

APPENDIX A

AMENDED COMPLAINT

IN THE UNITED STATES DISTRICT COURT U.S.A.
FOR THE SOUTHERN DISTRICT OF GEORGIA

2002 Jan 18 A 9

SOHAIL ABDULLA;)
Plaintiff) AMENDED COMPLAINT
VS.) (JURY TRIAL DEMANDED)
SOUTHERN BANK,)
Defendant.)

AMENDED COMPLAINT

COMES NOW, Pro Se Plaintiff Sohail Abdulla, and files this Amended Complaint as per this Court's Order dated January 3, 2022, and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff Sohail Abdulla is a citizen and resident of South Carolina whose address is 647 Vincent Avenue NE, Aiken, South Carolina 29801.
2. Defendant Southern Bank is a Georgia corporation whose registered agent is Jamin Hujik and whose address is 731 Charles Perry Avenue P.O. Box 100, Sardis, Georgia 30456.

JURISDICTION AND VENUE

3

3.

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. Section 1332 (a)(1) because Plaintiff and Defendant are residents of different states creating diversity, and the matter in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs.

FACTUAL BACKGROUND

The Sportsman's Link Bankruptcy and the Fraudulent Modification

4.

4. Plaintiff executed a note and mortgage under seal with Defendant June 29, 2001. The loan number for this note was 412039900. [Exhibit 1, Original Goodale Note] The Security Deed was recorded in Richmond County Georgia at Book 00738/2048 on July 12, 2001[hereinafter the "Goodale Mortgage"]. The Security Deed attached a condominium as collateral, hereinafter known as the "Goodale Property." [Exhibit 2, Original Goodale Security Deed]

5.

5. The debt for loan number 412039900 was paid by renewal in December of 2001 and was paid in full on or before March 2005. No other legal mortgages were placed on the Goodale Property after this time [Exhibit 3, Abdulla Credit Report] [Exhibit 4, Page 39 of Deposition of Ralph Dickey]

6.

6. In July 2006, Plaintiff executed a note and security agreement on behalf of his business, Sportsman's Link, Inc., in the amount of \$850,213.00. [Exhibit 5, 7-27-06 Sportsman's Link Note] Included as security for this Note were all of the stock, merchandise and

fixtures for Sportsman's Link, a \$250,000.00 life insurance policy, and certain jewelry that was placed in the collateral vault of Defendant, etc. etc.

7. The Goodale Property was listed in the designation of collateral in the 2006 Sportsman's Link Loan. However, the only executed and recorded security interest in favor of Defendant was an assignment of rents found at Book/Page: 1197/1273 in Richmond County Georgia. [Exhibit 6, Assignment of Rents] This Assignment of Rents did not allow Defendant to foreclose or obtain title to the Goodale Property.
8. No security deed was ever executed or recorded for the Goodale Property after Loan 412039900 was satisfied in or before 2005.
9. As part of the 2006 Sportsman's Link Note, and specifically referenced therein, was a Third-Party Agreement that stated as follows:

I [Sohail Abdulla] agree to give you [Southern Bank] a security interest in the property that is described on Page 1. I agree to the terms of this note and security agreement but I am in no way personally liable for the payment of the debt. [emphasis added] [Exhibit 7, Page 30 of Southern Bank's Original Bankruptcy Proof of Claim]
10. This note was crafted by Defendant.
11. Upon information and belief, this Third-Party Agreement was drafted by the Defendant as an inducement to execute to allow Defendant to attempt to circumvent the lending limit restrictions prescribed by 12 U.S.C. Section 12, essentially doubling the amount the bank could legally lend to Plaintiff and his business.

12. At the time of the loans, the lending limit for Defendant was approximately \$1 million. [Exhibit 4, Page 16 of, Deposition of Ralph Dickey]. At no time has the lending limit of Defendant exceeded \$1.3 million. Id.
13. In March 2007, Sportsman's Link entered Chapter 11 Bankruptcy.
14. In March 2007, Defendant filed a Proof of Claim with the Bankruptcy Court in the amount of \$853,718.96 based on the 2006 Sportsman's Link Note. Also included in the Proof of Claim were the 2006 Sportsman's Link Note, and the 2001 Goodale Security Deed as supporting documentation. [Exhibit 7, Southern Bank's Original Bankruptcy Proof of Claim].
15. In March 2007, Defendant filed a Proof of Claim with the Bankruptcy Court based on the July 2006 Note for Sportsman's Link in the amount of \$853,718.96. Included in the Proof of Claim were the Original July 2006 Note to Sportsman's Link and deed 2001 Goodale Mortgage as supporting documentation. [Exhibit 7, Southern Bank's Original Bankruptcy Proof of Claim]
16. On August 16, 2007, a motion to terminate Sportsman's Link's lease was filed by the landlord as Counsel for Sportsman's Link had failed to timely file the acceptance of lease with the Court. [Exhibit 8, Motion to Terminate Lease]
17. Upon information and belief, Counsel for Defendant, Mark Wilhelm, advised his client that Sportsman's Link would not be able to reorganize in Chapter 11 and would be forced to convert to a Chapter 7 bankruptcy.
18. On or about August 30, 2007, Defendant required Plaintiff to travel to its office in Waynesboro, Georgia to execute additional documents on his commercial loan, fourteen days after a motion to terminate Sportsman's Link's lease was filed by USPG.

19. Plaintiff was required to execute a "Renewal Note" to replace the June 2006 Note for Sportsman's Link. This Renewal Note was for \$843,640.46 which properly reflected the payments made on the note since its original execution. The renewal note also included the same Third-Party Agreement attached to the 2006 Sportsman's Link Note. [Exhibit 9, 8/30/2007 Renewal Note Sportsman's Link Note]
20. Another document Plaintiff was required to execute was a "Modification" of the 2001 note under loan 412039900, secured by the security deed on the Goodale Property [hereinafter the "Fraudulent Modification"]. [Exhibit 10, Goodale Modification]
21. The modification purported to increase the loan amount from \$200,872.00 to \$843,455.46, but never modified the collateral pledged or the mortgage that should have been satisfied in or before 2005. Further, there is no loan number listed on the face of the Fraudulent Modification.
22. Despite the purported increase of indebtedness from \$200,872.00 to \$843,455.46, no additional consideration was provided to Plaintiff.
23. This purported indebtedness is completely separate from the August 2007 Renewal Note. It is personal, it is a different loan amount, and Mr. Wilhelmi stated "And *one is a corporation and the other is an individual*" and the Defendant itself stated "*We've got two different entities*". [Exhibit 4, Page 48 Line 8 through Page 49 Line 1 Deposition of Ralph Dickey]
24. Under Defendant's own regulations and federal law, the purported increase of \$642,583.46 in Plaintiff's indebtedness exceeded the lending limit of Defendant in violation of 12 U.S.C. Section 84. Upon information and belief, the Defendant never put the Fraudulent

Modification on its books, thus circumventing the law. [Exhibit 4, Page 48 of Deposition of Ralph Dickey]

25. Defendant never obtained permission from the Bankruptcy Court to execute the August 2007 Renewal Note thus making it void and unenforceable.
26. Defendant never disclosed the August 2007 Renewal Note or the Fraudulent Modification to the Bankruptcy Court, nor did Defendant ever amend its claim to reflect the payments made by Plaintiff. The Defendant used the dead 2006 Note to collect monies from the bankruptcy estate.
27. Sportsman's Link's lease was officially terminated and the bankruptcy converted to Chapter 7 in July 2008.
28. Defendant willfully and intentionally foreclosed on the Goodale Property in November 2008, without providing lawful notice or serving Plaintiff with the necessary documents in violation of due process.
29. Plaintiff saw the default letter for the Goodale Property for the first time when delivered by the Defendant on December 23, 2021. The default letter was for the August 2007 Renewal Note, and not for the 2001 Original Goodale Mortgage or the Fraudulent Modification. [Exhibit 11, Goodale Default Letter]
30. On November 4, 2008, Defendant finalized the foreclosure by filing a deed under power transferring title to Defendant. The foreclosure was based entirely on the original dead June 29, 2001 note in the amount of \$200,872.00 and the original security deed recorded in Richmond County at 00738/2048. [Exhibit 12, Deed Under Power] [Exhibit 2, Original Goodale Security Deed]

with its claim amount (which went up \$3,718.96 after eight months of loan payments), but it can only be based on the Sportsman's Link Note and which the Chapter 7 trustee used to pay them. The Chapter 7 trustee used the only claim amount of \$853,718.96, minused expenses, and allowed the Amended Claim filed on November 20, 2011 in the amount of \$265,962.86.

36. The Defendant never amended their claim to reflect the August 30, 2007 Renewal Note or the Fraudulent Modification or the sale of the 31-acres in Columbia County. There is no legal document or instrument that the Defendant could use to foreclose and liquidate the store or the Goodale Landing property. [Exhibit 14, Affidavit Mr. Mark Wilhelmi 8-13-2021]

37. The Defendant previously claimed to the Aiken County South Carolina Court of Common Pleas that "the Amended Claim was filed" to reflect this note. [Exhibit 15, 2017-CP-02-00283 Counter Claim Paragraph 8 AND Answer 4]. Mr. Wilhelmi declared that Sportsman's Link was given credit for the \$125,000.00 value of the Goodale Property and that credit was reflected in the Amended Proof of Claim; [Exhibit 4, Page 42 Line 18 through Page 43 Line 4, Deposition of Ralph Dickey]. The Defendant reaped gains in the amount of \$1,017,996.30 for just this one action using this dead note. Not counting the Goodale Property. [Exhibit 14, Affidavit Mr. Mark Wilhelmi 8-13-2021]

Other Illegal Foreclosures and Seizure of Property

38. Plaintiff had two personal debt obligations to Defendant in 2008.

39. The first was a debt of \$110,366.72 which was originally secured by three motor vehicles.

31. In order for the foreclosure on the Goodale Property to be legal, there had to be another note. As attested by the Defendant, there is no other note or mortgage.
32. Defendant never filed suit against Plaintiff using any instrument or guaranty to collect on any purported deficiency for this "debt" or any other.
33. At the foreclosure sale, the bank made a bid of \$125,000.00 and took "legal" title to the Goodale Property. This acquisition was never reported to the bankruptcy court even though the Goodale Property was specifically listed in the 2006 Sportsman's Link Note, the (invalid and void) 2007 Renewal Note, and the Proof of Claim as collateral for the debt owed to Defendant by the debtor in bankruptcy.
34. In September 2009, Defendant resold the Goodale Property to Janice Clark for \$185,000.00 (which was financed by Defendant *with a less than 1% down payment*). This additional profit of \$60,000.00 was also never reported to the bankruptcy court despite the fact that the Goodale Property was specifically listed in the 2006 Sportsman's Link Note, the unlawful 2007 Renewal Note. The Defendant filed the ONLY Amended Claim on November 20, 2011 in the amount of \$265,962.86 signed by Mr. Wilhelm for the debt owed to Defendant by the debtor in bankruptcy. In 2011, this claim did not reflect the \$10,078.50 in direct payments made by Plaintiff on the Sportsman's Link Note, the acquisition of the Goodale Property by Defendant, or the subsequent sale of the Goodale Property to Janice Clark. [Exhibit 13, Southern Bank's Amended Bankruptcy Proof of Claim]
35. At the time of Defendant's filing the original bankruptcy claim for \$853,718.96, there was only one extant note for Sportsman's Link which is the July 27, 2006 Sportsman's Link Note in the amount of \$850,213.00. Plaintiff is unaware as to how the Defendant came up

43. The repossession and default notices were sent to an address that Defendant knew was incorrect.
44. The Defendant charged off \$35,253.00 on this exact note. Previously, the Defendant swore that it had received \$147,750.00 for this note. [Exhibit 14, Page 8, Affidavit Mr. Mark Wilhelmi 8-13-2021]
45. The total amount received by Defendant for this note is \$225,250.00, not counting \$35,253.00, which the Defendant charged off on this note alone. The Defendant did not give Plaintiff \$30,000 in credit nor the \$40,000 in credit for this loan as sworn by the Defendant in its Affidavit, in light of the non-legal vehicle sales and the false charge off. The sale of the vehicles and the \$35,253.00 charge off pay this loan by itself. [Exhibit 18, Mark Wilhelmi Demand Letter 9-5-2008]
[Exhibit 14, Affidavit Mr. Mark Wilhelmi 8-13-2021]
46. The second personal debt was approximately \$363,000.00 which was secured by two Columbia County Parcels (hereafter “Columbia County Note”). One of these parcels of land, the 31-acres, is the same parcel listed in the original Proof of Claim, purportedly to secure the 2006 Sportsman’s Link Note. [Exhibit 7, Page 14, of Southern Bank’s Original Bankruptcy Proof of Claim]
47. In October and November of 2008, Defendant instituted foreclosure proceedings against Plaintiff on the Columbia County parcels and a real estate parcel in Burke County Georgia.
48. Plaintiff did not receive any notice of the foreclosures and Defendant made no legitimate effort to inform Plaintiff of the foreclosures as required by the fundamentals of due process.
49. Defendant bid \$350,000.00 on the Columbia County Parcels and took title thereto.
50. Defendant bid \$30,000.00 on the Burke County Parcel and took title thereto.

40. Despite being aware of Plaintiff being sick and incapable of signing a legal document, Defendant required Plaintiff to sign a "Renewal Note" on July 25, 2008 for the \$110,366.72 debt (hereafter "Burke Note"). This was only three days after Sportsman's Link Inc., was converted from chapter 11, to chapter 7 bankruptcy in a hearing held on July 22, 2008. Plaintiff did not attend this hearing because of specific written instruction and explanation from his doctor. These written instructions were submitted to the Court at that time. Plaintiff was sick at the time of signing this note and was not of sufficient capacity to sign this foolish and unnecessary note which ceded over to Defendant around \$250,000.00 of additional unneeded collateral. Defendant's 30(b)6 witness Ralph Dickey admitted to Plaintiff's lack of capacity and knew that Plaintiff left the country because of his health, because he knew firsthand and was told by Plaintiff, making this additional collateral null and void by law. Plaintiff was sick at the time of signing the Burke Note and was not of sufficient capacity making this note void *ab initio*. Further, Defendant did not provide lawful notice nor did they serve Plaintiff with the necessary documents which violated due process. [Exhibit 16, October 14, 2011 Hearing Page 193 Line 11 through Page 194 Page Line 9] [Exhibit 4, Page 23 Line through 21, Page 25 Lines 2-20, Page 62 Line 7 through 17, Page 63 Line 12 through 25, Deposition of Ralph Dickey] [Exhibit 17, Abdulla Deposition Page 15 Line 23 through Page 16 Line 21]

41. This "Renewal Note" added a real estate parcel 7.68 acres located in Burke County, Georgia and 1.00 acre located in Columbia County, Georgia. No additional consideration was given for this Renewal Note.

42. Defendant moved to repossess the vehicles and foreclose on the added real estate less than 42 days after signing this note, and months before the note was due.

59. The Defendant did not give Plaintiff \$350,000.00 in credit for this loan as previously sworn by Defendant. [Exhibit 14, Affidavit Mr. Mark Wilhelm 8-13-2021 Page 8]

60. The Defendant never reported the sale of the 31-acres which was included in the bankruptcy claim of the Defendant. The Amended Claim of the Defendant did not reflect the proportionate share of the 31-acres from the \$350,000 buy back nor of the subsequent sale of \$490,000. This is not counting the Defendant charging off \$363,388.00, against Plaintiff. (This property once again was sold and financed by Defendant for the buyer) [Exhibit 21, Paragraph 4, Affidavit of Ralph Dickey] [Exhibit 22, Plaintiff's Credit Report showing Charge offs]. 7

61. The Defendant ultimately recovered \$790,250.00, for the two personal notes totaling \$473,366.72. The Defendant, which is a financial institution in which the books must balance, has sworn under oath that the "actual loss" was over \$363,000.00 and then changed it to \$141,000.00, which is also untrue, under oath. This is not counting their act of charging off \$398,640.00, on the Burke Note and Columbia County Note alone. In Docket Number 13 the Defendant has already given under oath its defense to many of the issues raised in this Amended Complaint. These defenses do not hold up under scrutiny, as addressed by Plaintiff in Docket Number 19 and in this Amended Complaint.

62. Upon information and belief, Defendant converted valuable articles out from under the sale. Further, after a court order telling them not to sell Plaintiff's personal items in the auction, the Defendant violated and went ahead and sold them, defying the Court, and also have never given Plaintiff an accounting, credit, or listing for the wrongful sale of personal

51. Defendant bid \$40,000.00 on the 1-Acre Columbia County Parcel and took title thereto.

52. The three vehicles securing the Burke Note were repossessed and sold in October 2008.

The Defendant has only recently in their Affidavit filed on August 13, 2021 given a vague and unsubstantiated accounting for these vehicles, nor have those sale amounts been credited to Plaintiff in any way.

53. Plaintiff did not receive any notice of the repossessions or sales and Defendant made no legitimate effort to inform Plaintiff of the foreclosures as required by the fundamentals of due process.

54. The Columbia County Properties were subsequently sold for \$490,000.00 by Defendant.

(This property once again was sold and financed by Defendant for the buyer)

55. The Burke County Georgia Property was subsequently sold for \$77,500.00 by Defendant.
[EXHIBIT 19, Burke Sale Record] (This property once again was sold and financed by Defendant for the buyer)

56. The Plaintiff also owned a modular log cabin which was located on the 1-acre parcel.
The Defendant also seized this log cabin and its contents without having legal title or a legal lien on it. [Exhibit 17, Abdulla Deposition Page 54 Line 1 through Page 55 Line 14].

[Exhibit 14, Page 7 Paragraph 2 Affidavit Mr. Mark Wilhelmi 8-13-2021]

57. For the Columbia County Note, the Defendant charged off the amount of \$363,388.00, despite buying the property in at \$350,000.00. This charge off is 100% of the loan amount.

58. Defendant, through its attorney, previously confirmed this charge off, stating "Southern Bank reporting a Charge Off of \$363,388.00, should not be surprising". [Exhibit 20, 2/24/2016 Letter of Mark Wilhelmi Page 5, last paragraph titled Charge Off]

- a. The Renewal Note in 2007 was done through an informal and unreported agreement with counsel for Plaintiff, with no attempt to ever notify (or get the approval of) the bankruptcy court or any other creditor;
- b. The Fraudulent Modification was executed to cover the debt obligations of Sportsman's Link and Plaintiff's personal obligation arising therefrom when there was absolutely no documentation to support this assertion;
- c. The proceeds from the sale of the Goodale Property were applied to the Sportsman's Link Debt, but were never reported to the bankruptcy court or reflected in the Amended Proof of Claim filed 2 years after its resale by Defendant; and
- d. No attempt was made to locate Plaintiff with regard to the foreclosures or repossessions because Plaintiff had left the United States without notice to the Defendant. [Exhibit 20, 2/24/2016 Letter From Mark Wilhelm]. Plaintiff left with a two-way ticket while in constant communication with Defendant including Plaintiff giving Defendant Plaintiff's contact information and notifying Defendant before Plaintiff left. Plaintiff was in the process of returning when continuously advised by his own counsel Mr. Bill Williams to stay where he was at. He stated "Stay where you are until we can figure out what else is going on". Further, Plaintiff was asked by the Defendant to help them in a lawsuit brought against them in 2009, to which Plaintiff complied and gave them assistance and was in complete communication with them before, during, and after returning. [Exhibit 25 Emails to Ralph Dickey] [Exhibit 26, Plaintiff's Affidavit] [Exhibit 27, Two Way Plane Ticket] [Exhibit 28, E-mail]

items sold at auction. The Defendant never obtained a judgement against the Plaintiff to sell his personal items at any time, as required by the fundamentals of due process.

