 h w h i ce id f to h i quag  
 23 i l f ing title g nt lo i g lo n  
 24 not bei g except ble it y th t it it the  
 25 f t t V E ye servl ocpa y that e y

1 h lid g that some ci l t iel onp i empl yoe t  
 2 f tt rny co evl mortg ge loo cl i g  
 3 docum t do t the compo y p po ti f  
 4 the r documents from co tituting th unauth ri d  
 5 practice of law Th i no evidence i than the  
 6 settleme t statement of n atto y losi g thi  
 7 t action it by hi corpo tion th doca t  
 8 exist anymo e d o I wo ld al o argue that th y do  
 9 not have a cl im to the proceeds beca they ooc  
 10 befo the co t unde the l ngu ge f the M ch vi  
 11 lth u l h dx because the t ti  
 12 l by on tity nd os by tt may nd  
 13 it would con clure n n authorized p tice of l  
 14 MR WILSON may I ply Y M or?  
 15 THE COURT y si  
 16 MR WILSON to begin with th d f dant or  
 17 ce h def ds t i th it ti  
 18 wa that th l n w s beif g paid to BA they  
 19 making payme t gain of J u y s I  
 20 ill t h y had n tice b th p ope party was  
 21 this action and theref e th y should not be bl  
 22 to covr i d cl i chac the mortg g i i lid  
 23 s thi i t p ope im ren th t th y h d  
 24 ti and we maki g paym nts to BAC f h  
 25 t clal th BAC i n t th proper pa ty i I m

1 King yo t h lid th t BAC is the p pe pa ty  
 2 s uly I beli h w c i ba ic lly  
 3 t the h p y ce no k equitabl li f  
 4 w e ceki g to foreclose this mo ty ge nd wa  
 5 i ply g ki g pl p oced f oer r  
 6 co dary lien d wa h v mad valid claim und  
 7 ul 71 I d no beli ve th t we h v o filed  
 8 ti fo fr lo d w e not e ki g to  
 9 f t l as th lien the lien hds already ben  
 10 f i d o I don t beli th fr e ca would  
 11 be applicabl in thi ma d if h t is gol g  
 12 be th def d nt a position and th t g i g to be  
 13 th d ldi g mat o i thi th I wo ld t  
 14 I set like t h e on opportunity c h ane mo  
 15 viden put forth s d p e that this  
 16 transe tio w tu lly l d by a clost g e t  
 17 n tt y I d t beli th t i ply t ti g  
 18 that on th c rd is good gh if the co t is  
 19 willi g t t k th t o l wo ld k that hav  
 20 noth h r g d t lly r e ome o id ne to  
 21 p f th h than the mere illeg ti n I would  
 22 ju t y th t w t p t J lth otic t  
 23 y i f t i f d h y hi g in y  
 24 fill in our to di p o n t if th t i going t  
 25 be he d id g nett b t I wo d k h t h

1 cut e e e not e oking eq itable r llof we o  
 2 not seek ng to foreclo e thim mortgage we are just  
 3 ki g the surpln proce d so I d t belise e  
 4 that the coff e c se is appropri In thl matter  
 5 MR VEREMES Your Honor I have a copy of th  
 6 ottloemnt t tme t that show who the ttieemnt  
 7 so t wa end I would also dd th t the Mach i  
 8 In addition t ba ring the quitable relief  
 9 stated that Machovia e legal cau of action were  
 10 bar od lo o I think nd l the Mach via c  
 11 tho they knew some of the parties the e knew that  
 12 th ro w mortg ge l pl c so th fact that e  
 13 had paid them th ough January I don t think tops us  
 14 from making a statement that on the xl t two issue  
 15 I ve menti d that th y e no they w ren t named  
 16 petty i thl f reclosure MERS was named o  
 17 th party and rule 71 C 1 po lific it y p ty  
 18 omone with li n th y didn t h li n  
 19 because their e ignme wa n t r corded until  
 20 f r the l a d it i not up to us to ha e thei  
 21 s ignmant eca dnd and w p c t tloway  
 22 f co MS Mindred when he pped making payme t  
 23 he told the bank th t this case was i f reclo ur  
 24 I se n th y knew it to k in F b y d it is not  
 25 f l t that they did t cord th lr ignmant

