

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2016CP1801001**

FILED-RECORDED  
2018 JAN 12 AM 11:57  
CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

|                    |                                  |                              |
|--------------------|----------------------------------|------------------------------|
| Tammy C Richardson | Halcyon Real Estate Services LLC | McCabe Trotter & Beverly P C |
|--------------------|----------------------------------|------------------------------|

|                      |  |
|----------------------|--|
| <b>PLAINTIFF(S)</b>  | <b>DEFENDANT(S)</b>  |
| <b>Submitted by:</b> | <b>Attorney for:</b> <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant<br><input type="checkbox"/> Self-Represented Litigant |

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other:

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

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

**ORDER INFORMATION**

**This order**  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|--|--|--|
|  |  |  |
|  |  |  |
|  |  |  |

If applicable, describe the property, including tax map information and address, referenced in the order: \_\_\_\_\_

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

**Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Diane S. Goodstein  
Circuit Court Judge

2112  
Judge Code

1/12/2018  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on **1/12/2018**, and a copy mailed first class or placed in the appropriate attorney's box on **1/12/2018**, to attorneys of record or to parties (when appearing pro se) as follows:

**Mary Leigh Arnold** 749 Johnnie Dodds Blvd, Ste B Mt.  
Pleasant, SC 29464  
**Justin S. Kahn**  
**Wes Baker Allison** PO Box 31397 Charleston, SC  
29417-1397

**Andrew W. Countryman** 321 Wingo Way Suite 102 Mount  
Pleasant, SC 29464  
**Kevin W. Mims /Randell Croft Stoney III** 50 Immigration  
Street, Suite 200 Charleston, SC 29403  
**Robert P. Wood** PO Box 100200 Columbia, SC 29202-3200

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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**ATTORNEY(S) FOR THE DEFENDANT(S)**



**Cheryl Graham - Clerk of Court**

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**Court Reporter**

**Court Reporter:**

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

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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**Clerk also emailed a copy to all counsel listed above on 1/12/2018**

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STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

FILED-RECORDED  
2018 JAN 12 AM 11:57

IN THE COURT OF COMMON PLEAS  
CASE No. 2016-CP-18-1001

**Tammy C. Richardson,**  
**Plaintiff,**

v.

**Halcyon Real Estate Services, LLC and  
McCabe Trotter & Beverly, P.C.,**

**Defendants.**

CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

**ORDER  
GRANTING  
CLASS CERTIFICATION**

Plaintiff, Tammy C. Richardson, (hereinafter "Plaintiff") filed a Motion for Class Certification against McCabe, Trotter & Beverly, P.C. on March 9, 2017. The Motion was heard April 10, 2017 with supplemental arguments on July 13, 2017. Justin S. Kahn and Mary Leigh Arnold, appeared on behalf of Plaintiff and all those similarly situated. Andrew Countryman, and Robert Wood appeared on behalf of Defendant McCabe, Trotter & Beverly, P.C. (MTB).

A central issue is whether MTB misrepresents the debt that property owners owe their HOAs in violation of the Fair Debt Collections Practices Act (FDCPA).

Having duly considered the filings, memoranda, exhibits and arguments of counsel this Court finds class certification should be granted as set forth below.

**I. Background**

**A. Brief Procedural History.**

- August 8, 2015 MTB filed suit to collect and foreclosure on behalf of Southern Magnolia Homeowners Association ("SMHOA") against Tammy Richardson ("Richardson") to collect for alleged past due homeowner association fees and expenses. Civil Action No. 2015-CP-18-1575 ("HOA Foreclosure").
- September 9, 2015 Richardson filed an Answer and Counterclaim against SMHOA.
- October 15, 2015 MTB filed a Reply to Counterclaim on behalf of SMHOA.
- November 5, 2015 Richardson filed a Third Party Complaint against MTB alleging violations of

the FDCPA.