[Exhibit 17 Abdulla Deposition Page 40 Line 14 through Page 41 Line 15, and Page 43 Lines 1-17]

Defendant's Fraudulent Acts to Conceal Illegal Activity

63. The doctrine of unclean hands applies to the Defendant for all of the transactions contemplated herein.
64. In 2010, Plaintiff requested all documents related to his property, loans, bank accounts, and personal guarantees from Defendant. Defendant did provide some bank statements, but nothing pertaining to the Fraudulent Modification, any repossession, sales, accounting, or any foreclosures was provided.
65. In 2016, Plaintiff again requested all documents related to his property, loans, bank accounts, and personal guarantees from Defendant through counsel. Nothing was provided as Defendant claimed that all information was available online through the bankruptcy file. This statement to Plaintiff was false and misleading, since nothing pertaining to any personal obligation of Plaintiff, nor anything about the Fraudulent Modification, was on file with the bankruptcy court. [Exhibit 23, Southern bank letter Document Request 9-15-2016] [Exhibit 24, Southern bank Response letter Document Mr. Mark Wilhelm 11-2-2016 To Abdulla Documents On Pacer]
66. In 2016, counsel for Defendant, Mark Wilhelm, made numerous assertions that concerned Plaintiff:

c. That Plaintiff was personally liable for the "actual loss" in excess of \$363,000.00.

[Exhibit 21, Paragraph 7, Affidavit of Ralph Dickey]

69. In 2018, Plaintiff was able to depose a representative of Defendant through another proceeding pursuant to Rule 30(b)(6), SCRCP. During that deposition, numerous false statements were made by Defendant and Mr. Wilhelmi:

a. Mr. Wilhelmi again declared that the Fraudulent Modification was executed to cover the Sportsman's Link debt in bankruptcy; [Exhibit 4, Page 40-41 of Deposition of Ralph Dickey]

b. Mr. Wilhelmi declared that Sportsman's Link was given credit for the \$125,000.00 value of the Goodale property and that credit was reflected in the Amended Proof of Claim; [Exhibit 4, Page 41 line 22 through Page 43-line 4 Deposition of Ralph Dickey] And that the proceeds from the Goodale Property were applied to the Sportsman's Link debt; [Exhibit 4, Page 42 Line 18 through Page 43 Line 4, Deposition of Ralph Dickey]

c. Defendant claimed that there was "another note" justifying the claimed deficiency and the Fraudulent Modification; [EXHIBIT 4 Page 57 line 22 through Page 64 line 8]

70. Defendant stated on the record in the deposition, which occurred on March 15, 2018, that the additional documentation justifying the deficiencies and the Fraudulent Modification would be researched and produced to Plaintiff. On December 23, 2021, Defendant confirmed that there are no other documents to justify the foreclosure or the claimed deficiencies. [EXHIBIT 4, Page 55 through Page 64 Line 8, Deposition of Ralph Dickey]

Communication From Bill Williams Bullet Point, 7] [Exhibit 4, Page 24 Line 6
through Line 19 of Deposition of Ralph Dickey].

67. In response to a separate lawsuit brought by Plaintiff in 2017, Defendant asserted in pleadings to the Aiken County Court of Common Pleas that:

- a. the Sportsman's Link note was "personally guaranteed" by Plaintiff, despite the fact that the aforementioned "Third-Party Agreement" specifically prevented any deficiency against Plaintiff; [Exhibit 15, 2017-CP-02-00283 Answer Paragraph 5]
- b. the Amended Bankruptcy Proof of Claim was filed because of the August 2007 Renewal Note, despite the fact that the August 2007 Renewal Note was never disclosed to the Bankruptcy Court and the actual debt refinanced in the 2007 Renewal Note was never reported, thereby allowing a fraudulently inflated indebtedness to remain on record; [Exhibit 15, 2017-CP-02-00283 Paragraph 8 Answer]
- c. Defendant suffered a loss in excess of \$363,000.00 due to the loans given to Plaintiff and his business; [Exhibit 15, 2017-CP-02-00283 Paragraph 10 Answer, Counter Claim Paragraph 8]

68. In a motion to dismiss in the aforementioned action, Defendant submitted an affidavit [Exhibit 21, Affidavit of Ralph Dickey] that made several false assertions:

- a. That Defendant foreclosed on the Goodale Property legally and with extant financing [Exhibit 21, Paragraph 6, Affidavit of Ralph Dickey];
- b. That Defendant suffered and "actual loss" in excess of \$363,000.00 as a result of the Sportsman's Link debt [Exhibit 21, Paragraph 7, Affidavit of Ralph Dickey]; and

79. The preceding paragraphs are incorporated herein as if restated verbatim.
80. Defendant failed to provide any notice of the seizure and ultimate sale for Plaintiff's personal property taken in 2008.
81. Defendant failed to provide any notice of the foreclosures and ultimate Deeds under power for Plaintiff's real property taken in 2008.
82. Defendant failed to liquidate the personal property of Plaintiff through a commercially reasonable collateral sale as required by law.

Defendant failed to apply the proceeds of the collateral sale to the outstanding indebtedness of Plaintiff, as evidenced by the fraudulent charge off of \$398,640.00. Plaintiff is entitled to a full accounting of the sale of his collateral in 2008 and 2009.

For a Third Cause of Action

Illegal Entry of Safety Deposit Box

83. Defendant willfully and illegally drilled and entered Plaintiff's safety deposit box at the direction of their counsel, Mark Wilhelmi in 2017 while in litigation. Mark Wilhelmi stated "Southern Bank informed me that Mr. Abdulla also had a safety deposit box with the bank which has not been paid and was in default. At my recommendation, Southern Box had the safety deposit drilled open. Upon opening the safety deposit box, they discovered that the inner box was missing entirely. In addition, the Signature Card for the lock box cannot be located. Southern Bank has no idea what the original contents of the Safety deposit box were." This box account was apparently kept open despite ten years of nonpayment. It is beyond suspicious for anyone to believe Defendant' statement that "the inner box was missing entirely" and in addition, "the

Signature Card for the lock box account has been lost by Defendant in litigation.

(Breach of Contract)

71. The preceding paragraphs are incorporated herein as if restated verbatim.
72. Defendant foreclosed on an invalid note and security deed in 2008 as both had been satisfied on or before in 2005.
73. The Original Goodale Security Deed, upon which the foreclosure was based, was sealed as to both Plaintiff and Defendant, thereby making the statute of limitations 20 years pursuant to Georgia law.
74. In the alternative, the fraudulent acts of Defendant concealed the particulars of the wrongdoing until 2018, tolling the statute of limitations until at least that time.
75. As Defendant wrongfully foreclosed on the Goodale Landing Property by using an invalid note and mortgage that were previously satisfied, that foreclosure was void *ab initio*.
76. Plaintiff was never given proper credit for the proceeds of the Burke Note, as evidenced by the \$35,253.00 charge off for this note. This note was not valid at the time of signing, was void *ab initio*, the property was not disposed of legally, nor was due process given. The Defendant breached both the Burke Note and its related security deed.
77. Plaintiff was never given proper credit for the Columbia County Note as evidenced by the \$363,388.00 charge off for this note, nor was due process given. The Defendant breached both the Columbia County Note and its related security deed.
78. Plaintiff suffered damages and continues to suffer damages as a result of Defendant's wrongful conduct in an amount to be determined by a jury.

FOR A SECOND CAUSE OF ACTION

(Accounting)

s/_____

Sohail Abdulla, Pro Se

647 Vincent Ave NE

Aiken, SC 29801

with Ralph Dickey from 2008 to 2018. Suspiciously, the “Signature Card could not be located”, according to the Defendant. Most blatant of all is the fact that this box was opened during the pendency of a court case in which the contents of the box were at issue; Plaintiff’s counsel was never notified of the proposed drilling of the safety deposit box. This was exactly what the Defendant did when Plaintiff was out of the country for his health. Despite the fact that the Plaintiff was in full and continuous contact with the Defendant in this case, no notice was given and Defendant did as they pleased, with no regard to the law or to Plaintiff. Plaintiff would like to know what happened to the contents of the box, and have the contents returned to the Plaintiff. [Exhibit 4, Deposition of Ralph Dickey Page 17 Line 19 through Page 21 Line 19] [Exhibit 29, 8/3/2017 Wilhelmi Letter to Player] [Exhibit 17, Abdulla Deposition Page 47 Line 6 through Page 52 Line 12].

84. Plaintiff suffered damages and continues to suffer damages as a result of Defendant’ wrongful conduct in an amount to be determined by a jury.

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendant, who are jointly and severally liable, on all claims and for actual damages and compensatory damages, punitive damages, Expert Fees, as well as any other relief shown to be appropriate including, but not limited to, costs and interest, and for such other and further relief as the Court may deem just and proper.

I agree to provide the Clerk’s Office with any changes to my address where case related papers may be served. I understand that my failure to keep a current address on file with the Clerk’s Office may result in the dismissal of my case.

APPENDIX B

AFFIDAVIT OF SOLE RESPONDENT

CERTIFICATE OF SERVICE

This is to certify that I have this day served the opposing party or counsel for the opposing party in the foregoing matter with a copy of Plaintiff's Amended Complaint by depositing a copy of same in the United States Mail, postage prepaid, as follows:

Charles C. Stebbins, III

Robert P. Mangum

Turner Padget Graham & Laney, P.A.

209 Seventh Street

PO Box 1495

Augusta, GA. 30901

Mark L. Wilhelm

Wilhelmi Law Firm

3527-Wheeler Road, Suite 401

Augusta, GA 30909

This the 18 day of January, 2022.

s/ _____

By: Sohail M. Abdulla, Pro Se

647 Vincent Avenue

Aiken, SC 29801

4. Paragraph 14 of the Affidavit of Larry Merideth states "At no time whatsoever did Mr. Wilhelm state, indicate, or even hint that he was not accepting service on behalf of Defendants nor that he could not accept service." As an officer of the Court, I can unequivocally state that this statement is a patent lie.
5. Paragraph 11 of Affidavit of Larry Merideth states "during this interrogation, Mr. Wilhelm was taking written notes at the desk." This is a true statement. More importantly these were contemporaneous notes I was taking at the time Mr. Merideth was attempting to make service on my client, Southern Bank and Sardis Bankshares, Inc. I specifically took these notes to memorialize the statements I made to him, specifically, "Not proper service.... Advised Merideth to inform Abdulla "not proper service....!"" (Exhibit #1) Given the many years of contentious litigation by Plaintiff against Southern Bank, which is still ongoing in South Carolina as well, I would never consent to accepting service of a lawsuit against any client without their specific permission.
6. Paragraph 5 of Affidavit of Sohail Abdulla states "I further asked Dana if Mr. Wilhelm still represented Southern Bank. Dana responded yes." This is a correct statement and was told me directly by Dana immediately after receiving that call. Paragraph 6 of the Affidavit of Sohail Abdulla states, "I further asked Dana if they would all accept service. Dana said yes." Mr. Abdulla, as well as Mr. Merideth, both know this to be totally untrue. Dana has worked in my office for over ten years as a very capable paralegal. She understands specifically she cannot answer any legal question to any person whether or not a client. What is interesting is the fact that Plaintiff and his friend expect her to serve Southern Bank with a lawsuit by delivering the notice to my paralegal Dana.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

SOHAIL M. ABDULLA,)
Plaintiff,)
v.	) Civil Action No. CV21-099
SOUTHERN BANK &)
SARDIS BANKSHARES, INC.,)
Defendant(s))

SUPPLEMENTAL AFFIDAVIT OF MARK L. WILHELM

Appeared before me, the undersigned officer duly authorized to administer oaths,

MARK L. WILHELM, who first being duly sworn, deposes and says as follows:

1. I am a member of the State Bar of Georgia and South Carolina, practicing law in Augusta, Georgia. I will be appearing in the above captioned case on behalf of Defendant(s).

2. This Affidavit is given to supplement the original Affidavit filed by Mark L. Wilhelm dated July 14, 2021 (Document No. 6-2). It is offered in further response to the Affidavit of Sehail M. Abdulla and Affidavit of Larry Merideth, both of which were submitted with Plaintiff's Response to Defendant's Motion to Dismiss, et al.

3. All statements made by me in the original Affidavit, including all attachments thereto, are true and correct.

ID: 1141816. This would be correct in that Sardis Bankshares, Inc. is now Southern Financial Corporation in South Carolina. All appropriate paperwork has been previously forwarded to the Federal Reserve, so the name change can be properly reflected in their records. The FDIC is responsible for banks, not holding companies like Southern Financial Corporation.

8. As set forth in our Reply Response to Plaintiff's Response to Motion to Dismiss, Plaintiff, for reasons still unknown, continues to allege that Southern Bank created a fraudulent loan in order to take Plaintiff's Goodale Landing property. In his previous lawsuit in South Carolina, Case No. 2018-CP-02-02912, which was dismissed by the Court on October 16, 2020 for lack of jurisdiction, Plaintiff referred to this note as "Zombie Note". As set forth in Paragraph 6 of Plaintiff's Complaint, "Defendant alleges that the note secured the Security Deed, dated June 29, 2001, in the original amount of \$200,872.00 was paid in full on or before March 2005." At this point in time, this particular loan was in the individual name of Plaintiff, Sohail M. Abdulla. On March 3, 2005, Plaintiff obtained a new loan on behalf of Sportsman's Link, Inc., at which time Plaintiff, on behalf of Sportsman's Link, Inc., entered into a new loan agreement, Loan #412943900, in the amount of \$853,734.14. This new note directly coincides with the time we list Mr Abdulla's personal note involving the Goodale Landing property as being satisfied. Plaintiff then signed a renewal note on behalf of Sportsman's Link, Inc. on June 14, 2005 in the amount of \$730,213.30. Plaintiff signed another note, on behalf of Sportsman's Link, Inc. on July 27, 2006 in the amount of \$850,213.00. Plaintiff signed a final renewal note on August 30, 2007 in the amount of \$843,640.46. ALL of these notes clearly list

Paragraph 7 of Affidavit of Larry Merideth in part states "I entered Mr. Wilhelm's office and saw a man who came out of an office. I asked him for Ms. Dana who is expecting documents from Mr. Abdulla." It should be noted by the Court that the word "documents" was the exact same word used with Dana over the phone. At no time was she asked to accept service on a lawsuit, nor would she have the authority to accept service regardless. Mr. Abdulla and Mr. Merideth have perjured themselves to this Court.

7. With respect to Plaintiff's allegations that Southern Financial Corporation is not a legitimate corporation, Affiant in his first Affidavit attached documents from both the Georgia Secretary of State and the South Carolina Secretary of State pertaining to Sardis Bankshares, Inc. and Southern Financial Corporation. The Certificate of Conversion specifically provides Sardis Bankshares, Inc., a domestic profit corporation, changed its standing in Georgia to Southern Financial Corporation, a foreign non-qualifying entity effective April 23, 2021 (Exhibit #2). In addition, the documents attached from the South Carolina Secretary of State, as set forth in the original Affidavit, show the corporate name of Southern Financial Corporation was reserved January 21, 2021. Domestication of foreign corporation to South Carolina corporation was filed March 29, 2021. Southern Financial Corporation became incorporated in South Carolina April 1, 2021. Finally, Articles of Amendment were filed April 26, 2021. These Articles of Incorporation clearly show in Article 2-Original Incorporation, "The corporation was originally incorporated as Sardis Bankshares, Inc., a Georgia corporation on September 22, 1986 and converted to a South Carolina corporation through affecting a corporate domestication effective as of April 1, 2021 at 12:01 a.m." Plaintiff's Exhibit R5A, 2nd paragraph, references the RSSD

collateral. With the exception of the vehicles, Plaintiff has known the exact amount derived of all sales of real estate and the Sportsman's Link, Inc. auction as clearly set forth in his Complaint. Nevertheless, Plaintiff continues to feign his need for accounting and a refund of almost every dollar he borrowed from Southern Bank.

FURTHER AFFIANT SAITH NOT.

s/ _____

By:

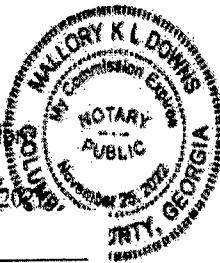
MARK L. WILHELM
Attorney at Law
GA Bar No. 759049
Cadence Bank Building
3527 Wheeler Road, Suite 401
Augusta, GA 30909
706-868-9646

Sworn to and subscribed before me this

me this 13th day of August 2021

s/ _____

Notary's Official Signature
(Official Seal)



Goodale Landing Phase 1 property as collateral for the Sportsman's Link, Inc. loan pursuant to Security Deed dated June 29, 2001 as filed in Book 738, page 2048, as filed with the Clerk of Court, Richmond County, Georgia. In addition, Plaintiff signed a Personal Guaranty for all indebtedness owed by Sportsman's Link, Inc. Plaintiff is fully aware that this property, pursuant to the Security Deed dated June 29, 2001, was pledged as collateral for the Sportsman's Link, Inc. loan. Defendant has attached copies of the Promissory Note(s) from Sportsman's Link, Inc. dated March 3, 2005, June 14, 2005, June 27, 2006, and August 30, 2007 (Exhibit 3).

9. Plaintiff alleges in Paragraph 47 of this Complaint that Southern Bank profited off of Plaintiff \$505,773.28 plus the sale of the Goodale Landing property, four (4) automobiles, Plaintiff's personal items wrongfully sold at auction, the contents in the properties, the missing contents of a Safety Deposit box and a modular log cabin. To put this in perspective, Sohail Abdulla, Ayesha Abdulla and Sportsman's Link, Inc. had four (4) separate loans with balances totaling approximately \$1,376,000.00 as of the fall of 2008. (Over the course of ten (10) plus years, the parties entered into dozens of loan transactions.) The approximate total amount derived by Southern Bank from the Sportsman's Link, Inc. Court Ordered liquidation, the foreclosure of four (4) separate properties, and repossession and sale of four (4) separate vehicles was \$1,235,000.00. Deducting this from the amount owed by Plaintiff, Southern Bank would still then be owed approximately \$141,000.00. This figure does NOT include additional accrued interest, legal fees, commissions, auction costs, etc. Attached to this Affidavit is an approximate Summary breakdown of the four (4) loans and the amount of derived from the sale of all

SALES PROCEEDS

Bankruptcy Store Liquidation: Net proceeds to Southern Bank \$581,145.33.