1 or that they did not seek co i rve e in the  
 2 fo closure or it w not our f ult th l MERS didn t  
 3 l ll then that f l u r did or Jfd ot tell  
 4 th m bout the foreclo ure but they MERS w a th  
 5 p ower po ty not M WJ on cli nt o l don t  
 6 think the lo llows the cau th y n t in  
 7 th cat g ry of claimant e that llowed und rul  
 8 71 c  
 9 MR WILSON Your Honor I thl k th t South  
 10 Co ll l w and case la is pretty clo r that the  
 11 hold r f the note mo to g e n tual origi ad  
 12 ote mortgage is the due you know can afere that  
 13 li n ny alle t i th holder of the note o d  
 14 mortgage I would at l est k h c we be allowed  
 15 you kno even if it a d yo two be case it  
 16 umf t n tely did not make it in the file that l h d  
 17 to quo tod y that we ha ome time to p od c  
 18 the o ignme te d no to g d if w c n I wo ld  
 19 k that we e hold th lgs l or h  
 20 p per pe ty d the propo li hold So th  
 21 C ll l d not requi e you to reco d e  
 22 ignse t i ordo t t blish yo r right t  
 23 f llo th l w l p y l th t that I  
 24 imply in o de to pot t b lght s a b qu c  
 25 edit s Th d f d t in thl w it co not b

1 h ld t be sub que t redit d h y were  
 2 f h li th y naki g payme t my li c  
 3 f hea to laim th t we wa t pa ty nd  
 4 h e no lght to ha d pl p oced seen  
 5 littl bit idi ll u I would ask og in that o  
 6 l m be h ld lid t l t put thl f a lny off  
 7 nd qf my cli t the bility to prod the  
 8 vigin l rote a d mo tgag d th al t  
 9 tablish some time t make on a quse t go di g  
 10 their cor e lloa tio the k ye  
 11 MR VEREMES h ly thl g I would dd y  
 12 M n I wo n t t ying to be idicui I tho ght  
 13 making a ve y lid l gal n gwart  
 14 MR WILSON I apologize t M V You  
 15 Mon h d I did t meo to sy hi  
 16 quse t s difoulou b t to mak payments to  
 17 n lty a d then cl m th y ot the p pe li n  
 18 h ld exk littl bit odd h w y nly  
 19 point o I do apolo e  
 20 THE COURT ll lght I d t p p to l  
 21 on r be h h r these ching Very rarely do  
 22 I h e cont t d it t l m i olviny urpl  
 23 It d it U lly cut nd dry ome time the re  
 24 mo th n one l lxe t th t file cl m b t th y  
 25 r lly ll dit h ll on

1 co d nd lly f h l I of he  
 2 d tha wh li fil d I d h d  
 3 t be h th one hdn t beo bordina d  
 4 will yi ld nd I ow th oth t t nd in f t  
 5 I is the pe f r lien hold r I had one  
 6 um l i h e no fl of ll th e w  
 7 Il rry f co ll r thl y l vol i g  
 8 clo ing not with no returning pa ticipati n th  
 9 M chovl c e tho names a t r i g i n g b l l e I  
 10 ne l h t o f th f r oas ll thl  
 11 year or is th t e rlier eb e than that?  
 12 MR WILSON Macho i C ffee Your Monr It  
 13 - i i court of appe l co  
 14 MR VEREMES I trying to fi d the front page  
 15 May 6th 20 of this y r It Ho hove Bank vs  
 16 Coffoo nd Bank of Ame lca d t l cite th  
 17 l e ca bo t th p a tic f l it re  
 18 h th Ma wo ld g t umuory judgement in o  
 19 f oclosure action denying the bank ord d th t  
 20 they could t p d on th l f l if I  
 21 d t nd corre tly i wh t they did be f  
 22 r w th h i l l g nat f  
 23 dl l b t M Coff nd h x hu band  
 24 THE COURT tb t was the Deaufo t ty  
 25 MR WILSON y sl



1 Nachovia case and this particular situation I have  
 2 nothing further at this time  
 3 MR. VERHEES: My first comment Your Honor is  
 4 that you cite in the Nachovia the court ruling is partially  
 5 on the issue of state v buyers service in which a  
 6 commercial title company did the closing not the  
 7 bank. And that's what we have here is a commercial  
 8 title company I mean based on this and I have the  
 9 settlement statement that I can provide lenders  
 10 service of Bluffton SC is the settlement  
 11 agent not an attorney. An attorney is not how  
 12 the settlement agent  
 13 MR. WILSON: Your Honor whether or not the  
 14 issue is litigated on it the title agent  
 15 buyers service I believe is pretty late in my  
 16 opinion of it. It just call for the attorney to  
 17 review the document review the title  
 18 statement. Now the issue is a question of whether  
 19 or how many papers in this particular case and  
 20 that can be up for debate but given the  
 21 distinguishing factors between the Nachovia case  
 22 which the co-defendant has cited here and this  
 23 case is that the bank actually negotiated in the  
 24 universe of the title I would here my client did  
 25 not

