

19479

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Eugene C Griffith, Jr , Circuit Court Judge

Case No 2008-CP-24-01221

RFT Management Co , LLC,

Appellant,

v

Tinsley and Adams, LLP &
Welborn D Adams, Individually,

Respondents

APPENDIX TO RECORD ON APPEAL

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Appellant hereby respectfully submits this Appendix in order to supplement the Record on Appeal as permitted by Rule 212(b), SCACR. Appellant's counsel represents that Respondent has consented in writing via email to the Appendix. Appellant represents further that the purpose of the Appendix is to add to the Record pages from the Appendix which were not copied due to clerical mistake even though designated for inclusion in the Record on Appeal or which were mistakenly omitted from the designation for inclusion in the Record on Appeal even though cited in the Initial Briefs of the parties.

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David Roatch - Direct Examination by Mr Swagart

1 approximately 1 1 million dollars of that 1 75
2 million dollar amenities loan was used to pay a
3 note off that Lake Greenwood Developers owed

4 Q So, after you had bought the units sometime
5 later you found out that 1 1 million wasn't going
6 to amenities but was going to pay off a prior loan,
7 is that correct?

8 A Yes

9 MR HENRIKSON Again I need to object and
10 move to strike There has not been a foundation
11 laid as to how this witness came by that knowledge
12 and I fully expected that when he rephrased the
13 question at Your Honor s direction There is no
14 foundation, we don't know how he came across the
15 information, what it's based on or anything It is
16 not relevant, I move to strike

17 MR SWAGART He just testified without
18 objection as to how, where 1 1 million dollars
19 went, so he s a little bit late there, Your Honor
20 and I'm just getting, I m just clarifying his prior
21 testimony

22 MR HENRIKSON I made objection prior to
23 that based on a lack of foundation The witness
24 answered the rephrased question and has not offered
25 any foundation, and so I'm moving to strike, there

David Roatch - Direct Examination by Mr Swagart

1 there is another way we can do it

2 THE COURT All right

3 BY MR SWAGART

4 Q Looking at Exhibit Numbers 5 and 6 again, it
5 is listed, who is listed as the seller in those
6 exhibits?

7 A Lake Greenwood Developers

8 Q Going into this transaction, based on what
9 you having had seen and had been told you, did you
10 have any doubts at all that Lake Greenwood
11 Developers owned lots 28 and 31?

12 A I had no reason to think otherwise The
13 contracts led me to believe it was Lake Greenwood
14 Developers'

15 Q Now, have you ever had a discussion with Jan
16 Bradshaw in which she mentioned buyback to you,
17 other than the one that was being offered to you?

18 A No

19 Q Have you ever had a discussion with Bill
20 Gilbert in which he mentioned buyback to you?

21 A No

22 Q Look at Exhibit Number 7 Tell me what that
23 document is

24 A It's a seller's buyback agreement dated
25 October 30, 2007

1 respect to whether or not a developer was having
2 financial troubles, would that have any impact on
3 your investment decision?

4 A Could you repeat the question?

5 Q With respect to whether or not a developer in
6 which you are thinking about investing some money
7 in the development was having financial troubles,
8 would that have, or not, would that have any
9 relevance to your decision on whether or not to
10 make the investment?

11 A Yes, it would

12 Q And explain why

13 A Well, if in fact I had knowledge that the
14 developer was failing I wouldn't be involved, I
15 wouldn't pursue it It just wouldn't make sense

16 Q And prior to the time that you entered into
17 this transaction were you ever given any
18 information by anybody that would indicate that the
19 developer was having financial problems?

20 A None whatsoever

21 Q All right Now, to this point you have got
22 the buyback agreement worked out, you've got the
23 documents with the loan subordination worked out
24 Then what happened?

