

RECEIVED

Feb 28 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge
The Honorable H. Steven DeBerry, IV, Circuit Court Judge

Case No. 2023-CP-26-02475
Appellate Case No. 2024-000440

Nicholas F. Wilson, ... Appellant.

v.

Janet P. Gochenour; Janet P. Gochenour Trustee; James B. Parker; James B. Parker, Sr.;
Mary Ann Parker; Kenneth Gregory Moore; R&G Corp., d/b/a Century 21 The Harrelson
Group; Patton Development SC, LLC; Flagstar Bank, N.A.; Sonia M. Raymond; and
Raymond Law Firm, P.A., ... Respondents.

RECORD ON APPEAL

R. Bruce Wallace, SC Bar No. 11653
Rhett D. Ricard, SC Bar No. 102353
Maynard Nexsen, PC
205 King Street, Suite 400
Charleston, SC 29401
Telephone: 843.720.1760
BWallace@maynardnexsen.com
RRicard@maynardnexsen.com

*Attorneys for Respondents Sonia M.
Raymond and Raymond Law Firm, P.A.*

Wesley D. Few (S.C. Bar # 15565)
Wesley D. Few, LLC
Post Office Box 9398
Greenville, SC 29604
(864)527-5906
wes@wesleyfew.com

Attorney for Appellant Nicholas F. Wilson

Matthew D. Patterson, S.C. Bar No. 68316
Blake T. Williams, S.C. Bar No. 100794
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000
matt.patterson@nelsonmullins.com
blake.williams@nelsonmullins.com
*Attorneys for Respondent Flagstar Bank,
N.A a.k.a Select Portfolio Servicing, Inc.*

Claude Townsend Prevost, III,
S.C. Bar No. 74343
Joseph Lucas Richardson,
S.C. Bar No. 103745
Collins & Lacy, PC
P.O. Box 12487 (29211)
1330 Lady Street Columbia SC 29201
803-256-2660
cprevost@collinsandlacy.com
lrichardson@collinsandlacy.com
*Attorneys for Respondent Respondents
Kenneth Gregory Moore and R&G Corp.,
d/b/a Century 21 The Harrelson Group*

Alexander Hray, S.C. Bar No. 2736
389 E. Henry Street, Suite 107
Spartanburg SC 29302
864-342-1111
lex@lexhray.com
*Attorney for Respondent Patton
Development SC, LLC*

James B. Parker (*pro se*)
James B. Parker, Sr. (*pro se*)
Mary Ann Parker (*pro se*)
919 Waterton Avenue
Myrtle Beach, SC 29579

Janet P. Gochenour
Janet P. Gochenour Trustee
2015 Hazlette Loop
Conway, SC 29526

INDEX

Orders

Order Dismissing Claims on Statute of Limitations, filed September 8, 2023.....	1
Order Denying Plaintiff's Rule 59 Motion to Alter or Amend Sept. 8, 2023 Order, filed Feb. 7, 2024.....	4
Order Denying Motion to Amend Complaint, filed March 12, 2024	7

Pleadings

Lis Pendens and Exhibit A to same, filed March 31, 2023.....	11
Amended Lis Pendens and Exhibit A to same, filed April 19, 2023	13
Verified Complaint and Exhibits 1-3, filed April 19, 2023	16
Respondents Raymond Law Firm Motion to Dismiss, filed May 24, 2023	53
Respondent Gochenour Motion to Dismiss, filed June 14, 2023	55
Respondents' Memorandum in Support of Motion to Dismiss, filed August 28, 2023	57
Plaintiff's Memorandum in Opposition to Motions to Dismiss, filed Sept. 7, 2023	62
Plaintiff's Supplemental Memorandum in Opposition to Motion to Dismiss, filed September 7, 2023	68
Plaintiff's Rule 59 Motion to Alter or Amend, filed Sept. 18, 2023	71
Respondent Raymond's Memorandum in Opposition to Rule 59 Motion, filed Oct. 5, 2023	76
Plaintiff's Motion to Amend Complaint, filed Dec. 5, 2023	81
Proposed Amended Verified Complaint and Exhibits 4-6, filed Dec. 5, 2023.....	84
Plaintiff's Reply in Support of Rule 59 Motion, filed Dec. 6, 2023	110
Respondent Century 21 Motion to Dismiss, filed Feb. 7, 2024.....	114
Respondent Parkers Motion to Dismiss, filed Feb. 14, 2024.....	117

Plaintiff’s Memorandum in Support of Motion to Amend (with Exhibits 1-3), filed Feb. 23, 2024.....	120
--	-----

Plaintiff’s Motion to Alter or Amend or Relief from Feb. 17, 2024 Order, filed Feb. 27, 2024.....	169
---	-----

Notice of Appeal, filed March 15, 2024	173
--	-----

Transcripts

Transcript of Hearing dated Sept. 7, 2023	177
---	-----

Transcript of Hearing dated February 26, 2024.....	212
--	-----

Other Documents

Plaintiff email to Respondent Flagstar Bank, N.A., dated July 22, 2021	244
--	-----

Affidavit of Erin Culbertson filed May 5, 2023	248
--	-----

Plaintiff counsel’s letter to Judge Culbertson, dated Jan. 29, 2024	254
---	-----

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2602475

Nicholas F Wilson
PLAINTIFF(S)

Janet P Gochenour et al
DEFENDANT(S)

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.
- ☐ **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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

Defendant, Raymond Law Firm's Motion to Dismiss is GRANTED. Plaintiff's action is barred by the Statute of Limitations.

Plaintiff's Motion/Dismiss and Summary Judgment is DENIED.

Defendant, Janet P Gochenour's Motion/Dismiss is GRANTED. Plaintiff's action is barred by the Statute of Limitations.

Plaintiff's Motion/Dismiss or Strike Counterclaim is GRANTED. Defendant Parker's counterclaim is dismissed.

Defendant, Janet P Gochenour's Motion/Dismiss crossclaim of defendant MERS is CONTINUED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/07/2023 .

James B Parker for James B Parker
James B Parker, Sr
Mary Ann Parker for Mary Ann Parker
James B Parker for James B Parker
Mary Ann Parker for Mary Ann Parker

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Nicholas F Wilson VS Janet P Gochenour , defendant, et al
Case Number: 2023CP2602475
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2023-09-07 16:29:13 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2602475

Nicholas F Wilson
PLAINTIFF(S)

Janet P Gochenour et al
DEFENDANT(S)

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.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

Plaintiff's Motion to Alter or Amend Order Filed Sept. 8, 2023, is DENIED.

This motion is decided on the contents of plaintiff's motion, prior arguments and memorandums of the parties, and letter dated January 29, 2024, from plaintiff's lawyer, without oral arguments.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/07/2024 .

James B Parker for James B Parker
James B Parker, Sr
Mary Ann Parker for Mary Ann Parker
Flagstar Bank NA
James B Parker for James B Parker
Mary Ann Parker for Mary Ann Parker

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Nicholas F Wilson VS Janet P Gochenour , defendant, et al

Case Number: 2023CP2602475

Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2024-02-07 10:54:24 page 3 of 3

ELECTRONICALLY FILED - 2024 Feb 07 12:48 PM - HORRY - COMMON PLEAS - CASE#2023CP2602475

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

NICHOLAS F. WILSON,
Plaintiff,

vs.

JANET P. GOCHENOUR, et al.,
Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Case No. 2023-CP-26-02475

**ORDER DENYING PLAINTIFF'S
MOTION TO AMEND COMPLAINT**

This matter came before the undersigned on Plaintiff's Motion to Amend the Complaint filed December 6, 2023. The Court conducted a hearing on the motion on February 27, 2023. For the reasons set forth below, the Court denies Plaintiff's Motion to Amend.

PROCEDURAL HISTORY

Plaintiff filed his complaint on April 19, 2023. Defendants Sonia M. Raymond and the Raymond Law Firm P.A. (hereafter, the "Lawyers") filed a motion to dismiss the complaint on May 24, 2023. Defendant Janet P. Gochenour, individually and as trustee, filed a motion to dismiss the complaint on June 14, 2023. By Order dated September 8, 2023, the Court, the Honorable Benjamin Culbertson presiding, granted the motions to dismiss, citing the statute of limitations barred the Plaintiff's claims against the Lawyers and Gochenour. Plaintiff filed a motion for reconsideration on September 18, 2023. Judge Culbertson denied the motion for reconsideration by Order dated February 17, 2024.

Plaintiff filed his motion to amend the complaint on December 5, 2023.

DISCUSSION

In his memorandum in support of his motion to Amend, Plaintiff cites to Judge Culbertson's two orders. Plaintiff asserts that Judge Culbertson's orders are not clear as to whether they dismiss the complaint with prejudice. Plaintiff's Memorandum at 2. Citing *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019), the Plaintiff argues *Judge Culbertson's* orders were unclear and the statute of limitations defense is fact based inquiry.

Plaintiff's memorandum in support of his Rule 59(e) motion incorporated his motion to amend the Complaint and the memorandum in support. See Plaintiff's Supplemental Memorandum in Support filed December 6, 2023 at 4. Plaintiff cited the *Skydive* case in support of his Motion to Reconsider. Motion filed September 18, 2023 at 2. And Plaintiff argued that Judge Culbertson's September 8, 2023 was unclear as to whether the court dismissed the complaint with prejudice. *Id.* at 2. In short, all of the grounds set forth in Plaintiff's Motion to Amend the complaint were argued in support of Plaintiff's Motion to Reconsider. Which Judge Culbertson denied by Order dated February 17, 2024.

Plaintiff requests this Court to essentially ignore or set aside Judge Culbertson's two orders. Plaintiff asks this court to interpret Judge Culbertson's orders as dismissals without prejudice, even though Judge Culbertson himself denied that very relief by Order dated February 17, 2024.

"One Circuit Court Judge does not have the authority to set aside the order of another." *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986). In fact, "one circuit judge has no power to review, revise or reverse the action of another circuit judge." *Ex parte State*, 263 S.C. 363, 368, 210 S.E.2d 600, 602 (1974). "If the prior ruling addresses a substantive point of law, or if nothing of significance has

changed, the second judge should consider the previous judge's ruling to be final.” *Rice v. Doe*, Op. no. 28190 (S.C. Sup. Ct. filed Jan. 24, 2024)(Howard Adv. Sh. No. 3 at 19). Plaintiff has not argued different grounds from those argued to Judge Culbertson, and nothing of significance has changed from the facts, law, and circumstances considered by Judge Culbertson. And where the effect of the court’s ruling would be to reverse a prior circuit court’s order without such change of circumstances, the second judge would be committing “an impermissible act.” *Enoree Baptist Church*, 287 S.C. at 604, 340 S.E.2d at 547.

For these reasons, the Court denies Plaintiff’s Motion to Amend. To the extent Plaintiff contends Judge Culbertson erroneously ruled, Plaintiff’s remedy lies with the appellate courts.

AND IT IS SO ORDERED.

[Electronic Signature(s) on following page]



Horry Common Pleas

Case Caption: Nicholas F Wilson VS Janet P Gochenour , defendant, et al
Case Number: 2023CP2602475
Type: Order/Other

H. Steven DeBerry, IV

Circuit Court Judge 2771

Electronically signed on 2024-03-12 11:49:27 page 4 of 4

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) IN THE COURT OF COMMON PLEAS
15TH JUDICIAL CIRCUIT

Nicholas F. Wilson,)
) Case No: 2023-LP-26-_____
Plaintiff,)
vs.) **LIS PENDENS**
) Janet P. Gochenour; Janet P. Gochenour Trustee;)
James B. Parker; James B. Parker, Sr.; Mary Ann)
Parker; Kenneth Gregory Moore; Patton)
Development SC, LLC; Mortgage Electronic)
Registration Systems, Inc.; T2 Financial, LLC, d/b/a)
Revolution Mortgage; and Flagstar Bank, FSB;)
Defendants.)
_____)

TO THE CLERK OF COURT OF HORRY COUNTY:

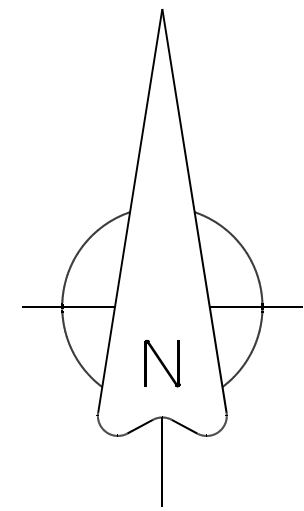
NOTICE IS HEREBY GIVEN that an action has been commenced or is about to be commenced by the above-named Plaintiff against the above-named Defendants for the declaratory judgment and specific performance of contract of sale between Plaintiff and Janet P. Gochenour, regarding the sale of the Defendant's property located at 4704 Highway 90, Conway, South Carolina 29526 in Horry County, South Carolina, consisting of 8.24 acres as more particularly and specifically described on the attached plat, and consisting of all of TMS #'s 140-00-04-022 (2.70 acres) and 140-00-04-023 (1.29 + 3.77 acres), and portions of PIN #'s 363-04-02-0004 (TMS # 140-00-04-114), 363-04-02-0002 and 363-04-02-0001 (consisting of 0.49 acres). For a more detailed description of the property, see attached "Exhibit A," plat prepared by K&R Land Surveyors, Inc., dated Jan. 30, 2020.

s/Wes Few/
Wesley D. Few, SC Bar No. 15565
416 East North Street, 2nd Floor
Greenville, South Carolina 29601
(864-527-5906 | wes@wesleyfew.com)

ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
March 31, 2023

"Exhibit A"



GRAPHIC SCALE



(IN FEET)
1 inch = 60' ft.

CERTIFICATE OF OWNERSHIP AND DEDICATION

The undersigned hereby acknowledge that I am (we are) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this [plot/plan of development] with my (our) free consent and that I (we) hereby dedicate all items as specifically shown or indicated on said plot.

Printed Name Signature Date

Printed Name Signature Date

Printed Name Signature Date

Printed Name Signature Date

CERTIFICATE OF ACCESS AGREEMENT

The undersigned hereby acknowledge that access is provided to Tract 1, 2 & 3 through the use of a 50 foot right of way non-exclusive and appurtenant easement. The aforementioned easement shall be owned and maintained collectively by the property owners of the Tract 1, 2 & 3. Horry County shall not be responsible for the maintenance of or improvements to the aforementioned drive or easement.

Printed Name Signature Date

Printed Name Signature Date

Printed Name Signature Date

Printed Name Signature Date

LINE	BEARING	DISTANCE
L1	S 35°03'36" E	5.88'
L2	N 61°43'14" E	29.62'
L3	S 21°11'54" E	35.23'
L4	S 21°38'31" E	86.79'
L5	S 41°27'12" E	23.07'
L6	S 03°58'55" W	38.74'
L7	S 28°29'22" E	16.58'
L8	S 28°16'46" E	10.71'
L9	S 27°22'04" E	39.22'
L10	N 63°12'43" E	29.95'
L11	S 29°20'49" E	19.72'
L12	S 61°50'54" W	38.78'
L13	S 28°41'08" E	28.41'
L14	S 69°45'47" W	30.37'
L15	N 28°25'21" W	130.83'
L16	N 29°20'49" W	19.72'
L17	N 29°12'32" W	203.39'
L18	N 63°07'04" E	20.09'
L19	N 61°43'14" E	390.87'
L20	S 28°45'14" E	25.36'
L21	S 61°43'14" W	394.02'

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE	TANGENT
C1	50.00'	57.99'	54.79'	S 04°48'05" W	66°26'51"	32.75'
C2	50.00'	103.63'	86.05'	N 82°36'00" W	118°45'00"	84.46'
C3	50.00'	74.00'	67.43'	N 19°10'35" E	84°48'09"	45.66'

Janet P. Gochenour
Pin: 362-00-00-0001
TMS: 140-00-04-022
MC 1805/300408
DB 761/480
84.72 Acres Remain
Not Surveyed by this Office

Tract "1"
(Inclusive of Tract "A, B, C and D")
359,059 Sq. Ft.
8.24 Acres

Tract "A"
DB 2588/316
56,057 Sq. Ft.
1.29 Acres
Janet P. Gochenour
Pin: 362-00-00-0001
TMS: 140-00-04-022
MC 1805/300408
DB 761/480
84.72 Acres Remain
Not Surveyed by this Office

Janet E. Gochenour
Pin: 362-01-01-0002
TMS: 140-00-04-026



K & R LAND SURVEYORS, INC.
Surveyors • Land Planners
312 Laurel Street • Conway, S.C. 29526
(843) 488-1804
Fax: (843) 248-9284



Kenneth D. Jordan, P.L.S. No. 21936
Date: 1-30-2020

If the surveyor's signature is not red colored, the plot is a copy that should be assumed to contain unauthorized alterations. The certification contained on this document shall not apply to any copies.

