

Exhibit E

McCue's Third Supplemental Answers to CFB's Second
Set of Interrogatories

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

CAROLINA FIRST BANK,)

Plaintiffs,)

vs.)

CHARLES S. McCUE, et. al.,)

Defendants,)

vs.)

CAROLINA FIRST BANK,)

Counter-Defendant/
Third-Party Plaintiff)

vs.)

BRIAN ATKINSON, et. al.,)

Third-Party Defendants)

AND)

CHARLES S. McCUE,)

Defendant/Counter
Plaintiff/Third-Party
Plaintiff)

vs.)

BLAIR WITKOWSKI,)

Third-Party Defendant.)

IN THE COURT OF COMMON
PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Civil Action No: 07-CP-07-03027

CHARLES McCUE'S THIRD
SUPPLEMENTAL ANSWERS TO
CAROLINA FIRST'S SECOND SET OF
INTERROGATORIES

In response to Carolina First Bank's Second Set Interrogatories to Charles S. McCue, Defendant/Counter Plaintiff Charles S. McCue supplements his Answers as follows:

Interrogatory No.1: Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party. Do not provide general allegations of damages as against (sic) this Interrogatory seeks a specific amount of any and all damages sought against (sic) in the case at bar.

Third Supplemental Answer No. 1:

Mr. McCue also seeks actual damages for any and all funds paid by Mr. McCue towards the completion of the property located at 6 Rose Hill Drive, which currently total approximately \$124,950.00, plus interest.

In addition, Mr. McCue seeks his attorneys' fees and costs in this matter, pursuant to the FCRA. As litigation is ongoing, these costs continue to accrue. To date, these expenses are as follows:

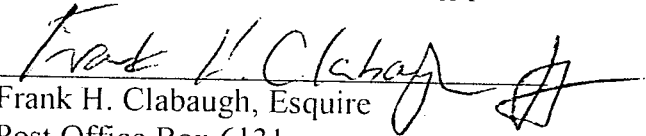
<u>Counsel</u>	<u>Fees</u>	<u>Costs</u>	<u>Total</u>
Clabaugh Law Offices	\$59,085.65	\$2,627.67	\$61,713.32
Halperin Law Center	\$75,835.00	\$11,604.46*	\$87,439.46
William Stover, Esq.	\$11,250.00	\$0.00	\$11,250.00
		TOTAL:	\$160,402.78

**This amount includes an estimated \$6,000.00 in deposition costs for which McCue is awaiting final invoices.*

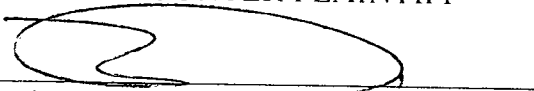
Mr. McCue seeks recovery of all funds taken from him by Defendant Witkowski and/or improperly transferred to Empire's accounts or the accounts of others, the sum of which is \$300,000.00.

CLABAUGH LAW OFFICES, P.A.

ATTORNEYS FOR
DEFENDANT/COUNTER PLAINTIFF

By: 
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Post Office Box 6131
Hilton Head Island, SC 29938

HALPERIN LAW CENTER, LLC
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By: 
Jonathan E. Halperin, Esquire
3480 Bleak House Rd.
Earlsville, VA 22936
Pro Hac Vice

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

CAROLINA FIRST BANK,

Plaintiffs,

vs.

CHARLES S. McCUE, et. al.,

Defendants,

vs.

CAROLINA FIRST BANK,

Counter-Defendant/
Third-Party Plaintiff

vs.

BRIAN ATKINSON, et. al.,

Third-Party Defendants

AND

CHARLES S. McCUE,

Defendant/Counter
Plaintiff/Third-Party
Plaintiff

vs.

BLAIR WITKOWSKI,

Third-Party Defendant.

IN THE COURT OF COMMON
PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Civil Action No: 07-CP-07-03027

CERTIFICATE OF SERVICE

I, the undersigned Counsel for Charles S. McCue, do hereby certify that I have served all counsel and/or parties in this action with a copy of the foregoing Charles S.