25 A Relative to my contact with Joe Maddox, I was

1 very comfortable with the transaction just myself
2 at that point and, you know, just felt like the
3 only thing left to do, I mean, I didn't have any
4 reason to not trust the people I was working with
5 and really the only thing I had to do at that point
6 was go to a closing

7 Q And did you go to a closing?

8 A Yes, I did

9 Q And where did the closing take place?

10 A At the offices of Tinsley & Adams in
11 Greenwood, South Carolina

12 Q And did you have an understanding as to who
13 Tinsley & Adams, Mr Adams represented at that
14 closing?

15 A Yes

16 Q And who did they represent at that closing?

17 A RFT Management Company and Lake Greenwood
18 Developers

19 Q Now, going back to your meeting with Mr
20 Maddox, did you ask Mr Maddox, who was your
21 attorney that was looking at the buyback agreement
22 only, did you ask him for any advice as to whether
23 or not you should go forward with this transaction?

24 A No

25 Q Why not?

1 A I was very comfortable with the transaction
2 the way it sat at that point Again, I had no
3 reason to distrust anybody that I was working with
4 at Lake Greenwood Developers at the time

5 Q Did you know whether or not Mr Maddox knew
6 anything about the project?

7 A Well, the other point I guess I want to make
8 at this point in time, Mr Maddox is not a real
9 estate developer, he is not an appraiser, he is not
10 a broker, an agent, he is not from Greenwood, so he
11 really didn't have any knowledge of this
12 development

13 Q You mentioned that you felt very comfortable
14 with the investment you planned to make in Planters
15 Row, lots 28 and 31 Why were you comfortable with
16 that decision?

17 A Well, at the time, I mean, the market on Lake
18 Greenwood was great, you know, in the fall of 2007
19 things were selling well Coupled with the fact I
20 had a second mortgage, a buyback agreement, the
21 developer had received a 1 75 million dollars
22 amenities loan based on a \$3,000,000 appraisal, the
23 lots that I was purchasing appraised for more than
24 what I was paying for them, and there had been
25 several lot sales at Lake Greenwood Development's

1 Planters Row in the last year So, everything
2 looked really good

3 Q At this time do you question at all your
4 decision at the time you made it?

5 A No

6 Q Prior to the closing did you receive any of
7 the closing documents?

8 A Yes

9 Q Now, Mr Henrikson stated you received, that
10 you stated at the deposition that you received a
11 copy of the title opinion letter prior to the
12 closing Is that correct?

13 A That's not correct

14 Q All right When was the first time you were
15 given a copy of the title opinion letter?

16 A That I actually received it?

17 Q Yes

18 A At the closing, in my packet

19 Q Okay And when you say your packet, would
20 you explain to the jury what the packet was?

21 A The packet consisted of all the signed
22 documents that were performed at the closing

23 Q How did the packet get formed at the closing?

24 A The documents began to stack up

25 Q Tell the jury how the documents circulated in

1 the closing

2 A The ones that I needed to sign were passed to
3 me The ones I didn't need to sign were not

4 Q All right And what did you do with the
5 documents that you needed to sign?

6 A I signed them

7 Q Okay And then what happened to that
8 document?

9 A It was put in that stack

10 Q All right Now, were you required to sign
11 the title opinion letter?

12 A No

13 Q So that went into the pack, correct?

14 A Yes, that's correct

15 Q Did you see the title opinion letter at the
16 closing?

17 A No

18 Q When was the first time you ever looked at
19 the title opinion letter?

20 A When I was researching this lawsuit

21 Q When was that?

22 A August of 2008

23 Q All right Now look at Exhibit Number 8 and
24 see if you can identify that document?

25 A Subordination agreement

1 Q That's the subordination agreement where you
2 got a subordination agreement? Would you explain
3 to the jury what that is?

4 A Yes This is a subordination agreement with
5 Service Corporation on that 1 75 million dollar
6 loan that they had on those 21 lots

7 Q Did Mr Adams explain that agreement to you
8 at the closing?

9 A He said it was, you know, no problem, just go
10 ahead and sign it, no big deal

11 Q Okay

12 MR SWAGART Move Exhibit Number 8 into
13 evidence

14 MR HENRIKSON No objection

15 THE COURT Exhibit 8 has six pages?

16 MR SWAGART Yes, Your Honor

17 THE COURT All right, Exhibit 8 is in, all
18 six pages without objection

19 MR HENRIKSON What is the document?

20 THE COURT It appears the six pages are the
21 subordination agreement

22 MR HENRIKSON Okay I don't see anything
23 extraneous here, six pages to the exhibit

24 THE COURT All right

25 MR HENRIKSON Okay

1 THE COURT Certainly

2 MR HENRIKSON Okay, thank you Other than
3 that, no objection

4 THE COURT Exhibit 9 is introduced without
5 objection subject to substitution of a more clear
6 copy

7 MR HENRIKSON Yes, sir

8 THE COURT And it's one page?

9 MR HENRIKSON Sir?

10 THE COURT One page?

11 MR HENRIKSON One page

12 (Attorney Disclosure letter marked and
13 received in evidence as Plaintiff's Exhibit
14 Number 9)