- November 23, 2015 MTB filed an Offer of Judgment and a Motion to Dismiss the Third Party Complaint.
- December 21, 2015 MTB filed an Answer to the Third Party Complaint.
- January 19, 2016 Judge Edgar Dickson heard MTB's Motion to Dismiss.
- June 1, 2016 Judge Edgar Dickson denied MTB's Motion to Dismiss. He also severed the FDCPA claim against MTB from the Foreclosure Action, resulting in this separate lawsuit.
- June 3, 2016 MTB removed the FDCPA claim to U.S. District Court. Plaintiff sought remand.
- July 20, 2016 an order was issued remanding this case.
- November 14, 2016 MTB filed a Motion for Partial Summary Judgment.
- January 19, 2017 a stipulation of dismissal was filed in the SMHOA foreclosure case and Richardson received compensation from SMHOA.
- March 9, 2017 Richardson filed a Motion for Class Certification.
- April 10, 2017 Judge Alison Renee Lee granted in part and denied in part MTB's Motion for Partial Summary Judgment.
- April 14, 2017, at a hearing on Richardson's Motion for Class Certification, this Court continued the matter pending further information regarding Judge Lee's Order.
- May 4, 2017 Judge Lee filed an Order clarifying her prior Order.
- July 13, 2017 the hearing on Richardson's Motion for Class Certification was reconvened with both sides presenting additional arguments.

#### **B. Factual Background.**

MTB is a South Carolina law firm that collects debts on behalf of homeowner associations throughout South Carolina. MTB filed suit on behalf of SMHOA in August 2015, seeking to foreclose Ms. Richardson's home to collect alleged delinquent homeowner association fees and expenses. That lawsuit resolved with SMHOA paying Richardson a settlement. The president of SMHOA also provided a

letter stating Ms. Richardson had done nothing wrong.

Richardson has sued MTB for alleged violations of the FDCPA.

MTB has a standard fee agreement with homeowner associations (“HOA”) with a fee schedule flow chart listing steps and fees that typically apply in collection matters. Trotter Dep. p. 58, 13-16. When MTB contracts with an HOA to collect amounts allegedly owed, MTB bills the HOA a flat rate as set forth on the flow chart. The chart states “Total Fees to Association: \$65.” Trotter Dep. p. 71, 15-19 referencing Ex. 3 Fee Schedule.

Each time an HOA contacts MTB to collect, MTB gets the account from the HOA and adds attorney’s fees to the amount provided by the HOA. Trotter Dep. p. 93, 22-25, p. 94, 1. MTB sends its form “Right to Cure Notice” that is intended to tell the consumer “that they currently owe certain amounts.” Trotter Dep. p. 95, 7-8. It is alleged that MTB has been sending letters to consumers claiming amounts greater than what MTB bills the HOA since at least 2012. Trotter Dep. p. 167, 3-13. Richardson claims that MTB also files a notice of lien that includes the inflated amount as well. MTB agrees that the Right to Cure letter does not distinguish between what MTB states is owed and what the HOA account actually reflects. Trotter Dep. p. 96, 5-7.

MTB sends the Right to Cure and a Notice of Lien claiming that the HOA member currently owes amounts greater than and not appearing on the actual HOA account. Trotter Dep. p. 52, 9-22. MTB agrees that the HOA account does not reflect the attorney’s fees as set forth on the letter it sends to the consumer. Trotter Dep. p. 97, 15-18; p. 98, 1-6; p. 99, 15-21. MTB agrees that the consumer “would rightfully believe that they currently owe those amounts. That’s what the [Right to Cure] letter says.” Trotter Dep. p. 96, 11-13.

In sum, Plaintiff contends MTB repeatedly violated the FDCPA when sending its “Right to Cure Notice” and filing Notice of Liens against homeowners’ property that misrepresent the amount of the debt. Plaintiff’s Memo in Support of Class Certification p. 18.

## II. Standard For Class Certification.

It is well settled in South Carolina that “Rule 23, SCRPC, endorses a more expansive view of class action availability than its federal counterpart.” *Salmonsens v. CGD*, 377 S.C. 442, 455, 661 S.E.2d 81, 88 (2008). “The class-action device saves the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion under Rule 23.” *Grazia v. South Carolina State Plastering, LLC*, 390 S.C. 562, 576, 703 S.E.2d 197, 204 (2010).

Our Supreme Court has made it clear that “class actions are favored in this state.” *Id.*

Our state class action rule differs significantly from its federal counterpart. The drafters of Rule 23, South Carolina Rules of Civil Procedure (SCRPC) intentionally omitted from our state rule the additional requirements found in Federal Rule 23(B), Federal Rules of Civil Procedure (FRCP). By omitting the additional requirements, Rule 23, SCRPC, endorses a more expansive view of class action availability than its federal counterpart.”

