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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Master in Equity

Cynthia Graham Howe Master in Equity

Case No 09 CP 26 3470

RECEIVED
JUL 08 2011
Court of Appeals

Robert W Oskin Glenn Small
and Freddie Kanos

Appellants

v

Stephen Mark Johnson Michael Brown
Joan Conner Brown and J Conner LLC

Respondents

And which State of South Carolina ex rel
Allan Wilson Attorney General is

Intervening Party

RECORD ON APPEAL
VOLUME I

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Attorneys For Respondents

**RECORD ON APPEAL
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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO 2006 CP 26 2371

Robert W Oskin a/k/a Woody)
Oskin)

Plaintiff)

vs)

Mark Johnson and Johnson Coastal)
Consulting LLC)

Defendants)

ORDER FOR SUMMARY JUDGMENT

This matter came before the Court on November 3 2008 on Plaintiff's Motion for Summary Judgment filed on December 27 2007 Present at the hearing were Robert H Gwin III Esquire attorney for Plaintiff and Mark Johnson Pro Se Plaintiff relies upon the Complaint with Exhibits the failure of the Defendant to respond to the Request for Admissions served upon the Defendant Mark Johnson and Plaintiff's Affidavit in Support of Plaintiff's Motion for Summary Judgment

The Defendant Mark Johnson has submitted no Affidavit in Opposition to Plaintiff's Motion

STANDARD OF REVIEW

Summary Judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law Rule 56(c) SCRPC In determining whether a genuine issue of fact exists as will preclude summary judgment the evidence and all

inferences which can be reasonably drawn therefrom must be viewed in a light most favorable to the non moving party Quality Towing, Inc. vs. City of Myrtle Beach, 340 S C 29 #530 S E 2d 369(2000) The non moving party may not rest upon the mere allegations or denials of his pleadings but the response must set forth specific facts showing issue for trial Rule 56(c) SCRPC In the instant case the Defendants have not provided a response setting forth specific facts showing issue for trial Based upon the review of the Court file the Complaint with Exhibits the failure of the Defendant to respond to the Requests for Admissions served upon him by the Plaintiff and Plaintiff's Affidavit in support of his Motion for Summary Judgment the Court hereby grants Summary Judgment in favor of the Plaintiff based upon on the Findings of Fact and Conclusions of Law as hereinafter provided

FINDINGS OF FACT

The Court hereby finds as follows

1 The Summons and Complaint were properly filed on May 11 2006 and the Defendants were served on May 24 2006

2 On or about April 27 2005 Robert Oskin and Mark Johnson entered into an Agreement whereby Mark Johnson was to pay Robert Oskin a finder s fee of One Million and No/100 (\$1 000 000 00) Dollars from the sale of Wild Wing Plantation and Golf Course located in Horry County South Carolina The payment of the fee was conditioned upon the sale to be procured through Joe McVay Realty and clients (herein Contract)

3 On December 15 2005 Wild Wing Plantation Inc transferred unto Wild Wing Company LLC the real estate which included Wild Wing Plantation and Golf Course

4 The Purchaser s closing statement attached as an Exhibit to the Plaintiff's Affidavit and Requests for Admissions showed that McVay Realty (which is the same as Joe

McVay Realty (according to the Affidavit and Requests for Admissions) was paid a real estate commission and that the sale referenced in the General Warranty Deed and Purchaser's Closing Statement was procured through McVay Realty Inc. also known as Joe McVay Realty.

5 The payment of the One Million and No/100 (\$1 000 000 00) Dollars finder's fee has not been made and Mark Johnson after due notice is in default under the terms of the Contract.

6 There is now due and owing to the Plaintiff by Mark Johnson on the Contract the unpaid principal sum of One Million and No/100 (\$1 000 000 00) Dollars.

CONCLUSIONS OF LAW

Based upon the Findings of Fact as set forth above, there is no genuine issue of material fact and the Court hereby concludes as a matter of law as follows:

A) The Court has personal and subject matter jurisdiction of the parties and this case is properly before the Court.

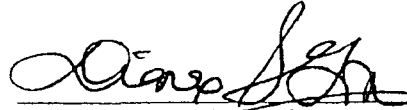
B) The Contract was properly executed for valuable consideration and is a legally binding obligation of the Defendant Mark Johnson. The Defendant, Mark Johnson, is in default under the terms of the Contract to the Plaintiff and the Plaintiff is entitled to an Order of Summary Judgment against the Defendant Mark Johnson.

C) The Defendant Johnson Coastal Consulting LLC was not a party to the Contract and should be dismissed as a party.

IT IS, THEREFORE, ORDERED that the Plaintiff shall have judgment against the Defendant Mark Johnson in the amount of One Million and No/100 (\$1 000 000 00) Dollars.

IT IS FURTHER ORDERED that the action shall be dismissed as to the Defendant

Johnson Coastal Consulting LLC only



Honorable Diane S. Goodstein
Presiding Judge
Horry County Court of Common Pleas

Dated December 8 2008

Conway South Carolina
Summersville



STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Robert W Oskin Glenn Small
and Freddie Kanos)

Plaintiffs)

vs)

Stephen Mark Johnson Michael Brown
Joan Conner Brown J Conner LLC and
South Carolina Bank and Trust N A)

Defendants)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 2009-CP-26-3470

CONSENT ORDER OF REFERENCE

FILED
2009 JUN 23 AM 10 07
MELANIE J. JAGGINS
CLERK OF COURT

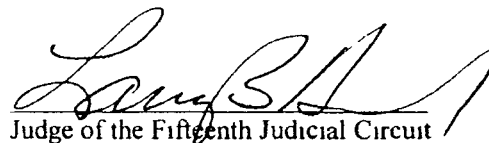
This matter is before me on Motion of the attorney for the Plaintiff for an order referring the above entitled case to the Master in-Equity for Horry County Now therefore, with the consent of the attorney for the Defendants the above entitled case is referred for all purposes and with finality to The Honorable Cynthia Graham Howe Master-in Equity of Horry County to take the testimony arising under the pleadings and to make his finding of facts and conclusions of law with the authority to enter final judgment pursuant to Rule 53(e), SCRCP with any appeal being directly to the South Carolina Supreme Court or South Carolina Court of Appeals as applicable

Deposit in the Amount of \$ 50.00

paid by Muller, Wylie, LLC

date 6-23-09

Received by the Master In Equity
For Horry County

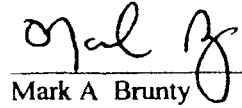

Judge of the Fifteenth Judicial Circuit

Hearing Scheduled for _____

6-12 2009
Conway, South Carolina

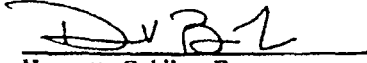
ROA_0005

I Move and Consent

A handwritten signature in black ink, appearing to read "Mark A. Brunty", written over a horizontal line.

Mark A Brunty
Attorney for Plaintiff

I Move and Consent

A handwritten signature in black ink, appearing to read "D. Butler", is written over a horizontal line.

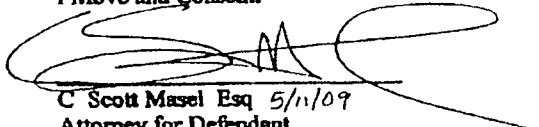
Henrietta Golding, Esq

Dan Butler, Esq

Attorneys for Defendants

Michael Brown, J Conner Brown and J Conner LLC

I Move and Consent:



C Scott Masel Esq 5/11/09
Attorney for Defendant

Consent Order of Reference
2009 CP 46 3470

I Move and Consent:



Brad Floyd, Esq.
Attorney for Defendant

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 2009 CP 26-3470

Robert W Oskin Glenn Small
and Freddie Kanos

Plaintiffs

vs

Stephen Mark Johnson Michael Brown
Joan Conner Brown J Conner LLC and
South Carolina Bank and Trust N A

Defendants

**ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

cc AUC 21 PM 7 06
11/21/09

This matter came before the Court on May 27 2009 on Defendants Motion for Summary Judgment Because the Court finds that a question of fact exists regarding the payment of money from J Conner LLC to SCB&T Defendants Motion is denied

FACTUAL SUMMARY

The facts of this case are largely without dispute Plaintiffs are creditors of Defendant Stephen Mark Johnson On May 11 2006 Oskin filed an action against Johnson for money owed and by virtue of a default judgment granted on November 3 2008 is a judgment creditor Small and Kanos are the lenders on a promissory note given to them by Johnson

On November 30 2006 Defendants Michael Brown (Brown) and Stephen Mark Johnson (Johnson) purchased a lot and home in the Grande Dunes Oceanfront Development located in Myrtle Beach South Carolina (hereinafter the Property) Title to the Property was conveyed to Brown and Johnson as tenants in common The purchase was financed by a loan obtained by Brown and Johnson as co obligors from the Defendant South Carolina Bank and Trust N A (SCB&T) in the original principal amount of \$3.5 million (the Note) The Note

had a maturity date of November 30 2008 and was secured by a mortgage on the Property (the Mortgage)

On December 30 2008 SCB&T assigned the Note and Mortgage to the Defendant J Conner LLC (the LLC) a North Carolina limited liability company Brown s wife the Defendant Joan Conner Brown is the sole member of the LLC SCB&T received \$3 544 303 31 for this transaction which comprised of the proceeds of a loan obtained by the LLC from Wachovia Bank in the principal amount of \$3 5 million (the Wachovia Loan), plus a personal check written by Brown for the balance of \$44 303 31

On April 6 2009 Plaintiffs filed the Complaint seeking a declaration that (i) the payments received by SCB&T were to pay off the Note and not for the purchase of the Note and Mortgage (ii) the pay off of the Note terminated the Mortgage and (iii) the assignment of the Note and Mortgage to the LLC was a fraudulent conveyance in violation of the Statute of Elizabeth as codified in S C Code Ann § 27-23 10

LEGAL ANALYSIS

Defendants seek summary judgment on Plaintiffs fraudulent conveyance action Summary judgment is appropriate when the pleadings discovery responses affidavits and evidence show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law Rule 56 SCRPC *Pye v Aycock* 325 S C 426 480 S E 2d 455 (S C App 1997) In short if the Court concludes a fair-minded judge or jury could not return a verdict in favor of the non-movant based on the record the Court may enter summary judgment *Anderson v Liberty Lobby Inc* 477 U S 242 (1986) *Lansing Dairy Inc v Espy* 39 F 3d 1339 1347 (6th Cir 1994)

A thorough review of these issues leads this Court to conclude that questions of fact exists as to the payment and the transfer of the Mortgage as a result Summary Judgment is improper at this time

I Payment of the amount due to SCB&T

Plaintiffs argue that the wire from Wachovia to SCB&T and the delivery of Michael Brown s personal check constituted a payment by or on behalf of Brown as defined by the South Carolina Uniform Commercial Code If such a payment under the UCC occurred Brown s and Johnson s obligations under the Note would be discharged by operation of law on or before December 30 2008

Plaintiffs rely upon the newly adopted Article 3 of the Commercial Code¹ S C Code Ann §36-3 602(a) provides an instrument is paid to the extent payment is made by or on behalf of the person obliged to pay the instrument, and to a person entitled to enforce the instrument Section 36-3 602(c) states that ‘ to the extent of a payment under Subsections (a) and (b) the obligation of the party obliged to pay the instrument is discharged

Plaintiffs argue that the payments received by SCB&T were made by or on behalf of Brown This Court finds that a question of fact exists as to whether J Conner is the alter ego of Brown Thus Summary Judgment is denied

II Transfer or grant of the Mortgage as a fraudulent conveyance

Defendants seek summary judgment against Plaintiffs causes of action Plaintiffs allege in their Complaint that the transfer or giving of the Mortgage to J Conner violated the South Carolina Fraudulent Conveyance Statute Because this issue and the issue related to §27 23-30

¹ See 2008 Act No 204 §4 A This act applies to a transaction occurring on or after the effective date [July 1 2008] of this act

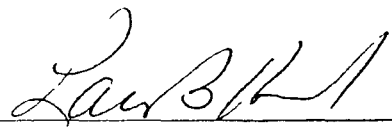
is dependent upon the outcome of the payment issue summary judgment is not proper at this time

CONCLUSION

For the reasons stated above Defendants Motion for Summary Judgment are denied

AND IT IS SO ORDERED

Aug 13-2004
Conway South Carolina


The Honorable Presiding Judge of the
15th Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Robert W Oskin Glenn Small
and Freddie Kanos

Plaintiffs

vs

Stephen Mark Johnson Michael Brown
Joan Conner Brown J Conner LLC and
South Carolina Bank and Trust N A

Defendants

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A 2009 CP 26-3470

ORDER DENYING PLAINTIFFS
MOTION FOR SUMMARY JUDGMENT

2009 SEP 28 PM 1:47
CLERK OF COURT

This matter came before the Court on Thursday September 3 2009 upon Plaintiffs
Motion for Summary Judgment

Present at the hearing were Mark A Brunty Esq on behalf of the Plaintiffs Dan V
Butler Esq on behalf of the Defendants Michael Brown Joan Conner Brown and J Conner
LLC and C Scott Masel Esq on behalf of the Defendant Stephen Mark Johnson

PROCEDURAL HISTORY

The Complaint was filed April 6 2009 Plaintiffs filed the underlying Motion for
Summary Judgment on August 5 2009

FACTUAL BACKGROUND

On November 30 2006 Defendants Michael Brown (Brown) and Stephen Mark
Johnson (Johnson) purchased a lot and home in the Grande Dunes Oceanfront Development
located in Myrtle Beach South Carolina (hereinafter the Property) Title to the Property was
conveyed to Brown and Johnson as tenants in common The purchase was financed by a loan
obtained by Brown and Johnson as co obligors from the Defendant South Carolina Bank and

Trust N A (SCB&T) in the original principal amount of \$3 5 million (the Note) The Note had a maturity date of November 30 2008 and was secured by a mortgage on the Property (the Mortgage)

On December 30 2008 SCB&T assigned the Note and Mortgage to the Defendant J Conner LLC (the LLC) a North Carolina limited liability company Brown s wife the Defendant Joan Conner Brown is the sole member of the LLC SCB&T received \$3 544 303 31 for this transaction \$3 5 million from a Wachovia Bank loan obtained by the LLC (the Wachovia Loan) plus a personal check written by Brown for the balance of \$44 303 31

Plaintiffs are creditors of Johnson¹ On April 6 2009 Plaintiffs filed the Complaint seeking a declaration that (i) the payments received by SCB&T were to pay off the Note and not for the purchase of the Note and Mortgage (ii) the pay off of the Note terminated the Mortgage and (iii) the assignment of the Note and Mortgage to the LLC was a fraudulent conveyance in violation of the Statute of Elizabeth as codified in S C Code Ann § 27-23 10

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C&H

SUMMARY JUDGMENT STANDARD

Summary judgment is proper only when it is clear there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law Osborne v Adams 346 S C 4 550 S E 2d 319 (2001) See Rule 56(c), SCRPC In determining whether any material issue of fact exists the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non moving party Wiedemann v Town of Hilton Head 330 S C 532 500 S E 2d 783 (1998) Moreover it must be shown that further inquiry into the facts is not needed to clarify the application of law Butts v AVX Corp 292 S C 256 355 S E 2d 876 (Ct App 1987)

¹There is no dispute that Johnson is the only Defendant indebted to the Plaintiffs

LEGAL CONCLUSION

After having considered the parties pleadings affidavits admissions of record and arguments of counsel, as well as Counsel s statement that discovery is ongoing this Court finds that further inquiry into the facts is desirable to clarify the application of the law

NOW THEREFORE,

IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiffs presently are not entitled to judgment as a matter of law pursuant to *Rule 56 SCRPC* and accordingly the Plaintiffs Motion for Summary Judgment is hereby denied without prejudice

IT IS ORDERED


Honorable Cynthia Graham Howe
Master in Equity for Horry County

Conway South Carolina
September 28 2009

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GHT

FORM 4

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

JUDGMENT IN A CIVIL CASE

ROBERT W OSKIN ET AL

STEPHEN MARK JOHNSON ET AL

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE

- ☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON) ☐ Rule 12(b) SCRPC ☐ Rule 41(a) SCRPC (Vol. Nonsuit) ☐ Rule 43(k) SCRPC (Settled) ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON) ☐ Rule 40(j) SCRPC ☐ Bankruptcy ☐ Binding arbitration subject to right to restore to confirm vacate or modify arbitration award ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX)
☐ Affirmed ☐ Reversed ☐ Remanded ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED

- ☒ See attached order (Formal order to follow)
☐ Statement of Judgment by the Court

Dated at Conway, South Carolina this 26th day of March 2010


PRESIDING JUDGE

This judgment was entered on the _____ day of _____ 20 and a copy mailed first class this _____ day of _____ 20 to attorneys of record or to parties (when appearing pro se) as follows:

Mark Brunty PO Box 70907 Myrtle Beach SC 29572

Dan V. Butler PO Box 336 Myrtle Beach SC 29578
Scott Masel PO Box 808 Myrtle Beach SC 29578-0808
Warren Ganjebsani PO Box 11549 Columbia SC 29211

ATTORNEY(S) FOR PLAINTIFF

ATTORNEY(S) FOR DEFENDANT

CLERK OF COURT

SCCA SCRPC Form 4 Revised 06/2008

FILED
CLERK OF COURT
2010 MAR 26 AM 9 48
KELAN E. HUGHES WARD

ROA_0017

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Robert W Oskin Glenn Small
and Freddie Kanos)

Plaintiffs)

vs)

Stephen Mark Johnson Michael Brown
Joan Conner Brown and J Conner LLC)

Defendants)

Of which)

State of South Carolina *ex rel*
Henry D McMaster Attorney General)

Intervening Party)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A 2009 CP 26 3470

FINAL ORDER
ENDING ACTION

FILED
2010 MAR 26 AM 9 48
McLain HUGGINS WARD
CLERK OF COURT

 Pursuant to Rule 53(e) of the South Carolina Rules of Civil Procedure and by Consent Order of Reference issued by the Honorable Larry B Hyman on June 12 2009 this case was referred to the Master in-Equity for Horry County to make appropriate findings of fact and conclusions of law with authority to enter a final judgment with any appeal from the final judgment to be to the South Carolina Court of Appeals or Supreme Court

The Final Hearing was held February 15 2009 All parties entitled to notice were duly and timely served with notice of the Final Hearing

Appearing at the Final Hearing were (i) Mark A Brunty attorney for the Plaintiffs (ii) Henrietta U Golding and Dan V Butler attorneys for the Defendants Michael Brown Joan Conner Brown and J Conner LLC and (iii) C Scott Masel attorney for the Defendant Stephen Mark Johnson The State of South Carolina *ex rel* Henry D McMaster Attorney General did

not appear at the Final Hearing Plaintiffs counsel advised the Court that the State elected not to appear and would abide by any order issued by this Court in this action

STATEMENT OF THE CASE

The Complaint was filed April 6 2009 alleging causes of action for Declaratory Judgment and Punishment Under South Carolina Fraudulent Conveyance Statute relating to an assignment of a promissory note and mortgage from South Carolina Bank and Trust N A to the Defendant J Conner LLC that occurred on or about December 30 2008 Plaintiffs allege that (i) the payment relating to the assignment resulted in pay off of the note (ii) the pay off of the note extinguished the mortgage and (iii) the assignment of the note and mortgage was a fraudulent conveyance in violation of S C Code Ann § 27 23 10 *et seq* also known as the Statute of Elizabeth Plaintiffs seek recovery of the civil penalty under S C Code Ann § 27 23 30 to set aside the assignment of the note and mortgage and for this Court to declare the mortgage void

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CH

Originally South Carolina Bank and Trust N A was a Defendant however it was dismissed by Stipulation of Dismissal filed September 2 2009 In addition the State of South Carolina *ex rel* Henry D McMaster Attorney General moved to intervene as a party, which motion was granted September 2 2009

Plaintiffs amended their Complaint on November 20 2009 to incorporate a Confession of Judgment in favor of David O Connell against the Defendant Stephen Mark Johnson which Confession was assigned to the Plaintiff Robert O Oskin

Based on the witness testimonies and documentary evidence presented at the Final Hearing and applicable law I find and conclude as follows

FINDINGS OF FACT

1 On November 30 2006 the Defendants Michael Brown and his wife s nephew Stephen Mark Johnson purchased a lot and home in the Grande Dunes Oceanfront Development located in Myrtle Beach South Carolina (hereinafter the Property) Title to the Property was conveyed to Michael Brown and Stephen Mark Johnson as tenants in common

2 The Property purchase was financed by a loan obtained by Michael Brown and Stephen Mark Johnson jointly from South Carolina Bank and Trust N A (SCB&T) in the principal amount of \$3 5 million (the Note) The Note provided for interest only payments for the first 23 months with a final balloon payment due on or about November 30 2008

3 The Note is secured by a first mortgage lien on the Property (the Mortgage)

4 The Property is also encumbered by a second mortgage lien in favor of Ameris Bank in the amount of \$500 000 00 recorded April 27 2007 The loan secured by the second mortgage lien remains outstanding

5 Michael Brown a Charlotte resident testified that he expected his nephew Stephen Mark Johnson to make the payments on both loans and that initially, Stephen Mark Johnson did in fact pay the monthly interest payments taxes and insurance on these loans Then in early 2008 Stephen Mark Johnson could no longer pay which required Mr Brown to pay the monthly interest payments on the loans as well as the taxes and insurance for the Property

6 Prior to the maturity date on the Note Michael Brown negotiated with SCB&T regarding the purchase of the Note and Mortgage

7 After weeks of negotiation SCB&T agreed to assign the Note and Mortgage at face value and on December 30 2008 SCB&T assigned the Note and Mortgage to J Conner LLC a North Carolina limited liability company formed for the purpose of acquiring holding and if necessary enforcing the Note and Mortgage

8 Joan Conner Brown wife of Michael Brown is the sole member of J Conner LLC

9 As consideration for the assignment of the Note and Mortgage SCB&T was paid a total of \$3 544 303 31 comprised of the proceeds of a loan obtained by J Conner LLC from Wachovia Bank N A (Wachovia Bank) in the principal amount of \$3 5 million (the Wachovia Loan) plus a personal check from Michael Brown for \$44 303 31

10 Both Michael Brown and Joan Conner Brown negotiated with Wachovia Bank in obtaining the Wachovia Loan The Wachovia Loan is secured by investment securities owned by Michael Brown and investment securities owned by Joan Conner Brown In addition Michael Brown and Joan Conner Brown each executed an Unconditional Guaranty for the payment of the Wachovia Loan

11 J Conner LLC maintains a business account at Wachovia Bank from which the monthly payments under the Wachovia Loan are automatically debited In 2009 Joan Conner Brown deposited at least \$20 000 00 into her LLC s business account

12 At or around the time of the assignment of the Note and Mortgage the Property was worth approximately \$2 5 million

13 Plaintiff Robert W Oskin is a judgment creditor of Stephen Mark Johnson by virtue of an Order for Summary Judgment signed December 8 2008 by the Honorable Diane S Goodstein in the amount of \$1 million The Order was later amended to add pre judgment interest of \$262 499 99 Robert W Oskin testified that the premise for the judgment was a real

estate commission owed by Stephen Mark Johnson and that he did not come out of pocket for these monies owed to him by Stephen Mark Johnson

14 Robert W Oskin is also a judgment creditor of Stephen Mark Johnson by virtue of a Confession of Judgment signed by Stephen Mark Johnson in favor of David O Connell for the amount of \$31 000 00 which Confession was assigned to Robert W Oskin for the price of \$500 00

15 Plaintiffs Glenn Small and Freddie Kanos are creditors of Stephen Mark Johnson by virtue of monies owed by Stephen Mark Johnson to them which were not disputed

16 The claims of all Plaintiffs against Stephen Mark Johnson are subordinate in priority to the first mortgage lien securing the loan from SCB&T and to the second mortgage lien securing the loan from Amerns Bank

5
6/11
17 Stephen Mark Johnson is the only Defendant indebted to any of the Plaintiffs at the time this action was commenced

18 Stephen Mark Johnson did not participate in any of the negotiations relating to the Assignment nor the Wachovia Loan

19 Before this lawsuit none of the Plaintiffs had any business transactions with Michael Brown or his wife Joan Brown

20 None of the Plaintiffs dispute that the \$3 5 million loan from SCB&T was a valid loan Also none of the Plaintiffs dispute the right of SCB&T to sell the Note and Mortgage

21 Neither SCB&T nor any of the Defendants J Conner LLC Michael Brown or Joan Conner Brown have ever been indebted to any of the Plaintiffs

CONCLUSIONS OF LAW

I Statute of Elizabeth

22 Plaintiffs assert that the assignment of the Note and Mortgage (hereinafter the Assignment) violated S C Code Ann § 27 23 10 also known as the Statute of Elizabeth because the Assignment was effected for the specific intent and purpose of defrauding the Plaintiffs

23 The Statute of Elizabeth provides in relevant part

Every gift grant alienation bargain transfer and conveyance of lands, tenements or hereditaments goods and chattels or any of them or of any lease rent commons or other profit or charge out of the same for any intent or purpose to delay hinder or defraud creditors and others of their just and lawful actions, suits debts accounts damages penalties and forfeitures must be deemed and taken to be clearly and utterly void frustrate and of no effect any pretense color feigned consideration expressing of use or any other matter or thing to the contrary notwithstanding

 S C Code Ann § 27-23-10 (1976)

24 Under South Carolina jurisprudence regarding the Statute of Elizabeth conveyances will be set aside under two conditions (1) if there is valuable consideration paid for the transfer the transfer is made by the grantor with the actual intent to defraud his creditors and that intent is imputable to the grantee or (2) if the transfer was made without valuable consideration even if the transfer is made without actual intent to defraud his creditors McDaniel v Allen 265 S C 237 217 S E 2d 773 (1975)

25 The line of South Carolina cases applying the Statute of Elizabeth specifically require the grantor to be indebted to the complaining creditor at the time of the transfer as made clear by the South Carolina Supreme Court

Under § 27 23 10 a transfer made without valuable consideration will be set aside as a fraudulent conveyance if the grantor was indebted to the

plaintiff at the time of the transfer and the grantor failed to retain sufficient property to pay his debt to plaintiff not merely at the time of transfer but at the time plaintiff seeks to collect. If there is valuable consideration the transfer will be set aside only where the grantor was indebted at the time of the transfer and had an actual intent to defraud creditors imputable to the grantee.

Future Group, II v Nationsbank 324 S C 89 96 478 S E 2d 45 48-49 (1996)(citations omitted)

26 The parties to the transfer – the assignment of the Note and Mortgage – were SCB&T the holder of the Note and Mortgage and J Conner LLC the assignee. Neither of these parties are or were ever indebted to any of the Plaintiffs. Therefore by the very language of the statute the Statute of Elizabeth is not applicable to the Assignment. See In re Ducate 369 B R 251 258 (Bkrcty D S C 2007)(The Statute of Elizabeth allows a creditor to avoid a fraudulent transfer of property by a debtor)

27 Even if applicable the Assignment did not violate the Statute of Elizabeth. Clearly there was valuable consideration paid for the Assignment \$3 544 303 31. Thus to prevail on this claim the Plaintiffs must prove that the Assignment was the result of an actual intent to defraud the Plaintiffs. McDaniel infra

28 Based on the witness testimonies and documentary evidence Plaintiffs failed to prove by the preponderance of the evidence that the Assignment was the result of an actual intent to defraud the Plaintiffs.¹ The Assignment was effectuated only after weeks of negotiation and due diligence and only after valuable consideration was paid to SCB&T. The funds paid to SCB&T for the Assignment \$3 544 303 31 were from proceeds of the \$3 5 million Wachovia Loan obtained by J Conner LLC and a personal check from Michael Brown.

¹ No South Carolina case law is dispositive on the issue of the standard of proof however for purposes of this Order this Court will apply the lower standard of preponderance of the evidence.

29 This Court does not believe any injustice or fraud was perpetrated on the Plaintiffs as a result of the Assignment Plaintiffs interest in the Property as creditors of Stephen Mark Johnson if any is clearly junior and subordinate to the first and second mortgage liens on the Property held by SCB&T and Ameris Bank respectively in the total principal amount of \$4 million Furthermore Plaintiffs did not dispute that the Property was valued at approximately \$2.5 million at the time of the Assignment Thus the Property had a negative equity value of approximately \$1.5 million when considering the underlying debts secured by the first and second mortgage liens If the Assignment had not occurred and SCB&T had foreclosed on the Note and Mortgage Plaintiffs interest in the Property if any would have been extinguished by the foreclosure action Additionally Plaintiff Robert W Oskin testified that he did not come out of pocket for the monies owed to him by Stephen Mark Johnson pursuant to the Order of Judge Goodstein and that he only paid \$500.00 to purchase the Confession of Judgment executed by Stephen Mark Johnson in favor of David O Connell Finally J Conner LLC Michael Brown and Joan Conner Brown are now liable on the \$3.5 million Wachovia Loan the proceeds of which were used to purchase the Note and Mortgage

30 Based on the foregoing even if the Statute of Elizabeth was applicable to the assignment of the Note and Mortgage this transaction did not violate the statute

II Pay-Off of Note and Termination of Mortgage

31 Plaintiffs assert that Michael Brown is the alter ego of J Conner LLC and therefore the payments made to SCB&T for the Assignment (including the proceeds of the \$3.5 million Wachovia Loan obtained by J Conner LLC) were really payments made by Michael Brown a co maker on the Note The Plaintiffs continue that because Michael Brown is a co-obligor on the Note the payments resulted in a pay off of the Note thereby rendering the

Mortgage cancelled satisfied or released

32 While this Court is aware that payment of a note by a co obligor can operate to extinguish the note and discharge the liability of any other co-obligor on that note under certain circumstances see Jeffcoat v Morris 300 S C 526 389 S E 2d 159 (S C App 1989) this Court is not convinced by the evidence that Michael Brown is the alter ego of J Conner LLC nor that the funds used to pay for the Assignment were solely that of Michael Brown s Michael Brown is neither an owner nor officer of J Conner LLC Furthermore Plaintiffs witness John Scott an officer at Wachovia Bank testified that J Conner LLC was an entity separate and apart from Michael Brown and the LLC s sole member Joan Conner Brown Upon hearing the testimony of Joan Conner Brown this Court is not convinced that Michael Brown has the requisite control over either J Conner LLC or its sole member Joan Conner Brown to be considered the alter ego of the company Joan Conner Brown appeared to be an independent woman who maintains a separate account and owns substantial investment securities at Wachovia Bank in her sole name Therefore Plaintiffs have not shown by a preponderance of the evidence that Michael Brown is the alter ego of J Conner LLC See Jones v Enterprise Leasing Company Southeast et al 383 S C 259 267 68 678 S E 2d 819 823-24 (Ct App 2009)([C]ontrol required for liability under an alter ego doctrine amounts to total domination of the subsidiary)

33 This Court is also not convinced by the evidence that the recognition of J Conner LLC as an entity separate and apart from Michael Brown would promote fraud wrong or injustice or would contravene public policy See Jones 383 S C at 267-68 678 S E 2d at 823 24 (in determining whether alter ego doctrine applies in addition to control or dominance of the subsidiary a party must also show that the retention of separate corporate personalities would promote fraud, wrong or injustice or would contravene public policy) J Conner LLC was

properly organized in the State of North Carolina for a legitimate business purpose J Conner LLC was recognized and accepted by Wachovia Bank a sophisticated banking institution as a valid business entity capable of obtaining a \$3.5 million business loan from it J Conner LLC has a properly executed operating agreement that contains its purpose membership rights and management provisions In addition J Conner LLC maintains a business account at Wachovia Bank separate and apart from Michael Brown and Joan Conner Brown Finally according to John Scott officer with Wachovia Bank the formation of business entities for limited purposes such as J Conner LLC is commonplace and is considered a legitimate business decision

34 Because this Court finds that Michael Brown is not the alter ego of J Conner, LLC the issue of whether the payments made to SCB&T resulted in a pay-off of the Note and the automatic cancellation satisfaction or release of the Mortgage is moot

10
35 However even if this Court were to find that the payments to SCB&T resulted in a pay off of the Note Michael Brown would be equitably subrogated to Stephen Mark Johnson's interest in the Property to the extent of the monies determined to have been paid by Michael Brown in excess of his one half share of the obligation on the Note See United Carolina Bank v Caroprop, LTD 316 S C 1 3 446 S E 2d 415 417 (1994)([W]here one co-tenant pays more than his proportionate share of the debt on property the excess amount is paid as a surety thereby entitling him to priority over claims against his co tenant's estate) Michael Brown's rights and priority with regards to his equitable interest in the Property would be the same as that of SCB&T before the Assignment See Dodge City of Spartanburg, Inc v Jones 317 S C 491 454 S E 2d 918 (Ct App 1995)(through doctrine of equitable subrogation subsequent creditor assumes rights and priority of original creditor)

36 Further a complete payment of the debt secured by the Mortgage would not have

required the release cancellation or satisfaction of the Mortgage nor would any of the Plaintiffs have had any right to require a release cancellation or satisfaction of the Mortgage under these circumstance because the Mortgage contains a future advance clause See Central Production Credit Association v. Page 268 S C 1, 8 231 S E 2d 210 214 (1977)(holding that if a mortgage contains a future advance clause the mortgage remains open and valid even after payment in full of the underlying debt)

37 In conclusion, based upon the evidence presented at the Final Hearing and applicable law

- 11
GSA
- a The assignment of the Note and Mortgage was a valid business transaction resulting from an arms length negotiation in which valuable consideration was paid for the Assignment
 - b None of the Plaintiffs was a creditor of SCB&T the party that received the consideration for the Assignment
 - c There existed no intent to defraud any persons much less the Plaintiffs specifically relating to the Assignment
 - d Michael Brown is not the alter ego of J Conner LLC
 - e The payment to SCB&T did not result in a pay off of the Note nor the cancellation, satisfaction or release of the Mortgage and
 - f The Note and Mortgage each remain valid and enforceable according to their respective terms

NOW THEREFORE BASED ON THE FOREGOING

IT IS ORDERED ADJUDGED AND DECREED that the assignment of the Note and Mortgage to J Conner LLC was not a fraudulent conveyance in violation of S C Code Ann §

27 23 10 *et seq* the payments made to SCB&T for the assignment of the Note and Mortgage did not result in a pay off of the Note thus the Note is currently valid and enforceable pursuant to its terms the assignment of the Note and Mortgage did not result in a cancellation satisfaction or release of the Mortgage thus the Mortgage is currently valid and enforceable pursuant to its terms and the Plaintiffs claims be dismissed with prejudice

IT IS ORDERED


Honorable Cynthia Graham Howe
Master in Equity for Horry County

March 25, 2010
Conway South Carolina

~~12~~
~~6/11~~

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Robert W Oskin Glenn Small
and Freddie Kanos)

Plaintiffs)

vs)

Stephen Mark Johnson Michael Brown,
Joan Conner Brown and J Conner LLC)

Defendants)

Of which)

State of South Carolina *ex rel*
Henry D McMaster Attorney General)

Intervening Party)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A 2009 CP 26 3470

FILED
HORRY COUNTY
2010 MAY -6 AM 10:27
WILLIE HUGGINS MARL
CLERK OF COURT

ORDER DENYING PLAINTIFFS
MOTION FOR RECONSIDERATION
TO ALTER OR AMEND OR FOR
A NEW TRIAL

A hearing was held April 30 2010 upon Plaintiffs Motion to Alter or Amend the Final
Order Ending Action dated March 25 2010 or for a New Trial

After careful consideration of the arguments of counsel and Memorandum submitted to
this Court Plaintiffs have failed to demonstrate any error of fact or law sufficient to alter or
amend the Final Order or that a new trial is warranted

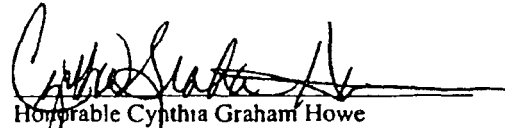
However there exists a scrivener s error on the second paragraph of the first page of the
Final Order wherein the date of the Final Hearing should have been February 15 2010

THEREFORE it is

ORDERED, ADJUDGED AND DECREED that Plaintiffs Motion to Alter or Amend
the Final Order Ending Action dated March 25 2010 or for a New Trial is hereby denied

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the second paragraph of the first page of the Final Order shall be revised as follows February 15 2009 shall be deleted and replaced with February 15 2010

IT IS SO ORDERED


Honorable Cynthia Graham Howe
Master in Equity for Horry County

May 5 2010
Conway South Carolina

2
CST

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ROBERT W OSKIN et al

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

vs

MARK A JOHNSON a/k/a STEPHEN MARK
JOHNSON MICHAEL BROWN et al

Defendant(s)

-2009 CP 26 3470-

(Please Print)

Submitted By Mark A Brunty
Address Mullen Wylie LLC
P O Box 1980
Myrtle Beach SC 29578

SC Bar # 68295
Telephone # (843) 449 4800
Fax # (843) 497 0449
Other
E mail mbrunty@mullenwylie.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint ☒ NON JURY TRIAL demanded in complaint
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules
☐ This case is exempt from ADR (certificate attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Construction (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Notary Public Malpractice (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Stander/Label (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☒ Other (499) Declaratory Judgment
Inmate Pension ☐ P.C.R. (500) ☐ Sex Offender (510) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (600) ☐ Insurance Settlement (610) ☐ Mortgage Judgment (620) ☐ Minor Settlement (630) ☐ Transient Judgment (640) ☐ Foreclosure (650) ☐ Other (699)	Administrative Law Relief ☐ Rate of Interest (800) ☐ Judicial Review (810) ☐ Review (820) ☐ Permanent Injunction (830) ☐ Eminent Domain (840) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate Court (910) ☐ Miscellaneous Criminal (920) ☐ Municipal (930) ☐ Probate (940) ☐ S.C.D.C. (950) ☐ Workers' Compensation (960) ☐ Zoning Board (970) ☐ Administrative Law Judicial (980) ☐ Public Service Commission (990) ☐ Employment Security Commission (991) ☐ Other (999)
Special Complex/Other ☐ Environmental (600) ☐ Automobile Acc. (610) ☐ Medical (620) ☐ Other (699)	☐ Educational (630) ☐ Unfair Trade Practice (640) ☐ Other (699)		

Submitting Party Signature

Mark A Brunty

Date April 6 2009

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC Rule 11 and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-16-10 et seq.

MANDATED ADR COUNTIES OF
Florence Perry Lexington Richland Greenville and Anderson

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

You are required to take the following action(s)

- 1 The parties shall select a neutral and file a Proof of ADR form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
- 2 The initial ADR conference must be held within 300 days after the filing of the action.
- 3 Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the Notice of Intent to File Suit or as the court directs. (Medical malpractice mediation is mandatory statewide.)
- 4 Cases are exempt from ADR only upon the following grounds:
 - a Special proceeding or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition.
 - b Requests for temporary relief.
 - c Appeals.
 - d Post Conviction relief matters.
 - e Contempt of Court proceedings.
 - f Forfeiture proceedings brought by governmental entities.
 - g Mortgage foreclosures and
 - h Cases that have been previously subjected to an ADR conference unless otherwise required by Rule 3 or by statute.
- 5 In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
- 6 Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Robert W Oskin Glenn Small
and Freddie Kanos

Plaintiffs

vs

Stephen Mark Johnson Michael Brown
John Conner Brown J Conner LLC and
South Carolina Bank and Trust N A

Defendants

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO 2009-CP 26 3470

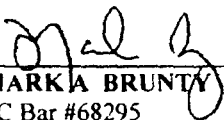
SUMMONS

APR -5 PM 3 06
SUS
11

TO THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action a copy of which is herewith served upon you and to serve a copy of your Answer to the said Complaint on subscriber at his office at Post Office Box 1980 Myrtle Beach South Carolina 29578 within thirty (30) days after the service hereof exclusive of the day of such service AND IF YOU FAIL TO APPEAR AND DEFEND THE ACTION AS REQUIRED BY LAW JUDGMENT BY DEFAULT WILL BE RENDERED AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT

MULLEN WYLIE LLC


MARKIA BRUNTY
SC Bar #68295
4710 Oleander Drive
Second Floor
Post Office Box 1980
Myrtle Beach SC 29578
Phone 843 449 4800
Fax 843 497 0449

Attorney for Plaintiff

April 6 2009
Myrtle Beach South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Robert W Oskin Glenn Small
and Freddie Kanos

Plaintiffs

vs

Stephen Mark Johnson Michael Brown
Joan Conner Brown J Conner LLC and
South Carolina Bank and Trust N A

Defendants

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO 2009-CP 26 3470

**COMPLAINT
(DECLARATORY JUDGMENT)
(NON JURY)**

FILED
APR - 6 PM 3 04
CLERK

The Plaintiffs complaining of the Defendants herein would respectfully show unto this
Honorable Court as follows

- 1 Plaintiff Robert W Oskin is a citizen and resident of Horry County South
Carolina
- 2 Plaintiff Glenn Small is a citizen and resident of Lancaster County South
Carolina
- 3 Plaintiff Freddie Kanos is a citizen and resident of Mecklenburg County South
Carolina
- 4 Defendant Stephen Mark Johnson (Johnson) is a citizen and resident of Horry
County South Carolina
- 5 Upon information and belief Defendant Michael D Brown (Brown) is a citizen
and resident of North Carolina who owns property in Horry County South
Carolina

- 6 Upon information and belief Defendant Joan Conner Brown (Wife) is a citizen
and resident of North Carolina Upon information and belief Brown and Wife
are husband and wife
- 7 Upon information and belief Defendant South Carolina Bank and Trust N A
(SCB&T) is a South Carolina Corporation which does business in Horry County
South Carolina
- 8 Upon information and belief Defendant J Conner LLC is a company organized
and existing pursuant to the laws of the State of North Carolina
- 9 This is an action to set aside the fraudulent conveyance of a note and mortgage by
and among the Defendants to declare the validity of that mortgage to declare the
rights of certain parties to a parcel of land in Horry County South Carolina and
for punishment under the South Carolina Statute of Elizabeth
- 10 This Honorable Court has jurisdiction over the parties hereto and the subject
matter herein

FACTUAL SUMMARY

- 11 Oskin Small and Kanos are creditors of Johnson as follows
- a Oskin is a judgment creditor by virtue of a judgment obtained on
December 11 2008 Oskins judgment totals \$1 262 499 99 and
 - b Small and Kanos are the holders of a promissory note given by Johnson to
Small The amount due on this Note as of April 1 2009 was \$611 000 00
- 12 Plaintiffs are owed with interest on Oskins judgment over \$1 9 million
- 13 At all times relevant hereto Defendants Brown and Johnson were aware of
Plaintiffs status as creditors of Johnson
- 14 In May of 2006 Oskin filed suit against Johnson seeking money owed pursuant to
a contract between Oskin and Johnson Johnson did not file an Answer

- 15 On or about November 30, 2006, Defendants Brown and Johnson were deeded certain property with improvements described and known as Lot 13, Dunes Ocean Front Development Phase II (the Property). Upon information and belief Johnson uses the Property as his primary residence. (See Deed attached as Exhibit A.)
- 16 In order to obtain the loan from SCB&T, Defendants Brown and Johnson submitted a loan application showing their assets and net worth. (A copy of the loan application is attached as Exhibit B.) Defendant Brown indicated on his application that Wachovia Bank, N.A., managed \$40 million of his assets.
- 17 As a prerequisite to making the loan, SCB&T required Brown to deposit \$300,000.00 into an SCB&T account to develop a depository relationship. (See page 6 of Exhibit B.) Upon information and belief, Brown transferred some or all of these funds at the time of the closing of the loan. (See HUD-1 Settlement Statement attached as Exhibit C.)
- 18 In order to secure the loan from SCB&T, Brown and Johnson executed and delivered to SCB&T a \$3.5 million promissory note (the Note) secured by a mortgage (the Mortgage) on the Property. (A copy of the Note and Mortgage are attached as Exhibits D and E.)
- 19 The Note's terms required interest-only payments at a rate of 7% until November 30, 2008, at which time the Note was due in full. The due date was later changed to December 10, 2009.
- 20 Defendants Brown and Johnson were co-makers and co-obligors on the Note. Pursuant to the terms of the Note, SCB&T had the right to demand payment from

either or both makers. In the event of default SCB&T had the right to foreclose on the Mortgage.

- 21 On November 3, 2008, a hearing was held in the Horry County Courthouse for Oskin's summary judgment motion against Johnson for the contract action. The Honorable Diane Goodstein ruled in favor of Oskin, granting his judgment in the amount of \$1 million (this Order and judgment were amended by Order of Judge Goodstein on March 4, 2009). Johnson was in attendance at this hearing and was aware of the ruling. (See Order for Summary Judgment and Order Amending that Order attached as Exhibits F and G.)
- 22 On information and belief, Defendants Brown and Johnson were informed and did believe that the value of the Property as of November, 2008 was \$2.5 million.
- 23 On or about November 7, 2008, four days after the ruling against Johnson, Defendant Brown, his agent, or someone acting on Brown's behalf, contacted SCB&T to inquire about the willingness of SCB&T to sell the Note and Mortgage to Brown for less than the full amount owed, specifically \$2.5 million. (See screen print from SCB&T attached as Exhibit H and email between SCB&T and Scott Masel attached as Exhibit I.)
- 24 Again on November 7, 2008, SCB&T informed Brown, or his agent, that Brown was a co-maker on the Note and that SCB&T would foreclose on the Note and Mortgage and seek deficiency judgment against Brown if the Note was not paid in full. (See Exhibit H.)
- 25 Upon information and belief, Brown and Johnson considered refinancing the obligation with Wachovia. (See Exhibit H.)

26 Defendant Brown did not want to be named in a foreclosure action and did not
want Johnson to lose the house through foreclosure. Furthermore, Brown did not
want to lose the value of the investment he already made in the Property, in
particular, the initial deposit of \$300,000.00 into the SCB&T account.

27 Similarly, SCB&T did not want to go through the time and expense of foreclosure
proceedings and did not want to try to collect a deficiency judgment from Brown,
who is a citizen of another State and who may have protected, hidden, or
otherwise disguised his assets.

28 As sometime between November 7, 2008 and November 21, 2008, Brown met
with representatives of SCB&T in person to discuss how each would proceed
(See email from SCB&T attached as Exhibit I). The email correspondence in
Exhibit I refers to Brown's purchase of the Note and Mortgage. SCB&T was fully
informed of Brown's intent. Following this meeting, SCB&T decided not to
demand payment of the full amount due on the due date of the Note. Rather,
SCB&T delayed action so that Brown could obtain the funds to pay off the Note.

29 In a separate email dated November 6, 2008, Jim Boyd, an employee of SCB&T,
informed Brown's agent that Brown's purchase of the Note and Mortgage would be
for the Payoff amount. (See email attached as Exhibit J).

30 Upon information and belief, Brown and Johnson sought counsel on how to keep
the Mortgage filed and of record upon payment to SCB&T of the full amount due
under the Note. This was vital to Brown because Oskins judgment would take
priority over any other mortgage.

1 Upon information and belief, Brown and Johnson were informed or were aware
that they would not be able to obtain conventional financing to refinance the Note.

because of the decrease in value of the Property and because Oskins judgment would be a lien that would have to be paid prior to or simultaneous with the refinance

- 32 Upon information and belief Brown Johnson and their agent or agents decided upon the following course of action
- a Brown would pay the full amount of the Note to SCB&T
 - b Brown and Wife and Brown's agent or agents or anyone or several of them would organize a company to act as the purchaser or holder of the Note and Mortgage
 - c The name of the company would combine the first initial of wife's first name Joan with her maiden name Conner to make it appear as if it were an unrelated company (See people Search report for Joan Conner Brown attached as Exhibit K) and
 - d Rather than marking the Note Paid and satisfying the Mortgage SCB&T would assign the Note and Mortgage through allonge and assignment respectively to the newly formed company
- 33 Browns and Johnsons and their agent or agents intent was to make it appear to creditors including Plaintiffs and others that there was a legitimate purchase of the Note and Mortgage In fact the formation of the new company and assignment of the Note and Mortgage was a sham was fraudulent and was done as part of a scheme and conspiracy to avoid creditors of Johnson including Plaintiffs
- 34 Defendants set out to put their scheme into action

35 On or about November 19, 2008, Sherri L. McGirt, as organizer, organized
Defendant J. Conner, LLC. (See copy of the Articles of Organization attached as
Exhibit L.)

36 Upon information and belief, Sherri L. McGirt is an attorney for McNair Law
Firm in Charlotte, North Carolina. Upon information and belief, Sherri L. McGirt
and McNair Law Firm provided legal advice and services to Brown.