© 2020 K & R Land Surveyors, Inc. Kenneth D. Jordan, Agent.
No warranty is made to others utilizing this plot for the purpose of further conveyances, deed descriptions, title certifications, etc.

"I, Kenneth D. Jordan, hereby state that to the best of my knowledge, information, and belief, the survey shown here in was made in accordance with the requirements of the Standards of Practice Manual for Surveying in South Carolina, and meets or exceeds the requirements for a Class B survey as specified therein; and that this is a Resurvey of an existing parcel (s) of record. Also, there are no encroachments, projections, or setbacks affecting the property other than those shown"

Pin: 362-01-01-0001
TMS: 140-00-04-023

Pin: 362-00-00-0001
TMS: 140-00-04-022

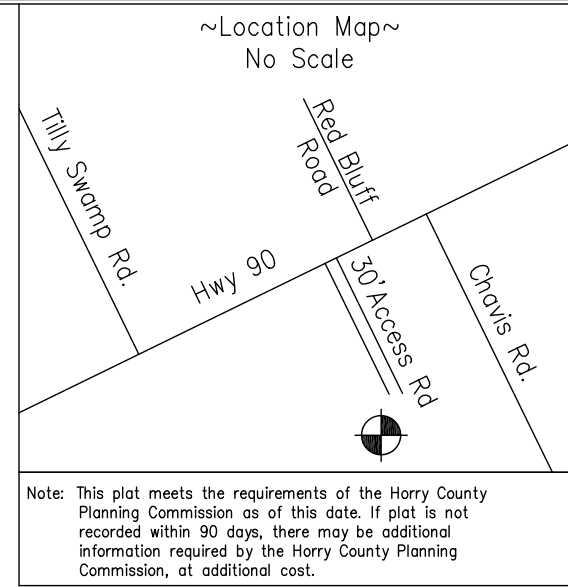
This Power Line Easement (DB XX-XX) Granted by Janet P. Gochenour with intent to Serve 4704 Hwy 90 Transfers with this survey as so deeded. Said Easement is 0.23 Acres

~Plat~

of a Subdivision Survey creating Tract 1 having 8.24 Acres and an 0.23 Acre Utility Easement Serving Address 4704 Hwy 90 Both being located in Conway Township, Horry County, S. C. surveyed for

Janet P. Gochenour

Legend
Conc. Monument Set
Conc. Monument Found
Iron Pipe Set
Iron Pipe Found
Iron Rod Set
Iron Rod Found
Nail and Cap
Nail
Post
Spike Set
Spike Found
Cotton Basin
Gate Found
Slope 3X4 Found
Curb and Gutter



- Notes:
- The 100-Year Flood Boundary was obtained directly from FEMA Flood Map 45061C0 535 H, (effective date August 23, 1999). This property is located in Flood Zone "A" & "X-Out". Flood Zone locations are scaled from current FEMA Maps. Scales vary from 1"=500' to 1"=2000' and are noted as being approximate on said maps. Kenneth D. Jordan, PLS does not certify to or assume responsibility of the accuracy of the flood zone lines. Flood lines are subject to verification by the County FEMA Officer.
 - This plot was prepared without the benefit of a title report. Property is subject to all restrictions noted in recorded deeds and/or established by recorded plans.
 - There has been no determination of wetlands or hazardous waste on this property.

References:

- DB 1794/850, 2255/802, 4216/2360, 4211/675, 4155/2669, 720/130 (All Mention the 30' Access Road)
- Plot by S.D. Cox, "Compiled" dated July 20, 1951
Entitled, "Map of 106.1 Acres", Prepared for Alton Parker, DB 761/480

This plot is the property of K & R Land Surveyors, Inc. and may not be used without their written consent. This plot and filed survey were made for the exclusive use of the person, persons, or entity named in the certification here on. Said certification does not extend or transfer to any unnamed person, persons, or entity without an expressed re-certification by the surveyor naming said person, persons, or entity.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
15TH JUDICIAL CIRCUIT

Nicholas F. Wilson,)

Plaintiff,)

vs.)

Janet P. Gochenour; Janet P. Gochenour Trustee;
 James B. Parker; James B. Parker, Sr.; Mary Ann
 Parker; Kenneth Gregory Moore; R&G Corp., d/b/a
 Century 21 The Harrelson Group; Patton
 Development SC, LLC; Mortgage Electronic
 Registration Systems, Inc.; Sonia M. Raymond;
 Raymond Law Firm, P.A.; T2 Financial, LLC, d/b/a
 Revolution Mortgage; and Flagstar Bank, FSB;

Defendants.)

Case No: 2023-LP-26-00335

AMENDED LIS PENDENS**TO THE CLERK OF COURT OF HORRY COUNTY:**

NOTICE IS HEREBY GIVEN that an action has been commenced or is about to be commenced by the above-named Plaintiff against the above-named Defendants for the declaratory judgment and specific performance of contract of sale between Plaintiff and Janet P. Gochenour, regarding the sale of the Defendant's property located at 4704 Highway 90, Conway, South Carolina 29526 in Horry County, South Carolina, consisting of 8.24 acres as more particularly and specifically described on the attached plat, and consisting of all of TMS #'s 140-00-04-022 (2.70 acres) and 140-00-04-023 (1.29 + 3.77 acres), and portions of PIN #'s 363-04-02-0004 (TMS # 140-00-04-114), 363-04-02-0002 and 363-04-02-0001 (consisting of 0.49 acres). For a more detailed description of the property, see attached "Exhibit A," plat prepared by K&R Land Surveyors, Inc., dated Jan. 30, 2020.

[signature on following page]

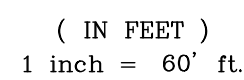
/s/Wes Few

Wesley D. Few, SC Bar No. 15565
416 East North Street, 2nd Floor
Greenville, South Carolina 29601
(864-527-5906 | wes@wesleyfew.com)

ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
April 19, 2023

GRAPHIC SCALE



The undersigned hereby acknowledge that I am (we are) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this [plat/plan of development] with my (our) free consent and that I (we) hereby dedicate all items as specifically shown or indicated on said plat.

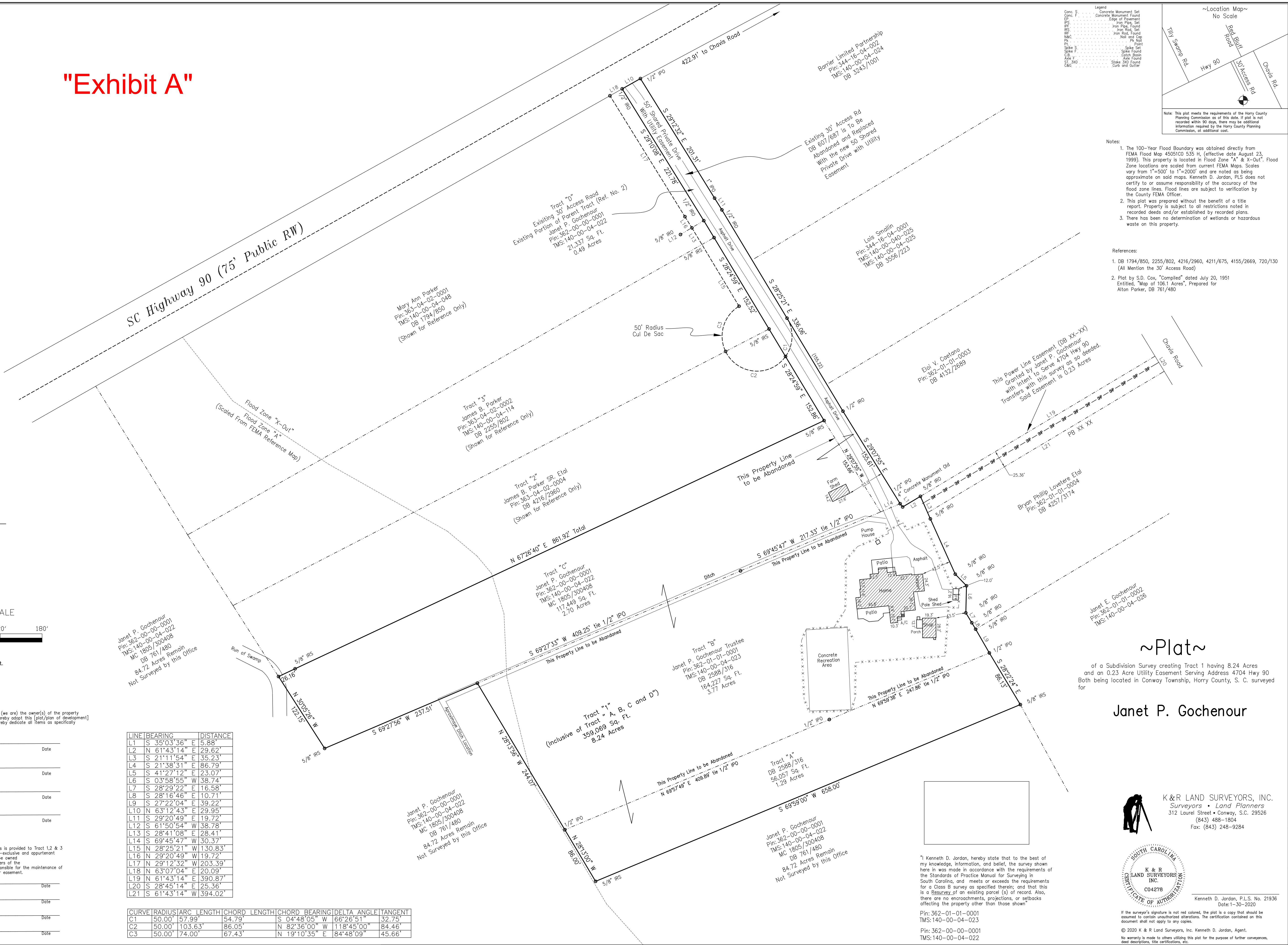
Printed Name _____ Signature _____ Date _____

CERTIFICATE OF ACCESS AGREEMENT

The undersigned hereby acknowledge that access is provided to Tract 1,2 & through the use of a 50 foot right of way non-exclusive and appurtenant easement. The aforementioned easement shall be owned and maintained collectively by the property owners of the Tract 1, 2 & 3. Horry County shall not be responsible for the maintenance or improvements to the aforementioned drive or easement.

Printed Name
Signature
Date

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE	TANGENT*
C1	50.00'	57.99'	54.79'	S 04°48'05" W	66°26'51"	32.75'
C2	50.00'	103.63'	86.05'	N 82°36'00" W	118°45'00"	84.46'
C3	50.00'	74.00'	67.43'	N 19°10'35" E	84°48'09"	45.66'



Kenneth D. Jordan, P.L.S. No. 2193

If the surveyor's signature is not red colored, the plat is a copy that should be assumed to contain unauthorized alterations. The certification contained on this document shall not apply to any copies.

© 2020 K & R Land Surveyors, Inc. Kenneth D. Jordan, Agent.
No warranty is made to others utilizing this plat for the purpose of further conveyan
deed descriptions, title certifications, etc.

"I Kenneth D. Jordan, hereby state that to the best of my knowledge, information, and belief, the survey shown here in was made in accordance with the requirements of the Standards of Practice Manual for Surveying in South Carolina, and meets or exceeds the requirements for a Class B survey as specified therein; and that this is a Resurvey of an existing parcel (s) of record. Also, there are no encroachments, projections, or setbacks affecting the property other than those shown"

Pin: 362-01-01-0001
TMS: 140-00-04-023

Pin: 362-00-00-000
TMS: 140-00-04-022

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) 15TH JUDICIAL CIRCUIT

Nicholas F. Wilson,)
) Case No: 2023-CP-26-____

Plaintiff,)

vs.)

SUMMONS

Janet P. Gochenour; Janet P. Gochenour Trustee;)
James B. Parker; James B. Parker, Sr.; Mary Ann)
Parker; Kenneth Gregory Moore; R&G Corp.,)
d/b/a Century 21 The Harrelson Group; Patton)
Development SC, LLC; Mortgage Electronic)
Registration Systems, Inc.; Sonia M. Raymond;)
Raymond Law Firm, P.A.;)

Defendants.)
)
_____)

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber, at his office at Post Office Box 9398, Greenville, South Carolina 29604, within thirty days (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for all relief demanded in the Complaint.

WESLEY D. FEW, LLC

s/Wes Few/

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
April 19, 2023

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	15 TH JUDICIAL CIRCUIT
 Nicholas F. Wilson,	)	
	)	Case No: 2023-CP-26-_____
	)	
Plaintiff,	)	
vs.	)	VERIFIED COMPLAINT
	)	FOR DECLARATORY JUDGMENTS,
Janet P. Gochenour; Janet P. Gochenour Trustee;	)	SPECIFIC PERFORMANCE,
James B. Parker; James B. Parker, Sr.; Mary Ann	)	AND DAMAGES
Parker; Kenneth Gregory Moore; R&G Corp.,	)	(jury trial demanded)
d/b/a Century 21 The Harrelson Group; Patton	)	
Development SC, LLC; Mortgage Electronic	)	
Registration Systems, Inc.; Sonia M. Raymond;	)	
Raymond Law Firm, P.A.;	)	
	)	
Defendants.	)	
_____	)	

Plaintiff Nicholas F. Wilson (“Plaintiff”) alleges for his Complaint as against the Defendants identified above (hereafter collectively “Defendants”), as follows:

1. Plaintiff is a resident of Horry County, South Carolina.
2. This lawsuit claims priority to and relates to that certain *Lis Pendens* No. 2023-LP-26-00335, filed March 31, 2023.
3. This Complaint incorporates by reference the above-identified *Lis Pendens* and all attachments.
4. Defendant Janet P. Gochenour, a/k/a Janet T. Gochenour, a/k/a Janet P. Gochenour, Trustee (hereafter “Janet” or “Defendant Janet”), is on information and belief, is a resident of Horry County, South Carolina, and was the seller of the property that is the subject of this action to the Plaintiff, which sale occurred on or about March 6, 2020.