Foreclosure of Real Estate: 7.68 acres, Burke County--\$30,000.00

1.0 acre, Columbia County--\$40,000.00

31 acres and 22 acres, Columbia County--\$350,000.00

Goodale Landing, Richmond County--\$125,000.00

Vehicle sales, 2004 Ford Mustang and 2005 Dodge Ram--
\$50,000.00

2005 Chevrolet SSR truck--\$27,750.00

2006 Ford F650--\$31,423.00

SUMMARY

Approximate LOAN BALANCE (4 loans): \$1,376,000.00

CREDITS toward LOANS: \$1,235,000.00

Approximate LOSS at time of sale: \$ 141,000.00

This figure does not include accrued interest, all legal fees associated with bankruptcy and foreclosures, commissions, auction costs, etc. Plaintiff has no legal claim to subsequent sale proceeds of foreclosed real property, as he alleges in his suit.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

Case No. CV 121-099

LOAN SUMMARY

1. Loan No. 413719800—Loan in the name of Sohail M. Abdulla; collateral 2004 Ford Mustang GT convertible, 2005 Chevrolet SSR truck, 2005 Dodge Ram truck. 7.68 acres located in Burke County, Georgia and 1.00 acre located in Columbia County, Georgia. Approximate loan balance \$109,781.00
2. Loan No. 413623700—Sohail M. Abdulla: Home with thirty (30) car garage under construction located on thirty (31) acres and twenty-two (22) acres, respectively, in Columbia County, Georgia. This property was gutted at the direction of Plaintiff prior to foreclosure. Plaintiff had bathroom and kitchen fixtures, faucets, etc. as well as HVAC system, windows, doors, etc. removed at his direction and later found hidden in a double wide mobile home. Approximate loan balance \$361,671.00.
3. Loan No. 413519600—Sportsman's Link, Inc. with Personal Guaranty of Sohail M. Abdulla: First secured interest in all inventory, fixtures, equipment, etc. etc. of store and Goodale Landing property in Richmond County. Approximate loan balance \$846,940.00.
4. Loan No. 413645100—Ayesha Chowhan (wife of Plaintiff): Secured by 2006 Ford F650 diesel truck. Approximate loan balance \$57,823.00.

Sales Proceeds and Summary on next page

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA, ^{FILED}
AUGUSTA DIVISION ^{DISTRICT COURT}
^{AUGUSTA DIV.}

2021 JUN 26 P 3 23

SOHAIL M. ABDULLA;)
Plaintiff)
)
vs.) Civil Action No. CV121-099
)
SOUTHERN BANK AND SARDIS)
BANKSHARES, INC.,)
Defendants.)

44:26-
SO. DIST. OF GA.

SURREPLY BRIEF IN FURTHER SUPPORT OF PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER
JURISDICTION, MOTION TO DISMISS FOR INSUFFICIENCY OF SERVICE OF
PROCESS, MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, AND
MOTION FOR A MORE DEFINITE STATEMENT

COMES NOW, pro se Plaintiff and files this necessary Surreply Brief In Further Support Of Plaintiff's Opposition To Defendants' Motion To Dismiss For Lack Of Subject Matter Jurisdiction, Motion To Dismiss For Insufficiency Of Service Of Process, Motion To Dismiss For Failure To State A Claim, And Motion For A More Definite Statement in order to address the serious and material matters brought by the Defendants for the first time.

I. Defendants' Motion To Dismiss For Lack Of Subject Matter Jurisdiction

In his first affidavit, Mr. Wilhelmi inserted undated, unverified corporate documents with multiple blank spaces in order to make his case. Here, he inserts different documents (with different signatures). Both cannot be true. Plaintiff will assume that the first set of documents inserted by Mr. Wilhelmi are true and will let Plaintiff's previous arguments stand as filed. This is laid out clearly in Plaintiff's July 29, 2021, Reply.

APPENDIX C

REBUTTAL BRIEF TO AFFIDAVIT OF SOLE RESPONDENT

Yes ma'am

Ah OK alright

Alright so Ah I can Ah I can So you all will take service at his place?

Yes

Ok great

We've received your letter

Ok nobody responded

He, he was out of town he got in late last night

That is OK

Mr. Wilhelm further states: "It should be noted by the Court that the word "documents" was the exact same word used with Dana over the phone". Mr. Wilhelm makes a point of saying he is quoting exactly from the conversation with Dana in order for this honorable Court to believe him (as an officer of the court). Once again, from the recorded conversation:

Well, we kind of just we are usually here until 5:30 or 6:00

OK alright alright, I appreciate it ma'am you have a great day

Would you like him to call you back?

Ah you can I just need to drop some paperwork so I will just drop that drop that and then he can call me after that if he would if he would like

Ok what is your phone number?

2 it's on the letter but I will give it to you again it is 202

Ok

603

Uhhuh

5958

5958 and you are dropping of paperwork is that what you said?

Yes ma'am

The bottom line is that Plaintiff would have never gone to Mr. Wilhelm's office if he had been told that they would not accept service. As stated by Mr. Merideth and Mr. Abdull in their Affidavit dated 7-29-2021.

2. Defendants' Motion To Dismiss For Insufficiency Of Service Of Process

In response, Plaintiff will interact directly with Defendants and Defendants' counsel's perjured affidavit, which, as pointed out by Mr. Wilhelm in Paragraph 3 of his Supplemental Affidavit (hereafter "Affidavit"), is submitted by an officer of the court. Plaintiff will show that Paragraph 4 of the Affidavit is false and will further show that most of the remainder of the Affidavit is false. What follows is the main reason that Plaintiff is filing this Surreply Brief and brings to the Court's attention matters of the utmost seriousness. Plaintiff will again point to Title 18 U.S.C. Sections 152, 3571 and Title 18 U.S.C. § 4 Misprision of Felony, which Plaintiff included in his previous response.

- a.) In response to Paragraph 5 of the Affidavit, Plaintiff would first point out that it makes no sense that Mr. Wilhelm would take meticulous notes, sit down and thoroughly review the Summons/Complaint, interrogate Mr. Merideth, tell Mr. Merideth that it was not proper service, and then keep the large Summons/Complaint file with exhibits. It also makes no sense Mr. Merideth would leave the large file after being told service was not being accepted. Why did Mr. Wilhelm not return it, even by mail? Instead, he kept it and used it. Mr. Wilhelm knew while being served that the Plaintiff is Pro Se and he could have contacted the Pro Se Plaintiff and voiced his objection directly, but he did not, since he accepted service for the Defendants. Also, Dana was not in the room at any time while Mr. Merideth was serving Mr. Wilhelm.

Further these notes are hearsay. Why not put them in the Original Affidavit? And what does "last note 6-29" mean? We are simply expected to believe them because Mr. Wilhelm is an officer of the court.

- b.) In response to Paragraph 6 of the Affidavit, Plaintiff recorded the June 24, 2021 conversation with Dana which occurred at 3:20 p.m. and is including a copy of same in this Surreply Brief. This recording is used for the purpose of impeachment of sworn testimony. Mr. Wilhelm states "Paragraph 6 of the Affidavit of Sohail Abdulla states, "I further asked Dana if they would all accept service. Dana said yes." Mr. Abdulla, as well as Mr. Merideth, both know this to be totally untrue. At no time was she asked to accept service on a lawsuit, nor would she have the authority to accept service regardless. Mr. Abdulla and Mr. Merideth have perjured themselves to this Court."

The relevant portion of the recorded conversation as follows impeaches Mr. Wilhelm:

That is ABDULLA and I was wondering if he still represents Southern Bank?

Yes

I'm sorry is your first name SOHAIL?

Modification was *crafted* by the Defendants and carried out by Mr. Wilhelm as an intentional act to defraud the Bankruptcy Court and the Plaintiff.

d.) The Fraudulent Modification is and always has been a unique, only one-time, separate, personal instrument from any of the Sportsman's Link, Inc. notes.

e.) Mr. Wilhelm deceptively inserts the Fraudulent Modification into his Exhibit 4 pages 17 and 25 in order to deceive the Court into thinking it was part of the Sportsman's Link, Inc. note(s). It was not.

f.) The amount of the Fraudulent Modification is \$843,455.46. The amount of the August 30, 2007 Loan Number 413519600 is \$843,640.46.

g.) Exhibit 4 of the Affidavit contains 8 duplicate pages and has been censored with about 100 pages missing. One glaring omission is in the Plaintiff's Personal Guaranty, which the Defendants presented to the Court twice, but censored it by conveniently omitting the Third-Party Agreement that *negates* the guaranty. It states as follows:

I [Sohail Abdulla] agree to give you [Southern Bank] a security interest in the property that is described on Page 1. I agree to the terms of this note and security agreement but I am in no way personally liable for the payment of the debt. [Emphasis Added] [See Complaint Exhibit 4, 7/06/2006 Sportsman's Link Note Page 11]

h.) Also, here in the Affidavit Mr. Wilhelm leaves out the Loan Number 413276200 because this note was dead as of August 30, 2007 and is the only note that was used by the Defendants to illegally seize assets from the bankruptcy estate. When the Defendants filed their one and only amended claim signed by Mr. Wilhelm on November 20, 2011 in the Bankruptcy Court, they intentionally used the dead and illegal July 27, 2006 note Loan Number 413276200, because it was a higher amount and they could get more money from the estate, which they did. The Defendants never amended their claim to reflect the August 30, 2007 note or the Fraudulent Modification or the sale of the 31 acres. There is no legal document or instrument that the Defendants could use to foreclose and liquidate the store or the Goodale Landing property.

i.) Mr. Wilhelm fails to explain what happened to certain other collateral listed in the Sportsman's Link, Inc. note, including "3.68 Acres" (deed recorded at Book 4105/174) [hereinafter the "Columbia County Parcels"]. The "3.68 Acres" tract had been fully paid off to Southern Bank, making the claim fraudulent. The "3.68 acres" note was fully paid just like the Original Goodale Note was fully paid. Georgia Bank and Trust a bankrupt; Proof of Claim on this exact same property based on the extant note they had. Further, the backhoe, the 2003 Hummer, and all furniture fixtures and equipment located at 4020 Washington Road had been paid off and released by Defendants. Defendants falsely inflated its collateral holdings, violating state and federal regulations. Why didn't they foreclose on these properties as they did on the Goodale Landing property? The answer

The outright lies, manipulation of the Court, and deception from an officer of the court is an ongoing pattern exhibited by Mr. Wilhelmi and the Defendants. The Plaintiff would ask this honorable Court to take notice that Mr. Wilhelmi, as an officer of the court under oath, is using his position of authority as an officer of the court to libel and intimidate two honest citizens, and is doing it inside the bosom of the Court.

3. Defendants' Motion To Dismiss For Failure To State A Claim

The three Federal counts Plaintiff included in his Complaint were intended to show the extent and character of the wrongdoing of the Defendants. Plaintiff is currently in the process of drafting an Amended Complaint to the best of his abilities.

4. Defendants' Motion For A More Definite Statement

Plaintiff will show that, in his Affidavit, Mr. Wilhelmi and Defendants are attesting to defrauding the Bankruptcy Court. Plaintiff will do his best to pull down the facade that has been presented.

Plaintiff will now focus particularly on Paragraph 8 of the Affidavit. Mr. Wilhelmi avers: "All, of these notes clearly list Goodale Landing Phase I property as collateral for the Sportsman's Link, Inc. loan pursuant to Security Deed dated June 29, 2001 as filed in Book 738, page 2048, as filed with the Clerk of Court, Richmond County, Georgia. In addition, Plaintiff signed a Personal Guaranty for all indebtedness owed by Sportsman's Link, Inc. Plaintiff is fully aware that this property, pursuant to the Security Deed dated June 29, 2001, was pledged as collateral for the Sportsman's Link, Inc. loan." "Plaintiff signed another note, on behalf of Sportsman's Link, Inc. on July 27, 2006 in the amount of \$850,213.00".

a.) The Court must understand that, in each of the various courts, Mr. Wilhelmi drafted, filed, and signed off on every single argument, document, and filing of material relevance to the instant case. He has intimate knowledge of all the transactions. He also has much at stake here, as evidenced by his filing this Affidavit on behalf of his clients.

b.) By arguing that the Goodale Landing property was part of the collateral of the Sportsman's Link, Inc. loans, thereby making the Fraudulent Modification somehow clean and legal, Mr. Wilhelmi is swearing that it was part of the bankruptcy estate. The Bankruptcy Court has no knowledge whatsoever of the sale of the Goodale Landing property nor was credit ever given to the estate.

c.) The Fraudulent Modification of the dead June 29, 2001 note is what Mr. Wilhelmi used in the Richmond County Superior Court to illegally foreclose on the Goodale Landing property, not any Sportsman's Link, Inc. loan. The Fraudulent

sales and the false charge off. The sale of the vehicles and the false charge off overpay this loan. This is laid out clearly in Plaintiff's Complaint.

Number 2 states "Loan No. 413623700-Sohail M. Abdulla; Home with thirty (30) car garage under construction located on thirty (31) acres and twenty-two (22) acres, respectively, in Columbia County, Georgia. This property was gutted at the direction of Plaintiff prior to foreclosure. Plaintiff had bathroom and kitchen fixtures, faucets, etc. as well as HVAC system, windows, doors, etc. removed at his direction and later found hidden in a double wide mobile home. Approximate loan balance \$361,671.00".

Mr. Wilhelmi has chosen to deceive the Court by this libelous and false statement which upon even a brief examination fails logic. How plausible is it to move property from one place to another to hide it, when both places are being foreclosed upon and are on adjoining properties? The modular home he is talking about can be seen from the front door of the house in which he claims the items were supposedly taken from. Plaintiff dealt with this issue head on in his deposition taken by Mr. Wilhelmi on March 15, 2018. After the confrontation, Mr. Wilhelmi moved on by stating the issue was "not germane". This libelous statement was made solely to improperly influence the trier of fact. See Complaint [Exhibit 11 Abdulla Deposition Page 54 Line 1 through Page 55 Line 14]. Here, Ralph Dickey the retired and now deceased President of Southern Bank states "If Mr. Abdulla owes us debt, he'll pay us. I don't have any doubt in my mind about that" he also stated "He's got impeccable character and, you know, I believe he would do that". [Exhibit S1 Page 119 Line 10 through Page 122 Line 6 Transcript of Hearing on 3-18-2008] "Anything Sohail would tell you he would do, he would do, and I never have known anything but honesty out of him over the years" [See Exhibit S2 October 14, 2011 Hearing Page 193 Line 11 through 14]

Mr. Wilhelmi as an officer of the court and the Defendants have further perjured themselves by stating that the house with the so called 30 car garage was included in Loan Number 413623700. This was a separate tract with a separate loan with a separate bank.

There are multiple frauds and deceptions inside of this particular section of the Affidavit.

- a.) This is the very first the number \$361,671.00 has been given to the Plaintiff or shown on the public record.
- b.) For this note the Affidavit states "31 acres and 22 acres, Columbia County -- \$350,000.00" when at the same time the Defendants charged off \$363,388.00 which is 100% of the loan amount.
- c.) Defendants through Mr. Wilhelmi previously confirmed this charge off, stating "Southern Bank reporting a Charge Off of \$363,388 should not be surprising".
- d.) The Defendants did not give Plaintiff \$350,000.00 in credit for this loan as falsely

is obvious. [See Complaint Exhibit 8 Georgia Bank & Trust Proof of Claim and Exhibit 6 Southern Bank's Original Bankruptcy Proof of Claim].

Plaintiff will next interact with the Loan Summary included in the Affidavit.

Number 1 states "Loan No. 413719800 --Loan in the name of Sohail M. Abdulla; collateral 2004 Ford Mustang GT Convertible, 2005 Chevrolet SSR truck, 2005 Dodge Ram truck, 7.68 acres located in Burke County, Georgia and 1.00 acre located in Columbia County, Georgia. Approximate loan balance \$109,781.00".

a.) Mr. Wilhelmi previously stated \$110,366.72 was owed. Second, the fourth vehicle Mr. Wilhelmi omits and has disappeared is a 2000 Ford Mustang, that the Defendants had no lien on and was repossessed according to Mr. Wilhelmi. The Ford F-650 diesel truck in Loan Summary Number 4 mentioned by Mr. Wilhelmi in his affidavit has no bearing on and is not relevant to the instant complaint. He inserted it to deceive the Court in two ways. One is to show four vehicles and make the 2000 Mustang disappear. The other is to confuse the number of actual loan instruments. He is falsely incorporating the Fraudulent Modification into the Sportsman's Link, Inc. notes and not as a separate personal instrument. He is giving the facade that the loan for the F-650 is the fourth instrument belonging to the Plaintiff when it does not. [See Complaint 15 9/05/2008 Letter of Mark Wilhelmi]

b.) Crucially, Mr. Wilhelmi also fails to tell the Court that the Defendants charged off \$35,253.00 on this exact note, in which Mr. Wilhelmi in the Affidavit is swearing that the Defendants received \$147,750.00 for. In actuality, the Defendants received \$195,250.00 for this note (not counting the illegal charge off)

For Loan No. 413719800.

7.68 acres, Burke County cried-out \$30,000.00 Sold for \$77,500.00. (On January 4, 2007, Plaintiff paid \$170,000.00 for this very same property.)

1- acre parcel in Columbia County Georgia cried-out \$40,000.00

Charge off of \$35,253.00

Total \$105,253.00

Defendants, for the first-time, show vehicles credit \$77,750.00 (well below market. The vehicles by themselves were worth more than the total amount for this note, and they are still worth more today)

Total amount received by Defendants \$195,250.00 not counting the Charge off of \$35,253.00.

c.) The Defendants did not give Plaintiff \$30,000 in credit nor the \$40,000 in credit for this loan as falsely claimed in Mr. Wilhelmi's perjured Affidavit, in light of the illegal vehicle

The Defendants stated to the Aiken County South Carolina Court of Common Pleas that "the Amended Claim was filed" to reflect this note. [See Complaint Exhibit 20 Paragraph 8 of the answer and Paragraph 4 of their Counter Claim]. Mr. Wilhelm and the Defendants previously perjured themselves, under oath and claimed that is why we amended the Claim to reflect the \$125,000.