37 Upon information and belief, Defendant Wife is the sole owner and sole member
of J. Conner, LLC and had knowledge of the entire transaction herein.

38 On or about December 2, 2008, Brown or his agents informed SCB&T that
Brown's funds would be available to pay SCB&T. (See email from Scott Masel to
SCB&T attached as Exhibit M.)

39 Upon information and belief, on December 2, 2008, Brown or Johnson and their
agents informed SCB&T of Brown and Johnson's desire to have SCB&T transfer
the Note and Mortgage to J. Conner. (See Exhibit M.)

40 On or about December 11, 2008, Oskins' judgment against Johnson was entered
on the Horry County judgment roll. (See copy of Judgment form attached as
Exhibit N.)

41 Upon information and belief, Defendants Brown and Johnson, either personally or
through the knowledge of their agents, were aware of the entry of Oskins'
judgment on or about December 11, 2008.

42 Johnson and Brown ignored Oskins' judgment and proceeded with the scheme,
sham, and fraudulent transaction they had conjured up with some or all of the
Defendants.

43 On or about December 16, 2008, Brown requested that Wachovia wire \$3.5 million of Brown's funds to SCB&T for payment on the Note. Wachovia noted this transaction was a Customer transfer and that Brown was the Caller. (See wire information attached as Exhibit O.) SCB&T received this wire information.

44 It is unclear to Plaintiffs how Brown and Wachovia funded the wire. On information and belief, Brown had adequate funds invested in Wachovia to pay the full amount due under the Note.

45 On information and belief, Brown either transferred his own funds to SCB&T or transferred the proceeds of a loan that Wachovia made to Brown. Information received from Wachovia regarding the wiring of \$3.5 million to SCB&T reference both a Customer Transfer as well as the Wachovia Commercial Loans Department. (See Exhibit O.) Wachovia, in furtherance of the fraudulent conveyance, has refused to provide information to Plaintiffs about this wire.

46 According to SCB&T's records, the amount due on the Note on or around December 10, 2008, was \$3,549,591.11. (See detailed printout of SCB&T attached as Exhibit P.)

47 On or about December 16, 2008, Wachovia, at Brown's request, wired \$3.5 million to SCB&T to pay off the Note. (See Exhibit O.)

48 The payment by Wachovia to SCB&T was made by or on behalf of Brown or Brown and Johnson and, in fact, the wire transaction references Brown and Johnson as the beneficiaries of the wire. SCB&T was aware that the funds paying off the Note were Brown's and were for the benefit of Brown and Johnson. (See Exhibits I and O.)

- 49 On or about December 23, 2008, Brown executed and delivered a check in the amount of \$44,303.31 drawn on Brown's Wachovia account for full and final payment of the Note. (See copy of check attached as Exhibit Q)
- 50 Rather than marking the Note Paid and satisfying the Mortgage as required by law, SCB&T waited for direction from Brown and Johnson or their agents.
- 51 On or about December 30, 2008, 14 days after receiving the wire of \$3.5 million for the benefit of Brown and Johnson and 7 days after receiving Brown's check for the final payoff, SCB&T, on the direction and request of Brown, Johnson or their agent or agents, assigned the Note and Mortgage to J. Conner, LLC. (See Assignment of Mortgage and details of the same from Horry County's website attached as Exhibit R.)
- 52 Throughout the Transaction, Brown and his agents only provided Masel with enough information to benefit Brown. On or about January 7, 2009, Scott Masel emailed SCB&T to inform them that he had just learned about the wire and check from Brown to SCB&T. Masel, at the direction of Brown and his agents, informed SCB&T that he was not filing a satisfaction of the Mortgage. SCB&T was complicit with this part of the scheme and had a pecuniary interest in following Brown's direction. To that end, SCB&T executed the assignment of the Note and Mortgage in January, but dated them December 30, 2008. (See email attached as Exhibit S.)
- 53 Because the full amount due under the Note was paid by or on behalf of Brown or Brown and Johnson, the Note should have been marked Paid and the Mortgage satisfied as required by S.C. Code Ann. § 36-3-602 (Supp. 2008).

54 Because the Note was paid by or on behalf of Brown or Brown and Johnson the
Note should have been marked Paid the Mortgage should have been
extinguished and Brown and Johnson should have held the property free and
clear of any encumbrances other than Plaintiffs judgment and claims
55 On or about January 14 2009 the assignment of the Mortgage was recorded in
the office of the Register of Deeds for Horry County
56 All of the acts of Brown Johnson Wife SCB&T and J Conner with respect to
the Note and Mortgage and the payment and assignment of both (the
Transaction) were done with the full knowledge and consent of each other and
were done with the intent to avoid creditors of Johnson

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment under S C Code Ann §15-53-10)

57 Plaintiffs reallege each and every allegation above as it repeated verbatim herein
58 This action is brought pursuant to S C Code Ann §15 53 10 et seq which is
known as the Uniform Declaratory Judgment Act
59 Plaintiffs request that this Court declare that Plaintiffs are creditors of Johnson
60 Plaintiffs request that this Court declare the rights of the parties in the Property to
include the rights of Oskin as a judgment creditor of Defendant Johnson and the
priority of Oskins judgment with respect to the Mortgage in Defendant J Conners
possession
61 Plaintiffs request that this Court declare that the assignment of the Mortgage to J
Conner was a fraudulent conveyance under South Carolinas statute of Elizabeth
which is codified at S C Code Ann §27-23-10 et seq

- 62 Plaintiffs request that this Court declare that the Mortgage should have been
satisfied or extinguished when payment was made by or on behalf of Brown or
Brown and Johnson
- 63 Plaintiffs request that the Court declare that the assignment of the Note and
Mortgage was fraudulent when made because some or all of the Defendants were
aware that the Note was paid in full by or on behalf of the obligor or obligors
and that the Mortgage as the security for the underlying debt should have been
satisfied or extinguished when such debt was extinguished
- 64 Plaintiffs request that the Court declare that the assignment of the Note and
Mortgage by SBC&T was a fraudulent conveyance and was had or made with the
intent or purpose to delay hinder or defraud Plaintiffs as creditors of their just
and lawful actions suits debts accounts damages penalties and forfeitures
- 65 Plaintiffs request that the assignment of the Note and Mortgage be deemed and
taken to be clearly and utterly void frustrate and of no effect and that J. Conners
interest in the Mortgage be declared void
- 66 Plaintiffs request that the Court declare that because the Property was free and
clear from any encumbrances due to payment of the Note any mortgage assigned
to J. Conner was a mortgage given at the direction of Defendants Brown and
Johnson as owners of the property and that such grant of a mortgage was a
violation of S.C. Code Ann. § 27-23-10 as it was made without consideration
made to a related company and was made to avoid delay Plaintiffs as creditors of
Johnson

- 67 Plaintiffs request that the Court declare that the two payments to SCB&T made the property free and clear of encumbrances other than Plaintiffs claims and judgment
- 68 Plaintiffs request that the court declare that the Transaction is controlled by S C Code Ann §36-3-602 (Supp 2008)
- 69 Plaintiffs request that the court declare that the payments made to SCB&T were made by or on behalf of Defendant Brown or Defendants Brown and Johnson as contemplated by S C Code Ann §36-3-602 (Supp 2008) such that the Note was paid and as a result that the Mortgage must be extinguished
- 70 Plaintiffs request that the Court declare that one years value of the Mortgage is \$245 000 which amount is based on the amount of interest on the Note which the Mortgage secures
- 71 Plaintiffs request that the Court declare that each Defendant was a party to was privy to had knowledge of or wittingly or willingly put in use avowed maintained justified or defended or any of them the feigned covinous and fraudulent transfer of the Note and Mortgage as true simple and done had or made bona fide or upon good consideration all of which was done of or to the disturbance or hindrance of the Plaintiffs
- 72 Plaintiffs request that the Court declare that each Defendant incur the penalty and forfeiture of one years value of the mortgage one moiety whereof shall be for the use of the State and the other moiety to the Plaintiffs who were grieved by such feigned and fraudulent conveyance encumbrance or limitation of use of the property

73 Plaintiffs request that the court declare that Oskins judgment has priority over any
other liens on the Property

FOR A SECOND CAUSE OF ACTION
(Punishment under South Carolina Fraudulent Conveyance statute)

74 Plaintiffs reallege each and every allegation above as if repeated verbatim herein

75 Defendants Johnson Brown Wife J Conner and SCB&T were all aware of the
payment of the Note and assignment of the Mortgage

76 Because all Defendants were parties to avowed had knowledge of and wittingly
or willingly put in use maintained justified or defended the Transaction as true
simple and done each Defendant is responsible if the assignment of the
Mortgage is set aside as a fraudulent conveyance for one year's value of the
Mortgage a moiety of which is payable to the State and the remaining moiety of
which is payable to Plaintiffs as required by S C Code Ann §27 23 30

77 One years value of the Mortgage as evidenced by the Note is 7% of \$3 5 million
or \$245 000 00

78 Plaintiffs are informed and do believe they are entitled to an order of this Court
granting judgment against each Defendant and any other person or entity that had
knowledge of the Transaction in the amount of \$245 000 for each such party
person or entity

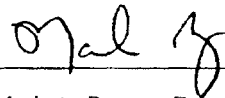
Wherefore having alleged the above Plaintiffs pray for the following

- a The Court to declare the rights of all parties in the Property
- b The Court to declare the priority of Plaintiff Oskins judgment
- c The Court to declare the status of the Mortgage in J Conners possession

- d The Court to declare that the transfer of the Mortgage was a fraudulent conveyance made in attempt to avoid Plaintiffs as creditors of Defendant Johnson
- e That the Court punish each defendant as required by S C Code Ann §27-23-30 and that the Court grant judgment against each Defendant for one years value of the Mortgage a moiety to the State and the remaining moiety to the Plaintiffs
- f That an expedited hearing and speedy trial be granted pursuant to Rule 57 SCRPC
- g That the Court award costs and fees related to the prosecution of this action and
- h Any other damages awards or relief this Court deems appropriate

MULLEN WYLIE LLC

By


Mark A. Brunty Esquire
4710 Oleander Drive
P O Box 1980
Myrtle Beach SC 29578
(843) 449-4800
Attorney for Plaintiffs

April 6 2009

Myrtle Beach South Carolina

STATE OF SOUTH CAROLINA)
) DEED TO REAL ESTATE
COUNTY OF HORRY)

KNOW ALL MEN BY THESE PRESENTS That Dunes Lot 13, LLC ("Grantor ") in the State aforesaid for the sum of Five Dollars and 00/100 (\$5 00) Dollars paid to it by Michael D Brown and Stephen Mark Johnson of 8810 N Ocean Boulevard North Myrtle Beach SC 29572 (the "Grantees") in the State aforesaid (Receipt of which is hereby acknowledged) Grantor has granted bargained sold and released and by these presents does grant bargain sell and release unto the said Grantees their heirs and assigns, forever in fee simple all of her interest in the following described property to wit

SEE ATTACHED EXHIBIT A

TOGETHER with all and singular the Rights Members Hereditaments and Appurtenances belonging or in any wise incident or appertaining

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantees their heirs and assigns

And the Grantor herein hereby binds itself its Successors and Assigns to warrant and defend all and singular the premises unto the Grantees their heirs and assigns against itself and its Successors and Assigns and all persons lawfully claiming or who may claim the same or any part hereof

Witness the execution hereof by Grantor this 30th day of November in the year of our Lord Two Thousand and Six and in the Two Hundred Thirty First Year of the Independence of the United States of America.

Signed Sealed and Delivered
in the Presence of

Witness

Notary

Dunes Lot 13 LLC

By Stephen Mark Johnson Member

Instrument# 2006900004870 DEED BK
3198 PG 1933 DOCTYPE 001 12/05/2006
at 04:53:33 PM 1 OF 5 EXEMPT
BALLER V SKIPPER HORRY COUNTY
SC REGISTRAR OF DEEDS

EXHIBIT A

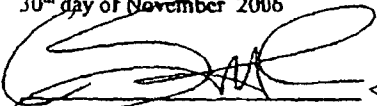
Johnson Docs: Page 1 of 84

ROA_0050

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF HORRY)

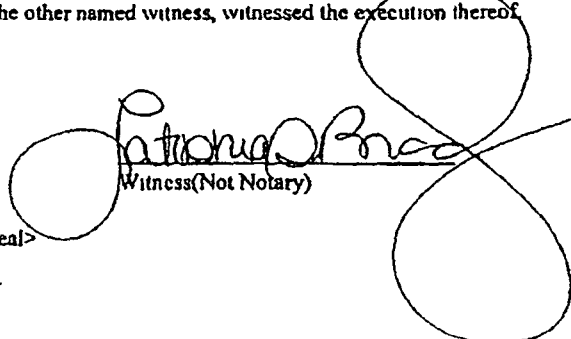
PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Stephen Mark Johnson, Member of Dunes Lot 13 LI C sign, seal and as its act and deed, executed the foregoing deed and that (s)he with the other named witness, witnessed the execution thereof.

SWORN to before me this
30th day of November 2006



Notary Public for South Carolina
My Commission Expires 5/3/08

<seal>



Witness (Not Notary)

EXHIBIT "A"

All and singular that certain piece, parcel or lot of land situate lying and being in Dogwood Neck Township School District Eight County and State aforesaid and being more particularly described as Lot 13 Dunes Ocean Front Development Phase II as shown on map prepared by Associated Land Surveyors dated October 27 1997 and recorded February 12 1998 in Plat Book 153 at Page 108 in the office of the Register of Deeds for Horry County reference to which is craved as forming a part of these presents

THIS being the identical property conveyed to Dunes Lot 13 LLC by deed of Ronald C. Vallone dated October 14 2004 recorded October 18 2004 in Deed Book 2808 at Page 313 Horry County Records

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALTY appeared before me the undersigned who being duly sworn deposes and says

- 1 I have read the information on this affidavit and I understand such information
- 2 The property being transferred is known as Lot 13 Dunes Oceanfront Development, in Horry County bearing County Tax Map Number 166-09-07 018 which was transferred by Dunes Lot 13 LLC to Michael D Brown and Stephen Mark Johnson on November 30 2006
- 3 Check one of the following The deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth
 - (b) _____ subject to the deed recording fee as a transfer between a corporation a partnership or other entity and a stockholder partner or owner of the entity or is a transfer to a trust or as a distribution to a trust beneficiary
 - (c) X exempt from the deed recording fee because (See Information section of affidavit)
(If exempt please skip items 4 7 and go to item 8 of this affidavit)
DEED OF GIFT
- 4 Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit)
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____
 - (b) _____ The fee is computed on the fair market value of the realty which is _____
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____
- 5 Check Yes _____ or No _____ to the following A lien or encumbrance on the land tenement or realty before the transfer and remained on the land tenement or realty after the transfer If Yes the amount of the outstanding balance of this lien or encumbrance is _____
- 6 The deed recording fee is computed as follows
 - (a) Place the amount listed in item 4 above here \$ _____
 - (b) Place the amount listed in item 5 above here \$ _____
(If no amount is listed place zero here)
 - (c) Subtract Line 6(b) from Line 6(a) and place result here \$ _____
- 7 The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$ _____
- 8 As required by Code Section 12-24-70 I state that I am a responsible person who was connected with the transaction as Seller

Responsible Person Connected with the Transaction

Notary Public for South Carolina
My Commission Expires 5/13

Except as provided in this paragraph the term value means the consideration paid or to be paid in money or money's worth for the property. Consideration is paid or to be paid in money's worth if it is paid in money, either directly, but is not limited to other realty, personal property, stocks, bonds, partnership interest, and thus includes property, the forgiveness of a claim of a debt, the assumption of a debt and the rendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the property being transferred in determining fair market value of the consideration. In the case of a transfer for value to a partnership or other entity and stockholder, partner or owner of the entity and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, value means the realty's fair market value. A deed even if it is void for the amount of any lien or encumbrance existing on the land, tenement or estate before the transfer and remaining on the land, tenement or realty after the transfer. Taxpayers may elect to use the fair market value for property purposes in determining gift or estate tax of the proceeds of the sale.

(1) transferring realty in which the value of the stock as defined in Code Section 12.24-10 is equal to or less than one hundred dollars.

- Johnson Docs. Page 5 of 84

Application Summary Report

Lender SOUTH CAROLINA BANK AND TRUST NA 838 JOHN C CALHOUN DRIVE PO BOX 8707 ORANGEBURG, SC 29118	Applicant MICHAEL B. BRIDEN, STEPHEN MARK JOHNSON 	Application Number _____ Application Date _____ Amount Requested 3,500,000.00 Interest by ANTA USER

This is an Application Summary Report for the application _____ dated _____

Applicant Information

MICHAEL B. BRIDEN


STEPHEN MARK JOHNSON
 88 PO NORTH OCEAN BLVD.
 MYRTLE BEACH, SC 29572

General Application Information

Loan Type		Proposed Repayment	
Proposed Loan Amount	3,500,000.00	Type	INTEREST ONLY
Funding Date	11-30-2008	Proposed Payments	MONTHLY
Fixed Rate	X	Number of Payments	
Variable Rate		Loan Decision Status	CLOSERS
Interest Rate	7.000	Loan Decision Confirmation	

Collateral Information

Collateral Description

Total Collateral Value \$ 4,150,000.00
Property Address
 8810 NORTH OCEAN BLVD. MYRTLE BEACH, SC 29572

Loan Information

Monthly Income

Gross Wages/Salary	
Other Income	
Total	
Assets	
Total Assets	
Liabilities	
Total Liabilities at Application	
Proposed Total Liabilities at Closing	
Ratios	
Loan-to-Value (LTV)	
Total Loan-to-Value (TLTV)	
Income-to-Debt (I/D)	
Debt-to-Income (D/I)	
Score	

If multiple applicants refer to the credit report

Loan Officer Comments

EXHIBIT B

Uniform Residential Loan Application

It is requested to be completed by the applicant with the lender's assistance. Applicant should complete this form as "Borrower" or "Co-Borrower". If applicable, Co-Borrower information must also be provided (and the appropriate box checked) when ☐ the income or assets of person other than the Borrower (including the Borrower's spouse) will be used as a basis for loan qualification or ☐ the income or assets of the Borrower's spouse or other person who has community property rights pertain to state law will not be used as a basis for loan qualification, but his or her address must be considered because the spouse or other person has community property rights pertain to applicable law and Borrower resides in community property state, the security property is located in community property state, or the Borrower is relying on other property located in community property state as basis for repayment of the loan.

This is an application for pre-qualified Borrower and Co-Borrower each agree that we intend to apply for this credit help below.

Stephen Mark Johnson
Michael D Brown

Mortgage Applied for	☐ VA ☒ Conventional ☐ Other (specify):	Agency Case Number	Under Code Number
Amount	Interest Rate	No. of Months	Repayment Types
\$350,000.00	7.00% 24		☒ Fixed Rate ☐ ARM (specify)

PROPERTY INFORMATION AND PURPOSE OF LOAN

Subject Property Address (street, city, state, ZIP) No. of Units

8010 NORTH OCEAN BLVD, MYRTLE BEACH, SC 29572 1 or Multi

Legal Description of Subject Property (attach description if necessary)

Purpose of Loan ☒ Purchase ☐ Construction ☐ Other (specify):

Property will be ☒ Primary Residence ☐ Secondary Residence ☐ Investment

Complete this line if construction or construction-permanent loan.

Year Let Acquired ☐ Original Cost ☐ Amount Existing (less) ☐ 1st Project Value of Lot ☐ 2nd Cost of Improvements ☐ Total to Bld

Complete this line if this is a business loan.

Y or ☐ Original Cost ☐ Amount Existing (less) ☐ Purpose of Refinance ☐ Describe Improvements ☐ made ☐ to be made

This will be held in what Name(s) MICHAEL D BROWN STEPHEN MARK JOHNSON Manner in which Title will be held

Form of Down Payment, Settlement Charges, and/or Subordinate Financing is (specify)

☒ Fee Simple ☐ Leasehold (less than 99 years)

III. BORROWER INFORMATION

Borrower's Name (Include Jr or Sr if applicable) Co-Borrower's Name (Include Jr or Sr if applicable)

MICHAEL D BROWN STEPHEN MARK JOHNSON

Social Security Number ☐ Home Phone (indicate code) ☐ DOS ☐ M. Status ☐ Social Security Number ☐ Home Phone (indicate code) ☐ DOS ☐ M. Status

☐ Married ☐ Unmarried (include single, divorced, widowed) ☐ Dependents (list name, date of birth, and relationship) ☐ Married ☐ Unmarried (include single, divorced, widowed) ☐ Dependents (list name, date of birth, and relationship)

Present Address (street, city, state, ZIP) ☐ Own ☐ Rent ☐ No Yrs ☐ Present Address (street, city, state, ZIP) ☐ Own ☐ Rent ☐ No Yrs

8010 NORTH OCEAN BLVD MYRTLE BEACH, SC 29572

Mailing Address, if different from Present Address

Mailing Address, if different from Present Address

If holding at present address for less than two years, complete the following:

Former Address (street, city, state, ZIP) ☐ Own ☐ Rent ☐ No Yrs ☐ Former Address (street, city, state, ZIP) ☐ Own ☐ Rent ☐ No Yrs

IV. EMPLOYMENT INFORMATION

Borrower's Name & Address of Employer ☐ Self-Employed ☐ Yes, on this job ☐ No, employed in this line (multiple previous)

JOHNSON COASTAL CONSULTING 1205 48TH AVENUE MYRTLE BEACH, SC 29577

Position/Title/Type of Business ☐ Business Name (indicate code) ☐ Business Name (indicate code)

OWNEPREMIER ESTATE/ 843-830-5224

If employed in same position for less than two years or if currently employed in more than one position, complete the following:

Name & Address of Employer ☐ Self-Employed ☐ Date (from to) ☐ Monthly Income ☐ Name & Address of Employer ☐ Self-Employed ☐ Date (from to) ☐ Monthly Income

Position/Title/Type of Business ☐ Business Name (indicate code) ☐ Position/Title/Type of Business ☐ Business Name (indicate code)

Name & Address of Employer ☐ Self-Employed ☐ Date (from to) ☐ Monthly Income ☐ Name & Address of Employer ☐ Self-Employed ☐ Date (from to) ☐ Monthly Income

Position/Title/Type of Business ☐ Business Name (indicate code) ☐ Position/Title/Type of Business ☐ Business Name (indicate code)

Name & Address of Employer ☐ Self-Employed ☐ Date (from to) ☐ Monthly Income ☐ Name & Address of Employer ☐ Self-Employed ☐ Date (from to) ☐ Monthly Income

radio this form to the lender

21R-0150

Visit Mortgage Lender for 1000-2 19

Stephen Mark Johnson

CONTINUATION SHEET RESIDENTIAL LOAN APPLICATION		
Use this continuation sheet if the credit report shows the completion of the Residential Loan Application, Mark B for Borrower or C for Co-Borrower	Borrower	Agency Case Number
	Co-Borrower	Lender Case Number
	MICHAEL R. BROWN	
	STEPHEN MARK JOHNSON	

I/We, by submitting this to Federal credit institutions by law or requirement, or by knowingly making false statements concerning any of the above facts or statements under the provisions of Title 18 United States Code Section 1001, are

Decisions	Signature	Date	Co-Borrower's Signature	Date
X	<i>Stephen Mark Johnson</i>		X <i>Michael R. Brown</i>	12/10/06

NOTE: Use Form 100-100
2-100-100-100

Johnson Doc F go 31 of 84

ROA_0059

Revised 8/2/06

Consumer Real Estate Approval Document

Borrower's Name Michael D. Brown		Page 2 for additional approvals		Lender ☐ SCBT ☐ Piedmont		Borrower Port new		CoBorrower Port new	
Co Borrower S. Mark Johnson (subject collateral will be his primary residence)		Loan Officer Anne Wilson		Application Date 11/22/06		Branch / Branch Code Columbia Grove 24		Officer Code 528	
Property Address 8810 North Ocean Blvd Myrtle Beach SC 29578		Relationship Summary/Deposits							
Borrower Occupation		Occupancy Status		No of Units		Sales Price		Appraised Value	
Detached Housing		Primary Residence		1				Orig. Fee	
Loan Amount \$ 3,500,000		Loan Rate 7.500%		Term (Months) 24		Orig. Note Rate 7		Processing Fee	
Loan Type		Amortization Type		ARM Type		Lien Position		And Subordinate/Other Financing	
Conventional		Interest Only				First Mortgage		none	
Loan Purpose Type		Cash Out Refinance		Purpose of Refinance		Cashout to p/c cover note 2nd mty & cash to borrower			
Stable Monthly Inc		Borrower		Co-Borrower		Total		Proposed Monthly Payments (Borrower's Primary Residence)	
Base Income								1st Mntg Interest only @ 9% \$26,250.00	
Other Income								Second Mortgage P & I	
Total Income		\$0						Hazard Insurance	
								Taxes	
								Mortgage Insurance	
								Lease/Ground Rent	
								Other	
Qualifying Ratios		Loan to Value Ratio						Total Primary Housing Expense \$26,250.00	
Prime y n ling Expense								All Other Monthly Payments \$291.00	
Total Obligation /Income								Total Monthly Payments \$26,541.00	
Adjusted Collateral Value		\$4,150,000							
Borrower Credit Risk Tiers									
BEACON/BNI	Pt	JOB/RETIRED	Pt	RESIDENCE	Pt	BEACON/BNI	Pt	JOB/RETIRED	Pt
Actual Score		> 5 Years		Homeowner		Actual Score		> 5 Years	
700+		1-5 Years		Rent & 5 Years		700+		1-5 Years	
650-699		< 2 Years		Other		650-699		< 2 Years	
625-649		Retired & 5 Years				625-649		Retired & 5 Years	
585-624		Retired < 5 Years				585-624		Retired < 5 Years	
585		Self & 5 Years				585		Self & 5 Years	
Borrower Pt		Self < 5 Years				Borrower Pt		Self < 5 Years	
Actual Score						Actual Score			
BNI > 780						BNI > 780			
BNI 780						BNI 780			
BNI Pt						BNI Pt			
Total Cr Pt		Total Bus Time Pt		Total Res Pt		Total Cr Pt		Total Bus Time Pt	
CO-Borrower Credit Risk Tiers									
BEACON/BNI	Pt	JOB/RETIRED	Pt	RESIDENCE	Pt	BEACON/BNI	Pt	JOB/RETIRED	Pt
Actual Score		> 5 Years		Homeowner		Actual Score		> 5 Years	
700+		1-5 Years		Rent & 5 Years		700+		1-5 Years	
650-699		< 2 Years		Other		650-699		< 2 Years	
625-649		Retired & 5 Years				625-649		Retired & 5 Years	
585-624		Retired < 5 Years				585-624		Retired < 5 Years	
585		Self & 5 Years				585		Self & 5 Years	
Borrower Pt		Self < 5 Years				Borrower Pt		Self < 5 Years	
Actual Score						Actual Score			
BNI > 780						BNI > 780			
BNI 780						BNI 780			
BNI Pt						BNI Pt			
Total Cr Pt		Total Bus Time Pt		Total Res Pt		Total Cr Pt		Total Bus Time Pt	
TOTAL POINTS 2 LOAN RISK TIER 4									
Score Guide TIER 1 = 6-7 Points, TIER 2 = 5 Points, TIER 3 = 3-4 Points, TIER 4 = 1-2 Points, TIER 5 = 0 Points									
Underwriting Exceptions									
If loan does not have any underwriting exceptions =									
Exceptions ☒ Loan to value over Bank guidelines =									
☐ Debt to income over guidelines									
☐ Length of time financed over Bank guidelines =									
If you marked more than one box above it will be indicated below									
☐ Loan to value & Debt to income over Bank guidelines =									
☐ Loan to Value & Length of time financed over Bank guidelines									
☐ Debt to Income & Length of time financed over Bank guidelines =									
☐ All checked									
EXCEPTION CODE									
BORROWER LOAN RISK TIER 1									
TOTAL SCBT Proposed Exposure = \$3,500,000.00									
Verified Liquidity									
Verified Income									
Comments Underwritten by L. Harkins 11/20/06 LTV calculation based on appraised value no cost figures obtained.									
Approval Subject To 1) Signed application 2) Pollok, Burns, Windley & Goette approval (see page 1 for Pollok & Burns approvals)									
Approval Name Signature Date									
Lender Anne Wilson 12/11/2006 15:03									
Regional President Jack Goette 12/14/2006 13:28									
res den SCBT John Windley 12/11/2006 7:21									

KW
DEC 14 2006
RECEIVED

Consumer Real Estate Approval Document

Revised 8/2004

Borrowers Name: "Page 1 of 2" **Lender:** ☐ SCBT ☐ Midmont **Borrower Port:** ☐ New **Co-Borrower Port:** ☐ New

Co-Borrower: **3 Mark Jackson (subject collateral will be his primary residence)** **Loan Officer:** Anne Wilson **Officer Code:** 526

Property Address: **5810 North Ocean Blvd, Myrtle Beach, SC 29575** **Application Date:** 11/22/06 **Branch / Branch Code:** Columbia Gardens 24

Borrower Occupants: **Relationship Summary/Deposit:**

Property Type: **Occupancy Status:** **No of Units:** **Sale Price:** **Appraised Value:** **Orig. Fee:** **Processing Fee:**

Detached Housing **Primary Residence** **1** **\$4,150,000.00** **\$4,150,000.00** **\$17,500.00** **\$200.00**

Loan Amount: **\$3,500,000** **Loan Rate:** **7.000%** **Term (Months):** **24** **Orig. Note Rate:** **7** **Qual. Note Rate:** **9%**

Loan Type: **Amortization Type:** **ARM Type:** **First Mortgage:** **Ant. Subordinate/Other Financing:**

Conventional **Interest Only** **First Mortgage** **None**

Loan Purpose Type: **Cash Out Refinance** **Purpose of Refinance:** **Cashout to pre-close note 2nd mty & cash to borrower**

Stable Monthly Inc: **Borrower:** **Co-Borrower:** **Total:** **Prepared Monthly Payments (Borrower's Primary Residence):**

Base Income: **Other Income:** **Total Income:** **1st Mty "Interest only" @ 9%:** **\$28,250.00**

10 **Second Mortgage P & I:** **Hazard Insurance:** **Taxes:** **Mortgage Insurance:** **Lease/Growth Rent:** **Other:**

Qualifying Ratio: **Loan to Value Ratio:** **Total Primary Housing Expense:** **\$28,250.00**

Primary Housing Expense: **Total Obligations/Income:** **All Other Monthly Payments:** **\$291.00**

Adjusted Collateral Value: **\$4,150,000** **Total Monthly Payments:** **\$28,541.00**

BORROWER CREDIT RISK TIERS **CO-BORROWER CREDIT RISK TIERS**

BEACON/BN	Pts	JOB/RETIRED	Pts	RESIDENCE	Pts	BEACON/BN	Pts	JOB/RETIRED	Pts	RESIDENCE	Pts
Actual Score		> 5 Years		Homeowner		Actual Score		> 5 Years		Homeowner	
700+	2	2-5 Years		Rent > 5 Years		700+	2	2-5 Years		Rent > 5 Years	
650-699	1	< 2 Years		Other		650-699	2	< 2 Years		Other	
600-649	1	Retired > 5 Years				600-649	1	Retired > 5 Years			
550-599	0	Retired < 5 Years				550-599	0	Retired < 5 Years			
500-549	0	Self > 5 Years				500-549	1	Self > 5 Years			
450-499	0	Self < 5 Years				450-499	0	Self < 5 Years			
Below 450	0					Below 450	0				
Below 450	0					Below 450	0				
Actual Score						Actual Score					
BN1 > 250	0					BN1 > 250	0				
BN1 250	1					BN1 250	1				
BN1 Pts	1					BN1 Pts	1				
Total C. Pts	0	Total Res Pts	0	Total Cr. Pts	0	Total C. Pts	0	Total Res Pts	0	Total Cr. Pts	0

TOTAL POINTS: **LOAN RISK TIER:** **TOTAL POINTS:** **LOAN RISK TIER:**

Score Guide: **TIER 1 = 6-7 Points**, **TIER 2 = 5 Points**, **TIER 3 = 3-4 Points**, **TIER 4 = 1-2 Points**, **TIER 5 = 0 Points**

Underwriting Exceptions:

If loan does not have any underwriting exceptions = **Code 0** **Lending Policy Approval/Exception Request**

Exceptions: ☐ Loan to value over Bank guidelines = **Code 1** **Other Exceptions/Comments:**

☐ Debt to income over guidelines **Code 2** **Home to serve as primary residence for Mark Jackson. Co-borrower is his uncle Michael Brown (who has liquid assets of \$40MM managed by Wachovia). Borrower to move \$100MM to SCBT to establish a depository relationship.**

If you marked more than one box above it will be indicated below: **Code 3** **1) Term exception (max 18 mos)**

☐ Loan to value & Debt to income over Bank guidelines **Code 6** **2) Policy LTV exception (max 75.80%)**

☐ Loan to value & Length of time financed over Bank guidelines **Code 7** **Posted note Expires 12/30/06**

☐ Debt to income & Length of time financed over Bank guidelines **Code 8**

☐ All checked = **Code 9**

EXCEPTION CODE: **7**

BORROWER LOAN RISK TIER: **CO-BORROWER TIER:** **RECEPTION CODE:**

1 **3** **1**

Total SCBT Proposed Exposure: **\$3,500,000.00** **Secured:** **\$3,500,000** **Unsecured:** **0**

Verified Liquidity: **Verified Income:**

Comments: **Underwritten by L. Martone 11/10/06. LTV calculation based on appraised value, no cash figures obtained**

Approval Subject To: **1) Signed application; 2) Follow, Burns, Windley & Goetts approval (see page 2 for Windley & Goetts approval)**

Approval: **By:** **For:** **Signature:** **Date:**

Lender: **Anne Wilson** **Signature:** **11/28/2006 10:03** **Commitment Date:**

Chief Credit Officer: **Joe Burns** **Signature:** **11/30/2006 10:18**

Regional President: **John Pollok** **Signature:** **11/30/2006 10:07**

KW
DEC 14 2006
RECEIVED

OAS NO 2602-0268

A U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT
SETTLEMENT STATEMENT

1 ☐ FHA 2 ☐ FmHA 3 ☒ CONV UNINS 4 ☐ VA 5 ☐ CONV INS
 6 FILE NUMBER 05-3-14388C 7 LOAN NUMBER
 8 MORTGAGE INS CASE NUMBER

C NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the borrower are shown. Items marked "POC" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D NAME AND ADDRESS OF BORROWER Michael D Brown Stephen Mark Johnson 6810 North Ocean Boulevard North Myrtle Beach, SC 29572	E NAME AND ADDRESS OF SELLER	F NAME AND ADDRESS OF LENDER South Carolina Bank & Trust
G. PROPERTY LOCATION 6810 North Ocean Boulevard North Myrtle Beach, SC 29572 Horry County South Carolina LOT 13 DUNES OCEANFRONT DEVELOPMENT	H SETTLEMENT AGENT 67-0668257 Newby Sertip, Masol, & Casper LLC PLACE OF SETTLEMENT Post Office Box 808 Myrtle Beach, SC 29578	I SETTLEMENT DATE November 30 2008 Disburse 12/05/08

J SUMMARY OF BORROWER'S TRANSACTION		K SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101 Contract Sales Price		401 Contract Sales Price	
102 Personal Property		402 Personal Property	
103 Settlement Charges to Borrower (Line 1400)	2,638,415.36	403	
104 2005 Property Taxes to Horry County Treasurer	8,658.44	404	
105 Escrow to South Carolina Bank & Trust	245,000.00	405	
Adjustments For Items Paid By Seller in advance		Adjustments For Items Paid By Seller in advance	
106 City/Town Taxes to		406 City/Town Taxes to	
107 County Taxes 01/01/08 to 01/01/07	7,839.92	407 County Taxes to	
108 Assessments to		408 Assessments to	
109		409	
110		410	
111		411	
112		412	
120 GROSS AMOUNT DUE FROM BORROWER	2,897,713.72	420. GROSS AMOUNT DUE TO SELLER	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201 Deposit or earnest money		501 Excess Deposit (See Instructions)	
202 Principal Amount of New Loan(s)	3,500,000.00	502 Settlement Charges to Seller (Line 1400)	
203 Existing loan(s) taken subject to		503 Existing loan(s) taken subject to	
204		504 Payoff of first Mortgage	
205		505 Payoff of second Mortgage	
206		506	
207		507	
208		508	
209		509	
Adjustments For Items Unpaid By Seller		Adjustments For Items Unpaid By Seller	
310 City/Town Taxes to		510 City/Town Taxes to	
311 County Taxes to		511 County Taxes to	
312 Assessments to		512 Assessments to	
313		513	
314		514	
315		515	
316		516	
317		517	
318		518	
319		519	
20 TOTAL PAID BY/FOR BORROWER	3,500,000.00	520 TOTAL REDUCT AMT DUE SELLER	
00 CASH AT SETTLEMENT FROM/TO BORROWER		600. CASH AT SETTLEMENT TO/FROM SELLER:	
01 Gross Amount Due From Borrower (Line 120)	2,897,713.72	601 Gross Amount Due To Seller (Line 420)	
02 Less Amount Paid By/FOR Borrower (Line 220)	(3,500,000.00)	602 Less Reductions Due Seller (Line 520)	
03 CASH (FROM) (X TO) BORROWER	602,288.28	603 CASH (TO) (FROM) SELLER	0.00

The undersigned hereby acknowledge receipt of a photostatic copy of pages 1&2 of this statement & any attachments referred to herein.

Borrower Michael D Brown
 Michael D Brown
Stephen Mark Johnson
 Stephen Mark Johnson

Seller

EXHIBIT C

Job 500 Dec 08 H.D. 12/5/08 Page 6 of 64

ROA_0062

L. SETTLEMENT CHARGES				Page 2
799	TOTAL COMMISSION Based on Price	\$	@	%
Division of Commission (line 700) as follows:				
701	\$	to		
702	\$	to		
703	Commission Paid at Settlement			
704		to		
800	ITEMS PAYABLE IN CONNECTION WITH LOAN			
801	Loan Origination Fee 0.5000 %	to South Carolina Bank & Trust		17,500.00
802	Loan Charge	%	to	
803	Appraisal Fee	to 848 Appraisal Service	POC 8258.00	
804	Credit Report	to		
805	Lender's Inspection Fee	to		
806	Mortgage Ins. App. Fee	to		
807	Processing Fee	to South Carolina Bank & Trust		200.00
808	Flood Determination Fee	to E/FloodZone		10.00
809	Court Fee	to South Carolina Bank & Trust		20.00
810	Advance Satisfaction Fee	to South Carolina Bank & Trust		5.00
811				
900	ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE			
901	Interest From 12/05/08 to 01/01/07	@ \$	Day (27 days %)	
902	Mortgage Insurance Premium	months		
903	Hazard Insurance Premium	1.0 years	to Puckett, Sheets, & Hogan	30,783.00
904	Flood Insurance	1.0 years	to Puckett, Sheets, & Hogan	3,812.00
905				
1000	RESERVES DEPOSITED WITH LENDER			
1001	Hazard Insurance	months @ \$	per month	
1002	Mortgage Insurance	months @ \$	per month	
1003	City/Town Taxes	months @ \$	per month	
1004	County Taxes	months @ \$	per month	
1005	Assessments	months @ \$	per month	
1006	Flood Insurance	months @ \$	per month	
1007		months @ \$	per month	
1008		months @ \$	per month	
1100	TITLE CHARGES			
1101	Previous Legal Fees on Prop.	to Newby, Sartin, Massel, & Casper LLC		9,500.00
1102	Abstract or Title Search	to Newby, Sartin, Massel, & Casper LLC		225.00
1103	Title Examination	to		
1104	Title Insurance Binder	to Newby, Sartin, Massel, & Casper LLC		125.00
1105	Document Preparation	to		
1106	Notary Fees	to		
1107	Attorney's Fees	to Newby, Sartin, Massel, & Casper LLC		1,500.00
(includes above item numbers)				
1108	Title Insurance	to Fidelity Mortgage Title		5,475.00
(includes above item numbers)				
1109	Lender's Coverage	\$ 3,500,000.00	\$ 475.00	
1110	Owner's Coverage	\$		
1111	Fed Ex Fee	to Newby, Sartin, Massel, & Casper LLC		50.00
1112	Mechanic's Lien Release	to Horry County Clerk of Court		45,733.33
1113				
1200	GOVERNMENT RECORDING AND TRANSFER CHARGES			
1201	Recording Fees, Deed \$ 11.00 Mortgage \$ 14.00	Releases \$		25.00
1202	City/County Tax/Stamp/Deed	Mortgage		
1203	State Tax/Stamp	Revenue Stamp Mortgage		
1204	Satisfaction of Mortgage(2)	to Horry County Register of Deeds		10.00
1205				
1300	ADDITIONAL SETTLEMENT CHARGES			
1301	Survey	to		
1302	Real Inspection	to		
1303	Payoff First Mortgage	to First Palmetto Savings Bank		2,041,432.03
1304	Payoff Second Mortgage	to Ronald Veltrop		300,000.00
1305	Payoff	to John Leung		189,000.00
1400	TOTAL SETTLEMENT CHARGES (Enter on Lines 100, Section J and 802, Section K)			2,636,415.36

read 1 be rue copy

Newby, Sartin, Massel, & Casper LLC
S. Mortimer Agent

NOTE

COLUMBIA
COUNTY

118.1661
SOUTH CAROLINA

11-30-2008
Date

210 NORTH COLUMBIA BLVD, MYRTLE BEACH, SC 29577
(Property Address)

1. BORROWER'S PROMISE TO PAY

I, the undersigned, promise to pay to the order of the Lender the sum of \$1,528,209.72 (this amount is called "Principal"), plus interest, in the order of the Lender. The Lender is SOUTH CAROLINA BANK AND TRUST CO., ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA.

I will make all payments under this Note in the form of cash, check or money order.

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

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.000%. Interest will be charged beginning on 11-30-2006.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Periodic Payments

I will pay principal and interest by making periodic payments when scheduled:

☐ I will make ... payments of \$... each on the ... of each ... beginning on ...

☒ I will make payments as follows:

22 MONTHLY INTEREST PAYMENTS BEGINNING FROM 11-30-06 TO 12-01-07 BEGINNING 12-30-08.

☒ In addition to the payments described above, I will pay a Balloon Payment of \$1,528,209.72 on 11-30-2008. The Note Holder will deliver or mail to me notice prior to maturity that the Balloon Payment is due. This notice will state the Balloon Payment amount and the date that it is due.

(B) Maturity Date and Place of Payments

I will make these payments as scheduled until I have paid all of the principal and interest and any other charges described below that I owe under this Note. My periodic payments will be applied as of its scheduled due date and will be applied to interest before Principal. If on 11-30-2008 I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date".

I will make my periodic payments at 250 JOHN C. CALHOUN DRIVE, PO BOX 1297, MYRTLE BEACH, SC 29577.

or at different

place if required by the Note Holder.

4. BORROWER'S RIGHT TO PREPAY

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

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayments to the accrued and unpaid interest on the Prepayment amount before applying my Prepayments to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of any periodic payments unless the Note Holder gives me writing to those changes.

5. LOAN CHARGES

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

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any periodic payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

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

(C) Notice of Default

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

(D) No Waiver By Note Holder

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

MULTIPURPOSE FT
SOUTH CAROLINA BANK AND TRUST CO.
NOT A NOTARIAL OFFICE

EXHIBIT D

signed at Myrtle Beach, SC on 12/15/2006
[Signature]

ROA_0064

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

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

2. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note is also obligated to keep all of the promises made in this Note. The Note holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

I and any other person who has obligations under this Note waive the rights of Protestation and Notice of Dishonor. Protestation waives the right to require the Note Holder to demand payment of amounts due. Notice of Dishonor waives the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

(In addition to the provisions given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instruments") dated 3/15/2008 protects the Note Holder from possible losses which might result if I do not keep the payments which I make to this Note. This Security Instruments describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of these conditions are described as follows:

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

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

(Complete the Balloon Payment notice below if this Note provides for a Balloon Payment at Section 9A) on page 1 of this Note.

THIS LOAN IS PAYABLE IN FULL ON NOVEMBER 20, 2008 ... AT VALDIVIA I MUST REPAY THE
THE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE, WHICH MAY BE A
ONE PAYMENT. LENDER IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME.
THEREFORE, BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS THAT I MAY OWN
I WILL HAVE TO FIND A LENDER, WHICH MAY BE THE LENDER I HAVE THIS LOAN WITH
WILLING TO LEND ME THE MONEY IF I REFINANCE THIS LOAN AT MATURITY. I MAY HAVE TO PAY
OR ALL OF THE CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN EVEN IF
AM REFINANCING FROM THE SAME LENDER.

Michael D. Brown
MICHAEL D. BROWN
Stephen Mark Johnson
STEPHEN MARK JOHNSON

(Sign Original Only)

Instruments 2006900004871 MTG BK
4795 PG 1876 DOCTYPE 002 12/05/2006
01 04 53.34 PM, 1 OF 8
BATTERY V SKIPPER HORRY COUNTY
SC REGISTRAR OF DEEDS

Space Above This Line For Recording Data

MORTGAGE

DEFINITIONS

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

(A) "Security Instrument" means this document which is dated 11-30-2008 together with all Riders to this document.

(B) "Borrower" is MICHAEL O. BURTON AND STEPHEN MARK JOHNSON

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is SOUTH CAROLINA BANK AND TRUST FIA CORPORATION.

THE UNITED STATES OF AMERICA
9007 SHAMBERG, SC 29115

Lender is a
organized and existing under the laws of
Lender address is 1650 JAMES CALHOUN DRIVE, PO BOX
Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated 11-30-2008. The Note states that Borrower owes Lender THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 Dollars (U.S. \$ 3,500,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full on or later than 11-30-2038.

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note plus interest, any prepayment charges and late charges due under the Note and all sums due under this Security Instrument plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

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

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final non-applicable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds other than a transaction negotiated by check, draft or similar paper instrument which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes but is not limited to, point of sale transfers, automated teller machine transactions, transfers initiated by telephone wire transfers and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages or proceeds paid by any third party (other than insurance proceeds) paid under the coverage described in Section 5) for (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance to lieu of condemnation; or (iv) misrepresentation of or omission as to the state and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time or any additional or successor legislative or regulatory instrument that governs the same subject matter. As used in this Security Instrument, RESPA refers to all requirements and restrictions that are imposed in regard to a federally related mortgage loan even if the loan does not qualify as a federally related mortgage loan under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title in the Property whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender (i) the repayment of the Loan and all renewals, extensions and modifications of the Note and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in the REGISTER OF DEEDS of

(Type the mailing jurisdiction)

HORRY

Phone e-mail web site

SOUTH CAROLINA Single Family First Mortgage Deed of Trust UNIFORM INSTRUMENT

(page 1 of 7 pages)

11/30/2008 1:02 PM
C 3 0
J. Johnson Doc# Page 5 of 84

EXHIBIT F

ROA_0066

1720001

MYTILE BEACH

South Carolina 20572

(Property Address)

TO HAVE AND TO HOLD this property unto Lessee and Lessee's successors and assigns forever together with all the improvements now or hereafter a part of the property. All replacements and additions shall also be covered by this Society Instrument. All of the foregoing is referred to in this Society Instrument as the "Property".

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

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

1 Payment of Principal, Interest, Escrow Fees, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Fees pursuant to Section 5. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check provided any such check is drawn upon an institution whose deposits are insured by a federal agency; instrumentally or cash; or (d) Electronic Funds Transfer.

Payments are deemed accepted by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 13. Lender may reserve any payment or partial payment if the payment or partial payment are insufficient to bring the Loan current. Lender may accept any payment or partial payment (sufficient to bring the Loan current, without waiver of any right hereunder or prejudice to its rights) or refuse to accept payment or partial payment in the future, in which case it is not obligated to apply such payments at all times to payments as accepted. If each periodic Payment is applied as of the date of the due date, Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for (a) taxes and assessments and other items which can accrue prior to this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property if any; (c) premiums for any and all insurances required by Lender under Section 5 and (d) Mortgage Insurance premiums if any or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. Those items are called "Escrow Items." At origination or at any time during the term of the Loan, Lenders may require that Community Association Dues, Fees and Assessments if any, be escrowed by Borrower, and such dues, fees and assessments shall be as Escrow Items. Borrower shall promptly furnish to Lender all notices of amounts due or payable under this Section. Borrower shall pay Lender for Escrow Items only as Borrower is obligated to pay the Funds for any or all Escrow Items. Lenders may waive Borrower's obligation to pay to Lender Funds for any or all Escrow items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly when and where payable the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument as the phrase covenant and agreement is used in Section 9. If Borrower is obligated to pay Escrow Items directly pursuant to a waiver and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and upon such revocation, Borrower shall pay to Lender all such amounts as may be due. Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds as the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

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

shall give to Borrower "without charge" all income attributable to the Funds as required by RESPA.