5. Defendant James Parker, a/k/a James Parker (hereafter “Jim Parker”), is on information and belief, is a resident of Horry County, South Carolina.
6. Defendant James Parker, a/k/a James Parker, Sr. (hereafter “James Parker”), is on information and belief, is a resident of Horry County, South Carolina.
7. Defendant Mary Ann Parker (hereafter “Mary Ann Parker”), is on information and belief, is a resident of Horry County, South Carolina.
8. Defendant Kenneth Gregory Moore (hereafter “Kenny Moore”), is on information and belief, is a resident of Horry County, South Carolina.
9. Defendant R&G Corp., d/b/a Century 21 The Harrelson Group, is a South Carolina Corporation (hereinafter “C21 Harrelson”), on information and belief, doing business in Horry County, South Carolina.
10. Margaret McBride is the broker-in-charge for C21 Harrelson.
11. Kenny Moore is a licensed real estate agent (South Carolina Real Estate Commission License No. 112423; Buyer’s Agent License Number/LLR Code 6517) with C21 Harrelson, and a REALTOR®.
12. Defendant Patton Development SC, LLC (hereinafter “Patton Development”), on information and belief, is a South Carolina Limited Liability Company doing business in Horry County, South Carolina.
13. Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”) is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in Michigan.

14. MERS is the nominee for the originating lender T2 Financial, LLC, d/b/a Revolution Mortgage (NMLS No. 1686046), and is named as the party in interest for a mortgage purporting to exist on the Property.

15. MERS, on information and belief, is expected to claim an interest in the Property by virtue of that mortgage recorded on March 6, 2020, in the records of the Clerk of Court for Horry County in book 6188 at page 1316.

16. Defendant Sonia M. Raymond (hereafter “Sonia Raymond”), on information and belief, is a resident of Horry County, South Carolina, and a licensed practicing attorney in this state.

17. Defendant Raymond Law Firm, P.A. (hereinafter “Raymond Law Firm”), is a professional association organized and existing in accordance with the laws of the state of South Carolina, with offices in and doing business in Horry County.

18. On information and belief, Sonia Raymond, is the owner of Raymond Law Firm.

19. Defendant Sonia Raymond and Defendant Raymond Law Firm may hereafter be referred to collectively as “Plaintiff’s Closing Attorney.”

VENUE AND JURISDICTION

20. Venue and jurisdiction in this Court are proper because the Property is located entirely within Horry County, South Carolina, and the events giving rise to the claims occurred in this County.

ADDITIONAL FACTUAL ALLEGATIONS

21. On January 22, 2020, Plaintiff submitted a written offer to purchase the property as advertised by C21 Harrelson as 4708 Highway 90, Conway, South Carolina 29526, also

described as “Tax Map No. 36201010001 plus additional acreage,” for a purchase price of \$480,000.00.

22. On January 23, 2020, Plaintiff and Defendant Janet executed that certain Addendum to Contract providing specifically as follows: “Seller shall have the property surveyed, including the additional acreage listed as being included in the sale to reach no less than 8 acres and recorded as part of this parcel confirming total acreage. Seller to include the deed of the driveway as part of the sale.” (hereafter the “Property”).

23. On or about January 23, 2020, Plaintiff and Defendant Janet amended the Contract to increase the Earnest Money required from \$3,000.00 to \$10,000.00, and also agreed upon a Purchase Price of \$465,000.00.

24. On or about January 29, 2020, Plaintiff and Defendant Janet executed that certain Addendum to Contract providing specifically as follows: “At closing, Seller will pay Buyer’s Transaction costs not to exceed \$10,000. Buyer is responsible for any Buyer’s transaction costs exceeding this amount.”

25. At least as early as Jan. 30, 2020, the Original Survey requested from Janet and, on information and belief her brother Jim Parker, to be prepared by Kenneth D. Jordan (P.L.S. No. 21936, hereafter “Jordan” or “Surveyor”) showing Plaintiff being conveyed Tracts A, B, C, and D, consisting of 8.24 acres in total, was prepared and available to one or more Defendants.

26. At least as early as Feb. 2, 2020, the specific metes and bounds of the land to be conveyed to the Plaintiff were known to Janet, Jim Parker, and to Kenny Moore and C21 Harrelson, by virtue of that certain electronic copy of the Original Survey then in the possession of Kenny Moore, and provided to Plaintiff.

27. On or about March 5, 2020, Plaintiff and Defendant Janet executed that certain Addendum to Contract providing specifically as follows: “The buyer and the seller agree to extend the closing date to March 6, 2020.”

28. The above-described documents constitute the Contract between Plaintiff and Janet (hereafter “Contract”).

29. At least as early as Jan. 23, 2020, the land to be conveyed to the Plaintiff was known to Janet and to Kenny Moore and C21 Harrelson, and, on information and belief, also to Jim Parker.

30. On Jan. 30, 2020, Plaintiff (as Client) and Defendant Kenny Moore, a/k/a Ken Moore and C21 Harrelson (as Agent) executed that certain Buyer Representation Agreement.

31. By virtue of the Buyer Representation Agreement, Kenny Moore’s and C21 Harrelson’s obligations to the Plaintiff, included but were not necessarily limited to: **“1. A fiduciary duty of loyalty, utmost care, integrity, and honesty in all dealings with the buyer.”**

32. By virtue of the Buyer Representation Agreement, Kenny Moore’s and C21 Harrelson’s obligations to the Plaintiff, included but were not necessarily limited to: **“2. A duty to obey all lawful instructions from the buyer within the scope of authority.”**

33. By virtue of the Buyer Representation Agreement, Kenny Moore’s and C21 Harrelson’s obligations to the Plaintiff, included but were not necessarily limited to: **“3. A duty not to disclose confidential information that may weaken the buyer's bargaining position.”**

34. By virtue of the Buyer Representation Agreement, Kenny Moore’s and C21 Harrelson’s obligations to the Plaintiff, included but were not necessarily limited to: **“4. Utilize professional knowledge and skills to locate real property that is available to purchase and suitable for client.”**

35. On Jan. 22, 2020, Plaintiff and Defendant Janet and Defendant C21 Harrelson executed that certain Dual Agency Agreement, as provided for on LLR's form known as Rev. 10/04.

36. Many, if not all, of the above documents were signed by Plaintiff using C21 Harrelson's dotloop system, enabling the Plaintiff to e-sign and have his signature marked with a specific date, time and unique code consisting of up to 16 alphanumeric digits.

37. As such, C21 Harrelson has an electronic record of all these documents being transmitted and executed, and a record of any third-parties to whom these documents were also provided.

38. Each of the above documents were signed by Defendant Janet by hand and no witness names were provided by any of the C21 Harrelson representatives or anyone else.

39. On or about Feb. 2, 2020, on information and belief, the originating lender provided the Original Survey to the appraiser selected pursuant to applicable law to appraise the Property for purposes of the lender's forthcoming mortgage on the Property.

40. Janet and / or Jim Parker requested Jordan modify the Original Survey at least as early as Feb. 10, 2020.

41. On information and belief, Jim Parker was involved in the communications with Jordan regarding the revised modified survey(s) he prepared after Jan. 30, 2020.

42. Plaintiff relied on the Original Survey.

43. Plaintiff was never informed by anyone that the Original Survey was not the survey that would be recorded to show the Property he was to receive from Janet under their Contract.

44. On information and belief, the Plaintiff's Closing Attorney did not obtain a complete title search until on or about March 2, 2020.

45. On information and belief, the Plaintiff's Closing Attorney and others, including but not limited to Kenny Moore, Janet and Jim Parker, then knew or should have known that Janet may not have had the legal rights at that time to convey to Plaintiff the entirety of Tracts A, B, C, and / or D, as shown on the Jan. 30, 2020 Original Survey prepared by Jordan.

46. At all times before and after Jan. 23, 2020, Plaintiff made it abundantly clear that he would not purchase the property unless he was going to be deeded the driveway.

47. On information and belief, all or a portion of the property that was to be conveyed to Plaintiff by Janet is now claimed, in whole or in part, by Defendant Patton Development.

48. Patton Development, on information and belief, claims an interest in property that Janet was contractually obligated to convey to the Plaintiff, but failed to do so, as set forth herein.

49. Jim Parker is a necessary party to this action based on records showing his current and / or prior interest in the driveway property that was to be conveyed to the Plaintiff.

50. Mary Ann Parker is a necessary party to this action based on records showing her current and / or prior interest in the driveway property that was to be conveyed to the Plaintiff.

51. MERS is a named as a necessary party to this action based on its anticipated claim to have a mortgage lien on the property.

52. Kenny Moore and C21 Harrelson were Dual Agents for Plaintiff and the Seller, Janet. As such, all representations made to the Plaintiff by Kenny Moore or C21 Harrelson were representations of the Seller, Janet.

1st Cause of Action
Breach of Contract

53. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

54. Janet and Plaintiff had an enforceable contract.

55. Janet breached the contract.

56. Janet's breach of the contract caused Plaintiff damages which will be proven at trial.

57. In the alternative, Janet's breach of the contract has caused Plaintiff irreparable harm, such that damages are not an adequate remedy.

58. Plaintiff is entitled to damages or specific performance of the contract as against Janet.

2nd Cause of Action

Interference with Contract

59. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

60. On information and belief, Jim Parker and / or Mary Ann Parker were aware of the contract between Janet and Plaintiff.

61. On information and belief, Jim Parker and / or Mary Ann Parker intentionally interfered with the contract between Janet and Plaintiff, and caused Janet to breach.

62. These Defendants' interference and breach of the contract caused Plaintiff damages which will be proven at trial.

63. Plaintiff is entitled to damages and punitive damages against these Defendants.

3rd Cause of Action

Breach of Fiduciary Duty / Loyalty / Buyer Representation Agreement

64. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

65. C21 Harrelson and Kenny Moore owed Plaintiff duties, including but not limited to as set forth in the Buyers Representation Agreement.

66. C21 Harrelson and Kenny Moore had a special relationship of trust and confidence with the Plaintiff.

67. Plaintiff placed special trust and confidence in C21 Harrelson and Kenny Moore.

68. C21 Harrelson and Kenny Moore breached their duties to Plaintiff as set forth herein.

69. These Defendants' breach of duties owed to the Plaintiff caused damages which will be proven at trial.

70. Plaintiff is entitled to damages and punitive damages against these Defendants for their reckless and wanton conduct, and deliberate indifference to his rights. .

4th Cause of Action
Breach of Dual Agency Agreement

71. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

72. C21 Harrelson and Kenny Moore owed Plaintiff duties, including but not limited to as set forth in the Dual Agency Agreement, executed on or about Jan. 22, 2023.

73. C21 Harrelson and Kenny Moore breached their duties to Plaintiff as set forth herein.

74. These Defendants' breach(es) of duties owed to the Plaintiff caused damages which will be proven at trial.

75. Plaintiff is entitled to an award of damages against these Defendants to put him in a position he would be in but for their conduct.

5th Cause of Action
Negligence *Per Se*

76. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

77. C21 Harrelson and Kenny Moore owed Plaintiff duties under S.C. Code Ann. § 40-57-10 *et seq.*, including but not limited to §§'s 40-57-135, 40-57-350, and 40-57-370.

78. C21 Harrelson and Kenny Moore breached their statutory duties to Plaintiff as set forth herein.

79. These Defendants' breach of statutory duties owed to the Plaintiff caused damages which will be proven at trial.

80. Plaintiff is entitled to damages and punitive damages against these Defendants.

6th Cause of Action
Breach of Fiduciary Duty / Legal Malpractice

81. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

82. Plaintiff's Closing Attorney was selected for him by Kenny Moore and C21 Harrelson.

83. Plaintiff's Closing Attorney owed Plaintiff duties.

84. Plaintiff's Closing Attorney had a special relationship of trust and confidence with the Plaintiff.

85. Plaintiff placed special trust and confidence in Plaintiff's Closing Attorney.

86. Plaintiff's Closing Attorney breached their duties to Plaintiff as set forth herein.

87. Plaintiff's Closing Attorney's breach(es) of duties owed caused Plaintiff damages which will be proven at trial, including but not limited to failing to ensure that he received the property as identified in the Jan. 23, 2020 Addendum and as shown on the Original Survey.

88. Plaintiff's Closing Attorney additionally failed to advise him that he was not receiving a deed to the property identified and described in the Jan. 23, 2020 Addendum and as shown on the Original Survey.

89. Plaintiff is entitled to damages and punitive damages against Plaintiff's Closing Attorney for their reckless and wanton conduct, and deliberate indifference to his rights.

EXPERT AFFIDAVIT

90. Pursuant to S.C. CODE ANN. § 15-36-100(B), because this Complaint is being filed when there is a good faith basis to believe the expiration of the statute of limitations is imminent or that the Defendants may argue that the statute of limitations may expire, it is filed without an affidavit by expert licensed by the Supreme Court of the State of South Carolina specifying at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. Plaintiff intends to file an Amended Complaint with an expert affidavit within forty-five (45) days.

7th Cause of Action Fraud

91. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

92. Janet, Kenny Moore and C21 Harrelson represented and continued to represent to Plaintiff that he would be the owner of the property as described in the Jan. 23, 2023 Addendum and in the Original Survey.

93. These representations were material.

94. These representations were false.

95. Janet knew the representations were false.

96. Kenny Moore and C21 Harrelson, on information and belief, either knew the representations were false when they made them or should have known and acted in reckless disregard of Plaintiff's rights.

97. Janet, Kenny Moore and C21 Harrelson intended that the Plaintiff rely on their representations.

98. Plaintiff had no idea he would ever receive anything less than what was shown on the Original Survey and described in the Jan. 23, 2020 Addendum.

99. Plaintiff relied on the representations of Janet, Kenny Moore and C21 Harrelson.

100. Plaintiff had every right to rely on the representations of Janet, Kenny Moore and C21 Harrelson.

101. Plaintiff's reliance on these representations caused him damages, specifically in that he did not receive title to the land he was entitled to under the Contract.

102. Plaintiff is entitled to an award of actual and punitive damages.

8th Cause of Action
Constructive Fraud

103. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

104. Janet knew or should have known the material representations were false.

105. Kenny Moore and C21 Harrelson should have known the material representations were false and acted in reckless disregard of Plaintiff's rights.

106. Janet, Kenny Moore and C21 Harrelson intended that the Plaintiff rely on their representations.

107. Plaintiff is entitled to an award of actual and punitive damages.

9th Cause of Action

Breach of Contract Accompanied by Fraudulent Act

108. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

109. Janet had a fraudulent intent with respect to the terms of the Contract with Plaintiff.

110. On information and belief, such fraudulent intent was developed before formation of the Contract.

111. Such fraudulent intent was developed and acted upon after formation of the Contract.

112. Janet, by herself and / or through one or more of her agents, falsely represented to Plaintiff that he would be getting title to the property as shown on the Original Survey and described in the Jan. 23, 2020 Addendum.

113. Janet did not convey the property required to be conveyed to Plaintiff by their Contract.

114. Plaintiff is entitled to an award of actual and punitive damages.

10th Cause of Action

Declaratory Judgment

115. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

116. MERS is expected to and may claim an interest in property that Janet was contractually obligated to convey to the Plaintiff, but failed to do so, as set forth herein.

117. Janet and Plaintiff had an enforceable contract.

118. By virtue of the fraudulent representations set forth herein, the Plaintiff did not receive title to the driveway, specifically Tract D, as shown on the Original Survey, and Mary Ann Parker and Jim Parker and James Parker benefitted by the same.

119. As a result of the fraud perpetuated on the Plaintiff, Mary Ann Parker and / or Jim Parker and / or James Parker remained as owners or maintained ownership rights in the driveway in contradiction of the Contract between Plaintiff and Janet.

120. But for the fraudulent representations relied upon by Plaintiff, Mary Ann Parker and / or Jim Parker and / or James Parker would not have any legal rights to accept, on information and belief, valuable consideration from Patton Development for its access to and use of the Plaintiff's driveway.

121. But for the fraudulent representations relied upon by Plaintiff, MERS would have a mortgage on the Plaintiff's property, including the driveway.