*Id.*, citing, *Littlefield v. South Carolina Forestry Comm’n*, 337 S.C. 348, 354-55, 523 S.E.2d 781 (1999).

Reliance on federal court cases interpreting Rule 23, FRCP that are inconsistent with our Rule 23, SCRPC are inappropriate.

When considering a motion to certify a class action, this Court “may not look to the merits when determining whether to certify a class.” *King v. American General Finance, Inc.*, 386 S.C. 82, 88, 687 S.E.2d 321, 324 (2009).

Thus, it is clear that class actions are favored and the merits are not to be considered when certifying a class. The focus is simply whether the prerequisites of Rule 23 have been met. The analysis for this is below.

## III. Analysis.

### A. The Requirements for Class Certification Are Satisfied.

“Upon a motion for class certification, it will be incumbent on the circuit court to determine whether or not the action meets each of the five prerequisites proponents of class certification are required to prove.” *Grazia v. SC State Plastering, LLC*, 390 S.C. 562, 575-76, 703 S.E.2d 197, 204 (2010). “The

prerequisites are: 1) the class must be so numerous that joinder of all members is impracticable; 2) there must be questions of law or fact common to the class; 3) the claims or defenses of the representative parties must be typical of the claims or defenses of the class; 4) the representative parties must fairly and adequately protect the interests of the class; and 5) the amount in controversy must exceed one hundred dollars for each member of the class.” *Id.* Here, the requirements of Rule 23, SCRCF are satisfied. Further, as discussed herein, the requirements for certifying a class under South Carolina rules are less restrictive than the Federal Rules.

**1) Rule 23(a)(1) – Numerosity.**

Rule 23(a)(1), SCRCF, requires the class to be so numerous that joinder of all members is impracticable. Plaintiff asserts that MTB has produced 470 Right to Cure letters for just Dorchester and Charleston Counties. Defendant does not dispute that the numerosity element is met in this matter. It appears that at least hundreds of letters and communications were sent by MTB that are at issue. Thus, numerosity is satisfied.

**2) Rule 23(a)(2) – Commonality – Individual Issues Do Not Defeat**

Rule 23(a)(2), SCRCF requires a showing of the existence of “questions of law or fact common to the class.” SCRCF, 23(a)(2).

“The essence of a class action is common questions of law and fact and Rule 23(a)(2) reflects this. It is important to note that the subsection does not demand that all questions of law and fact be common, only that there be common issues among the class. In fact, *a single common issue will suffice if it is important enough*. It also follows that *the mere existence of individual issues does not defeat class action status*. There is no qualitative or quantitative test in the Rule. Ultimately, commonality is a judgment that the issues are sufficiently similar so that the class action will be a more efficient means of resolving the problem, even though some individual issues may be litigated in any event.”

*McGann v. Mungo*, 287 S.C. 561, 568, 340 S.E.2d 154, 157 (Ct. App. 1986) *citing* H. Lightsey & J. Flanagan, South Carolina Civil Procedure at 198 (2d ed. 1985) (emphasis added). Further, in *McGann v. Mungo*, the Court looked merely to the pleadings and the amended complaint, to determine there were common questions of law and fact. *Id.* at 568, 158.

MTB agrees that when it sends the Right to Cure letter to the consumer the greater amount listed for attorney's fees is not on the homeowner's account and is greater than what MTB bills the homeowner association. *See* Trotter Dep. p. 52, 9-22; p. 167, 3-13. In an attempt to suggest there are too many individual issues to certify a class, MTB suggests there may be different covenants that relate to each HOA. However, Plaintiff argues that a review of each covenant is unnecessary. For example, one need only to look at the MTB fee schedule which states "Total Fees to Association: \$65" (Trotter Dep. Ex. 3 Fee Schedule) and compare that to the amount stated in the "Right to Cure" letter to see that MRB is overstating amounts owed. Similarly, one can look at the Notice of Lien to determine that a higher amount is claimed than what MTB states will be the "Total Fees to Association." *Id.*

Further, MTB agrees:

- No covenants authorize a sum certain attorney's fees. Trotter Dep. p. 21, lines 13-19;
- MTB cannot tell a consumer incorrect HOA balances. Trotter Dep. p. 110, 23-25;
- Providing a consumer with incorrect balances violates the FDCPA. *Id.* at p. 118, 17-20.
- MTB has not seen any covenants that require a homeowner to pay whatever amount of attorney's fees are charged by MTB. Trotter Dep. p. 76, 10-14.