[See Complaint Exhibit 7, Page 42 Line 18 through Page 43 Line 4, Deposition of Ralph Dickey]

a.) The Defendants reaped illegal gains in the amount of \$1,017,996.30 for just this one illegal action fraudulently using this note. *Defendants should, by all that is just, forfeit to the Bankruptcy Estate the entire \$1,017,996.30 plus interest. The creditors who did things the legal and right way should be paid in full from this forfeiture.*

Mr. Wilhelm states in his Affidavit as an officer of the court on Loan Summary 4. Loan No. 413645100-Ayesha Chowhan (wife of Plaintiff): Secured by 2006 Ford F650 diesel truck. Approximate loan balance \$57,823.00. Here for the very first time, they are trying to add another loan and, another vehicle to the Plaintiff, so it would sound plausible, by making it *four* vehicles and *four* notes as stated by the Plaintiff.

Plaintiff will now interact briefly with certain false and deceptive statements made in the Defendants' Reply Brief because Plaintiff cannot allow them to go unaddressed.

a.) With regards to Plaintiff's malpractice lawsuits against his former attorneys, there are many things Plaintiff would like to point out, but here are just a few. First, because of the efforts of the Plaintiff in his actions against the attorneys, the attorneys were fined \$56,780. [See Exhibit S3 July 17, 2012 Order] Second, Ralph Dickey the retired and now deceased President of Southern Bank joined with Plaintiff's attorney in his effort to move the case forward and against the settlement. Third, Mr. Wilhelm himself refused to join his client in the effort in any way to go against fellow attorneys. [See Exhibit S2 October 14, 2011 Hearing Page 194 Line 10 to Page 198 Line 25] Fourth, the Plaintiff was ruled to not have standing in the matter, and the case was settled for \$20,000 by attorneys and for attorneys. [See Exhibit S4 December 20, 2011 Order] Fifth, the Eleventh Circuit Court of Appeals never denied any of the wrongdoing of the attorneys; they ruled that the Plaintiff did not have standing.

b.) The facts regarding Plaintiff's dealings with the shopping center owner USPG are that Plaintiff had accepted their offer of the lower amount of \$1,500,000 for the lease buyout (the highest amount Plaintiff was offered was \$1,600,000), his only caveat was that the right of rescission that had been inserted be taken out of the agreement and that it be a done deal. Plaintiff actually agreed to \$1,500,000 which was less

claimed in Mr. Wilhelm's perjured Affidavit.

- e.) Besides the tax fraud, the Defendants actions regarding this note also constitute bankruptcy fraud. The Defendants never reported the sale of the 31 acres which was included in the bankruptcy claim of the Defendants. The Amended Claim of the Defendants was fraudulent since it did not reflect the proportionate share of the 31 acres from the \$350,000 buy back nor of the subsequent sale of \$490,000.
- f.) This Affidavit is part of an ongoing scheme by the officer of the court and the Defendants to deceive and improperly influence the trier of fact.

[See Complaint Exhibit 21 Paragraph 7 Affidavit of Ralph Dickey and Exhibit 16 2/24/2016 Letter From Mark Wilhelm Page 5, last paragraph titled Charge Off]
[See Complaint Exhibit A Plaintiff's Credit Report showing write offs].

In Loan Summary Number 3. Mr. Wilhelm states in his Affidavit. "Loan No. 413519600—Sportsman's Link, Inc. with Personal Guaranty of Sohail M. Abdulla: First secured interest in all inventory, fixtures, equipment, etc. etc. of store and Goodale Landing property in Richmond County. Approximate loan balance \$846,940.00."

There are multiple frauds and deceptions related to this note.

- a.) This is the very first time this number \$846,940.00 has been given to the Plaintiff or shown on the public record. This number does not exist, it is being used to deceive the Court to make it look like the Defendants acted in a legal manner. This loan number nor this amount were ever used to liquidate or foreclose on anything.
- b.) This is an invalid note. This note was never reported to the Bankruptcy Court.
- c.) By not reporting it, a fraudulently inflated indebtedness was created. Mr. Wilhelm signed and filed the ONLY Amended Claim on November 20, 2011 in the amount of \$265,962.86 which was a fraudulent claim, under oath in violation of 18 U.S.C. Sections 152 and 3571. This claim failed to report the \$10,078.50 lowered amount from the dead July 27, 2006 note. The Defendants received an additional illegal \$24,262.61 on August 24, 2015 [See Complaint Exhibit 14, Southern Bank's Amended Bankruptcy Proof of Claim]. The Defendants received a grand total of \$1,017,996.30, for an illegal foreclosure, on a dead note from the Bankruptcy Estate. This does *not* include the illegal moneys received for the Goodale Property in the amount of \$125,000.00-\$185,000.00.
- d.) This note was never used at all by the Defendants to seize assets from the bankruptcy estate or for any other seizures of property. The dead note dated July 27, 2006 which was Loan Number 413276200 is what the Defendants used to seize assets from the bankruptcy estate, purposefully used this *dead* loan to receive more than the Defendants were legally owed.

The Defendants also state "This figure, however, does not include additional accrued interest legal fees, commissions, auction costs, etc." This figure DOES include commissions and auction costs of \$402,509.86 which is extremely high. This is another deception to influence the trier of fact.

In summary, the Plaintiff's response is based on the limited public record. And the very limited, *unverified, and shifting* numbers provided by the Defendants. Here is the Defendants' balance sheet that clearly shows the so-called facts based on the Defendants deception and in which Mr. Wilhelmi is attesting to in his Affidavit as an officer of the court. He is attempting to cover up these frauds for reasons known only to himself and the Defendants.

Summary Of Legal Receipts

\$110,366.72 Note	Received	\$195,250.00
-\$35,253.00 Charge Off	Received	\$Tax Credit
\$363,388.00 Note	Received	\$490,000.00
-\$363,388.00 Charge Off	Received	\$Tax Credit
Dead 2006 Note Loan #413276200	Received	\$1,017,996.30
Fraudulent 2001 Note	Received	\$185,000.00
Expenses Zero	Received	-\$402,509.86
I Acres Columbia County	Credit	-\$40,000.00

TOTAL (Actual) \$925,326.72 Received +\$1,445,736.44

TOTAL OVERAGE RECEIVED BY THE DEFENDANTS IS +\$520,409.72

Note: This figure does not reflect what the Defendants may have written off for the Sportsman's Link, Inc. loan.

The Pro Se Plaintiff is not familiar with the rules, but would like to give the Court notice that Mr. Stebbins has in the past served as counsel for the Plaintiff.

When a perjured and fraudulent affidavit is inserted into the Court by an officer of the court as part of a scheme, it is an offense directly against the machinery of the Court. The elements for fraud upon the court are here: scienter, a scheme to mislead the trier of fact related to material issues, and an officer of the court swearing under oath in furtherance of the scheme. This is not ordinary fraud since this involves an officer of the court, which Mr. Wilhelmi explicitly stated that he is. The entire Reply Brief filed by the Defendants and their attorneys exhibits a contempt for the intellect and honor of this Court.

money than what they came back with. The Defendants' statement that "Plaintiff refused to move with the contention he had a phenomenally low rental rate per square foot and would not move unless the Landlord paid him approximately \$4-5,000,000.00." is a complete fabrication. Afterward, USPG began the barrage of false claims of lease violation, false claims of environmental contamination, threats of multimillion dollar lawsuits, etc. After the attorneys missed the deadline, the offers from USPG were reduced dramatically and rent would have doubled. The highest offer number was reduced from \$1,600,000 down to \$350,000. [Exhibit S5

December 20, 2011 Order] The bankruptcy was only supposed to be for 90 days to protect Sportsman's Link and to clarify the lease. Plaintiff's attorneys missed a crucial deadline and the death knell spiraled from that point. Plaintiff's own attorney Scott Klosinski stated that dealing with the USPG case "takes away the valuable time from Mr. Abdulla from the management and the operation of the store". [See Exhibit S1 March 18, 2008 Hearing Pages 20-21]. Mr. Klosinski himself admits that it is his fault the plan had not been filed and not the Plaintiff's fault. "But if there's a fault in that, that's my fault because I believe that Mr. Paschke was under the – that we were okay on that. That's my fault, not my client's fault". [See Exhibit S1 March 18, 2008 Hearing Pages 182-183]

Also, as Mr. Ralph Dickey testified in his deposition and in the October 14, 2011 hearing, Plaintiff's health deteriorated to the point where he could not function.

[See Complaint Exhibit 7 Page 23 Line 13 through 21 and Page 25 Line 2 through 20 Deposition of Ralph Dickey] [Exhibit S2 Page 193 Line 15 through Page 194 Line 9 October 14, 2011 Hearing]

Further, the Defendants' statement that "Plaintiff, through his company, in effect depleted (stole) Southern Bank's secured status by over \$619,000.00." is libelous and will not be tolerated by Plaintiff.

The Defendants state that "Southern Bank had an approximate loss of \$141,000.00." Plaintiff has a hard time keeping up with the multiple different and contradictory statements made by the Defendants. The Defendants previously stated that they had suffered an "actual loss" in excess of \$363,000 (the Defendants actually charged off \$398,641.00 against the Plaintiff) as result of the Plaintiff's two debts. This also does not include the amount the Defendants charged off on Sportsman's Link, Inc., which both the amount and which loan was used is unknown to Plaintiff. [See Complaint Exhibit 21 Paragraph 7 Affidavit of Ralph Dickey] [Complaint Exhibit 16 February 24, 2016 Letter From Mark Wilhelm] Page 5 last paragraph titled Charge Off] and [Complaint Exhibit A Plaintiff's Credit Report showing write offs].

CERTIFICATE OF SERVICE

This is to certify that I have this day served the opposing party or counsel for the opposing party in the foregoing matter with a copy of Plaintiff's Motion For Leave To File Surreply by depositing a copy of same in the United States Mail, postage prepaid, as follows:

Charles C. Stebbins, III
Robert P. Mangum
Turner Padget Graham & Laney, P.A.
209 Seventh Street
PO Box 1495
Augusta, GA 30901

Mark L. Wilhelm
Wilhelm Law Firm
3527 Wheeler Road, Suite 401
Augusta, GA 30909

This the 26 day of August, 2021.

s/ _____

By: Sohail M. Abdulla, Pro Se
647 Vincent Avenue
Aiken, SC 29801

Respectfully submitted this 26 day of August, 2021.

s/ _____

Sohail M. Abdulla, Pro Se
202-603-5958
647 Vincent Avenue
Aiken, SC 29803
smabox@live.com

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

IN THE MATTER OF:

SPORTSMAN'S LINK, INC.

Case No. 07-10454-JSD

Debtor

Chapter 11

TRANSCRIPT OF HEARING

CONTINUED DEBTOR'S ASSUMPTION OF LEASE WITH
USPG PORTFOLIO TWO, LLC (DOC. 181)

NOTICE TO PRODUCE AT HEARING
FILED BY DEBTOR (DOC. 261)

OBJECTION TO NOTICE TO PRODUCE, BY USPG
PORTFOLIO TWO, LLC (DOC. 262)

Held March 18, 2008
U.S. Courthouse
600 James Brown Blvd.
Augusta, Georgia

BEFORE THE HONORABLE JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE
APPROVED BY ADMINISTRATIVE OFFICE OF U.S. COURTS

Cheryl Culver (813) 929-0995

Official Court Reporter and Administrative Office of U.S. Courts Approved Transcriber

EXHIBIT

S1

1 shotgun shells. Now, how in the world is that
2 related?

3 MR. KLOSINSKI: Because it takes away the
4 valuable time from Mr. Abdulla from the management
5 and the operation of the store to be handling and
6 chasing these responses to the government
7 authorities.

8 THE COURT: I don't think that's relevant
9 to this matter at all. Objection is sustained.

10 MR. KLOSINSKI: No. 9, Your Honor, is the
11 documents regarding the plans for Village Plaza
12 Shopping Center, including USPG's plans to relocate
13 any and all tenants within the shopping center,
14 which goes to the relevance of this space that Mr
15 Abdulla occupies.

16 THE COURT: Well, I understand. This
17 fight is about whether or not, to some extent
18 anyway, whether or not the landlord can move or get
19 rid of your client to realign the stores in this
20 shopping center. I mean, that's your contention,
21 right? All along, they've been trying to run us
22 off, right?

23 MR. KLOSINSKI: That's correct. Your
24 Honor.

1 or otherwise, since November of 2004. This was used
2 to show the selective prosecution, for lack of a
3 better word, which USPG has generated and
4 perpetuated upon my client.

5 THE COURT: And I think that's totally
6 irrelevant to these matters. Objection sustained.

7 MR. KLOSINSKI: Your Honor, No. 6 appears
8 to be substantially the same request.

9 THE COURT: All right. Then that's
10 sustained as well. Anything else?

11 MR. KLOSINSKI: Your Honor, No. 7 is the
12 communications memorandums, the letters, the e-mails
13 or otherwise, to legal authorities, government or
14 otherwise, regarding the Debtor or any employee of
15 the Debtor, including Mr. Abdulla.

16 We believe that someone on behalf of USPG
17 or Sam's has been communicating with the taxing
18 authorities, the firearms authorities, to bring
19 about an unnecessary burden upon the Debtor and Mr.
20 Abdulla, which has negatively impacted his sales.

21 THE COURT: If somebody writes a letter or
22 calls up the police for some reason, and that has
23 negatively impacted the sales. You mean, somebody
24 walking in off the street wanting to buy a box of

1 Q And how long have you been Mr. Abdulla's
2 banker?

3 A Approximately about 20 years. I made Mr.
4 Abdulla his first loan when he went into business in the
5 firearms, hunting and fishing business some 20 years ago.

6 Q Okay. In that 20 years, has Mr. Abdulla ever
7 defaulted in any loans to Southern Bank?

8 A No, sir, he has not.

9 Q Is he current with Southern Bank currently?

10 A Yes, sir, he is.

11 Q Do you believe that Mr. Abdulla can reorganize
12 Sportsman's Link and return it to profitability?

13 A I have no doubt in my mind, if given the
14 opportunity, he can.

15 Q Okay. And in doing this, you've reviewed his
16 current financial statements?

17 A Yes, I have.

18 Q Or the operating reports he's filed?

19 A That's correct.

20 Q Okay. And you have confidence in Mr. Abdulla

21 A Yes. I mean, I don't know very many people
22 that go into bankruptcy Chapter 11 that would even want
23 to guarantee their unsecured creditors, but he would
24 to do that. He's got impeccable character and, you know,

1 (Whereupon, the oath was administered by
2 the courtroom deputy.)

3 THE COURT: Have a seat, please. Go
4 ahead.

5 RALPH EVANS DICKEY

6 being first duly sworn, was examined
7 and testified under oath as follows:

8 DIRECT EXAMINATION

9 BY MR. KLOSINSKI:

10 Q Will you state your name, please?

11 A Ralph Evans Dickey.

12 Q And where do you live, Mr. Dickey?

13 A Waynesboro, Georgia.

14 Q Okay. And your occupation, sir?

15 A Banker.

16 Q And who are you a banker for?

17 A Southern Bank.

18 Q Southern?

19 A Bank.

20 Q Southern Bank. And how long have you known Mr.
21 Abdulla?

22 A A little over 20 years.

23 Q Okay. And are you Mr. Abdulla's banker?

24 A Yes, I am.

1 that.

2 Q So Southern Bank's going to get paid one way or
3 the other, right?

4 A We'd get paid one way or -- yeah, we would
5 get paid. If Mr. Abdulla owes us debt, he'll pay us.
6 I don't have any doubt in my mind about that, so --

7 Q Do you know how much of his business is selling
8 firearms, ammunition, things that are licensed by the
9 ATF?

10 A I don't know what proportion. I know he has
11 other interests but, I mean, his main livelihood -- he's
12 been in the hunting and fishing business for some 20-odd
13 years that I'm aware of. So a pretty large part, I would
14 think.

15 Q When did Mr. Abdulla inform you that the ATF
16 was investigating him?

17 A I don't -- you know, I don't remember the exact
18 date. He did mention it to me but, there again, I mean
19 that to me is sort of like banking regulators. I mean
20 deal with those guys too, we make mistakes too in bank
21 so, you know, I'm not overly concerned with that.

22 Q Has Southern Bank ever had a notice saying that
23 the banking regulators were going to pull its banking
24 license?

1 I believe he would do that.

2 Q Okay. And the debt current to Southern Bank
3 is --

4 A About -- approximately \$850,000.

5 MR. KLOSINSKI: That's all I have, Your
6 Honor.

7 THE COURT: Witness is with you.

8 MR. KEOGH: Thank you, Judge, very
9 quickly.

10 CROSS-EXAMINATION

11 BY MR. KEOGH:

12 Q Mr. Dickey, is Southern Bank a secured or
13 unsecured creditor?

14 A Secured.

15 Q Okay. And do you also have a personal guaranty
16 from Mr. Abdulla?

17 A That's correct.

18 Q Okay. And what collateral do you have for that
19 personal guaranty?

20 A Basically his assets. I mean, his personal
21 assets.

22 Q And what's the value of those?

23 A Several millions of dollars. I don't know the
24 exact figure but his personal guaranty would indicate

1 million and a half dollars worth of property.
2 I think we've carried our burden in showing adequate
3 assurances.

4 THE COURT: Mr. Keogh?

5 MR. KEOGH: Thank you, Your Honor, and may
6 it please the Court, as Your Honor is well aware,
7 the burden of proof in this matter is on the Debtor
8 to establish that they can adequately assure future
9 performance. They clearly, I would submit, have not
10 overcome that burden, indeed have not even
11 contradicted the fact that they have violated the
12 law, in contradiction to the brief -- or excuse me,
13 in contradiction to the lease. And the Debtor has
14 admitted it before you.

15 Judge, the problem with the plans they're
16 talking about, if that is a plan, is that we keep
17 having shifting sands here. They told the Trustee
18 ten months ago that they were going to amend their
19 inventory schedules. There is no evidence of what
20 this inventory is worth other than the gentleman's
21 opinion.

22 MR. KLOSENSKI: Your Honor, may I say
23 something about that. I have discussed those issues
24 with Mr. Paschke. Mr. Paschke is satisfied with

1 what we've done --

2 MR. KAY: No, sir, that's incorrect. I
3 discussed it with Mr. Paschke too and he's not
4 satisfied.

5 MR. KLOSINSKI: Well, I haven't seen a
6 motion, and my last discussion with him -- and it's
7 not the big deal that they're making out of it. I
8 believe if there's a fault in that, that's my fault because
9 I believe that Mr. Paschke was under the -- that
10 we were okay on that. That's my fault, not my client's
11 fault.

12 MR. KAY: That's not Mr. Paschke's
13 feeling, Your Honor.

14 MR. KLOSINSKI: Then that's my fault, Your
15 Honor.

16 THE COURT: Well, if Mr. Paschke on behalf
17 of the United States Trustee feels as though the
18 Debtor is somehow deficient in his schedules, file
19 something.

20 MR. KAY: That's fine, Your Honor,
21 but I --

22 THE COURT: And I've got this discussion
23 back and forth between the -- that was on the record
24 at the 341 meeting apparently, and there was an

EXHIBIT

S2

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

IN RE:

SPORTMAN'S LINK, INC.,

Debtor.