122. Based upon the undisputed facts as set forth herein and in the public record, under S.C. Code § 15-53-10 *et seq.*, the Uniform Declaratory Judgments Act, Plaintiff is entitled to an order from this Court declaring his ownership of the driveway.

123. Such order / declaration shall be recorded in the RMC office for Horry County.

11th Cause of Action

S.C. Unfair Trade Practices Act ("UTPA"), S.C. Code Ann. § 39-5-10 *et seq.*

124. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

125. Kenny Moore and C21 Harrelson misled Plaintiff to believe he would be treated as a client and beneficiary of the fiduciary duties owed to same.

126. Kenny Moore and C21 Harrelson, by their actions and by their offering of documents and representations to the Plaintiff as set forth herein, deceived Plaintiff to his detriment.

127. The actions of Kenny Moore and C21 Harrelson violate the UTPA, as well as the statute governing Real Estate Brokers, Brokers-in-Charge, Salespersons, and Property Managers, S.C. Code Ann. 40-57-5 *et seq.*

128. These deceptive and misleading actions of Kenny Moore and C21 Harrelson are capable of repetition and / or, on information and belief, have been repeated and if they are not enjoined from same, will continue to be repeated.

129. The actions of Kenny Moore and C21 Harrelson were, on information and belief, willing and knowingly perpetrated.

130. The actions of Kenny Moore and C21 Harrelson caused Plaintiff damages, as will be proven at trial.

131. Plaintiff is entitled to an award of actual damages, treble damages and costs and attorneys' fees, as mandated by the UTPA.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, consequential damages, exemplary damages, punitive damages, for the costs of this action, reasonable attorneys' fees and costs, injunctive relief as set forth herein, for relief allowed as damages under state law, and for such other and further relief as this Court deems just and proper under the circumstances to be presented at trial.

The Plaintiff requests a jury trial for all claims and issues asserted in this action, excepting those portions of Cause of Action numbers 1, 7, 8, 9 and 10, which can be established

on the existing court record and relate to injunctive relief, for which a motion for preliminary injunction is forthcoming.

WESLEY D. FEW, LLC

s/Wes Few/

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
April 19, 2023

Table of Exhibits

- Ex 1 – Original Survey, prepared and provided by seller, Jan. 30, 2020
- Ex 2 – Original Survey as shown on lender’s March 4, 2020 Appraisal (with invoice)
- Ex 3 – Contract and all Addenda to same (as identified in Complaint at Paras. 21 to 28)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Nicholas F. Wilson,

Plaintiff,

vs.

Janet P. Gochenour; Janet P. Gochenour
 Trustee; James B. Parker; James B. Parker, Sr.;
 Mary Ann Parker; Kenneth Gregory Moore;
 R&G Corp., d/b/a Century 21 The Harrelson
 Group; Patton Development SC, LLC;
 Mortgage Electronic Registration Systems,
 Inc.; Sonia M. Raymond; Raymond Law Firm,
 P.A.;

Defendants.

IN THE COURT OF COMMON PLEAS

15TH JUDICIAL CIRCUIT

Case No: 2023-CP-26-_____

**VERIFICATION
 IN LIEU OF AFFIDAVIT**

I, **Nicholas F. Wilson**, the Plaintiff herein, have read the foregoing Verified Complaint and know the contents thereof, and hereby verify that the allegations in the same are true of my own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters I believe them to be true.



 Nicholas F. Wilson

Horry County, South Carolina
 April 19, 2023

Certification in Lieu of Affidavit. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

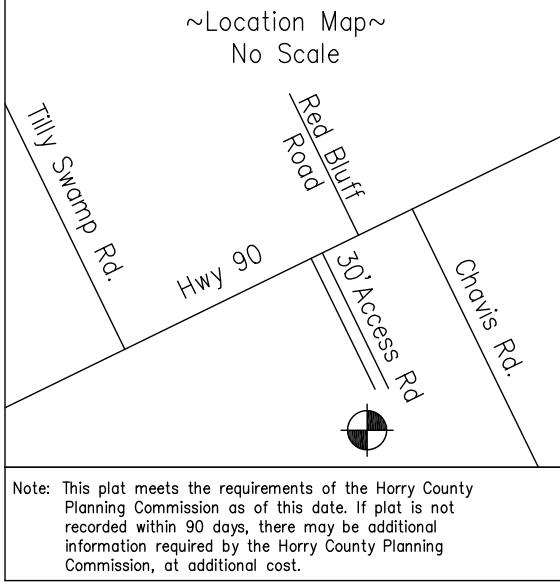
Exhibit 1

“Original Survey”

prepared and provided by seller, Jan. 30, 2020

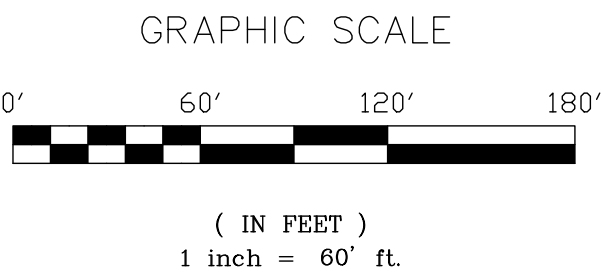
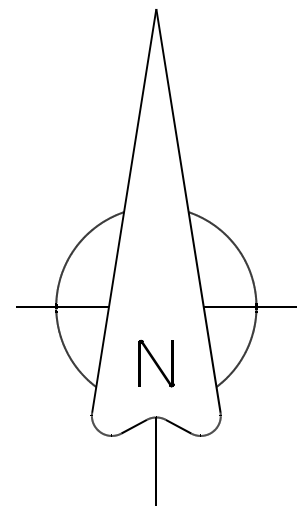
"Exhibit A"

Legend	
Conc. S	Concrete Monument Set
Conc. P	Concrete Monument Found
Iron P	Iron Pipe Set
Iron F	Iron Flag Set
Iron R	Iron Rod Set
Iron B	Iron Bolt Set
Iron N	Iron Nail Set
Iron C	Iron Cap Set
Iron S	Iron Spike Set
Iron L	Iron Loop Set
Iron T	Iron Tag Set
Iron W	Iron Wire Set
Iron O	Iron Oil Set
Iron G	Iron Grease Set
Iron D	Iron Dust Set
Iron E	Iron Earth Set
Iron A	Iron Air Set
Iron F	Iron Fire Set
Iron W	Iron Water Set
Iron S	Iron Smoke Set
Iron L	Iron Light Set
Iron T	Iron Taste Set
Iron O	Iron Odor Set
Iron G	Iron Gravity Set
Iron D	Iron Density Set
Iron E	Iron Elasticity Set
Iron A	Iron Adhesion Set
Iron F	Iron Friction Set
Iron W	Iron Weight Set
Iron S	Iron Strength Set
Iron L	Iron Length Set
Iron T	Iron Time Set
Iron O	Iron Oil Set
Iron G	Iron Grease Set
Iron D	Iron Dust Set
Iron E	Iron Earth Set
Iron A	Iron Air Set
Iron F	Iron Fire Set
Iron W	Iron Water Set
Iron S	Iron Smoke Set
Iron L	Iron Light Set
Iron T	Iron Taste Set
Iron O	Iron Odor Set
Iron G	Iron Gravity Set
Iron D	Iron Density Set
Iron E	Iron Elasticity Set
Iron A	Iron Adhesion Set
Iron F	Iron Friction Set
Iron W	Iron Weight Set
Iron S	Iron Strength Set
Iron L	Iron Length Set
Iron T	Iron Time Set



- Notes:
- The 100-Year Flood Boundary was obtained directly from FEMA Flood Map 45061C0 535 H, (effective date August 23, 1999). This property is located in Flood Zone "A" & "X-Out". Flood Zone locations are scaled from current FEMA Maps. Scales vary from 1"=500' to 1"=2000' and are noted as being approximate on said maps. Kenneth D. Jordan, PLS does not certify to or assume responsibility of the accuracy of the flood zone lines. Flood lines are subject to verification by the County FEMA Officer.
 - This plot was prepared without the benefit of a title report. Property is subject to all restrictions noted in recorded deeds and/or established by recorded plans.
 - There has been no determination of wetlands or hazardous waste on this property.

- References:
- DB 1794/850, 2255/802, 4216/2360, 4211/675, 4155/2669, 720/130 (All Mention the 30' Access Road)
 - Plot by S.D. Cox, "Compiled" dated July 20, 1951
Entitled, "Map of 106.1 Acres", Prepared for
Alton Parker, DB 761/480



CERTIFICATE OF OWNERSHIP AND DEDICATION

The undersigned hereby acknowledge that I am (we are) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this [plot/plan of development] with my (our) free consent and that I (we) hereby dedicate all items as specifically shown or indicated on said plot.

Printed Name	Signature	Date
Printed Name	Signature	Date
Printed Name	Signature	Date
Printed Name	Signature	Date

CERTIFICATE OF ACCESS AGREEMENT

The undersigned hereby acknowledge that access is provided to Tract 1, 2 & 3 through the use of a 50 foot right of way non-exclusive and appurtenant easement. The aforementioned easement shall be owned and maintained collectively by the property owners of the Tract 1, 2 & 3. Horry County shall not be responsible for the maintenance of or improvements to the aforementioned drive or easement.

Printed Name	Signature	Date
Printed Name	Signature	Date
Printed Name	Signature	Date
Printed Name	Signature	Date

LINE	BEARING	DISTANCE
L1	S 35°03'36" E	5.88'
L2	N 61°43'14" E	29.62'
L3	S 21°11'54" E	35.23'
L4	S 21°38'31" E	86.79'
L5	S 41°27'12" E	23.07'
L6	S 03°58'55" W	38.74'
L7	S 28°29'22" E	16.58'
L8	S 28°16'46" E	10.71'
L9	S 27°22'04" E	39.22'
L10	N 63°12'43" E	29.95'
L11	S 29°20'49" E	19.72'
L12	S 61°50'54" W	38.78'
L13	S 28°41'08" E	28.41'
L14	S 69°45'47" W	30.37'
L15	N 28°25'21" W	130.83'
L16	N 29°20'49" W	19.72'
L17	N 29°12'32" W	203.39'
L18	N 63°07'04" E	20.09'
L19	N 61°43'14" E	390.87'
L20	S 28°45'14" E	25.36'
L21	S 61°43'14" W	394.02'

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE	TANGENT
C1	50.00'	57.99'	54.79'	S 04°48'05" W	66°26'51"	32.75'
C2	50.00'	103.63'	86.05'	N 82°36'00" W	118°45'00"	84.46'
C3	50.00'	74.00'	67.43'	N 19°10'35" E	84°48'09"	45.66'

Exhibit 2

“Original Survey”

As shown on lender’s March 4, 2020 Appraisal (with invoice)

CRB Appraisal Associates
Christopher Byrne
819 Lalton Dr
843-582-8077
christopherrbyrne@gmail.com

03/04/2020

Revolution Mortgage
480 Old Worthington Rd Suite 300, Westerville OH 43082

Re: Property: 4708 Highway 90
Conway, SC 29526
Borrower: Nicholas F Wilson
File No.: 20-002

Opinion of Value: \$ 460,000
Effective Date: 02/08/2020

In accordance with your request, we have appraised the above referenced property. The report of that appraisal is attached.

The purpose of the appraisal is to develop an opinion of market value for the property described in this appraisal report, as improved, in unencumbered fee simple title of ownership.

This report is based on a physical analysis of the site and improvements, a locational analysis of the neighborhood and city, and an economic analysis of the market for properties such as the subject. The appraisal was developed and the report was prepared in accordance with the Uniform Standards of Professional Appraisal Practice.

The opinion of value reported above is as of the stated effective date and is contingent upon the certification and limiting conditions attached.

It has been a pleasure to assist you. Please do not hesitate to contact me or any of my staff if we can be of additional service to you.

Sincerely, esign.afsmode.com/verify Serial: F17E00BF



Christopher Byrne
License or Certification #: 5780
State: SC Expires: 06/30/2020
christopherrbyrne@gmail.com

Serial# F17E00BF
esign.afsmode.com/verify

Subject Survey Plat Map

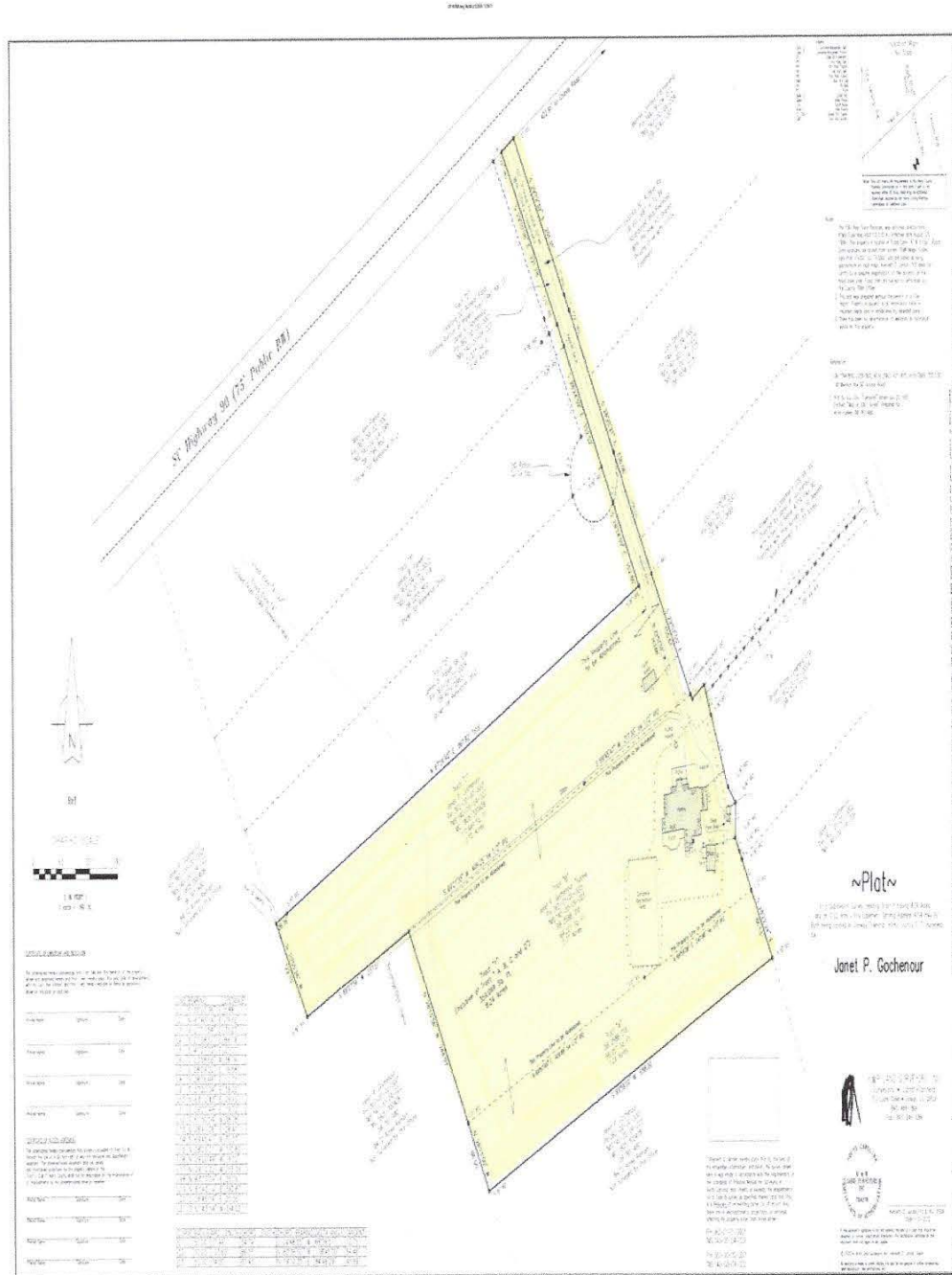


Exhibit 3

Contract and all Addenda

- Jan. 22, 2020, Offer
- Jan. 23, 2020, Addendum
- Jan. 29, 2020, Addendum
- Jan. 30, 2020, “Original Survey”
- Mar. 5, 2020, Addendum
-



ADDENDUM/AMENDMENT TO

☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☐ COUNTEROFFER] OR

☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____

COVERING THE ☐ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as:

Address _____ 4708 Highway 90, - Unit # _____ -

City _____ Conway _____ State of South Carolina

Other _____ n/a _____ TMS _____ 36201010001

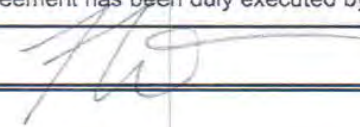
The undersigned Parties hereby agree as follows: _____

The buyer and the seller agree to extend the closing date to March 6, 2020.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at _____ ☐ AM ☐ PM on _____ unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: Nicholas Wilson  dotloop verified 03/05/20 2:14 PM EST W45J-6L7Y-E0WJ-FX6M

WITNESS: _____

BUYER: _____

WITNESS: _____

SELLER: Jarvis Goheen 

WITNESS: _____

SELLER: _____

WITNESS: _____

REALTOR® is the registered collective membership mark which may be used only by those real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its strict professional Code of Ethics. The South Carolina Association of REALTORS® (SCR) owns copyright to the content of this form and expressly prohibits the display, distribution, duplication, transmission, alteration, or reproduction of any part of SCR copyright content as well as the use of the name "South Carolina Association of REALTORS®" in connection with any written or electronic format without the prior written consent of SCR.