15 BY MR SWAGART

16 Q Now, at anytime during the closing were you
17 informed by anybody that the lots that RFT
18 Management was buying were not then owned by Lake
19 Greenwood Developers?

20 A No

21 Q At anytime during the closing did anybody
22 disclose to you that the lots that you were buying
23 first had to be purchased from the Robertsons and
24 the Grimshaws?

25 A No

1 Q At anytime during that closing did anybody
2 advise you that the reason that they had to be
3 purchased from the Robertsons and Grimshaws was
4 because the Robertsons and Grimshaws had buyback
5 agreements?

6 A No

7 Q At anytime at that closing did anybody tell
8 you that the Robertsons and Grimshaws were being
9 paid \$250,000 for the lots you were paying a lot
10 more money for?

11 A No

12 Q Now let's turn to Exhibit Number 10, please

13 THE COURT Mr Swagart, take a quick break
14 We've been going a little more than an hour

15 MR SWAGART That's fine, Your Honor

16 THE COURT Ladies and gentlemen, please
17 remember don't discuss the case, we'll be back
18 When you all get ready you tell Mr Willingham and
19 we'll get started right back

20 (The jury was excused from the courtroom)

21 MR HENRIKSON Can the witness be reminded
22 he is under oath and he is not to discuss his
23 testimony?

24 THE COURT I will so remind him During
25 your swearing and being questioned and

1 A No

2 Q Is there anything in that letter that tells
3 you precisely when Lake Greenwood Developers would
4 be obtaining title to those lots?

5 A No

6 Q Is there anything in that letter that says,
7 that tells you anything about how or why it was
8 necessary for Lake Greenwood Developers to get
9 title to those lots?

10 A No

11 Q Have you had any legal training?

12 A None

13 Q Have you ever had any training in reading and
14 interpreting title opinion letters written by
15 lawyers?

16 A No

17 Q And again, Mr Adams didn't explain to you
18 the significance of any of that language?

19 A None whatsoever

20 Q Did there come a time when you started to
21 have doubts about whether or not the investment the
22 plaintiff made in Lake Greenwood Developers was a
23 good investment?

24 A Yes

25 Q When was that?

1 A In August of 2008

2 Q And what happened then?

3 A While researching the public records I came
4 across the fact that lot 31 and lot 28 were in fact
5 not owned by Lake Greenwood Developers at the time
6 that I closed on those lots, but rather the
7 Robertsons and Grimshaws

8 Q And what documents did you look at that told
9 you that?

10 A The deeds

11 Q Did anything else happen during the summer of
12 2008 which gave you concern about the viability of
13 Lake Greenwood Developers?

14 A Yes I was in Phoenix, Arizona the first
15 week of June, 2008, and received a phone call from
16 Courtney Furman and he told me that --

17 MR HENRIKSON I would object to any
18 hearsay

19 MR SWAGART Your Honor, we're not offering
20 it for the truth -- let me back up, let me rephrase
21 it I will rephrase the question

22 THE COURT All right I sustain the
23 objection I was going to ask you to rephrase it

24 BY MR SWAGART

25 Q Why is it that in August, 2008, you saw a

1 Q And as the authorized representative of the
2 plaintiff, the landowner, what is your opinion of
3 the value of those two lots?