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

SOUTH CAROLINA - Single Family - F and M (see Fannie Mae UNIFORM INSTRUMENT)

D. Form 3023 - Lender

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defaced under RESPA. Lender shall notify Borrower as required by RESPA and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA but in no more than 12 monthly payments.

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

4. **Chargeback Liens.** Borrower shall pay all taxes, assessments, charges, fees, and impositions attributable to the Property which can arise prior to the date of this Security Instrument, leasthold payments or ground rents on the Property. If any and Community Association Dues, Fees, and Assessments. If any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

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

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

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

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

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

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

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

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

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

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

8. **Borrower's Loan Application.** Borrower shall be in default if during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false

SOUTH CAROLINA - Single Family - First Mortgage - Non-Uniform Instrument

Borrower's name: Mr. John Doe, Mrs. Jane Doe, SC 202000

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misleading or inaccurate information or statements to Lender (or failed to provide Lender with essential information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SOUTH CAROLINA—Simpli Form—FF-100 (Revised 10/01) UNIFORM INSTRUMENT

Borrower Property No. _____ Lender No. _____ Doc. No. _____

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

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

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

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

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

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

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

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

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

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

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives no discretion without any obligation to take any action.

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

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

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

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given to accordance with Section 13 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Retestate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for

SOUTH CAROLINA - Single Family - Fannie Mae and Freddie Mac Uniform Instrument

Version: January 2014. See Official Code of Laws of the State of South Carolina, Title 40, Chapter 11, Section 40-11-100.

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

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

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

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

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

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

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

22. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-occurrence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of this evidence, all of which shall be additional sums secured by this Security Instrument.

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

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

25. **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or entered may, within 30 days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as dwelling place as defined in § 12-17.150 of the South Carolina Code of Laws.

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Document System: 100 10 Check, LHA Pop-up and SC 6/20/2020

Page 6 of 7 pages *Boyle-MR*

Johnson Data Page 13 of 84

ROA_0071

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

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

Signed, sealed and delivered to the presence of



Michael D. Brown (Seal)
MICHAEL D. BROWN
Borrower

Stephen Mark Johnson (Seal)
STEPHEN MARK JOHNSON
Borrower

(Specify Below This Line For Acknowledgment)

STATE OF SOUTH CAROLINA

Horry

County is

Before me personally appeared ~~the undersigned~~ ^{the undersigned} ~~witness~~ ^{witness}
and made oath that ~~he~~ ^{she} ~~is~~ ^{is} ~~the~~ ^{the} ~~owner~~ ^{owner} ~~of~~ ^{of} ~~the~~ ^{the} ~~within~~ ^{within} ~~described~~ ^{described} ~~property~~ ^{property}
saw the within named Borrower sign, seal and as ~~witnessed~~ ^{witnessed} the execution thereof
with ~~the undersigned~~ ^{the undersigned} Notary

Sworn before me this 08TH

day of NOVEMBER, 2008


(Seal)
Notary Public for South Carolina

My commission expires 5/13/12

EXHIBIT A

All and singular that certain piece parcel or lot of land situate lying and being in Dogwood Neck Township, School District Eight, County and State aforesaid and being more particularly described as Lot 13 Dunes Ocean Front Development Phase II as shown on map prepared by Associated Land Surveyors, dated October 27 1997 and recorded February 12 1998 in Plat Book 153 at Page 108 in the office of the Register of Deeds for Horry County reference to which is craved as forming a part of these presents

THIS being the identical property conveyed to Dunes Lot 13, LLC by deed of Ronald C Vallone dated October 14 2004 recorded October 18 2004 in Deed Book 2808 at Page 313 Horry County Records

THIS being the identical property conveyed to Michael D Brown and Stephen Mark Johnson by Deed of Dunes Lot 13 LLC dated November 30 2006 recorded simultaneously herewith.

NOTE

11-30-2009
(Date)

COLUMBIA
(City)

SOUTH CAROLINA
(State)

8814 NORTH OCEAN BLVD MYRTLE BEACH SC 29572
(Property Address)

1 BORROWER'S PROMISE TO PAY

I borrow for a loan that I have received, I promise to pay U.S. \$3500.00 (this amount is called Principal) plus interest to the order of the Lender. The Lender is SOUTH CAROLINA BANK AND TRUST NA, ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA.

I will make all payments under this Note in the form of cash, check or money order.

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

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.000%. Interest will be charged beginning on 11-30-2008.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Periodic Payments

I will pay principal and interest by making periodic payments when scheduled:

☐ I will make payments of \$ _____ each on the _____ of each _____ beginning on _____.

☒ I will make payments as follows:

23 MONTHLY INTEREST PAYMENTS RANGING FROM \$10489.75 TO \$20808.22 BEGINNING 12-30-2008.

☒ In addition to the payments described above, I will pay a Balloon Payment of \$3570,898.12 on 11-30-2009.

The Note Holder will deliver or mail to me notice prior to maturity.

but the Balloon Payment is due. This notice will state the Balloon Payment amount and the date that it is due.

(B) Maturity Date and Place of Payments

I will make these payments as scheduled until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My periodic payments will be applied as of its scheduled due date and will be applied to interest before Principal. If on 11-30-2009, I still

owe amounts under this Note, I will pay those amounts in full on that date which is called the Maturity Date.

I will make my periodic payments at 850 JIMMIE C. CALHOUN DRIVE, PO BOX 1787, CHARLOTTE, NC 28201.

or at a different

place if required by the Note Holder.

4 BORROWER'S RIGHT TO PREPAY

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

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayments to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes to the due date or to the amount of any periodic payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

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

6 BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any periodic payment by the end of 15

calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of any overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Defaults

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

(C) Notice of Default

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

(D) No Waiver By Note Holder

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

MULTIPURPOSE FIXED RATE NOTE (MULTISTATE)

NOTE: This Note is subject to the terms and conditions of the accompanying Disclosure Statement.

Signature of Borrower: [Signature]
Signature of Lender: [Signature]

ROA_0074

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO 2006 CP-26-2371

Robert W Oskin a/k/a Woody
Oskin,)

Plaintiff)

vs)

Mark Johnson and Johnson Coastal
Consulting LLC)

Defendants)

ORDER FOR SUMMARY JUDGMENT

FILED
NOV 11 2008
CLERK OF COURT

This matter came before the Court on November 3 2008 on Plaintiff's Motion for Summary Judgment filed on December 27 2007 Present at the hearing were Robert H Gwin III Esquire attorney for Plaintiff and Mark Johnson, Pro Se Plaintiff relies upon the Complaint with Exhibits the failure of the Defendant to respond to the Request for Admissions served upon the Defendant Mark Johnson and Plaintiff's Affidavit in Support of Plaintiff's Motion for Summary Judgment

The Defendant, Mark Johnson has submitted no Affidavit in Opposition to Plaintiff's Motion

STANDARD OF REVIEW

Summary Judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law Rule 56(c) SCRCP In determining whether a genuine issue of fact exists as will preclude summary judgment the evidence and all

EXHIBIT F

ROA_0076

inferences which can be reasonably drawn therefrom must be viewed in a light most favorable to the non moving party Quality Towing, Inc. vs City of Myrtle Beach, 340 S C 29 #530 S E 2d 369(2000) The non moving party may not rest upon the mere allegations or denials of his pleadings but the response must set forth specific facts showing issue for trial Rule 56(e) SCRPC In the instant case the Defendants have not provided a response setting forth specific facts showing issue for trial Based upon the review of the Court file the Complaint with Exhibits the failure of the Defendant to respond to the Requests for Admissions served upon him by the Plaintiff and Plaintiff's Affidavit in support of his Motion for Summary Judgment, the Court hereby grants Summary Judgment in favor of the Plaintiff based upon on the Findings of Fact and Conclusions of Law as hereinafter provided

FINDINGS OF FACT

The Court hereby finds as follows

1 The Summons and Complaint were properly filed on May 11 2006 and the Defendants were served on May 24 2006

2 On or about April 27 2005 Robert Oskin and Mark Johnson entered into an Agreement whereby Mark Johnson was to pay Robert Oskin a finder s fee of One Million and No/100 (\$1 000 000 00) Dollars from the sale of Wild Wing Plantation and Golf Course located in Horry County South Carolina The payment of the fee was conditioned upon the sale to be procured through Joe McVay Realty and clients (herein Contract)

3 On December 15 2005 Wild Wing Plantation Inc transferred unto Wild Wing Company LLC the real estate which included Wild Wing Plantation and Golf Course

4 The Purchaser s closing statement attached as an Exhibit to the Plaintiff's Affidavit and Requests for Admissions showed that McVay Realty (which is the same as Joe

McVay Realty according to the Affidavit and Requests for Admissions) was paid a real estate commission and that the sale referenced in the General Warranty Deed and Purchaser's Closing Statement was procured through McVay Realty Inc. also known as Joe McVay Realty

5 The payment of the One Million and No/100 (\$1 000 000 00) Dollars finder's fee has not been made and Mark Johnson after due notice is in default under the terms of the Contract

6 There is now due and owing to the Plaintiff by Mark Johnson on the Contract the unpaid principal sum of One Million and No/100 (\$1 000 000 00) Dollars

CONCLUSIONS OF LAW

Based upon the Findings of Fact as set forth above there is no genuine issue of material fact and the Court hereby concludes as a matter of law as follows

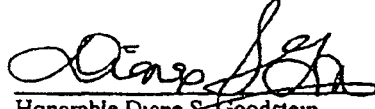
A) The Court has personal and subject matter jurisdiction of the parties and this case is properly before the Court

B) The Contract was properly executed for valuable consideration and is a legally binding obligation of the Defendant Mark Johnson. The Defendant Mark Johnson is in default under the terms of the Contract to the Plaintiff and the Plaintiff is entitled to an Order of Summary Judgment against the Defendant Mark Johnson

C) The Defendant Johnson Coastal Consulting LLC was not a party to the Contract and should be dismissed as a party

IT IS, THEREFORE ORDERED that the Plaintiff shall have judgment against the Defendant Mark Johnson in the amount of One Million and No/100 (\$1 000 000 00) Dollars

IT IS FURTHER ORDERED that the action shall be dismissed as to the Defendant
Johnson Coastal Consulting, LLC only


Honorable Diane S. Goodstein
Presiding Judge
Horry County Court of Common Pleas

Dated December 8, 2008

Conway South Carolina
Simmons

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) CIVIL ACTION NO 2006-CP-26-2371

Robert W Oskin a/k/a Woody Oskin)
)
Plaintiff) ORDER AMENDING ORDER, *NUNC*
) *PRO TUNC*
vs)
)
Mark Johnson a/k/a Stephen Mark Johnson)
Defendant)
_____)

This matter came before the Court on Plaintiff Robert W Oskin's Motion to Amend. A hearing was held at Charleston County Courthouse on March 4, 2009. Robert L. Gwin and Mark A. Brunty appeared on behalf of the Plaintiff. Defendant, although properly served notice of the time and location of the hearing, was not present and was not represented by counsel. Oskin seeks to have this Court's Order of December 8, 2008, which was entered on December 11, 2008, modified or amended pursuant to either Rule 60(a) or 60(b)(1) SCRPC. Modification of the Order is sought so that the Order will include prejudgment interest. For the reasons stated below, this Court grants Plaintiff's Motion and hereby amends the Order of December 8, 2008, *nunc pro tunc* to include amounts for prejudgment interest.

FACTUAL AND PROCEDURAL SUMMARY

On or about February 3, 2009, Oskin filed a Motion to Amend this Court's Order pursuant to Rule 60(b)(1) SCRPC. This Rule provides, in part, that a court may grant relief to a party or his legal representative for mistake, inadvertence, or excusable neglect. Alternatively, Oskin requested that the Court amend its original Order on its own initiative pursuant to Rule 60(a) SCRPC.

EXHIBIT C

The underlying action arose out of a dispute over Johnson's obligations under a written agreement to pay Oskin a fee of \$1,000,000.00 upon the sale of certain real property in Horry County. The sale occurred on December 15, 2005. Johnson did not pay the fee. Oskin filed his Complaint on May 11, 2006, seeking the full amount of \$1,000,000.00 together with prejudgment interest from the date of closing until final judgment. Johnson did not answer the Complaint. In addition, Johnson failed to respond to Requests for Admissions which were properly served upon him.

Following a hearing on November 3, 2008, this Court granted summary judgment against Johnson based on (1) his failure to file an Answer or otherwise plead to Oskin's complaint and (2) his admissions to Oskin's Requests for Admissions. In its Order, this Court found that Oskin and Johnson entered into an agreement requiring payment by Johnson of \$1,000,000.00 to Oskin upon the sale of the property. This Court also found that the property was sold on December 15, 2005. Oskin's counsel prepared an Order for this Court's review and signature.

LEGAL ANALYSIS

This Court must now determine if it should grant relief under Rule 60(b)(1) SCRPC by amending its Order *nunc pro tunc* to include an award of prejudgment interest. In the alternative, Oskin draws the Court's attention to Rule 60(a) which allows for the Court to act on its own initiative to correct errors in ~~its~~ Order. Before considering whether to grant Oskin's Motion or to amend the Order on his its own initiative, this Court must first determine if Oskin is entitled to prejudgment interest.

I Prejudgment interest for Oskin's claim

Prejudgment interest is a right granted by statute at S.C. Code Ann. §34-31-20(A). This section provides: "In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and being due shall draw interest according to law the legal interest shall be at the rate of eight and three-fourths percent per annum. Generally, prejudgment interest is appropriate where there was an agreement between the parties as to a sum certain or to an amount that could be ascertained at the time the claim arose and that payment is demandable. See Butler v. Court Street, 369 S.C. 121, 631 S.E.2d 252 (2006).

Lee v. Thermal Engineering Corporation, 352 S.C. 81, 572 S.E.2d 298 (Ct. App. 2002) controls the disposition of Oskin's Motion. As Lee holds, the grant of prejudgment interest provided by statute is a right that is mandatory if the party seeking it is entitled to such interest under the law. The Lee Court, relying on Wright & Miller and several state court¹ interpretations of prejudgment interest statutes, concluded that prejudgment interest was mandatory. "[T]he addition of interest to a verdict is a ministerial act that is mandatory and does not require the exercise of judgment or discretion. Lee at 90-303 (citing Brooks v. Jackson, 813 P.2d 847 (Colo. Ct. App. 1991))."

Based on the well-settled law of this state, an award of prejudgment interest is proper and is, in fact, a statutory right to which Oskin was entitled. Oskin and Johnson entered into an agreement that made the payment of \$1,000,000.00 from Johnson to Oskin demandable on the date of the closing of the sale of the property, December 15, 2005. Because the amount to be paid under the contract was a sum certain and was agreed to by Oskin and Johnson, an award of prejudgment interest from the date of closing is appropriate and mandatory here.

II Oskin's Motion to Modify under Rule 60(b)(1) SCRCP

Oskin requests under Rule 60(b)(1) SCRCP that the Court modify its Order based on his attorney's inadvertence, mistake, or excusable neglect in drafting the Order that granted summary judgment for the amount of the fee but omitted an amount for prejudgment interest. Motions under Rule 60(b)(1) are subject to this Court's discretion.

Because Oskin is entitled to prejudgment interest, the failure of Oskin's counsel to include an award for such interest in the Order was a mistake, inadvertence, or excusable neglect. Rule 60(b)(1) is in place to prevent a party such as Oskin from being harmed by his attorney's mistake, inadvertence, or excusable neglect. As a result, Oskin's Motion to modify or amend the Order must be granted.

III Court's authority under Rule 60(a) SCRCP

Regardless of the outcome of Oskin's Motion under Rule 60(b)(1) SCRCP, this Court can act on its own to correct mistakes in the Order. Rule 60(a) provides: clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative. (Emphasis added.) While a party may move for an amendment under this Rule, the Rule specifically gives this Court the right to act at any time and on its own initiative to correct mistakes in an order.

The Lee decision *supra* is directly on point and supports Oskin's request here. Because pre-judgment interest is mandatory under the statute for this type of claim, we find no error in the trial court's decision to correct this omission under 60(a). Lee at 90-303. The failure to include interest in a judgment when the law provides for the award of pre-judgment interest is an oversight which fits squarely within the parameters of Rule 60(a); therefore, the

addition of interest to a verdict is a ministerial act that is mandatory and does not require the exercise of judgment or discretion Brooks v. Jackson 813 P.2d 847 (Colo. Ct. App. 1991) (cited by Lee)

Because Oskin is entitled as a matter of right to prejudgment interest this Court elects to amend its order to add prejudgment interest to the Order. ^{judgment amount (b)}

IV Amendment of Order *Nunc Pro Tunc*

Oskin has requested that any Order amendment be made *nunc pro tunc*. *Nunc pro tunc* is a phrase applied to acts allowed to be done after the time when they should have been done with a retroactive effect. Black's Law Dictionary 737 (7th ed. 1991). *Nunc pro tunc* orders can only be used to place in the record evidence of judicial action that has actually taken place. A prerequisite for a *nunc pro tunc* order is some previous action by the court that is not adequately reflected in its record. Ex parte Strom 343 S.C. 257, 539 S.E.2d 699 (2000). This Court has already ruled that the Oskin and Johnson agreement called for the payment of a sum certain which was demandable on December 15, 2005. In effect, the Court found that Oskin is entitled to prejudgment interest but did not include it in the Order. An amendment of this Court's Order to include prejudgment interest will merely place in the record the ruling already made. As a result, this Court's Order is amended *nunc pro tunc* to December 11, 2008.

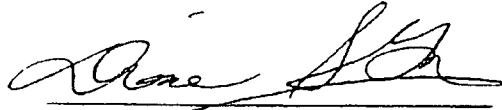
V Calculation of prejudgment interest

Turning to the prejudgment interest amount, Oskin submits that interest on the fee since the date of closing is \$262,499.99. This amount is calculated as follows: Multiply the sum certain due (\$1,000,000.00) by the prejudgment rate of interest (8.75%) to get the annual rate (\$87,500.00). Divide the annual rate by 364 to get the daily rate (\$240.38). Multiply the daily

rate by the number of days between the date payment was demandable under law December 15 2005 and the date judgment was entered December 11 2008 (1092) Graphically the computation looks like this $((\$1,000,000.00 \times 0.0875)/364) \times 1092$ The resulting amount of prejudgment interest for this case is \$262,499.99 The Court has reviewed the record and agrees that the amount of prejudgment interest is \$261,527.78

For the foregoing reasons this Court grants Plaintiff's Motion to Amend under Rule 60(b)(1) SCRPC finds that the Court should act on its own initiative and correct a mistake under Rule 60(a) SCRPC and amends the entry of judgment to \$1,262,499.99 This amendment ^{of the Order} is made *nunc pro tunc* to the Order entered on December 11 2008 As a result the Clerk of Court for Horry County shall show on her Judgment Roll that the judgment entered against Johnson on December 11 2008 is \$1,262,499.99

AND IT IS SO ORDERED



Judge Diane S. Goodstein

March 4 2009

Installation 01 SCBT N A Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Forward Stop Home Search Favorites Print Mail

Address http://172.23.95.17/nav_nav1151/Nav1151.aspx?WCI=Navigate&WCE=Request&PID=0

Premier Navigator SCBT FCCAL1

Loans - Account Inquiry

File Edit View Favorites Tools Help

Balance Activity Loans Payments Statement History

Product: [1040107] MORT INTEREST Collateral 8810 N OCEAN BLVD
ONLY BEACH SC

Accounting Branch [24] SCBT N A

Warnings
Date Paid Off Dec 30 2008

Priority Miscellaneous

Description

- Customer due date changed from the 30th of the month to the 10th per customer per customer request approved by officer 8/2/07 ARJ
- Borrower contacted Lender to see if we could work something out on taking over the property. It initially appeared that he was refinancing at Wachovia. He then wanted us to sell him the note for 2.5MM which was the new appraised amount. Referred to S/A and spoke with his Attorney. Told him that would not happen.
- Advised Attorney that Brown was a Maker on the Loan and NOT a guarantor. We would be looking for full payment or would be forced to FC with a resulting deficiency judgement. He said he would advise his client and get back to us 11/7/08.
- Based on new Appraisal and Uncertainty of Mr. Brown's conviction to pay, changing RR to a 4 and sent D&D R/E letter. Default Date 12/14/08. JB
- Borrower made payment prior to sending D&D Ltr. now only 4 days delinquent. Will see if account is brought current before becoming 11 days delinquent. JB 11/14/08

Summary

Principal Balance	\$0.00	Interest Method	[1] 365/365 Payments
Interest Balance	\$0.00	Current Payment Due Date	Dec 1

Note 11824661 MICHAEL D BROWN

Start Stop Print In R Pr M In F Search Desktop

-----Original Message-----

From: Mark Brunty [mailto:mbrunty@mullenwylie.com]
Sent: Friday, February 06, 2009 2:53 PM
To: Shanna Byrd
Subject: RE: Oskin v. Johnson subpoena

Anne M Wilson appears on the summary sheet I received

Mark A Brunty
Mullen Wylie LLC
P O Box 1980
Myrtle Beach, SC 29578

Phone: (843) 449-4800
Fax: (843) 497-0449

From: Shanna Byrd [mailto:Shanna.Byrd@scbtonline.com]
Sent: Friday, February 06, 2009 2:47 PM

From: C. Scott Masel
To: Anne Wilson
Cc: [REDACTED]
Subject: RE: beach house loan
Date: Friday, November 21, 2008 11:48:00 AM

Hi Anne

I'm glad the bank had a chance to sit down with Mr. Brown and clear up where we stand. I will assist Mr. Brown on the purchase of the beach house loan. I will be confirming the identity of the purchasing entity and the financing for the purchase. Will I again be working directly with Jim Boyd? Thanks again, Scott

C. Scott Masel
NEWBY SARTIP, MASEL & CASPER, LLC
4593 Oleander Drive, Suite 100
P.O. Box 808 (29578)
Myrtle Beach, SC 29577
smasel@newbylaw.com
(843) 449-9417
(843) 449-9419 Fax

CONFIDENTIALITY: This electronic message may contain confidential information and is protected by the attorney-client privilege. If you are not the intended recipient, you may not read, print, distribute or copy this communication. If you have received this communication in error, please notify the sender immediately and delete this message and any attachments from your computer system. Thank you.
IRS CIRCULAR 230 NOTICE: Nothing contained in this communication or its attachments may be relied upon or used by any taxpayer for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code or for the purpose of promoting, marketing or recommending any tax-related action.

From: Anne Wilson [mailto:Anne.Wilson@scbtonline.com]
Sent: Thursday, November 06, 2008 5:10 PM
To: mbrown627@aol.com
Cc: smasel@newbylaw.com
Subject: RE: beach house loan

Jim Boyd will contact Scott then.

Anne

Original Message--
From: mbrown627@aol.com [mailto:[REDACTED]]
Sent: Thursday, November 06, 2008 4:59 PM
To: Anne Wilson
Cc: smasel@newbylaw.com
Subject: Re: beach house loan

I had not considered discounting the note until I was told by Mark Johnson and Orlando Brockington that banks were doing this under the current market conditions. Since they had originally negotiated the loan, I listened to what they said. I did not expect any gain from co-signing the note, nor did I expect to have to bear the loss. Your bank and I are both losers in this loan. I am asking for the discount so that I do not take on the entire loss alone. I would ask that you continue to communicate this.

EXHIBIT 1

Johnson Docs: Page 71 of 84

ROA_0087

through Scot Masel Mike Brown

Original Message -
From: Anne Wilson <Anne.Wilson@scbtonline.com>
To: [REDACTED]
Cc: Jim Boyd <Jim.Boyd@scbtonline.com>
Sent: Thu 6 Nov 2008 2:58 pm
Subject: beach house loan

Hi Mike

My colleague Jim Boyd just spoke to Scot Masel, the attorney who is handling the assignment of the beach house loan for you.

Scot apparently told Jim that you were looking to buy the note from us for \$2.5 million. As you know, the loan balance is \$3.5 million. We are not in a position to sell the note for anything less than the balance owed.

I am hoping that Jim and Scot just miscommunicated about this, as I was never under the impression from my conversations with you that there was any suggestion about us discounting the note.

Please confirm your intentions with me so that we can move forward on the assignment. We are happy to oblige, but the note amount would need to remain at \$3.5 million.

Sincerely,

Anne

Anne Wilson

Senior Vice President

Private Banking Division

South Carolina Bank and Trust
520 Gervais Street
Columbia, SC 29201
(803) 540-3307 fax (803) 252-5799
VoIP Direct Line 53307

How Can We Make Your Day?

IRS Circular 230 Notice: Internal Revenue Service regulations generally provide that for the purpose of avoiding federal tax penalties, a taxpayer may rely only on formal written advice meeting specific requirements. Any tax advice in this message or in any attachment to this message does not meet those requirements. Accordingly, any such tax advice was not intended or written to be used, and it cannot be used, for the purpose of avoiding federal tax penalties that may be imposed on you or for the purpose of promoting, marketing, or recommending to another party any tax-related matters.

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Johnson Docs: Page 72 of 84

ROA_0088

through Scot Masel Mike Brown

Original Message -

From Anne Wilson <Anne.Wilson@scbtonline.com>
To [REDACTED]
Cc Jim Boyd <Jim.Boyd@scbtonline.com>
Sent Thu, 6 Nov 2008 2:58 pm
Subject beach house loan

Hi Mike

My colleague Jim Boyd just spoke to Scot Masel, the attorney who is handling the assignment of the beach house loan for you.

Scot apparently told Jim that you were looking to buy the note from us for \$2.5 million. As you know, the loan balance is \$3.5 million. We are not in a position to sell the note for anything less than the balance owed.

I am hoping that Jim and Scot just miscommunicated about this, as I was never under the impression from my conversations with you that there was any suggestion about us discounting the note.

Please confirm your intentions with me so that we can move forward on the assignment. We are happy to oblige, but the note amount would need to remain at \$3.5 million.

Sincerely,

Anne

Anne Wilson

Senior Vice President
Private Banking Division

South Carolina Bank and Trust
520 Gervais Street
Columbia, SC 29201
(803) 540-3307 fax (803) 252-5799
VoIP Direct Line 53307

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From: C. Scott Masel
To: Jim Boyd
Cc: [REDACTED]
Subject: RE: beach house loan
Date: Thursday, November 06, 2008 5:35:00 PM

Jim, we're just trying to deal with a financially difficult situation as best we can. I will communicate with Mr. Brown and will be back in touch with you soon. Have a good evening, Scott.

C. Scott Masel
NEWBY SARTIP MASEL & CASPER, LLC
4593 Oleander Drive Suite 100
P.O. Box 808 (29578)
Myrtle Beach, SC 29577
smasel@newbylaw.com
(843) 449-9417
(843) 449-9419 Fax

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From: Jim Boyd (mailto:Jim.Boyd@scbtonline.com)
Sent: Thursday, November 06, 2008 5:11 PM
To: SMasel@newbylaw.com
Cc: [REDACTED], Anne Wilson, Jack Goettee
Subject: FW: beach house loan

Scott, As per the request of Mr. Brown, I am forwarding the Bank's answer to you. We are not interested in discounting the Note and Mortgage. If Mr. Brown wishes to purchase same, it will be for the Payoff.

Original Message --
From: Anne Wilson
Sent: Thursday, November 06, 2008 5:06 PM
To: Jack Goettee, Jim Boyd
Subject: FW: beach house loan

FYI

Jim, I guess you are the lucky one to respond to Scott Masel.

--Original Message --
From: [REDACTED]
Sent: Thursday, November 06, 2008 4:59 PM
To: Anne Wilson
Cc: smasel@newbylaw.com
Subject: Re: beach house loan

I had not considered discounting the note until I was told by Mark Johnson and Orlando Brockington that banks were doing this under the current market conditions. Since they had originally negotiated the loan, I listened to what they said. I did not expect any gain from co-signing the note, nor did I expect to have to bear the loss. Your bank and I are both losers in

EXHIBIT J

Johnson Docs Page 74 of 84

ROA_0091

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Subject: BROWN JOAN

966 QUEENS RD #966 CHARLOTTE NC 28207
517 CORPORATION ST WILKESBORO NC 28697
249 FAIRWAY LN WILKESBORO NC 28697
PO BOX 704 WILKESBORO NC 28697
20 FAIRWAY LN WILKESBORO NC 28697

Our premium report: We search over 24 databases and billions of records. You get a highly detailed, easy to read report most current, updated info, address and phone history, birth date, age, aliases / maiden names, marriages, divorces, court records & personal assets, relatives, roommates, neighbors, property ownership, view sample report.

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EXHIBIT K

ROA_0092

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Name/AKAs	Age	Address	Possible Relatives	Birthdate	Phone
1 BROWN, JOAN C View Profile Associated names: BROWN JOAN E	74	BROOKDALE CT MATTHEWS NC OAK DR CHARLOTTE NC OAK DR CHARLOTTE NC OAK DR CHARLOTTE NC	BROWN WILLIAM JAMES BR WEN JAC BROWN J C JR See all relatives	03/14/1934	(704) 545-5125
2 BROWN, JOAN CONNER View Profile Associated names: BROWN JOAN M	75	QUEENS RD #986 CHARLOTTE NC CORPORATION ST WALKESBORO NC FARMWAY LN WALKESBORO NC PO BOX WALKESBORO NC	BROWN MELBA LON MARY JR BROWN JAMES DELMONTE JR JR BROWN MICHAEL KEITH JR JR See all relatives	04/15/1933	(704) 375-8087 (336) 687 1364 (910) 687 1364 (919) 687 1364 (336) 638-3686
3 BROWN, JOAN CLARY View Profile		DORMIC DR HIGH POINT NC WALKER RD #8 CHARLOTTE NC PO BOX CHARLOTTE NC	LAN CAROL P LAM		

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Name(AKA)	Age	Address	Possible Relatives	Birthday	Phone
1 BROWN, JOAN C View Details Associated names BROWN, JOAN E	74	BIRCHDALE CT MATTHEWS NC OAK DR CHARLOTTE NC OAK DR CHARLOTTE NC	BROWN, JAMES A BROWN, A BROWN, W C JR BROWN, W C JR	05/14/1934	(704) 545-5126
2 BROWN, JOAN CONNER View Details Associated names BROWN, JOAN M	75	QUEENS RD #968 CHARLOTTE NC CORPORATION ST WILKESBORO NC FAIRWAY LN WILKESBORO NC PO BOX WILKESBORO NC	BROWN, JAMES M JR BROWN, JAMES DELBERT JR BROWN, WILHELMINE E BROWN, WILHELMINE E	04/15/1933	(704) 375-8097 (336) 567-1364 (910) 867-1364 (919) 867-1364 (336) 838-3606
3 BROWN, JOAN CLARY View Details		DOONICK DR HIGH POINT NC WALKER RD #8 CHARLOTTE, NC PO BOX CHARLOTTE, NC	ALL, ALICE		

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State of North Carolina
Department of the Secretary of State

SOSID 1072752
Date Filed 11/20/2008 4 08 00 PM
Elaine F Marshall
North Carolina Secretary of State
C200832500148

Limited Liability Company
ARTICLES OF ORGANIZATION

Pursuant to §57C 2 20 of the General Statutes of North Carolina the undersigned does hereby submit these Articles of Organization for the purpose of forming a limited liability company

- 1 The name of the limited liability company is J Conner LLC
- 2 If the limited liability company is to dissolve by a specific date the latest date on which the limited liability company is to dissolve *(If no date for dissolution is specified there shall be no limit on the duration of the limited liability company)* _____
- 3 The name and address of each person executing these articles of organization is as follows
(State whether each person is executing these articles of organization in the capacity of a member organizer or both Note This document must be signed by all persons listed here)
Sherri L McGirt Organizer
301 South Tryon Street, Suite 1615
Charlotte North Carolina 28282
- 4 The street address and county of the initial registered office of the limited liability company is
Number and Street 327 Hillsborough Street
City State Zip Code Raleigh North Carolina 27603 County Wake
- 5 The mailing address *if different from the street address* of the initial registered office is

- 6 The name of the initial registered agent is Corporation Service Company
- 7 Principal office information *(Select either a or b)*
 - a ☐ The limited liability company has a principal office
The street address and county of the principal office of the limited liability company is
Number and Street _____
City State Zip Code _____ County _____
The mailing address *if different from the street address* of the principal office of the corporation is

 - b ☒ The limited liability company does not have a principal office

EXHIBIT L

ROA_0095

8 Check one of the following

☒ (i) *Member-managed LLC* all members by virtue of their status as members shall be managers of this limited liability company

☐ (ii) *Manager-managed LLC* except as provided by N C G S Section 57C 3 20(a) the members of this limited liability company shall not be managers by virtue of their status as members

9 Any other provisions which the limited liability company elects to include are attached

10 These articles will be effective upon filing unless a date and/or time is specified

This is the 19th day of November 20 08

J CONNER LLC

Sherri L. McGirt
Signature of

Sherri L. McGirt Organizer

Type or Print Name and Title

NOTES

1 Filing fee is \$125. This document must be filed with the Secretary of State

CORPORATIONS DIVISION
(Revised January 2002)

P O Box 29622

Instructions for Filing

RALEIGH NC 27626 0622
(Form L 01)

ROA_0096

From: Jim Boyd
To: C. Scott Masel
Subject: RE: Articles of Organization of J Conner LLC
Date: Wednesday, December 03, 2008 3:54:43 PM
Attachments: Assn Mike M. Brown.doc
Allison to Note Mike Brown.doc

Here are the Forms. Just let me know the date to be executed. Thanks.

---Original Message---

From: C. Scott Masel [mailto:smasel@newbylaw.com]
Sent: Tuesday, December 02, 2008 10:14 AM
To: Jim Boyd
Subject: FW: Articles of Organization of J Conner LLC

Jim,

The name of the Company is "J Conner LLC". It is a NC LLC and its Articles are attached. If you can forward the paperwork for the transaction to me to review, I will, in the meantime, confirm with Mike Brown a date that his funds will be available. Scott

C. Scott Masel
NEWBY SARTIP, MASEL & CASPER, LLC
4593 Oleander Drive, Suite 100
P.O. Box 808 (29578)
Myrtle Beach, SC 29577
smasel@newbylaw.com
(843) 449-9417
(843) 449-9419 Fax

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EXHIBIT M

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ROA_0097

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF HORRY

CASE NO 2006CP2602371

IN THE COURT OF COMMON PLEAS

Robert W Oskin plaintiff et al VS Mark Johnson, defendant

☐ JURY VERDICT This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

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

☐ ACTION DISMISSED(CHECK REASON) ☐ Rule 12(b) SCRPC ☐ Rule 41(a) SCRPC(Vol Nonsuit)
☐ Rule 43(k) SCRPC (Settled) ☐ Other

☐ ACTION STRICKEN ☐ Rule 40(j) SCRPC ☐ Bankruptcy

☐ Binding arbitration subject to right to restore to confirm vacate or modify arbitration award
☒ Other _____

IT IS ORDERED AND ADJUDGED

☐ See Attached Order

☒ Statement of Judgment by the Court:

Judgment in the amount of \$ 1,262,499.99

This judgment was entered on the 11 th day of December 2008 and a copy mailed first class this
13 th day of March 2009 to attorneys of record or to parties (when appearing pro se) as follows:

Presiding Judge Diane Schafer Goodstein

Robert H Gwin II
Gwin Law Offices LLC
2105 Cromley Cir Ste B
Myrtle Beach SC 29577

Mark Andrew Brunty
Mullen Wylie LLC
P O Box 1980
Myrtle Beach SC 29578

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Melanie Huggins - Clerk of Court

EXHIBIT N

ROA_0098

WACHOVIA BANK, N A - NC
FULL TRANSACTION REPORT

REPORTID 10075018

ADD 17-DEC-2008 22:11 PA
FOR 16-DEC-2008

<<< TRN: 20081216-00040164 >>>

MESSAGE ENVELOPE

(Bank : 001)

SEC:SPD CALLER:LOVE, ARLICIA

END DATE: 08/12/16
EXT:

RTTS AMT:3 500 000 00
TEST: DGE:

CR:USD RATE: 1 TRNS
TTP:STR/1000 FUDS:8 CR:08:M CD:M CDB:M CBL:M

DET 0/01439160009099/
DEBIT VAL: 08/12/16
AMT:3 500 000 00 CR:USD
GL KCCN: 0801313031
DEPT:00000003
COMMERCIAL LOAN OPS NC
PAYMENTS AND ADVANCES
ROANOKE VA-7364
SERV:0/003:0113466
COMMERCIAL LOAN OPS NC
PAYMENTS AND ADVANCES
ROANOKE
SEDR REF NUM:081216000622

COY A/053200903 ADV:FED
CREDIT VAL: 08/12/16
AMT:3 500 000 00 CR:USD
DEPT:00000003
SCBT NATIONAL ASSOCIATION
ORANGEBURG SC
EXT:/11024661 CSD: BTRN
S MARK JOHNSON AND MICHAEL D BROWN

CREDIT PAYMENT MESSAGE TEXT

(1510) Type/Subtype Code:
Type Code: 10 (Transfer of funds)
Subtype Code: 00 (Regular transfer)

(1000) Amount: 33 300 000 00

(3100) Sending Bank:
ABA number: 053000219
Short name: WACHOVIA BK NA NC
ABA lookup (ABX): WACHOVIA BANK, NA
CHARLOTTE NC

(3320) Sender Reference: 2008121600040164

(3400) Receiving Bank:
ABA number: 053200903
Short name: SCBT NATIONAL ASSN
ABA lookup (ABX): SCBT NATIONAL ASSOCIATION
ORANGEBURG SC

(3600) Business Function Code: CTR (Customer transfer)

(4200) Beneficiary: D/11024661
S MARK JOHNSON AND MICHAEL D BROWN

EXHIBIT O

ROA_0099

UNICHOVIA BANK, N.A. - NC
FULL TRANSACTION REPORT

REPORTID FIFT5010

RUN 17-DEC-2008 22:11 PA
FOR 16-DEC-2008

(4320) Reference for Beneficiary: 081216000022

(3000) Originator: 3/NC-01459160000099
COMMERCIAL LOAN OPS NC
PAYMENTS AND ADVANCES
ROADSIDE VA-7544

MESSAGE TEXT **

DEMO1A033000119
RUFFYR 081216 0000 Y
RMT1300000 000000 0000000000
CST001459160000999
0001317001
DELETED 00
SRV081216000022
SRV0003:0113464
COMMERCIAL LOAN OPS NC
PAYMENTS AND ADVANCES
ROADSIDE
CUT FLD
SRV0037200983
SCST, NATIONAL ASSOCIATION
CHANGESTUD
SC
REF 11820661
1 MARK JOHNSON AND MICHAEL O BROWN
CHENOWETH
CONSOLLER-MICHAEL BROWN

MESSAGE HISTORY SEQUENCE

001 is the coming bank. Priority:

STS J0000 CALLER-MICHAEL BROWN
KEY INDEX REF #: 2008121600040164 16-DEC-2008 15:43:30 97
DTL1000 LOG CTRID: TIME: 16-DEC 2008 15:43:30 97
Name: ASI:081216000022:VTX0000
STS J0000 *CVD:--- DVD:23 FSD:2 SSD:--- DSD:1 CSD:1
SRV0000000 KEY: 081216000022
STS J0000 Stop Check NO MATCH - 16-DEC-2008 15:43:30 98
ADR_H00 CUE END TEXT: 2008121600040164
Name: DT1/955339

003 ADR_H00 CUE END TEXT: 2008121600040164
Name: JSA/962668
PAYADV LOG CTRID: 160000 TIME: 16-DEC-2008 15:43:31 06
CL SRV CBT AMOUNT: 350000 00 USD
SYSTEMAL PRF CL CBT AMOUNT: 350000 00 USD
BEGIN DESTINATION DST(1) CBT STATE: 0
RYE: 0/014591600000999/

MACROVIA BANK & A - MC
FULL TRANSACTION REPORT

REPORTID PJFT3018

RUN 17-DEC-2008 22:11 PA
FOR 16-DEC-2008

DST: CHS/EDI//US
COMMERCIAL LOAN OPS SC
PAYMENTS AND ADVANCES
ROANOK VA-7544
DST CHS
DST_HISQ DBQ
DST_OUT_ACH DBQ
Memo: >>>151ACKP00000442048121600048164EDI_OUT]-DST
SYS MEMO External system reference: 081216000622
EDI OUT SEQ #: 0046 16-DEC-2008 15:43:36 02 Info: DST
END DESTINATION
FED GL CASH COT AMOUNT: 3500000 00 USD
BEGIN DESTINATION DST(2) ROSTE:033200983 DLV STATE: 0
RTE: /
DST: FED//US
COT
FED_HISQ DBQ
FEDOUT LOG AMT: 3500000 00 TIME: 16-DEC-2008 15:43:31 10
FED_HISQ DBQ
FEDOUT1 ABA: 033200983 FED DST: 2008121600048164
FEDOUT1 ISAD: 12160000000000000000
FEDOUT1 SEQ #: 3436 16-DEC-2008 15:43:33 69
FEDOUT1 SEQ #: 3436 16-DEC-2008 15:43:33 69 Info: IX 001
C1873D1C 033200219-A1 REQ11120001216
FEDOUT1 DBQ
SYS MEMO FED/ACK -- 2008/12/16 0800000015:0000000043
END DESTINATION
ABA INBOX KEY: 033200983
GL BACKLOG REQ TRKT: 2008121600048164 AMOUNT: 3500000 00 USD
BEGIN DESTINATION DST(3) DLV STATE: 0
RTE: /
DST: REQ//US
Queue: 001//IXM_OUTQ
IXM_OUTQ DBQ
IXM_OUT KEY: 1600048164001529
IXM_OUT SEQ #: 1529 16-DEC-2008 15:43:31 31 Info:
1600048164001529 F SEQ #: 1529 16-DEC-2008 15:43:31 31 Info:
1600048164001529 F SEQ #: 1529 16-DEC-2008 15:43:31 31 Info:
1600048164001529 F SEQ #: 1529 16-DEC-2008 15:43:31 69 Info:
1600048164001529 +
END DESTINATION
BEGIN DESTINATION DST(4) DLV STATE: 0
RTE: /
DST: REQ//US
Queue: 001//IXM_OUTQ
IXM_OUTQ DBQ
IXM_OUT KEY: 1600048164001545
IXM_OUT SEQ #: 1545 16-DEC-2008 15:43:35 53 Info:
1600048164001545 F SEQ #: 1545 16-DEC-2008 15:43:35 53 Info:
1600048164001545 F SEQ #: 1545 16-DEC-2008 15:43:35 53 Info:
1600048164001545 F SEQ #: 1545 16-DEC-2008 15:43:35 84 Info:
1600048164001545 +

MORT INTEREST ONLY 11824661
Printed by MAJOR CATHERINE

SCBT N A

1/27/2009 5 07 49 PM
Reporting Institution 1

Note 11824661 - MICHAEL D BROWN

[02] MICHAEL D BROWN

Ref Birthdate Phone Tax Identification
..

Tax Name [2] MICHAEL D BROWN

Summary

Principal Balance	\$0 00	Interest Method	[1] 365/365 Payments P&I
Interest Balance	\$0 00	Current Payment Due Date	Dec 10 2008
Current Late Charge Balance	\$0.00	Current Payment Due Amount	\$0 00
Total Collateral Value	\$4 150 000 00	Date Last Payment:	Dec 30 2008
Payments Scheduled	24	Amount Last Payment	\$0 00
Payments Billed		Current Days Past Due	
Payments Made	23	Total Amount Past Due	\$0 00
Times Extended		Payment Frequency	Monthly
Times Renewed	0	Regular Payment Amount	\$3 549 591 11
Times Past Due 0-29 Days	14	Current Rate Over	7 0000%
Times Past Due 30-59 Days	3	One Day s Interest.	\$0 0000
Times Past Due 60-89 Days		Original Note Amount	\$3 500 000 00
Times Past Due 90+ Days:		Original Note Date	Nov 30 2006
		Date Paid Off	Dec 30 2008
		Maturity Date	Dec 10 2008
		Date Accrued Through	Jan 26 2009
		Date Last Transaction Activity	Dec 30 2008
		Date Principal Paid To	Dec 30 2008
		Date Interest Paid To	Dec 30 2008
		Date Last Change	Nov 14 2008
		Date Last Updated	Jan 26 2009

Collateral Addenda 1

Description

8810 N OCEAN BLVD MYRTLE
BEACH SC 29572

Collateral Code

[270] 1ST MTG RES 1 4
FAMILY DWELL

Responsibility Code

[526] ANNE M WILSON

Address

Miscellaneous Code

[0]

Collateral Value	\$4 150 000 00
Net Appraised Value	\$4 150 000 00
Date Last Appraised	Nov 28 2006

EXHIBIT P

Matured Lines of Credit

ROA_0102

02/04/2009 WED 11 36 FAX 803/89473 SCBT LOAN OP

003/012

MICHAEL D. BROWN 3703
Dec 23, 2008 DATE
Pay to the order of South Carolina Bank & Trust \$ 44,303 31
Forty Four Thousand Three Hundred Three and 31/100
VISA/NOVIA SECURITIES CODE
MICHAEL D. BROWN
3703
Transit - 12/24/2008

2207210977 122483 03
BIT (BRANCH) LIA
-00000000-00 011574541
Transit - 12/24/2008

EXHIBIT Q

ROA_0103

STATE OF SOUTH CAROLINA)

) ASSIGNMENT OF MORTGAGE

COUNTY OF RICHLAND)

FOR VALUE RECEIVED, the undersigned SCBT, N.A. ("Assignor") a bank organized and existing under the laws of the State of South Carolina, assigns to J. Conner LLC, its successors and assigns ("Assignees") all right, title and interest in that certain mortgage of real estate dated November 30, 2006, securing the original principal sum of \$3,500,000.00 made by Michael D. Brown and Stephen Mark Johnson, as mortgagor(s), to SCBT, N.A., as mortgagee, as filed in the office of the Register of Deeds for Horry County together with the Note dated November 30, 2006 and indebtedness secured by said mortgage. This Assignment is made without recourse.

Assignee's address: 327 Hillsborough St. Raleigh, NC 28282

Executed this 30th day of December 2008

Mortgage recorded December 5, 2006 in Book 4795 at Page 1676

SCBT, N.A.

James W. Boyd
By James W. Boyd

Its Special Assets Officer/SVP

Witness *L. J. Sparkins*

Witness *W. H. Smith*

STATE OF SOUTH CAROLINA)

) ACKNOWLEDGEMENT

COUNTY OF RICHLAND)

As a Notary Public for the State of South Carolina, I hereby certify that James W. Boyd personally appeared before me on this date and acknowledged that s/he is an Authorized Agent of South Carolina Bank and Trust, N.A. and that by authority duly given and as the act of the corporation s/he has signed the foregoing instrument.

Witness my hand and official seal dated 12/30/2008

W. H. Smith
Notary Public for South Carolina

My Commission Expires 7/21/2016

(Notary Stamp)

11424661

LXIIIIBIT R

ROA_0104

EXHIBIT "A"

All and singular, that certain piece, parcel or lot of land situate, lying and being in Dogwood Neck Township School District Eight, County and State aforesaid, and being more particularly described as Lot 13 Dunes Ocean Front Development Phase II as shown on map prepared by Associated Land Surveyors, dated October 27 1997 and recorded February 12, 1998 in Plat Book 153 at Page 108 in the office of the Register of Deeds for Horry County, reference to which is craved as forming a part of these presents.

THIS being the identical property conveyed to Dunes Lot 13, LLC by deed of Ronald C. Vallone dated October 14, 2004, recorded October 18, 2004 in Deed Book 2808 at Page 313 Horry County Records

THIS being the identical property conveyed to Michael D Brown and Stephen Mark Johnson by Deed of Dunes Lot 13, LLC, dated November 30, 2006, recorded simultaneously herewith.