McCue's Third Supplemental Answers to Carolina First Bank's Second Set of Interrogatories by mailing a copy of same by U.S. mail, postage prepaid, to the following:

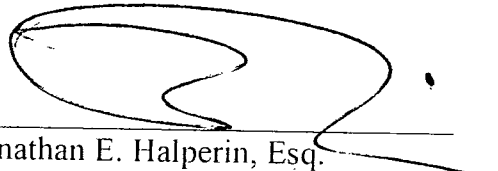
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Alford & Wilkins, P.C.
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Hilton Head Island, SC 29938


Jonathan E. Halperin, Esq.

February 11, 2010

Exhibit F

05/07/09 Order

COPY

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

Carolina First Bank,) Civil Action No. 2007-CP-07-3027
)

Plaintiff,)

vs.)

Charles S. McCue, Builder Services Group,)
Inc., d/b/a Gale Contractor Services,)
Pebblethorn Landscape & Design, LLC,)
Falco, Inc., Distinctive Granite & Marble,)
Inc. and Gustavo Angeles, individually and)
dba Empire Construction,)

Defendants.)

ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT

2007 MAY -7 AM 9:23
CLERK OF COURT
BEAUFORT COUNTY
SOUTH CAROLINA

This matter came before the Court on Motion for Partial Summary Judgment ("Motion") filed by Plaintiff Carolina First Bank ("CFB"). Based on applicable law and the facts properly before the Court, CFB's Motion is hereby GRANTED.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Defendant Charles S. McCue ("McCue") entered into a Mortgage and Interest Only Fixed Rate Note ("Note") on or about January 31, 2006. The purpose of the \$840,000.00 loan was to fund the purchase of certain real property and construction of an investment home on Hilton Head Island. Of the \$840,000.00 loan, \$579,596.00 was immediately paid by CFB to Lowcountry Bank in order to satisfy a prior loan obligation by McCue.

A second loan -- a home equity line of credit ("HELOC") in the amount of \$300,000.00 -- was later obtained in the name of McCue. However, McCue disputes that

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he signed the power of attorney that was used to close the loan. The parties agree that this debt related to the HELOC is disputed and, therefore, is not subject to this Motion. Similarly, the parties agree that the difference between the Lowcountry Bank payoff (\$579,596.00) and the current balance of the loan (\$833,250.00) is in dispute and is not subject to this Motion. However, McCue admits that he owes CFB \$579,596.00, the amount paid to satisfy his loan with Lowcountry Bank. McCue also admitted that he owed any amounts paid by CFB for the benefit of his property, such as property taxes or insurance.

CFB filed a Motion for Partial Summary Judgment only as to the amounts admittedly owed on or about February 25, 2009. McCue did not file any opposition memorandum or counter-affidavits. A hearing was held on April 9, 2009 and counsel for all parties were present. The Court heard arguments from all involved and this issue is now ripe for adjudication.

Counsel for McCue argues that summary judgment cannot be granted because of McCue's pending counterclaim. This position was expressly rejected by the South Carolina Supreme Court in SSI Med. Services, Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789, 794 (1990). More specifically, the Cox court held that "when summary judgment for the plaintiff in its claim is appropriate, we view it as proper to grant the motion despite the presence of a meritorious counterclaim." Id. The court further noted that this rule causes no harm to the counterclaimant because the judgment granted cannot be executed "until the counterclaim is fully adjudicated." Id. Therefore, I find that there is no procedural impediment to granting CFB's Motion while McCue's counterclaim is pending.

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
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At the April 9, 2009 hearing, there was also a discussion about whether CFB could obtain partial summary judgment on the Note and then seek a subsequent judgment on the remaining amount at a later time. I find that there is no authority preventing the award of partial summary judgment in this manner. In fact, the South Carolina Court of Appeals has suggested that awarding damages when some amount of a note is admittedly owed would be permitted. cf. Chambers v. Pingree, 334 S.C. 349, 513 S.E.2d 369, 372 (Cl.App. 1999) ("a party cannot establish a right to recover on a promissory note yet need a damages hearing to ascertain if any amount is due *unless* the maker acknowledges that some amount is due") (emphasis in original).

