

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No. 2011-CP-27-011

JEFFREY H. ANDERS AND MAUREEN
ANDERS, MICHAEL K. CALLAHAN AND
AMY CALLAHAN, MELINDA A.
CAVICCHIA, MICHAEL B. CIULIS,
STEPHEN KIPA AND KIMBERLEY A. K.
KIPA, CHAD KURTZ, SPENCER L.
MORGAN, RICHARD O'REILLY AND
ALICIA F. O'REILLY, DANIEL RYAN AND
SUSAN RYAN, GENNADY SHMUKLER,
MICHAEL SCHMUFF AND JOANNE
SCHMUFF, AND MATTHEW TERRY,
KATHRYN M. TILLMAN, VALERIE A.
LOWE, TACG PROPERTIES, LLC,
MACKAY MARSH, LLC,

Plaintiffs,

v.

THE SETTINGS OF MACKAY POINT, LLC,
THE SETTINGS DEVELOPMENT
COMPANIES, LLC, BRANCH BANKING &
TRUST CO., WACHOVIA BANK, N.A.,
BOND SAFEGUARD INSURANCE
COMPANY, AND JASPER COUNTY.

Defendants.

ORDER FOR
FINAL
JUDGMENT

JUN 20 AM 09 15
JASPER COUNTY

This matter came before the Court for a ^{trial} ~~hearing~~ on Tuesday, May 28, 2013, pursuant to an Order scheduling this matter for a date-certain trial to begin at 9:30 a.m. on Tuesday May 28, 2013. Present at the opening of the Court's proceedings were Defendant Wells Fargo Bank, N.A. as successor by way of Merger to Defendant Wachovia Bank, N.A. ("Wells Fargo") through its corporate representative, Carlos Gonzalez, counsel for Wells Fargo, S. Sterling Laney III and Hugh M. Claytor, and Plaintiff's counsel, Robert W. Maring. Plaintiff Spencer Morgan ("Mr. Morgan") did not appear.

ROUTED
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Since Mr. Morgan did not appear to prosecute his claim against Wells Fargo, the Court instructed Mr. Laney and Mr. Claytor to present Wells Fargo's case on its counterclaims against Mr. Morgan for breach of contract and unjust enrichment in relation to a certain Promissory Note executed on March 16, 2007 in favor of Wachovia Bank, N.A., by Mr. Morgan in the amount of One Hundred Thirty Thousand, Two Hundred Seventy Nine and 30/100 Dollars (\$130,279.30) (the "Note"). The evidence presented by Wells Fargo established that the Note had been lawfully executed on behalf of Mr. Morgan by Helen R. Roper, Esquire, as attorney-in-fact for Mr. Morgan, pursuant to a recorded Power of Attorney given to Ms. Roper by Mr. Morgan.

Mr. Laney, on behalf of Wells Fargo, referred the Court to the judicial admissions made by Mr. Maring during the hearing on Wells Fargo's Motion for Summary Judgment; namely: (1) that Mr. Morgan had duly executed the Note; (2) that Mr. Morgan had failed to make payments pursuant to the terms and conditions of the Note; and (3) that Mr. Morgan had no defenses to the validity of the Note or its enforcement by Wells Fargo. A copy of the transcript of hearing for the Motion for Summary Judgment was offered into evidence by Wells Fargo and accepted by the Court.

Mr. Laney further referred the Court to admissions made by Mr. Morgan in his deposition taken March 13, 2013, the original transcript of which is a part of the Court's record in this case. Mr. Morgan therein admitted that: (1) he applied for the subject loan from Wells Fargo; (2) Wells Fargo made the loan; (3) Mr. Morgan authorized Ms. Roper to execute the Note and close the loan; (4) he used the loan proceeds to purchase Lot 51 in the subdivision known as The Settings at McKay Point in Jasper County, South Carolina; (5) he had not made payments to Wells Fargo under the terms of the Note; and (6) he did not intend to make any payments to Wells Fargo pursuant to his obligations under the Note.

The Court took judicial notice of Mr. Morgan's responses to Wells Fargo's Requests for Admissions, which had previously been filed with the Court as part of the record in this case, that authenticated the existence of the Note and the legality of the signature on the Note. Further, the Court accepted into evidence the original Promissory Note and Power of Attorney which were submitted by Mr. Laney on behalf of Wells Fargo during the hearing on this matter.

Finally, the Court heard testimony from Carlos Gonzalez, an employee and representative of Wells Fargo, who testified as to the following: (1) the existence of the loan between Wells Fargo and Spencer Morgan in the principal amount of \$130,279.30 made on March 16, 2007; (2) the fact that the loan was in default because Mr. Morgan had failed to make payments as due under the terms and conditions of the Note; and c) the amount currently due on the Note which was One Hundred Thirty Nine Thousand Two Hundred Twenty-Eight and 68/100 Dollars (\$139,228.68), exclusive of attorneys' fees and costs of collection which are recoverable under the terms of the Note. Wells Fargo chose to forego recovery of these sums.

Mr. Maring offered no defenses to Wells Fargo's counterclaims, or any reasons why judgment should not be entered in favor of Wells Fargo and against Mr. Morgan in the sum of \$139,228.68.

Based on the totality of the evidence before the Court, the testimony submitted at the hearing on this matter, and the applicable laws of the State of South Carolina, this Court finds that Wells Fargo is entitled to judgment against Spencer Morgan on its counterclaims for breach of contract and unjust enrichment in the amount of One Hundred Thirty Nine Thousand Two Hundred Twenty-Eight and 68/100 Dollars (\$139,228.68).

The Clerk of Court for Jasper County is hereby ordered to enter judgment in the above referenced sum, in favor of Wells Fargo and against Spencer Morgan, in the public records of Jasper County.

IT IS SO ORDERED, ADJUDGED AND DECREED.



Honorable Carmen T. Mullen
Presiding Judge, Court of Common Pleas
Fourteenth Judicial Circuit

6-18-13

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-27-00011

Jeggrey H. Anders; Maureen Anders; Michael K. Callahan; Amy Callahan; Melinda A Cavicchia

The Settings of MacKay Point, LLC; The Setting Development Companies, LLC;

Michael B. Ciulis; Stephen Kipa; Kimberly A.K. Kipa; and Chad Kurtz

Wachovia Bank, NA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
	or	
	<input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: The above-referenced lawsuit came before the court for a date certain trial on May 28, 2013. This case is dismissed for the failure to prosecute.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

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

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

Circuit Court Judge

SCRPC Form 4C (03/2013)

2142
 Judge Code

6-18-13
 Date

Page 1

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