* Case Number: 07-10454
* Augusta, Georgia
* October 14, 2011
*
* Chapter 7
*
* TRANSCRIBED FROM
* ELECTRONIC RECORDING

MOTION TO COMPROMISE CONTROVERSY and RESPONSE TO MOTION TO
COMPEL ABANDONMENT OF CAUSE OF ACTION BY TRUSTEE
OBJECTION TO SETTLEMENT BY SOHAIL ABDULLA
SUPPLEMENT TO OBJECTION TO SETTLEMENT BY SOHAIL ABDULLA
OBJECTION BY JAMES W. GRAY AND
CONT'D MOTION TO COMPEL TRUSTEE TO ABANDON/HIRE PLAYER
LAW FIRM, LLC AS SPECIAL COUNSEL TO DEBTOR HEARING
BEFORE THE HONORABLE LAMAR W. DAVIS, JR.
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

FOR TRUSTEE:

EDWARD J. COLEMAN, III
Surrett & Coleman, PA
P.O. Box 204720
Augusta, Georgia 30917-4720

FOR SOHAIL ABDULLA:

TUCKER PLAYER
Player Law Firm, LLC
1415 Broad River Road
Columbia, South Carolina 29210

TRANSCRIPT ORDERED BY:

TUCKER PLAYER

1 A Ralph Evans Dickey.

2 Q And where are you employed, Mr. Dickey?

3 A I am president of Southern Bank and located in

4 Waynesboro, Georgia.

5 Q Is Southern Bank a creditor in the Sportsman's Link
6 bankruptcy?

7 A Yes, we were.

8 Q Do you recall just approximately what the claims were
9 that Southern Bank made in the bankruptcy?

10 A Gosh. I think the overall claims was around a million
11 three with total indebtedness about a million three.
12 Probably \$800,000 or \$900,000 with the store Sportsman's
13 Link.

14 Q Have you received any money during the course of the
15 bankruptcy?

16 A Yes, we have. We came up sizably short. Once the
17 liquidation sale was held, it was about a million dollars
18 in sales I believe from the sale of the inventory but due
19 to the overall cost of selling it and with the auctioneers
20 and things of that nature we got between \$575,000 and
21 \$600,000.

22 Q So you are still owed between \$600,000 and \$700,000?

23 A Probably about two, and with some of the real estate
24 we had. We had other things besides just the store. We
25 had some real estate holdings also.

1 the hearing. Do you anticipate anything else other than
2 Mr. Abdulla on direct?

3 MR. PLAYER: Just Mr. Dickey very quickly. Your
4 Honor.

5 THE COURT: Well let's recess. I know I have a
6 phone call I have to make before 5:00 and assuming I can
7 get through I think it will be quick. I am going to try to
8 hold this to about a 15 minute recess and come back in at
9 4:50, and if I am delayed it will be based on that
10 telephonic conference that I have to take care of.

11 So, recess for 15 minutes.

12 (COURT IN RECESS - APPROXIMATELY 4:33 P.M.)

13 (COURT RESUMES AT APPROXIMATELY 4:59 P.M.)

14 THE COURT: We are back on the record in the
15 Sportsman's Link case, and I believe Mr. Player you were
16 about to call your first witness, correct?

17 MR. PLAYER: Yes, sir. I would call Ralph
18 Dickey.

19 THE COURT: Mr. Dickey, if you will come forward,
20 please, and take the oath.

21 (RALPH DICKEY, DEBTOR'S WITNESS, SWEORN)

22 DIRECT EXAMINATION

23 BY MR. PLAYER:

24 Q Mr. Dickey, will you say your full name for the
25 record, please?

1 talked to him and I knew there were some problems but when
2 I did go to visit him he was unshaven, he didn't look like
3 he had shaved in about a month. He had lost about probably
4 20 or 25 pounds, but the most notable thing about him is
5 his speech. His speech was very much slurred and just
6 constant stuttering. He couldn't complete a sentence
7 without just stuttering. Just pretty much incoherent to
8 some degree so it was totally unlike anything I had ever
9 seen from him before in all the years I had known him.

10 Q Did you have an opportunity to read the objection that
11 I filed to the Trustee's Motion to Compromise the
12 Malpractice cases?

13 A Yes, I did.

14 Q What is Southern Bank's position with regards to the
15 objection?

16 A Well we just thought there were some irregularities as
17 you pointed out. Some things that were brought up that
18 seemed to be not correct and we just really just wanted to
19 be here and be a part of really finding out what really did
20 go on and if there was some favoritism shown in certain
21 instances, which to me, it appear like there may could have
22 been.

23 Q Is Southern Bank represented by an attorney in the
24 bankruptcy?

25 A Well we have been in the past with Sportsman's Link.

1 Q How long have you known Sohail Abdulla?

2 A Since approximately 1988.

3 Q Have you done a lot of business with him over the
4 years?

5 A Yes. As a matter of fact, I met him back in 1988 and
6 I made him his first loan when he went in business with a
7 little company in Waynesboro called American Sportsman.
8 Initially I loaned him \$50,000 to start that business and
9 that was his first entrée, I guess, into the hunting and
10 sporting goods business.

11 Q Have you always considered him to be honest?

12 A Very much so. Anything Sohail would tell you he would
13 do, he would do, and I never have known anything but
14 honesty out of him over the years.

15 Q Did you have any personal contact with Sohail during
16 the time that he was going through the bankruptcy I guess
17 while it was in Chapter 11 in 2008?

18 A Yes, I did.

19 Q Did you personally witness any of his health problems
20 during that time period?

21 A Yes. I went to visit Sohail at his home out in
22 Windmill Plantation out in Evans and this is approximately
23 I want to say maybe a couple weeks before the final hearing
24 which he was unable to attend at that time, and I was
25 pretty much appalled at his overall condition. I had

CROSS-EXAMINATION

BY MR. COLEMAN:

Q Mr. Dickey, --

A Yes, sir.

5 Q -- did your bank take as collateral from Mr. Abdulla
6 his shares of stock in Sportsman's Link?

7 A Yes. I believe we had his shares of stock, and
8 I believe we had his equipment, fixtures, in the store.

9 Q So where the UCC-1 says I think 500 shares of stock is
10 outstanding shares of stock?

as far as I know, it is.

11 A As far as I can,
12 Q And tell the Court what effort you have made to

13 foreclose on that piece of information.
14 A Really we haven't. The stock is basically worthless.
15 I guess. There is nothing there.

Do you think the stock is worthless?

16 Q You think the same.
17 A Well if the business is not intact or anything, you
18 know. We felt like we had pretty good inventory and we had
19 UCC-1's on all the furnishings and fixtures and everything.
20 We thought we had plenty of collateral but basically the
21 stock I don't guess was given as much consideration as the
22 other collateral we did have. We felt like we had plenty
23 of collateral.

24 Q Okay. Were the shares of stock actually endorsed over
25 to you or physical possession given to the bank?

1 We do not have an attorney here today. I am here today by
2 myself.

3 Q Do you know if Southern Bank ever made a request to
4 join in Sohail Abdulla's objection to the Trustee's
5 Petition to Compromise the case?

6 A We did want to be a part of it. As one of the leading
7 creditors, we did want to be a part of really just finding
8 out what all had transpired during the bankruptcy.

9 Q And I guess my question is do you think the case would
10 settle for \$20,000 without any further investigation?

11 A I wouldn't think that would be very feasible to do
12 that. It would be totally irrelevant to do something like
13 that.

14 Q Did you ask your attorney to join in the objection
15 that I filed?

16 A Basically we discussed it and we had a difference of
17 opinion I guess you could say.

18 Q Is he still your attorney?

19 A He is not our attorney representing us today.

20 Q But if Southern Bank had their druthers, would they
21 want us to be able to pursue these lawsuits or take the
22 \$20,000 settlement?

23 A Definitely pursue the lawsuits.

24 MR. PLAYER: No further questions, Your Honor.

25 THE COURT: Mr. Coleman.

1 THE COURT: Have a seat.

2 THE WITNESS: Thank you.

3 (SOHAIL ABDULLA, DEBTOR'S WITNESS, PREVIOUSLY SWORN)

4 DIRECT EXAMINATION

5 BY MR. PLAYER:

6 Q You have heard a lot today, Sohail.

7 A Yes, sir, I have.

8 Q Bill Keogh, he thought on those defaults that you were
9 the only tenant doing anything bad in the development.

10 What do you have to say to that?

11 A Your Honor, our lease is clear and simple. If the
12 four corners of our lease allows us to display outside, it
13 gives us the right to sublease or licensee up to 60 percent
14 to one entity. And the problem was my attorneys could
15 never ever get something filed with the court to give me
16 these rights. And my problem is that the other tenants
17 doing these things out there and they are not getting in
18 trouble for it and I keep getting these letters.

19 And Mr. Keogh made several things that were incorrect.
20 Judge Slaby already ruled that the roof issue and all was
21 damages only thing had to be added to that. And what I
22 think, Your Honor, is getting confused here is they keep
23 talking about this case. When they are talking about a
24 case, they are talking about the roof case. They haven't
25 done any discovery and all the other stuff. If they have,

1 A Yes, sir. I believe we did have them in our
2 collateral vault.

3 Q Do you still have them?

4 A As far as I know we do, yes, sir.

5 Q And under your security agreement do you have the
6 right to vote those shares?

7 A That, I am not quite sure of. I don't believe - we
8 never pursued that angle. Let's put it that way.

9 MR. COLEMAN: All right. That's all I have.

10 Thank you.

11 THE COURT: Mr. Player, anything more?

12 REDIRECT EXAMINATION

13 BY MR. PLAYER:

14 Q If you did have the power to vote those shares, would
15 you vote for us to move forward with the legal malpractice
16 case?

17 A Yes. Yeah, we would vote for it, definitely.

18 MR. PLAYER: No further questions, Your Honor.

19 THE COURT: Is that all for the witness?

20 Thank you, Mr. Dickey.

21 Mr. Player, your next witness.

22 MR. PLAYER: Sohail Abdulla, Your Honor.

23 THE COURT: Mr. Abdulla, you were sworn earlier
24 and you are still under oath.

25 THE WITNESS: Yes, sir.

In the United States Bankruptcy Court
for the

Southern District of Georgia **FILED**

Augusta Division

Lucinda B. Rauback, Acting Clerk
United States Bankruptcy Court
Savannah, Georgia
By Bernard at 5:14 pm, Jul 17, 2012

In the matter of:)
SPORTSMAN'S LINK, INC.)
Debtor)
Chapter 7 Case
Number 07-10454

OPINION AND ORDER
ON MOTION TO IMPOSE SANCTIONS FOR
VIOLATION OF BANKRUPTCY RULE 2014

This matter comes before the Court on the United States Trustee's Motion
to Impose Sanction for Violation of Bankruptcy Rule 2014 by Klosinski Overstreet, LLP.
Dckt. No. 808.

FINDINGS OF FACT

Debtor, Sportsman's Link, Inc., filed Chapter 11 bankruptcy, on March 11
2007, Dckt. No. 1. The case was converted to Chapter 7 on July 22, 2008, Dckt. No. 357
Attorney, Scott J. Klosinski and his firm, Klosinski Overstreet, LLP ("KO"), represents
Debtor, as Debtor-in-Possession, in Chapter 11 bankruptcy, Dckt. No. 22. Upon conversion
to Chapter 7, Edward J. Coleman was appointed Chapter 7 Trustee ("Trustee"). Dckt. N
358. He hired KO and its partners, Klosinski and James C. Overstreet, Jr., as special coun
to pursue preference and fraudulent transfer actions for Debtor's estate. Dckt. No. 50
Klosinski commenced twenty-three adversary proceedings and recovered \$514,400.27
funds for Debtor's estate. Dckt. No. 791, 5. KO requested \$101,612.50 for servic

EXHIBIT

S3

EXHIBIT

S4

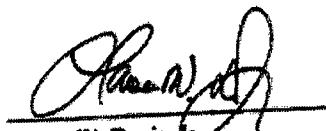
\$3,300.00.

3. Other Fees

KO seeks fees of approximately \$3,480.00 attributed to defending KO against First Bank and Southern Bank's Motions for an award of those Bank's attorney's fees incurred in their successful defense of the Consolidated Actions. KO's defense costs for that Motion are not appropriately recouped from the estate, thus KO's fee will be reduced by an additional \$3,480.00. 11 U.S.C. § 330(a)(4) ("the court shall not allow compensation for . . . (ii) services that were not – (I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case").

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS
HEREBY ORDERED that KO's Chapter 11 fee be reduced by \$20,000.00 and KO's Chapter
7, special counsel, fee be reduced by \$36,780.00 for a total reduction of \$56,780.00.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

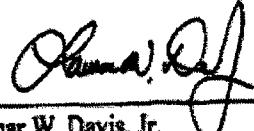
Dated at Savannah, Georgia

This 17th day of July, 2012.

of Controversy should be granted.

ORDER

Pursuant to the foregoing, IT IS THE ORDER OF THIS COURT that the Trustee's Application to Compromise Controversy is GRANTED. The Trustee shall be authorized, upon his receipt of \$20,000.00, to execute such releases in favor of the Defendants named in Adversary Proceeding Number 11-01031, and any other attorneys or law firms who represented the Debtor before or after the filing of the Chapter 11 bankruptcy case on March 13, 2007, in full satisfaction and compromise of any claims for legal malpractice that the Debtor may have against such parties released.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 20th day of December, 2011.

**In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division**

In the matter of:	)	Chapter 7 Case
SPORTSMAN'S LINK, INC.	)	Number <u>07-10454</u>
<i>Debtor</i>)	
)	
)	
EDWARD J. COLEMAN, III,	)	FILED
TRUSTEE	)	Samuel L. Kay, Clerk
<i>Movant</i>	)	United States Bankruptcy Court
	)	Savannah, Georgia
	)	<i>By Bernard at 3:34 pm, Dec 20, 2011</i>
V.)	
SOHAIL ABDULLA)	
<i>Respondent</i>)	

**MEMORANDUM AND ORDER
ON TRUSTEE'S APPLICATION TO
COMPROMISE CONTROVERSY**

Currently pending before the Court is Trustee's Application to Compromise Controversy filed on August 2, 2011. (Dkt. No. 695) by which the Trustee proposes to settle on behalf of the bankruptcy estate, certain actual or potential causes of action for legal malpractice against various attorneys and law firms that represented the Debtor corporation before and during the Chapter 11 bankruptcy filed on March 13, 2007. In response to the Trustee's application, Sohail Abdulla ("Abdulla"), the sole shareholder of Sportsman's Link,

**In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division**

In the matter of:)	
	)	Chapter 7 Case
SPORTSMAN'S LINK, INC.)	
	)	Number <u>07-10454</u>
<i>Debtor</i>)	
)	
)	
)	
EDWARD J. COLEMAN, III,)	
TRUSTEE)	
<i>Movant</i>	)	FILED
	)	Samuel L. Kay, Clerk
	)	United States Bankruptcy Court
	)	Savannah, Georgia
	)	By <i>Bernard</i> at 3:34 pm, Dec 20, 2011
v.)	
)	
SOHAIL ABDULLA)	
<i>Respondent</i>)	

**MEMORANDUM AND ORDER
ON TRUSTEE'S APPLICATION TO
COMPROMISE CONTROVERSY**

Currently pending before the Court is Trustee's Application to Compromise Controversy filed on August 2, 2011. (Dckt. No. 695) by which the Trustee proposes to settle on behalf of the bankruptcy estate, certain actual or potential causes of action for legal malpractice against various attorneys and law firms that represented the Debtor corporation before and during the Chapter 11 bankruptcy filed on March 13, 2007. In response to the Trustee's application, Sohail Abdulla ("Abdulla"), the sole shareholder of Sportsman's Link,

EXHIBIT

S5

formally moved to assume the USPG lease, came and went on July 11, 2007, without a formal written motion and order allowing assumption.

39. Seizing upon this July 11, 2007, deadline, USPG filed its Motion for Possession of Premises (Dckt. No. 137) on July 17, 2007, which stated in part as follows:

USPG has contended throughout this case that The Lease between the Debtor and USPG terminated pre-petition. This issue has now been rendered moot because The Lease has now been deemed rejected under Section 365(d)(4) of the Bankruptcy Code.

Dckt. No. 137, ¶ 2.

40. The Debtor then filed an Amended Debtor's Motion to Extend Exclusivity Period (Dckt. No. 138), by which it sought an extension of time to assume the lease. Pleading in the alternative, the Debtor contemporaneously filed its Motion for Formal Order Providing that it has Assumed an Unexpired Lease Pursuant to 11 U.S.C. § 365. Dckt. No. 139. These motions came on for hearing before the Court on August 22, 2007, and the Court took the matter under advisement. Hearing Transcript, Dckt. No. 192, p. 39 (Aug. 22, 2007).

41. USPG made one final settlement proposal to the Debtor in the form of a letter of August 23, 2007, (Trustee's Application to Compromise Controversy, Dckt. No. 695, Exh. "C") which contained three options from which the Debtor could choose:

Option One: "Move for term, plus \$150,000.00"
Option Two: "Move for shortened term, plus \$250,000.00"
Option Three: "Buy-Out for \$350,000"

APPENDIX D

SOUTHERN DISTRICT OF GEORGIA ORDER OF DISMISSAL

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

SORAIL M. ABDULLA,	*
	*
Plaintiff,	*
	*
v.	*
	CV 121-099
	*
SOUTHERN BANK,	*
	*
Defendant.	*

O R D E R

Presently before the Court are Defendant's motion to dismiss the Amended Complaint (Doc. 39) and Defendant's motion to strike portions of the Amended Complaint (Doc. 40). For the following reasons, Defendant's motion to dismiss is **GRANTED** and Defendant's motion to strike is **DENIED AS MOOT**.

I. PROCEDURAL HISTORY

On January 3, 2022, this Court granted in part Defendant's original motion to dismiss, dismissing Plaintiff's claims under the Federal Trade Commission Act ("FTCA"), the Gramm-Leach-Bliley Act ("GLBA"), the Privacy Act of 1974 ("Privacy Act"), and the Fair Credit Reporting Act ("FCRA"). (Doc. 30.) Further, the Court found the remainder of Plaintiff's complaint to be an impermissible shotgun pleading and directed him to file an amended complaint in compliance with Federal Rules of Civil Procedure 8(a)(2) and 10(b).

(Id. at 11.) Specifically, Plaintiff was instructed to set forth each of his claims as separate counts and clearly allege the appropriate facts under each one; to make each claim separately and distinctly numbered and stated plainly and succinctly; to avoid conclusory and vague statements and state the specific facts that support each claim; and to eliminate any extraneous material and make clear which facts pertain to which count. (Id. at 11-12.)