Result Row: [Prev](#) 17 of 23 [Next](#)Instrument # [Prev](#) 2009000004359 [Next](#)

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Booktype Mortgage

Book. 5136 Page 3415 [Jump To](#)

Document Type:	(008) ASSIGNMENT MTG
Modified Date:	1/14/2009 3 39 10 PM
Record Date:	1/14/2009 3 03 54 PM
MORTGAGOR:	BROWN MICHAEL D (1/14/2009 3 15 31 PM) JOHNSON STEPHEN MARK (1/14/2009 3 15 31 PM)
MORTGAGEE:	SOUTH CAROLINA BANK AND TRUST NA (1/14/2009 3 15 31 PM)
Book Type:	MTG
Book / Page:	5136 / 3415
# of Pages:	2
MEMO:	CONNER LLC
Legal:	CONNER LLC
Previous Related Docs:	4795/1676

Note: Empty fields are not shown
Direct External Link to this Document

From: Anne Wilson
To: C. Scott Masel
Subject: RE: Mike Brown
Date: Wednesday, January 07, 2009 4:13:47 PM

Thanks Scott

Let me forward to Jim Boyd to be handled by him. We will be in touch.

Anne

Original Message: --

From: C. Scott Masel (mailto:smasel@newbylaw.com)
Sent: Wednesday, January 07, 2009 4:09 PM
To: Anne Wilson
Subject: Mike Brown

Anne

Got your voice mail, thank you. I just found out from Mike Brown yesterday that the funds had already been paid to SCBT. I discussed with Jim Boyd last month that the mortgage and note would be assigned to a new LLC. The attached documents as prepared by Jim are therefore ready to be executed by the bank. We are not filing a satisfaction, but instead the mortgage assignment.

It is my understanding that SCBT received \$3,500,000 through a transfer from Wachovia and an additional check for \$44,303.31. Is that correct?

Thanks for your help, Scott.

C. Scott Masel
NATURAL BY SARTIP, MASEL & CASPER, LLC
4593 Oleander Drive, Suite 100
P.O. Box 808 (29578)
Myrtle Beach, SC 29577
smasel@newbylaw.com
(843) 449-9417
(843) 449-9419 Fax

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From: Jim Boyd (mailto:Jim.Boyd@scbtonline.com)
Sent: Wednesday, December 03, 2008 3:55 PM
To: C. Scott Masel
Subject: RE: Articles of Organization of J Conner, LLC

Here are the Forms. Just let me know the date to be executed. Thanks.

Johnson Docs: Page 58 of 84

EXHIBIT S

ROA_0107

--Original Message--
From: C. Scott Masel [mailto:smasel@newbylaw.com]
Sent: Tuesday, December 02, 2008 10:14 AM
To: Jim Boyd
Subject: FW: Articles of Organization of J Conner LLC

Jim

The name of the Company is "J Conner LLC". It is a NC LLC and its Articles are attached. If you can forward the paperwork for the transaction to me to review, I will, in the meantime, confirm with Mike Brown a date that his funds will be available. Scott

C. Scott Masel
NEWBY SARTIP MASEL & CASPER, LLC
4593 Oleander Drive, Suite 100
P.O. Box 808 (29578)
Myrtle Beach, SC 29577
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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Robert W Oskin Glenn Small,
and Freddie Kanos,

Plaintiffs

vs

Stephen Mark Johnson Michael Brown,
Joan Conner Brown J Conner LLC and
South Carolina Bank and Trust N A

Defendants

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A 2009 CP 26 3470

ANSWER OF DEFENDANTS
MICHAEL BROWN JOAN CONNER
BROWN AND J CONNER LLC

The Defendants Michael Brown Joan Conner Brown and J Conner LLC (hereinafter the
Defendants) answering the Complaint would respectfully show and allege unto this
Honorable Court as follows

FIRST DEFENSE

1 Each and every allegation not hereinafter admitted modified or qualified is denied
and require strict proof thereof

2 Defendants are without knowledge or information sufficient to form a belief as to
the truth of the allegations of Paragraphs 1, 2 3 11 12 14 and 21 as such the allegations are
denied and strict proof demanded hereof

3 The allegations of Paragraphs 4 5 6 7 8 and 55 are admitted

4 The allegations of Paragraph 9 10 13 17 22 23 24 25 26 27 28 29 30 31 32
33 34 38 39 41 42 43 44 45 46 47 48 50 51 52 53 54 56 57 58 59 60 61 62 63 64
65 66 67 68 69 70 71 72 73 74 75 76 77 and 78 are denied and strict proof demanded
hereof

5 The allegations of Paragraph 15 are admitted to the extent that Defendants Michael Brown and Stephen Mark Johnson purchased Lot 13 Dunes Ocean Front Development Phase II the remaining allegations are denied and strict proof demanded hereof

6 These answering Defendants object to the allegations of Paragraph 16 as these allegations are improper and intended solely to prejudice the Defendant Michael Brown

7 The allegations of Paragraph 18 are admitted only to the extent that Defendants Michael Brown and Stephen Mark Johnson executed the Note and Mortgage referenced in Paragraph 18 the remaining allegations are denied and strict proof demanded hereof

8 The allegations of Paragraph 19 are admitted only to the extent that the terms of the Note speak for themselves the remaining allegations are denied and strict proof demanded hereof

9 The allegations of Paragraph 20 are admitted only to the extent that Defendants Michael Brown and Stephen Mark Johnson executed the Note and Mortgage referenced in Paragraph 18 the terms of which speak for themselves the remaining allegations are denied and strict proof demanded hereof

10 The allegations of Paragraph 35 are admitted only to the extent that Sherri L. McGirt signed the Articles of Organization for J. Conner LLC dated November 19, 2008 as organizer the remaining allegations are denied and strict proof demanded hereof

11 The allegations of Paragraph 36 are admitted only to the extent that Sherri L. McGirt is an attorney for the McNair Law Firm and that the McNair Law Firm has provided and currently provides legal services for Michael Brown the remaining allegations are denied and strict proof demanded hereof

12 The allegations of Paragraph 37 are admitted only to the extent that Joan Conner Brown is the sole member of J Conner LLC the remaining allegations are denied and strict proof demanded hereof

13 The allegations of Paragraph 40 are admitted only to the extent that the referenced document appears to be a copy of a Judgment in a Civil Case captioned 2006-CP 26-2371 the remaining allegations are denied and strict proof demanded hereof

14 The allegations of Paragraph 49 are admitted only to the extent that the referenced check appears to be a copy of a personal check signed by Michael Brown the remaining allegations are denied and strict proof demanded hereof

SECOND DEFENSE

15 The allegations within Complaint fail to state a claim upon which relief may be granted

THIRD DEFENSE

16 The allegations in the Complaint are barred in whole or in part because Plaintiffs fail to satisfy the elements for a violation under the Statute of Elizabeth S C Code Ann § 27-2-310 *et seq*

FOURTH DEFENSE

17 The allegations in the Complaint are barred in whole or in part by the Doctrines of Waiver Estoppel and/or Laches

FIFTH DEFENSE

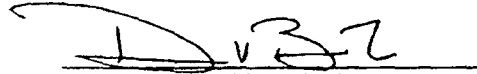
18 The allegations in the Complaint are barred in whole or in part because Plaintiffs damages if any were caused by the acts or omissions of persons other than these answering Defendants and for which these answering Defendants have no responsibility

WHEREFORE having fully answered the Complaint, the Defendants Michael Brown
Joan Conner Brown and J Conner, LLC pray as follows

- A A dismissal of Plaintiffs causes of action and/or denial of the relief sought in
Plaintiffs Complaint
- B Costs of this action be paid by the Plaintiffs and
- C For such other and further relief as this Court may deem just and proper

Respectfully submitted

McNair Law Firm, P.A



Henrietta U Golding, SC Bar # 2173
Dan V Butler, SC Bar # 72791
McNair Law Firm PA
2411 N Oak Street, Suite 206 (29577)
Myrtle Beach SC 29577
Ph (843) 444-1107
Fax (843) 443 9137
Email hgolding@mcnair.net
dbutler@mcnair.net

Attorneys for Defendants Michael Brown
Joan Conner Brown and J Conner LLC

Date May 6 2009
Myrtle Beach South Carolina

ROBERT W OSKIN a/k/a WOODY
OSKIN,

PLAINTIFF

vs

MARK JOHNSON a/k/a STEPHEN
MARK JOHNSON

DEFENDANT

HEARING
February 15, 2010

Given before Cynthia Graham Howe
Master-in-Equity Horry County in the Horry
County Courthouse, Conway, South Carolina, on
Monday the 15th day of February 2010,
commencing at 10 00 a m

P O Box 2833, Myrtle Beach, S C 29578
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ROA 0114

4-20 09

APPEARANCES

FOR THE PLAINTIFF **MARK BRUNTY**
 Attorney at Law
 MULLEN AND WYLIE
 4710 Oleander Blvd 2nd Fl
 Myrtle Beach, S C 29577

FOR THE DEFENDANT **HENRIETTA GOLDING**
 Attorney-at-Law
 McNAIR LAW FIRM
 2411 Oak St
 Myrtle Beach, S C 29577

FOR THE DEFENDANT **C. SCOTT MASEL**
JOHNSON **Attorney-at-Law**
 NEWBY, SARTIP, MASEL &
 CASPER
 P O Box 808
 Myrtle Beach S C 29578

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ROA_0115

4 20 09

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ROA_0116

4-20-09

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4-20-09

P R O C E E D I N G S

THE COURT Counsel

this is the case of Robert W Oskin versus Mark Johnson, Civil Action Number 2006-CP-26-2371, is that correct?

All right, this is the case of Robert W Oskin Glenn Small and Freddie Kanos v Stephen Mark Johnson Michael Brown Joan Conner Brown, J Conner, LLC and South Carolina Bank & Trust, N A And I believe the State of South Carolina has been added as a party

MR BRUNTY That s

correct Your Honor

It s Civil Action Number 2009-CP-26-3470 I have a Consent Order of Reference signed by the Honorable Larry B Hyman Jr dated June the 12th 2009 And are the parties ready to proceed?

MR BRUNTY Yes Your

Honor For the record, South Carolina Bank & Trust is no longer a party They have been dismissed In addition, the State of South Carolina is a party The Attorney General s Office has entered an appearance in this matter, however Warren Ganjehsan1 the attorney for the

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4-20-09

1 Attorney General's Office who is involved in this
2 matter informed me on Friday that it is -- we
3 discussed this before in chambers, it's kind of a
4 State holiday and due to their constraints and
5 their travel budget he will not be able to
6 attend, but can discuss this matter with the
7 Court either in person or on the phone if
8 desired He is aware of everything He is
9 available if needed

10 **THE COURT** All right

11 **MR. BRUNTY** Plaintiffs
12 are prepared to proceed I think Ms. Golding has
13 some evidentiary issues she wants to address with
14 the Court at this time

15 **THE COURT** All right

16 **MS. GOLDING** Your
17 Honor, just for the record out of an abundance
18 of caution, Your Honor the State of South
19 Carolina according to the representations of
20 Plaintiff's counsel was informed and advised of
21 the hearing date and time and I certainly would
22 have a -- I certainly would object to the State
23 of South Carolina making any ex parte
24 communications which I know you would not But
25 the State of South Carolina has this opportunity

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4 20-09

1 this day to be present present evidence and I
2 don t believe that they can just, on their own,
3 unilaterally present anything subsequent to the
4 hearing So I would object at any attempts by
5 the State to do so

6 THE COURT. That's
7 correct

8 MS GOLDING Thank you,
9 Your Honor

10 THE COURT And I would
11 not accept any evidence outside of today's
12 hearing without all parties being present

13 MS GOLDING Or without
14 all parties agreeing

15 THE COURT Agreeing,
16 that s correct

17 MS GOLDING Thank you,
18 Your Honor Your Honor with respect to the
19 Plaintiff s exhibits we -- I did not receive a
20 copy of them until just a few minutes ago We've
21 tried to go through and the list we had is not
22 exactly right with the documents So I might be
23 asking Plaintiff's counsel

24 But in going through the documents,
25 Your Honor, rather than eleven objections that, -

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ROA_0121

4 20-09

1 - or exhibits that are objectionable Your Honor,
2 we have discovered thirteen that are
3 objectionable Your Honor And if Your Honor
4 would please, I would like to just to go through
5 them all in a list because some objections will
6 be somewhat repetitive And then Your Honor can
7 address them or Plaintiff's counsel can address
8 them after I address all of the objections, Your
9 Honor

10 THE COURT All right
11 MS GOLDING With
12 respect to Exhibits Number 4 and 5, Your Honor,
13 those two exhibits relate to a Confession of
14 Judgment with respect to Mr David O'Connell and
15 the assignment of the Judgment to Mr Oskin one
16 of the Plaintiffs Obviously, Mr Oskin received
17 that assignment of judgment subsequent to the
18 civil action being started and therefore, he
19 received it with full notice of all matters of
20 public record and without any type of legal
21 prejudice or with respect to any type of surprise
22 or undue hardship in any respect So based upon
23 the legal theories in this case, Your Honor, I do
24 not believe 4 and 5 would be admissible

25 With respect to Exhibits 6 and 7,

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4 20 09

1 those relate to another proceeding, Your Honor,
2 execution against property on the Judgment and
3 the Order of Reference for Supplemental
4 Proceedings, Your Honor Neither of those two
5 relate to issues in this case, Your Honor

6 With respect to Exhibit Number 9,
7 that is a letter from me to Mr Brunty before the
8 lawsuit started Of course, I would object to
9 that letter on the basis that it s between
10 attorneys and should not be subject to
11 evidentiary status in this case But also it
12 states that it doesn't relate to the issues in
13 this case, Your Honor

14 With respect to Exhibits -- to
15 Exhibit Number 10, it's a Promissory Note to Mr
16 Small and Mr Kanos, I believe that s how you ---
17 The documents in the exhibit which we only have
18 one page It reflects a two-page document but
19 it's only a one-page document and I would have to
20 see the second page Your Honor

21 With respect to Exhibit Number 11,
22 that is a cover letter from Womble Carlisle law
23 firm and emails with a third party with
24 Wachovia Your Honor obviously those documents
25 are constitute hearsay and should not be entered

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ROA_0123

4-20-09

1 into in the record However, I do know that
2 Plaintiff s counsel has subpoenaed the Wachovia
3 officer Mr Scott And in the event Mr Scott
4 has any emails between Mr Scott and Mr Brown,
5 those would be admissible but not any emails
6 internally with any type of Wachovia officers

7 The next item is Exhibit Number 12
8 That's a Wachovia key risk review That's an
9 internal document which none of the defendants
10 have any contact or control with Clearly that
11 would be hearsay and detrimental Your Honor

12 The next exhibit is Exhibit Number
13 20 That s an application to South Carolina Bank
14 & Trust It s not relevant to the issues That
15 was an application in 2006 Your Honor for the
16 three and a half million dollar loan

17 The next exhibit is Exhibits Number
18 24 and 33 Those are affidavits of the
19 Defendants, Mr and Mrs Brown 24 is the
20 affidavit of Michael Brown and 33 is the
21 affidavit of Joan Brown Obviously, neither of
22 those should be introduced into evidence Both
23 are here to testify as Mr Brunty advised the
24 Court during the pretrial status conference he
25 intends to call them as his own witnesses, Your

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ROA_0124

4-20-09

1 Honor

2 Then the final objection is Exhibit
3 Number 26, Your Honor That s an email between
4 the McNair Law Firm and Mr Brown And that is
5 subject to attorney-client privilege We have
6 guarded the privilege, Your Honor and I'm not
7 sure how or why that became available And
8 obviously, if it did become available it was
9 through an error and we would object to that
10 Thank you, Your Honor

11 THE COURT Let me make
12 sure I got those

13 MS GOLDING Yes, Your
14 Honor

15 THE COURT It s ---

16 MS GOLDING- I'll go
17 through numerically I have Exhibits Number 4
18 and 5 Exhibit Number 6 Exhibit 7 Exhibit
19 Number 9, Exhibit 10 Exhibit 11 Exhibit 12
20 Exhibit 20, Exhibit 24, Exhibit 26 and Exhibit
21 33

22 THE COURT All right
23 Thank you I have those now

24 MS GOLDING Thank you
25 Your Honor

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ROA_0125

4 20 09

1 **THE COURT** Thank you
2 very much Mr Brunty, I don't know that we need
3 to address any of your arguments now I guess
4 we'll take those up as they -- as you get there
5 All right, thank you very much
6 **MR BRUNTY** Okay, Your
7 Honor Thank you
8 **THE COURT** All right
9 Mr Brunty
10 **MR. BRUNTY** Thank you
11 Your Honor Before we get started I'm Mark
12 Brunty of Brunty Law Firm representing the
13 Plaintiffs in this matter I m not -- I don't
14 have an opening, but I wanted to introduce the
15 Court to Robert Oskin and Glen Small who are
16 seated with me at the counsel table
17 **MS GOLDING.** May I
18 introduce my clients Your Honor?
19 **THE COURT** Certainly
20 **MS GOLDING** Okay I d
21 like to introduce, this is Mrs Brown with us
22 and this is Mr Brown Thank you
23 **THE COURT** You re
24 welcome
25 **MR MASEL** And Scott

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ROA_0126

4-20-09

1 Masel for Defendant Mark Johnson and he is not
2 here today

3 **MR. BUTLER** Your Honor,
4 Dan Butler

5 **MR BRUNTY.** For the
6 record, I believe Mr Johnson is in Costa Rica
7 He had notice of the hearing

8 **MS. GOLDING** You know,
9 I m not sure why that that is even -- I mean here
10 again, we're starting the case, he's trying to
11 prejudice I m not sure that that was even
12 necessary That is -- I don't know why -- I mean
13 if he can establish that the Browns forced him to
14 go to Costa Rica that s something else But
15 this is a starting of a case that the Browns are
16 innocent people, they're just trying to do what s
17 right and he is poison -- I mean Mr Brunty is
18 trying to establish insinuations that I think are
19 totally improper And I want to object to that
20 statement and ask that it be withdrawn

21 **MR BRUNTY** It can be
22 withdrawn Your Honor Mr Johnson had notice of
23 this hearing through his attorney and his
24 attorney's here but Mr Johnson is not

25 **THE COURT** All right

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ROA_0127

4 20-09

1 Thank you very much I don't know that it -- it
2 certainly didn't prejudice me to know that Mr --
3 that one of the defendants is not here and that
4 he is in Costa Rica That did not prejudice me
5 at all

6 MS GOLDING I just
7 don't want to establish any type of inference
8 insinuation that the Browns had anything to do
9 with that whatsoever

10 THE COURT I
11 understand

12 MS GOLDING Thank you,
13 Your Honor

14 THE COURT All right
15 thank you very much

16 MR BRUNTY Your Honor
17 the Plaintiff calls Robert Oskin

18 THE COURT Mr Oskin
19 if you'll come around, please sir and place your
20 left hand on the red Bible over here and raise
21 your right hand and be sworn or affirmed by the
22 court reporter

23 ++++++

24 Whereupon

25 (ROBERT OSKIN, having been duly

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ROA_0128

4-20 09

1 sworn, testified as follows

2 **THE COURT** And if
3 you'll have a seat sir, and state your full name
4 for the record

5 **THE WITNESS** Robert
6 William Oskin

7 **THE COURT** All right,
8 Mr Brunty

9 **MR. BRUNTY** Thank you,
10 Your Honor

11 **DIRECT EXAMINATION**

12 **BY MR BRUNTY**

13 **Q.** Good morning Mr Oskin How are you
14 this morning?

15 **A.** Good morning Good

16 **Q** Can you inform the court where you
17 live please?

18 **A** 1415 Glen Keith Court Myrtle Beach

19 **Q** Okay That's in the Prestwick
20 Community?

21 **A** Yes sir it is

22 **Q.** Okay You're one of the Plaintiffs
23 in this action because you brought the judgment
24 against Mark Johnson is that correct?

25 **A** That is correct

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ROA_0129

4-20 09

1 Q Okay What is the nature of that
2 judgment? What was the reason for obtaining that
3 judgment?

4 MS GOLDING Your
5 Honor I think the judgments speaks for itself
6 and I have no objection to the judgment being
7 entered into evidence

8 ++++++++
9 (JUDGMENT WAS MARKED
10 FOR IDENTIFICATION
11 AS PLAINTIFF'S EXHIBIT
12 NUMBER 1 AND WAS
13 RECEIVED IN EVIDENCE)

14 ++++++++

15 BY MR BRUNTY

16 Q This judgment that s been marked as
17 Exhibit Number 1 is an Order for Summary
18 Judgment in the amount of a million dollars is
19 that right?

20 A. Yes sir

21 Q Okay And can you tell me why you
22 are owed a million dollars from Mr Johnson?

23 A I d entered into a business contract
24 with Mark and he failed to pay me

25 Q So you were forced to sue him?

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4 20 09

1 **A.** Forced to sue him, exactly

2 **Q.** Okay And ultimately you obtained
3 Summary Judgment, is that right?

4 **A** Yes we did

5 **Q.** How long did he owe you that money
6 before you got the judgment?

7 **MS GOLDING** Your
8 Honor, I want to make an objection I mean we re
9 here on the Judgment Your Honor, and the length
10 of time that he was owed the money that's not
11 relevant

12 **MR BRUNTY** Your Honor,
13 it's relevant to the fact that Mr Johnson knew
14 for a lengthy period of time that he owed this
15 money to Mr Oskin and it just speaks to the fact
16 that -- of knowledge of the Judgment and laying
17 the ground work for the knowledge of Mr Johnson
18 and others in this matter about the debt owed to
19 Mr Oskin which is absolutely relevant to this
20 case

21 **THE COURT** Well I ll
22 let you go into it briefly just to give me a
23 little background But don't go into it any
24 longer than necessary

25 **MR BRUNTY** Sure And

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ROA_0131

4-20 09

1 believe me, the Plaintiffs are not going to spend
2 a great deal of time

3 THE COURT Okay

4 BY MR BRUNTY

5 Q Prior to obtaining the Judgment Mr
6 Oskin did you try to resolve this matter with
7 Mr Johnson?

8 A. Yes I did

9 Q How did you do that?

10 A I contacted Mark and got with Mr
11 Masel and we had a meeting and, you know, Mark
12 was supposed to -- Mark and I agreed to terms and
13 he never did anything

14 Q Okay You said you talked with Mr
15 Masel?

16 A Yes, I did

17 Q That s Scott Masel the attorney in
18 the Courtroom?

19 A Yes sir

20 Q. Okay But you could never agree to
21 it and ultimately a Judgment was entered
22 correct?

23 A That is correct

24 Q. All right That Judgment was later
25 amended at some point is that right?

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ROA_0132

4-20-09

1 A. Yes, sir

2 MS GOLDING No

3 objection What number is that?

4 MR. BRUNTY That would

5 be Number 2 For the record, Your Honor, Number

6 2 is the Order Amending Order non pro tunc It's

7 the Order of Judge Goodstein amending the

8 Judgment to include pre-Judgment interest

9 amounts

10 THE COURT All right

11 MS GOLDING No

12 objection to Number 3

13 THE COURT Plaintiffs 2

14 is without objection

15 +++++

16 (AMENDING ORDER WAS

17 MARKED FOR IDENTIFICATION

18 AS PLAINTIFF'S EXHIBIT

19 NUMBER 2 AND WAS

20 ENTERED INTO EVIDENCE)

21 +++++

22 MR BRUNTY And I m

23 marking Number 3, Your Honor without objection

24 it's the Clerk's entry of the Order reflecting

25 one million two hundred sixty-two thousand, four

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ROA_0133

4 20 09

1 hundred ninety-nine dollars and ninety-nine
2 cents And it s non pro tunc so it's to the
3 date of the entry of the original one December
4 11, 2008, Your Honor

5 ++++++

6 (CLERK'S ENTRY OF THE

7 ORDER WAS

8 MARKED FOR IDENTIFICATION

9 AS PLAINTIFF S EXHIBIT

10 NUMBER 3 AND WAS

11 ENTERED INTO EVIDENCE)

12 ++++++

13 BY MR BRUNTY

14 Q All right, regarding your Judgment
15 for that commission have you been paid?

16 A No I have not

17 Q. Mr Johnson hasn t paid you any money
18 to satisfy that?

19 A No sir he hasn't

20 Q Okay Has anyone else satisfied you,
21 paid you or satisfied you?

22 A No they have not

23 Q Thank you All right What did you
24 do next after you got the Judgment in December --
25 November/December of 2008? What transpired?

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ROA_0134

4 20 09

1 A We checked to see what -- what assets
2 Mark would have and I hired you

3 Q Okay You hired me to collect -- to
4 try to collect on that judgment, is that right?

5 A Yes, sir it is

6 Q And you said you checked the assets,
7 were you aware of the assets of -- were you aware
8 of any assets that Mr Johnson had or owned in
9 Horry County?

10 A He had had some property that -- that
11 he'd lost in foreclosure and we found his house,
12 his residence

13 Q Okay Where is that residence?

14 A Piano Lots East of the Dunes Club on
15 the oceanside

16 Q You understand that he owned that, is
17 that right?

18 A Yes sir

19 Q Okay What was your understanding of
20 -- or what was your goal in -- or how were you
21 going to attempt to collect on that Judgment?

22 A To get a judgment on his property and
23 see if he could be forced to sell it or borrow
24 against it to pay me

25 Q Okay And that never happened did

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ROA_0135

4 20-09

1 it?

2 A No sir

3 Q And you hired me to represent you to

4 collect on that Judgment?

5 A Correct

6 Q And in my representation of you, I --

7 did you ask me to demand an amount from Mr

8 Johnson through Mr Masel?

9 A Yes, I did

10 Q Okay And you wanted your Judgment

11 paid a million dollars, correct?

12 A Plus interest yes, sir

13 Q Okay And what response did you get

14 to my demand?

15 A We received a letter from McNair Law

16 firm

17 Q Okay I m going to hand to you a

18 copy of the letter

19 Can you identify that for the Court?

20 A This is the letter that I received,

21 you know

22 Q And you received a copy of that from

23 me?

24 A Yes I have

25 Q What did that letter ---

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ROA_0136

4 20 09

1 MS GOLDING Your
2 Honor he's going into about communication
3 between him and his client All of that is not
4 proper for direct examination And it's also
5 leading to the letter I think that is not -- it
6 should not be admitted into evidence As I
7 stated it s a letter that I wrote denying that
8 there was any entitlement for the Browns to pay
9 off the Judgment, Your Honor And I can
10 stipulate to that I mean ---

11 THE COURT Do you
12 object to the letter that he s trying to
13 introduce presently?

14 MS GOLDING Simply
15 because it s a letter from me Your Honor to Mr
16 Brunty This witness did not write Mr Brunty's
17 letter and it s not a letter to him Your Honor
18 That s the whole basis

19 MR BRUNTY Your Honor
20 up to this point we had -- I on behalf of Mr
21 Oskin and Mr Oskin's testimony has revealed that
22 we were trying to collect amounts from Mr
23 Johnson Mr Oskin just testified that on -- at
24 his request I wrote a letter to Mr Masel and Mr
25 Johnson requesting that they pay off the Judgment

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ROA_0137

4-20-09

1 amount We didn't ask -- we didn't demand it of
2 any other party The response came from Ms
3 Golding This letter will show that Mr Oskin
4 had to, instead of going forward with the
5 supplemental proceedings to try to sell the
6 asset, that this letter changed his course

7 **THE COURT** But Mr
8 Brunty, how are you going to get this letter in
9 through this witness?

10 **MR. BRUNTY** As a result
11 of this letter as a result of receiving it from
12 me Mr Oskin had to institute this action

13 **THE COURT** This letter
14 didn't go to this witness

15 **MR. BRUNTY** Right I
16 copied him on it If it doesn't get in, the
17 Court can make the ruling, but ---

18 **THE COURT** I sustain
19 the objection

20 **MR. BRUNTY** Okay And
21 is the objection to the letter or to the
22 question?

23 **THE COURT** To the
24 exhibit coming in

25 **MR. BRUNTY** Okay

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ROA_0138

4 20 09

1 BY MR. BRUNTY

2 Q. Mr Oskin, you testified about a
3 letter that you received from ---

4 MS GOLDING: Your
5 Honor I'm going to make an objection He s been
6 leading this witness He can t testify -- he
7 can't -- Mr Brunty cannot ask the question
8 He s been testifying about a letter He's got to
9 ask his direct questions, who, what, when and how
10 type of questions You know if it eases it, I
11 mean, the stipulation demand was made upon the
12 Browns we'll stipulate to that And the Browns
13 said no, we don't owe the money and you're not
14 obligated to give it I mean that ---

15 MR BRUNTY. Your Honor
16 the content of the letter Ms Golding informed
17 me as the attorney for the Plaintiffs, that Mr
18 Oskin would have to satisfy the entire 3 5
19 million dollars alleged to be owed on the note
20 and mortgage before he could seize on the
21 property If she'll stipulate to that, that's
22 fine

23 MS GOLDING. Certainly
24 I mean that s not an issue, Your Honor

25 MR BRUNTY Okay If I

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ROA_0139

4-20-09

1 might based on that stipulation, I just want to
2 ask the Plaintiff

3 BY MR BRUNTY

4 Q Mr Oskin, did you have 3 5 million
5 dollars to satisfy the note and mortgage?

6 A. No, sir

7 Q Okay As a result of that, you filed
8 this action is that right?

9 A. Correct

10 Q And again you hired me and my then
11 law firm to represent you in the action correct?

12 A. That s correct

13 Q All right What has transpired in
14 that time?

15 A We ve received no money

16 MS. GOLDING Your
17 Honor, what has transpired subsequent to the
18 lawsuit starting, I mean, that has no relevancy
19 That doesn t go to any of the issues in this
20 case

21 THE COURT You might
22 want to narrow that question just a little bit

23 BY MR BRUNTY

24 Q You haven't been paid anything have
25 you?

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ROA_0140

4-20-09

1 **A** No sir

2 **Q** Okay The amount that's on your
3 Judgment is still outstanding Have you been
4 made aware of any other assets that Mr Johnson
5 has?

6 **A.** No, sir

7 **MS GOLDING** Object to
8 that What number is that? That was ---

9 **MR BRUNTY:** It hasn't
10 been -- It was Number 4

11 **MS GOLDING** I thought
12 you just said the letter was Number 4

13 **MR BRUNTY** It was
14 Number 4 on the list The letter hasn't been
15 marked

16 **MS GOLDING:** Yes, but
17 you -- so you're now going to mark it The
18 confession of judgment is Number 4

19 **MR BRUNTY** It's Number
20 4 on the list If he doesn't know it I'm not
21 going to mark it

22 **BY MR BRUNTY**

23 **Q** Mr Oskin I've handed to you the
24 Confession of Judgment Can you tell me what
25 that is? Are you familiar with that?

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ROA_0141

4-20-09

1 **A** Yes, ---

2 **MS GOLDING** Your
3 Honor this is an exhibit that I object to This
4 is a Confession of Judgment of a Mr David
5 O'Connell And this witness is not a party to
6 that Confession of Judgment So I don't think
7 Number 1, I object to the exhibit Number 2, I
8 object to this witness testifying with respect to
9 that Confession of Judgment Your Honor

10 **THE COURT** Mr Brunty -

11 --

12 **MR BRUNTY** Mr Oskin
13 obtained a copy of this Judgment of this
14 Confession of Judgment He can testify that he
15 obtained a copy of it and as a result contacted
16 Mr O Connell who was a judgment holder The
17 Judgment is a matter of public record The
18 actual Judgment was provided to me by the McNair
19 Law Firm in response to a subpoena request

20 I can if necessary call multiple
21 witnesses to get their records testified to
22 However I don t want to do that But this put
23 Mr Oskin on notice that there s another -- a
24 judgment holder out there The Judgment in
25 January of 2008 who we contacted and obtained an

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ROA_0142

4 20-09

1 assignment of judgment from which he is
2 prosecuting in this action

3 **THE COURT** Okay Then
4 I'm going to overrule that objection So as a
5 matter of this being a public record, this
6 witness did something?

7 **MR BRUNTY** Yes It s
8 been marked as Number 4

9 +++++++
10 (CONFESSION OF JUDGMENT
11 WAS MARKED FOR
12 IDENTIFICATION AS
13 AS PLAINTIFF'S EXHIBIT
14 NUMBER 4 AND WAS RECEIVED)

15 +++++++

16 **BY MR BRUNTY**

17 **Q** You received a copy of and reviewed
18 the Confession of Judgment that you're holding?

19 **A** Yes

20 **Q** All right What is that -- that s a
21 Confession of Judgment of what can you tell me?

22 **A** Monies owed to Mr David O'Connell
23 from Mark Johnson

24 **Q.** And what s the amount of that
25 Judgment?

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ROA_0143

4 20-09

1 **A.** Thirty-six thousand
2 **Q** And what's the date on it?
3 **A** January 9 2008
4 **Q.** 2008?
5 **A** Yes sir
6 **Q.** Is there a time stamp copy on there
7 from the Clerk of the Court or the Register of
8 Deeds office?
9 **A** January 11 2008
10 **Q** Okay And when you received a copy
11 of that and reviewed it what did you do?
12 **A** I contacted David to see if I could
13 purchase it off of him
14 **Q** Okay And what was the result of
15 that conversation?
16 **A** I -- I bought his judgment
17 **Q** Okay
18 **MS GOLDING** Your
19 Honor I would again object to the Assignment of
20 Judgment And that would be Number 5?
21 **MR. BRUNTY** It would be
22 Number 5
23 **MS GOLDING** Again, the
24 basis for that objection Your Honor, is that
25 Assignment was obtained after this lawsuit was

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ROA_0144

4.20.09

1 started, Your Honor with full knowledge about
2 the controversy in this case, in that I don't
3 believe that he can as a matter of law utilize
4 this judgment to enhance or increase his position
5 in any way, Your Honor Thank you

6 **THE COURT** Thank you
7 I overrule the objection

8 **MR BRUNTY** We ll mark
9 it as Number 5

10 +++++++
11 (ASSIGNMENT OF JUDGMENT WAS
12 MARKED FOR IDENTIFICATION
13 AS PLAINTIFF S EXHIBIT
14 NUMBER 5
15 AND WAS RECEIVED IN EVIDENCE)

16 +++++++

17 **BY MR. BRUNTY**

18 **Q** And Exhibit Number 5 is the
19 Assignment of Judgment and that's been filed with
20 the Horry County Register of Deeds is that
21 right?

22 **A** Yes sir

23 **Q** Are you're the owner of that
24 Assignment of Judgment?

25 **A.** Yes, I am

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ROA_0145

4 20 09

1 Q Are you prosecuting both your rights
2 in that judgment and your rights in your original
3 judgment here today?

4 A Yes, I am

5 Q And similar to your original
6 judgment has anyone paid you for that judgment?

7 A. No, sir they have not

8 Q. Okay Regarding the collection of
9 your original judgment that matter has preceded
10 the supplemental proceedings is that correct?

11 A Yes sir

12 Q Okay And those supplemental
13 proceedings were halted is that right?

14 A. Uh-huh (yes)

15 Q And were they halted because ---

16 MS GOLDING Your
17 Honor I want to make an objection He's leading
18 the witness terribly

19 BY MR BRUNTY

20 Q. Why were they halted?

21 THE COURT Try not to
22 lead so much Mr Brunty

23 BY MR BRUNTY

24 Q Why were they halted?

25 A We didn't have the money to buy the

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ROA_0146

4 20-09

1 note

2 Q Have you been injured or delayed in
3 any way by the actions of the Defendants?

4 A Yes

5 MR BRUNTY Nothing
6 further Your Honor

7 THE COURT Ms Golding

8 MS GOLDING Thank you,
9 Your Honor

10 ++++++

11 CROSS-EXAMINATION

12 BY MS. GOLDING

13 Q. Mr Oskin, you ve never met Michael
14 Brown have you?

15 A No ma'am

16 Q Okay And you ve never met Mrs
17 Brown have you?

18 A No ma am

19 Q You ve never lent money to Mr
20 Michael Brown have you?

21 A No ma'am

22 Q And you ve never lent any money to
23 Ms Joan Brown, have you?

24 A No ma am

25 Q You ve never had any business

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ROA_0147

4-20-09

1 dealings with Michael Brown have you?

2 A. No none other than the house that
3 Mark owned

4 Q. Well, you've never had any business
5 dealings with Mr Brown have you? There's not a
6 business deal that you've ever had with Michael
7 Brown?

8 A He s -- he's with Mark on the house
9 I mean ---

10 Q Well I mean did you -- you didn't
11 take part in buying the house did you?

12 A. No ma'am

13 Q Okay You didn't take part in
14 borrowing the monies for the house did you?

15 A No ma'am but we have a Judgment
16 against the house and he s one of the owners

17 Q. Well that s your judgment against
18 Mr Johnson is that right?

19 A Yes ma'am

20 Q Okay And that judgment you obtained
21 against Mr Brown against Mr Johnson, but Mr
22 Brown is not part of that judgment is he? You
23 didn't sue Mr Brown did you?

24 MR BRUNTY Objection

25 Your Honor The question has already -- the

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ROA_0148

4 20 09

1 judgment against Mr Brown goes into a little bit
2 of a legal issue as to ---

3 MS GOLDING The
4 judgment against Mr Johnson

5 MR. BRUNTY Against Mr
6 Johnson and whether or not he's got a judgment
7 against Mr Brown to the extent that the judgment
8 on its face is against Mr Johnson I will
9 stipulate that it is against Mr Johnson not
10 against Mr Brown

11 MS GOLDING Your
12 Honor, this is cross-examination and I think I
13 have this witness erroneously stated that he had
14 some kind of business dealings with Mr Brown
15 And I have a right to establish that he never had
16 any business dealings with Mr Brown

17 THE COURT I'm going to
18 allow it

19 BY MS GOLDING

20 Q Just going back that judgment
21 against Mr Johnson Mr Brown had absolutely
22 nothing to do with that transaction did he?

23 A If you say so

24 Q. No sir, you're under oath and you re
25 the witness and you re obligated to speak the

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ROA_0149

4-20-09

1 truth And you realize that Mr Oskin?
 2 A Yes, ma'am
 3 Q Let s go to that judgment against Mr
 4 Johnson That judgment was for a real estate
 5 commission related to the sale of Wild Wing
 6 Plantation is that correct?
 7 A Yes ma'am
 8 Q Okay And that real estate
 9 transaction you never had one contact with Mr
 10 Brown during that, did you?
 11 A No ma'am
 12 Q Okay You never had one contact with
 13 Mrs Brown did you?
 14 A No ma am
 15 Q Okay And that real estate
 16 transaction, the commission that they you never
 17 had anything to do with Mr Brown or Mrs Brown
 18 as to say pay me this commission did you?
 19 A That's correct
 20 Q Okay And so the judgment that you
 21 obtained with Mr Johnson had nothing to do with
 22 Mr or Mrs Brown is that not correct?
 23 A The judgment is against Mark s house
 24 Q The judgment that you obtained
 25 against Mr Johnson let s go through this again

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ROA_0150

4-20-09

1 was based upon a real estate commission you
2 claimed you were due for Wild Wing Plantation is
3 that correct?

4 A Yes, ma'am

5 Q Okay And that judgment for the real
6 estate commission, you've already testified that
7 Mr or Mrs Brown had no obligation to pay you
8 for that real estate commission, is that not
9 correct?

10 A That's correct

11 Q Okay So that judgment against Mr
12 Johnson was only against Mr Johnson because the
13 Browns had no obligation to pay you any
14 commission is that correct?

15 A That s correct

16 Q Now with respect to the judgment
17 that you got against Mr Johnson, it s over a
18 million dollars today with interest is that
19 correct?

20 A Yes ma am

21 Q And in fact, that judgment you never
22 came out of pocket a million dollars, have you?

23 A No

24 Q Okay And you never came out of
25 pocket half a million dollars, have you?

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ROA_0151

4 20-09

1 A No, ma'am
2 Q And you never came out of pocket a
3 hundred thousand dollars for that judgment have
4 you?
5 A No ma am
6 Q Now with respect to this judgment
7 that you obtained that you bought from Mr
8 O'Connell Exhibit Number 5 you went to Mr
9 O Connell what was it four or five months ago?
10 A Yes ma am
11 Q Okay And so that was the latter
12 part of 2009 is that right?
13 A Yes ma am
14 Q. Okay And, in fact this assignment
15 is dated November 4 2009 is that correct?
16 A That s correct
17 Q Okay So this lawsuit that you sued
18 Mr and Mrs Brown for had been going on for
19 almost a year is that correct before you went to
20 Mr O'Connell and said let me buy your judgment?
21 A Uh-huh (yes)
22 Q And when you went to Mr O Connell
23 you paid him five hundred dollars for this
24 judgment is that correct?
25 A. Yes ma am

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ROA_0152

4-20-09

1 Q Okay And you paid him five hundred
2 dollars in November of 2009?
3 A. That s correct
4 Q. Okay And you paid him that money
5 out of your funds?
6 A. Yes
7 Q And you paid with full knowledge that
8 the Browns took the position that you re not
9 entitled to any execution against that house is
10 that not correct?
11 A. Could you say that again, please?
12 Q You paid Mr O'Connell five hundred
13 dollars with full knowledge that Mr and Mrs
14 Brown said you were not entitled to any execution
15 against the house that Mr Brown has an interest
16 in?
17 A. Yes, ma am
18 Q Now with the LLC J Conner LLC
19 you never lent any monies to J Conner, LLC did
20 you?
21 A No, ma'am
22 Q You never transacted any business
23 with J Conner LLC have you?
24 A No ma am
25 Q. And you don t never obtained a

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ROA_0153

4-20-09

1 judgment against J Conner, LLC did you?

2 A No ma'am

3 Q And J Conner, LLC was not involved
4 in any way in this Wild Wing transaction was
5 he?

6 A No ma'am

7 Q Now, before this lawsuit started
8 before you brought this lawsuit against Mr and
9 Mrs Brown and J Conner, LLC, you had never
10 known of them have you?

11 A I knew that Mark went to his uncle to
12 buy property in Edenton, North Carolina, and
13 other places around the beach

14 Q And you -- but before you started
15 this lawsuit you never had any contact with Mr
16 Brown Mrs Brown or J Conner LLC had you?

17 A I did not know that they were on the
18 house until we got the judgment

19 Q Okay And none of the three, Mr
20 Brown, Mrs Brown or J Conner LLC ever have
21 been debtors to you, have they?

22 MR BRUNTY Object to
23 the form Your Honor her question is -- she s
24 trying to get them to -- she s asked the question
25 about the term debtor without defining it and

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ROA_0154

4-20-09

1 that is a legally defined term She's asked him
2 if -- she's asked him previously if he's had any
3 business dealings with them, had he loaned them
4 any money, et cetera But the question debtor
5 calls for -- to the extent that it calls for a
6 legal conclusion or answer as to the definition
7 of debtor, the Plaintiffs object to that, Your
8 Honor

9 MS GOLDING I'm not
10 seeking any legal conclusion from him I m just
11 asking him as a matter of fact Your Honor

12 BY MS GOLDING

13 Q. As a matter of fact none of the
14 three, Mr Brown Mrs Brown J Conner, LLC have
15 ever been your debtors have they?

16 A. Correct

17 Q Now with respect to the South
18 Carolina Bank & Trust, you did not lend South
19 Carolina Bank & Trust any monies, did you?

20 A No ma am

21 Q Okay And South Carolina Bank &
22 Trust has never to your knowledge been indebted
23 to your other co-Plaintiffs in this case have
24 they?

25 A I don t believe so

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ROA_0155

4-20-09

1 Q And in your -- you're not here today
2 to tell this Court that South Carolina Bank &
3 Trust did not lend three and a half million
4 dollars to Mark Johnson and Mr Brown are you?

5 A No ma'am

6 Q And in fact, it is a fact that South
7 Carolina Bank & Trust did lend three and a half
8 million dollars to Mr Brown and Mr Johnson is
9 that not a fact?

10 A I believe that is true yes ma'am

11 Q And they lent -- but the bank lent
12 that money in November of 2006 is that correct?

13 A Yes ma'am

14 Q. And you understood and you understand
15 now that when the bank South Carolina Bank &
16 Trust lent that money to Mr Brown and Mr
17 Johnson that Mr Brown was a hundred percent
18 responsible for that debt just as was Mr
19 Johnson is that correct?

20 A Yes ma'am

21 Q Now this mortgage that you've sued
22 on the mortgage that was from South Carolina
23 Bank & Trust to Mr Brown and Mr Johnson that
24 was transferred to J Conner LLC, that mortgage
25 that was secured -- that was security for that

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ROA_0156

4 20-09

1 three and a half million dollars that South
2 Carolina Bank & Trust lent is that correct in
3 November?

4 A. Yes, ma'am

5 Q. And so there's nothing -- you're not
6 here today to tell this Court that mortgage isn't
7 a valid mortgage are you?

8 A. No ma'am

9 Q And you understood when you started
10 this lawsuit that that mortgage from South
11 Carolina Bank & Trust was security for that three
12 and a half million dollars and future advances
13 did you not?

14 A Yes ma'am

15 Q Now with that three and a half
16 million debt you've made no interest payments on
17 that debt have you?

18 A No ma'am

19 Q Okay And you've paid none of the
20 property taxes on that property, have you?

21 A No ma'am

22 Q And you've paid none of the property
23 insurance have you?

24 A. No ma'am

25 Q And you've done nothing to upkeep the

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ROA_0157

4 20 09

1 property have you?

2 A No, ma'am

3 Q Okay And you will agree that South
4 Carolina Bank & Trust didn't need your consent to
5 lend money to Mr Brown and Mr Johnson on Mr
6 Johnson Brown's house did they?

7 A. Correct

8 Q Okay And South Carolina Bank &
9 Trust didn't need your consent to make any
10 advances under the future advances clause under
11 the mortgage did it?

12 A No ma'am

13 Q And Mr Oskin South Carolina Bank &
14 Trust wasn't required to have your consent to
15 assign the note and mortgage of three and a half
16 million did it?

17 A No, ma'am

18 Q Okay Nothing further Thank you

19 THE COURT Mr Masel

20 MR MASEL Very

21 briefly Your Honor

22 ++++++

23 CROSS-EXAMINATION

24 BY MR MASEL

25 Q Mr Oskin, in your original lawsuit

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ROA_0158

4-20 09

1 against Mark Johnson, you were represented by
2 Attorney Bob Gwin is that correct?

3 A. That s correct

4 Q He filed the lawsuit on your behalf?

5 A. Yes, sir, he did

6 Q And in that lawsuit he did not you
7 did not name either the Browns or J Conner, LLC
8 as defendants in that case, is that correct?

9 A That s correct

10 Q And in that lawsuit itself in the
11 body of the Complaint there were no allegations
12 against those entities, is that correct?

13 A. That s correct

14 Q. Mark Johnson did not file an Answer
15 to that lawsuit is that right?

16 A That s correct

17 Q. And no attorney represented him in
18 that case is that correct?

19 A. That's right

20 Q And the judgment you obtained against
21 him was one based in part on a default judgment
22 for him not answering that lawsuit?

23 A. That I don't know

24 Q As to the O'Connell judgment, since
25 you obtained that judgment have you made any

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ROA_0159

4-20-09

1 demands directly to Mark Johnson for payment
2 under that judgment?

3 **A** No, I have not

4 **Q** Have you made demands to anyone
5 individually for payment or anyone else other
6 than Mark Johnson?

7 **A.** I consulted Mark Brunty concerning
8 that judgment

9 **Q.** Okay But you haven t made any
10 demands for payment yourself?

11 **A** Me personally no, I ve been going
12 through Mr Brunty

13 **Q** That s all I have Your Honor

14 **THE COURT** Thank you
15 Mr Masel Mr Brunty any re-direct?

16 **MR BRUNTY** None Your
17 Honor

18 **THE COURT** You may step
19 down Mr Oskin Mr Brunty you want to call
20 your next witness?

21 **MR BRUNTY** Thank you
22 Your Honor The Plaintiffs call Glenn Small

23 **THE COURT** Mr Small
24 if you ll come around and place your left on the
25 Bible and raise your right hand and be sworn or

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ROA_0160

4 20-09

1 affirmed by the court reporter, please, sir

2 Whereupon,

3 (RONALD GLEN SMALL, having been duly
4 sworn testified as follows

5 THE COURT If you'll
6 state your full name for the record

7 THE WITNESS Okay
8 Ronald Glen Small

9 THE COURT Mr Small,
10 there should be water there I forgot to tell
11 Mr Oskin that And you may need it

12 ++++++

13 DIRECT EXAMINATION

14 BY MR BRUNTY

15 Q Thank you Mr Small Will you state
16 your name for the record?

17 A. Ronald Glen Small

18 Q Will you tell the Court where you
19 live?

20 A 1146 Steel Hill Road, Lancaster
21 South Carolina

22 Q. All right You re one of the
23 Plaintiffs in this case is that correct?

24 A. Correct

25 Q. Along with Mr Kanos?

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ROA_0161

4-20-09

1 A Yes

2 Q He s not in the courtroom today, is

3 that ---

4 A That's correct

5 Q Do you know why?

6 MS GOLDING Your

7 Honor, I'm going to make an objection It's

8 reason I mean, that obviously would be without a

9 foundation

10 THE COURT Well if he

11 knows

12 MS GOLDING He has to

13 lay a foundation

14 BY MR BRUNTY

15 Q Do you know why he's not here?

16 A He didn't think he needed to be here

17 Q Are you here representing his

18 interests?