4 A \$25,000 apiece

5 Q And what is that opinion based on?

6 A Based on the fact there was a lot of
7 comparable size that was foreclosed on and sold at
8 foreclosure sale for \$25,000

9 MR SWAGART I have no other questions, Your
10 Honor

11 THE COURT All right Miss Price, I kind of
12 tipped my hand a little bit earlier Would you
13 take a quick poll, maybe you have already done so,
14 since we're working on your time -- Mr Roach, you
15 can go ahead and step down, you're going to be
16 under oath tonight, you will be called in the
17 morning, subject to cross-examination by Mr
18 Henrikson

19 THE WITNESS Thank you, Your Honor

20 THE COURT You can leave the exhibits back
21 there

22 What time do you all want to get going in the
23 morning?

24 JUROR What are our options?

25 THE COURT We can start as early as you

William Gilbert - Re-Direct Examination by Mr Swagart

1 responded whatever the situation was at that time

2 Q Did you have enough cash on hand to pay off
3 either one of the buybacks that were due on October
4 30 and November 14th?

5 A That was -- no Well, we did by selling them
6 to Mr Roach, yes

7 Q That's the only way you got that, got the
8 money to pay those off, right?

9 A Well, the sales people were instructed to
10 find buyers and one salesperson got one buyer for
11 both lots, so we sold them

12 Q The bank would not let you use the loan
13 proceeds to pay off debts that you had been unable
14 to pay off for about six months would they?

15 A Well, we wouldn't even ask the bank for that
16 because that wasn't the purpose of the loan The
17 bank loan was for amenities

18 MR SWAGART That's all I have Thank you
19 very much

20 THE WITNESS Sure

21 MR HENRIKSON I don't have any more
22 questions Your Honor

23 THE COURT Thank you Mr Gilbert You may
24 step down

25 THE WITNESS Okay

Excerpt from Argument on Motions for a Directed Verdict at the Close of the Evidence

1 Number one, that Mr Adams, that any attorney
2 representing both parties in a closing has a
3 conflict of interest That being the case, in
4 order to continue with the closing, Mr Freeman was
5 very clear on the fact that the attorney then has
6 an obligation to reveal the fact that he has a
7 conflict or a potential conflict and then to sit
8 down and explain to his clients that he has a
9 conflict, what the nature of the conflict is and
10 the risks, the possible risks that could arise from
11 the conflict Mr Adams admitted he didn't do any
12 of that stuff

13 THE COURT Well, I mean, the experts
14 testified diametrically opposed there was no
15 conflict it was an unwaiverable conflict That's
16 what I heard So, I mean, some conflicts are
17 waiverable that's what I heard

18 MR SWAGART Let me give you a little
19 authority, then for Mr Freeman's position If you
20 look in State v Buyers Service Company, which is
21 357 Southeast 2d 15

22 THE COURT Let me ask you this Is the
23 question of whether there is a conflict or not, is
24 that not a factual question?

25 MR SWAGART In this circumstance the answer

1 is no

2 MR HENRIKSON That's a legal question

3 THE COURT Do you think that's a legal
4 question?

5 MR HENRIKSON I think it's a legal
6 question

7 MR SWAGART I think it could be a factual
8 question but this is what the Supreme Court says
9 about it Conflicts of interest are inherent in
10 such an arrangement and the adverse interests in
11 real estate transactions Conflict of interest is
12 inherent in such an arrangement They are talking
13 about closings in the Buyers case, and the adverse
14 interest in real estate transactions make it
15 extremely difficult for the attorney to maintain a
16 proper professional posture toward each party

17 And in this, this situation is inherently
18 conflicting On the one hand you have a buyer who
19 wants to pay the lowest price he can pay and get
20 the most protection that he can get On the other
21 hand you have the seller wants the greatest price
22 he can pay and wants to give up the least in the
23 way of mortgages that he can So, it's an
24 inherently conflicting situation

25 The South Carolina bar ethics advisory

1 The South Carolina Supreme Court said the
2 rules of professional conduct constitute evidence
3 of the standard of care, so we believe there is no
4 dispute that there was conflict of interest, that
5 it wasn't properly waived and that it couldn't have
6 been properly waived because of information Mr
7 Adams had

8 THE COURT Hold that thought right there
9 That is very critical right here His comment or
10 argument to me that conflict was not contradicted
11 factually is what you said?

12 MR SWAGART Excuse me?

13 THE COURT The conflict is factually
14 uncontradicted was your argument to me, is that
15 right, conflict of interest?