© 2013 South Carolina Association of REALTORS®. 8/2013



BUYER



BUYER



SELLER



SELLER HAVE READ THIS PAGE

FORM 390 PAGE 1 of 1

ELECTRONICALLY FILED - 2023 Apr 19 7:02 PM - Horry - COMMON PLEAS - CASE#2023CP2602475



AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE (RESIDENTIAL/CONDO)

PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL.

1. PARTIES: This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Nicholas Wilson

("Buyer"), and

Seller(s), Janet Gochenour

("Seller").

- (A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.
- (B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
- (C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing. TBD
- (D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to initially cause this primary Contract to be binding on all Parties.
- (E) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.
- (F) "Time" - all time stated shall be South Carolina local time. **Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.**

☐ **BUYER** ☐ **SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE**

NW (initials) BUYER(s) acknowledges receipt of the SC Disclosure of Brokerage Relationships form and is receiving ☒ **Client** ☐ **Customer service** in this transaction.

NW (initials) SELLER(s) acknowledges receipt of the SC Disclosure of Brokerage Relationships form and is receiving ☐ **Client** ☐ **Customer service** in this transaction.

2. PURCHASE PRICE: ~~\$480,000~~ \$465,000

Payable by transfer of Good Funds via ☐ Finance or ☒ a combination of Finance and Cash USD or ☐ Cash USD.

Verification of Cash available for Closing is ☐ attached ☐ not attached ☐ to be Delivered before 01/27/2020

This Contract ☐ is ☒ is not contingent upon the sale and closing of Buyer's real property and SCR504 ☐ is ☐ is not attached.

3. PROPERTY: Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises herein), Seller will sell and convey and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying in same operable condition, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financed equipment prior to signing Contract. Leasing issues and items and financed equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental act reservations, rents, deposits, documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll carts).

Address 4708 Highway 90

Unit #

City Conway

State of South Carolina

Zip 29526

County of

Lot n/a

Block n/a

Section/Phase n/a

Subdivision n/a

Other

Tax Map 36201010001 plus additional acreage

Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in attachment(s):

NW BUYER ☐ BUYER ☐ SELLER JG SELLER
NW BUYER ☐ BUYER ☐ SELLER ☐ SELLER

HAVE READ THIS PAGE

4. CONVEYANCE/CLOSING/POSSESSION: "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before 03/03/2020 ("Closing Date"). Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s): Nicholas Wilson

and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

5. EARNEST MONEY: Total \$ 3000 10,000 (USD) Earnest Money is paid as follows: \$ 0.0 accompanies this offer (date) and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire) 01/27/2020

to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Century 21 The Harrelson Group as Escrow Agent to deposit and hold and disburse earnest money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request. If Earnest Money is not delivered by the agreed upon date above Seller may terminate the contract by delivering Notice of Termination to the Buyer.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR518, SCR517, MEDIATION AGREEMENT) OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR RELATED TO EARNEST MONEY, PARTY RECEIVING THE LEAST AMOUNT OF EARNEST MONEY IN THE COURT'S DISBURSEMENT ORDER AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ 125 SHALL BE PAID TO THE ESCROW AGENT BY THE PARTIES AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. TRANSACTION COSTS: Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (including but not limited to mortgage insurance, title insurance lender/owner, flood, insurance, and hazard insurance) discount points, interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes prorated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

All costs to obtain information from or pertaining to owners' association, private/public transfer fees, and any costs similar to transfer fees (e.g. certificate of assessment, capital contributions, working capital, estoppel fees or otherwise named but similar fees) are the ☒ Seller's or ☐ Buyer's transaction costs. If no box is checked these costs will be added to Seller's transaction costs.

At Closing, Seller will pay Buyer's transaction costs not to exceed \$ n/a, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs.

☒ BUYER
☐ BUYER
☐ BUYER
☐ BUYER
☒ SELLER
☐ SELLER
☐ SELLER
☐ SELLER
 HAVE READ THIS PAGE

7. **FINANCE:** Buyer's obligation under this Contract ☒ is ☐ is not contingent upon obtaining financing of a ☒ 30 year or ☐ 15 year or ☐ other n/a purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts to a maximum 80% % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing by 01/22/2020 (date) and shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions by 01/29/2020 (date) (no repairs required prior to this Notice). Final loan approval occurs when Lender funds loan(s). If the Buyer changes their Lender during the Financing Period they must notify the seller in writing within 2 calendar days. Absent written approval by the Seller, Buyer cannot change lender if the closing date agreed upon in Paragraph 4 will change as a direct result. If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Lender (may change): Revolution Mortgage ☐ FHA ☐ VA ☒ Conventional ☐ Seller
☐ Other n/a . An FHA VA Financing Addendum ☐ is ☐ is not attached. Additional financing terms
☐ are ☐ are not attached.

8. REPAIRS:

CHECK ONLY ONE OF THE FOLLOWING OPTIONS. IF NO BOXES ARE CHECKED THIS CONTRACT WILL BE AN AS-IS CONTRACT IN REGARDS TO REPAIRS. IF MULTIPLE BOXES ARE CHECKED THEN THE FIRST PARAGRAPH WITH A CHECKED BOX WILL DETERMINE REPAIRS.

☐ REPAIR PROCEDURE:

All Repair Procedure Inspections and Requests shall be completed and delivered to the Seller by 6 P.M. on 01/31/2020 (date). Any and all requests necessary to place the heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems to be conveyed in operative condition, to make the roof free of leaks, to address environmental concerns and to make the improvements structurally sound (Repair Requests) should be delivered by the deadline above. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer. Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead based hazards including lead based paints, wetlands study, appurtenant buildings, heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems, as well as, appurtenant equipment or appliances. Upon Seller's request the Buyer will provide with a copy of the Inspection Report.

No later than 6 P.M. on 02/07/2020 (date), Seller shall Deliver Notice agreeing or not agreeing to make repairs in the Buyer's Repair Requests. The costs of all repairs to heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems making these systems operable, make roof free of leaks, address environmental concerns, and to make the improvements structurally sound to be paid by Seller ("Seller Paid Repairs"). Seller Paid Repairs DO NOT include the following items: home maintenance, flooring, fogged windows, grandfathered code issues, landscaping, preventive maintenance, cosmetic changes, home improvement, and energy efficiency. If the Seller contractually agrees to make all the requested Seller Paid Repairs, the Parties agree to proceed under the amended Contract. The repairs to any other items are the sole responsibility of the Buyer.

If the Seller does not timely respond per above or does not agree to make all the Seller Paid Repairs, the Buyer shall within 2 Calendar Days choose any one of the following options (1) accept the Property in its present condition, (2) negotiate a new/amended Contract with the Seller for the payment of these repairs/price or (3) terminate this Contract by Delivered Notice. IF BUYER FAILS TO ACCEPT, RENEGOTIATE A NEW/AMENDED CONTRACT WITH SELLER, OR TERMINATE CONTRACT BY DELIVERED NOTICE WITHIN 2 CALENDAR DAYS: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract. The obligations of the Seller for repairs terminate upon Closing.

☐ DUE DILIGENCE:

The DUE DILIGENCE PERIOD begins upon the Effective Date and shall expire at 6 P.M. on n/a (date). Any extension to this date must be made in writing and agreed to by both Parties.

BUYER	BUYER	SELLER	SELLER
BUYER	BUYER	SELLER	SELLER

HAVE READ THIS PAGE

During the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/Inspectors, Seller/Estimators, and REALTORS® all have adequate time for: Buyer to coordinate Inspections and Repair Requests, Seller to obtain Repair estimates, Buyer and Seller to negotiate Repairs, and Buyer to potentially timely/properly Due Diligence terminate or buy.

During the Due Diligence Period, Seller agrees Buyer may rely on the following list of five items in accordance with Contract and laws. Buyer is solely responsible for Inspections. Buyer is not required to Inspect. Until Buyer timely/properly terminates the Contract or the Parties agree on an amended Contract, the Buyer can rely on #1, #2, #3, #4, and #5. TIME IS OF THE ESSENCE. Delivering a Repair Request does not extend the Due Diligence Period.

- (1) Conduct/obtain Inspections [e.g. on site conditions, off site conditions]
- (2) Deliver Repairs Requests Notice to Seller [e.g. SCR525 with all repair requests, all/portions of reports]
- (3) Proceed under amended Contract [e.g. SCR310 and SCR525, SCR390, SCR391]
- (4) Proceed under As Is Contract [e.g. Buyer desires to buy anyway, Buyer wants Property without Repair]
- (5) Terminate Contract by timely/properly Delivering "Notice of Termination" and "Termination Fee" to Seller within the Due Diligence Period.

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract only by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ n/a USD Good Funds.

DURING THE DUE DILIGENCE PERIOD, SHOULD BUYER FAIL TO OBTAIN A NEW/AMENDED CONTRACT WITH THE SELLER OR BUYER FAIL TO TIMELY/PROPERLY DUE DILIGENCE TERMINATE THE CONTRACT DURING THE DUE DILIGENCE PERIOD: The Buyer agrees to buy and Seller agree to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed in writing by the Parties in this Contract

☐ **AS-IS**

All Parties agree that Property is being sold "As-Is". "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract. Buyer retains the right to inspect the Property by 6 P.M. on n/a (date) for informational purposes only. The Seller is under no obligation to remedy any issues the Buyer discovers during their inspections, and the Buyer may not terminate the contract based on the results of any inspections conducted.

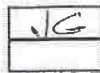
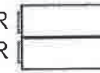
9. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured inspectors ("Inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for Inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will grant the Buyer the right to perform a final walkthrough inspection of the property within 48 hours prior to the closing date. Seller will keep all utilities operational through Closing unless otherwise agreed:

☐ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the Inspections

Other n/a ☐ see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.

	BUYER		BUYER		SELLER		SELLER
	BUYER		BUYER		SELLER		SELLER

HAVE READ THIS PAGE

10. APPRAISED VALUE:

☒ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Calendar Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

☐ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

11. WOOD INFESTATION REPORT: If the Property to be sold has been previously occupied, this Contract is ☒ contingent ☐ not contingent upon the ☐ Buyer ☒ Seller having the Property inspected at their expense by a qualified/licensed/bonded pest control operator selected by the ☐ Buyer ☒ Seller. ☐ Buyer ☒ Seller shall deliver timely Notice of and shall deliver to Closing a CL100 Wood Infestation Report dated no earlier than 30 calendar days prior to Closing and no later than 10 calendar days prior to Closing. If the Buyer is responsible for having the Property inspected as indicated above, but does not have the Property timely inspected for the report's required Delivery time frame, the Buyer waives any and all rights under the terms of this section. The Seller makes no warranties with regard to matters covered by such infestation report or any other improvement unless specifically stated in this Contract.

If the wood infestation report reveals the presence or indication of or damages by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish the Buyer with a CL100 wood infestation report by a qualified/licensed/bonded pest control operator (dated no earlier than 30 calendar days prior to Closing) that the Property is free from infestation or any damage herein mentioned; or documentation that the infestation has been treated and damage has been repaired as appropriate in a workmanlike manner on or before closing and reported by an appropriate licensee. State law and regulations control CL100 issues. If the Seller does not make the repairs and treatment, the Buyer shall have the option to (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Contract by Delivering Notice of Termination to the Seller. If the Property to be sold has not been previously occupied, Seller shall certify that the Dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide at Closing to the Buyer a written certification from a qualified/licensed/bonded pest control operator. The obligations of the Seller under this Section terminate after the Closing.

12. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands/beachfront determined, and appropriate insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

13. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

14. HOME WARRANTY COMPANY OPTIONAL COVERAGE ("HWC"): Parties agree that a Home Warranty ordered by n/a with at least twelve months of coverage after Closing Date ☐ will ☒ will not be provided by Closing and \$ n/a will be paid by n/a to the Home Warranty Company. Buyer to pay any deficit and surplus reverts to payor. Proposed HWC and type of HWC: n/a

NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.

15. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Calendar Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount sufficient for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

11/22/20 BUYER	BUYER	BUYER	SELLER	SELLER
BUYER	BUYER	BUYER	SELLER	SELLER

HAVE READ THIS PAGE

16. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☒ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer/making reasonable repairs prior to Closing). Buyer understands the CDS does not replace Inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers have met requirements of SC Code 27-50-70 and Brokers are not responsible or liable for any information in the CDS. CDS is not a substitute for the Buyers and Inspectors inspecting the Property (related issues/onsite/offsite) "Property issues" for all needs.

☐ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property Issues for all their needs.

17. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR315) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect Your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain Inspections of all Property issues per their needs.

18. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

19. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☐ may ☒ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

20. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

21. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms; and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

22. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

23. DEFAULT:

- (A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:
- (i) Deliver Notice of Default to Seller and terminate Contract; and
 - (ii) Pursue any remedies available to Buyer at law or equity; and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.
- (B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:
- (i) Deliver Notice of Default to Buyer and terminate Contract; and
 - (ii) Pursue any remedies available to Seller at law or equity; and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.

 01/22/20	BUYER		BUYER		SELLER		SELLER
HAVE READ THIS PAGE							

(C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
 (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

24. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party. Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System 803-772-5206 or www.NAR.REALTOR/policy/mediation or www.screaltors.org/mediation). Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies).

25. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

26. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (8) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

27. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency and/or non-agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid in accordance with laws and REALTOR® ethics.

28. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. Parties shall initial and date Contract changes. If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, such documents can be further identified or described here (e.g. SCR 390, 391, 503, 504, 315, 320, 393, 370, 375, 513, 610): N/A

29. NOTICE AND DELIVERY: Notice is any unilateral communication (e.g. offers, counteroffers, acceptance, termination, unilateral requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will only be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

APR 19 01/22/20	BUYER		BUYER		SELLER		SELLER
	BUYER		BUYER		SELLER		SELLER

HAVE READ THIS PAGE

30. Acknowledgements: Due to potential criminal activity, parties are solely responsible to verify all wiring instructions with law firm/bank. Parties are also advised and understand that audio/visual surveillance may occur in the property and parties should plan accordingly and comply with all federal, state, and local laws. Parties acknowledge receiving, reading, reviewing, and understanding: this Contract, the SC Disclosure of Real Estate Brokerage Relationships form, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract.

31. EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 12:00 ☐ AM ☒ PM on 01/23/2020 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline. This offer will expire automatically if no action is taken by either party 30 calendar days after the offer's submittal.

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties as true to the best of their knowledge/belief. If signee is not a Party, appropriate legal documents (e.g. Power of Attorney, Corporate Authorization) are ☐ attached or ☐ to be Delivered to the other Party within _____ Calendar Days.

Parties shall initial and date all changes in this Contract and initial all pages.

BUYER: Nicholas F. Wilson dotloop verified 01/23/20 10:39 AM EST 9LD9-BZVN-TNQH-2RDD Date: _____ Time: _____

BUYER: _____ Date: _____ Time: _____

BUYER: _____ Date: _____ Time: _____

BUYER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____
nfwilson1990@gmail.com

SELLER: Jarvis Hockema Date: 1-22-20 Time: 3:20 PM

SELLER: _____ Date: _____ Time: _____

SELLER: _____ Date: _____ Time: _____

SELLER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: 4708 Highway 90, Conway, SC 29526

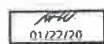
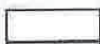
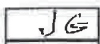
1/20 01/22/20 BUYER ☐ BUYER ☒ SELLER ☐ SELLER ☐
 BUYER ☐ BUYER ☐ SELLER ☐ SELLER ☐

HAVE READ THIS PAGE

ELECTRONICALLY FILED - 2023 Apr 19 7:02 PM - Horry - COMMON PLEAS - CASE#2023CP2602475

Ken Moore	Century 21 The Harrelson Group	112423	6517
Buyer's Agent/Company		Buyer's Agent License #/LLR Office Code	
kenmoorec21@gmail.com		843-446-5777	
Buyer's Agent's Email Address		Buyer's Agent Telephone Number	
Ken Moore	Century 21 The Harrelson Group	112423	6517
Seller's Agent/Company		Seller's Agent License #/LLR Office Code	
kenmoorec21@gmail.com		843-446-5777	
Seller's Agent's Email Address		Seller's Agent Telephone Number	

REALTOR® is the registered collective membership mark which may be used only by those real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its strict professional Code of Ethics. The South Carolina Association of REALTORS® (SCR) owns copyright to the content of this form and expressly prohibits the display, distribution, duplication, transmission, alteration, or reproduction of any part of SCR copyright content as well as the use of the name "South Carolina Association of REALTORS®" in connection with any written or electronic format without the prior written consent of SCR. SCR makes no representation as to the legal adequacy of this form or the information added for a specific transaction and recommends that Parties consult a SC attorney prior to signing to ensure the completed form meets your legal need.

	BUYER		BUYER		SELLER		SELLER
	BUYER		BUYER		SELLER		SELLER

HAVE READ THIS PAGE



ADDENDUM/AMENDMENT TO

☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☐ COUNTEROFFER] OR

☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____

COVERING THE ☒ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as:

Address 4708 Highway 90 Unit # _____
City Conway State of South Carolina
Other N/A TMS 36201010001

The undersigned Parties hereby agree as follows: _____

Seller shall have the property surveyed, including the additional acreage listed as being included in this sale to reach no less than 8 acres and recorded as part of this parcel confirming total acreage. Seller to include the deed of the driveway as part of the sale.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 5 ☐ AM ☒ PM on 01/23/2020 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: Nicholas Wilson

dotloop verified
01/23/20 8:15 AM EST
15GQ-E7A1-Y5ST-QJZY

WITNESS: _____

BUYER: _____

WITNESS: _____

SELLER: Janet Gochen 1-23-20

WITNESS: _____

SELLER: _____

WITNESS: _____

REALTOR® is the registered collective membership mark which may be used only by those real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its strict professional Code of Ethics. The South Carolina Association of REALTORS® (SCR) owns copyright to the content of this form and expressly prohibits the display, distribution, duplication, transmission, alteration, or reproduction of any part of SCR copyright content as well as the use of the name "South Carolina Association of REALTORS®" in connection with any written or electronic format without the prior written consent of SCR.

© 2013 South Carolina Association of REALTORS®. 8/2013

MW
01/23/20
8:15 AM EST
dotloop verified

BUYER

☐

BUYER

JG

SELLER

☐

SELLER HAVE READ THIS PAGE

FORM 390 PAGE 1 of 1



ADDENDUM/AMENDMENT TO

☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☐ COUNTEROFFER] OR

☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____

COVERING THE ☒ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as:

Address 4708 Highway 90 Unit # _____
 City Conway State of South Carolina
 Other N/A TMS 36201010001

The undersigned Parties hereby agree as follows:

At Closing, Seller will pay Buyer's Transaction costs not to exceed \$10,000. Buyer is responsible for any Buyer's transaction costs exceeding this amount.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 5 ☐ AM ☒ PM on 1/30/20 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: Nicholas Wilson dotloop verified 01/29/20 1:11 PM EST FOU7-KNHR-RSZO-5XPD

WITNESS: _____

BUYER: _____

WITNESS: _____

SELLER: X Janet Hochman

WITNESS: _____

SELLER: _____

WITNESS: _____

REALTOR® is the registered collective membership mark which may be used only by those real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its strict professional Code of Ethics. The South Carolina Association of REALTORS® (SCR) owns copyright to the content of this form and expressly prohibits the display, distribution, duplication, transmission, alteration, or reproduction of any part of SCR copyright content as well as the use of the name "South Carolina Association of REALTORS®" in connection with any written or electronic format without the prior written consent of SCR.

© 2013 South Carolina Association of REALTORS®. 8/2013



BUYER



BUYER



SELLER



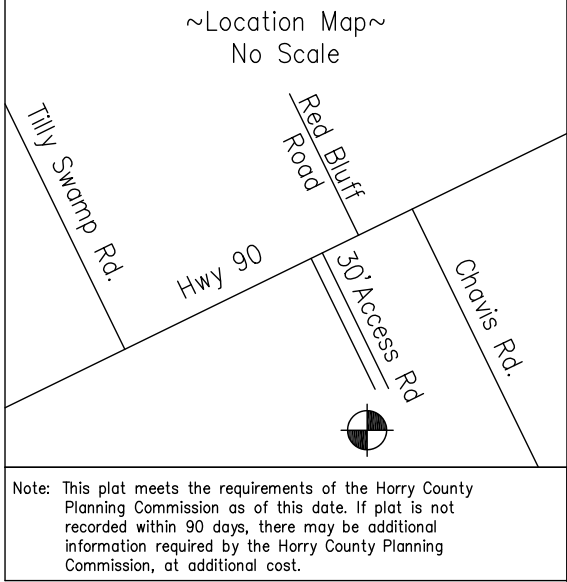
SELLER HAVE READ THIS PAGE

FORM 390 PAGE 1 of 1

ELECTRONICALLY FILED - 2023 Apr 19 7:02 PM - Horry - COMMON PLEAS - CASE#2023CP2602475

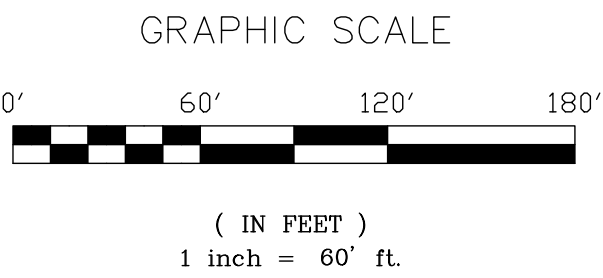
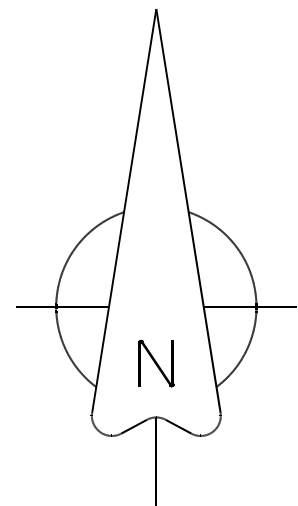
"Exhibit A"

Legend	
Conc. Monument	Set
Conc. Monument	Found
Iron Pipe	Set
Iron Pipe	Found
Iron Rod	Set
Iron Rod	Found
Nail and Cap	Set
Nail and Cap	Found
Spike	Set
Spike	Found
Spike	Set
Spike	Found
Spike	Set
Spike	Found
Spike	Set
Spike	Found



- Notes:
- The 100-Year Flood Boundary was obtained directly from FEMA Flood Map 45061C0 535 H, (effective date August 23, 1999). This property is located in Flood Zone "A" & X-Out". Flood Zone locations are scaled from current FEMA Maps. Scales vary from 1"=500' to 1"=2000' and are noted as being approximate on said maps. Kenneth D. Jordan, PLS does not certify to or assume responsibility of the accuracy of the flood zone lines. Flood lines are subject to verification by the County FEMA Officer.
 - This plot was prepared without the benefit of a title report. Property is subject to all restrictions noted in recorded deeds and/or established by recorded plans.
 - There has been no determination of wetlands or hazardous waste on this property.

- References:
- DB 1794/850, 2255/802, 4216/2360, 4211/675, 4155/2669, 720/130 (All Mention the 30' Access Road)
 - Plot by S.D. Cox, "Compiled" dated July 20, 1951
Entitled, "Map of 106.1 Acres", Prepared for
Alton Parker, DB 761/480



CERTIFICATE OF OWNERSHIP AND DEDICATION

The undersigned hereby acknowledge that I am (we are) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this [plot/plan of development] with my (our) free consent and that I (we) hereby dedicate all items as specifically shown or indicated on said plot.

Printed Name	Signature	Date
Printed Name	Signature	Date
Printed Name	Signature	Date
Printed Name	Signature	Date

CERTIFICATE OF ACCESS AGREEMENT

The undersigned hereby acknowledge that access is provided to Tract 1, 2 & 3 through the use of a 50 foot right of way non-exclusive and appurtenant easement. The aforementioned easement shall be owned and maintained collectively by the property owners of the Tract 1, 2 & 3. Horry County shall not be responsible for the maintenance of or improvements to the aforementioned drive or easement.

Printed Name	Signature	Date
Printed Name	Signature	Date
Printed Name	Signature	Date
Printed Name	Signature	Date

LINE	BEARING	DISTANCE
L1	S 35°03'36" E	5.88'
L2	N 61°43'14" E	29.62'
L3	S 21°11'54" E	35.23'
L4	S 21°38'31" E	86.79'
L5	S 41°27'12" E	23.07'
L6	S 03°58'55" W	38.74'
L7	S 28°29'22" E	16.58'
L8	S 28°16'46" E	10.71'
L9	S 27°22'04" E	39.22'
L10	N 63°12'43" E	29.95'
L11	S 29°20'49" E	19.72'
L12	S 61°50'54" W	38.78'
L13	S 28°41'08" E	28.41'
L14	S 69°45'47" W	30.37'
L15	N 28°25'21" W	130.83'
L16	N 29°20'49" W	19.72'
L17	N 29°12'32" W	203.39'
L18	N 63°07'04" E	20.09'
L19	N 61°43'14" E	390.87'
L20	S 28°45'14" E	25.36'
L21	S 61°43'14" W	394.02'

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE	TANGENT
C1	50.00'	57.99'	54.79'	S 04°48'05" W	66°26'51"	32.75'
C2	50.00'	103.63'	86.05'	N 82°36'00" W	118°45'00"	84.46'
C3	50.00'	74.00'	67.43'	N 19°10'35" E	84°48'09"	45.66'

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE CIRCUIT COURT

NICHOLAS F. WILSON,
Plaintiff,

Case No. 2023-CP-26-02475

vs.

JANET P. GOCHENOUR, et al.,
Defendants.

**DEFENDANTS RAYMOND LAW FIRM,
P.A. AND SONIA M. RAYMOND'S
NOTICE OF MOTION AND MOTION
TO DISMISS**

TO: NICHOLAS F. WILSON AND HIS ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE THAT Defendants Raymond Law Firm, P.A. and Sonia M. Raymond, by and through their undersigned counsel, will move the presiding judge of the Court of Common Pleas to dismiss Plaintiff's Complaint against these Defendants pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The grounds for this Motion are that Plaintiff's claims are barred by the applicable statute of limitations, S.C. Code Ann. § 15-35-350(5); *Berry v. McLeod*, 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997) (statute of limitations for legal malpractice is three years).

[SIGNATURE(S) ON FOLLOWING PAGE]

s/ Bruce Wallace

R. Bruce Wallace, SC Bar No. 11653

Rhett D. Ricard, SC Bar No. 102353

MAYNARD NEXSEN, PC

205 King Street, Suite 400 (29401)

P.O. Box 486

Charleston, SC 29402

Telephone: (843) 577.9440

Email(s): bwallace@maynardnexsen.com

RRicard@maynardnexsen.com

Attorneys for Defendants

SONIA M. RAYMOND and

RAYMOND LAW FIRM, P.A.

May 24, 2023

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE CIRCUIT COURT

NICHOLAS F. WILSON,
Plaintiff,

Case No. 2023-CP-26-02475

vs.

JANET P. GOCHENOUR, et al.,
Defendants.

**DEFENDANTS JANET P.
GOCHENOUR; JANET P.
GOUCHENOUR TRUSTEE,
NOTICE OF MOTION AND
MOTION TO DISMISS**

**TO: NICHOLAS F. WILSON AND HIS ATTORNEY OF RECORD WESLEY D.
FEW, ESQUIRE.**

YOU WILL PLEASE TAKE NOTICE THAT Defendants Janet P. Gochenour and Janet P. Gochenour Trustee, by and through their undersigned counsel, will move the presiding judge of the Court of Common Pleas to dismiss Plaintiff's Complaint against these Defendants pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The grounds for this Motion are that Plaintiff's claims are barred by the applicable statute of limitations. The Statute of Limitations for all the Plaintiff's causes of action including those against Defendants Janet P. Gochenour and Janet P. Gochenour Trustee is three years. (Breach of Contract, Interference with a Contract, Fraud, Constructive Fraud, Breach of Contract Accompanied by a Fraudulent Act, SC Unfair and Deceptive Trade Practices Act) all have a three-year statute of limitations.

Signature Page to Follow

Law Office of William J. Luse

S/William J. Luse

William J. Luse, Esquire

SC Bar No: 72790

917 Broadway Street

Myrtle Beach, SC 29577

Phone: 843-839-4795

Fax: 843-839-4815

bill@getlusenow.com

Myrtle Beach, SC
June 14, 2023

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

NICHOLAS F. WILSON,
Plaintiff,

vs.

JANET P. GOCHENOUR, *et al.*,
Defendants.

IN THE CIRCUIT COURT

Case No. 2023-CP-26-02475

DEFENDANTS
RAYMOND LAW FIRM, P.A. AND
SONIA M. RAYMOND'S
MEMORANDUM IN SUPPORT OF
THEIR MOTION TO DISMISS

TO: NICHOLAS F. WILSON AND HIS ATTORNEYS:

Defendants Raymond Law Firm, P.A. and Sonia M. Raymond (hereafter, the "Lawyers"), by and through their undersigned counsel, submit this Memorandum in support of their Motion to Dismiss filed May 24, 2023. The Lawyers seek dismissal of the Complaint because the applicable statute of limitations has run. For the reasons set forth in the Motion and herein, the Lawyers request the Court dismiss the Complaint against the Lawyers in its entirety, with prejudice.