On January 18, 2022, Plaintiff filed his Amended Complaint against Defendant, asserting three claims: (1) breach of contract; (2) accounting; and (3) illegal entry of safety deposit box. (Am. Compl., Doc. 35, at 17-19.) On February 1, 2022, Defendant filed the pending motions seeking to dismiss the Amended Complaint as well as to strike certain paragraphs from the Amended Complaint. (Docs. 39, 40.) Plaintiff responded in opposition to both motions (Docs. 41, 42), Defendant filed a brief in support of its motion to dismiss (Doc. 44), and Plaintiff filed an additional reply in opposition (Doc. 45). Based on the foregoing, the motions have been fully briefed and are ready for the Court's review.

II. FACTUAL BACKGROUND

Despite the Court's instructions in its January 3, 2022 Order, the Amended Complaint rehashes countless transactions and events that took place from 2001 through 2019, and the facts relevant to the alleged claims are still somewhat hard to follow. (See Am.

4-6.) Then in November 2008, Defendant foreclosed on the Goodale Property "without providing lawful notice or serving Plaintiff with the necessary documents in violation of due process." (Id. at 6.) Plaintiff makes numerous other allegations about the foreclosure, the sale of the property, the process that went along with it, and the money Defendant made from the sale. (Id. at 6-8.)

Plaintiff goes on to allege he "was sick at the time of signing [the renewal] and was not of sufficient capacity to sign this foolish and unnecessary note which ceded over to Defendant around \$250,000.00 of additional unneeded collateral." (Id. at 9.) He believes his lack of capacity made what he refers to as the "Burke Note" void. (Id.) Defendant proceeded to repossess Plaintiff's vehicles and additional real estate that was listed as collateral, and Plaintiff believes Defendant sent the notices to an address it knew was incorrect. (Id. at 9-10.) Somewhere along the way there was another personal debt that was secured by two parcels of land in Columbia County and a parcel in Burke County which were also foreclosed on by Defendant without notice to Plaintiff. (Id. at 10.) Essentially, Plaintiff alleges Defendant never gave him an accounting, credit, or listing for the "wrongful" sales, never obtained a judgment against Plaintiff, and ultimately violated his due process rights. (Id. at 12-13.)

Compl.; Doc. 30, at 11-12.) Nevertheless, the Court attempts to decipher the basis of Plaintiff's grievances as best it can. Plaintiff, a South Carolina resident, brings claims against Defendant for breach of contract, accounting, and illegal entry of safety deposit box. (Am. Compl., at 16-19.) The underlying facts start as early as June 2001 when Plaintiff executed a note and mortgage with Defendant that attached a condominium (the "Goodale Property"), as collateral. (Id. at 2.) Then in 2006, Plaintiff executed a note and security agreement on behalf of his business, Sportsman's Link, Inc. (the "Sportsman's Loan"). (Id.) Plaintiff represents that "[n]o security deed was ever executed or recorded for the Goodale Property" after the first mortgage was satisfied "in or before 2005." (Id. at 3.) As part of the Sportsman's Link Loan, Plaintiff asserts there was a third-party agreement "drafted by Defendant as an inducement . . . to allow Defendant to attempt to circumvent the lending limit restrictions prescribed by [12 U.S.C. § 12], essentially doubling the amount the bank could legally lend to Plaintiff and his business." (Id.)

In March 2007, Sportsman's Link entered Chapter 11 Bankruptcy. (Id. at 4.) In relation to this bankruptcy, Plaintiff alleges many other actions took place. He references many renewals and modifications to his loans that Defendant fraudulently and secretly did without reporting them to the Bankruptcy Court, ultimately alleging Defendant "circumvent[ed] the law." (Id. at

Davis v. Scherer, 468 U.S. 183 (1984). Pursuant to Federal Rule of Civil Procedure 8(a)(2), a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief" to give the defendant fair notice of both the claim and the supporting grounds. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Although "detailed factual allegations" are not required, Rule 8 "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 555).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" ¹ Id. (quoting Twombly, 550 U.S. at 570). The plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that defendant has acted unlawfully." Id. A plaintiff's pleading obligation "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Twombly, 550 U.S. at 555. "Nor does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual

¹ The Court must accept all well-pleaded facts in the Amended Complaint as true and construe all reasonable inferences therefrom in the light most favorable to

Plaintiff states “[t]he doctrine of unclean hands applies to the Defendant for all of the transactions contemplated [in the Amended Complaint].” (*Id.* at 13.) Plaintiff’s breach of contract claim incorporates all preceding paragraphs in the Amended Complaint and appears to be based on two allegations: Defendant foreclosed on an “invalid” note in 2008, and Defendant’s fraudulent acts have tolled the statute of limitations until 2018 when the wrongdoing was discovered. (*Id.* at 16-17.) His accounting claim again incorporates the preceding paragraphs and alleges Defendant failed to provide notice of the seizure and sale of Plaintiff’s personal property or the foreclosures and failed to properly liquidate his personal property and apply the sale proceeds to his indebtedness. (*Id.* at 17-18.) And finally, Plaintiff’s claim for illegal entry of safety deposit box simply states “Defendant willfully and illegally drilled and entered Plaintiff’s safety deposit box” which was “kept open despite ten years of nonpayment.” (*Id.*) Plaintiff had no notice of this situation as he was sick and out of the country, and he is unsure what happened to the contents of the box. (*Id.* at 19.)

III. LEGAL STANDARD

In considering a motion to dismiss under Rule 12(b)(6), the Court tests the legal sufficiency of the complaint. Scheuer v. Rhodes. 416 U.S. 232, 236 (1974), overruled on other grounds by

impose unwarranted expense on the litigants, the court and the court's parajudicial personnel and resources." Cramer v. State of Fla., 117 F.3d 1258, 1263 (11th Cir. 1997).

IV. DISCUSSION

Defendant moves to dismiss Plaintiff's Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) and 41(b). (Doc. 39.) Defendant argues Plaintiff has failed to recast his complaint in accordance with the Court's instructions and even if he had remedied the defects, his allegations are still insufficient and should be dismissed for failure to state a claim. (Doc. 39-1, at 1.) Defendant also moves to strike portions of Plaintiff's Amended Complaint pursuant to Federal Rule of Civil Procedure 12(f). (Doc. 40.) The Court will address Defendant's motions in turn.

A. Motion to Dismiss

Defendant asserts Plaintiff's Amended Complaint is a shotgun pleading, arguing it should be dismissed pursuant to Rule 41(b) for failure to comply with the Court's instructions and pursuant to Rules 8(a) and 10(b) for failure to state a claim. (Doc. 39.

1. Compliance with Court Order (Doc. 30)

The Court's January 3, 2022 Order found Plaintiff's original complaint to be an impermissible shotgun pleading. (Doc. 30, a 9-12.) Specifically, the Court found that each of Plaintiff's

enhancement.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557). Furthermore, "the court may dismiss a complaint pursuant to [Rule 12(b)(6)] when, on the basis of a dispositive issue of law, no construction of the factual allegations will support the cause of action." Marshall Cnty. Bd. of Educ. v. Marshall Cnty. Gas Dist., 992 F.2d 1171, 1174 (11th Cir. 1993) (citing Exec. 100, Inc. v. Martin Cnty., 922 F.2d 1536, 1539 (11th Cir. 1991)).

Pursuant to the Court's January 3, 2022 Order, Plaintiff was given an opportunity to replead his complaint because the Court found it to be a shotgun pleading. (Doc. 30, at 8-12.) The Eleventh Circuit provides that "a district court must *sua sponte* give the plaintiff at least one chance to replead a more definite statement of [his] claims before dismissing [the] case with prejudice." Embree v. Wyndham Worldwide Corp., 779 F. App'x 658, 662 (11th Cir. 2019) (citation omitted). A court's order requiring repleading "comes with an implicit notion that if the plaintiff fails to comply with the court's order - by filing a repleader with the same deficiency - the court should strike his pleading or, depending on the circumstances, dismiss his case and consider the imposition of monetary sanctions." Vibe Micro, Inc. v. Shabanets, 878 F.3d 1291, 1295 (11th Cir. 2018) (internal quotations and citations omitted). These procedures are in place because shotgun pleadings "exact an intolerable toll on the trial court's docket, lead to unnecessary and unchanneled discovery, and

recounts are numerous and are very difficult to link to his claims. Further, Plaintiff states in his response that he is bringing a claim of "unclean hands of the Defendant"; however, this is not a claim asserted in his Amended Complaint and therefore he cannot bring it for the first time in his response to the motion to dismiss.² (See id. at 4-5; Gilmour v. Gates, McDonald & Co., 382 F.3d 1312, 1315 (11th Cir. 2004) ("A plaintiff may not amend her complaint through argument in a brief") .) The remainder of Plaintiff's response rehashes the same factual allegations previously stated in his Amended Complaint simply separated into categories based on the various foreclosed properties. (Id. at 6-12.) Plaintiff also lists so many monetary values the Court is unable to ascertain their connection to the various allegations Plaintiff attempts to bring. (See id. at 5-16.) In his second reply in opposition, Plaintiff simply states that "Defendant is once again confusing the simple nature of [his] Amended Complaint" and that his "charge is breach of contract." (Doc. 45, at 1.) Plaintiff argues "Defendant breached a security deed by using a phantom instrument(note) to seize Plaintiff's property." (Id.)

Defendant supplemented its motion to dismiss by arguing that "Plaintiff has completely failed to abide by the Court's instructions, choosing rather to add another 14 paragraphs to his

² Plaintiff simply mentioning the doctrine of "unclean hands" during his long factual recount is insufficient to put Defendant on notice of such claim when he fails to assert it in his Amended Complaint.

claims adopted the allegations of all preceding claims without clearly describing their association with each specific offense. (Id. at 9.) Further, the Court pointed out that Plaintiff recounted years' worth of events without linking them to any specific claim. (Id.)

There are four types of shotgun pleadings: first, those "containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before" Weiland v. Palm Beach Cnty. Sheriff's Off., 792 F.3d 1313, 1321 (11th Cir. 2015). The second type is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." Id. at 1322. Third are those that do not separate each claim into a separate count. See id. at 1322-23. Fourth is the "relatively rare sin of asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts . . . or which of the defendants the claim is brought against." Id. at 1323. A pleading must only qualify as one of these four types to be an impermissible shotgun pleading.

Plaintiff argues he "more than satisfie[d] the pleading requirements" and that his Amended Complaint "in no way relies upon mere legal conclusions but contains a detailed factual account of Defendant['s] illegal practices." (Doc. 41, at 3.) While true that Plaintiff includes a detailed factual account, the facts he

the alleged March 2005 date. (See e.g. Doc. 35-1, at 155, 158, 161.) Therefore, the Court cannot accept Plaintiff's version of the facts in light of his own proffered evidence. Instead, the evidence shows that "Plaintiff continually pledged this property as security for the business loans to Sportsman's Link, Inc. through the last note he executed August 30, 2007." (Doc. 44, at 5.)

The Court further finds that Plaintiff's Amended Complaint continues to violate the above-described "sins," and is therefore an impermissible shotgun pleading. First, two of Plaintiff's causes of action explicitly incorporate all preceding paragraphs of the Amended Complaint. (See Am. Compl., at 17, 18.) This violates the first "sin." And second, despite the Court instructing Plaintiff to eliminate extraneous material, the Amended Complaint is still replete with conclusory, vague, and immaterial facts, violating the second "sin." As pointed out above, Plaintiff recounts transactions dating back to 2001 including various loans, renewals, payments, and actions; however he fails to clearly describe what happened in this case and the basis for each of his claims. For example, Plaintiff states he was not mentally capable to sign one of the loan renewals, yet brings a breach of contract claim presumably for breach of the same contract. (See id. at 9, 17.) Further, under his singular breach of contract claim, he mentions three different "notes," s

rambling 'factual background account' of various wrongs that he thinks he has experienced." (Doc. 44, at 1.) Further, it believes Plaintiff is simply trying to "indulge in a wide-ranging fishing expedition through discovery requests . . . all without any reason to believe that a tenable legal claim will miraculously arise from the results." (Id. at 2.) Defendant also addresses Plaintiff's mention of "unclean hands" and argues "[u]nclean hands is only appropriate as an equitable defense, which Plaintiff has no purpose to assert here because the Defendant has not filed counterclaims against Plaintiff." (Id. at 3.) Defendant also clarifies the underlying facts and characterizes the transactions and debts in a very different light than Plaintiff. (Id. at 3-10.) The Court is required to accept as true Plaintiff's version of the facts at the motion to dismiss stage unless the evidence on the record contradicts Plaintiff's assertions. See Hoefling v. City of Miami, 811 F.3d 1271, 1277 (11th Cir. 2016) ("A district court can generally consider exhibits attached to a complaint in ruling on a motion to dismiss, and if the allegations of the complaint about a particular exhibit conflict with the contents of the exhibit itself, the exhibit controls."). Plaintiff alleges after the original mortgage was paid in full by March 2005, "[n]o other legal mortgages were placed on the Goodale Property." (Am. Compl., at 2.) However, the exhibits attached to his Amended Complaint show the Goodale Property listed on several lines of credit issued after

upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion." Sarhan v. Miami Dade Coll., 800 F. App'x 769, 772 (11th Cir. 2020) (internal quotations and citation omitted). But, dismissal under Rule 41(b) is only appropriate where "there is a clear record of delay or willful contempt and a finding that lesser sanctions would not suffice." Goforth v. Owens, 766 F.2d 1533, 1535 (11th Cir. 1985) (internal quotations and citations omitted). The Eleventh Circuit has held that:

our case law "makes clear that dismissal of a complaint with prejudice [as a shotgun pleading] is warranted under certain circumstances." Jackson v. Bank of Am., N.A., 898 F.3d 1348, 1358 (11th Cir. 2018). One circumstance is where . . . the pleader fails to remedy the problems with the complaint after being given another chance . . . to do so. See id.

Tran v. City of Holmes Beach, 817 F. App'x 911, 915 (11th Cir 2020).

The Court finds that Plaintiff willfully disobeyed the Court's January 3, 2022 Order (Doc. 30) by re-filing his Amended Complaint replete with the same issues the Court instructed him to fix. When faced with a shotgun pleading, the Court is required to give the plaintiff a chance to replead a more definite statement before dismissing the case with prejudice, and that chance was already given. See Embree, 779 F. App'x at 662 (citing Vibe Micro 878 F.3d at 1296). Lesser sanctions would not suffice in this case because Plaintiff has replied his complaint and has still

it is impossible to know under which contract he is bringing a claim. (See id. at 17.) The Court is unable to decipher the basis of Plaintiff's three claims due to his failure to comply with Rules 8 and 10 and the Court's prior instructions.

By incorporating prior assertions and restating irrelevant and conclusory facts under these counts, Plaintiff requires the Court and Defendant to speculate how to properly apply the factual allegations to each alleged count. See Chudasama v. Mazda Motor Corp., 123 F.3d 1353, 1359 n.9 (11th Cir. 1997) (classifying complaint as a shotgun pleading because reader must speculate as to which factual allegations pertain to which count). "When plaintiffs indiscriminately incorporate assertions from one count to another, they run afoul of Rule 8(a)(2) by 'materially increas[ing] the burden of understanding the factual allegations underlying each count.'" Cummings v. Mitchell, No. 20-14784, 2022 WL 301697, at *3 (11th Cir. Feb. 2, 2022) (quoting Weiland, 792 F.3d at 1324). And, a district court has the "inherent authority to control its docket and, in some circumstances, dismiss pleadings that fail to conform with the Federal Rules of Civil Procedure." Id. at *2 (citing Weiland, 792 F.3d at 1320).

"On a motion by the defendant, a district court may dismiss a complaint for failure . . . to obey a court order or federal rule." Beckwith v. BellSouth Telecomm. Inc., 146 F. App'x 368, 372 (11th Cir. 2005) (citing FED. R. CIV. P. 41(b)). "Dismissal

ORDER ENTERED at Augusta, Georgia, this 10th day of May,
2022.

s/ _____

J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

failed to file a cohesive legal pleading that follows Rules 8(a)(2) and 10(b). Based on this, the Court finds Plaintiff's Amended Complaint (Doc. 35) is a "shotgun pleading" and GRANTS Defendant's motion to dismiss (Doc. 39). Plaintiff's Amended Complaint shall be DISMISSED WITH PREJUDICE.

2. Failure to State a Claim

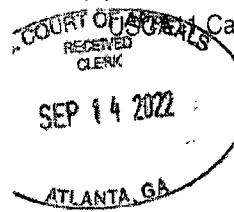
Having found Plaintiff's Amended Complaint to be an impermissible shotgun pleading and not in compliance with the Court's January 3, 2022 Order, the Court will not address Defendant's remaining arguments for dismissal. (See Doc. 39-1, at 6-20.)

B. Motion to Strike

Defendant also moves to strike paragraphs 11, 12, 15, 17, 34, 54, 55, a portion of paragraph 60, and a portion of paragraph 61 from Plaintiff's Amended Complaint. (Doc. 40.) Having dismissed Plaintiff's Amended Complaint as an impermissible shotgun pleading, Defendant's motion to strike is DENIED AS MOOT.

V. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that Defendant's motion to dismiss (Doc. 39) is GRANTED and Defendant's motion strike (Doc. 40) is DENIED AS MOOT. This matter is DISMISSED WITH PREJUDICE and the Clerk is DIRECTED to TERMINATE all pending motions and deadlines, if any, and CLOSE this case.



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ELEVENTH CIRCUIT COURT OF APPEALS

IN RE: Appeal Number 22-12037

SOHAIL M. ABDULLA APPELLANT

SOUTHERN BANK APPELLEE

APPEAL FROM A GRANTING OF A MOTION TO DISMISS

HONORABLE RANDALL J. HALL

APPELLANT'S BRIEF

RESPECTFULLY SUBMITTED BY:

SOHAIL M. ABDULLA

Pro Se Appellant

647 VINCENT AVE. NE

AIKEN, SC 29801

Phone: 202-603-5958

E-mail: smabox@live.com

APPENDIX E

APPEAL BRIEF OF PETITIONER TO THE ELEVENTH CIRCUIT COURT OF
APPEALS

(f)	J. Preston Conner	Board of Directors SFC
(g)	Scott M. Frierson	Board of Directors SFC
(h)	Dean J. Garritson	Board of Directors SFC
(i)	Steve H. Owings	Board of Directors SFC
(j)	Jesse A. Smith	Board of Directors SFC
(k)	Judge Randall J. Hall	District Court Judge below
(l)	Judge Brian K. Epps	Magistrate Judge below
(m)	Robert P. Mangum	Attorney for Appellee
(n)	Charles C. Stebbins, III	Attorney for Appellee
(o)	Mark L. Wilhelmi	Attorney for Appellee

35 APPEALS
REED LEWIS
214 2022

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ATLANTA, GA APPELLANT'S CERTIFICATE OF INTERESTED PERSONS

The undersigned, Pro Se Appellant, certifies that the following is a full and complete list of the parties in this action:

	<u>Name</u>	<u>Identification and Relationship</u>
(a)	Sohail M. Abdulla	Appellant
(b)	Southern Bank	Appellee

The undersigned further certifies that the following is a full and complete list of officers, directors, or trustees of the above-identified parties:

	<u>Name</u>	<u>Identification and Relationship</u>
(a)	Jamin M. Hujik	Chief Executive Officer
(b)	Scott M. Frierson	President
(c)	Frank Townsend	Chief Lending Officer

After extensive search, Pro Se Appellant could not locate the names of the Board of Directors for Appellee Southern Bank.