16 MR SWAGART Yes, sir

17 THE COURT There is no factual dispute as to
18 that, I believe is what you just presented?

19 MR SWAGART According to the authorities
20 that I just read

21 THE COURT All right

22 MR HENRIKSON Let me understand the Court's
23 question

24 THE COURT All right Here is my question
25 Here is what I'm struggling with You want a

1 ruling the conflict of interest, your request is
2 that I rule as a matter of law whether or not a
3 conflict existed?

4 MR HENRIKSON Right

5 THE COURT Mr Swagart, I believe, is
6 arguing that it is uncontradicted according to
7 authority there was a conflict as a matter of law
8 Is that right?

9 MR HENRIKSON Well, there is always, what I
10 think the case law says --

11 THE COURT It might be a factual question

12 MR HENRIKSON Here is what I think is the
13 problem There is always an inherent conflict when
14 one lawyer represents more than one person

15 THE COURT I buy that

16 MR HENRIKSON That's the conflict that the
17 rule is talking about That conflict is waived if
18 the conflict is identified to the parties by
19 saying, "We are acting as attorneys on behalf of
20 both parties," and that is the inherent conflict
21 "If you want to waive that conflict, because we're
22 doing a deed for one guy and we're giving title to
23 the other guy, if you would like to waive that you
24 can," and by signing this he waives that inherent
25 conflict So, all that professional conduct thing

1 MR HENRIKSON One important thing I
2 thought and I believe, I thought that conflict of
3 interest issue was a legal issue Miss Snyder has
4 found a case that says it's a factual issue for the
5 jury

6 THE COURT That suits me a lot better

7 MR HENRIKSON I'm sorry?

8 THE COURT That suits me a lot better I
9 just don't want to go forward at this time and
10 everything not be right

11 MR HENRIKSON That is just what I thought
12 I have been corrected

13 MR SWAGART I have given you a jury
14 instruction on it anyway

15 THE COURT If it's a factual question I
16 would rather instruct it, no question in my mind
17 that's what I would rather do If you all both
18 agree it's a legal issue I will tell you what I'm
19 going to rule

20 MR HENRIKSON I apologize for
21 unintentionally misleading the Court That is what
22 I thought it was

23 THE COURT That is why you have a lawyer
24 with you

25 MR SWAGART Your Honor, another thing that

Excerpts from Jury Charge

1 based upon any of the witnesses' testimony, no
2 matter who called them, based upon your assessment
3 of their believability and their credibility

4 Now, by the term preponderance of the
5 evidence, I further define that preponderance of
6 the evidence means such evidence as when weighed
7 with that which is offered to oppose it is more
8 convincing in your mind It is not used
9 necessarily as a technical term but simply evidence
10 that outweighs that which is offered to oppose it
11 And it does not mean a greater number of witnesses
12 versus a fewer number of witnesses

13 This cause of action or this lawsuit is
14 centered around a professional negligence cause of
15 action Now, negligence means that a person did
16 not use the same amount of care that a person of
17 ordinary reason and prudence would exercise in the
18 same circumstances The word careless means the
19 same thing To prevail in a cause of action
20 against the defendant for negligence the plaintiff
21 must prove three essential elements by the greater
22 weight or the preponderance of the evidence
23 First, they must show the defendant is negligent
24 that is, he did not use the same amount of care
25 that a person would ordinarily exercise under the

1 same circumstances

2 Second, the plaintiff must prove he was
3 damaged by this negligence

4 And third, he must prove that the negligence
5 was the proximate cause of his damages

6 Now, the proximate cause word I just used,
7 it's a touchstone of negligence law The
8 touchstone of proximate cause is foreseeability
9 Foreseeability of some injury from a negligent act
10 or omission is a prerequisite to it being the
11 proximate cause of injury for recovery which is
12 sought The standard by which foreseeability is
13 determined is that of looking to the natural and
14 probable consequences of the complained act And
15 while it is not necessary the act must have
16 contemplated or could have anticipated a particular
17 event that occurred, liability cannot rest merely
18 upon possibilities The actor cannot be charged
19 with that which is unpredictable or which could not
20 be expected to happen In determining whether the
21 consequence is one that is natural and probable the
22 actor's conduct must be viewed in the light of the
23 attendant circumstances