In Chambers, the court held that because a genuine issue of material fact existed as to whether *any* amount was due under note, partial summary judgment was precluded. Id. Conversely, McCue admits he owes a substantial amount of the Note and, therefore, partial summary judgment is not precluded as to the amount not in dispute. Moreover, I find that McCue would not suffer any prejudice because in no event could CFB recover more than the full balance of the Note, whether obtained in one judgment or two. Lastly, I find that this ruling is consistent with the purpose of Rule 56, S.C.R.Civ.P., and summary judgment generally. See Williams v. Lancaster Co. School Dist., 369 S.C. 293, 631 S.E.2d 286, 292 (Cl.App. 2006) ("The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder."); Manley v. Manley, 291 S.C. 325, 353 S.E.2d 312, 314 (Cl.App. 1987) ("The purpose of summary judgment is to obviate delay when there is no issue of fact involved."); Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986) ("Indeed, summary judgment is not to be regarded as a disfavored procedural shortcut, but rather as an integral part of the Rules of

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Procedure which are designed to secure the just, speedy and inexpensive determination of every action.").

Now that it is determined that partial summary judgment should be granted, I must turn to the amount of damages to be awarded. First, the principal amount of \$579,596.000 is admittedly owed. McCue testified in his deposition that he owed this amount and there is no evidence in the record to the contrary. However, I find that McCue is entitled to a pro-rata credit based on the payments he made toward the loan.


The Affidavit of CFB employee Joseph Lindsey establishes that the current payoff amount for the first loan is \$833,250.00, reflecting a payment of \$6,750.00 toward the original principal owed. Because \$579,596.00 is 69% of the original \$840,000.00 loan principal, McCue is entitled apply 69% of the \$6,750.00 paid, or \$4,657.50. Therefore, CFB is owed \$579,596.00 less \$4,657.50 for principal owed, or \$574,938.50. Judgment in this amount is hereby awarded to CFB.

Second, as McCue further conceded, CFB is entitled to \$14,832.58 for the force-placed insurance it purchased. Again, there is no evidence contradicting this finding. However, I decline to award this amount at this time but reserve my decision for a later date.

Third, CFB argues that it is entitled to the interest due under the Note as to the \$579,596.00. The Affidavit of CFB Vice President Joseph Lindsey identifies interest due and owing on the Note as of April 9, 2009. However, I decline to award interest claimed by CFB at this time. Instead, I am allowing discovery to continue and will take up the issue of what amount, if any, interest is owed by McCue to CFB at a later time.

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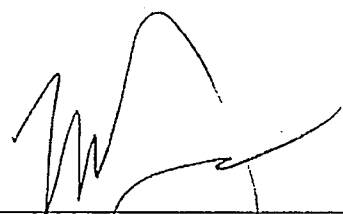
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Lastly, CFB argues that is entitled to reasonable attorneys' fees and costs under the terms of the Note and Mortgage. In support of its claim as to fees and costs, counsel for CFB submitted an Affidavit describing the amount requested. As with its claim for force-placed insurance and interest, I find that CFB's claim for attorneys' fees and costs is timely made and properly preserved for a later ruling. However, I also decline to award CFB any of its attorneys' fees and costs claimed at this time. I will take up the issue of what amount, if any, attorneys' fees and costs are owed by McCue to CFB at a later date.

CONCLUSION

Based on the foregoing, CFB's Motion is hereby GRANTED, subject to the rulings herein as to attorneys' fees, costs and interest. Therefore, CFB is entitled to a judgment in the amount of \$574,938.50. CFB's claim for reimbursement for force-placed insurance, attorneys' fees, costs and interest shall be addressed at a hearing to be scheduled at a later date by the Court.

AND IT IS SO ORDERED.



Marvin H. Dukes, III
Judge, Fourteenth Judicial Circuit

MIR, BPR

Beaufort, South Carolina

5/6 2009.

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