19 A Yes

20 Q Okay Mr Small, I'm handing you a

21 document titled Promissory Note Would you

22 identify that for the Court?

23 A Do what?

24 Q Can you identify that? Are you

25 familiar with what that document is?

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ROA_0162

4-20-09

1 **A** Yes

2 **Q** Okay What is it?

3 **A.** It s my loan agreement, or mine and
4 Freddie s with Mark Let me read it I hadn t
5 looked at it in so long

6 **Q.** It s titled, Promissory Note says
7 Page 1 of 2 Do you know what the other pages
8 are?

9 **A.** Yeah I don t have them with me I
10 thought I gave them to you

11 **THE COURT** Mr Brunty
12 has this been pre-marked?

13 **MR BRUNTY** It has not

14 **THE COURT** Okay

15 **THE WITNESS.** Yeah

16 Okay

17 **BY MR. BRUNTY**

18 **Q** The face of that Note Page 1 of 1 of
19 2 is that the entirety of your Promissory Note
20 with Mr Johnson?

21 **MS GOLDING** Your
22 Honor, I want to make an objection He's varying
23 the terms of it It's supposed to be a document
24 Page 1 of 2 Page 2 is not part of the exhibit
25 And I m objecting on that basis I'd like to see

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ROA_0163

4 20-09

1 the whole exhibit the whole document

2 **THE COURT** Do you have
3 the whole document?

4 **MR BRUNTY** I never
5 obtained it What I obtained from Mr Small was
6 -- it's titled Page 1 of 2 Mr Small didn't
7 draft it The other pages that are with it are
8 from the attorney who drafted it, as well as some
9 other documents that go along with the agreement
10 It is not part of the Promissory Note and it's
11 nothing that I wanted to admit into evidence
12 Because it is an attorney s letter and it goes
13 into things that are outside of the debt The
14 Promissory Note itself the Court has a copy of
15 it, outlines the debt and it s signed by Mr
16 Johnson Anything that would be on Page 2 if
17 there were actually a Page 2 would modify the
18 terms of the Promissory Note

19 **THE COURT** Why don t we
20 ask him if this is his entire Promissory Note?

21 **BY MR BRUNTY**

22 **Q** Is this your entire Promissory Note,
23 Mr Small?

24 **A.** This is the entire agreement what I
25 loaned the money on, yeah

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ROA_0164

4 20-09

1 Q Did you draft that Promissory Note?
2 A. No
3 Q Did you set the terms of that
4 Promissory Note?
5 A No
6 Q Who drafted it?
7 A Scott Masel and me and Mark
8 Q Who set the terms?
9 A Mark did
10 Q. Mark Johnson?
11 A Mark Johnson set the terms
12 Q. Okay
13 A That's what he said he d pay me you
14 know But I basically didn t want to loan him
15 the money
16 Q That Promissory Note is the entirety
17 of his --- Your understanding in his agreement
18 to pay you money?
19 A Correct
20 MR BRUNTY I move to
21 have this submitted into evidence Your Honor
22 MS GOLDING Your
23 Honor it s part of the document I think it s -
24 - Plaintiff's counsel says that the second page
25 doesn t have anything to do with it Well

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ROA_0165

4-20-09

1 that's his version I've never seen it and I
2 have a right to see it, Your Honor That is not
3 the complete exhibit Your Honor

4 **MR. BRUNTY** May I
5 represent to the Court this is the complete
6 exhibit This is the entirety of the Promissory
7 Note It s signed by Mark Johnson There's no -
8 --

9 **MS. GOLDING** That s his
10 representation I'm entitled to the entire
11 document, Your Honor He can't keep it from
12 us

13 **MR BRUNTY** And the
14 witness has testified this is his entire
15 Promissory Note

16 **THE COURT** Mr Masel
17 is Mr Johnson your client?

18 **MR MASEL** Mr Johnson
19 is my client, yes, Your Honor And I don t know
20 how much light I can shed I don't -- I
21 participated in that I did draft that document
22 If there wasn t anything in addition to that that
23 I had provided in discovery, I don t have
24 anything additional today I don t have any
25 recollection of what may have been on Page 2

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ROA_0166

4-20-09

1 THE COURT You drafted
2 this document Mr Masel?

3 MR MASEL I did Your
4 Honor, at the request of the parties to that
5 note

6 MS GOLDING Your
7 Honor why can't I just see the letter that's
8 Page 2?

9 THE COURT. Do we know
10 Page 2 is a letter?

11 MR BRUNTY I believe
12 that Page 2 is 1 of 2 is a scrivener s error
13 The letter is a letter from -- actually what I
14 had received and I received from Mr Small was
15 a document six or seven pages

16 THE COURT I can t
17 imagine that Page 2 of this would be a letter
18 You think Page 2 of this is a letter?

19 MS GOLDING Mr Brunty
20 said it was That s the only reason

21 MR BRUNTY Here s the
22 way I received the documents in order That
23 Note then a letter that outlined the fact that
24 Mr Masel could not represent either party going
25 forward Mr Johnson was in default of the

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ROA_0167

4-20-09

1 Promissory Note arrangement and Mr Masel had
2 indicated to them, going forward, here's what you
3 need to do I can't represent you I believe
4 the indication that it says 1 of 2 is a
5 scrivener s error Occasionally word processing
6 software will continue a document onto a page
7 If you have a footer in there, it will call it
8 Page 1 of 2 But that Promissory Note is in toto
9 on the exhibit That s all the Plaintiffs want
10 to address

11 **THE COURT** Well
12 sometimes it s the witnesses signatures are on
13 Page 2

14 **MR. BRUNTY** It's
15 possible

16 **MS GOLDING** You know
17 it may be payment terms on Page 2 Your Honor

18 **THE COURT** It could be

19 **MS. GOLDING.** Yes So I
20 mean, how about the original Can we get a copy
21 of the original? Can we take a look at the
22 original?

23 **MR. BRUNTY** We don t
24 have the original, Your Honor The payment terms
25 are on Page 1

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ROA_0168

4-20-09

1 MS GOLDING Then I
2 would also object to not having an original Your
3 Honor

4 THE COURT Then the
5 payment terms are on this Page 1?

6 MS. GOLDING I mean but
7 it could be some other --- I mean we're
8 speculating Your Honor It's a two-page
9 exhibit It s a two-page document and now that
10 the original is not even accessible I would
11 object to not having the original in this
12 Courtroom

13 MR BRUNTY The purpose
14 of the exhibit is to establish that Mark Johnson
15 owes money under a Promissory Note to Mr Small
16 and Mr Kanos They are his creditors under that
17 note Mr Small has testified to that Mr
18 Masel has indicated to the Court that he drafted
19 this document and this is the agreement The
20 agreement speaks for itself It s in toto a
21 Promissory Note An obligation to pay

22 THE COURT Well I'm
23 going to let it come in for what it s worth
24 It s one page of a document It says it s Page 1
25 of 2 Ms Golding, you may cross examine on this

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ROA_0169

4-20-09

document

+++++

(PROMISSORY NOTE WAS
MARKED FOR IDENTIFICATION
AS PLAINTIFF'S EXHIBIT
NUMBER 6 AND WAS
RECEIVED IN EVIDENCE)

+++++

MR. BRUNTY Number 6 is
the Promissory Note

MS GOLDING That would
be Plaintiff s Exhibit Number 6?

MR BRUNTY Yes

BY MR BRUNTY

Q Mr Small the Promissory Note that
has been marked as Exhibit Number 6, have you
been paid in full for that -- for the amounts
due?

A No

Q Have you made a demand to Mr Johnson
to pay you?

A Yes

Q Have you filed a lawsuit against Mr
Johnson to pay you for that note?

A If that's what I did through you

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ROA_0170

4-20 09

1 yes
2 Q Okay Has anyone paid you for that
3 Note?
4 A. No
5 Q Okay Prior to today have you ever
6 seen Michael Brown or Joan Brown?
7 A No
8 Q Have you ever had any dealings with
9 them?
10 A No
11 Q Loaned them any money?
12 A No
13 Q Entered into any business agreements
14 with them?
15 A No
16 Q Known them in any way shape or form?
17 A No
18 Q. Have you met them before?
19 A No
20 Q You re not here today claiming that
21 they owe you any money, are you?
22 A No
23 Q. How about SCB&T have you loaned any
24 money to them?
25 A. No

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ROA_0171

4-20 09

1 Q Okay Had any business dealings with
2 SCB&T regarding anything out of this lawsuit?

3 A No

4 Q. Anything with Mark Johnson and SCB&T
5 and you?

6 A No

7 MR BRUNTY That s all
8 I have Thank you

9 THE COURT Ms Golding

10 MS GOLDING Thank you,
11 Your Honor

12 ++++++

13 CROSS-EXAMINATION

14 BY MS GOLDING

15 Q Mr Small if I understand it
16 correctly, you do not have any judgment against
17 Mr Johnson based on the Promissory Note do you?

18 A If that means that what I hired my
19 attorney to do, whatever he says

20 Q Okay Well you don t have a
21 judgment on the Promissory Note, Plaintiff's
22 Exhibit Number 6 you didn't bring a lawsuit just
23 on this Note against just Mr Johnson did you?

24 A I know if that says I can get my
25 money Whatever way I can get my money that s

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ROA_0172

420-09

1 what I care about So explain the question

2 Q Before you hired Mr Brunty --- Let
3 me do it this way Before you hired Mr Brunty,
4 did you hire any attorney to sue on the
5 Promissory Note Exhibit 6?

6 A No

7 Q. Okay And when you -- you negotiated
8 the Promissory Note, Exhibit Number 6, you didn't
9 -- that was for a transaction only between you
10 and Mr Johnson, is that right?

11 A Correct

12 Q Okay And the Browns were not party
13 to that transaction at all?

14 A No

15 Q Okay No that you agree they were
16 not parties to the transaction?

17 A. Ma'am

18 Q No, you agree that the Browns were
19 not parties to the transaction in which you and
20 Mr Johnson that resulted in the Promissory Note,
21 Exhibit 6?

22 A If that means they had nothing to do
23 with it no

24 Q Okay You agree they had nothing to
25 do with it?

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ROA_0173

4-20-09

1 A. Whatever, uh-huh (yes)

2 Q Okay Thank you And you didn't

3 have anything to do with the judgment that David

4 O'Connell was paying against Mr Johnson, did

5 you?

6 A No I did not

7 Q Okay And with respect to J Conner,

8 LLC, you never lent J Conner LLC any monies,

9 did you?

10 A. No, I did not

11 Q. Okay And you never had any business

12 transactions with J Conner, LLC did you?

13 A. No I did not

14 Q. And you ve never had a judgment

15 against J Conner LLC have you?

16 A. No ma am

17 Q Okay And with respect to South

18 Carolina Bank & Trust, you didn t lend South

19 Carolina Bank & Trust any monies have you?

20 A. No I wish they d lend me some

21 Q Okay And with respect to South

22 Carolina Bank & Trust you re not here today

23 saying that South Carolina Bank & Trust was wrong

24 in lending the three and a half million dollars

25 to Mr Brown and Mr Johnson are you?

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ROA_0174

4-20-09

1 A. No

2 Q Okay And with respect to that three
3 and a half million dollars, you don't -- you're
4 not here today telling the Court that South
5 Carolina Bank & Trust didn't lend three and a
6 half million dollar to Mr Brown and Mr Johnson,
7 are you?

8 A. No

9 Q And with respect to South Carolina
10 Bank & Trust you know that South Carolina Bank &
11 Trust obtained a mortgage on the home that's
12 owned by Mr Brown and Mr Johnson?

13 A I have no clue about that That s up
14 to Mr Brunty That's what I hired him to do to
15 figure it out

16 Q Okay So you have -- but you've not
17 personally just on your personal knowledge
18 you re not saying that South Carolina Bank &
19 Trust was wrong to get that mortgage to when it -
20 --

21 A I m not here to judge anybody, I
22 don t know

23 Q Well let me finish asking my
24 question, then you can answer okay?

25 A All right

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ROA_0175

4-20-09

1 Q Your personal knowledge you re not
2 saying South Carolina Bank & Trust was wrong in
3 lending the three and a half million dollars to
4 Mr Brown and Mr Johnson are you?

5 A I -- I mean that s kind of an open
6 ended question

7 Q No I'm asking you a question

8 A. I -- I can t decide who they loaned
9 money to

10 Q Just on your personal knowledge

11 A My personal knowledge I don t -- I
12 don t know what they do

13 Q Okay Your personal knowledge -- you
14 have no knowledge that South Carolina Bank &
15 Trust committed any wrong in lending three and a
16 half million dollars to Mr Brown and Mr
17 Johnson are you?

18 A Did they lend three and a half
19 million dollars?

20 Q Yes

21 A They did? Well I guess not

22 Q Okay And you re not here today and
23 you don t have any personal knowledge that South
24 Carolina Bank & Trust was wrong in assigning that
25 note and mortgage in the amount of three and a

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ROA_0176

4-20-09

1 half million dollars to J Conner LLC, are you?
 2 A That's not my place to judge
 3 Q Okay I'm just asking do you have
 4 any knowledge of any wrong ---
 5 A I don't have any knowledge what South
 6 Carolina Bank & Trust did with the Browns period
 7 Q Okay And any knowledge with South
 8 Carolina National Bank an assignment of the note
 9 and mortgage to J Conner, LLC?
 10 A. I have no clue about that
 11 Q Okay Now, you didn't make any type
 12 of interest payments on this three and a half
 13 million dollars, did you?
 14 A. I -- I -- no, I didn't
 15 Q Okay And you didn't make any
 16 principal payments on that three and a half
 17 million dollars, did you?
 18 A No
 19 Q And you didn't pay any of the
 20 property taxes did you?
 21 A No
 22 Q And you didn't pay any of the
 23 property insurance on the property that's secured
 24 by the three and a half million, did you?
 25 A No

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ROA_0177

4 20 09

1 **Q** And you re not here today to tell
2 this Court that you have to consent or give
3 permission to South Carolina Bank & Trust under
4 the future advances clause before it could make
5 any future advances, are you?

6 **A** I don't know what a future advance
7 clause is and I have not had any discussions with
8 South Carolina Bank & Trust

9 **Q** Okay And you re not here today to
10 say that South Carolina Bank & Trust could not
11 assign the three and a half million dollar note
12 and mortgage are you?

13 **A** That's for them to decide

14 **Q** Okay Nothing further, Your Honor
15 Thank you

16 **THE COURT** Mr Masel

17 **MR MASEL** I have no
18 questions, Your Honor

19 **THE COURT** Mr Brunty
20 do you have any re-direct?

21 **MR BRUNTY** None Your
22 Honor

23 **THE COURT** You may step
24 down, Mr Small Mr Brunty

25 **MR BRUNTY.** Before we

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ROA_0178

4 20-09

1 proceed, Your Honor, we've been in the courtroom
2 for a little bit ---

3 **THE COURT** Do you need
4 a break?

5 **MR BRUNTY** I was just
6 going to say if anybody needs a break, Mr Scott
7 is my next witness from Wachovia He may be a
8 little longer So it would be a good time for a
9 break

10 **THE COURT** Okay All
11 right Let s take about a ten-minute break
12 (Whereupon a brief recess was
13 taken)

14 **THE COURT** Mr Brunty
15 do you want to call your next witness?

16 **MR BRUNTY** Thank you,
17 Your Honor Plaintiffs call John Scott

18 **THE COURT** All right
19 Mr Scott If you'll come forward and take your
20 left hand on the Bible and raise your right hand
21 and be sworn or affirmed by the court reporter

22 ++++++

23 Whereupon

24 (JOHN LEE SCOTT, having been duly
25 sworn testified as follows

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ROA_0179

4-20-09

1 THE COURT If you'll be
2 seated and state your full name for the court
3 reporter

4 THE WITNESS John Lee
5 Scott

6 THE COURT Thank you,
7 sir There should be water there if you need
8 it

9 THE WITNESS Okay
10 Thank you

11 DIRECT EXAMINATION

12 BY MR BRUNTY.

13 Q. Thank you Mr Scott Will you tell
14 the Court where you live?

15 A My address is 439 Boyce Road that s
16 B-o-y-c-e in Charlotte, North Carolina

17 Q Okay You're here today pursuant to
18 a subpoena, is that correct?

19 A Yes it is

20 Q And that was provided to Laurel
21 Blair is that your understanding?

22 A Yes

23 Q And can you tell the Court who she
24 is?

25 A She is counsel representing Wachovia

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ROA_0180

4-20-09

1 Bank in this matter

2 MR BRUNTY And Your
3 Honor, for the Court, she has appeared before the
4 Court previously in a hearing, the Supplemental
5 Proceeding matter

6 BY MR. BRUNTY.

7 Q Could you tell the Court what type of
8 work do you do?

9 A. I work for our private bank which is
10 now Wells Fargo private bank And my
11 responsibility is credit Mostly commercial
12 credit putting commercial credits in place for
13 our wealth clients

14 Q. Okay Fair to say you re in the
15 banking business generally?

16 A. Yes

17 Q. How long have you been doing that
18 type of work?

19 A Twenty-one years

20 Q. Okay Is that your entire career?

21 A Yes

22 Q And you said you're in credit and I
23 think did you say wealth management?

24 A Wealth management is the name of the
25 group that I work with

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ROA_0181

4-20-09

1 Q Okay In addition to that type of
2 work, what other types of jobs have you held in
3 the past?

4 A. I collected past due car loans as my
5 first job, two years Originated mortgage loans
6 and made credit decisions on those mortgage loans
7 as well for five to six years Retail credit
8 decisioning following that And then I've been
9 in wealth management since 2000

10 Q Okay And you mentioned Wells Fargo
11 Do you work for Wells Fargo now?

12 A Yes Wells Fargo purchased Wachovia
13 They consummated the closing on December 31 of
14 2008

15 Q Okay And prior to Wells Fargo it
16 was Wachovia you worked there, is that my
17 understanding?

18 A Yes

19 Q And you worked for a Bank of America
20 you told me before?

21 A Ten months in that twenty-one year
22 time period

23 Q Okay What is the wealth management
24 group you talked about? Can you describe that
25 for me a little bit?

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ROA_0182

4-20-09

1 **A** We work with high net worth clients
2 across pretty much providing any type of
3 financial product they can need, insurance
4 estate planning trust investment management,
5 credit traditional banking needs Any type of
6 financial need that they have, we try to put fit
7 that

8 **Q** Okay And that's the type of work
9 you were doing -- or were you doing that in the
10 latter part of 2008?

11 **A** Yes

12 **Q** Okay As part of your work at the
13 Wachovia Wealth Management Group and now Wells
14 Fargo but referring specifically to that time,
15 the latter part of 2008 did you work with
16 Michael Brown?

17 **A** Yes

18 **Q** Okay Can you describe the nature of
19 your work with Michael Brown?

20 **A** Mike and I and his wife for that
21 matter Mike was a client of the private bank for
22 Wachovia and we handled some transactions for
23 him credit included in that

24 **Q** And you say credit transactions is
25 that -- you re talking about like a loan?

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ROA_0183

4-20-09

1 **A** Yes

2 **Q** You don't -- you had a loan prior to
3 -- we're going to discuss a loan to J. Conner
4 He had a loan in his own name or in a company
5 name prior to this transaction. Is that right?

6 **A** Yes

7 **Q** Okay. Was that for Michael Brown
8 Enterprises or MDB Enterprises, excuse me?

9 **MS. GOLDING** Your
10 Honor, I'm going to make an objection. I don't
11 think that going into other financial activities
12 amounted to Mr. Brown have any bearing or
13 relevancy with this lawsuit.

14 **MR. BRUNTY** Your Honor
15 this will establish among other things Mr.
16 Brown's involvement with the Bank, the Bank's
17 involvement with Mr. Brown. The fact that Mr.
18 Brown had other entities set up at the time of
19 this transaction that housed loans or took out
20 loans that or took out loans that were housed at
21 Wachovia. Just -- and I'm not going in depth. I
22 just want a little bit of background to see how
23 Mr. -- how well Mr. Scott knew Mr. Brown.

24 **THE COURT** And what
25 does that have to do with this lawsuit?

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ROA_0184

4 20-09

1 **MR. BRUNTY** In
2 specific Your Honor Mr Brown had a line of
3 credit prior to this one with Wachovia that he
4 could have housed this loan within He could
5 have increased that line of credit Instead,
6 they formed this company which Plaintiffs have
7 alleged is the mere alter ego of Michael Brown
8 for the sole purpose of paying this obligation by
9 keeping the mortgage alive The fact that MDB
10 Enterprises was in existence and had a loan will
11 help the Plaintiffs establish the fact that this
12 was an in and around the use of Mr Brown, where
13 his solely owned entity to hold the note and the
14 mortgage, which is the crux of this case

15 But as far as this witness I don't
16 want a lot of information Just want a little
17 bit of background

18 **THE COURT** Background
19 is okay But let s not go into his other loans
20 his other -- his other dealings with Wachovia

21 **MR BRUNTY** Okay And
22 he s testified that he has had dealings with them
23 so I will not go any further

24 **THE COURT** All right
25 So I ll sustain that objection

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ROA_0185

4-20-09

1 BY MR BRUNTY

2 Q Were you his relationship manager?

3 A I was not

4 Q Will you tell me what a relationship
5 manager is?

6 A. In the Wachovia Wealth Management
7 view, the relationship manager is the primary
8 contact with the wealth client

9 Q Okay Who was his relationship
10 manager?

11 A At the time of these that we're
12 speaking of in the fall of 2008, Susan Johnson
13 was Mike s relationship manager And that, there
14 was a shift in that later on Bob Suddreth took
15 over that role

16 Q I was going to say, you said at the
17 time that in fact changed?

18 A Yes

19 Q Okay And Susan Johnson was his
20 relationship manager until what time do you
21 know?

22 A I believe she left the bank in
23 October of -- October/November of 2008

24 Q. Do you remember how -- you have
25 testified before in your office or in Womble

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ROA_0186

4 20 09

1 Carlisle's office in Charlotte and we discussed
2 this transaction in depth at your deposition
3
4 **MS GOLDING** Your Honor I'm going to make an objection You know
5 with respect to going into you testified before
6 your deposition, all of that, that's improper
7 going into trying to set up questions He just
8 needs to ask the question of the witness At
9 this point in time the witness has not done
10 anything that's adverse, hostile nor has he done
11 anything that is contrary to his testimony So
12 he can't set him up to do any kind of cross-
13 examination

14 **MR BRUNTY** Your Honor,
15 just for the purpose of getting to him -- I'm
16 just refreshing that he testified about a
17 transaction And if she would let me finish the
18 question, all I was going to ask him was do you
19 remember the transaction we re talking about?
20 You recall the loan to J Conner

21 **THE COURT** Why don't
22 you do it that way, Mr Brunty?

23 **BY MR BRUNTY**

24 **Q.** Do you remember the loan that
25 Wachovia made to J Conner, LLC in 2008?

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4-20-09

1 A Yes

2 Q Okay Do you remember how that
3 began?

4 A I do

5 Q Can you inform the Court how that
6 began?

7 A Yes Mr Brown called us in October
8 of 2008 and said he had a need for some
9 discussion with us about potentially taking out a
10 real estate loan on some property in South
11 Carolina

12 Q. Okay And you say taking out you
13 mean obtaining a loan from Wachovia?

14 A Yes, that s correct

15 Q Okay And you say contacted us Did
16 he contact you or us being Wachovia?

17 A Us being Wachovia

18 Q. What is your understanding of what
19 the beginning of that -- of what that was, what
20 he was seeking?

21 **MS. GOLDING** Your
22 Honor I want to make an objection as to the
23 question of understanding The witness can
24 testify as to events and what occurred, but not
25 as to Mr Brown s understanding

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ROA_0188

4 20 09

1 **MR BRUNTY** I'm not
2 asking about Mr Brown s understanding I'm
3 asking about Mr Scott's understanding of what
4 Mr Brown was trying to obtain He's the banker,
5 he was dealing with credit, award of credit and a
6 loan to Mr Brown He would certainly have
7 knowledge of what his own understanding was with
8 respect to what the client/customer of the bank
9 was seeking

10 **MS GOLDING** Your
11 Honor, it's not his understanding that was
12 admissible it was actually what was done and
13 what was said that's admissible

14 **THE COURT** You can
15 testify as to what you know what Mr Brown was
16 attempting to do

17 **THE WITNESS** Yes,
18 ma am

19 **BY MR BRUNTY**

20 **Q** In the beginning part of the
21 transaction October 2008, what was Mr Brown
22 attempting to do, do you know?

23 **A** Mr Brown had a maturing loan
24 facility with South Carolina Bank & Trust It
25 was coming up in November and I believe that they

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ROA_0189

4 20 09

1 had already stated that they were not interested
2 in renewing that facility Given our past
3 history with Mr Brown and Ms Brown we met with
4 them -- met with Mike to discuss the -- what we
5 could potentially do to replace that mortgage
6 And so we began that process

7 Q Okay And then a couple of things in
8 your question you said they were not going to
9 renew Who were you referring to?

10 A South Carolina Bank & Trust I m
11 sorry

12 Q Okay And you say replace, were they
13 going to refinance?

14 A The loan was maturing and I guess you
15 could say refinance the existing loan that s in
16 place

17 Q Okay I'm going to hand to you a
18 document that has not been marked The front
19 page is a letter from Womble Carlisle This is
20 for the record one of the exhibits that Ms
21 Golding has an objection to It s the Wachovia
22 emails on the exhibit list it s Number 11 by
23 mine Your Honor

24 Can you -- you re reviewing those
25 records, can you continue your review of the

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ROA_0190

4 20 09

1 records and let me know when you re finished?
 2 A You'd like me to review all of them?
 3 Q. Just if you could, flip through the
 4 pages
 5 A Okay
 6 Q Are those the records of Wachovia
 7 Bank?
 8 A They -- they look to be, uh-huh
 9 (yes)
 10 Q. Were those records prepared and
 11 maintained in the record course of the business
 12 of Wachovia Bank
 13 A Yes
 14 Q Is it Wachovia s regular practice to
 15 maintain those records in that manner?
 16 A Yes as far as I know
 17 Q Okay And those are actually your
 18 emails correct?
 19 A They are
 20 Q And you have personal knowledge of
 21 the information contained in them is that
 22 right?
 23 A I do
 24 Q And were those records and those
 25 emails in particular, prepared at or near the

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ROA_0191

4-20-09

1 time of the events for conditions described in
2 those emails or at least reasonably soon
3 thereafter?

4 **A** Yes

5 **Q** Your Honor I move to have these
6 admitted into evidence as Plaintiff's Exhibit
7 Number 7

8 **MS GOLDING** • Your
9 Honor as I stated these are email
10 communications with -- not with the Browns They
11 are internal email communications, Your Honor, it
12 appears And I would base -- I would object
13 basing my objection on internal communications

14 **THE COURT** Overruled
15 I don't know that the letter from Laurel R S
16 Blair to you needs to come in Mr Brunty

17 **MR BRUNTY** Okay

18 **THE COURT** Do you think
19 that needs to come in?

20 **MR BRUNTY** No I can
21 tear it off and we can remark it

22 **MS GOLDING** What
23 exhibit number is that?

24 **THE COURT** It's 11 in
25 the notebook

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ROA_0192

4-20-09

1 MR BRUNTY: It is
2 THE COURT Plaintiff's

3 7?

4 MR BRUNTY Plaintiff

5 7

6 ++++++

7 (SET OF EMAILS WAS
8 MARKED FOR IDENTIFICATION
9 AS PLAINTIFF'S EXHIBIT
10 NUMBER 7 AND WAS
11 RECEIVED IN EVIDENCE)

12 ++++++

13 BY MR BRUNTY

14 Q. Before we get too far a field, I m
15 going to hand to you the next document or ask you
16 questions about it And ask you if you can
17 identify that document, as well?

18 A The three documents included here a
19 key risk review dated December 8 of 2008 that
20 was completed by probably a combination of myself
21 and Kara Clark Another one another key risk
22 review dated 3/4/2009 that was completed by
23 Karnessa Reed who is in a different area than
24 myself And then a -- I see a terms document
25 which is basically the skeleton of our loan

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ROA_0193

4-20-09

1 facility that was done in December of 2008 for
2 the J Conner, LLC transaction

3 Q Okay And those are records of
4 Wachovia Bank's?

5 A. Yes

6 Q Okay And they were prepared and
7 maintained in the regular course of business of
8 Wachovia Bank, is that right?

9 A Yes

10 Q. And it is the regular practice of
11 Wachovia to have these records prepared and
12 reduced to writing?

13 A Yes

14 Q And these records were prepared
15 either by you or other employees who had personal
16 knowledge of information contained, correct?

17 A Yes

18 Q And those entries were -- that are
19 contained in the document you have in your hand
20 they were prepared at or near the time of the
21 events or conditions described or at least
22 reasonably soon thereafter is that right?

23 A Correct

24 MR BRUNTY I move to
25 have these admitted as exhibit Number 8

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ROA_0194

4-20-09

1 MS GOLDING Your
2 Honor, these exhibits contain thought processes
3 that are individuals and not the Browns are not
4 parties to all these documents And they also
5 contain credit information that has nothing to do
6 with this transaction whatsoever Your Honor

7 MR BRUNTY As to the
8 extent his credit information that has nothing to
9 do with this transaction, I believe Wachovia's
10 done a good job of redacting any of that
11 information But anything on it the Defendants
12 want to have redacted I have no objection to it
13 But I don't see anything in here that is credit,
14 outside the scope of this loan But we can take
15 that up after

16 THE COURT Ms Golding,
17 do you see anything that needs to be redacted
18 that would not be proper? It looks to me as if
19 anything that would be improper has actually been
20 redacted apparently before it was produced
21 pursuant to a subpoena?

22 MR BRUNTY That s
23 correct, Your Honor

24 MS GOLDING I think
25 there's a good bit, Your Honor On Page 3 of

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ROA_0195

4 20-09

1 8 ---

2 THE COURT Okay Page

3 3 of 8?

4 MS GOLDING Yes, Your

5 Honor

6 MR BRUNTY The back

7 part of the CA terms the top page 1 of 8 2 of

8 8 3 of 8 the top page is there What are you

9 referring to?

10 THE COURT 3, Page 3 of

11 8

12 MS GOLDING Correct

13 Your Honor

14 THE COURT All right

15 And if you would like if you don t want this on

16 the record, you're certainly welcome to come

17 forward

18 MS. GOLDING Okay

19 Thank you, Your Honor

20 (A bench conference was held)

21 MS GOLDING Your

22 Honor, Mr Brunty has removed the financial

23 personal financial information and the other

24 basis, of course is that I believe it contains

25 assumptions and opinions that have no validity

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ROA_0196

4.20.09

1 And of course if anything in here was utilized
2 to render any type of legal opinion, I would
3 object to that as well

4 **THE COURT** Okay Why
5 don t you ask him if he used any information in
6 here to obtain any legal opinion then?

7 **BY MR BRUNTY**

8 **Q** Mr Scott, the key risk review you
9 just reviewed and the CA terms, which has been
10 marked as Plaintiff s Exhibit Number 8, did you
11 use that to obtain a legal opinion or render a
12 legal opinion?

13 **A** No

14 **Q** Okay

15 **MS GOLDING** Your
16 Honor I meant to say with respect to the Court
17 that they re making statements in here I don t
18 want this document to be perceived as rendering a
19 legal opinion by the Bank from Wachovia Your
20 Honor

21 **THE COURT** I
22 understand And this will be taken If there
23 are any opinions in here it will be taken
24 strictly as such And based on that that I
25 overrule your objection

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ROA_0197

4-20-09

+++++

(KEY RISK REVIEW WAS
MARKED FOR IDENTIFICATION
AS PLAINTIFF S EXHIBIT
NUMBER 8

AND WAS RECEIVED IN EVIDENCE)

+++++

MR BRUNTY Thank you,

Your Honor

BY MR BRUNTY

Q Mr Scott, you testified earlier if
I'm correct and please correct me if I'm wrong
that this began in October of 2005 or 2008?

A To the best of my recollection

Q And am I right that Wachovia ordered
appraisals on the property, the real property
here in Myrtle Beach?

A Yes we did

Q All right Do you know when you
received those appraisals back?

A My best guess would be late October
mid-November somewhere around there

Q Does when you received them from the
appraisal company help you determine when they
were ordered?

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ROA_0198

4-20-09

1 A Typically a typical turn around time
2 was about thirty days on a residential real
3 estate appraisal So that could help us

4 Q If you -- who is Rhonda Phillips?

5 A Rhonda Phillips was a client
6 management associate that had worked with Mr
7 Brown

8 Q Okay She's an employee of Wachovia?

9 A Yes, she is

10 Q And you testified Susan Johnson was
11 also an employee of Wachovia and she was, in
12 fact Mr Brown's relationship manager, is that
13 right?

14 A. Yes that s correct

15 Q I would show you on Exhibit Number 7
16 the bottom part of Page 2 It appears to be an
17 email from Rhonda Phillips to M
18 Brown627@aol com smcgirt@mcnair net, and Susan
19 Johnson It seems to be enclosing and if you'll
20 flip to the next page there are a copy of
21 attachments enclosing appraisals on the property

22 A. Yes

23 Q That's dated in the middle of
24 October is that right?

25 A October 14

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ROA_0199

4 20-09

1 Q Okay Based on that you have any
2 idea when this would have begun this process?

3 A The appraisal process probably began
4 sometime early October

5 Q Early October?

6 A Yes

7 Q But you just testified that it took
8 about thirty days

9 A That s an average time give or take
10 You know sometimes it s quicker sometimes it s
11 shorter

12 Q Fair to say the middle of September
13 early October ---

14 MS. GOLDING Your
15 Honor I mean Your Honor this witness -- I mean
16 Mr Brunty can continued to do direct cross-
17 examination and I think he needs to just ask his
18 direct questions

19 THE COURT Try not to
20 lead, Mr Brunty

21 MR BRUNTY Thank you
22 Your Honor

23 BY MR BRUNTY

24 Q According to the front page of
25 Plaintiff s exhibit Number 7, the bottom half of

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ROA_0200

4 20-09

1 that And if you could aid the Court to reading
2 this document, the bottom half of this page your
3 name is just below what appears to be a grouping
4 of sports balls or it s beside a grouping
5 actually, a soccer ball et cetera Does that
6 mean that it's an email coming from you?

7 A My name is indicated at the top, so
8 that would mean that it's coming from me

9 Q Okay And this is an internal
10 Wachovia document If this were Gmail an Outlook
11 Express I could read it better This is how
12 your email is set up Your name is at the top,
13 it s coming from you to other people correct?

14 A Right It's -- you re speaking of
15 this one specifically?

16 Q That one and the one below it

17 A Okay Right This one here is the
18 one sent from me and I'm forwarding this to our
19 CatTools which is our electronic file This one
20 here is from Rhonda Phillips and she has
21 forwarded to numerous people

22 Q Okay Did you get a copy of that?

23 A I did

24 Q Ms Phillips?

25 A Uh-huh (yes)

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ROA_0201

4-20-09

1 Q. And thank you very much is the
2 beginning of Ms Phillips' email?

3 A. That s correct

4 Q Okay Ms Phillips states in her
5 email we were originally lend the money for him
6 referring to Mr Brown, to refinance Is that
7 your recollection?

8 A You know I'm not -- those are
9 Rhonda s words We were -- we were going to lend
10 the money I don't think it had been decided
11 what form or name that type of thing at that
12 time

13 Q Okay He had an obligation that he
14 had to take out is that right?

15 A That was our understanding

16 MS GOLDING Your
17 Honor you know the bottom line is Mr Brunty
18 continues to do leading questions and he has his
19 -- I really object to what he's --- He is not
20 handling the witness with the direct questions as
21 he should be

22 MR BRUNTY Apologize
23 Your Honor

24 BY MR BRUNTY

25 Q Going back to the second page, it

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ROA_0202

4-20-09

1 appears to be an email from Susan Johnson, am I
2 reading that right? The To line is to John
3 Scott?

4 A That's correct

5 Q Okay And Ms Johnson, again, she
6 was the relationship manager?

7 A That's right

8 Q And in it, what is she asking you to
9 do? If you would review that email

10 A It says John, the appraisal for the
11 Myrtle Beach property came in at 2 5 million and
12 2 6 million versus 4 6 million Mike has loan
13 one million four -- X is marked out matures in
14 December and the blank is a fifteen year loan
15 according to Mike He and Sherry McGirt are
16 meeting today and have both asked that we come up
17 with some options for refi on the 3 5 million
18 Mike will obviously have to come out of pocket
19 also They have discovered that Mike is a joint
20 owner of the property and are working to make him
21 sole owner with the nephew leasing back the house
22 to Mike Thanks

23 Q Specifically she says ask that we
24 come up with some options Was she asking you to
25 help come up with some options?

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ROA_0203

4.20.09

1 A She is -- Susan was saying that
2 because of the appraisal issues that were there,
3 we weren't going to be able to go the route that
4 we were considering originally which is real
5 estate secured and we needed to look at other
6 options that might be available as determined by
7 the bank

8 Q And the original option was real
9 estate secured, you just testified to that?

10 A Yes

11 Q Did Wachovia or would Wachovia
12 normally in that scenario ask for some title work
13 to be checked into?

14 A. No the first step would be the
15 appraisal process and from there we would
16 determine what we needed to do afterwards But
17 because we got the appraisals low, we no longer
18 pursued that

19 Q So Wachovia never asked for a title
20 update or title search on the property?

21 A No

22 Q Do you know if Wachovia ever received
23 copies of any title search information?

24 A No I do not

25 Q So based on the appraisal amount,

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ROA_0204

4 20-09

1 could Wachovia --- What did Wachovia do?

2 A We went back to Mike and said that we
3 would not be able to offer a real estate secured
4 loan as an option

5 Q Okay

6 A And we talked about what options that
7 we could offer And based on our past experience
8 with Mike, we came up with a solution that would
9 -- would work for both the bank and for Mike at
10 the time

11 Q Okay What was ultimately decided?

12 A We -- the decision was made to offer
13 a marketable security secured loan bonds cash,
14 stocks et cetera for the three and a half
15 million dollars

16 Q Who did you deal with outside of your
17 bank with regards to this money? Who did you
18 have discussions with?

19 A No one that I m aware of

20 Q Okay Did you talk to -- you didn t
21 talk to anybody regarding this loan?

22 A It s -- I don t know that we had any
23 reason to talk to anybody We made an agreement
24 with Mike and other than maybe -- maybe Sherry
25 McGirt, may have had a phone call and said

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ROA_0205

4-20-09

1 Sherry, we re not going to be able to go the
2 route we were hoping I think we re going to
3 look at another option But I'm not sure that we
4 had specific conversation about it

5 Q And you talked to Mike, that s Mike
6 Brown?

7 A Mike that's correct

8 Q How about Ms Brown?

9 A No, I didn t speak with Ms Brown
10 other than there were a couple of occasions
11 during the process that I did call their home and
12 she answered the phone and I spoke with her then
13 and left messages for Mr Brown

14 Q Okay From October 14 when the
15 appraisals came back until December what did
16 Wachovia do with respect to this loan?

17 A Well after we had put in the --
18 given the outline of the loan we did ask if
19 there would -- if this loan would be in Mike's
20 name or Mike and Joan's name or some other
21 entity s name And the response was given that
22 they would be forming an LLC would be formed to
23 hold the real estate or excuse me hold the loan
24 for the purposes of serving as the borrower

25 We waited on that documentation We

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ROA_0206

4 20-09

1 performed our due diligence on the borrower And
2 afterwards we put the loan in place and wired the
3 funds to South Carolina Bank & Trust

4 Q. Okay Backing up a little bit

5 A Sorry

6 Q That s fine

7 A I covered a lot there

8 Q That s fine, I appreciate your
9 answer You said you learned that there being a
10 -- you contacted the Browns or contacted someone
11 and asked who the borrower would be Do you
12 remember when you learned that it would be an
13 entity?

14 A I don t remember the exact date But
15 it was probably sometime in November That s a
16 guess

17 Q Okay Page 5 of Exhibit Number 7 is
18 an email It appears to be from you correct me
19 if I m wrong, but it refers -- it's dated
20 November 20, 2008?

21 A That s correct?

22 Q Does that refer to an LLC?

23 A. Yes

24 Q Okay Does that help refresh your
25 recollection as to when you learned about the

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ROA_0207

4-20-09

1 entity being the borrower?

2 A Yes that would be November 20,
3 according to my email

4 Q Okay Did that change anything as
5 far as Wachovia was concerned?

6 A No, it s very commonplace

7 Q Okay And to Wachovia --- Well,
8 what did Wachovia have to do with regards to an
9 entity being the borrower?

10 A We re required by Federal regulations
11 to do an enhanced diligence process to we get
12 copies of operating agreement and Articles of
13 Incorporation as well as a -- a TIN number for
14 commercial entities

15 Q TIN, Tax Identification Number?

16 A Yes, Tax Identification Number And
17 it goes through an enhanced due diligence process
18 and background information is sought on the
19 entity

20 Q Did you do that on this entity?

21 A Yes we did

22 Q What did it reveal?

23 A There was no negative news So we
24 were able to proceed with the loan

25 Q Who were -- did you require a

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ROA_0208

4-20-09

1 guarantor on this loan?

2 A Yes

3 Q. Who was the guarantor -- the
4 guarantors?

5 A. Mr and Mrs Brown served as
6 guarantors

7 Q. Okay And I believe you testified
8 earlier that you had dealt with Mr Brown before
9 and it didn't matter what the entity was, is that
10 -- am I right?

11 A No, it s typical for our borrowers to
12 establish LLCs especially when real estate s
13 involved

14 Q As long as Mike Brown was ---

15 MS GOLDING Your
16 Honor I'm going to make ---

17 MR BRUNTY I m going
18 to revise that question Your Honor

19 BY MR BRUNTY

20 Q Were the guarantors important to
21 you?

22 A Yes

23 Q Why?

24 A For our underwriting purposes the
25 guarantors served as both primary and secondary

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ROA_0209

4 20 09

1 sources of repayment That s how we get paid
2 back

3 Q And what was your primary source of
4 repayment on this loan?

5 A Cash flow of our guarantors

6 Q Both or either?

7 A Yes

8 Q And what is the cash flow of your
9 guarantor in this instance?

10 MS GOLDING Your
11 Honor he testified that he had guarantors not
12 one guarantor

13 BY MR BRUNTY

14 Q Guarantors excuse me

15 A The cash flow was based off a most
16 recent tax returns that we had A joint tax
17 return for Mike and Joan Brown

18 Q What type of business were they in?

19 A I don't know that there was a
20 specific business Mostly what we were relying
21 on was interest and dividend income from
22 investments We did not do any in-depth look at
23 any businesses that were operated by Mike and
24 Joan And I can t recollect that there were any
25 to be honest

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ROA_0210

4-20-09

1 Q. Were they working at that time?

2 A I don't believe that they -- they
3 were working They were -- I believe they were
4 both retired

5 Q Okay Who else did you deal with
6 inside of your bank regarding approval for this
7 loan?

8 A The approval of the actual loan
9 because of -- for exposure purposes went to my
10 boss Mike York and another gentleman, probably
11 Steve Smith

12 Q Okay Stephen Smith and Michael York
13 -- Mike York?

14 A Yes Mike York

15 Q I m going to hand to you again
16 Plaintiff s Exhibit Number 7 I refer you to
17 Page 4 the second email there s an email that
18 appears to be from you is that correct?

19 A Yes

20 Q Okay If you could read for the
21 Court, the sentence in the first paragraph that
22 begins the second is a new ---

23 A The second is a new 3 5 million
24 dollar liquid security facility to protect a real
25 estate asset that is facing some judgment liens

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ROA_0211

4 20-09

1 if the property is not taken out of it's existing
2 structure "

3 Q And this is an email you sent to Mr
4 York and Mr Smith seeking approval for the
5 loan?

6 A. Yes

7 Q. Okay You said existing structure
8 What do you mean by structure?

9 A The loan that we were taking out was
10 with South Carolina Bank & Trust That loan was
11 maturing in December so the structure referred to
12 the existing loan with South Carolina Bank &
13 Trust

14 Q Okay And you used the term facility
15 I believe in some of your documents Is there a
16 difference facility and structure?

17 A. Structure would refer more to the
18 particulars of the facility Facility would be
19 the loan

20 Q Okay And this is your email that
21 says that you just read, a real estate asset
22 that is facing some judgment liens Where did
23 you get that information?

24 A In the common course of banking and
25 twenty years of banking I know what happens when

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ROA_0212

4 20-09

1 a facility matures and there's nothing to pay it
2 off or take it out And knowing that we had done
3 the appraisals on the property and that they came
4 in at the values they were, I knew that it would
5 be difficult if not impossible, to find someone
6 to loan that kind of money given the values of
7 the property So I -- my -- my words there were
8 meant to if Mike doesn't get this paid off and
9 he's going to -- he could potentially have some
10 issue with South Carolina Bank & Trust

11 Q Okay But was foreclosure an option?

12 A Not with us

13 Q I mean for Mr Brown as far as you
14 know, was foreclosure ever an option or a
15 concern?

16 A I -- foreclosure had been potentially
17 I think discussed some But it wasn't something
18 that we were actively involved with because we
19 were seeking to do this loan

20 Q Okay I'll have you skip down to the
21 next paragraph The final sentence starts this
22 new loan will also serve --- Can you read that
23 to the Court?

24 A This new loan will also serve as
25 security to keep the borrowers' assets here at

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ROA_0213

4-20-09

1 Wachovia wealth since it s former RM
2 relationship manager is attempting to have all
3 of his assets moved to Carolina s Investment
4 Consulting Inc

5 Q And Chris Gammon was his former
6 relationship manager?

7 A. Yes that s correct

8 Q. He had left Wachovia s Wealth
9 Management Group?

10 A That s correct

11 Q He was attempting to take his
12 business?

13 A. Yes

14 Q Okay That s what this means? This
15 email was sent December 5 2008 for approval
16 What happened after that email was sent, do you
17 remember?

18 A It was approved and we sent loan --
19 had loan documents prepared and wired funds to
20 South Carolina Bank & Trust

21 Q Okay You got loan documents
22 prepared and actually signed I guess was that
23 the normal course of business?

24 A Yes Yes sir

25 Q As part of your -- you testified

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ROA_0214

4 20-09

1 about the due diligence You -- did you get
2 anything else about the company besides your
3 negative news review?

4 A No It was a newly formed entity so
5 there was no prior financial information that we
6 could obtain

7 Q Okay Did you ever receive copies of
8 an operating agreement?

9 A Yes

10 MS GOLDING No
11 objection, Your Honor

12 MR BRUNTY. Number 9

13 THE COURT You said
14 Number 9?

15 MR BRUNTY 9

16 THE COURT Plaintiff's
17 9 without objection

18 ++++++

19 (ARTICLES OF INCORPORATION

20 FOR J CONNER LLC WAS

21 MARKED FOR IDENTIFICATION

22 AS PLAINTIFF S EXHIBIT

23 NUMBER 9 AND WAS

24 RECEIVED IN EVIDENCE)

25 ++++++

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ROA_0215

4 20 09

BY MR BRUNTY

Q I hand you Exhibit Number 9 Are you familiar with that document?

A Yes I did see it

Q Okay That s the Operating Agreement for J Conner LLC?

A. Yes it is

Q. Okay On the -- can you identify for the Court the top right side has the date filed

A Date filed is November 20, 2008

Q. Okay Did you ever receive a copy of the limited -- of the operating agreement for that LLC?

A. Yes

MS GOLDING No

objection I thought Number 9 was the operating agreement

MR BRUNTY Number 9

was the Articles of Organization

MS. GOLDING And so

Number 10 is the Operating Agreement?

MR. BRUNTY Yes

+++++

(OPERATING AGREEMENT FOR

J CONNOR LLC WAS

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ROA_0216

4-20-09

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MARKED FOR IDENTIFICATION

AS PLAINTIFF'S EXHIBIT

NUMBER 10 AND WAS

RECEIVED IN EVIDENCE)

+++++

BY MR BRUNTY:

Q. Number 10 is -- I'm handing to you
Number 10 Plaintiff s Exhibit Number 10 that
the copy of the Operating Agreement for J
Conner LLC?

A Yes

Q That s something you would have
received and would be in the bank s files?

A Yes

Q Can -- could the new LLC do a true
refinance?