The undersigned further certifies that the following is a full and complete list of other person, firms, partnerships, corporations, or organizations that have a financial interest in, or another interest which could be substantially affected by the outcome of this case (including a relationship as a parent or holding company or similar relationship):

	<u>Name</u>	<u>Identification and Relationship</u>
(a)	Southern Financial Corporation ("SFC")	Holding Company for Appellee
(b)	Jamin M. Hujik	Board of Directors SFC
(c)	F. Andrew Mitchell	Board of Directors SFC
(d)	Scott Brandon	Board of Directors SFC

STATEMENT REGARDING ORAL ARGUMENT

Appellant does not believe that oral argument will assist the Court in reviewing the ruling of the lower court.

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**STATEMENT OF SUBJECT MATTER AND APPELLATE
JURISDICTION**

This case was filed in the United States District Court for the Southern District of Georgia with the District Court having jurisdiction based on 28 U.S.C. Section 1332. This Court has jurisdiction pursuant to 28 U.S.C. Section 1291 as it is an appeal from the final order and judgment of the District Court that disposed of all of Plaintiff/Appellant's claims. The lower court issued its final order on May 10, 2022 and Appellant filed and served his Notice of Appeal on June 9, 2022.

STATEMENT OF THE ISSUES

DID THE LOWER COURT ERR IN FINDING THAT APPELLANT'S AMENDED COMPLAINT WAS A SHOTGUN COMPLAINT

DID THE LOWER COURT ERR IN FINDING THAT APPELLANT HAD DISOBeyed THE DISTRICT COURT'S ORDER

DID THE LOWER COURT ERR IN DISMISSING WITH PREJUDICE APPELLANT'S STATE COURT CLAIMS

STATEMENT OF THE CASE

Course of Proceedings and Disposition in the Court Below:

The Appellant filed suit on June 23, 2021 in the Southern District of Georgia. The District Court ruled on January 3, 2022 that the Appellant's complaint was a shotgun complaint, was difficult to understand, and that Appellant would get one opportunity to file a recast Amended Complaint. The Appellant filed an Amended Complaint on January 18, 2022. On May 10, 2022 the District Court ruled that the Appellant had disobeyed the Court's order dated January 3, 2022 and dismissed all Counts with prejudice and closed the case.

Statement of Facts:

The Appellant had a long standing banking relationship with the Appellee going back to the late 1980's. The Appellant did numerous banking transactions over a long period of years until 2007 when Appellant's corporation, Sportsman's Link, was advised by its attorneys to enter bankruptcy to fend off an eviction from the landlord in which the business was located. This eviction was not based on non-payment of rent. The landlord was attempting to evict Sportsman's Link in order to expand the Sam's Club located two doors down.

The Appellee used this situation to take Appellant's properties through a series of wrongful and illegal means. One of these was to attempt to revive a dead note and claim to use it to foreclose on certain property which violated its security deed. The Appellee made substantial monetary profit from these wrongful actions. The Appellant is giving only a short background and a portion of the material facts since the Amended Complaint speaks for itself.

Standard of Review: The Court will review this decision de novo.

SUMMARY OF ARGUMENT

The Appellant's case was dismissed on May 5, 2022 (DOC. 46) with prejudice by the lower court for the sole reason of disobeying the court's previous order dated January 3, 2022 (DOC. 30) (hereafter "Original Order"). In this previous order, the district court ruled that the Appellant's original complaint was a shotgun complaint, that in essence the complaint was difficult to understand because of multiple transactions over a period of years, that the Appellee/Defendant was put in a difficult position to answer the charges made in the original complaint, and that only three of the counts were to remain with three being dismissed.

The Appellant filed an Amended Complaint (hereafter "Amended Complaint") on January 18, 2022 (DOC. 35) in which he abided by the District Court's Original Order. The Appellant removed the dismissed counts, made as plain a statement as he could with all paragraphs being relevant to the Counts of Breach of Contract and Accounting, incorporated the paragraphs properly because they were relevant to these Counts, reduced the number of Defendants to only one, and (before the filing of the Amended Complaint) filed briefs in the Court which clearly explained the nature of the charges being made against the Appellee. The Appellant acted intentionally to obey the Court's order.

Further, the District Court should not have dismissed the state law claims with prejudice. The Appellant obeyed the District Court's Original Order, and the district court did not rule on Failure To State A Claim Upon Which Relief Can Be Granted. All of the Counts in the instant case are state law claims which should not have been dismissed at all and certainly not with prejudice.

ARGUMENT AND CITATION OF AUTHORITY

The District Court's entire ruling is that the Appellant disobeyed the court's order dated January 3, 2022 (hereafter "Original Order") See DOC. 30. The Appellant will show that the lower court abused its discretion, and that the Amended Complaint falls within the boundaries set forth by this honorable Court and should not have been dismissed.

The District Court, in its Original Order, ruled that a. the Appellant's original complaint was a shotgun complaint and that the Appellee/Defendant was put in a difficult position to answer the charges made in the original complaint b. that in essence the complaint was difficult to understand because of multiple transactions over a period of years c. that only three of the counts were to remain with three being dismissed.

a. As to the Amended Complaint being a shotgun complaint

This honorable Court has defined what a shotgun complaint is: "Though the groupings cannot be too finely drawn, we have identified four rough types or categories of shotgun pleadings. The most common type — by a long shot — is a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint.¹¹ The next most common type, at least as far as our published opinions on the subject reflect, is a complaint that does not commit the mortal sin of re-alleging all preceding counts but is guilty of the venial sin of being replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action.¹² The third type of shotgun pleading is one that commits the sin of not separating into a different count each cause of action or claim for relief.¹³ Fourth, and finally, there is the relatively rare sin of asserting multiple claims against multiple defendants without specifying which defendant(s) are responsible for which acts or omissions, or which of the defendant(s) the claim is brought against.¹⁴ The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the

claims against them and the groupids upon which each claim rests.” *Barmapov v. Anniel*, ___ F.3d ___, 2021 WL 359632 (11th Cir. 2021)

The Appellant recognizes this honorable Court’s standard for a shotgun complaint and would point out that his Amended Complaint (DOC. 35) does not commit the sins listed.

First, the Appellant did not incorporate all of the paragraphs in each Count of the Amended Complaint, only the first two Counts and not the last Count. The Appellant incorporated where he did because all of the preceding paragraphs relate to the first two Counts of Breach of Contract and Accounting. The Accounting is directly related to the Breach of Contract since Plaintiff alleges that he was not given credit for certain monies received by the Appellee thereby breaching the security deeds. The Appellant only had three Counts; and did not incorporate paragraphs with the last Count. The Appellant only incorporated two Counts with the preceding paragraphs being related to those Counts, which cannot make it a scattershot complaint.

Second, Appellant believes that all of the paragraphs in the Amended Complaint are directly relevant and material to the Counts listed and are not “conclusory, vague, or immaterial.” The Appellant made as short and plain a statement as he could make given the underlying facts and his effort to help the Court and the Defendant understand the Counts alleged.

For example, the bankruptcy issues, among all the others, are directly relevant and are linked directly to Counts 1 and 2. Appellee itself states that it used the August 30, 2007 Sportsman’s Link loan to foreclose on the Riverbend Property, (See DOC. 13 pp. 4-5 Supplemental Affidavit) which is not true and exhibits a breach of contract as will be dealt with below.

Also, the charge of Accounting relates directly to all the transactions and how much money was taken in by the Appellee and whether credit was given to the Appellant. This was recognized by the Appellee. (DOC. 13 pp. 7-8). A true accounting would show the breaches of the security deeds.

The Amended Complaint clearly laid out the elements of a breach of contract and the Appellee had notice and understood exactly what was being alleged against them which will be proven below.

Third, the Amended Complaint separates the Counts correctly and does not commit this sin.

Fourth, there is only one Defendant in the Amended Complaint, so this sin could not have been committed.

b. As to the Amended Complaint Being Difficult to Understand

The Amended Complaint is clear and understandable on its own, and is especially so in light of the additional filings on the record.

The Appellee was given adequate notice of the claims against it and the factual allegations that support those claims. A dismissal under Rules 8(a)(2) and 10(b) is appropriate where "it is virtually impossible to know which allegations of fact are intended to support which claim(s) for relief." Anderson, 77 F.3d at 366 (emphasis added). No such virtual impossibility exists in this case.

The Defendant clearly understood the Counts alleged against them as laid out in the Amended Complaint. The clear evidence of this is the fact that the Appellee's attorney made the extraordinary move to file a sworn affidavit (hereafter "Affidavit" (DOC. 13) on behalf of his client to address the Counts in the Amended Complaint. This same attorney represented the Appellee in every single transaction contemplated in the Amended Complaint, including the bankruptcy. His knowledge of the transactions is more than intimate. Appellee, in its Affidavit dealt directly with the charges of Breach of Contract and Accounting; obviously comfortable enough in its understanding of the relevant and material issues to make sworn statements under penalty of perjury regarding them. Further, the Appellee, in multiple other filings in this case, addressed the charges alleged against them. (DOC. 39 and 44)

The Appellant was forced to respond to the Affidavit via a Surreply Brief (DOC

Affidavit. In Paragraph 61 of the Amended Complaint, the Appellant cites this document which incorporates it into the Amended Complaint.

The Affidavit and the Surreply Brief undermine any argument of the Appellee that a. they did not understand the Counts against them or b. that these Counts do not have validity. (Doc. No. 35, Exhibit 14, pp. 12)

The lower court seemed to overlook the Affidavit and all the other additional filings of Appellant; including Appellant's Surreply Brief, which gave crystal clarity to Appellant's case.

In *Johnson, v. City of Shelby*, 135 S. Ct. 346 (2014), the Supreme Court stated, the basic objective of the Federal Rules of Civil Procedure is to "is to avoid civil cases turning on technicalities" and all a complaint must do is state, "events that, [as] alleged, entitled them to damages" and once defendants are informed of "the factual basis for [a] complaint, [a plaintiff] is required to do no more to stave off threshold dismissal". *Id.* at 347. In *Skinner v. Switzer*, 562 U.S. 521 (2011) the Supreme Court acknowledged, a complaint need not be "a model of the careful drafter's art...[nor] pin plaintiffs claim for relief to a precise legal theory" to meet the pleading requirements of Fed. R. Civ. P. 8(a)(2). *Id.* at 530.

There are no mortal or venial sins committed by the Appellant in the Amended Complaint since it clearly enabled the Appellee to answer the allegations, did not violate the Rules, and it is not a shotgun complaint according to this honorable Court's directives. The Appellant's Amended Complaint speaks for itself and meets the minimum requirements to survive a dismissal.

c. As to three of the counts being dismissed

The Appellant properly deleted the Counts ordered by the District Court to be dismissed and did not include them in his Amended Complaint.

As a side note, nowhere in its Dismissal Order does the District Court note that the Appellant is pro se.

The Underlying Claims

Although the District Court did not rule directly on the Counts alleged in the Amended Complaint, the Appellant will address them since the District Court chose to touch on them in its Dismissal Order. The Appellant laid out a clear and understandable case for Breach of Contract and for an Accounting. The Accounting is inextricably tied to the Breach of Contract since credits were not applied to the Appellant for monies received, thereby breaching the security deeds. If the Court must accept all of the allegations of the Amended Complaint as true, then the Appellant has made a plausible argument for each of these Counts.

The Appellant's fundamental argument with regards to the property located at 112 Riverbend Drive (hereafter "Goodale Property") is that its foreclosure was based on the June 29, 2001 Note; which on the face of it expired and was dead on or before June 29, 2002. In 2007, the Appellee had the Appellant sign a modification of the (now dead) June 29, 2001 Note (hereafter Fraudulent Modification) which purportedly extended the expiration date from 2002 to 2008 and added over \$642,583.46 to the original face amount on the dead June 29, 2001 Note. [Plus, the Modification was not used to foreclose on the Riverbend Property]. You cannot modify a dead note. This is a modification and not a renewal. Further the District Court erred when it stated regarding the Appellant that "He references many renewals and modifications to his loans" (See Doc. 46 Page 3). The Amended Complaint only refers to one modification; because there was only one modification. This is an important error because the Fraudulent Modification was a unique, one time only document the Appellee used in order to attempt to revive a dead note and make it easier for them to seize Appellant's property. There was no valid mortgage on the Goodale Property and the security deed was breached.

The Appellee swore to the Lower Court that it had used the August 30, 2007 business loan to foreclose on the Goodale Property. The Appellee was required to sue the Appellant for a deficiency in order to obtain the Goodale Property, which it did not do. As further evidence of the deceit, the Appellee bought the Goodale Property back in for only \$125,000.00 in which \$843,455.46 was supposedly owed on it. This is with the Richmond County Superior Court knowing nothing about a

business loan and only knowing of the (now dead) June 29, 2001 Note with a face amount of \$200,872.00.

In the Deed Under Power the Appellee filed on November 4th, 2008, which it used to seize the Goodale Property, the Appellee states to the Clerk of Superior Court of Richmond County: "Whereas, heretofore on June 29, 2001, Sohail M. Abdulla, did execute and deliver to Southern Bank, a certain Deed to Secure Debt to the hereinafter described land to secure the payment of a certain Note, dated June 29, 2001, all as shown by the record of said Deed to Secure Debt in the Office of the Clerk of Superior Court of Richmond County, Georgia, in Deed Book 738, Page 2048-2058: and the Parties of the First Part defaulted in the payments due and Southern Bank has declared the entire indebtedness due and payable" (See Doc. No. 35-1 Exhibit 12 p. 143)

This paragraph in the Deed Under Power makes it crystal clear that the Appellee used only the dead June 29, 2001 note to seize the Goodale Property. This clearly contradicts their sworn statements to the Court and their statements to the Appellant and the Court in the limited discovery granted by the Court. When given limited discovery by the lower court, the Appellant made certain requests for documents to the Appellee. (Paragraph 30, Doc. 35, Doc. 35-1 Exhibit 12, pp. 133) The first discovery request made by the Appellant was for:

1. A copy of the Default Notice/Letter sent out prior to the foreclosure of 112 Goodale Drive Augusta, GA 30901.

The Appellee responded as follows: Attached is a Default Letter dated September 19, 2008, Loan No. 413519600, as it pertains to 112 Riverbend Drive, Augusta, Richmond County, GA 30901. Also included is the letter to the Augusta Chronicle along with the Notice of Sale Under Power. These notices were sent via Certified Mail. Also enclosed is copy of the front of the envelope which was returned by the U.S. Post Office marked "Return to Sender - Unclaimed - Unable to Forward". (See Doc. No. 35-1 Exhibit 11, pp. 135-141)

The abovementioned Notice of Sale Under Power sent to the Augusta Chronicle states that the original principal amount was \$200,872.00. Loan Number 413519600, which is the August 30, 2007 business loan, never had an original principal amount of \$200,872; that is the original principal amount of the dead, expired, and paid off June 29, 2001 mortgage. The Appellee created a fraudulent modification to give an appearance of legitimacy since there was no extant mortgage on the Goodale Property. The Appellee swore to the lower court in the Affidavit that Loan Number 413519600 was used to foreclose, which is clearly false. (Doc. 35-1 Exhibit 14 Affidavit, Page 153) (Of further interest, in the default letter the Appellee stated the balance owed was \$888,857.00 and in the Sworn Affidavit Mr. Wilhelmi states Approximately loan balance \$846,940.00 See Doc. 35-1 Exhibit 11, Goodale Default Letter Page 136)

Put simply, the Appellee modified a dead note, and then used the dead note to foreclose, and via its counsel lied about it to the District Court in a sworn affidavit. Further, the Appellant did not receive funds or credit for this sale. The security deed was breached by

- a. Using illegal means to enforce the security deed
- b. Not giving Appellant credit for the sale

The Appellee simply used clever language to the Court to cloud this clear issue and the Appellant, in his Surreply Brief, (Doc. 19) expounded on this thoroughly.

Also, the Court below made a fundamental error in its Dismissal Order stating that the Appellant's own statement is contradicted by its own documents. The Court attempted to show that the Appellant was misleading the Court by stating that "no other legal mortgages were placed on the Property". The Court used the ensuing business loans to Appellant's corporation as proof that Appellant was wrong and that his own documents spoke against him. (See Doc. 46 pp. 11-12)

The fact is that no other legal mortgages were placed on the Property. A mortgage by definition is a "loan for the purchase of real property, secured by a lien on the property." The subsequent business loans that the Court cites are not mortgages. This is particularly relevant to the Appellant's Count for breach of contract. First,

~~the Appellee used the business loans in order to attach the real estate to~~

collateral for the business loan. Second, the Appellee was required to sue the Appellant to obtain the Goodale Property to satisfy any deficiency; which the Appellee never did because it was easier to pretend they had a mortgage on the Goodale Property; and there was no deficiency to boot. The August 30, 2007 business loan was not used to foreclose on the Goodale Property according to the Appellee's own statement to the Richmond County Superior Court. The Appellee purportedly used the dead June 29, 2001 Note which actually had been a mortgage at one time. The security deed was clearly breached.

Also, in his Surreply Brief, the Appellant showed the Court how the Appellee had given contradicting statements to multiple courts. This includes telling the Richmond County Superior Court that it used the June 29, 2001 Note to foreclose on the Goodale Property and not the August 30, 2007 Sportsman's Link loan which it told the district court it used. (See Doc. 19 Pages 4-5)

Furthermore, the Affidavit filed by the Appellee should have put the final nail in any credibility that it may have had (DOC. 13). The Appellant in its Surreply Brief (DOC. 19) exhaustively detailed the multiple clearly false statements made by the Appellee on material issues. Including, but not limited to: Swearing that the Appellee had used the August 30, 2007 Sportsman's Link loan to foreclose on the Goodale Property (DOC. 13). The dead June 29, 2001 mortgage is what the Appellee claimed to the Richmond County Georgia Superior Court it had used to foreclose.