1 THE COURT: All right gentlemen. I would  
 2 earlier I mentioned I would like to rule on the  
 3 bench and at this point I must lift my  
 4 further matter. I am finding the higher per se  
 5 although I am not ruling that out as a possibility  
 6 before I find it in because of the  
 7 issue we've pointed here the first time I had to  
 8 address this I did usually surplus funds  
 9 property cut and dried we're only have being  
 10 all we have lots of surplus funds usually get  
 11 cut a check and mail them to somebody without even  
 12 having to have them here and other time of filing  
 13 clearance as I said earlier do you which one is  
 14 priority do that to the cash register in  
 15 the cases either but the case is interesting  
 16 issue raised here and I will examine them in my  
 17 ruling later time which has the whole lot of  
 18 right now unfortunately and I can't promise a speedy  
 19 decision on this but I will be back with you on  
 20 this

21 MR. VERHEES: I would like to file this copy of  
 22 the settlement statement for your file in the  
 23 record

24 MR. WILSON: I'll just take a look at it we  
 25 have problems with it I have no objection

1 THE COURT: plus no complications in this  
 2 matter. I think that you had that is Nachovia case  
 3 will be a logical consequence of the  
 4 you no doubt to take him to time you what we  
 5 would do like I said earlier I will  
 6 take this and deal with it if necessary  
 7 if proceeding I'll be in touch with you

IN 10:00 Jud at 11:00

1 STATE OF SOUTH CAROLINA )  
 2 ) CERTIFICATE  
 3 COUNTY OF DORCHESTER )  
 4 )  
 5 I Pamela A. Hedlin Court Reporter do hereby  
 6 certify that I did on the 14th day of May  
 7 2011 appear before the Honorable Judge  
 8 October 28 2011 at the Clerk of the Court  
 9 at 109 Park Avenue SE Atlanta Georgia 30334  
 10 for the purpose of taking testimony in the  
 11 case of the testimony given at that time  
 12 as follows:  
 13 I certify that I am a member of the  
 14 Bar of the State of South Carolina and I  
 15 do hereby declare under oath that I am  
 16 IN WITNESS WHEREOF I have hereunto signed  
 17 my hand and the seal of my office on the 14th day of May 2011

\_\_\_\_\_  
 Pamela A. Hedlin  
 My Commission Expires 06/30/2018

**Settlement Statement**  
 Optional Form for  
 Transactions without Sellers

U S Department of Housing  
 and Urban Development

OMB Approval No 2502 0481

Name & Address of Borrower George W Brelsford 4 Old South Court 14H Bluffton SC 29910	Name & Address of Lender Quicken Loans Inc (Lender) 20555 Victor Parkway Livonia MI 48152
Property Location (if different from above) 117 Club Villa Drive Aiken SC 29803	Settlement Agent LSI (LENDER SERVICES INC ) Place of Settlement 4 Old South Ct 14-H Bluffton SC 29910

Loan Number 3210809319	Settlement Date 03/21/07	Disbursement Date 03/21/07
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Code	Description	Amount	Code	Description	Amount
800	Loan Origination Fee	0.00	1301	Service Fee	0.00
801	Loan Origination Fee % to Quicken Loans	0.00	1302	Preparation Fee	0.00
802	Loan discount 1.25% to Quicken Loans	1,862.50	1303	Sub Agency Fee	0.00
803	Agency Fee DON TOGGLE AND ASSOC	315.00	1304	Tax Related Service Fee	0.00
804	CDI Report Fee (Kroll Factual Data)	7.37	1305	Document Preparation	0.00
805	Preparation Fee	0.00	1305b		
806	Wire Fee	0.00	1306		
807	Flood Cert Fee of Loan Co. First American	5.00	1307	Express Mail/Courier Fee	45.00
808	Flood Cert Fee First American Flood	10.50	1308	Debts to be paid(per addendum)	0.00
809	Underwriting Fee to Quicken Loans Inc	495.00	1309	Taxes Owed	0.00
810	Processing Fee to Quicken Loans Inc	575.00	1310	Escrow Holdback	0.00
811	CLD Fee to Lending Tree (LPOC) 700.00*	0.00	1311	VOD/VOM/VOR to	0.00
812					
813					
814					
888	TSI App 1.15.01	80.00	1601	COUNTRYWIDE HOME LOANS	82,450.95
900	Item Required by Lender to be Paid in Advance		1602	CITIZENS BANK	30,462.95
901	from 03/21/2007 to 04/01/2007 @ \$ 26.90 per day 11 days	295.90	1603		
902	Mortgage Insurance Premium		1604		
903	Home Inspection Fee	0.00	1605		
904	Flood Certificate	0.00	1606		
905	Reserve Deposit with Lender		1607		
906	Mortgage Insurance	672.03	1608		
907	County Property Tax	1,358.72	1609		
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Return to Finkel Law Firm LLC  
PO Box 71727  
N Charleston, SC 29415