A What do you mean by true refinance?

Q. An LLC can t refinance somebody
else s debt in the terms of a refinance of
someone s debt, it s renewing their own debt An
LLC can't come in and refinance that debt
correct?

A It really depends on the institution

Q Okay At the beginning your -- the
emails from your field employees/co-workers

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ROA_0217

4-20-09

1 refer to this as a refi?

2 A. Uh-huh (yes)

3 Q But ultimately it was not a refi is
4 that right? This is a loan to J Conner?

5 A Sure, but it's replacing an existing
6 loan So I mean in that respect it is a
7 refinance

8 Q Okay Are there any other
9 requirements placed on Mr Brown with respect to
10 the making of the loan by Wachovia?

11 A Normal interest repayment Guarantor
12 -- both Mr and Mrs Brown serving as guarantors
13 was a requirement Their assets that we were
14 encumbering had to remain with Wachovia as a
15 condition of the loan And we were -- we did
16 require annual updates on their financial
17 condition tax returns financial statement

18 Q Okay Refer to you at Page 1 of
19 Plaintiff s Exhibit Number 8 This is a key risk
20 review Before I get into that question if you
21 could inform the Court exactly what a key risk
22 review of the KRR What is that?

23 A This is the document that we use to
24 annually assess relationships that are within our
25 bank from a credit standpoint We go through a

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ROA_0218

4 20 09

1 process of just looking at risk and reviewing
2 those and mitigating them appropriately as
3 needed So it's an annual document that we
4 produce

5 Q Okay And you produced the one that
6 you're holding is that right?

7 A Yes, the top one uh-huh

8 Q Okay On the lower third of that
9 page I ll direct your attention to the sentence
10 that starts J Conner, LLC and Mike Brown Could
11 you read that for the Court?

12 A 'J Conner LLC and Mike Brown plan
13 to pay down two million dollars against the three
14 and a half million facility in liquidation of
15 hedge funds within the collateral pool between
16 January 2009 and April 2009

17 Q Do you know if that happened?

18 A. Do I know if it happened? I m not
19 sure

20 Q Okay In addition to what you
21 already testified to did the bank require ---
22 How's this loan going to get paid back?

23 A The principal repayment -- there were
24 no specific requirements on principal repayment
25 And that is fairly common on a liquid secured

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ROA_0219

4 20 09

1 facility So we had not -- we'd had discussions
2 around some liquidation occurring in the Browns'
3 accounts that could potentially pay it down But
4 as a part of the loan documents, there was no
5 required pay down, just interest carry

+++++

7 (PROMISSORY NOTE WAS MARKED

8 FOR IDENTIFICATION

9 AS PLAINTIFF'S EXHIBIT

10 NUMBER 11 AND WAS

11 RECEIVED IN EVIDENCE)

+++++

13 MR BRUNTY Okay

14 Promissory note s 11

15 (SECURITY AGREEMENT FOR

16 J CONNOR LLC WAS

17 MARKED FOR IDENTIFICATION

18 AS PLAINTIFF S EXHIBIT

19 NUMBER 12 AND WAS

20 RECEIVED IN EVIDENCE)

+++++

22 MR BRUNTY Security

23 Agreement will be 12

24 (CONTROL AGREEMENT FOR

25 J CONNOR LLC WAS

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ROA_0220

4-20-09

1 MARKED FOR IDENTIFICATION

2 AS PLAINTIFF'S EXHIBIT

3 NUMBER 13 AND WAS

4 RECEIVED IN EVIDENCE)

5 ++++++

6 MR BRUNTY. And the

7 Control Agreement will be 13 Let s talk about
8 that note for a minute9 BY MR. BRUNTY:10 Q. I'm going to hand you a copy of the
11 Promissory Note Is that -- are you familiar
12 with that document?

13 A Yes, I am

14 Q And it's been admitted into evidence
15 But if you could review it who was the borrower
16 on that?

17 A J Conner LLC is the borrower

18 Q Okay What are the -- without
19 getting into specifics what are the repayment
20 terms?21 A. Under the repayment terms we note
22 that the note should be due and payable in
23 consecutive monthly payments of accrued interest
24 only commencing on January 15, 2009 continue on
25 the same day of each month thereafter until fully

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ROA_0221

4-20-09

1 paid And in any event this note shall be due
2 and payable in full, including all principal and
3 accrued interest on demand

4 Q. Okay It s a demand note?

5 A That s correct

6 Q Do you know what the monthly payments
7 of that note would be?

8 A There is an index rate and an
9 interest rate noted and it would be interest on
10 the balance principal balance of the loan

11 Q Okay Do you know off the top of
12 your head what that would be?

13 A I'm a banker but I don t know
14 calculations real well I m sorry Yeah I
15 don t know what libro was at that time so it s
16 kind of hard to determine

17 Q Okay On Page 2 of the note
18 automatic debit of checking account?

19 A Right

20 Q What did the bank require with
21 regards to automatic payments?

22 A We were going to automatically debit
23 the -- the checking account for J Conner LLC
24 for the interest payments that were due monthly

25 Q. Okay Do you know if that happened?

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ROA_0222

4-20-09

1 **A** Yes

2 **Q** Is that how the bank has been getting

3 paid?

4 **A.** As far as I know

5 **Q.** Okay Do you know who funded that

6 account?

7 **A** I do not know specifically who funded

8 the account

9 **Q** Okay On Exhibit Number 8

10 Plaintiff's Exhibit Number 8 your key risk

11 review, on the bottom of the page for the Court,

12 PSLR refers to what?

13 **A** Primary source of repayment

14 **Q** And beneath that paragraph, SSOR

15 **A** Secondary source of repayment

16 **Q** What is the secondary source of

17 repayment that you listed in the key risk review?

18 **A** If I can just read it The secondary

19 source of repayment stems from liquidation of

20 collateral which consists of Wachovia Bank

21 Investment Management accounts held in the name

22 of Michael D Brown and J Conner Accounts are

23 to diversify amounts various assets Note that a

24 single trust account of Mike Brown includes hedge

25 funds which the bank is advancing up to fifty

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ROA_0223

4-20-09

1 percent

2 Q Okay The accounts securing this
3 loan appear on your CA terms documentation And
4 before I get into that, will you inform the Court
5 what CA terms -- what that is?

6 A. That's credit advisor terms This is
7 our skeleton of what the loan would look like in
8 structure

9 Q. And that's documentation or
10 information that you have input at various times?

11 A. Yes

12 Q Okay On the middle part of that
13 Page 1 of 8 will you read the description of
14 borrower s business for me?

15 A. Single asset real estate holding
16 company, shell entity

17 Q Before I get away from it I meant to
18 ask you on the Promissory Note can you read for
19 the Court what use of proceeds?

20 A Use or proceeds, borrower shall use
21 the proceeds of the loan advanced by this note
22 for the commercial purposes of borrower as
23 follows Pay off of existing debt "

24 Q The key risk review you ve already
25 testified about is your information the CAT

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ROA_0224

4 20 09

1 terms is your information Do they contain
2 similar information?

3 A Yes

4 Q And some of it is duplicative And
5 rather than go into it, is it -- why is it
6 contained in both?

7 A. The Key Risk Review is an official
8 document that serves for auditors and other folks
9 who come in and look at for the details of the
10 loan The CAT terms it's just more of a
11 document that is prepared to allow our
12 documentation folks to prepare the loan
13 documents So there s sometimes more detail in
14 these than there actually has to be

15 Q More detail on the CA terms?

16 A Sometimes

17 Q Okay The same information, the
18 purpose as listed on Page 2 of 8 funds requested
19 to pay off a 3 5 million dollar lien right?

20 A Uh-huh (yes)

21 Q Okay Page 3 of 8 it lists the
22 collateral description We have redacted the
23 information except for certain names Can you
24 tell me what those names indicate?

25 A One says Michael D Brown

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ROA_0225

4-20-09

1 Q. I don't mean indicate before you go
2 in I don't want to know to identify, but if it
3 lists a name, does that mean -- what does that
4 mean?

5 A That's the person the account is in
6 the name of

7 Q. Okay That's the owner of the
8 account?

9 A Right

10 Q There are how many accounts securing
11 the J Conner loan?

12 A. Six I'm counting

13 Q. How many are owned by Michael Brown?

14 A. As best I can tell five

15 Q Okay So the remaining one would be
16 Ms Brown's?

17 A Yes

18 Q. Okay So the varying dates on the
19 Key Risk Review for the Court's edification the
20 -- there are dates after this loan closed Can
21 you please explain to the Court what the varying
22 dates mean?

23 A. When we did this loan, the loan was
24 done within Wealth Management for Wachovia One
25 of the things I read earlier was trying to retain

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ROA_0226

4-20-09

1 the assets of the Browns under management with
2 us We weren t successful in doing that and the
3 loan was transferred to Carolina's Investment
4 Consulting who is an affiliate of Wachovia And
5 we clear trades for them, so we have a lending
6 relationship set up as well

7 So that loan was transferred assets
8 were transferred to Carolina s Investment
9 Consulting The loan was then transferred to the
10 area that serviced Carolina s Investment
11 Consulting from a credit standpoint So I was no
12 longer engaged on the loan

13 Q. The area of the bank?

14 A Yes

15 Q So the differing dates what does
16 that indicate?

17 A It just indicates a transfer from one
18 servicing area to another

19 Q Did anything -- was anything modified
20 that wasn t true after December when you first
21 entered the information?

22 A Really without looking at the whole
23 document --- I mean I didn t write that
24 document so I really don't know

25 Q I believe you said Karnessa Reed did?

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ROA_0227

4-20-09

1 A. Yes That was the name I remember
 2 Q. She is an employee of Wachovia?
 3 A. I'm not sure whether she's still
 4 there But she was at the time
 5 Q And Page 3 of this document is Key
 6 Risk Review date 3/4/2009 And it indicates
 7 Karnessa Reed's name If you could review that
 8 and see if it s anything inaccurate with what
 9 that person input?
 10 A I didn t read it word for word but
 11 it looks accurate
 12 Q Okay Thank you You were just
 13 testifying about the goal of Mr Brown s
 14 business And I ll hand back to you Plaintiff s
 15 Exhibit Number 7 Page 4 an email -- the email
 16 to Mike York and Stephen Smith that we discussed
 17 earlier The bottom paragraph sentence begins
 18 with I spoke and stop where it says loans If
 19 you could read that for the Court?
 20 A I spoke with the borrower immediately
 21 to make sure that he was aware of the fact that
 22 making these loans was dependent on his
 23 investment assets remaining at Wachovia and
 24 serving as the collateral for the loans Mike
 25 understood and asked that we proceed with the

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ROA_0228

4 20-09

1 loans

2 Q Okay And did I understand you to
3 say that that's not what happened?

4 A No that was what did happen when we
5 put the loan in place

6 Q Okay But is that what s -- are the
7 loans -- are the assets still within your bank
8 today?

9 A. They are not

10 Q. Okay

11 A. They're with an affiliated firm

12 Q. Okay That s CIC?

13 A Yes

14 Q. That s the abbreviation? Mr
15 Gammon s firm?

16 A. Yes

17 Q. When you say affiliated what do you
18 mean?

19 A We clear trades for Carolina s
20 Investment Consulting through our brokerage arm
21 and so we're affiliated that way

22 Q. Okay I asked you earlier and you
23 gave me a full answer and I appreciate it It
24 took a little ahead of me What happened on or
25 around December 16 with respect to this loan?

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ROA_0229

4 20 09

1 A I really don't know what happened on
2 the 16th of December

3 Q. I'm going to hand back to you the
4 promissory note Exhibit Number 11

5 A. That is the date of closing for this
6 -- for this note

7 Q All right And that's within this
8 document as well as Exhibits 12 and 13 which are
9 the security agreement and control agreement
10 among other documents that were executed, is that
11 right?

12 A. Yes

13 Q. Okay Was a wire sent on that day?

14 A. Yes there was a wire sent

15 Q And how much was the wire?

16 A It would have been for the full
17 amount of the loan, three million five hundred
18 thousand dollars

19 Q Who sent the wire?

20 A. Rhonda Phillips probably would have
21 sent the wire

22 Q Wachovia sent the wire?

23 A. Yes Wachovia I m sorry

24 Q And to whom did they send it?

25 A. South Carolina Bank & Trust

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ROA_0230

4-20-09

1 Q. Okay Do you know who asked for that
2 wire to be sent?

3 A I'd spoken with Mike about at some
4 point earlier who we were going to be paying
5 off And then I made arrangements with South
6 Carolina Bank & Trust And so I got wiring
7 instructions from them to have the funds
8 forwarded

9 Q Okay So you found out where to send
10 it?

11 A Yes

12 Q Following that wire what happened
13 with respect to that facility, that note being
14 referring to the SCB&T?

15 A When I contacted South Carolina Bank
16 & Trust and told them we were sending three and a
17 half million dollars, they said that the payoff
18 was in excess of that And I said we're doing a
19 loan for three and a half million dollars This
20 is what we re doing And -- and I called Mike
21 afterwards and said I just want to make sure that
22 we re clear I wired the funds They've been
23 received There is outstanding money still on
24 the note that existed with South Carolina Bank &
25 Trust

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ROA_0231

4 20 09

1 Q Okay And that's I think reflected
2 in your emails, if I m not mistaken Do you
3 recall that?

4 A I believe I recall reading an email
5 that stated that

6 Q Okay And December 17 an email from
7 you to Mr Suddreth regarding Mike Brown Is
8 that indicated on that?

9 A Right

10 Q Okay Do you know anything that
11 happened after that?

12 A With South Carolina Bank & Trust?

13 Q Yes

14 A No I don t

15 Q Okay You re in the I think you
16 said credit evaluation on wealth management?

17 A The area that I'm in is credit
18 oriented I do commercial loans and structuring
19 and price and I negotiate commercial loans with
20 our wealth clients

21 Q. Okay Do you know -- how did you
22 price this loan to J Conner, before we go into
23 that?

24 A We would consider the entire
25 relationship that we had with the Browns and from

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ROA_0232

4-20-09

1 an investment standpoint, credit standpoint any
2 -- any of the other things that we were doing
3 And we would look at a revenue figure and make a
4 judgment within our line of business on how we
5 wanted to price it

6 Q So you're looking at how much money
7 the bank is going to make?

8 A We consider that The return, we do
9 consider the return

10 Q. And under the promissory note, what
11 is the bank getting paid?

12 A I'm sorry

13 Q. Under the promissory note you
14 testified earlier about it but I'll just direct
15 it again How -- what is the bank being paid?
16 Not amounts, but what is the bank being paid?

17 A We're being paid a spread over an
18 index And that spread is how we make our money

19 Q Okay That s an interest only
20 payment?

21 A Yes

22 Q And when you call it due because it's
23 called a note, will you get paid -- what will the
24 bank be paid?

25 A It should be paid the entire

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ROA_0233

4-20-09

1 principal balance plus any outstanding interest

2 Q And that's 3 5 million dollars?

3 A Yes

4 Q Okay So is that in your
5 consideration when you're evaluating this loan
6 and the loan to be made what you re going to get
7 paid?

8 A Yes, that's a part of it

9 Q Okay You certainly expect to get
10 the interest plus the 3 5 million?

11 A Yes

12 Q / And for this promissory note there
13 is no terms So it's just a future stream of
14 income is that fair to say?

15 A It s -- yeah it s demand facility so
16 it can stay out there six months, it could stay
17 out there six years

18 Q Is it still out there?

19 A I really don t know That's -- I
20 haven't been associated with the loan since March
21 of 2009

22 Q I appreciate you answering my
23 questions

24 A Sure Thank you

25 THE COURT Ms Golding

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ROA_0234

4-20-09

1 MS. GOLDING Thank you,
2 Your Honor

3 ++++++

4 CROSS-EXAMINATION

5 BY MS. GOLDING:

6 Q Mr Scott with respect to the J
7 Conner, LLC that is an independent entity, is
8 that right?

9 A. Yes, it is

10 Q. And that is the borrower is that
11 correct to Wachovia?

12 A. Yes, ma'am

13 Q And there s nothing in Wachovia
14 documents that to your knowledge that there is
15 any other borrower other than J Conner LLC?

16 A That's correct

17 Q And when your bank is audited this
18 note this indebtedness of three and a half
19 million reflects the auditor as being J --
20 excuse me reflects the borrower as being J
21 Conner, LLC?

22 A Yes, ma am

23 Q. And with respect to your
24 communications with Mr and Mrs Brown during the
25 negotiations for the three and a half million

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ROA_0235

4-20-09

1 dollar note, you did have some contact with Mrs
2 Brown is that correct?
3 A Yes
4 Q Okay And Mrs Brown is in fact, a
5 customer or was a customer at Wachovia?
6 A Yes ma'am
7 Q And she maintains some investment
8 accounts is that correct?
9 A Yes ma'am
10 Q And, in fact at least one of her
11 investment accounts are utilized as security for
12 this three and a half million dollar note, is
13 that correct?
14 A Yes, ma'am
15 Q And you've known the Browns for many
16 years, is that correct?
17 A Yes ma'am
18 Q Okay And would it be fair to state
19 that Mrs Brown is an independent lady on her
20 own?
21 A I would say so
22 Q Okay And with respect to
23 negotiations of this three and a half million
24 dollars to J Conner LLC at no time was there
25 ever any mention of a Mr Oskin Mr Small or Mr

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ROA_0236

4 20-09

1 Kanos is that correct?

2 A No, ma'am

3 Q Okay And at no time was there any
4 mention of what Mark Johnson owned and he was a
5 co-tenant or co-owner of a property of real
6 estate in South Carolina?

7 A Yes, ma'am

8 Q And when you referenced in some of
9 the documents payoff that was -- the payoff was
10 the monies that Wachovia sent to South Carolina
11 Bank & Trust?

12 A Yes, ma'am

13 Q And that payoff was essentially then
14 an assignment South Carolina Bank & Trust had
15 assigned the note and mortgage to J Conner LLC?

16 A I don't know anything about that

17 Q You weren't involved in the
18 assignment?

19 A No ma'am

20 Q Now, with respect to the word shell
21 entity with respect to J Conner LLC that word
22 was utilized because there is no active business
23 of J Conner, LLC, is that correct?

24 A That's right it just serves as a
25 holding company

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ROA_0237

4-20-09

1 Q And when you say holding company the
2 purpose of this LLC was to hold the note and the
3 mortgage?

4 A Yes ma'am

5 Q And, you know, I think you indicated
6 earlier that it's not, I think you stated that
7 it's very common for LLCs to be formed to hold
8 assets such as a note and mortgage?

9 A Yes ma'am, that's correct

10 Q. And that's a common business
11 practice, is that correct?

12 A Yes, ma'am

13 Q And that's done for business reasons
14 the formations of these LLCs is that correct?

15 A. Yes ma'am

16 Q And to your knowledge, the LLC J
17 Conner LLC was formed for an appropriate
18 business reason, is that correct?

19 A Yes, ma'am

20 Q. One moment please Mr Scott just
21 a few more questions With respect to Mrs
22 Brown I know you've said you've known her many
23 years is that correct?

24 A. Yes ma'am

25 Q And she did have some health issues

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ROA_0238

1 in 2008 to your knowledge, is that correct?

4 Q And because of those health issues
5 you dealt with Mr Brown, is that correct?

6 | **A.** Predominantly, yes

7 MS GOLDING Thank you
8 No further questions

9 THE COURT Thank you
10 Mr Masel

11 ++++++

12 CROSS-EXAMINATION

13 BY MR. MASEL

14 Q Mr Scott at no time did you
15 consider Mark Johnson your client or customer, is
16 that right?

17 | **A** No, we did not

18 Q Did you have any conversations
19 directly with Mark Johnson?

20	A	Never

21 Q Are you aware of anyone else at
22 Wachovia having any direct conversations with
23 Mark Johnson?

24 | **A** | I am not

25 Q And it s true that Mark Johnson was

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4-20-09

1 not a borrower or a guarantor on this loan,
2 correct?

3 A That s correct

4 Q Mark Johnson never requested to your
5 knowledge, to be a borrower or a guarantor, is
6 that right?

7 A That s correct

8 Q No one on Mark Johnson s behalf ever
9 asked Wachovia that he be a borrower or
10 guarantor is that correct?

11 A Not that I'm aware of

12 Q Wachovia never required Mark Johnson
13 to be a borrower or guarantor is that correct?

14 A We did not that's right

15 Q To your knowledge did Wachovia ever
16 seek any financial statements or any financial
17 documents directly from Mark Johnson?

18 A No

19 Q Is it fair to say that from
20 Wachovia's perspective Mark Johnson and his
21 personal finances have nothing to do with the
22 loan from Wachovia to J Conner LLC?

23 A That's correct

24 MR MASEL That's all I

25 have Thank you

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ROA_0240

4 20 09

1 THE COURT Any re-
2 direct?
3 MR BRUNTY Just
4 briefly Your Honor
5 ++++++
6 REDIRECT EXAMINATION
7 BY MR BRUNTY:
8 Q Mr Scott Ms Golding asked you
9 about the LLC, J Conner LLC? And you
10 indicated that it was ---
11 MS GOLDING Your
12 Honor, there has to be new matter on re-direct
13 And he covered the LLC on his direct, Your
14 Honor
15 MR BRUNTY I m getting
16 to the new ---
17 THE COURT Let s see
18 what the question is first
19 MR BRUNTY Yes Thank
20 you
21 BY MR BRUNTY
22 Q. If you could, Plaintiff s Exhibit
23 Number 8 the first page, after referring to J
24 Conner read for the Court the first lien loan
25 item

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ROA_0241

4-20-09

1 **MS GOLDING** Your
2 Honor I m going to object That exhibit was in
3 evidence provided by Mr Brunty and all of that
4 information -- he could have asked that question
5 That was already covered in his direct, Your
6 Honor

7 **MR BRUNTY** She asked
8 about the viability or the legitimacy of this
9 LLC He testified that it was for legitimate
10 purposes I m asking him just his understanding
11 of that the purpose of that LLC which we really
12 didn't address on direct

13 **THE COURT** I think he
14 testified that to the best of his knowledge it
15 was for a legitimate business purpose I'm not
16 sure he knows I don t believe he was involved
17 in the forming of J Conner

18 **MR BRUNTY** Okay
19 Nothing, Your Honor

20 **THE COURT** All right
21 Thank you, Mr Brunty

22 **MS GOLDING** Nothing
23 further

24 **THE COURT** Thank you
25 **MS GOLDING** I

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ROA_0242

4-20-09

1 understand Your Honor that this witness is
2 subject to a subpoena Can he be excused?

3 MR BRUNTY: Yes I was
4 just going to say please excuse him

5 THE COURT Thank you,
6 Mr Scott

7 (Mr Scott was excused)

8 THE COURT Would this
9 be an appropriate time to break for lunch?

10 MR BRUNTY Yes

11 MS. GOLDING My
12 understanding there are two witnesses, the
13 Brown s and that would be it

14 MR BRUNTY Yes This
15 is a perfect lunch break

16 THE COURT• How about
17 about an hour then so we would be back around
18 1 20

19 MS GOLDING. That would
20 be good

21 THE COURT• Thank you
22 very much

23 (Whereupon a luncheon recess was
24 taken)

25 ++++++

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ROA_0243

4-20-09

AFTERNOON SESSION

THE COURT. Mr Brunty,
are you calling the other two witnesses or Ms
Golding, are you calling them?

MR BRUNTY. Plaintiff
is calling them Your Honor

THE COURT. All right,
Mr Brunty

MR BRUNTY: Thank you,
Your Honor May it please the Court, Plaintiffs
call Michael Brown

THE COURT Mr Brown
If you'll come around sir and place your left
hand on the Bible and raise your right hand and
be sworn or affirmed by the court reporter
please, sir
Whereupon,

(MICHAEL DILLARD BROWN, having been
duly sworn testified as follows

THE COURT And if
you'll have a seat sir and state your full
name And if there's not any water left, we ll
get you some, sir

THE WITNESS Michael
Dillard Brown

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ROA_0244

4 20-09

1 THE COURT Thank you,
2 Sir
3 ++++++
4 DIRECT EXAMINATION
5 BY MR BRUNTY
6 Q Good afternoon Mr Brown It's good
7 to see you again today Can you tell the Court
8 where you live?
9 A I live in Charlotte, North Carolina
10 Q What do you do for a living?
11 A I m retired
12 Q Prior to your retirement what type
13 of work did you do?
14 A I was in merchandising of the home
15 center Lowe's Companies
16 Q Beyond just merchandising what did
17 you have an official title at Lowe s?
18 A Senior Vice President of
19 Merchandising
20 Q. Okay How long did you work with
21 Lowe s?
22 A Excuse me of Marketing
23 Q Marketing
24 A I was with Lowe s twenty-seven years
25 Q And when did you retire?

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ROA_0245

4-20-09

1 A. 1984, excuse -- yeah, 1984
 2 Q Okay What have you been doing since
 3 1984?
 4 A I have had a couple of small
 5 businesses that I went into with young men who
 6 basically operated the businesses on a day-to-day
 7 basis I did volunteering I did investing
 8 Q Okay Real estate investing?
 9 A No
 10 Q How are you related to Mark Johnson -
 11 - Stephen Mark Johnson?
 12 A He is my nephew on my wife's side
 13 Q Okay So if I understand you
 14 correctly since 1984 you ve been involved in
 15 some businesses with some other gentlemen and
 16 you ve done some investing Have you held any
 17 employment with any companies?
 18 A No, I have not
 19 Q You've done any -- some consulting?
 20 A Not for pay
 21 Q Okay I did it on a volunteer basis
 22 one time
 23 A You're the owner of a piece of
 24 property in Myrtle Beach, is that correct?
 25 Q Yes

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ROA_0246

4-20-09

1 MS GOLDING No
2 objection
3 (DEED TO REAL ESTATE WAS
4 MARKED FOR IDENTIFICATION
5 AS PLAINTIFF'S EXHIBIT
6 NUMBER 14 AND WAS
7 RECEIVED IN EVIDENCE)
8 +++++++
9 BY MR. BRUNTY.
10 Q I m going to hand to you Plaintiff s
11 Exhibit Number 14, ask to be admitted into
12 evidence, a copy of a deed to real estate If
13 you can review that for me Let me know when
14 you're done reviewing it please
15 A Okay
16 Q. Is that document the deed to the
17 property that you were just talking about owning
18 in Myrtle Beach?
19 A This appears to be the deed to the
20 land, not to the house not to the structure
21 Q What s the date of the deed?
22 A Okay Witness the execution here on
23 the 30th of November 2006
24 Q Okay Is that the date you recall
25 executing closing documents for the purchase of

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ROA_0247

4 20 09

1 the land and house?

2 A Yes

3 Q Okay And that deed was part of that

4 closing transaction, is that right?

5 A. Yes but my signature is not on it

6 That's why I -- I wondered why --- Because I was

7 -- I was ---

8 Q. And I'll tell you, if it was granted

9 to you as a grantee you do not have to sign the

10 deed

11 A Okay

12 Q Dunes Lot 13 LLC was the grantor and

13 it s member, I believe, signed?

14 A Yes

15 Q Okay

16 A Okay he has signed as a member

17 Okay

18 Q And this is the deed to the real

19 estate you own in Myrtle Beach correct?

20 A All right

21 Q And you own that along with Mr

22 Johnson?

23 A Correct

24 Q Besides that house have you had any

25 other real estate deals with Mr Johnson?

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ROA_0248

4-20-09

1 **A** Yes I have

2 **Q** What other deals have you had?

3 **A** I bought a parcel of land in Edenton,
4 North Carolina Mark came to me saying that he
5 had an option on the land He thought it was a
6 grand buy He had been negotiating with someone
7 to sell the land once he took it ownership But
8 he couldn't close on the land He didn't have
9 the cash So he asked that I come in and buy the
10 land with him, that we would then hold it for a
11 period of perhaps a year and sell it And he
12 assured me that he could sell it out of pocket
13 So I agreed to do that

14 **Q** Okay And you said that you bought
15 it Is Michael Brown the owner of that property?

16 **A** I bought it in the name of a
17 Subchapter S corporation that I have had for a
18 number of years called MDB Enterprises

19 **Q** So when you went to buy the Edenton
20 property you purchased it and put it into the
21 Enterprise's name when you took the title?

22 **A** Yes

23 **Q** Okay And you entered into that
24 transaction freely and of your own accord
25 correct?

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ROA_0249

4-20-09

1 A Yes I did

2 Q Now you had informed me when I took
3 your deposition in the fall of last year, we
4 talked a little bit about MDB Enterprises You'd
5 said you'd set it up You just now said you d
6 set it up several years ago Why did you set
7 that company up do you remember?

8 A I was beginning to be involved after
9 my retirement from Lowe's with this young man
10 He had a sign company he wanted to -- to grow
11 that business And so I told him I would get
12 involved with that And at that time my
13 accountant suggested that I form a separate
14 corporation so that work that he did could be
15 charged partially to the corporation and part to
16 me

17 Q Okay The part that your accountant
18 did he charged is that a way of saving money to
19 have a company?

20 A Yes

21 Q Okay What else -- well MDB is a
22 you said a Sub-chapter S corporation?

23 A Yes

24 Q Who are the shareholders of MDB
25 Enterprises?

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ROA_0250

4-20-09

1 A I am the sole shareholder
2 Q Has that been the way it's -- that
3 company s been set up since it s organization?
4 A Yes
5 Q What else does MDB own?
6 A Right now I own a house in Charlotte
7 that I rent to my son And I believe that s the
8 only thing that's in MDB at the present time,
9 besides the land, which we just mentioned
10 Q Does MDB has its own debts?
11 A No
12 Q Okay What was the purchase price of
13 the Edenton property?
14 A Six and a half million dollars
15 Q If it doesn t have it s own debts
16 you individually funded that purchase in some
17 form or fashion?
18 A I -- I borrowed money from Wachovia
19 Q Okay And I believe your testimony
20 about the -- you re becoming involved in that
21 transaction was your nephew told you about it
22 It sounded like, I think you said a grand
23 purchase, a good deal And ultimately you bought
24 it to put it into your name so that you could
25 control it, is that correct?

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ROA_0251

4 20-09

1 A That is correct
2 Q. In fact you still control that
3 property?
4 A Yes
5 Q And you borrowed the money from
6 Wachovia for the purchase is what you just
7 testified to?
8 A Yes
9 Q And you still owe Wachovia for that?
10 A Yes
11 Q All right Let's talk a little bit
12 about Wachovia then You prior to November of
13 2008 you had investment accounts with Wachovia
14 is that right?
15 A That is right
16 Q And when I say with Wachovia they
17 were handling your money?
18 A I would say they were handling my
19 investments I have a checking account with
20 Wachovia so, you know I handle that My wife
21 has a checking account I have a checking account
22 and we have a joint checking account all with
23 Wachovia
24 Q Okay And they were handling your
25 investment accounts as well?

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ROA_0252

4-20-09

1 **A** Yes

2 **Q** I guess making trades and profiting
3 from your profits, is that fair to say?

4 **A** Yes

5 **Q** All right Now we re here today
6 about this particular property and the deed that
7 we already looked at Can you tell the Court how
8 you became involved in that property?

9 **A** Mark came to my house in Charlotte
10 and told me that he needed to secure a mortgage
11 on the property That his credit rating was not
12 good enough at that present time to get a what
13 he thought was a good interest rate And he
14 wanted me to co-sign the note And as soon as
15 his credit improved he would secure new
16 financing with his better credit rating and I
17 would be out

18 He told me at the time that he
19 thought that would take six to eight months

20 **Q** And similar to the Edenton property
21 you entered into this transaction freely and of
22 your own accord is that correct?

23 **A** That s true

24 **MS GOLDING** No

25 objection

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ROA_0253

4-20-09

1 **MR. BRUNTY** I'm going
2 to mark the note, SCB&T note and the SCB&T
3 mortgage as Numbers 15 for the Note and 16 for
4 the mortgage

5 (SCB&T NOTE WAS
6 MARKED FOR IDENTIFICATION
7 AS PLAINTIFF S EXHIBIT
8 NUMBER 15 AND WAS
9 RECEIVED IN EVIDENCE)

10 +++++

11 (SCB&T MORTGAGE WAS
12 MARKED FOR IDENTIFICATION
13 AS PLAINTIFF S EXHIBIT
14 NUMBER 16 AND WAS
15 RECEIVED IN EVIDENCE)

16 +++++a

17 **BY MR BRUNTY**

18 **Q** I'll hand to you the note and ask you
19 to review both pages of that

20 **A** This is a copy of the note

21 **Q** And on the second page did you sign
22 your name?

23 **A** This copy doesn't show my signature,
24 but I did sign it

25 **Q** Okay And you are an obligor on the

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ROA_0254

4 20 09

1 note to SCB&T, correct?

2 A. I was I am not now

3 Q Okay Are you primarily or directly
4 responsible -- or were you primarily and directly
5 responsible on that note to SCB&T?

6 A. I'm not sure I understand the term
7 primarily We were, Mark and I are co-owners
8 We were co-signers of the mortgage

9 Q. Okay

10 A So to say one of us was primary over
11 the other one I can't say that

12 Q Well then you both were co-obligors
13 on it?

14 A Okay Yeah

15 Q. You didn't sign that merely as a
16 guarantor or a back-up to Mark, you signed as an
17 obligor?

18 A Yes

19 Q. Okay You know the mortgage to SCB&T
20 for you or to you Plaintiff's Exhibit Number 16
21 If you could take a look at that and let me know
22 when you're done

23 A. Okay

24 Q. You reviewed Exhibit 16? Before
25 going into that Your Honor, the witness

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ROA_0255

4 20 09

1 indicated that previously marked as Plaintiff's
2 15 the note he had not signed I have a copy in
3 my hand that I would like to substitute as
4 Exhibit Number 15 It's the same note with his
5 signature appearing on the back I don't know
6 how I got a copy without a signature

7 **THE COURT** If you'll
8 show that to the witness

9 **BY MR BRUNTY**

10 **Q** Is that the copy or similar copy to
11 what identical copy actually to what, other
12 than your signature was previously given to you
13 and marked as Exhibit Number 15?

14 **A** Yes

15 **MR BRUNTY** Your Honor
16 I ask that we substitute this as Exhibit Number
17 15

18 **THE COURT** Certainly

19 **BY MR BRUNTY**

20 **Q** All right Regarding the mortgage,
21 this was the mortgage that you signed in
22 connection with that closing for the purchase of
23 the house here in Myrtle Beach is that right?

24 **A** That's right

25 **Q** And this mortgage and as far as you

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ROA_0256

4 20 09

1 understand it, secured SCB&T's interest in the
2 promissory note?
3 **A** Put that in ---
4 **Q** Okay You signed the note ---
5 **A** Language that layman's language
6 **Q** Okay You signed a note and SCB&T
7 said if we're going to lend you this money we
8 want a mortgage to secure our loan, is that your
9 understanding?
10 **A** Yes
11 **Q** Okay Could you -- the writing is
12 small, but Paragraph 23 are you able to read
13 that? Can you make that out?
14 **MS. GOLDING** Is that
15 the promissory note?
16 **MR BRUNTY** It s the
17 mortgage
18 **MS GOLDING** The
19 mortgage okay
20 **BY MR BRUNTY**
21 **Q** Paragraph 23
22 **A** I can read that
23 **Q.** Okay Could you read it for the
24 Court?
25 **A** Release upon payment of all sums

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ROA_0257

4-20-09

1 secured by this security instrument this
2 security instrument shall become null and void
3 Lender shall release this security instrument
4 Borrower shall pay any recordation costs Lender
5 may charge borrower a fee for releasing this
6 security instrument but only if the fee is paid
7 to a third party for services rendered and the
8 charging of the fee is permitted under applicable
9 law

10 Q Okay Thank you While we re
11 talking about the mortgage are you aware of any
12 advances made by SCB&T to you or Mark above and
13 beyond the 3 5 million dollars?

14 A. No

15 Q. Okay They didn t loan you any more
16 money, did they?

17 A. No

18 Q. Are you aware of any other interest,
19 court cost or attorneys fees that SCB&T sought
20 from you or Mark?

21 A. What fees? Now, give me that list
22 again

23 Q. And we ll get into the total amount
24 that was ultimately been paid to SCB&T

25 A That's what I was concerned about

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ROA_0258

4-20-09

1 Q Other than accrued interest, did they
2 have any attorney s fees or court costs or
3 anything that you never paid to them?

4 A No

5 Q Okay Now, the closing of that --
6 the purchase of the house in Myrtle Beach, South
7 Carolina requires that you have an attorney
8 represent you Do you recall who represented you
9 at that closing?

10 A. No I don t

11 Q. Do you know if it would be Mr Masel?

12 A It very well could have been, yes

13 Q Okay Do you remember dealing with
14 Mr Masel in the fall of 2006 regarding this
15 purchase?

16 A You know, my recollection in dealing
17 with Mr Masel is -- is more with the note and
18 the property in Edenton rather than the Myrtle
19 Beach property

20 Q Okay

21 A But it certainly could have been
22 both

23 Q So he did some work for you on the
24 Edenton purchase, Mr Masel?

25 A Yes

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ROA_0259

4 20 09

1 Q Okay That house was purchased on or
2 about November 30, 2006 Since that time how has
3 the house been used?

4 A. As Mark's residence

5 Q Is he currently living in the
6 residence?

7 A. Yes, he is

8 Q And from the outset of the note and
9 mortgage payments were due to SCB&T under their
10 note is that correct?

11 A That is correct

12 Q How were those payments made?

13 A Mark made the payments up until I
14 guess some point in maybe in 2008 I don't
15 remember exactly But he -- he said that he
16 needed help on making the payment I made one
17 My recollection is he made maybe one or two more
18 and then he couldn't make any further payments
19 And I started making all the payments

20 Q Okay Do you remember what the terms
21 of the note are or were? And I can be more
22 specific Do you know how long the note was for,
23 how many years or months?

24 A. Okay It called for a balloon
25 payment on November 30, 2008 So that would make

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ROA_0260

4-20-09

1 it two years

2 Q A two-year note? And what about the
3 interest rate?

4 A. Interest rate was seven percent

5 Q Okay And the payments that you
6 and/or Mr Johnson were making were interest
7 only, correct?

8 A. That is correct

9 Q So seven percent per annum divided by
10 the number of days in the billing cycle, that was
11 your payment?

12 A. That s right

13 Q Okay Do you know as you sit here
14 today what the grand total of your payments were
15 for the two-year note?

16 A. No I -- I have that in my
17 possession I don't have it in the Courtroom
18 I m sorry So I can t tell you what the total
19 amount of all the payments that I made was

20 Q Okay And the ultimate -- is it fair
21 to say that the payment amount of that note
22 includes the principal amount the balloon that
23 you referred to is that right?

24 A The payments that were due?

25 Q Yes

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ROA_0261

4 20-09

1 A Yes

2 Q The balloon is referred to in that?

3 A Yes

4 Q And what does it say the balloon

5 amount is?

6 A Three million, five hundred and

7 twenty thousand, eight hundred eight dollars and

8 twenty-two cents

9 Q And that s in addition to did they

10 say monthly payments between nineteen thousand,

11 four hundred and sixty-five dollars and twenty

12 thousand eight hundred dollars and change?

13 A It says yes twenty-three monthly

14 payments ranging from nineteen four sixty-five

15 seventy-five to twenty thousand, eight hundred

16 and eight dollars and twenty-two cents

17 Q Okay I want to hand to you for

18 identification purposes only and really just

19 referring to help your calculation, it s part of

20 what was referred to as the application

21 documents? This is the only question I have

22 about it I don t want the rest of it to come

23 in I m just going to ask him about that

24 The page I m handing to you appears

25 to have your signature on the bottom It s a

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ROA_0262

4-20-09

1 Truth in Lending disclosure statement generally
2 prepared by a bank Up top it has total of
3 payments Do you see that?

4 A I see that number

5 Q What is that number?

6 A Three million, nine hundred and
7 ninety thousand six hundred and seventy-one
8 dollars and twenty-eight cents

9 Q Okay And are they -- my
10 understanding of that calculation is the balloon
11 payment that's referred to here on the note and
12 twenty-three months of payments and indicating
13 their finance charge, is that accurate? I'll
14 refer you back to the note

15 A Yes

16 Q The note contemplates twenty-three
17 payments of roughly that amount, plus that
18 balloon of 3 5 twenty?

19 A Yes All right

20 Q That was two years of payments on the
21 note would equal that 3 99 number correct?

22 A Yes

23 Q Okay So ultimately you took over
24 the payments on the note and at some point you
25 were aware that it was coming due is that right?

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ROA_0263

4-20-09

1 A. That is correct

2 Q How did you become aware of that?

3 A I -- you know I had signed a two-
4 year note I knew the date I knew the date
5 that the note would end

6 Q Okay Did SCB&T contact you or did
7 you begin on your own to begin on your own to
8 begin to deal with the impending maturity date?

9 A I had conversations from time to time
10 with a lady at the -- at the bank Wilson And I
11 really don't remember her bringing it to my
12 attention or calling my attention to it She
13 could have

14 Q Okay In the middle of September,
15 did you ask anyone to conduct a title search on
16 the property here for the purposes of refinancing
17 this loan?

18 A I asked for an appraisal Would that
19 include a title search? I can't recall
20 specifically asking for a title search

21 Q Okay I'm going to hand to you a
22 document that is titled, Title Summary Are you
23 familiar with that document?

24 A No I don't recall ever seeing this
25 before

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ROA_0264

4-20-09

1 Q Okay Do you remember asking anyone
2 to begin looking into this loan or the property
3 itself in the middle of September 2008?

4 A Mark, help me, what would have
5 triggered me to do that in September?

6 Q That's the question I asked you
7 before was why did you begin looking at the due
8 date I didn't know if something had triggered
9 you a phone call from Ann Wilson at SCB&T if
10 Ms McGirt called and said you have this due date
11 coming up or if that was just your doing

12 A As -- as far as becoming concerned
13 about it that was my doing

14 Q Okay

15 A I knew I had a debt and I knew I had
16 to take care of it

17 Q Okay

18 A But that doesn't speak to a title
19 search

20 Q Sure And if you don't know, you
21 don't know That's fine Did you have any
22 discussion with anyone other than Ms Wilson
23 about the impending maturity date prior to
24 October of 2008?

25 A Well I would have talked to my wife

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ROA_0265

4-20-09

1 about it I would have talked to Mark Johnson
2 about it I would have talked to Wachovia about
3 it That -- yes, I would have talked to people
4 about it

5 Q Okay When you discussed your pay-
6 off of that amount or your pending -- the coming
7 maturity date and your obligation of that with
8 those individuals and the institution you just
9 discussed, correct?

10 A I would say that s accurate yes

11 Q All right And you said you talked
12 to Wachovia about it Did you approach them
13 about paying -- lending money to you to pay off
14 the amount to take care of your obligation?

15 A. Yes I did

16 Q Did you originally ask them or
17 approach them about a refinance of that amount?

18 A A refinance be when they would take
19 over the financing from SCB&T?

20 Q No my question was really did you
21 mention to them specifically a refinance or did
22 you just say I ve got an obligation I need to
23 take care of it help me out, lend me the money

24 A No I did not say lend me the money
25 I was looking for advice on what options I had

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ROA_0266

4-20 09

1 Whether, it you know, be a refinance a payoff
2 or whatever You know I was looking for answers
3 at that time

4 Q. You didn't say lend me money You
5 said I've got an obligation, help me take care of
6 it?

7 A Yes Excuse me Mr Scott earlier
8 talked about my relationship with Wachovia and
9 the branch that he dealt with I had Mr Chris
10 Gammon who was my advisor at one time, then a
11 lady named Johnson and then Wachovia was going
12 through a lot of turmoil at this time And the
13 it was another man who was -- who was named But
14 in the time that I was dealing with primarily
15 with Mr Gammon he -- he was very very helpful
16 to me in -- not just in making investments but
17 any -- any question dealing with -- with finance,
18 dealing with end of life planning taxation I
19 would go to him and you know, seek his help
20 And he was -- he was very good about that And
21 that is a good part of the reason that when he --
22 when he left and went to Carolina's Investment
23 Consulting, I wanted to continue doing business
24 with him So he helped me in many ways, not just
25 -- I didn't go to him just when I wanted to

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ROA_0267

4 20-09

1 borrow money Does that answer your -- your
2 question?

3 Q. It does

4 A. I m sorry I took off on my own there
5 a little bit

6 Q. That s okay Feel free to do that
7 At some point you had -- or you had testified
8 previously that you ordered an appraisal or ask
9 for appraisals on property Did you get copies
10 of the appraisals?

11 A Yes I did

12 Q Okay At that point what was your
13 understanding of what Wachovia could do for you
14 as far as the lending of the money?

15 A Well there was not enough value in
16 the house at that time for them to secure the
17 loan So we started looking at other ways to
18 secure a loan from them to -- so that I could
19 satisfy my debt that I had at SCB&T

20 Q Okay So you could satisfy your
21 debt Now you testified you re looking at other
22 ways Did you contact your nephew at that point?

23 A. At what point?

24 Q When you had determined or when
25 Wachovia told you appraisals are coming in a

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ROA_0268

4 20 09

1 little light we can't loan enough You began
2 determining, I think you testified, how you're
3 going to come up with -- how you're going to
4 satisfy your obligation At that point, did you
5 say okay, let's go to Mark and see what he can do
6 about this?

7 A. I did not because I knew that Mark
8 did not have any money He had, I think at that
9 point had -- had lost his car It was obvious
10 that he had no assets So going to him to ask
11 him to help me solve this was futile fruitless

12 Q I've handed you a copy of an email
13 from Mr Johnson to I believe it's your email
14 address Are you familiar with that document?

15 A Yes

16 Q. That's an email you obtained or you
17 received from Mr Johnson is that right? The
18 second page is an attachment to that email

19 A Okay What is -- what's on the --
20 whatever copy was on the front pages is no longer
21 there

22 Q This is the identical document I gave
23 you at your deposition It is -- I believe what
24 you have is a redacted copy of what Mr Masel
25 provided to me Or Mr Masel provided to me a

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ROA_0269

4-20-09

1 redacted copy because he -- it appears there
2 would have been a message up on the top part of
3 that?

4 A Yes

5 Q But what I got, what we reviewed at
6 your deposition was just blank And it merely
7 says from joecocol@sc rr com And that's I
8 believe, Mr Johnson's email address?

9 A Yes

10 Q To ---

11 A Sherry McGirt

12 Q Sherry McGirt and cc

13 MBrown627@aol com that's your email address,
14 correct?

15 A Yes

16 Q And I believe you testified at your
17 deposition that you remember receiving a copy of
18 this?

19 A Yes

20 Q. Along with the attachment?

21 A Yes

22 Q Page 2 I ask that this be admitted
23 into evidence Plaintiff's Exhibit 16 -- 17?

24 MS. GOLDING No

25 objection Your Honor

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ROA_0270

4-20 09

1 THE COURT Plaintiff's
2 17 admitted without objection

3 ++++++

4 (EMAIL WAS MARKED

5 FOR IDENTIFICATION

6 AS DEPOSITION

7 EXHIBIT NUMBER 17 AND WAS

8 RECEIVED IN EVIDENCE)

9 | ++++++

10 BY MR BRUNTY

11 Q. And you don't know why he sent that
12 to you, is that right?

13 | **A** Yes, I do

14	Q	Okay

15 **A** My counsel ---

16 MS GOLDING Your
17 Honor he s not going into attorney-client
18 privilege matters If that was intended that s
19 -- I don't think that was the intent of Mr
20 Brunty, was it to go into any attorney-client
21 privilege matters?

22 MR BRUNTY No

23 THE COURT I'm not
24 sure are you advising him not to go into any
25 attorney-client privilege? Anything that your

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4-20-09

1 attorney may have advised you I think your
2 present attorney is advising you please not to go
3 into that from the witness stand

4 **BY MR BRUNTY.**

5 Q Okay You obtained a copy -- you
6 received that email, correct?

7 A Yes, I did

8 Q The second page of that email is an
9 attachment which you opened and read when you got
10 it correct?

11 A Yes

12 Q And it is entitled financial
13 statement for Stephen Mark Johnson as of October
14 26, 2008, correct?

15 A. Yeah I can t see it from here
16 Yeah Yes

17 Q Okay On the bottom it says pending
18 litigation Robert W Oskin v Mark Johnson
19 requesting a continuance Monday, November 3
20 2008, right?

21 A Yes Did you pick up the phone after
22 receiving that email and call Mr Johnson?

23 A No

24 Q Okay Did you talk with him about
25 that email eventually?

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ROA_0272

4 20 09

1 A I don t specifically recall that
2 conversation I probably did

3 Q. Okay At your deposition you
4 testified that Mr Johnson said that the lawsuit
5 was frivolous, do you remember that testimony?