FACTS

The facts are taken from Plaintiff's Complaint filed April 19, 2023. Plaintiff entered into a written real estate sales contract with Defendant Janet Gochenour. Complaint, ¶¶ 21 and 22. The Contract was amended several times. Complaint, ¶¶ 23, 24, and 27. The Contract identified the property Plaintiff was purchasing, including a parcel known as Tract "D". Complaint, ¶25. The property Plaintiff was purchasing, including Tract "D", was depicted on an unrecorded Plat, attached as an exhibit to the Complaint. Complaint, ¶25, Exh. 2. Tract "D" in turn contained a driveway Plaintiff states everyone knew he was purchasing. Complaint, ¶22. Plaintiff made it abundantly clear that he would not purchase the property unless he was going to be deeded the driveway. Complaint, ¶46.

Plaintiff purchased the property and closed the transaction on March 6, 2020. Complaint, ¶¶ 4, 15, 27. Plaintiff did not receive title to the driveway or Tract "D." Complaint, ¶118.

Plaintiff retained the Lawyers as his closing lawyers based on the selection of his realtors. Complaint, ¶82. Plaintiff alleges the Lawyers breached the duties owed to Plaintiff. Complaint, ¶86. Specifically, Plaintiff alleges the Lawyers failed to ensure he received the property identified in the Contract and the Survey. Complaint, ¶87. Plaintiff also alleges the Lawyers failed to advise Plaintiff he was not receive a deed to the property identified in the Contract and the Survey. Complaint, ¶88.

Plaintiff filed an affidavit pursuant to S.C. Code Ann. § 15-36-100 on May 5, 2023. In that affidavit, Plaintiff's expert states that Plaintiff closed on the property on March 6, 2020. Affidavit at ¶6.i. Plaintiff's expert states that the Lawyers failed to explain to Plaintiff that he was not receiving a deed to the driveway in fee simple, but only an easement. *Id.*, ¶7.c.

ARGUMENT

Plaintiff's complaint asserts a single cause of action against the Lawyers for Breach of Fiduciary Duty / Legal Malpractice.¹ The statute of limitations for both breach of fiduciary and legal malpractice claims is three years. S.C. Code Ann. § 15-35-350(5); *Berry v. McLeod*, 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997) (statute of limitations for legal malpractice is three years); *Mazloom v. Mazloom*, 382 S.C. 307, 323, 675 S.E.2d 746, 755 (Ct. App. 2009), *aff'd*, 392 S.C. 403, 709 S.E.2d 661 (2011)(claim for breach of

¹ Breach of Fiduciary Duty and legal malpractice claims are duplicative causes of action where, as here, the claims arise out of the attorney-client relationship. See Complaint ¶¶ 82-86. See also, *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 732 S.E.2d 166 (2012).

fiduciary duty is subject to a three-year statute of limitations.). Plaintiff knew or should have known that he had a cause of action against the Lawyers before April 19, 2020.

The Lawyers closed the transactions on March 6, 2020 and recorded the deed to Plaintiff the same day. As a result, the statute of limitations on any claim that would have been revealed by reviewing the deed began to run March 6, 2020. Plaintiff's claims arise out of the fact that the deed is allegedly different from the Contract. Complaint, ¶¶87. Similarly, Plaintiff's claims against the Lawyers arise out of their alleged failure to explain he was not getting fee simple title to the driveway *in the deed*. Complaint, ¶¶88. Plaintiff would have known the contents of the deed had he examined them. In fact, as Plaintiff's expert states, the deed plainly does not convey the property described in the Contract.

The applicability of statutes of limitations in South Carolina is based in part on the "discovery" rule – i.e., the statute begins to run when a reasonable plaintiff knew or should have known about the alleged negligence. *Christensen v. Mikell*, 324 S.C. 70, 73, 476 S.E.2d 692, 693 (1996). This is an objective test, and the discovery rule focuses on whether the complaining party acquired knowledge of any facts sufficient to put said party on inquiry, which, if developed will disclose the alleged malpractice. *Peterson v. Richland County*, 335 S.C. 135, 139, 515 S.E.2d 553, 555 (1999). An individual on "inquiry" or "constructive" notice is held to be on notice of the contents of documents filed in conformity with applicable statutory law, which an inquiry would have revealed. *Fuller–Ahrens Partnership v. S.C. Dept. of H'ways and Pub. Trans.*, 311 S.C. 177, 180, 427 S.E.2d 920, 922 (Ct.App. 1993).

The Case of *Berry v. McLeod*, 328 S.C. 435, 492 S.E.2d 794 (1997) proves instructive here. In *Berry*, the plaintiffs sued based on the lawyers' alleged malpractice

arising out of the filing of a public bond to fund a sewer system for the Town of New Ellenton. The trial court and Supreme Court found that the statute of limitations began when the bond documents were filed. *Id.* at 445-46, 495 S.E.2d at 800. Like the *Berry* plaintiffs, Plaintiff here knew or should have known he did not own the driveway when the Lawyers recorded the Deed on March 6, 2020.

Stated simply, because the deed was recorded, Plaintiff would have learned of any deficiencies had he looked at the recorded deed. Therefore, the statute of limitations runs from the date of filing of the deed, March 6, 2020. Because Plaintiff did not file this action until April 19, 2023, his claims against Sonia Raymond and The Raymond Law Firm are barred as a matter of law. The Court should dismiss the Complaint with prejudice.

CONCLUSION

The Lawyers will move the presiding judge of the Court of Common Pleas to dismiss Plaintiff's Complaint against the Lawyers pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The grounds for this Motion are that Plaintiff's claims are barred by the applicable statute of limitations, S.C. Code Ann. § 15-35-350(5); *Berry v. McLeod*, 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997) (statute of limitations for legal malpractice is three years).

s/ Bruce Wallace

R. Bruce Wallace, SC Bar No. 11653

Rhett D. Ricard, SC Bar No. 102353

MAYNARD NEXSEN, PC

205 King Street, Suite 400 (29401)

P.O. Box 486

Charleston, SC 29402

Telephone: (843) 577.9440

Email(s): bwallace@maynardnexsen.com

RRicard@maynardnexsen.com

Attorneys for Defendants

SONIA M. RAYMOND and

RAYMOND LAW FIRM, P.A.

August 28, 2023

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
15TH JUDICIAL CIRCUIT

Case No: 2023-CP-26-02475

Nicholas F. Wilson,

Plaintiff,

vs.

Janet P. Gochenour; Janet P. Gochenour Trustee;
James B. Parker; James B. Parker, Sr.; Mary Ann
Parker; Kenneth Gregory Moore; R&G Corp.,
d/b/a Century 21 The Harrelson Group; Patton
Development SC, LLC; Mortgage Electronic
Registration Systems, Inc.; Sonia M. Raymond;
Raymond Law Firm, P.A.;

Defendants.

**PLAINTIFF’S JOINT MEMORANDUM
IN OPPOSITION TO MOTIONS TO
DISMISS OF: (1) SONIA M. RAYMOND,
AND RAYMOND LAW FIRM, P.A., AND
(2) JANET P. GOCHENOUR, AND
JANET P. GOCHENOUR TRUSTEE
BASED ON THE STATUTE
OF LIMITATIONS**

Plaintiff respectfully submits this joint response in opposition to the following motions:

(i) Motion to Dismiss by Sonia M. Raymond and Raymond Law Firm, P.A. (hereafter “Law Firm Defendants”) (filed May 24, 2023); and (ii) Motion to Dismiss by Janet P. Gochenour and Janet P. Gochenour Trustee (“Seller Defendants”) (filed June 14, 2023).

On August 28, 2023, the Law Firm Defendants filed their Memorandum in Support of Motion to Dismiss. The only claim at issue in this motion is Plaintiff’s Claim 6: “Breach of Fiduciary Duty / Legal Malpractice.”

On September 4, 2023, the Seller Defendants filed their Memorandum in Support of Motion to Dismiss. The claims at issue in the Seller Defendants’ motion include: Plaintiff’s Claim 1: Breach of Contract; Plaintiff’s Claim 7: Fraud; Plaintiff’s Claim 8: Constructive Fraud;

Plaintiff's Claim 9: Breach of Contract Accompanied by a Fraudulent Act; and Plaintiff's Claim 10: Declaratory Judgment.¹

All claims at issue in both motions have a three-year statute of limitations.

The Discovery Rule

The statute of limitations for a legal malpractice cause of action is three years. S.C. Code Ann. § 15-3-350. Under the discovery rule, “the statute of limitations accrues at the time of the negligence or when the facts and circumstances would put a person of common knowledge on notice that there might be a claim against another party.” *True v. Monteith*, 327 S.C. 116, 489 S.E.2d 615, 616 (1997); *see also Personal Care, Inc. v. Theos*, 426 S.C. 78, 89, 825 S.E.2d 281, 287 (Ct. App. 2019); *Holmes v. Haynsworth, Sinkler & Boyd*, PA, 408 S.C. 620, 623-33, 760 S.E.2d 399, 405 (2014).

The discovery rule also applies to all claims put at issue by the Seller Defendants.

STANDARD OF REVIEW

“A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deductible therefrom would entitle the plaintiff to relief on any theory of the case.” *Fleteau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 415 (Ct. App. 2003). “The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Patterson v. Witter*, 418 S.C. 66, 76, 791 S.E.2d 294, 300 (Ct. App. 2016).

¹ The Seller Defendants' Memorandum mistakenly references Plaintiff's Claim 2: Interference with a Contract, and Plaintiff's Claim 11: SC Unfair and Deceptive Trade Practices Act. These claims are not plead against the Seller Defendants. In addition, Plaintiff's Claim 10: Declaratory Judgment, is plead as against all parties and seeks an order declaring his rights in the Property in accordance with the sales contract with the Seller Defendants (Verified Complaint at ¶¶'s 117 and 123).

Rule 8, SCRCP

Rule 8(c), SCRCP provides a list of “affirmative defenses,” stating, *inter alia*, as follows:

In pleading to a preceding pleading, a party shall set forth affirmatively the defenses: accord and satisfaction, arbitration and award, assumption of risk, condonation, contributory negligence, discharge in bankruptcy, duress, fraud, illegality, injury by fellow servant, laches, license, misrepresentation, mistake, payment, plene administravit or the administration of the estate is closed, recrimination, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense.

Id. (underline emphasis added).

The statute of limitations is an affirmative defense. In circumstances where facts are in dispute, discovery is necessary. *See e.g., Baughman v. At&T*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (stating, “[t]his means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.”). In addition, even if these Defendants could prevail with the court viewing the facts as plead in the light most favorable to the Plaintiff, the Plaintiff would still have a right to re-plead his claims under *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019). In *Skydive*, the Supreme Court stated:

A circuit court does not have “discretion” to dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a). Under Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted.

Id. (underline emphasis added).

APPLICATION

In Paragraph 43 of the Verified Complaint, Plaintiff states he “was never informed by anyone that the Original Survey was not the survey that would be recorded to show the Property

he was to receive from Janet under their Contract.”² In Paragraph 46 of the Verified Complaint, Plaintiff states, “[a]t all times before and after Jan. 23, 2020, Plaintiff made it abundantly clear that he would not purchase the property unless he was going to be deeded the driveway.”

In Paragraph 22 of the Verified Complaint, Plaintiff states:

On January 23, 2020, Plaintiff and Defendant Janet executed that certain Addendum to Contract providing specifically as follows: “Seller shall have the property surveyed, including the additional acreage listed as being included in the sale to reach no less than 8 acres and recorded as part of this parcel confirming total acreage. Seller to include the deed of the driveway as part of the sale.” (hereafter the “Property”).

Id. (underline emphasis added).

Plaintiff was only ever provided one survey pursuant to the Jan. 23, 2020 Addendum. (Verified Complaint at ¶¶’s 25, 42). “Plaintiff relied on the Original Survey.” (*Id.* at ¶ 42).

As legal counsel to the Plaintiff, the Law Firm Defendants had a duty to “communicate” with him. Rule 407, SCACR: Rule 1.4. This rule requires, *inter alia*, that the Law Firm Defendants “shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” *Id.* at 1.4(b). The Law Firm Defendants failed to communicate with the Plaintiff regarding the representation.

In their motion and Memorandum, counsel for the Law Firm Defendants assumes facts not in evidence and contrary to the facts as alleged in the Verified Complaint. Specifically, that the Law Firm Defendants provided Plaintiff with a copy of the deed and explained how it complied with the contract provisions on March 6, 2020. This did not occur.

² Neither of the moving Defendants reference ¶ 43 in their motions or memoranda in support.

Counsel for the Law Firm Defendants also assumes the Law Firm Defendants provided Plaintiff with a copy of the survey / plat to be recorded as part of the transaction on March 6, 2020. This also did not occur. (Verified Complaint at ¶¶'s 25, 42).

Instead, as is also shown in the 475 pages of file materials provided to Plaintiff after the filing of this lawsuit, counsel to Plaintiff (*i.e.*, the Law Firm Defendants) relied upon the Seller's Attorney to draft the deed. There is no indication the Law Firm Defendants even checked to see if the provisions in the January 23, 2020 Addendum were incorporated into the deed. (Verified Complaint at ¶¶'s 25, 88). According to the closing statement, Plaintiff actually paid the seller's attorney's fees, which were \$470.00, as well as reimbursing the seller's attorney for a \$40.00 recording fee.³

If the Law Firm Defendants had fulfilled their duty to properly communicate with the Plaintiff about the material issues related to the representation, and had explained the deed and the "new" plat to the Plaintiff (and maybe even that they relied exclusively on the Seller's Attorney to draft same), then two things would have happened. Number 1: Plaintiff would not have "purchased the property."⁴ (Verified Complaint at ¶ 46). Number 2: If somehow, Plaintiff had proceeded to have purchased the property, the statute of limitations as to the matters actually disclosed would have begun to run on March 6, 2020. Counsel to the Law Firm Defendants seeks

³ The fact that the closing documents were "recorded" by the Seller's Attorney is yet another indication that counsel to the Plaintiff / Law Firm Defendants may not have even seen the documents prior to them being recorded.

⁴ And the Law Firm Defendants get no fees for the closing, and the Real Estate Agent Defendants would get no commission for the sale (at least \$13,950.00, see e.g., RLF_000139, 140).

a reward for the malpractice of the firm, namely protection of the statute of limitations based on assumed facts contrary to the facts set forth in the Verified Complaint.

Plaintiff was led to believe that the Original Survey was the document to be recorded showing the property he was to receive, which he believed was consistent with the January 23, 2020 Addendum. The Original Survey showed him receiving 8.24 acres, including 0.49 acres for Tract D (the driveway), which he did not get as part of the sale. Plaintiff in fact received less than the 8 acres promised in the Jan. 23, 2020 Addendum.

CONCLUSION

For at least the reasons et forth herein, the motions to dismiss of the Law Firm Defendants and the Seller Defendants must be denied.

WESLEY D. FEW, LLC

s/Wes Few/

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
Sept. 7, 2023

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	15 TH JUDICIAL CIRCUIT
		Case No: 2023-CP-26-02475
Nicholas F. Wilson,	)	
	)	PLAINTIFF’S “SUPPLEMENTAL”
	)	MEMORANDUM IN OPPOSITION TO
Plaintiff,	)	MOTIONS TO DISMISS OF: (1) SONIA M.
vs.	)	RAYMOND, AND RAYMOND LAW
	)	FIRM, P.A., AND (2) JANET P.
Janet P. Gochenour; Janet P. Gochenour Trustee;	)	GOCHENOUR, AND JANET P.
James B. Parker; James B. Parker, Sr.; Mary Ann	)	GOCHENOUR TRUSTEE BASED ON THE
Parker; Kenneth Gregory Moore; R&G Corp.,	)	STATUTE OF LIMITATIONS
d/b/a Century 21 The Harrelson Group; Patton	)	
Development SC, LLC; Mortgage Electronic	)	
Registration Systems, Inc.; Sonia M. Raymond;	)	
Raymond Law Firm, P.A.;	)	
	)	
Defendants.	)	
	)	

These matters were heard today before The Honorable Benjamin H. Culbertson.