24 Now, the law defines proximate cause of an
25 injury to be something that produces a natural

1 chain of events which in the end brings about the
2 injury or the damages In other words, proximate
3 cause is the direct cause without which the injury
4 would not have occurred Foreseeability of some
5 injury from a negligent act is a prerequisite for
6 it being the proximate cause for an injury for
7 which recovery is sought

8 When the injury complained of is not
9 foreseeable or is not able to be foreseen in the
10 exercise of due care there is no liability It is
11 not required that the specific injury be foreseen
12 but only that some injury might result from the
13 negligence In order to establish liability it is
14 not necessary that the party charged with
15 negligence should have contemplated the particular
16 event that occurred It is sufficient that the
17 defendant should have foreseen that his negligence
18 would result in some kind of injury The wrongdoer
19 may be held liable for anything which after the
20 injury is complete it appears to have been the
21 natural and probable consequence of his negligence

22 Now, it is the plaintiff's burden in a legal
23 malpractice action to prove the following elements
24 by a preponderance of the evidence One, the
25 existence of an attorney-client relationship

1 between the attorney and the plaintiff

2 Two, negligent, reckless or intentional
3 misconduct by the attorney in performing a legal
4 service in connection with the relationship

5 And three, the damages proximately result by
6 the attorney's misconduct

7 Now, I instruct you that the parties have
8 agreed or stipulated that an attorney-client
9 relationship existed between the plaintiff and the
10 defendant

11 Now, typically a plaintiff in a legal
12 malpractice case must establish the standard of
13 care through expert testimony unless that subject
14 matter is the subject of common knowledge to lay
15 persons An attorney-client relationship is by
16 nature a fiduciary one A relationship of an
17 attorney with his or her client is highly fiduciary
18 in its nature and very delicate and exacting and
19 confidential in nature

20 Now, in a legal malpractice action causation
21 in fact is proved by establishing the plaintiff's
22 injury would not have occurred but for the
23 defendant's negligence In order to prove a duty
24 of care of which the defendants were subject to the
25 plaintiff must prove, must present evidence of the

1 generally recognized practices and procedures that
2 would be exercised by competent attorneys in this
3 state under same or similar circumstances This
4 means that an attorney engages that he or she
5 possesses and will use reasonable legal knowledge
6 that lawyers of ordinary ability and skill possess
7 and exercise An attorney is expected to possess
8 knowledge of those plain and elementary principles
9 of law which are commonly known by well informed
10 lawyers and to discover those additional rules of
11 law which although not commonly known may readily
12 be found by standard research techniques Thus, if
13 the law on the subject is well and clearly defined
14 and has existed and been published long enough to
15 justify the belief that it was known to the
16 profession a lawyer who disregards the rule or is
17 ignorant of it is liable for losses caused by such
18 negligence or want of skill

19 In order to prove the defendant breached a
20 duty of care owed to him the plaintiff must prove
21 by a preponderance of the evidence that the
22 defendant's conduct did not conform to the legal
23 duty under the circumstances In a legal
24 malpractice action the plaintiff must prove both
25 the existence of a legal duty of care and the

1 defendant's breach of that duty by expert
2 testimony Thus, there can be no finding of
3 negligence on the part of the defendant absent
4 expert testimony to support it

5 Now, a lawyer may commit malpractice even
6 where his or her only duties consisted of
7 preparation of documents Preparation of documents
8 constitutes the practice of law when such
9 preparation involves the giving of advice or
10 consultation, explanation or recommendations on
11 matters of law

12 Now, while many situations of an attorney's
13 representation of both a buyer and seller in a real
14 estate transaction may create a conflict of
15 interest, if the parties have already agreed on the
16 basic terms of the agreement and the attorney acts
17 primarily as a scrivener he may normally represent
18 both parties after obtaining their consent

19 The rules of professional conduct are rules
20 adopted by our Supreme Court of this state which
21 governs the conduct of all members of the South
22 Carolina Bar Because these rules meet the minimum
23 standard of competency to be displayed by all
24 attorneys, a violation of the rules may be
25 considered as evidence of the attorney's breach of

1 his standard of care Stated differently, since
2 the rules do establish standard of conduct by
3 lawyers, a lawyer's violation of a rule may be
4 evidence of a breach of the applicable standard