- a. Swearing that the Appellee had given a full and truthful accounting of the monies involved in the various transactions (Doc. No. 13 pp. 4-8). Almost all of the amounts given are incorrect and contradict the documented record along with overlooking the obviously fraudulent write offs. Doc. No. 19 pp. 7-11)
- b. Swearing that the Appellee had a net loss of \$141,000. This is not only an untrue statement in and of itself, it directly contradicts previous sworn testimony of the Appellee's 30(b)6 witness Ralph Dickey who swore that the actual loss was over \$363,000. Doc. 35-1, Exhibit 29, Paragraph 7, pp 246-247. Exhibit 4, pp. 32-33, Deposition Page 45, Line 1 through Page 47, Line 12) And also Appellee swore that "This figure does not include accrued

interest, all legal fees associated with bankruptcy and foreclosures, commissions, auction costs, etc". (Doc. No. 13 p. 5 and 8).

- c. Swearing that the Appellee had used the August 30, 2007 Sportsman's Link loan to foreclose on the Riverbend Property. The dead June 29, 2001 mortgage is what the Appellee claimed to the Richmond County Georgia Superior Court it had used to foreclose. (Doc. No. 13 pp. 5 and 8)
- d. Inserting a loan from someone other than the Appellant to mislead the court and to skew the numbers in their favor. (Doc. 19 Page 9)

Further, the Appellee's counsel, Mark Wilhelm, who signed off on the Affidavit and the Appellee's previous (30) b(6) witness contradict the Affidavit.

In the deposition taken on March 15, 2018, several important statements were made.

- 1. On Page 34 Lines 1-9 of the deposition, the Appellee's 30(b)6 witness Ralph Dickey testifies that you have to have a mortgage on real estate to secure it in the business loan. Appellee has shown that there was no valid mortgage on the Goodale Property. (See Doc. No. 35-1 Exhibit 4, p. 30)
- 2. On Page 40 Lines 18-25 of the deposition, Appellee's attorney, Mark Wilhelm contradicts his own affidavit by testifies that there was a valid mortgage on the Goodale Property. He testifies that the Appellee rolled the fraudulent modification into the August 30, 2007 business loan and that the original principal amount of the June 29, 2001 loan was never paid off. This is patently false and Appellant has proven it. (See Doc. No. 35-1 Exhibit 4, p. 31)
- 3. On Page 60 line 16 through Page 61 Line 3 of the deposition, Mark Wilhelm once again testifies that the fraudulent modification is somehow valid, that there is a mortgage on the Goodale Property, and that it was included in the August 30, 2007 business loan. This is clearly false and contradicts his Affidavit in which he stated he used the August 30, 2007 business loan in order to foreclose on the Goodale Property. (See Doc. No. 35-1 Exhibit 4, pp. 36-37)

In Appellant's Surreply Brief, (DOC. 19) which was filed before the Amended Complaint was filed, the lower court was given ample explanations of the issues before the court prior to Appellant filing the Amended Complaint. Further, because of the Appellee's filing of an affidavit addressing the charges and of Appellant's filing that addressed and explained in detail the charges, the Appellant presumed that both the lower court and the Appellee should have no trouble understanding the Counts laid out in the Amended Complaint.

Another fundamental issue that was completely overlooked by the lower court is the write offs that the Appellee did. For the Columbia County Note in the face amount of \$363,000, the Appellee bought it back in for \$350,000 and wrote off \$363,000 which was the entire amount of the Columbia County Note. This is blatant and clear evidence of the Appellee's wrongdoing with regards to Appellant's account balance and monies owed. These write offs also breach all of the security deeds. (Doc. 19, pp, 7-8 a-f, p-10 Doc. No. 35-1 Exhibit 29, Paragraph 7, pp 246-247. Exhibit 22, p. 249)

The Appellee also wrote off \$35,253.00 on the Burke County Note while at the same time receiving \$147,750.00 . This is *prima facie* evidence of Appellant's funds being mishandled by the Appellee. (Doc. No. 35-1 Exhibit 22, p. 249)

This honorable Court should also be made aware of the untruths in the Appellee's Supplemental Brief in Support of Motion to Dismiss (hereafter "Final Brief"). filed by the Appellee. The Appellee used its Final Brief in an attempt to fully discredit the Appellant and mislead the District Court.

The Appellee states "Also, for clarification, on page 9 of Plaintiff's Response to Motion to Dismiss (Dkt. No. 41), Plaintiff alleges Defendant filed a Fraudulent Claim (Proof of Claim) against Plaintiff pertaining to 3.68 acres located in Columbia County, Georgia. Dkt. No. 7. This is untrue. This property was released to Plaintiff on March 27, 2005 as so indicated on the Note dated June 14, 2005. Dkt. No. 35, Exhibit 14 (Dkt. No. 35-1, p. 158-160). The loan dated July 27, 2006 only lists the Goodale Landing real estate. Dkt. No. 35, Exhibit 14 (Dkt. No. 35-1, p. 161-163). The backhoe, 2003 Hummer and furniture at 1420 Washington Road, Augusta, GA were also previously released and not included in the Proof of

dated March 22, 2007. Dkt. No. 7. Plaintiff makes false allegations that contradict the exhibits to his own Amended Complaint, yet remarkably claims "unclean hands" by Defendant. " (See Doc. 44 Page 7)

The bankruptcy claim clearly contradicts this:

1. Doc. 35-1 Page 94,95,97, 2003 Hummer.
2. Doc. 35-1 Page 102,103 Backhoe.
3. Doc. 35-1 Page 102,103, Columbia County 31-Acre
4. Doc. 35-1 Page 103, 3.68 Target Columbia County
5. Doc. 35-1 Page 104, 1420 Washington Road, should be 4020

Another false and misleading argument used in its Final Brief, the Appellee argued that the Goodale Security Deed gave the Appellee power to foreclose, stating "Dkt. No. 35, Exhibit 2. The security deed, on page 2, states it was security for "the repayment of the Loan, and all renewals, extensions, and modifications of the Note." Dkt. No. 35, Exhibit 2 (emphasis added). Between 2001 and 2004, this loan was renewed, modified and extended five (5) additional times. Each renewal recited the Goodale Property as security." See Doc. 44 Page 4

This is false because there was not a valid mortgage on the Goodale Property.

There were no extant renewals of any kind nor any valid, legal modifications to the Original Note. There was no mortgage on the Goodale Property. The Appellee had to sue in order to obtain any deficiencies. By making this argument, the Appellee is simply pointing to one of the clauses of Goodale Security Deed in which it breached.

Another issue of importance is that the Appellee in its Final Brief on March 1, 2022, finally admitted that that Third Party Agreement attached to the August 30, 2007 Sportsman's Link note specifically stated that the Appellant was not personally liable for the debt. The Appellee had to sue to obtain the Riverbend Property. (See Doc. No. 44 p. 4)

As to Count Three in the Amended Complaint, the Appellant has shown that the Appellee did in fact claim to drill the safety deposit box in 2017. (See Doc. No. 35-1 Deposition of Ralph Dickey pp. See Doc. 35-1 Exhibit 4, Pages 26-27
~~Memorandum Dated 10/1/18, Page 2 through Page 91, I and 101. This means that the~~

District Court erred in stating that the Appellee was out of the country and sick at the time of drilling the box in 2017. No one disputes that the Appellant was in the country and well in 2017. Also, the Appellee knew that Appellant was represented by counsel at the time, that the Appellee knew who the counsel was, and how to contact him. Notice was only given after the fact and conveniently the records card of the Appellee for this box went missing. See (Doc. No. 35-1 Letter of Mark Wilhelmi p. See Doc. 35-1 Exhibit 29 Wilhelmi letter, August 3, 2017. Page 272) The Appellant has made a plausible case for the violation of this Count.

Also, the lower court did not rule on the issue of Failure to State a Claim Upon Which Relief Can Be Granted.

Dismissal with Prejudice Was Improper

Not only should the Amended Complaint have survived a dismissal as laid out above, but it certainly should not have warranted the extreme sanction of being dismissed with prejudice. This honorable Court has spoken on this issue: "*a dismissal with prejudice, whether on motion or sua sponte, is an extreme sanction that may be properly imposed only when: '(1) a party engages in a clear pattern of delay or willful contempt (contumacious conduct); and (2) the district court specifically finds that lesser sanctions would not suffice.'*" *Id.* at 1337-38 (emphasis omitted) (quoting *World Thrust Films, Inc. v. Int'l Family Entm't, Inc.*, 41 F.3d 1454, 1456 (11th Cir. 1995)).

The Appellant never engaged in a pattern of delay or willful contempt with regards to the Court. First, Appellant was only given one chance to amend his complaint so there could not possibly be a continuous pattern of contempt. Secondly, the Appellee clearly acted to obey the Court's order by dismissing the Federal Counts, dismissing one of the Defendants, and not confusing the Defendants in its Amended Complaint since there is now only one. Further, Appellant omitted certain paragraphs and edited the Amended Complaint in a sincere effort to obey the Court's order. Appellant also firmly believes that all of the paragraphs contained in the Amended Complaint are relevant and material.

Additionally, the Court did not address the issue of Failure to State a Claim Upon Which Relief Can Be Granted nor did it exercise supplemental jurisdiction over the

state law causes of action, which are, in the normal course of proceeding, dismissed without prejudice.

In Vibe Micro, Inc. v. Shabanets, 878 F.3d 1291, 1295 (11th Cir. 2018), this Court reversed the lower Court's ruling on dismissal with prejudice stating that: "if the district court instead chooses to dismiss the state law claims, it usually should do so without prejudice as to refiling in state court. Crosby v. Paulk, 187 F.3d 1339, 1352 (11th Cir. 1999). We find that to be particularly the case where, as here, the dismissal occurs without any analysis of the merits of the state claims. The district court dismissed the entire SAC with prejudice on non-merits Rule 8 grounds. However, to whatever extent that the SAC includes state law claims, the dismissal should have been without prejudice as to refiling in state court."

The District Court made no specific ruling on the merits of the state law claims, and these should not have been dismissed with prejudice.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with type-volume limitation set forth in FRAP 32(a)(7)B because it contains 5971 words.
2. This brief complies with the typeface requirements of FRAP 32(a)(6) because it was created in a proportionally spaced typeface using Microsoft Word in 14 pt Times New Roman font.

On September 12, 2022

s/ _____

Sehan M. Abdulla, Pro Se Appellant

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CONCLUSION

The lower Court abused its discretion in its finding that Appellant's Amended Complaint was a shotgun complaint, that Appellant violated the Court's order, and that the charges should be dismissed with prejudice. The Appellant respectfully asks that this honorable Court reverse the ruling of the District Court and the Appellant be allowed to have his case proceed forward.

On September 12, 2022

s/ _____

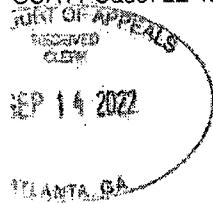
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CERTIFICATE OF SERVICE

I hereby certify that a copy of Appellant's Brief was served on the parties below through the U.S. Mail with sufficient postage affixed, to the following addresses:

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~~Mark L. Wilhelm~~

~~Wilhelmi Law Firm~~

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~~Augusta, GA 30909~~

On September 12, 2022

s/ _____

SOHAIL M. ABDULLA

Pro Se Appellant

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Attn: Ms. Joanne Yo
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APPENDIX F

INITIAL RULING OF THE ELEVENTH CIRCUIT COURT OF APPEALS

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-12037

Non-Argument Calendar

SOHAIL M. ABDULLA,

Plaintiff-Appellant,

versus

SOUTHERN BANK,

Defendant-Appellee,

SARDIS BANKSHARES, INC.,

Defendant.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 1:21-cv-00099-JRH-BKE

Before WILSON, JORDAN, and BRANCH, Circuit Judges.

PER CURIAM:

Sohail Abdulla appeals the district court's order granting Southern Bank's motion to dismiss his pro se amended complaint, which raised breach-of-contract, accounting, and illegal-entry-into-a-safety-deposit-box claims. On appeal, he argues the district court erred by dismissing his complaint. After careful review, we affirm.¹

I.

On June 23, 2021, Abdulla filed his initial complaint against Southern Bank and its former holding company, Sardis Bankshares, Inc., alleging violations of several federal and state laws. Southern Bank and Sardis moved for a more definite statement and to dismiss for numerous reasons, including failure to state a claim. The parties stipulated a dismissal of Sardis from the lawsuit. On January 3, 2022, the district court granted the motion to dismiss as to the federal law claims for failure to state a claim, determining those statutes lacked a private cause of action. The district court then

¹ In its brief on appeal, Southern Bank asks us to sanction Abdulla pursuant to our Local Rule 25-6(a)(1) for arguing on appeal that Southern Bank lied in an affidavit below. We conclude that sanctions are not appropriate here.

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noted that the remainder of Abdulla's initial complaint was a shotgun pleading and gave him an opportunity to amend. The district court explained that Abdulla had to set forth each of his claims as separate claims, clearly allege the appropriate facts under each of his claims, state each claim plainly and succinctly without conclusory allegations, and eliminate extraneous material.

On January 18, 2022, Abdulla filed his amended complaint, alleging diversity jurisdiction over his state law claims. Abdulla marshaled three counts: (1) breach of contract, (2) accounting, and (3) illegal entry into a safety deposit box. His breach-of-contract and accounting claims contained very little factual matter and conclusory allegations. These two counts also incorporated his previous sixty factual allegations, discussing various properties and the bank notes attached to each property and other actions allegedly taken by Southern Bank. The accounting claim also incorporated the allegations listed in his breach-of-contract claim. His third claim—illegal entry into a safety deposit box—contains only two paragraphs, one of which contains multiple allegations ranging from specific-and-detailed to conclusory. Abdulla also attached over 270 pages of exhibits. Southern Bank moved to dismiss for failure to state a claim or failure to comply with the Federal Rules of Civil Procedure and the court's prior order.

On May 10, 2022, the district court granted Southern Bank's motion to dismiss, finding Abdulla's amended complaint to be a shotgun pleading because (1) two of his claims incorporated all preceding paragraphs; (2) the amended complaint contained

“conclusory, vague, and immaterial facts”; and (3) he failed to clearly describe the basis for each of his claims, specifically noting that because he referenced three different notes, it was hard to discern what basis upon which his breach of contract claim rested. The district court also found that Abdulla willfully disobeyed its prior order by filing the amended complaint without correcting identified issues and that, for the above reasons, dismissal with prejudice was an appropriate remedy. Abdulla timely appealed.

II.

Abdulla argues that the district court erred in dismissing his amended complaint for three reasons. First, he argues the district court erred in determining that his amended complaint was a shotgun pleading. Second, the district court erred in finding that he willfully disobeyed the court’s prior order. Last, the district court erred in dismissing his state law claims with prejudice.

First, we review a district court’s dismissal of a complaint as a shotgun pleading for abuse of discretion. *Barmapov v. Amuial*, 986 F.3d 1321, 1324 (11th Cir. 2021). A complaint must contain “a short and plain statement of the claim” showing that the plaintiff is entitled to relief. Fed. R. Civ. P. 8(a)(2). Further, claims should be stated “in numbered paragraphs, each limited as far as practicable to a single set of circumstances.” Fed. R. Civ. P. 10(b).

Shotgun pleadings include complaints that: (1) contain “multiple counts where each count adopts the allegations of all preceding counts”; (2) are “replete with conclusory, vague, and

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immaterial facts not obviously connected to any particular cause of action”; (3) do not separate each cause of action or claim for relief into separate counts; or (4) assert “multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions.” *Weiland v. Palm Beach Cnty. Sheriff’s Off.*, 792 F.3d 1313, 1321–23 (11th Cir. 2015). All of these types of shotgun pleadings are characterized by their failure “to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.” *Id.* at 1323.

Here, the district court did not abuse its discretion in dismissing Abdulla’s amended complaint as a shotgun pleading. Abdulla’s amended complaint fits into two of the categories enumerated above. First, Abdulla incorporated his first count into his second count. Although we recognize that this may not be the most egregious manifestation of a shotgun pleading, our case law states that a complaint with many counts that incorporate all preceding counts is a shotgun complaint. *See Ambrosia Coal & Constr. Co. v. Morales*, 368 F.3d 1320, 1330–31 n.22 (11th Cir. 2004). Second, Abdulla’s amended complaint contains numerous conclusory, vague, and immaterial facts. For example, Abdulla discusses bids he made on foreclosed properties and the sale of those properties, including financing and down-payment information. He also includes allegations about advice counsel allegedly gave to Southern Bank. Further, Abdulla’s breach-of-contract claim identifies breaches of multiple contracts in one breach of contract claim. While we recognize that Abdulla’s amended complaint is not the

most egregious shotgun pleading, it is nonetheless a shotgun pleading, and our review is confined to searching for an abuse of discretion.

Thus, we conclude that the district court did not abuse its discretion by dismissing with prejudice Abdulla's amended complaint as a shotgun pleading.² Having made this determination, we decline to further decide whether the court abused its discretion by dismissing Abdulla's amended complaint with prejudice for violating its prior order.

Abdulla relied on our case in *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291 (11th Cir. 2018) to argue that the district court should not have dismissed his state law claims—what amounted to, after the dismissal of his federal claims, his entire amended complaint. *Vibe Micro* is distinguishable from the case we face here, however. In *Vibe Micro*, we concluded that when a district court dismisses an entire action that includes pendant state claims, it should ordinarily dismiss the pendant state claims without prejudice to that they may be refiled in the appropriate state court. *Id.* at 1296–97.

² It is true that “while this circuit’s shotgun-pleading rule applies to everyone, we ordinarily give pro se litigants more leeway when it comes to drafting.” *Pinson v. JPMorgan Chase Bank, Nat'l Ass’n*, 942 F.3d 1200, 1208 (11th Cir. 2019). However, like other litigants, if a pro se litigant files an amended complaint without substantially fixing the identified deficiencies in the original complaint, dismissal with prejudice may be warranted. See *Jackson v. Bank of Am., N.A.*, 898 F.3d 1348, 1358–59 (11th Cir. 2018). Here, the district court gave Abdulla another opportunity, and he failed to fix the deficiencies.

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Here, Abdulla's case is distinguishable. Abdulla's amended complaint contained no federal law claims, and he asserted diversity jurisdiction as the basis for his claims being in federal court. His state law claims were not based on supplemental jurisdiction like in *Vibe Micro*.

Thus, we affirm the district court's dismissal of Abdulla's amended complaint.

AFFIRMED.

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-12037

SOHAIL M. ABDULLA,

Plaintiff-Appellant,

versus

SOUTHERN BANK,

Defendant-Appellee,

SARDIS BANKSHARES, INC.,

Defendant.

Appeal from the United States District Court
for the Southern District of Georgia

D.C. Docket No. 1:21-cv-00099-JRH-BKE

Before WILSON, JORDAN, and BRANCH, Circuit Judges.

BY THE COURT:

Appellant's motion to recall the mandate and for leave to file his "Motion for Reconsideration" as an untimely petition for rehearing, as construed from his "Motion Reinstate and to Stay Mandate," is DENIED.

Additional material
from this filing is
available in the
Clerk's Office.