6 A Yes

7 Q Do you remember -- does that refresh
8 your recollection as to the conversation about
9 Mr Oskin s lawsuit?

10 A The -- the problem I m having Mr
11 Brunty, is -- is the timing of when he might have
12 described that as frivolous or not He -- you
13 know, I don't know when that happened

14 Q Okay He didn t refer to it as
15 frivolous after a judgment had been entered into
16 -- entered against him had he?

17 A I don t think so

18 Q Okay So it was sometime prior to
19 his judgment being entered whenever that was he
20 told you it was a frivolous lawsuit right?

21 A. That s probably right

22 Q Okay And you were of the
23 understanding that he had not replied to that
24 lawsuit at that time whenever you had that
25 discussion?

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ROA_0273

4-20-09

1 **A** That was my understanding that he had
2 not replied

3 **Q** He was actually in default, is that
4 right?

5 **A.** Don t know that

6 **Q.** Okay : Would that conversation have
7 been around the time of you receiving this email?

8 **A** I don t take notes on things like
9 that I didn t record when he told me certain
10 things when he didn t He was very -- it was
11 very seldom that he ever called me with any
12 information It was difficult for me to get in
13 touch with him I -- I can't recall the
14 sequence I'm sorry

15 **Q** Okay Prior to October 27 2008 the
16 date of this email do you remember having any
17 discussions with him about the Oskin lawsuit?

18 **A** Specifically I do not

19 **Q** Do you remember even knowing about
20 the Oskin lawsuit before this email?

21 **A** That email is October the ---

22 **Q** 27th, 2008

23 **A** 27th I m going to refer to a note
24 that I've made I don t have any notes
25 concerning that

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ROA_0274

4 20-09

1 Q What are you referring to?

2 A What you just asked me

3 Q No, in your hand, what are you

4 referring to?

5 A. At our deposition you asked me a lot

6 of questions about dates and when things

7 happened So I decided that before I came here

8 this time I would make myself a few notes so

9 that I could answer you better

10 Q Okay I appreciate the effort You

11 don t have anything on there as far as when you

12 had that discussion with Mark about the Oskin

13 lawsuit?

14 A No I don t

15 Q Okay Backing up a little bit it

16 was, for the record, it was sometime in September

17 ---

18 MS GOLDING Your

19 Honor, I m going to object He s not --- Mr

20 Brunty ---

21 MR BRUNTY. If she d

22 let me ask my question

23 MS. GOLDING No You

24 need to -- Mr Brunty, please, I'm making an

25 objection You know he s not to testify and

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ROA_0275

4-20-09

1 he's been putting information in the record then
2 he finally asks the question And that's just
3 not the proper way to do it

4 **MR BRUNTY** I'm trying
5 to follow up on what he testified to earlier
6 about when he began going into the note And I
7 got ahead of myself a little bit with regards to
8 his discussions with SCB&T and Wachovia I just
9 wanted to -- I'm trying to keep a timeline of
10 events about when he -- when he went and started
11 the discussions about the refi and J Conner et
12 cetera I'm only trying to find out with this
13 next question where he stood in October of 2008,
14 as far as prior to getting this where he was in
15 terms of payment refinance et cetera

16 **THE COURT** So what is
17 your question now?

18 **MR BRUNTY** I thought
19 he testified to it as far as September October
20 being when he on his own of his own volition knew
21 that the note was coming due and following that
22 he began discussions with SCB&T and Wachovia and
23 he received from Wachovia ---

24 **MS GOLDING** Your
25 Honor I think he's not even answering He needs

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ROA_0276

4-20-09

1 to ask the question Your Honor I mean you
2 asked him what the question was He needs to say
3 what the question is

4 **THE COURT** What is your
5 question of Mr Brown?

6 **BY MR. BRUNTY**

7 **Q** When did you the appraisals back from
8 Wachovia? Do you remember?

9 **A** No I don t

10 **Q** Okay Did you obtain it directly
11 from Wachovia?

12 **A** I believe the appraisals were sent to
13 me on line, I believe They could have been
14 printed out and sent to me, but I did get copies
15 of two separate appraisals

16 **Q** You say online, would that have been
17 in an email?

18 **A** I suppose so

19 **Q** Okay I ll hand to you what s been
20 marked as Exhibit -- Plaintiff s Exhibit Number
21 7 The second page at the bottom is an email
22 from Rhonda Phillips to M Brown627@aol

23 **A** Okay

24 **Q.** Do you remember getting that email?

25 **A** Okay Here yeah It says here is

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ROA_0277

4 20-09

1 one of the two appraisals done on Ocean Boulevard
2 Property

3 Q Okay That was the middle -- October
4 14 correct?

5 A October the 14th

6 Q Okay So moving forward from the
7 October the 14th you were testifying earlier
8 that you had -- you were trying to figure out
9 what to do

10 MS. GOLDING Your
11 Honor I'm going to make an objection I mean he
12 can't go into knowing what the witness testified
13 He needs to just ask the question

14 BY MR BRUNTY

15 Q What did you do after receiving that
16 email on October 14th?

17 THE COURT Very good

18 THE WITNESS I would
19 suppose that I contacted Wachovia

20 THE COURT I'm sorry,
21 did you say I suppose I contacted Wachovia?

22 THE WITNESS Yes I
23 did

24 THE COURT You think
25 that s what you did?

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ROA_0278

4 20-09

1 THE WITNESS Yes
2 THE COURT All right
3 Thank you
4 BY MR BRUNTY
5 Q. Do you know who at Wachovia you
6 contacted?
7 THE COURT. If you
8 contacted Wachovia? Because you said you think
9 you contacted Wachovia Do you know who you
10 would have contacted at Wachovia?
11 THE WITNESS Your
12 Honor, during this time period I talked with John
13 Scott I talked with Chris Gammon who was -- he
14 had left there by that time But I talked with
15 whoever my advisor was at that time So you
16 know I was talking with a lot of people I was
17 talking to counsel I was trying to get as much
18 information as I could I have to solve this
19 problem
20 BY MR BRUNTY
21 Q What was the purpose of contacting
22 Wachovia?
23 A. Wachovia is a bank They lend money
24 Q Okay
25 A That you know they manage my money

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ROA_0279

4-20-09

1 So I was talking to them about money

2 Q Okay, Did you contact SCB&T?

3 A Yes, I did

4 Q Do you know when?

5 A That, I know

6 Q Okay

7 A Okay, I have here in my notes that
8 on November the 7th of 08, I emailed SCB&T and
9 asked for a note reduction I had -- I had also
10 talked with others about the note Mark Johnson
11 and a friend of his, a man named Orlando
12 Brockington who handles financial matters for
13 Mark, told me in a conversation that people in
14 the area were thankfully reducing debts because
15 of the financial turmoil and it was possible that
16 SCB&T would -- would accept a lesser amount as
17 payoff for their note

18 I called -- or I contacted Scott
19 Masel and asked him to call on my behalf to SCB&T
20 and see if -- if they would negotiate a lower
21 repayment figure And the reason I did that was
22 because -- now this goes to lawyer-client
23 privilege again But they -- they were doing
24 business with SCB&T and they told me they could
25 not represent me in talking with SCB&T and they

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ROA_0280

4 20 09

1 recommended that I get Mr Masel to call on my
2 behalf

3 So when -- when that took place, they
4 were -- they didn't have a positive response I
5 called and talked with Mrs Wilson Then that
6 was sometime after the email Then on November
7 19 2008 I visited in Columbia and met with
8 SCB&T And at that meeting was Mrs Wilson and a
9 senior vice president of the bank When I went
10 down I fully expected them based on her inviting
11 me to Columbia to discuss it that there was
12 going to be some sort of reduction When I got
13 there they told me in no uncertain terms that
14 they were not going to reduce that debt

15 So I -- in the discussion there were
16 other charges we talked about that that time that
17 had been added to the total But as a result of
18 that -- that meeting I knew that they were not
19 going to -- to negotiate -- renegotiate at all
20 and I had to do something else And that
21 happened as I say on November 19

22 Q The 19th was the trip?

23 A That's when I went down

24 Q. Okay

25 A And the email when I emailed them

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ROA_0281

4 20 09

1 asking it was November 7

2 Q Okay I'll hand to you what's been
3 marked as Plaintiff's Exhibit Number 18 It is
4 four pages of emails between you and Wilson and
5 Scott Masel Are you -- can you please review
6 that?

7 A Okay Yes

8 Q Okay And the email you refer to is
9 actually within this document, is that right
10 where you had emailed ---

11 A Where I had emailed asking for a
12 reduction That is here

13 Q Okay I'll move to have this
14 admitted into evidence, Your Honor

15 MS. GOLDING No
16 objection

17 THE COURT It would be
18 Plaintiff s Exhibit ---

19 MR BRUNTY Eighteen

20 THE COURT Eighteen

21 without objection

22 ++++++

23 (EMAIL WAS MARKED

24 FOR IDENTIFICATION

25 AS DEPOSITION

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4 20-09

EXHIBIT NUMBER 18 AND WAS

RECEIVED IN EVIDENCE)

+++++

BY MR BRUNTY

Q And in that email you're asking for the -- this is where you re say you're asking for the reduction If you owed 3 5, you wanted them to take 2 5?

A Well, that was a -- a starting negotiating point I ---

Q And that never took off?

A No

Q A week or so later is when they invited you down, you thought you were going to negotiate and they just didn't?

A That s correct

Q Did you have telephone conversations with anybody at SCB&T before that email?

A I had mentioned conversations with Ann Wilson but that s the only one I had talked with at SCB&T

Q Okay What did you talk to Ms Wilson about?

A I talked with her about the note that I owed

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ROA_0283

4-20-09

1 Q. Are you finished?

2 A. I am if you are

3 Q I'm sorry You said you talked with
4 her about the note?

5 A Yes

6 Q Okay You talked to her about the
7 judgments?

8 A What judgments?

9 Q Any judgments

10 A No Wait -- wait Okay At -- at
11 that time I had been advised that there was a
12 possibility that anybody -- that people who Mark
13 owed money to might try and get money from
14 me

15 Q Okay

16 A When I first heard that -- that
17 information, I can't tell you exactly when that
18 was, but it was not specific as to who might do
19 that other than that was something I had to be
20 concerned about That people that he owed money
21 to might want me to pay it

22 Q So were you aware that he owed money
23 to people?

24 A I saw a report that was done I think
25 in Myrtle Beach, searching who might have owed

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ROA_0284

4-20-09

1 money to Mark Johnson Mark was asked to look
2 over that list and see if -- if he was, in fact
3 the person they named There were about six or
4 seven items on there And he returned it and
5 said that the one that he did owe money to was, I
6 think McConnell, a man who was mentioned earlier
7 in testimony today The one who had sold his
8 fifty-six thousand dollar -- that was the only
9 one that was on that list that Mark said yes,
10 that was, in fact he did owe that money

11 Q And for clarification, I believe you
12 just testified that it was money that was owed to
13 Mark Johnson, but it was -- what you meant to ---

14 A. No, I meant that Mark owed to others

15 Q Okay

16 A. Yeah I m sorry

17 Q You said you saw a report Do you
18 know when you saw that report?

19 A No, I didn t make ---

20 Q Okay Do you know when Mr Johnson
21 would have seen it and reported back to you?

22 A No

23 Q. It would have been around the time of
24 that email that he sent to you in October of
25 2008?

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ROA_0285

4-20-09

1 **A** Yes

2 **Q** Okay I m going to hand back to you

3 -- you looked at it for the title summary But

4 I'll refer you to a couple -- a few pages, this

5 and these pages You can look through those

6 pages and tell me if you recognize that document

7 now?

8 **A.** This does not look like what I saw

9 earlier The one I saw was I believe typed,

10 rather than handwritten

11 **Q** Flip to the next couple of pages

12 **A** I haven't these pages before so what

13 am I looking for?

14 **MS GOLDING** Your

15 Honor he s testified he hasn t seen that

16 document before so I don't think it s proper ---

17 **MR. BRUNTY** He hasn't

18 looked through the whole thing He s testified

19 that he s seen a report that's typed This is a

20 mixture of typed and handwritten pages I just

21 want to see if he s seen it before

22 **THE WITNESS** No, I

23 haven t seen any of those pages before

24 **BY MR BRUNTY**

25 **Q** Okay The report you talked about

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4-20-09

1 you did actually see it at that time though?

2 A Yes, I did see it a listing

3 Q You didn't prepare it though did

4 you?

5 A No

6 Q. Do you know who did?

7 A To the best of my knowledge, McNair

8 Law Firm

9 Q. Okay I don't remember if you

10 answered this question before and if so I

11 apologize for repeating it Did you tell Ms

12 Wilson that you were worried about potential

13 people who were owed money by Mark Johnson coming

14 after you?

15 A. I could have mentioned that to her

16 Q Did you tell her about judgments that

17 could affect you?

18 A. What is the difference -- what's --

19 those two questions you just asked?

20 Q The difference is a debt owed to

21 someone and it being actually reduced to

22 judgment Judgment being a filed copy of a debt

23 A Okay -- okay So your question on

24 the first one was just debts owed and was I aware

25 of judgments?

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ROA_0287

4-20-09

1 Q. Yes

2 A. I believe the one that I mentioned to

3 you earlier that for thirty-six thousand dollars,

4 I believe that was a judgment

5 Q Okay And you mentioned that to Ms

6 Wilson?

7 A I doubt it but I -- I didn't mention

8 that to her specifically, no

9 Q But you were aware of that in late

10 October, early November 2008?

11 A We would have to look at the date for

12 me to say I would think it was in that time

13 period yes

14 Q Okay And you're aware that Mr

15 Johnson had recently lost his car He didn't

16 have the money to pay anybody?

17 A I was aware of that

18 Q But you were not aware of Mr Oskin's

19 judgment at that time?

20 A Not to my knowledge

21 Q Did you understand that there was a

22 hearing to be held November 3 2008?

23 A I don't know I'm not sure

24 Q Okay Did you talk to Wachovia about

25 the potential judgments or money that Mark owed

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ROA_0288

4-20-09

1 somebody else as potentially affecting you?

2 A. Possibly

3 Q Did you talk to Chris Gammon about
4 that?

5 A. Could have

6 Q Do you remember any advice Mr Gammon
7 gave you?

8 A No

9 Q. Was foreclosure ever a threat or a
10 true concern of yours with regard to the SCB&T
11 note?

12 A No

13 Q Why is that?

14 A Foreclosure would have only come if I
15 were not going to pay them And that was never
16 an option

17 Q You were going to make sure they got
18 paid, right?

19 A Yeah

20 Q. And did you in fact make
21 arrangements to borrow the money from Wachovia
22 after the meeting with SCB&T in November?

23 A We -- at that time I was looking at
24 you know, options

25 Q Okay

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ROA_0289

4-20-09

1 **A** One of them was to -- to borrow the
2 money from Wachovia and pay them

3 **Q** Okay After the meeting on November
4 19 in Columbia with SCB&T, you went back to
5 Charlotte, I assume, and you proceeded with other
6 options correct?

7 **A** That s correct

8 **Q** And that ultimately led to Wachovia
9 loaning the money, the 3 5 million dollars?

10 **A** The establishment of the LLC and that
11 Wachovia s loan to the LLC that was the result
12 of that

13 **Q.** Okay And you dealt exclusively or
14 you only dealt with Wachovia about that loan,
15 correct?

16 **A** At the time I was concerned because
17 they had made the loan based on my having my
18 funds at Wachovia I was in the process of
19 making a move to Carolina's Investing So I
20 talked with Mr Gamin, told him my concerns He
21 contacted people at Wachovia told them what --
22 what the needs were and because of the
23 affiliation between those two it was arranged
24 that even though my assets were still not under
25 management at Wachovia Wachovia would make the

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ROA_0290

4-20-09

1 loan So -- so I did talk with Mr Gamin about
2 that And I didn t consider after that was
3 okayed, I didn't consider getting a loan anywhere
4 else

5 Q. Okay And you talked to Mr Gamin
6 and you and Mr Gamin either/or both talked to
7 Wachovia about the loan?

8 A. Yes

9 Q. Nobody else talked to Wachovia about
10 the loan?

11 A Do you have anybody specific that
12 maybe?

13 Q Ms Brown?

14 A Yes, she would have been talking with
15 them about it because it was going to be in her
16 name

17 Q Okay But prior to December 16 she
18 didn t talked to him about it did she?

19 A. Well I would think that she would
20 have Mark or excuse me Mr Brunty I don t
21 remember specifically conversations that she had

22 Q Okay And she testified that you
23 would leave that up to her then?

24 MS GOLDING Your
25 Honor you know Mrs Brown hasn t testified yet

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ROA_0291

4 20-09

1 Mr John Scott's already testified He said he
2 had communications with Ms Brown So I m not
3 sure if he's trying to change that around, but
4 that's already testified by Mr Scott
5 THE COURT You talking
6 about Mrs Brown who will testify?
7 MR BRUNTY You would
8 leave that to Mrs Brown?
9 THE COURT Absolutely
10 MS GOLDING Well, he
11 also testified he had telephone conversations
12 with Mrs Brown
13 MR BRUNTY Earlier
14 though?
15 MS GOLDING Maybe ---
16 I m sorry, this -- Mr Brunty's way of asking
17 direct questions, you know, he cannot testify
18 Mr Brunty can if he wants, ask a question of the
19 witness, he can But trying to make a trying to
20 testify to the witness to try to get the witness
21 to say something is just not proper
22 MR BRUNTY I ll move
23 on Your Honor
24 THE COURT Thank you
25 BY MR BRUNTY

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ROA_0292

4-20-09

1 Q Let's talk about the formation of J
2 Conner Are you familiar with that?
3 A Yes
4 Q Who was the organizer of J Conner,
5 do you recall?
6 A Sherry McGirt
7 MS GOLDING No
8 objection That would be Number 19?
9 MR BRUNTY 19
10 THE COURT. Plaintiff s
11 19 without objection
12 ++++++
13 (LETTER FROM MCGIRT
14 WAS MARKED FOR IDENTIFICATION
15 AS DEPOSITION EXHIBIT
16 NUMBER 19 AND WAS
17 RECEIVED IN EVIDENCE)
18 ++++++
19 BY MR BRUNTY
20 Q I hand to you Exhibit 19 and ask you
21 if you ve seen that document?
22 A Yes
23 Q That s a letter from Ms McGirt?
24 A McGirt yes
25 Q Filing the LLC with an expedited fee

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ROA_0293

4 20 09

1 is that correct?

2 A With a what?

3 Q It s a check for an expedited fee is

4 that right?

5 A Yes

6 Q What's the date of that letter?

7 A November 19

8 Q That was the date of your meeting

9 with SCB&T?

10 A. I thought that meeting was on the

11 17th Mark November 19, oh you re right I m

12 sorry

13 Q Do you know why that was formed that

14 day? Why the company was -- why that letter

15 would have been sent that day to the North

16 Carolina Secretary of State?

17 A. No I don t

18 Q Did you approve the formation of the

19 LLC?

20 A. If you re question is did I agree

21 with it, I did agree with it

22 Q It wasn't your original idea?

23 A No, it was not

24 Q Did you ask that it be formed?

25 A I agreed to its formation

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ROA_0294

4-20-09

1 Q Why was it formed?

2 A. It was formed to hold the mortgage on
3 the beach house that Mark and I owned jointly

4 Q. Okay What was your goal -- what was
5 the goal of J Conner, LLC?

6 A The goal of that was to hold of that
7 mortgage until such time as the market improved,
8 the house could be sold and Mark could pay off
9 his debt from the proceeds or if he could pay it
10 off any other way

11 Q Okay

12 A It was formed to hold it until Mark
13 could pay

14 Q Okay Do you know why J Conner was
15 formed at that point? Why the need for a
16 separate legal entity?

17 THE COURT I m sorry

18 BY MR BRUNTY

19 Q Why the need for a separate legal
20 entity?

21 A Separate from my holdings Joan s
22 holdings separate from -- separate from what?

23 Q Separate from anything Why form a
24 company at that point to hold the mortgage?

25 A I was on the -- I had signed the --

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ROA_0295

4-20-09

1 the mortgage I owed money on that mortgage
2 If I had not formed or if we had not formed a
3 separate corporation I would have owed money to
4 myself and that -- that didn't seem reasonable or
5 logical And that was at least one of the
6 reasons that we formed a J Conner, LLC to hold
7 that mortgage

8 Q You were part owner of the property
9 right?

10 A Yes

11 Q. You needed a separate company to own
12 the mortgage, right?

13 A. Yes

14 Q So you were an owner of the property?
15 That s your understanding?

16 A. That s my understanding

17 Q MDB Enterprises was in existence at
18 that time?

19 A Yes

20 Q Why didn't you put it in MDB?

21 A I -- I don t know If -- I am not an
22 attorney I m not versed in -- in matters of
23 that sort so I don t know But it was deemed
24 that it was the best thing to do with people that
25 I rely on to tell me things like that

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ROA_0296

4-20-09

1 **Q** Okay Did you form J Conner and
2 obtain a loan from Wachovia to protect your
3 assets?

4 **A** No, we formed it to hold the
5 mortgage That was, you know, I've stated that
6 several times I don't know what you want me to
7 say, but other than what I've said

8 **Q** Okay I took your deposition on
9 October 14 at your attorney's office here in
10 Myrtle Beach I ask you to begin on Page 54 ---

11 **MS. GOLDING** You're
12 going to have to give him the deposition that
13 you're referring to

14 **MR. BRUNTY** We've got
15 the original if we need it Your Honor

16 **MS. GOLDING** The
17 original needs to go to the Judge Would you
18 give the Judge the original?

19 **MR. BRUNTY** I'll hand
20 this to you first

21 **MS. GOLDING** What page?

22 **MR. BRUNTY** Page 54

23 **MS. GOLDING** And what
24 line?

25 **MR. BRUNTY** 54 begins

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ROA_0297

4 20 09

1 at Page 20

2 MS. GOLDING On line

3 20?

4 MR. BRUNTY Begins line

5 20

6 MS. GOLDING Lien 20 is
7 the last sentence -- it has to begin at the top
8 of Line 13, the question?

9 MR BRUNTY Line 22

10 excuse me

11 THE WITNESS Question

12 You were making payments on the and then it s
13 blank blank blank

14 BY MR BRUNTY

15 Q Your answer is that note?

16 MS GOLDING I think
17 the proper way is to do if Mr Brunty reads you
18 the question and then the answer is read by the
19 witness And can Mr Brunty please stand over
20 here and not at the witness?

21 THE COURT Wait Just
22 one minute Let me open the original and let the
23 record reflect I am now opening the original
24 I m breaking the seal I'm opening the original
25 of the deposition of Michael D Brown It s a

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ROA_0298

4-20-09

1 deposition taken on the 14th Day of October 2009
 2 MR BRUNTY You found
 3 it, Your Honor?
 4 THE COURT Yes Page
 5 54?
 6 MR BRUNTY Yes, Your
 7 Honor It begins at Line 22
 8 BY MR. BRUNTY.
 9 Q. You were making payments on the ---'
 10 A. Do you want me to read? And after
 11 you said that, I said that note yes '
 12 Q That SCB&T note has prompted
 13 borrower to seek legal advice in dealing with the
 14 outstanding liens Borrower s attorney suggested
 15 this alternative to protect assets And that was
 16 your -- that's what you were trying to do, right,
 17 protect this asset?" Non-responsive nods head
 18 Is that a yes?
 19 A And then I answered yes
 20 Q Okay
 21 MS. GOLDING Your
 22 Honor I'm going to move to strike that That is
 23 not at all responsive as to what Mr Brunty s
 24 question was Mr Brunty s question you formed
 25 the LLC to protect the asset '

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ROA_0299

4 20 09

1 Well, the LLC was formed and Mr
2 Brown had a part in the formation of it But the
3 purpose of it as was set forth in the operating
4 agreement and as Mr Brown has testified to was
5 to hold the note and mortgage And trying to
6 take something, a completely different question
7 and trying to utilize it to cross -- to show a
8 contradiction is just wrong

9 THE COURT Can you read
10 this? I think the proper thing to do at this
11 point Ms Golding is that he can put in whatever
12 portions of this deposition that you would like
13 to clarify what Mr Brunty is wanting to do
14 here

15 MS GOLDING Thank you
16 Your Honor

17 THE COURT Do you want
18 to go ahead and do that now, Ms Golding?

19 MS GOLDING Yes sir -
20 - yes, ma'am, excuse me, Your Honor I apologize

21 THE COURT Okay

22 BY MS GOLDING

23 Q Mr Brown, do you have the deposition
24 in front of you?

25 A Yes I do

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ROA_0300

4-20-09

1 Q I'm going to continue to read Well,
2 I'm going to start on Page 54 and start with Line
3 13 And the question okay -- Have you got Line
4 13?

5 A Yes

6 Q Question Okay I've taken Mr
7 Scott's deposition He inputted information or
8 an input information into Wachovia's system and
9 some of that information is contained in what I
10 have before me One thing that he input was that
11 the borrower, meaning you making payments that
12 is directly quoted from his words borrower
13 making payments since early January 2008, and I
14 think that was your recollection

15 Answer?

16 A Making payments on ---

17 Q Question You were making payments
18 on the' ---

19 A The note on that note yes

20 Q Question SCB&T note has prompted
21 borrower to seek legal advice in dealing with
22 outstanding loan Borrower's attorney suggested
23 this alternative to protect assets and that was
24 your -- that's what you were trying to do right,
25 protect this asset?

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ROA_0301

4-20-09

1 There's no comment or nods head Is
2 that yes?"

3 **A** Yes

4 **Q** Question Okay borrower plans a two
5 million dollar pay down from liquidation of hedge
6 funds in a collateral pool between January 2009
7 and April 2009 Primary source of repayment is
8 the cash flow of our guarantors and liquidations
9 of assets securing this loan Was that your
10 understanding that you were going to liquidate
11 your hedge funds to pay down a portion of this
12 loan?

13 Answer?

14 **A** Answer There had been some
15 discussion We talked about several different
16 methods of doing it

17 **Q** Question 'Okay Have you done
18 that? Did they liquidate funds to pay down the
19 three million, five hundred dollar obligation?"

20 **A** No

21 **MS GOLDING** Thank you,
22 Your Honor

23 **THE COURT** Thank you

24 All right Mr Brunty

25 **MR BRUNTY** Thank you

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ROA_0302

4-20-09

1 Your Honor I beg the Court s indulgence while
2 we have this open I was going to get into reading
3 a portion of the ---

4 MS GOLDING Your
5 Honor, I think that's inappropriate He has to
6 continue with the direct examination He cannot
7 continue to ask him questions -- use the
8 deposition, Your Honor He was only trying to --
9 if he was -- Number 1 of his own witness,
10 trying to impeach his own witness which was
11 improper

12 But Number 2 he cannot use the
13 deposition to continue the questioning

14 BY MR. BRUNTY

15 Q Can you tell me the purpose of J
16 Conner holding the mortgage?

17 A. The purpose was to hold the mortgage
18 until Mark Johnson could either sell the property
19 or raise funds in any other way and pay it

20 Q. Okay You didn t want to liquidate
21 your funds correct?

22 A No

23 Q So you needed an instrument of some
24 kind to borrow the funds?

25 A I don t think that Wachovia required

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ROA_0303

4-20-09

1 me to have a particular form They were willing
2 to loan money to Joan and I based on our -- our
3 pledged assets

4 Q. Okay

5 A. And what they you know, what it
6 eventually went into, they never specified, no

7 Q Okay In December Wachovia decided
8 to make this loan is that right?

9 A Yes

10 Q Prior to that time you had negotiated
11 the payment to SCB&T?

12 A Prior to that time I had made the
13 monthly payments as were required yes

14 Q. Prior to December you negotiated with
15 SCB&T the 3 5 million dollar amount?

16 A We -- we covered that a number of
17 times Yes I did

18 Q Okay And you negotiated with
19 Wachovia for the J Conner loan correct?

20 A Yes

21 MS GOLDING No

22 objection

23 ++++++

24 (UNCONDITIONAL GUARANTEE

25 WAS MARKED FOR IDENTIFICATION

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ROA_0304

4-20-09

AS DEPOSITION EXHIBIT
NUMBER 20 AND WAS
RECEIVED IN EVIDENCE)

+++++

BY MR BRUNTY

Q We've already entered into evidence
some of the Wachovia documents We're now
marking as Plaintiff s Exhibit Number 20, the
unconditional guarantee

A Am I going to use this anymore?

Q No not at this time We'll put it
up here just in case You're reviewing the
unconditional guarantee and that is -- let me
know when you're done looking at it I have a
few questions about it

A Okay I signed this document

Q. Okay That s in connection with the
J Conner closing, correct?

A The J Conner closing, you mean the
closing of the loan to J Conner LLC?

Q Yes

A. Yes

Q If you could read for me the first
two lines

A To induce bank to make extend or

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ROA_0305

4-20-09

1 renew loans advances, credit or other financial
2 accommodations to or for the benefit of borrower
3 which are and will be to direct -- to the direct
4 interest and advantage of the guarantor

5 Q. Okay And you signed that as the
6 guarantor, correct?

7 A Yes

8 Q Okay Those first two lines I just
9 had you read are they accurate?

10 A Yes

11 Q That was to your direct benefit that
12 you signed that?

13 MS GOLDING I m sorry

14 I didn t hear that question

15 BY MR BRUNTY

16 Q I said it was to the direct benefit

17 A. Okay -- this -- the heading of this
18 is to J Conner, LLC to Michael Brown and
19 Wachovia Bank National Association But both J
20 Conner LLC and Michael Brown are listed

21 Q. Okay

22 A They would both benefit is that your
23 interpretation?

24 Q Just the language there, is that
25 accurate? It was to the grantors direct benefit?

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ROA_0306

4-20-09

1 The guarantors, excuse me, direct benefit?

2 A Am I the sole guarantor or is J
3 Conner, LLC a guarantor?

4 Q I'm not sure

5 A I m not sure either so I can't answer
6 that

7 Q On that agreement, is there anyone
8 else, anyone else's signature beside your own?

9 MS GOLDING Your
10 Honor I think that is trying to mislead Mr
11 Brown His wife also signed the guarantee a
12 separate guarantee There s a promissory note
13 for J Conner I think that this is trying to be
14 misleading to the witness

15 MR BRUNTY I merely
16 asked him about this document that he signed,
17 Your Honor

18 THE COURT If he knows
19 -- it may be that Mr Brown needs a break He s
20 been on the witness stand about an hour and a
21 half

22 MR BRUNTY Okay It's
23 a good break time

24 THE COURT We all may
25 need a break about an hour and a half Let s

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ROA_0307

4-20-09

1 take a break for about ten minutes

2 (Whereupon, a brief recess was
3 taken)

4 THE COURT Did y'all
5 need more time Mr Brunty?

6 MR. BRUNTY No, ma'am
7 While the Court was in recess we went ahead and
8 pre-marked some exhibits And if the Court wants
9 me to inform her now of the numbers or ---

10 MS. GOLDING I can just
11 say I have no objections to Plaintiff's Exhibits
12 21 22 23 24 25 and 26, Your Honor

13 THE COURT Okay

14 MR BRUNTY And they
15 are different from the Exhibit list I'll let
16 the Court know when we get to those what they
17 are

18 THE COURT Okay

19 MR BRUNTY Okay

20 BY MR. BRUNTY.

21 Q. Thank you Mr Brown We are back
22 from a break

23 A Okay

24 Q On December 16, you and your wife
25 went and executed Wachovia loan documents is

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ROA_0308

4-20 09

1 that right?

2 A. Yes

3 Q The note the security agreement the

4 control agreement?

5 A. I don't remember the exact papers,

6 I'm sorry

7 Q Okay I'll hand them to you

8 They re Exhibits 11 12 13 and you're holding

9 the guarantee Number 20

10 A Okay

11 Q They're all dated December 16 is

12 that right?

13 A Yes

14 Q. Okay Do you recall a wire being

15 sent from Wachovia to SCB&T on or about that

16 date?

17 MS GOLDING We sent a

18 wire A wire was sent Your Honor We'll

19 stipulate to that fact

20 BY MR BRUNTY

21 Q Okay

22 A. I suppose so

23 MR BRUNTY: Your Honor

24 can I look at what he s referring to?

25 MS GOLDING. May I see

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4-20 09

1 it real quick Your Honor?

2 **THE COURT** Certainly

3 My guess is they re his notes that he's jotted
4 down Ms Golding would like to look at them
5 first

6 **MS GOLDING** Okay

7 This is just a timeline, Your Honor Not a
8 problem

9 **MR. BRUNTY** May I
10 approach to review?

11 **THE COURT** Certainly

12 I suppose we need to ask Mr Brown some
13 questions Mr Brown is that a timeline that
14 you prepared yourself sir?

15 **THE WITNESS** Yes

16 **THE COURT** All right
17 sir

18 **MR BRUNTY** Thank you
19 Mr Brown

20 **BY MR BRUNTY**

21 **Q** And your attorney stipulated that
22 wire was sent December 16 Did you request that
23 the wire be sent from Wachovia to SCB&T?

24 **A.** Yes

25 **Q** After the 3 5 million dollars was

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4-20-09

1 wired do you recall there being an amount still
2 owed to SCB&T?

3 A Yes

4 Q All right I'm going to hand to you
5 what s been marked as Plaintiff's Exhibit Number
6 21 Can you identify that document?

7 A Yes

8 ++++++++
9 (CHECK FOR 44,000 TO SCB&T
10 WAS MARKED FOR IDENTIFICATION
11 AS DEPOSITION EXHIBIT
12 NUMBER 21 AND WAS
13 RECEIVED IN EVIDENCE)

14 ++++++++

15 BY MR BRUNTY

16 Q What is on Exhibit Number 21?

17 A It s a copy of a check that I made
18 out and sent to South Carolina Bank & Trust in
19 the amount of forty-four thousand, three hundred
20 and three dollars and thirty-one cents

21 Q Okay

22 A December 23

23 Q That s from your own -- excuse me,
24 your checking account at Wachovia correct?

25 A That s correct

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4 20 09

1 Q What was the purpose of the forty-
2 four thousand, three hundred three dollars and
3 thirty-one cents?

4 A SCB&T told me that that amount was
5 owed in addition to the three and a half million
6 because during the life of the note Mark had paid
7 less than was called for at various times and
8 that was needed to -- to complete those payments

9 Q Okay. So to complete the transfer of
10 the note that was required?

11 A. Yes

12 Q And once that was -- that check was -
13 -- I guess you mailed that -- did you mail that
14 check to SCB&T?

15 A. Yes

16 Q. Okay, I'm going to hand you what s
17 been marked as Plaintiff s Exhibit Number 22 and
18 ask you to identify that document

19 MS. GOLDING Since
20 they're admitted you can just go ahead and say
21 22 is the Assignment of the Promissory Note to
22 SCB&T to J Conner LLC

23 ++++++

24 (ASSIGNMENT OF THE
25 PROMISSORY NOTE TO

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ROA_0312

4 20 09

1 SCB&T TO J CONNOR WAS MARKED
2 FOR IDENTIFICATION
3 AS PLAINTIFF'S EXHIBIT NUMBER 22
4 AND WAS RECEIVED IN EVIDENCE)
5 ++++++

6 BY MR BRUNTY

7 Q Are you familiar with the note being
8 assigned to J Conner?

9 A Yes

10 Q And that was after the payment was
11 received? It's dated November 30

12 A Yes

13 Q So after the 3 5 million was received
14 and then after your forty-four thousand check
15 roughly was received, they assigned the note to
16 J Conner, correct?

17 A Yes

18 ++++++

19 (NOTE WAS MARKED FOR IDENTIFICATION
20 AS PLAINTIFF'S EXHIBIT NUMBER 24
21 AND WAS RECEIVED IN EVIDENCE)

22 ++++++

23 BY MR BRUNTY

24 Q And I'll hand to you the note which
25 has been admitted without objection Plaintiff's

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ROA_0313

4 20 09

1 Number 24 where SCB&T is indicated that the note
2 is now held by J Conner, is that your
3 recollection of the events?

4 A Yes

5 ++++++

6 (ASSIGNMENT OF THE
7 MORTGAGE FROM SCB&T
8 TO J CONNOR WAS
9 MARKED FOR IDENTIFICATION
10 AS PLAINTIFF'S EXHIBIT NUMBER 26
11 AND WAS RECEIVED IN EVIDENCE)

12 ++++++

13 BY MR BRUNTY

14 Q I'll hand to you Plaintiff's Exhibit
15 Number 26, the assignment of the mortgage from
16 SCB&T to J Conner Is that your understanding
17 of what transpired the latter part of December,
18 early January of 2008 and 9?

19 A Yes

20 Q Okay Did you have to make a payment
21 of the property taxes on this property in
22 October/November/December of 2008?

23 A I think the property taxes for two --
24 two separate years

25 Q Okay

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ROA_0314

4 20 09

1 **A** One, the first time I did it was well
2 past due and I asked them to send me the bill the
3 next year, which they did

4 **Q** Okay They changed that address for
5 you? Did -- do you recall setting up a demand
6 deposit account for J Conner?

7 **A** Yes

8 +++++++
9 (COPY OF CHECK TO J
10 CONNOR, LLC WAS MARKED
11 FOR IDENTIFICATION
12 AS PLAINTIFF'S EXHIBIT NUMBER 25
13 AND WAS RECEIVED IN EVIDENCE)

14 +++++++

15 BY MR BRUNTY

16 **Q** I'm going to hand to you Plaintiff's
17 Exhibit Number 25 That's a check that was
18 written to J Conner, LLC Is that your personal
19 check?

20 **A** Yes

21 **Q** Okay Is that on the same account?
22 I think that account number information has been
23 redacted, but is that the same account that you
24 wrote the forty-four thousand dollar check
25 previously?

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ROA_0315

4 20 09

1 A Yes

2 Q Okay Have you had to replenish that
3 account yet?

4 A Yes

5 Q Okay How was it replenished at this
6 time?

7 A My wife wrote a check for twenty
8 thousand dollars to replenish the account at one
9 time I don't know exactly what the status is
10 right -- right now

11 +++++++

12 (CHECK TO J CONNOR

13 ACCOUNT WAS MARKED

14 FOR IDENTIFICATION

15 AS PLAINTIFF'S

16 EXHIBIT NUMBER 23

17 AND WAS RECEIVED IN EVIDENCE)

18 +++++++

19 BY MR BRUNTY

20 Q Okay I'm going to hand to you
21 Plaintiff's Exhibit Number 23 This appears to
22 be another check on that same account, is that
23 right?

24 A Okay It appears to be, yes

25 Q Do you know what that check was

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ROA_0316

4 20 09

1 written for?

2 **A** No, I don't

3 **Q** And is it made out to -- who's it
4 made out to?

5 **A** CSC

6 **Q** Do you know who CSC was?

7 **A** I -- I don't know as we sit here
8 today, no

9 **Q** Okay Do you recall the company
10 Corporation Service Corp ?

11 **A** Yes

12 **Q** Is that the registered agent for J
13 Conner?

14 **A** Yes

15 **Q** Okay The check that you're holding
16 in your hand, is that a copy of the check you
17 wrote them for serving as the registered agent
18 for J Conner?

19 **A** Yes

20 **Q** Okay Has J Conner made any
21 advances under that note to you or Mr Johnson?

22 **A** No

23 **Q** Okay How about payments on that
24 note, have you or Mr Johnson made any payments?

25 **A** No

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ROA_0317

4 20 09

1 Q Okay, J Conner makes payments to
2 Wachovia?

3 A Yes

4 Q Does it do any -- does it have any
5 other activities with the business?

6 A No

7 Q J Conner paid 3 5 million dollars
8 for that mortgage?

9 A Yes

10 Q Is that your understanding of the
11 value of that mortgage?

12 A No

13 Q Okay Do you have an understanding
14 of the value of the mortgage?

15 A What the value, when I said no, I was
16 thinking of the value of the underlying asset,
17 the house It is not worth three and a half
18 million

19 Q The house is not?

20 A No The mortgage that was assigned
21 is still worth three and a half million

22 Q Okay And that's -- because the
23 mortgage as I understand it and as you understand
24 it entitles the holder to future payments,
25 correct?

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ROA_0318

4-20 09

1 A Yes

2 Q Are you making sure that Wachovia
3 gets repaid?

4 A No

5 Q Have you paid down two million
6 dollars of the debt by liquidating your assets?

7 A No

8 Q And your investment accounts, are
9 they still housed with Wachovia?

10 A No

11 Q What was the amount due on the SCB&T
12 note in the middle of December 2008?

13 A Three million, five hundred thousand
14 dollars

15 Q Is J Conner's -- the purpose of J
16 Conner holding the note and the mortgage, was
17 that to prevent creditors or Mark Johnson from
18 affecting your assets?

19 A No

20 Q It's to protect your assets?

21 A The purpose of J Conner, LLC was to
22 hold the mortgage on the property

23 Q Okay

24 MR BRUNTY I beg the
25 Court's indulgence, Your Honor

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ROA_0319

4 20 09

1 BY MR BRUNTY

2 Q You just said the purpose was to hold
3 the mortgage Another purpose was to pay SCB&T,
4 is that correct?

5 A J Conner, LLC did not pay SCB&T

6 Q Okay Wachovia ---

7 A Wachovia paid SCB&T So no, the
8 purpose was not to pay SCB&T

9 Q The purpose of money being sent to
10 SCB&T was to take care of your obligation to
11 SCB&T is that right?

12 A It was to -- so that SCB&T would
13 assign that mortgage to J Conner, LLC That was
14 the purpose

15 Q And the reason that was created was
16 because you owed money to SCB&T correct?

17 A Yes

18 Q If you didn't owe that money and it
19 was solely Mr Johnson, that owed the money on
20 the SCB&T note, and you had not signed any other
21 agreement with SCB&T, would J Conner have been
22 created?

23 A No

24 Q The property hasn't been deeded or
25 transferred to anyone, has it, the actual real

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ROA_0320

4 20 09

1 property?

2 **A** No

3 **MR BRUNTY** Mr Brown,
4 I appreciate your time I don't have any further
5 questions for you

6 **THE COURT** Wait a
7 minute, Mr Brown Your attorney may have some
8 questions

9 +++++

10 **CROSS-EXAMINATION**

11 **BY MS GOLDING**

12 **Q** Mr Brown, I'm going to gather some
13 of these exhibits together and ask you a few
14 questions, if you don't mind

15 This SCB&T note and mortgage that was
16 assigned to J Conner, that's still outstanding,
17 this promissory note is still outstanding, is
18 that right?

19 **A** Yes

20 **Q** Okay And under the note, you owe
21 monies to J Conner, LLC is that correct?

22 **A** That's correct

23 **Q** Okay And as well Mark Johnson owes
24 monies to J Conner, LLC?

25 **A** Yes

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ROA_0321

4 20 09

1 Q Okay And in fact with respect to
2 your wife, Mr Johnson is on your wife's side of
3 the family, is that correct?

4 A Yes

5 Q Okay And with respect to your wife,
6 she anticipates Mr Johnson will pay the three
7 and a half million that's owed to J Conner, LLC?

8 A Yes

9 Q Okay And the J Conner, LLC, the
10 note and mortgage, these are the two documents
11 that J Conner, LLC owns, this note and mortgage
12 which are Plaintiff's Exhibits 15 and 16, is that
13 right?

14 A Yes

15 Q Okay Now, with respect to the
16 mortgage, the future advances clause which is, I
17 believe, a provision Number 26 under the
18 mortgage, J Conner, LLC can make future advances
19 under the future advance clause which is
20 Paragraph 26 is that correct?

21 A Yes

22 Q And those future advances, in fact,
23 can constitute the twenty thousand more dollars
24 that your wife had paid is that correct? You
25 testified ---

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ROA_0322

4 20 09

1 **A** Yes -- yes

2 **Q** And this twenty thousand dollars that
3 your wife has put into J Conner to pay toward
4 the indebtedness to Wachovia, those are monies
5 that your wife expects to be repaid by Mark
6 Johnson, is that correct?

7 **A** Yes

8 **Q** Okay Do you have any objections to
9 Defendant's Exhibits 4 and 18 and 19? Excuse me,
10 4, 5, 18 and 19

11 **MR BRUNTY** 18 and 19,
12 no 4 and 5, I don't know how -- what they have
13 done anything to do with this action

14 **MS GOLDING** Your
15 Honor, Exhibit Number 4 and 5, Number 4 is a
16 promissory note from Ameris Bank to Mr Johnson
17 and Mr Brown in the amount of five hundred
18 thousand dollars Exhibit Number 5 is the
19 mortgage to Ameris Bank securing the five hundred
20 dollar -- five hundred thousand dollar
21 indebtedness And both of these, the mortgage is
22 recorded of record and was recorded on April 27,
23 2007 Your Honor So these are in existence and
24 have been in existence for over three years

25 **THE COURT** It is on the

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ROA_0323

4 20 09

1 same piece of property?

2 MS GOLDING Same piece
3 of property, Your Honor

4 THE COURT Mr Brunty

5 MR BRUNTY I'll
6 stipulate that they're of relevance to this She
7 can have them in No objection

8 MS GOLDING Your
9 Honor, then we would offer into evidence
10 Defendant's Exhibits -- Exhibit 4, Defendant's
11 Exhibit 5, Defendant's 18 and Defendant's Exhibit
12 19, Your Honor

13 THE COURT All right
14 So as I understand it, you've withdrawn your
15 objections to 4 and 5 So those four exhibits
16 are without objection

17 ++++++++
18 (PROMISSORY NOTE AND
19 MORTGAGE WAS MARKED
20 FOR IDENTIFICATION
21 AS DEPOSITION EXHIBIT
22 NUMBER 4 AND 5 AND WAS
23 RECEIVED IN EVIDENCE)

24 ++++++++

25 BY MS GOLDING

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ROA_0324

4 20 09

1 Q Mr Brown, let me give you what
2 deposition -- excuse me, what Defendant's
3 Exhibits 4 and 5, Defendant Exhibit 4 is a
4 promissory note with Ameris Bank and Defendant
5 Exhibit 5 is the mortgage with Ameris Bank Do
6 you see those?

7 A Yes

8 Q To date, you personally are indebted
9 to Ameris Bank in the amount of five hundred
10 thousand dollars, is that correct?

11 A Yes

12 Q Okay And this is a debt that arose
13 in April of 2007, is that correct?

14 A Yes

15 Q And this debt is secured by a
16 mortgage also on the house that you and Mr
17 Johnson own is that correct?

18 A Yes, it is

19 Q And this mortgage has been in
20 existence in April 23 of 2007?

21 A Yes

22 Q Okay And to your knowledge this
23 mortgage still continues today on the property?

24 A Yes, it does

25 +++++

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ROA_0325

4-20-09

1 (APPRAISALS WERE MARKED
2 FOR IDENTIFICATION
3 AS DEPOSITION EXHIBIT
4 NUMBERS 18 AND 19 AND
5 WERE RECEIVED IN EVIDENCE)

6 ++++++

7 BY MS GOLDING

8 Q With respect to the appraisals that
9 have been discussed which have been introduced as
10 Defendant's Exhibits 18 and 19, let me give you
11 those two exhibits The two exhibits, Number 18
12 and 19, those two exhibits were done in the fall
13 of 2008, is that correct?

14 A Yes

15 Q Okay And both of these appraisals
16 show that the value of the property, the house of
17 Mr Johnson and yourself are valued less than the
18 three and a half million dollars, is that
19 correct?

20 A Correct

21 Q So as of when these appraisals were
22 conducted in September of 2008, there was no
23 equity in this house in September of 2008, is
24 that correct?

25 A That is correct

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ROA_0326

4 20 09

1 Q And in December of 2008, there was no
2 equity in this house, is that correct?

3 A That's correct

4 Q Okay Now, with respect to the
5 mortgage of Ameris Bank and the promissory note
6 for five hundred thousand to Ameris Bank, this
7 mortgage of Ameris Bank, that is a second
8 mortgage that was taken out after the mortgage to
9 SCB&T, is that correct?

10 A That is correct

11 Q And with respect to the mortgage that
12 J Conner holds today, the note and mortgage, the
13 note and mortgage of J Conner are still superior
14 to the mortgage to Ameris Bank today?

15 A That is correct

16 Q Now, when you started talking to
17 Wachovia Bank in September of 2008, at that point
18 in time in, September 2008, you had no desire to
19 liquidate any of your assets is that correct?

20 A That is correct

21 Q Okay And with respect to the
22 testimony that had on the record about protecting
23 your assets, your desire not to liquidate your
24 assets was that you wanted to protect your
25 assets is that correct, and that's why you did

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ROA_0327

4 20 09

1 not want to liquidate?