5 Now, I instruct you further that a failure to
6 comply with the rules of professional conduct are
7 not necessarily negligence in and of itself but
8 merely one circumstance that may be considered
9 along with other facts and circumstances in
10 determining whether an attorney acted with
11 reasonable care

12 Now, the adverse interests in real estate
13 transactions make it extremely difficult for the
14 attorney to maintain a proper professional posture
15 toward each party It is clear in real estate
16 transactions that purchasers and sellers often have
17 competing if not directly competing interests
18 Each party may have a need for legal advice about
19 the nature of the transaction and the legal
20 relationship it will create and effect

21 Now, with respect to potential conflict of
22 interest for a lawyer, generally there must be a
23 full and effective disclosure of all material
24 relevant facts and circumstances which in the
25 judgment of a lawyer of ordinary skill and capacity

1 are necessary in order to enable his client to give
2 an informed consent It is not sufficient that
3 both parties be informed of the fact that the
4 lawyer is undertaking to represent both of them
5 He must explain to them the nature of the conflict
6 of interest in such detail so that they can
7 understand the reasons which it may be desirable
8 for each to have independent counsel with undivided
9 loyalty to each of them The fact that a client
10 knew of a conflict is not enough to satisfy the
11 attorney's duty of full disclosure

12 Now, I have instructed you that the
13 attorney-client relationship is a fiduciary one and
14 parties to a fiduciary relationship must fully
15 disclose facts to one another based upon all
16 information that is significant and material

17 In an action for legal malpractice a
18 plaintiff who proves his case by a preponderance of
19 the evidence may receive such actual damages which
20 the evidence shows were proximately caused by the
21 misconduct of the attorney I will later instruct
22 you on the purpose of the award of actual damages
23 and how to determine the amount of actual damages

24 Now, the plaintiff's claims in this case are
25 based in part on the contention that the defendant

1 either misrepresented material facts or information
2 to them or failed to disclose material facts or
3 information to them The key word being material
4 In order for a fact to be material it need not be
5 shown that the disclosure of true facts would have
6 changed the plaintiff's decision to go through with
7 the closing or its overall view of the transaction,
8 but rather is enough to show the facts in question
9 would have been relevant to the plaintiff's
10 decision

11 I instruct you further that a paralegal
12 working in a law firm is an employee of the law
13 firm A lawyer working in the law firm is also an
14 employee of that law firm in most respects Now,
15 if an employee is doing some act in furtherance of
16 the employer's business he will be regarded as
17 acting in the scope of his or her employment
18 although the employee exceeds his actual authority
19 On the other hand, if the employee acts for some
20 independent purpose on their own wholly
21 disconnected with the employer's business his
22 conduct falls outside the scope of his employment
23 An act is within the scope of the servant's
24 employment where it is reasonably necessary to
25 accomplish the purpose of the employment and in

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In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Eugene C Griffith, Jr , Circuit Court Judge

Case No 2010175606

TINSLEY & ADAMS, LLP &
WELBORN D ADAMS, INDIVIDUALLY

Respondent,

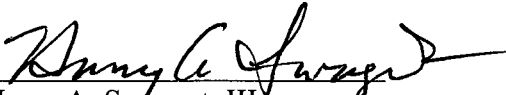
v

RFT MANAGEMENT CO , LLC,

Appellant

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCACR, the undersigned attorney for the Appellant hereby certifies that the Appendix to Record on Appeal contains all supplementary material agreed to be included by the parties and not any other material


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Columbia, South Carolina
November 4, 2011

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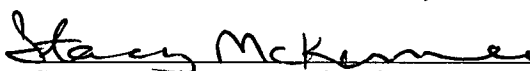
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TINSLEY & ADAMS, LLP, &
WELBORN D ADAMS, INDIVIDUALLY,

Respondents

PROOF OF SERVICE

I certify that I have served one copy of the Appendix to Record on Appeal on Respondents by depositing a copy of it in the United States Mail, postage prepaid, on November 4, 2011, addressed to the Respondents' attorney of record, Matthew H Henrikson, Clarkson, Walsh, Terrell & Coulter, PA, at his Post Office Box 6728, Greenville, South Carolina 29606 on November 4, 2011


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