Despite these admissions by MTB, there is no evidence that any variation of covenants will create issues that make a class action unmanageable.

Further, even a single common issue will suffice if it is important enough to certify a class and the mere existence of individual issues does not defeat class action status.

Here, the questions of fact and law in this litigation are identical among the class members. A common issue is whether MTB's Right to Cure Letter and filing of a lien in an attempt to collect a debt violated the FDCPA. More specifically, common issues and questions could include:

- 1) whether MTB's form letter stating what a consumer "currently" owes is a violation of the FDCPA by misrepresenting the amount of the debt;
- 2) whether MTB misrepresented the amount of debt owed by a consumer by including in its collection letters amounts greater than what MTB states are the "Total Fees to



Association";

- 3) whether MTB's form collection letters falsely represent the nature, character or amount of the debt in violation of the FDCPA;
- 4) whether MTB's communications to class members fail to properly state "the amount of the debt" as required by 15 U.S.C. §1692g(a)(1);
- 5) whether telling a consumer s/he is required to pay amounts pursuant to the "governing documents" of the HOA, when MTB admits its collection contract is not a governing document (Trotter Dep. p. 54, 2-16) and no governing documents authorize a sum certain attorneys fee (Trotter Dep. p. 21, 13-19); and
- 6) whether using the "notice of consumer's right to cure" language contained within the South Carolina Consumer Protection Code then failing to comply with those provisions by charging more attorney's fees than allowed under that statute is a FDCPA violation.

The Court finds there are common questions of law and fact such that the requirements of Rule 23(a)(2) are satisfied.

**c) Rule 23(a)(3) – Typicality.**

Rule 23(a)(3) requires that the claims of the class representation be "typical of the claims of the class." SCRCF, Rule 23(a)(3). "A plaintiff's claim is typical if it arises from the same event, practice, or course of conduct that gives rise to the claims of other class members and if his or her claims are based on the same legal theory...The test for typicality is not demanding and 'focuses on the similarity between the named plaintiffs' legal and remedial theories and the theories of those whom they purport to represent...However, the plaintiffs' claims need not be identical to those of the class; typicality will be satisfied so long as 'the named representatives' claims share the same essential characteristics as the claims of the class at large.'" *Newberg on Class Actions* §3:29 (5<sup>th</sup> Ed. 2016). Further, "the plaintiffs' claims need not be identical to those of the class; typicality will be satisfied so long as "the named representatives' claims share the same essential characteristics as the claims of the class at large.'" *Id.*

Here, multiple allegations share the same characteristics as the claims of the class at large, including but not limited to: MTB's alleged practice or course of conduct in sending written communications to homeowners stating amounts as being currently owed to the homeowner association when they are not; and billing the HOA one amount for attorney's fees while telling the homeowner a different amount is owed.

Plaintiff has presented facts and testimony that further supports the allegations needed to show the typicality requirement. These include the following:

- The "Notice of Consumer's Right to Cure" letter is typical of the right to cure letters that are sent by MTB. Trotter Dep. p. 41, 9-12;
- When MTB sends the "Notice of Consumer's Right to Cure" letter to the consumer, it includes an amount for attorney's fees that exceeds the amount billed to the HOA. Trotter Dep. p. 167, 3-13; and
- MTB has engaged in that conduct since the firm started. *Id.*

These kinds of allegations and testimony support the argument that the claims are typical and arise out of MTB's common course of conduct.

The threshold for establishing typicality is low. As described above, Plaintiff's claims arise out of a common course and pattern of alleged wrongdoing by MTB. Richardson's claim is typical of the class in many ways including because it is brought pursuant to the FDCPA and involves the same course of conduct of asserting in writing incorrect amounts are allegedly owed. The fact pattern is the same with respect to all class members, and the same legal theory is asserted on behalf of all. Accordingly, the typicality requirement has been satisfied.