2 A Yes Correct

3 Q Okay One moment please Now, Mr
4 Brown, with respect to the SCB&T debt of three
5 and a half million, the note and mortgage, you
6 never asked SCB&T to cancel the note and mortgage
7 in the amount of three and a half million
8 dollars did you?

9 A No

10 Q And Mr Johnson, Mark Johnson, to
11 your knowledge he never asked SCB&T to cancel
12 SCB&T's note and mortgage in the amount of three
13 and a half million dollars?

14 A No

15 Q Okay And in fact, Mark Johnson, he
16 was not involved with respect to your and your
17 wife's communications with Wachovia and the
18 formation of J Conner, LLC is that correct?

19 A He was not

20 Q Okay Now, the negotiations that
21 were held with Wachovia, you know, those, excuse
22 me, negotiations that were held with SCB&T that
23 you met in November, those were negotiations with
24 respect to the purchase price You were trying
25 to reduce the purchase price of the outstanding

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ROA_0328

4 20 09

1 debt, is that correct?

2 A Yes

3 Q Now, with respect to the purpose of
4 the LLC, that purpose was to hold the note and
5 the mortgage that SCB&T had assigned to it, is
6 that correct?

7 A That's correct

8 Q Okay Mr Brown, with regard to Mr
9 Oskin, you saw him testify today, you've never
10 met Mr Oskin before today, have you?

11 A No, I have not

12 Q In fact, have you even met him today?
13 You've just seen him but you've never have met
14 and been introduced to him is that correct?

15 A We spoke in the hall

16 Q And you never at any time attempted
17 to participate in any type of scheme or
18 conspiracy or plan to defraud Mr Oskin in any
19 way have you?

20 A I did not

21 Q Okay And the same thing with Mr
22 Smith You heard Mr Smith testify today You
23 never at any time participated or in any way were
24 involved in any type of scheme to defraud Mr
25 Smith or his partner Mr Kanos at any time, were

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4 20 09

1 you?

2 A Are you sure of the name Smith?

3 THE COURT Mr Small

4 BY MS GOLDING

5 Q Mr Small, I apologize Thank you
6 Mr Small

7 A No, I did not

8 Q Okay And with respect to David
9 O'Connell, do you know him?

10 A No

11 Q Okay Have you -- do you know if
12 your wife knows him?

13 A She does not

14 Q Okay And did you in any way
15 participate in any type of scheme to defraud Mr
16 O'Connell?

17 A No

18 Q And with respect to you and your wife
19 and J Conner in particular, and particularly at
20 no time did you, your wife or J Conner, LLC ever
21 try to protect any assets of Mark Johnson so that
22 Mark Johnson can avoid paying creditors, did you?

23 A No

24 Q Okay I have no further questions
25 Thank you, Mr Brown

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ROA_0330

4 20 09

1 THE COURT Mr Masel
2 MR MASEL I have no
3 questions, Your Honor
4 THE COURT Any re-
5 direct?
6 MR BRUNTY Nothing,
7 Your Honor
8 THE COURT Thank you
9 You now may step down
10 THE WITNESS Thank you
11 (Mr Brown was excused from the
12 stand)
13 THE COURT Mr Brunty
14 MR BRUNTY Your Honor,
15 I was going to call Mrs Brown, but I don't think
16 I'm going to But I would like to publish some
17 responses -- some requests for admissions in
18 their responses into the record
19 THE COURT Okay And
20 were there any portions of her deposition that
21 you wanted to publish?
22 MR BRUNTY No
23 THE COURT No And
24 what about any portions of Mr Brown's deposition
25 that you want -- are there any additional

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ROA_0331

4 20 09

1 portions of Mr Brown's deposition that you
2 wanted to publish? |

3 MR BRUNTY No, Your
4 Honor

5 THE COURT Okay All
6 right Thank you

7 MR BRUNTY I am
8 reading from the Defendants, Michael Brown, Joan
9 Carter Brown and J. Conner, LLC responses to
10 Plaintiff's Request for Admission

11 THE COURT Yes, sir

12 MR BRUNTY Number 2,
13 that in December of 2008, Michael Brown obtained
14 a loan from Wachovia Bank, N A in the amount of
15 3 5 million dollars

16 Response Denied

17 Number 6, that Michael Brown or
18 someone acting on his behalf requested that
19 Wachovia Bank, N A wire the funds to obtained
20 and referred to in Numbers 2 or 3 above to
21 SCB&T

22 Response Denied

23 Number 8, that the amount referred to
24 in Number 6 was the balance then due on the note
25 to SCB&T Denied For the record, that's

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ROA_0332

4 20 09

1 referring to the wire 3 5 million

2 Number 18, that the 3 5 million
3 dollars and forty-four thousand, three hundred,
4 three dollars and thirty-one cents which were
5 delivered to SCB&T were Michael Brown's funds
6 that were funds loaned to Michael Brown and
7 others by Wachovia Bank, N A

8 Response Denied

9 Number 21, that you directed the
10 transfer of the note and the mortgage to J
11 Conner, LLC in order to prevent creditors of
12 Stephen Mark Johnson from affecting the title to
13 the property located at 8810 N Ocean Boulevard,
14 Myrtle Beach, South Carolina 29572

15 Response Denied

16 From response to request for
17 admissions on behalf of Stephen Mark Johnson,
18 Number 16, that you were aware on or before
19 December 30, 2008, that on November 3, 2008 Judge
20 Diane Goodstein granted Summary Judgment against
21 Mark Johnson and granted judgment in favor of
22 Robert Osk.n in the amount of one million
23 dollars

24 Response Admitted that this party
25 was present for and had knowledge of the results

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ROA_0333

4 20 09

1 of the November 3, 2008, hearing
 2 Number 17, and that you're aware of
 3 the entry of the judgment against Mark Johnson,
 4 a/k/a Stephen Mark Johnson, on or before December
 5 16, 2008

6 Response Admitted that this party
 7 was privy of and had knowledge of the results of
 8 the November 3, 2008 hearing

9 **THE COURT** And who are
 10 those responses on behalf of?

11 **MR BRUNTY** Stephen
 12 Mark Johnson

13 **THE COURT** All right
 14 Thank you

15 **MR BRUNTY** Number 20,
 16 that neither Michael Brown or Stephen Mark
 17 Johnson makes payments to J Conner for any
 18 obligations under the mortgage

19 Response Admitted that this party
 20 has made no payment to J Conner

21 **MR BRUNTY** That's all

22 **THE COURT** Thank you

23 **MS GOLDING** Your
 24 Honor, at this time is an appropriate time to
 25 make a motion for directed verdict I believe

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ROA_0334

4 20 09

1 Plaintiff has rested its case
2
3 THE COURT Yes
4 MS GOLDING Okay
5 THE COURT I think of
6 the motion for Non-suit
7 MS GOLDING A motion
8 for Non-suit?
9 THE COURT Or judgment
10 as a matter of law
11 MS GOLDING Judgment
12 as to matter of law Thank you That's always
13 confused me I think federal court is a ---
14 THE COURT You're
15 exactly right
16 MS GOLDING I
17 apologize, Judge
18 Well, with respect to the Statute of
19 Elizabeth claim, Your Honor, it's very clear that
20 only the debtor is able to pay creditors But,
21 and the debtor in this case is Mark Johnson and
22 the creditors are the Plaintiff It's very clear
23 that Mr and Mrs Brown and J Conner, LLC were
24 never debtors of the Plaintiffs
25 So the very basic tenant of the
Statute of Elizabeth is simply not applicable in

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ROA_0335

4 20 09

1 this case There are cases that referred out of
2 this jurisdiction, but clearly the South Carolina
3 Supreme Court has held that the status of the
4 debtor and the creditor and the obligations under
5 those As the Court has stated, there were two
6 situations where a claim can be made And that's
7 the grantor's property transferred without
8 consideration with intent to defraud grantor's
9 creditors The grantor was SCB&T The grantor's
10 creditors, none of the Plaintiffs were the
11 grantor's creditors

12 The second item was the grantor's
13 property transferred for valuable consideration
14 with intent to defraud grantor's creditors and
15 intent to defraud is imputable to grantee

16 There again, the grantor is SCB&T
17 SCB&T has been dismissed from this case Even if
18 it were in this case, it still would be
19 applicable But the dismissal by the Plaintiff
20 shows you that there is no basis to their claim
21 under the Statute of Elizabeth, Your Honor

22 The key is that the Plaintiffs are
23 not grounds creditors That is the underlying
24 factor in this whole case And it simply is
25 against South Carolina Supreme Court decision and

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ROA_0336

4 20 09

1 State law to say in any way that J Conner, LLC
2 or the Browns are in any way indebted to the
3 Plaintiffs or that the Statute of Elizabeth
4 should be invoked

5 In this case there was no property,
6 as we say, transferred by the grantors There
7 was an assignment of a note and mortgage SCB&T
8 was the owner, the holder, of that note and
9 mortgage Holder in due course, Your Honor The
10 grantee here is J Conner, LLC Both Mr Oskin
11 and Mr Small testified that there was nothing
12 improper about SCB&T transferring the note and
13 mortgage There was valuable consideration for
14 the assignment

15 As Mr Scott testified, the debtor,
16 the borrower is J Conner, LLC As Mr Scott
17 testified Mrs Brown's, and she's the member as
18 in the exhibits, and the purpose under the
19 operating agreement is to hold the note and
20 mortgage There is nothing nefarious about that

21 As testified by Mr Brown is that Mr
22 Johnson is still obligated, as is Mr Brown But
23 the purpose is, Mr Johnson is going to pay And
24 it's his primary -- it's his obligation There
25 was never any intent to defraud any type of

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ROA_0337

4 20 09

1 creditors even if there was not a requirement
2 that there be any type of debtor/credit status
3 I think it's important to note that with respect
4 to the note, Mr Brunty or the Plaintiffs were
5 saying that the promissory note was paid off

6 Well, South Carolina law is very
7 clear that the promissory note it had a future
8 advances clause The future advances clause in
9 and of itself makes it, it cannot even if the
10 note were paid off, the mortgage would still
11 exist But the note was not paid off The note
12 exists today Mr Johnson is obligated under it
13 and Mr Brown is obligated Just because
14 somebody doesn't make a payment under it, doesn't
15 mean that the note is not ineffective
16 Nonpayment doesn't mean the note is obviated
17 You know, the proceeds of the loan were from
18 Wachovia The LLC was the borrower The
19 proceeds of the loan were for utilization to
20 obtain the assignment There was consideration
21 for the assignment

22 Now, this is a case in where three
23 and a half million dollars existed in November of
24 2006 It was a valid transaction in November of
25 2006 That three and a half million dollars

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ROA_0338

4 20 09

1 exists still today And it is not something that
2 was created, devised or in any how conjured up to
3 defraud anybody It was a valid existing debt
4 back there and it's a valid existing debt today

5 You know, the future advances clause,
6 you know, Mr Brown's already testified that Mrs
7 Brown has put in twenty thousand dollars And
8 clearly he's testified that that money is
9 something that will go under the future advances
10 But you don't have to have any advances to make
11 that mortgage valid Just the fact that that
12 clause exists is the validity for the existence
13 even if the note were not paid Even if the note
14 were paid

15 But the bottom line is, Your Honor,
16 is the note is still outstanding and the note is
17 still due by Mr Johnson and Mr Brown And it's
18 the testimony of Mr Brown that Mr Johnson's
19 going to pay that note

20 Your Honor, you know, the Plaintiffs
21 have to show that they were prejudiced in some
22 way That there had something that they lost
23 They haven't lost anything, Your Honor There
24 was no equity in the house in December There's
25 no equity today They have not lost anything

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ROA_0339

4 20 09

1 They haven't been prejudiced It is the
2 continuation of an existing valid debt

3 Both of the arguments I have asserted
4 go to both the claims and the claims of the
5 State Well, Your Honor, I guess the State is
6 not here to put up any money and they should be
7 dismissed as a matter of law Put up any
8 evidence, Your Honor I apologize And they
9 should be dismissed as a matter of law

10 But as I stated, Your Honor, the --
11 J Conner, LLC is a valid legal entity It's
12 considered by a national bank to be a valid legal
13 entity It is a entity that was created for the
14 purpose of holding a note and mortgage Nobody
15 disputes that And that is a valid legal
16 purpose It was not created to in some way
17 defraud any type of Plaintiffs It was created
18 for a valid business reason to hold the note and
19 mortgage And Mr Brown's activities, he's an
20 owner of a property He has a right to have the
21 activities relating to the property His payment
22 of the taxes, his payment of insurance are his
23 obligations with respect to the property that
24 he's fulfilling as a property owner

25 And Your Honor, we respectfully

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ROA_0340

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1 request the Plaintiff's complaint be dismissed
2 with prejudice Thank you

3 THE COURT Mr Brunty

4 MR BRUNTY Thank you,

5 Your Honor

6 I can talk for a long, long time
7 about this subject

8 THE COURT I know you
9 have I've heard you say it before, Mr Brunty

10 MR BRUNTY I'll
11 address some of the issues If the Court wants
12 to ask me questions, please feel free

13 THE COURT Let me ask
14 you one thing The State of South Carolina is
15 named a party only because of the fraudulent
16 conveyance statute, is that correct?

17 MR BRUNTY Yes And
18 they're entitled to one of the penalty If the
19 Court wants to step in and give all the penalty
20 to the Plaintiffs, I will not object to it

21 Ms Golding refers to the person or
22 argument, the fact that the fraudulent conveyance
23 statute, her Statute of Elizabeth is the
24 fraudulent conveyance statute It addresses all,
25 gifts, grants, transfers and advances of and

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1 conveyances of lands which may be had or made to
2 or for any intent or purpose to delay, hinder or
3 defraud creditors That's a mouth full of words
4 It sounds old, it is old

5 The cases cited in Defendant's brief
6 and referred to by Ms Golding, there are many
7 that talk about a winning conveyance What
8 creditors and others can do to set aside a
9 fraudulent conveyance Now, Ms Golding, when
10 she was arguing to the Court, I paid close
11 attention to this, she said a grantor has to
12 transfer its property, a grantee has to accept
13 the transfer of the property

14 There's a subtle yet very important
15 distinction in that case law and in that
16 language Those cases say conveyance of
17 property The conveyance of property when this
18 was written in 1585 in England and adopted here
19 in South Carolina in 1712, was the transfer of
20 legal title to property by way of deed That is
21 what a conveyance is Those cases all refer to
22 somebody taking real property and deeding it away
23 to somebody else That's a conveyance

24 South Carolina cases for years have
25 held that giving a mortgage, granting a mortgage,

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1 alienating property, transferring property
2 mortgage rights, rights and property other than
3 conveyances are subject to the statute

4 There is a mortgage, there's a case
5 that is cited in Plaintiff's multiple filings
6 with this Court, that deal with mortgages That
7 case applies to this case, not the conveyance
8 cases So I would submit that the statute
9 absolutely applies and absolutely applies to the
10 parties in this case

11 As Plaintiffs pointed out on numerous
12 occasions, this statute is to be applied
13 liberally against the defendants

14 It is meant to protect creditors and
15 others The Plaintiffs are creditors and others
16 of any money that they have a claim The
17 creditors and others term is defined as someone -
18 - if you are a creditor or other of someone if
19 you have a claim against their rights, title,
20 interest, et cetera

21 Mr Oskin, in particular, and this
22 has been agreed, was a creditor or other of
23 anybody who owned property, as Mr Johnson, he
24 had the ability to partition the property, to
25 sell it, to satisfy his obligation that his

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1 judgment that's set out in a case like this -- I
2 don't remember the name of it off the top of my
3 head I apologize He can sell it subject to
4 that Ameris Bank loan But the efficacy of the
5 Ameris Bank loan and the future advance clause,
6 I'll show that to the Court in a little bit,
7 that's something to be decided later at a
8 supplemental hearing to sell off this judgment if
9 the payment to SCB&T is deemed to have paid for
10 the obligation within the payment by or on behalf
11 of the obligors of the note, which Plaintiffs
12 certainly believe it was under the South Carolina
13 UCC and other cases Your Honor is familiar with,
14 in South Carolina, Jeffcoat case

15 Ms Golding also made a good
16 distinction that I think is important for the
17 Court The debt and taking out the debt and
18 paying 3 5 million dollars, that's not the fraud
19 That's not a conveyance But keeping the
20 mortgage in place as a shield to protect the
21 property from someone seizing on it, that's where
22 the problem of conveyance occurs And there are,
23 there's a case out of Michigan that is cited in
24 my brief in the ALR, or excuse me, the CJS that
25 says keeping a mortgage in place after payment as

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1 a shield is a fraudulent conveyance

2 South Carolina law has a similar law

3 But in the very next section in CJS, a South
4 Carolina case, is cited for support of the
5 position that keeping a judgment in place after
6 payment as a shield to creditors is a fraudulent
7 conveyance That's Booth v Morah It's so old
8 it doesn't have a year, a case cite It dates
9 back when we only had one court and the reporter
10 I think is Brevard I think is the reporter

11 But that's referred to in CJS Section
12 55 and 54 is the mortgage case out of Michigan
13 So that's -- I can -- I'd be glad to address any
14 other issues that the Court has But the
15 Plaintiffs have certainly proven their case in
16 this matter and ask that The Court deny the
17 Defendant's motion for let the matter proceed

18 **THE COURT** Let me ask
19 you this, what is the burden of proof in a
20 fraudulent conveyance action? Is it by the
21 preponderance of the evidence?

22 **MS GOLDING** It's clear
23 and convincing, Your Honor

24 **THE COURT** It's clear
25 and convincing?

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1 MR BRUNTY I think
2 that was addressed I'm pretty sure it's a
3 preponderance of the evidence because that was
4 addressed in the Rorrer case The Rorrer case,
5 as cited, dealt with a ---
6 THE COURT I'm sorry,
7 which case?
8 MR BRUNTY Rorrer R-o-
9 r-r-e-r
10 MS GOLDING Is that a
11 South Carolina case?
12 MR BRUNTY It's a
13 South Carolina case I actually worked on that
14 case with Sid Conner It dealt with a -- it's
15 the gambling statute that was both remedial and
16 punitive The fact that it had a penalty in it,
17 the Court of Appeals said did not raise the
18 standard of proof beyond preponderance
19 THE COURT But this is
20 a fraudulent conveyance action Fraud has a
21 clear and convincing burden of proof Ms
22 Golding
23 MS GOLDING I
24 understood it to be clear and convincing I was
25 trying to find, I had it in my research file, but

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ROA_0346

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1 I can't find the case I do know that fraud is
2 required to be clear and convincing, Your
3 Honor

4 **MR BRUNTY** We had
5 commented on fraudulent conveyance statutes and
6 fraud in general, but specifically to Fraudulent
7 Conveyance Statute, saying you're not going to
8 have people on the witness stand testify and
9 swear to the fraud The Court has to look into
10 the evidence Look beyond the mere form of
11 transactions and see what happened or what
12 actually -- actually the result of their actions
13 were So I think we met any standards based on
14 the knowledge of the parties at the time The
15 occurrence of the events forming the company at
16 the time it was formed

17 **THE COURT** You think
18 you've met clear and convincing?

19 **MR BRUNTY** I'm pretty
20 sure I met clear and convincing ---

21 **THE COURT** You know
22 you've met a preponderance of the evidence and
23 you think that you've met clear and convincing?

24 **MR BRUNTY** I'm -- I'd
25 be surprised if I haven't, Your Honor

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4 20 09

1 **THE COURT** Well, I
2 guess that's the first thing that we need to know
3 is what's the burden of proof, what's the
4 standard

5 I am not going to grant a non-suit
6 I think I have everything before me right now
7 I'm just going to render a decision And I'm
8 going to take it under advisement

9 **MS GOLDING** Your
10 Honor, I have -- this was my Motion I have -- I
11 have -- I need to put up Ms Brown

12 **THE COURT** Oh, you're
13 going to put up your witness You're going to
14 put up -- I'm sorry I thought -- I did not
15 realize you were going to put her up

16 **MS GOLDING** Yes,
17 because he didn't, I will put up Mrs Brown

18 **THE COURT** Very good

19 **MS GOLDING** Okay

20 Thank you

21 **THE COURT** I'm sorry, I
22 did not mean to cut you off

23 **MR MASEL** Excuse me
24 Maybe even before we do that, if I could get on
25 the record with my motion as well on behalf of

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4 20 09

1 Mark Johnson

2 THE COURT Absolutely

3 MR MASEL It's a

4 little more simple because I think what the
5 Court's seen is that the evidence in its entirety
6 that's been presented here as pertains to Mark
7 Johnson, is that he is a debtor And that is
8 where his role in this case and under the cause
9 of action of fraud stops

10 He had no communications with SCB&T
11 He made no payment to SCB&T as part of that
12 transaction and he had no role in that
13 transaction I think everyone whose testified
14 said that it was just -- he was excluded from
15 that He had no conversations with Wachovia He
16 was not a customer with Wachovia in that he had
17 no role in the transaction with Wachovia Bank

18 There's been no evidence presented
19 that Mr Johnson did anything on behalf of
20 Michael Brown or Joan Conner Brown and on behalf
21 of the J Conner, LLC And there's been no
22 evidence that any of those entities did anything
23 directly on his behalf

24 With all that being said, there's no
25 evidence that Mark Johnson made any payoff To

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1 the contrary, he's been broke He owes everybody
2 in this case money He was not part of any alter
3 ego relationship At all times during this case
4 he's acknowledged his status as the judgment
5 debtor to Mr Oskin, the judgment debtor to Mr
6 O'Connell and the debtor under the promissory
7 note with Mr Small and Mr Kanos But that is
8 where the evidence stops in this case as far as
9 Mark Johnson goes And because of that, there's
10 no evidence to support a finding against him as
11 to either of the causes of action in this
12 case

13 **MR BRUNTY** Your Honor,
14 Plaintiffs cited in their pre-trial brief a case
15 that, a South Carolina case involves the
16 knowledge of attorneys imputed to his or her
17 client Mr Masel represented Mr Johnson and
18 Mr Brown and Ms Brown prior to this
19 transaction I think he's had a longstanding
20 relationship with Mr Johnson He closed a loan
21 on the Edenton property He, Your Honor, has
22 heard testimony from both Mr Oskin and Mr
23 Small Dealt with them directly on both the
24 negotiation of the amounts owed to Mr Oskin and
25 the drafting of the note itself to Mr Small He

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ROA_0350

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1 was aware that those amounts weren't paid That
2 knowledge would be imputed to Mr Johnson for the
3 case against him

4 As to his knowledge of the actual
5 transaction, Mr Masel, Mr Johnson -- Mr Brown
6 testified Mr Masel represented him with regards
7 to the purchase of the note from SCB&T So Mr
8 Masel was aware of the entity formation and
9 structure, et cetera, that they were trying to do
10 the note to SCB&T who housed and put into another
11 entity either held directly by Mr Brown at the
12 beginning or ultimately an entity Mr Masel had
13 full knowledge of that and that knowledge would
14 be imputed to Mr Brown, or Mr Johnson, excuse
15 me

16 In addition, Mr Johnson has remained
17 in the house, has not made a payment to rent or
18 otherwise on the note that's alleged to still be
19 open and owing He's not made a demand that the
20 mortgage be satisfied so that his interest in the
21 property could be made free and clear He has
22 been complicit in everything that has transpired
23 with these events

24 I ask the Court to look at the Badges
25 of fraud, which in cases like this and South

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ROA_0351

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1 Carolina has adopted them, has held that in cases
2 under the Statute and involving fraud generally,
3 Plaintiffs often must prove fraud, through the
4 use of circumstantial rather than direct
5 evidence

6 Now, denying that there were nine
7 badges of fraud that had been cited universally
8 on this Uniform Code and South Carolina has
9 indeed adopted those They include insolvency or
10 the indebtedness of the debtor While Mr Masel
11 has indicated Mr -- and Mr Brown has testified
12 that Mr Johnson doesn't have any money

13 Lack of consideration for the
14 conveyance Our Plaintiff's argument is that the
15 note was paid off thereby extinguishing the
16 mortgage Any mortgage that J Conner can have
17 would be one granted by Mr Brown and Mr Johnson
18 as the owners of the property If that is indeed
19 the case, there was that mortgage granted by
20 them There's no consideration for it Because
21 that consideration was paid to satisfy the
22 obligation

23 The relationship between the
24 transferor and the transferee, that doesn't, that
25 speaks to more of husband giving his wife her

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ROA_0352

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1 property In this situation, we have the entity
2 that he supposedly owes money to is his aunt and
3 she's not seeking any payment The present
4 litigation, at the time of the transfer holds the
5 goings on there was obviously litigation that had
6 already been instituted and there was certainly a
7 judgment of owing money to Mr Small Secrecy or
8 concealment between and among the parties, apart
9 from the usual method of business transfer of
10 debtor's entire estate This is not a transfer
11 of his estate, but all of Mr Johnson's equity
12 was held up in this transaction, this transfer

13 Reservation of benefit to the debtor,
14 he's reserved that debt He still lives in the
15 house rent free He isn't paying anybody
16 anything He's not paying them, he's not paying
17 them That's one of the badges of fraud

18 And the retention of the benefit of
19 or possession of the property is establishment
20 It is absolutely, he's realizing that benefit

21 Again, badges of fraud was adopted
22 in these cases because you're not going to get
23 witnesses to the stand to testify and have a
24 Perry Mason moment where they admit, oh, yeah, I
25 did it, here's why I did it

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ROA_0353

4 20 09

1 Courts use it to look at, they look
2 beyond the word, and look actually what happened
3 **THE COURT** Well, thank
4 you very much Ms Golding, you may put up your
5 witness

6 **MS GOLDING** Thank you,
7 I call Ms Brown to the stand

8 **THE COURT** And I
9 apologize for trying to cut you off earlier

10 **MS GOLDING** That's all
11 right

12 ++++++
13 Whereupon,

14 (JOAN CONNOR BROWN, having been duly
15 sworn, testified as follows

16 **THE COURT** And if
17 you'll have a seat and state your full name

18 **THE WITNESS** Joan
19 Conner Brown

20 **DIRECT EXAMINATION**

21 **BY MS GOLDING**

22 **Q** Good afternoon, Ms Brown Would you
23 -- you've told the Court your full name Would
24 you please tell the Court where you live and who
25 you're married to?

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4 20 09

1 **A** I'm married to Michael Brown I live
2 in Charlotte, North Carolina

3 **Q** And can you tell us a little bit
4 about your education and your work history?

5 **A** Well, I never worked I raised
6 children

7 **Q** Okay

8 **A** I went to three and a half years of
9 college And then Mike and I got married And
10 so I didn't finish school

11 **Q** Ms Brown, I'm going to give you
12 three documents, exhibits, Defendant's Exhibits
13 11, 16 and 17

14 **A** Okay

15 **MS GOLDING** Do you
16 have any objection to these?

17 **MR BRUNTY** No
18 objection, Your Honor

19 **MS GOLDING** Since he
20 has no objection, Your Honor, I'm going to offer
21 into evidence Defendant's Exhibits 11, 16 and 17

22 **THE COURT** 11, 16 and
23 17?

24 **MS GOLDING** Yes,
25 ma'am

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ROA_0355

4 20 09

1 THE COURT Admitted
2 without objection
3 +++++
4 (CERTIFICATE OF RESOLUTION,
5 UNCONDITIONAL GUARANTEE
6 AND MINUTES OF SPECIAL
7 MEETING WERE MARKED
8 FOR IDENTIFICATION
9 AS DEFENDANT'S EXHIBIT
10 NUMBERS 11, 16 AND 17
11 AND WERE RECEIVED IN EVIDENCE)
12 +++++
13 MS GOLDING Thank you
14 BY MS GOLDING
15 Q I'm not going to hand them to you now
16 because the attorney has agreed they can come in
17 A Oh, okay
18 Q Thank you Ms Brown, is J Conner,
19 LLC, what was your maiden name?
20 A Conner
21 Q Okay And is that the reason that
22 the LLC was formed using your maiden name?
23 A Yes
24 Q And why was the LLC formed?
25 A Well, to hold the mortgage

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ROA_0356

4 20 09

1 Q And is that holding the note and the
2 mortgage?
3 A Yes
4 Q Okay And does the LLC own anything
5 else other than this promissory note and mortgage
6 from SCB&T?
7 A No
8 Q Okay And who owes the LLC money on
9 this notes and mortgage?
10 A Well, Mark Johnson for one
11 Q Okay And that is your nephew?
12 A Yes, he's my nephew
13 Q And what are your expectations about
14 Mr Johnson, Mark Johnson, paying the LLC for the
15 monies?
16 A Well, I hope eventually he will be
17 able to do so
18 Q Okay Ms Brown, have -- before
19 today, have you ever met Mr Oskin and Mr Small?
20 A No
21 Q Okay And do you know a Mr Kanos?
22 A No
23 Q Do you know a David O'Connell?
24 A No
25 Q Have you ever been in business with

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ROA_0357

4 20 09

1 Mr Oskin, Mr Small, Mr Kanos and David
2 O'Connell?

3 A No

4 Q Now, the LLC with respect to J
5 Conner, LLC, have you put money into that LLC?

6 A Yes

7 Q And as of today, how much have you
8 put in?

9 A Twenty thousand

10 Q Okay And is that a future advance
11 that you expect Mark Johnson to pay back?

12 A Yes

13 Q And with the LLC, your LLC borrowed
14 three and a half million dollars from Wachovia?

15 A Yes

16 Q And that three and a half million
17 dollars, did any of your personal assets used to
18 go to secure the three and a half million?

19 A Yes

20 Q And what was that?

21 A I don't know the amount

22 Q Not the amount, but wasn't it an
23 investment account?

24 A Oh, yes -- yes

25 Q Okay And my understanding is Mr

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ROA_0358

4 20 09

1 Scott or someone testified earlier that you had
2 an investment account at Wachovia

3 A Well, most of mine is now with ---

4 Q This other company?

5 A Yes

6 Q And with respect to -- you also have
7 a checking account?

8 A Yes

9 Q Okay Do you maintain your own
10 checking account?

11 A Uh-huh (yes)

12 Q Okay Thank you One moment,
13 please Please answer any questions that the
14 Plaintiff's counsel may have

15 A Okay

16 ++++++

17 CROSS EXAMINATION

18 BY MR BRUNTY

19 Q Good afternoon, Ms Brown

20 A Good afternoon

21 Q I met you at your deposition Again,
22 I'm Mark Brunty Good to see you this afternoon

23 A Yes

24 Q Have you had any other business
25 interest, owned any other business interest, LLCs

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ROA_0359

4 20 09

1 besides J Conner?

2 A No

3 Q Okay Did you negotiate with SCB&T
4 for the purchase of the note?

5 A No

6 Q Did you negotiate with Wachovia the
7 terms of the loan that they were going to give
8 you?

9 A I didn't directly

10 Q Okay And what's your understanding
11 of why J Conner was born?

12 A To hold the mortgage

13 Q Okay Was it to protect your assets?

14 A That also

15 Q Okay And what's your understanding
16 of how J Conner was born to protect your assets?

17 A So that people wouldn't take my
18 money

19 Q Okay

20 A Or the bank wouldn't take my money

21 Q The bank wasn't going to take your
22 money

23 A I don't want them to

24 Q You said that twenty thousand dollars
25 was a future advance under the mortgage, is that

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ROA_0360

4 20 09

1 your understanding?

2 A That's my understanding

3 Q And how did you make that future
4 advance?

5 A By check

6 Q Okay And you paid it -- you put
7 money into an account at Wachovia for payments?

8 A Yes, I put it into the ---

9 Q Do you know when that happened?

10 A Well, no, I don't

11 Q Okay That had not happened as of
12 October of last year, is that correct?

13 A No, it was after that

14 Q Prior to November or, excuse me,
15 December 16, 2008, what type of work had you done
16 for J Conner?

17 A There's no work to be done

18 Q Okay After December 16, what has
19 been your role with J Conner, December 16, 2008?

20 A What do you mean by role?

21 Q Well, what have you done as a member
22 of J Conner since December 16, 2008?

23 A I don't know what you're saying I
24 don't know what you're talking about

25 Q Okay Does J Conner have any

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ROA_0361

4 20 09

1 business activities?

2 A No

3 Q Okay You don't hold any meetings or
4 anything like that?

5 A Well, we had a meeting, yes

6 Q Okay Since December 16, 2008, have
7 you received any payments from either Mr Brown
8 or Mr Johnson?

9 A No

10 Q Have you asked either one of them to
11 pay your LLC for the amounts owed?

12 A No

13 Q Why was the money transferred to
14 SCB&T?

15 A To buy the mortgage

16 Q Okay Was it because your husband
17 had an obligation there?

18 A Yes, as well as Mr Johnson

19 Q Okay And they were obligors to
20 SCB&T?

21 A Well, they owed the money, I mean ---

22 Q Okay That was your understanding
23 was that they were obligors to SCB&T under the
24 note and mortgage that you now own?

25 A Yes

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ROA_0362

4 20-09

1 Q And sorry to be repetitive, but
2 you're not asking your husband for any payments
3 on that note correct?

4 A Well, no I just want Mr Johnson to
5 pay it

6 Q Okay But your husband has the
7 wherewithal and the ability to pay you on that
8 note right?

9 A Yeah, I guess

10 Q Okay Do you have any testimony as
11 to how much that mortgage is worth that you
12 bought from SCB&T?

13 A It's worth less than it was to begin
14 with At first it was appraised at four thousand
15 -- four million and then it was reduced to two
16 million something

17 Q And that's the property But the
18 mortgage that you paid 3 5 million dollars for,
19 do you know how much that is worth? Do you have
20 any testimony?

21 A Do I know how much the mortgage is
22 worth?

23 Q Yes

24 A Well, what does it --- I don't know

25 Q You paid 3 5 million dollars for it?

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ROA_0363

4 20 09

1 **A** Yeah

2 **Q** Okay Is it your normal practice to
3 buy an asset, a mortgage that is worth 3 5
4 million dollars that secures a note on property
5 worth a million dollars less?

6 **A** I'm hoping the property will increase
7 in value when the business climate improves

8 **MR BRUNTY** All right
9 I don't have any further questions Thank you

10 **MS GOLDING** Nothing
11 further, Your Honor

12 **MR MASEL** No
13 questions

14 **THE COURT** Ms Brown,
15 you may step down Thank you very much

16 **THE WITNESS** Thank you

17 **MS GOLDING** Your
18 Honor, the only other thing we would offer would
19 be the deposition of Jim Boyd And I, being the
20 hour of the day, I have no problem just giving to
21 the Court and you can read it at your leisure

22 **THE COURT** Okay

23 **MR BRUNTY** No
24 objection to that, Your Honor

25 **MS GOLDING** I'll give

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ROA_0364

4 20 09

1 you the original transcript, Your Honor

2 THE COURT Thank you
3 very much Could you refresh my memory as to who
4 ---

5 MS GOLDING Mr Boyd
6 is the loan officer with SCB&T and his testimony
7 relates to the purchase and assignment of the
8 note and mortgage

9 THE COURT All right
10 And do I need -- are there certain portions or --
11 it looks very, very short Shall I just read all
12 of it?

13 MS GOLDING Please,
14 Your Honor

15 MR BRUNTY It was
16 brief, Your Honor

17 MS GOLDING Yes, it
18 was

19 THE COURT And are
20 there sections of -- was Mrs Brown deposed?

21 MS GOLDING Yes, she
22 was

23 THE COURT Are there
24 any sections of her deposition that need to be
25 read?

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ROA_0365

4 20 09

1 MS GOLDING No, Your
2 Honor
3 THE COURT Now, do I
4 have -- I guess I have everybody's email address,
5 is that correct
6 MS GOLDING Correct
7 MR BRUNTY You do
8 THE COURT And I will
9 get back to y'all I hope fairly shortly I'm
10 behind with my foreclosures
11 MS GOLDING We
12 understand the work load
13 THE COURT But I know
14 this is very important to everybody and I will
15 try to get back with you as quickly as I possibly
16 can about the proposed order I know you've
17 already done -- y'all have done substantial work
18 Everybody's done substantial work with your pre-
19 trial briefs and your exhibit list and I
20 appreciate that So the next thing would just be
21 a proposed order And I'll get back with you I
22 don't anticipate asking everybody to do a
23 proposed Order I will get back with you and ask
24 one party to do a proposed Order
25 MS GOLDING Thank you,

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HEARING

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4 20 09

1 Your Honor

2 **MR BRUNTY** Thank you

3 **THE COURT** Thank you

4 very much We're in recess

5 (Whereupon, the hearing was

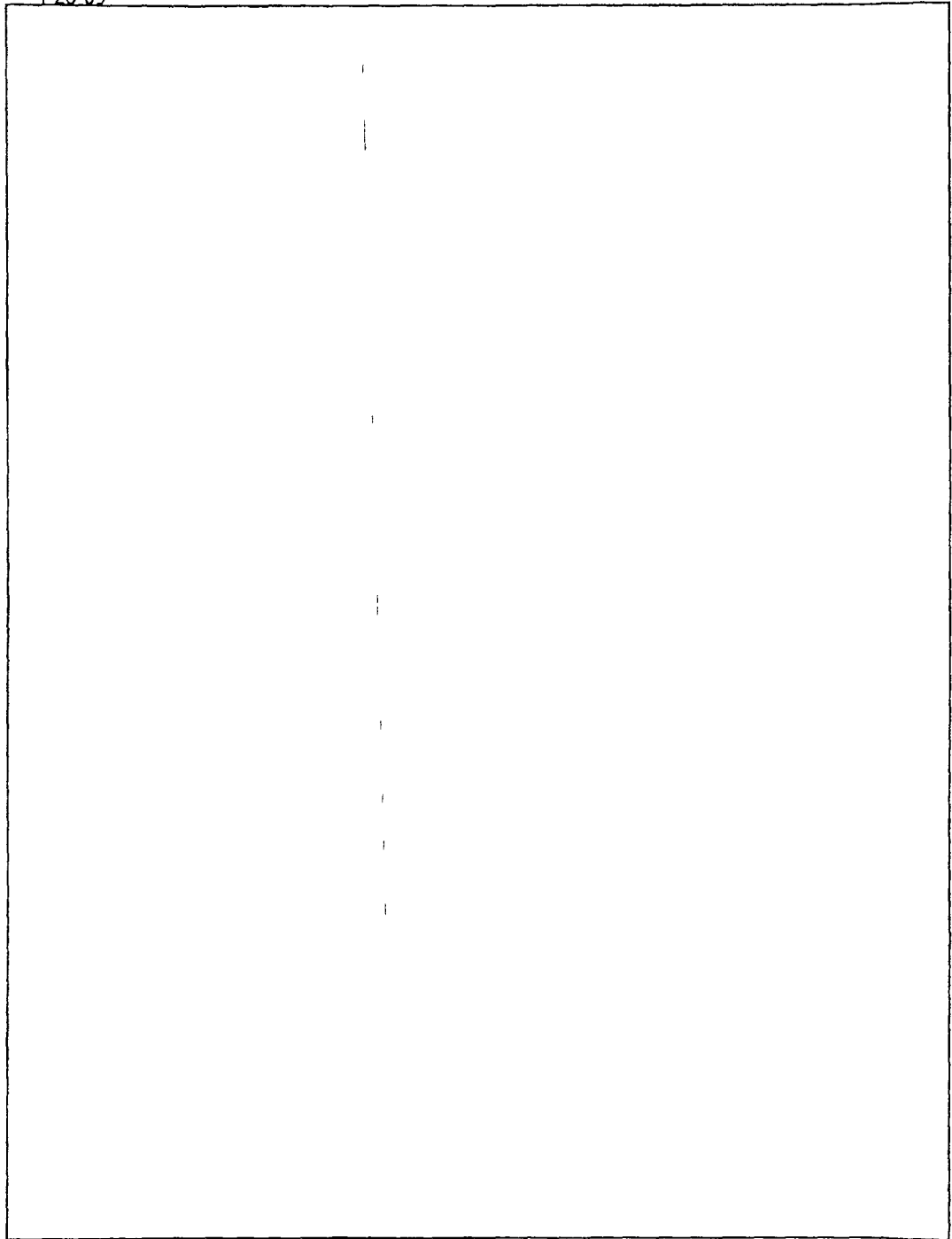
6 concluded)

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4 20 09

1 CERTIFICATE

2 STATE OF SOUTH CAROLINA

3 COUNTY OF HORRY

4 I, Debbie Rayl,

5 Professional Verbatim Reporter and Notary Public
6 for the State of South Carolina, certify that I
7 the foregoing proceeding to appear before me at
8 10 00 a m on the 15th day of February, 2010, in
9 the Horry County Courthouse, Master-in-Equity
10 Court, Conway, South Carolina, that the foregoing
11 pages constitute a true and accurate transcript
12 of the testimony given at that time and place

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

17 IN WITNESS WHEREOF I have hereunto
18 set my hand and seal this 9th day of April, 2010
19

20 _____
21 Debbie Rayl, Notary Public

22 My Commission expires January 4, 2011

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ORAL DEPOSITION OF JIM BOYD

JUNE 24 2009

ROBERT W OSKIN GLENN SMALL AND FREDI KANOS

VS

STEPHEN MARK JOHNSON MICHAEL BROWN JOAN CONNER BROWN
J CONNER LLC AND SOUTH CAROLINA BANK AND TRUST N A

CIVIL ACTION NO 2009 CP 26 3470

REPORTER CECILIA P ENGLERT

ROA_0370

JIM BOYD

1 Q She was kind of in charge of it at the
2 beginning?

3 A Yes

4 Q Is it Ms Wilson that Mr Brown or Mr Masel
5 or someone on behalf of the borrowers would have
6 contacted, to approach them about paying \$2 5 million
7 rather than \$3 5 million?

8 A Probably so

9 Q Okay Wouldn't have been Mr Goette?

10 A No, no Typically it would come through the
11 lender, and then she would get Jack involved in making
12 such a decision, so --

13 Q When you say the lender" you mean Ms
14 Wilson?

15 A Yes

16 Q Okay Do you remember what happened after
17 November 6th 2008, your email? What happened after
18 that?

19 A Basically we just -- Scott talked about
20 buying our new mortgage, and we put that into place to
21 have the new mortgaged assigned to whoever it was that
22 was going to buy it

23 Q And who was going to buy it? Do you know?

24 A Was an LLC I think it must be the J
25 Conner LLC

JIM BOYD

1 the road

2 Q You didn't have any type of -- you
3 personally didn't have any type of discussions with
4 Mr Masel or Mr Brown about taking less --

5 A No

6 Q -- did you?

7 A Uh-uh No

8 Q You got involved after they had made their
9 request and you said there was --

10 A That's it, that was the beginning of my
11 involvement And then from there it was just -- well
12 then, what's the alternative?

13 Q And you informed them that you would sell it
14 to someone for the full face amount, whatever's due --

15 A Correct

16 Q -- late charges, etc ? And that s
17 ultimately what you --

18 A Right

19 Q -- what you received, correct?

20 A Right

21 Q Would it change how you disposed of the note
22 and mortgage if you were told in the beginning or told
23 now that the money was not, in fact, the LLCs, but it
24 was Mr Brown s or Mr Johnson s, the two borrowers

25 A I can t answer that As I -- as I told them

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ROA_0372

JIM BOYD

1 before, that you can't buy your own note that's
2 called a payoff That in order to sell a note, a
3 mortgage it has to be to a third party, and that's
4 what took place And the money came in from
5 Wachovia's wire That's as far as I looked into it

6 Q Okay Did you look at the wiring
7 instructions from Wachovia? Or the wiring information
8 from Wachovia?

9 A The wiring information is ours You list
10 your bank name you list your account number, your
11 routing and transit number, and you list the account
12 that -- that the money is to be applied to And as
13 far as I know, that was the instructions that was sent
14 to Wachovia to wire it

15 Q Okay Wachovia's wiring information lists
16 beneficiaries as Mr Johnson and Mr Brown did you
17 see that?

18 A No

19 Q You said that you can't buy your own note
20 Why can't you buy your own note?

21 A Because it's called a payoff It has to be
22 some -- I'm not sure what the statute is that -- that
23 may prohibit that, but you -- you don't buy your own
24 note back you pay it off

25 Q And how do you know that?

JIM BOYD

1 A How do I know that? Thirty-eight years of
2 being in the business

3 Q Okay That s what I was hoping you d say
4 So for instance if I owed SCB&T a hundred dollars and
5 I gave you a hundred dollars today to pay off that
6 note, and I told you, This is my hundred dollars
7 give me my note what would SCB&T need to do? Or
8 what could it do, at that point?

9 A It would mark the note paid '

10 Q So your understanding of the transaction was
11 that a different' -- this is your understanding -- a
12 different unrelated LLC company was going to buy the
13 note that you held

14 A Right '

15 Q And that those funds when they hit your
16 SCB&T when they made it here, you were then to assign
17 the note and mortgage to that company

18 A Correct

19 Q And other than Mr Masel you didn't have --
20 you and Mr Boyd didn t have any discussions with
21 anyone else related to this case is that right?

22 A Correct

23 Q Nobody else related to the mortgage

24 A Correct

25 Q You didn t have any meetings with Mr Brown?

JIM BOYD

1 A Okay Good

2 MR BUTLER Mr Boyd do you need to take a
3 break?

4 THE WITNESS No, I m good

5 MR BUTLER I just have two follow-up
6 questions for you

7 THE WITNESS Okay All right

8 EXAMINATION

9 BY MR BUTLER

10 Q My name is Dan Butler and I represent Mr
11 Brown Mrs Brown and J Conner LLC Now Mr Boyd
12 before this -- before you sold the note and mortgage
13 to the J Conner LLC have you been involved in
14 transactions similar to this?

15 A Yes

16 Q And do you recall an estimate of how many
17 times you ve done this?

18 A At this bank it s kind of been a new process
19 because of just the economic times and you have
20 different ways of trying to work things out and I
21 probably did maybe three At other banks I've done
22 the same thing numerous times

23 Q And more generally, have you been involved
24 in number of transactions where the bank has sold the
25 note mortgaged to a third party?

JIM BOYD

1 A Just the -- the three that I know about

2 Q And is that just with this bank?

3 A Yes

4 Q What about with Bank One and Coastal Federal
5 Bank?

6 A Not with Bank One, but Coastal Federal and
7 several of the other institutions that I worked at

8 Q Now in your experience with selling notes
9 and mortgages, is it customary or practice of any of
10 those banks that you look into the background of the
11 co-makers to see if their's creditors that may have a
12 claim against the co-maker?

13 A No

14 Q Would you have an opinion as to why you
15 think that's not part --

16 A It's not --

17 Q -- of the process?

18 A -- pertinent to the circumstances Again,
19 money coming in from certified funds, so we feel like
20 that it's legal funds and that's all we're really
21 concerned with is receiving legal funds to pay it off

22 Q And just to clarify, it's your position
23 today that the note and mortgage was sold to J
24 Conner LLC is that correct?

25 A Correct, Uh-huh

JIM BOYD

1 Q Okay

2 A Yeah, at that point in time, we re not --
3 we're not taking it as collateral on another loan We
4 weren't involved in any of the financing So for him
5 to get it to his LLC, he would have needed to do the
6 assignment declaration He had no reason to do that

7 Q When did you find out again about the name
8 of the entity?

9 A Somewhere in there when I asked them on --
10 you know, on who was buying it, as to know the name of
11 the entity That was in November or would be early
12 December, somewhere in that time period

13 Q Did you know anything about the LLC?

14 A No Uh-uh

15 Q Was there anything done regarding this
16 transaction that was different than any other
17 transaction similarly --

18 A No

19 Q -- situated?

20 A No

21 Q That last item that Mr Brunty showed you
22 was a screen shot of the, I guess, loan history --

23 A Right

24 Q -- on some notes

25 A Right

JIM BOYD

1 note, right?, based on --

2 MR BUTLER Object to the form

3 Q -- what you told us before?

4 A But -- but that's not what took place As
5 far as -- as -- what the bank was -- was looking at,
6 it was an LLC buying the property

7 Q I understand that

8 A Mike Brown didn't say, "I m going to write
9 you a check for three million five and I want you to
10 sell me the note and mortgage

11 Q He did write you a check for \$44 000

12 A I -- I don't know Again I didn t see any
13 of that

14 Q If that three point five was his money --
15 you told me before that you can't buy your own note
16 If that three point five turned out to be his money
17 he couldn't buy that note right?

18 A We would have changed the structure of the
19 deal

20 Q Right But if he said Jim I m going to
21 bring \$3 5 million dollars in a briefcase to you
22 tomorrow '

23 A That would have been a payoff just like I
24 told him originally

25 Q He wouldn't have left with a note and