33820 F34474/  
STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

2010018927  
ASSIGNMENT  
RECORDING FEES \$6 00  
PRESENTED & RECORDED  
08-20 2010 08 52 AM  
JUDITH WARNER  
REGISTER OF DEEDS CONVEYANCE  
AIKEN COUNTY SC  
By JULIE STUTTS DEPUTY RMC  
BK:RB 4320  
PG:1877-1877

ASSIGNMENT OF MORTGAGE

FOR VALUE RECEIVED, the undersigned, Mortgage Electronic Registration Systems, Inc as nominee for Quicken Loans, Inc does hereby transfer, assign, set over and convey to BAC Home Loans Servicing, L.P fka Countrywide Home Loans Servicing L P its successors and assigns forever, that certain mortgage and the Note thereby secured, made and executed by George W Brelsford to Mortgage Electronic Registration Systems Inc as nominee for Quicken Loans Inc, dated March 21, 2007 and duly recorded on April 20, 2007 in Mortgage Book 4131, Page 1308 in the Office of the Register of Deeds for Aiken County in the State of South Carolina.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed and delivered this 30<sup>th</sup> day of July, 2010

In the presence of

Mortgage Electronic Registration Systems Inc  
as nominee for Quicken Loans, Inc

[Signature]  
Witness #1

By [Signature]  
(Name of Officer)

[Signature]  
Witness #2

Title VP / Asst Sec

STATE OF South Carolina  
COUNTY OF Charleston

ACKNOWLEDGMENT  
S C CODE 30 5-30

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

WITNESS my hand and seal on this 30<sup>th</sup> day of July, 2010  
[Signature] (Signature)  
Notary Public for SC  
My Commission Expires 3/17/2015

ASSIGNEE ADDRESS BAC Home Loans Servicing L P fka Countrywide Home Loans  
Servicing L P  
7105 Corporate Dr  
Mail Stop PTX-C35  
Plano TX 75024

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Robert A. Smoak, Jr., Master-in Equity for Aiken County

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Case No 2010-CP-02-172

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BAC Home Loan Servicing, L P ,  
f/k/a Countrywide Home Loan Servicing, L P ,  
successor in interest to Defendant  
Mortgage Electronic Registration Systems, Inc  
MIN # 100039032108093192,

Appellant

v

Debra Kinder Personal Representative of  
The Estate of George William Brelsford, IV  
a/k/a George W Brelsford, and Debra Kinder,  
Personal Representative of the Estate of  
Patricia M Brelsford,

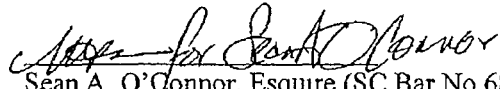
Respondent(s)

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CERTIFICATE OF COUNSEL

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material

  
Sean A. O'Connor, Esquire (SC Bar No 68382)  
Finkel Law Firm LLC  
P O Box 41489  
Charleston, South Carolina 29423  
Attorneys for Appellant

Charleston South Carolina  
November 9, 2011

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Robert A Smoak, Jr , Master-in-Equity for Aiken County

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Case No 2010-CP-02-172

---

BAC Home Loan Servicing, L P ,  
f/k/a Countrywide Home Loan Servicing, L P ,  
successor in interest to Defendant  
Mortgage Electronic Registration Systems, Inc  
MIN # 100039032108093192,

Appellant,

v

Debra Kinder, Personal Representative of  
The Estate of George William Brelsford, IV  
a/k/a George W Brelsford, and Debra Kinder,  
Personal Representative of the Estate of  
Patricia M Brelsford,

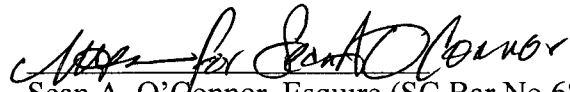
Respondent(s)

---

**CERTIFICATE OF COUNSEL**

---

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material

  
Sean A O'Connor, Esquire (SC Bar No 68382)  
Finkel Law Firm LLC  
P O Box 41489  
Charleston, South Carolina 29423  
Attorneys for Appellant

Charleston, South Carolina  
November 9, 2011