**d) Rule 23(a)(4) – Adequacy of Representation.**

"[T]he adequacy requirement focuses on the desired attributes of those who seek to represent the class as opposed to the characteristics of the class." *Newberg on Class Actions* §3:50 (5<sup>th</sup> Ed. 2016). The

adequacy of representation requirement “ensures that the class’s champion will pursue its interests sufficiently well so as to produce a judgment that can fairly bind all members of a group who cannot appear before the court individually.” *Id.* “In determining whether a particular named plaintiff will adequately represent a proposed class pursuant to Rule 23(a)(4) one factor we must consider is whether the named plaintiff has interests that are antagonistic or adverse to those of the rest of the class... The kind of antagonism that will defeat the maintenance of a class action is the kind which relates to the subject matter in controversy, as when the named representative has a claim which conflicts with the economic interests of the class. The issue of whether a named plaintiff will adequately protect the interests of the class members is a question of fact which depends upon the circumstances of each case.” *Waller v. Seabrook Island Property Owners Ass’n*, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (1990) (citations omitted). Thus, the class representative should not have any significant antagonistic or conflicting interests to the unnamed members and it must appear that the class representative will vigorously prosecute the interests of the class through qualified counsel.

Here, the facts show that Ms. Richardson's claims are not adverse or antagonistic to the class. As to her adequacy, has previously and successfully litigated against the homeowner association that was represented by MTB when the HOA tried to foreclose her home claiming she owed money that she argued she did not owe. That matter resulted in her challenging the lawsuit, the homeowner association paying her money and the president of the association writing a letter stating she did nothing wrong. It appears to the Court that the class representative accepts and understands her duties toward all the members of the putative class and she will make an adequate representative.

The adequacy of Plaintiff’s counsel must also be satisfied. “Adequacy of counsel asks whether the attorneys who seek to represent the class are competent to do the job.” *Newberg on Class Actions* §3:54 (5<sup>th</sup> Ed. 2016). The Court is satisfied that Plaintiff’s counsel satisfies the necessary factors and this has not been challenged by MTB. Plaintiff’s counsel has also demonstrated that they will and have vigorously prosecuted this matter.

Plaintiff has satisfied the element of adequacy and she and her counsel will fairly and adequately

protect the interests of the class.

e) **Rule 23(a)(5) – Amount in Controversy.**

Rule 23(a) (5), SCRCF provides that: “in cases in which relief primarily is sought is not injunctive relief or declaratory with respect to the class as a whole, *the amount in controversy* exceeds one hundred dollars for each member of the class.” (emphasis added). Here, in each matter at issue, MTB seeks an amount greater than \$100. The proposed class seeks statutory damages and actual damages pursuant to the FDCPA. The FDCPA is a strict liability statute that provides for statutory damages “not exceeding \$1,000.00...” plus attorney’s fees. 15 U.S.C. §1692(k)(a)(2)(A). *See, e.g. Welker v. Law Office Of Daniel J. Horwitz*, 699 F. Supp. 2d 1164, 1171 (S.D. Cal. 2010). Thus, given the debt claimed owed by MTB and the potential statutory damages of up to \$1,000, the amount in controversy exceeding \$100 for each member of the class is satisfied.

This Court finds that Plaintiff has established that the amount in controversy for each class member exceeds \$100 and has been met.

**IV. Class Definition**

The certified class is defined as:

All individuals who owned South Carolina real property who were sent a document by McCabe, Trotter & Beverly, P.C. attempting to collect a debt for a homeowner or community association during the following period: November 5, 2014 (representing the date one year prior to the filing of Plaintiff Richardson’s Third-Party Complaint) through January 11, 2016.

Excluded from the Class are individuals who are or were during the Class period officers, directors or employees of MTB and all consumers who file a timely and proper request to be excluded from the Class.

THEREFORE IT IS ORDERED that Plaintiff’s Motion for Class Certification is granted and that the certified class is defined as above; and it is

FURTHER ORDERED that Plaintiff’s motion to appoint Plaintiff’s counsel, Justin S. Kahn and

Mary Leigh Arnold as counsel for the aforementioned class is granted; and it is

FURTHER ORDERED that the notice shall be given to the class members in a form and manner to be determined by the Court upon application by Plaintiff.

AND IT IS SO ORDERED.

  
Honorable Diane Schaffer Goodstein

St. George, S.C.  
January 11, 2018