Toward the conclusion of arguments today, counsel to Sonia M. Raymond and Raymond Law Firm, P.A. (hereafter “Law Firm Defendants”), argued their motion for dismissal “with prejudice” was governed by *Fuller–Ahrens Partnership v. S.C. Dept. of H’ways and Pub. Trans.*, 311 S.C. 177, 180, 427 S.E.2d 920, 922 (Ct. App. 1993). In their Memorandum in Support of Motion to Dismiss, filed August 28, 2023, the Law Firm Defendants cited *Fuller* for the following proposition: “An individual on ‘inquiry’ or ‘constructive’ notice is held to be on notice of the contents of documents filed in conformity with applicable statutory law, which an inquiry would have revealed.” *Id.*

Fuller involved facts entirely different from the facts set forth in Plaintiff’s Verified Complaint, filed April 19, 2023. For example, in *Fuller*, the “constructive notice” at issue

consisted of an recorded deed in the chain of title in favor of the South Carolina Department of Highways and Public Transportation, recorded in 1956. Id. at 921. The party held to have been on “constructive notice” of the deed, namely Fuller-Ahrens Partnership, was a successor to the purchasers of the subject property from “Andrew Patterson and others in his family” in 1985. Id. The party held to have been on constructive notice of the 1956 deed in the chain of title of its grantor was not even formed until 1986, after the property was purchased by Frederick B. Fuller and Leslie H. Ahrens individually. Id. (stating, “Fuller-Ahrens Partnership was formed in 1986 and purchased the property from Fuller and Ahrens shortly thereafter.”). Ultimately, the Court of Appeals held, “Fuller-Ahrens had constructive notice of the pipe’s existence because of a 1956 deed in Fuller-Ahrens’ chain of title.” Id.

In this case, the contents of the deed and the 2nd survey / plat were withheld from the Plaintiff at the closing on March 6, 2020, and thereafter by Defendants. He had no reason to believe his real estate agent and closing attorney, each of which owed him fiduciary duties, would be involved in violating those duties. Therefore, he had no reason to go and check the record to discover documents or information they had a duty to provide him with in the first instance. See also Slack v. James, 356 S.C. 479, 482-483, 589 S.E.2d 772, 774 (Ct. App. 2003) (stating, “[t]he person committing the fraud cannot defeat a claim for misrepresentation simply because the person defrauded is charged with notice under a recording statute, particularly where the misrepresented facts are peculiarly within the representor’s knowledge.”). The Court of Appeals in Slack, further stated, “The purpose of the recording act is to protect one who buys a recorded title against one who acquires a paper title but fails to record it. The recording act is not intended to protect a seller who makes a false or misleading statement.” Id.

In *Fuller*, the party held to have been on “constructive notice” of the “ditch” could have discovered it via a title search. In fact, the Fuller-Ahrens Partnership acknowledges they ultimately found out about it via actual notice. *Id.* (stating, “it discovered the pipe ‘sometime after the property was purchased on June 20, 1985.’”). Here, it was only after the fraud and the failure to disclose occurred on March 6, 2020, that Plaintiff could have been on “constructive” or “inquiry” notice.

CONCLUSION

For at least the reasons set forth herein and in Plaintiff’s Joint Memorandum in Opposition, filed earlier today, the motions to dismiss of the Law Firm Defendants and the Seller Defendants must be denied.

WESLEY D. FEW, LLC

s/Wes Few/

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
Sept. 7, 2023

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	15 TH JUDICIAL CIRCUIT
 Nicholas F. Wilson,	)	
	)	Case No: 2023-CP-26-02475
	)	
Plaintiff,	)	
vs.	)	
	)	NOTICE OF MOTION AND
Janet P. Gochenour; Janet P. Gochenour Trustee;	)	MOTION TO ALTER OR AMEND
James B. Parker; James B. Parker, Sr.; Mary Ann	)	ORDER FILED SEPT. 8, 2023
Parker; Kenneth Gregory Moore; R&G Corp.,	)	
d/b/a Century 21 The Harrelson Group; Patton	)	
Development SC, LLC; Mortgage Electronic	)	
Registration Systems, Inc.; Sonia M. Raymond;	)	
Raymond Law Firm, P.A.;	)	
	)	
Defendants.	)	
	)	

TO: THE HONORABLE BENJAMIN H. CULBERTSON, 15TH CIRCUIT JUDGE; BRUCE WALLACE, ESQ., COUNSEL TO SONIA M. RAYMOND, ESQUIRE AND RAYMOND LAW FIRM, P.A.; AND WILLIAM LUSE, ESQ., COUNSEL TO JANET P. GOCHENOUR; JANET P. GOCHENOUR TRUSTEE:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Plaintiff respectfully move before The Honorable Benjamin H. Culbertson (presiding Judge of the 15th Judicial Circuit at hearings on Sept. 7, 2023) within ten (10) days from the date hereof or as soon thereafter as counsel may be heard under S.C. R. Civ. P. Rule 59(e) for an order or orders reconsidering, altering and / or amending the order granting two motions to dismiss, filed Sept. 8, 2023, stating, as follows:

Defendant, Raymond Law Firm's Motion to Dismiss is GRANTED. Plaintiff's action is barred by the Statute of Limitations.

...

Defendant, Janet P Gochenour's Motion/Dismiss is GRANTED. Plaintiff's action is barred by the Statute of Limitations.

Id. at 1.

Plaintiff incorporates by reference herein his Joint Memorandum in Opposition to Motions to Dismiss, filed Sept. 7, 2023 at 11:54 A.M., and his Supplemental Memorandum in Opposition to Motions Dismiss, filed Sept. 7, 2023 at 6:09 P.M.¹

As set forth in the Plaintiff's Memorandum:

A circuit court does not have "discretion" to dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a). Under Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted.

Skydive Myrtle Beach v. Horry Cty., 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019) (underline emphasis added); see also Baughman v. At&T, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (stating, "[t]his means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.").

The subject order does not address or consider whether or not "plaintiff [should be provided] a meaningful chance to amend the complaint." Skydive at 592.

The subject order does not "expressly" specify whether or not the Plaintiff's Verified Complaint claims are dismissed with prejudice. At a minimum, Plaintiff is entitled to re-plead and include even more specific facts as to when he could have first discovered the fraud perpetrated on him in January, February and March of 2020. Plaintiff maintains, however, that ¶

¹ The Form 4 Order put at issue by this motion was e-signed by the court on Sept. 7, 2023 at 4:29 P.M. Id. at 3. Therefore, the Plaintiff's Supplemental Memorandum, filed later that same day at 6:09 P.M., could not have been considered before the subject order issued.

43 of the Verified Complaint, which states, Plaintiff “was never informed by anyone that the Original Survey was not the survey that would be recorded to show the Property he was to receive from Janet under their Contract.” As noted in the Plaintiff’s Memorandum, both counsel to the Law Firm Defendants and the Seller Defendants failed to reference ¶ 43 in their motions or memoranda in support. *Id.* at 4 (fn. 2)

In *Slack v. James*, 356 S.C. 479, 482-483, 589 S.E.2d 772, 774 (Ct. App. 2003), our Court of Appeals stated, “[t]he person committing the fraud cannot defeat a claim for misrepresentation simply because the person defrauded is charged with notice under a recording statute, particularly where the misrepresented facts are peculiarly within the representor’s knowledge.” *Id.* The Court of Appeals in *Slack*, further stated, “[t]he purpose of the recording act is to protect one who buys a recorded title against one who acquires a paper title but fails to record it. The recording act is not intended to protect a seller who makes a false or misleading statement.” *Id.*; *see also Moseley v. All Things Possible*, 395 S.C. 492, 498, 719 S.E.2d 656, 659 (2011) (noting, “general rule must at times yield when confronted with fraudulent misrepresentations. The purpose of the recording act is, after all, to protect innocent purchasers, not fraudulent sellers.” (citing *Slack*)).

Fuller–Ahrens Partnership v. S.C. Dept. of H’ways and Pub. Trans., 311 S.C. 177, 180, 427 S.E.2d 920, 922 (Ct. App. 1993), which counsel to Defendants stated they relied upon at the hearing on Sept. 7, 20203, was decided in 1993, years before both *Slack* in 2003 and *Moseley* in 2011. *Id.* Further, as noted in Plaintiff’s Supplemental Memorandum, the facts of *Fuller-Ahrens* are very different from this case. For example, in *Fuller*, the “constructive notice” at issue involved a deed recorded in the chain of title in favor of the South Carolina Department of

Highways and Public Transportation, recorded in 1956. Id. at 921. The party held to have been on “constructive notice” of the deed, namely Fuller-Ahrens Partnership, was a successor to the purchasers of the subject property from “Andrew Patterson and others in his family” in 1985. Id. The party held to have been on constructive notice of the 1956 deed in the chain of title of its grantor was not even formed until 1986, after the property was purchased by Frederick B. Fuller and Leslie H. Ahrens individually. Id. (stating, “Fuller-Ahrens Partnership was formed in 1986 and purchased the property from Fuller and Ahrens shortly thereafter.”). Ultimately, the Court of Appeals held, “Fuller-Ahrens had constructive notice of the pipe’s existence because of a 1956 deed in Fuller-Ahrens’ chain of title.” Id.

In this case, the contents of the recorded deed and the 2nd survey / plat were withheld from the Plaintiff at the closing on March 6, 2020, and thereafter by Defendants. He had no reason to believe his real estate agent and closing attorney, each of which owed him fiduciary duties, would be involved in violating those duties. Therefore, he had no reason to go and check the record to discover documents or information they had a duty to provide him with in the first instance.

Further, in Fuller, the party held to have been on “constructive notice” of the “ditch” could have discovered it via a title search. In contrast, Plaintiff here would have had to conduct a second title search after the one he had already relied upon from the Law Firm Defendants. The Fuller-Ahrens Partnership acknowledged they ultimately found out about the “ditch” via actual notice. Id. (stating, “it discovered the pipe ‘sometime after the property was purchased on June 20, 1985.’”). Here, it was only after the fraud and the failure to disclose occurred on March 6, 2020, that Plaintiff could have been on “constructive” or “inquiry” notice.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests an order altering and amending the order / judgment entered on Sept. 8, 2023, and permitting all of his claims to proceed to discovery where Defendants will have every opportunity to establish notice of the existence of the claims.

WESLEY D. FEW, LLC

s/Wes Few/

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
Sept. 18, 2023

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

NICHOLAS F. WILSON,
Plaintiff,

vs.

JANET P. GOCHENOUR, et al.,
Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Case No. 2023-CP-26-02475

**DEFENDANT SONIA M. RAYMOND
AND RAYMOND LAW FIRM P.A.'S
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION TO ALTER OR
AMEND**

Defendants Sonia M. Raymond and the Raymond Law Firm P.A. (hereafter, the "Lawyers") submit this memorandum in opposition to the Plaintiff's Motion to Alter or Amend the Court's Order filed September 18, 2023. For the reasons set forth below, the Court should deny Plaintiff's Motion.

PROCEDURAL HISTORY

Plaintiff filed his Complaint on April 19, 2023. The Lawyers filed their Motion to Dismiss on May 24, 2023. The Court conducted a hearing on the Motion to Dismiss and other motions on September 7, 2023. By Order dated September 8, 2023, the Court granted the Lawyers' Motion to Dismiss based on the expiration of the applicable statute of limitations. Plaintiff filed his Motion to Alter or Amend on September 18, 2023. Pursuant to Rule 59(g), Plaintiff provided Judge Culbertson, the presiding judge, a copy of the Motion on September 18, 2023.

STANDARD OF REVIEW

"A party may wish to file [a motion pursuant to Rule 59] when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file

such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). “A motion under Rule 59(e) is timely if it is ‘served not later than 10 days after receipt of written notice of the entry of the order.’” *Coward Hund Const. Co. v. Ball Corp.*, 336 S.C. 1, 3, 518 S.E.2d 56, 57 (Ct. App. 1999). “The purpose of Rule 59(e), SCRCP, to alter or amend the judgment, is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” *Id.*, 518 S.E.2d at 58.

ARGUMENT

The Court should deny Plaintiff’s motion for two reasons. First, *Slack v. James* is distinguishable. Second, *Fuller-Ahrens* is controlling on the statute of limitations issue, confirming the Court correctly dismissed these malpractice claims.

The case cited by Plaintiff, *Slack v. James*, 356 S.C. 479, 589 S.E.2d 772 (Ct.App. 2003)¹ is distinguishable for three reasons. First, Plaintiff has sued the Lawyers for legal malpractice not for negligent misrepresentation. Second, the Plaintiff here has sued the Lawyers claiming the deed was incorrect on its face. Third, *Slack v. James* did not involve a statute of limitations defense. For these reasons, *Slack* does not require a different result and the Court correctly dismissed Plaintiff’s claims against the Lawyers.

The Supreme Court’s opinion in *Slack v. James* arose out of an oral misrepresentation by the realtor to the purchasers related to the existence of an easement. *Slack v. James*, 364 S.C. 609, 612, 614 S.E.2d 636, 637 (2005). The buyers allegedly relied on that representation when they entered into the contract to purchase the property. The Supreme Court said it would be unreasonable to expect a purchaser

¹ The Supreme Court affirmed *Slack v. James*, see *infra*.

to research the title before entering into a contract. *Id.* at 616, 614 S.E.2d at 639. All of the Court's analysis addressed whether the Plaintiff could maintain a cause of action when examination of the title would have revealed the easement. It is clear *Slack* is not a legal malpractice case.²

Next, there was also no deed involved in *Slack*. Here, the Lawyers recorded a deed which, if Plaintiff had read it, would have revealed, on its face, that it was incorrect, according to Plaintiff. As stated in *Watts v. Monarch Builders, Inc.*, "[t]his is not a case of fraudulent misrepresentation. This is a case where two purchasers chose to shut their eyes and contract for the purchase of a house and lot without first determining either the size or the boundaries of that lot." *Watts v. Monarch Builders, Inc.*, 272 S.C. 517, 519, 252 S.E.2d 889, 891 (1979). Like the Plaintiffs in *Watts*, Plaintiff closed his eyes and did not read the deed. Because the deed provided record notice of its plain alleged deficiency, *Slack* is inapposite. Plaintiff cannot complaint about the Lawyers' alleged failure to accurately represent the contents of a document – here a deed – when reading the deed would have revealed the alleged inaccuracies. *See, e.g., Austin v. Indep. Life & Acc. Ins. Co.*, 296 S.C. 156, 160, 370 S.E.2d 918, 921 (Ct. App. 1988) ("A person cannot complain of fraud and misrepresentation in the contents of a document if the truth can be ascertained by reading it...")

Finally, *Slack* did not involve the application of the statute of limitations. Rather, *Slack* addressed whether Plaintiff could reasonably rely on representations of the purchaser in entering into a contract. In other words, *Slack* involved the merits of the

² *Slack* is distinguishable because the gravamen of the Lawyer's alleged negligence in this action is the failure to convey title to the property by way of deed. Complaint, ¶187. So regardless of other negligence allegedly occurring prior to recording the deed, most of Plaintiff's claims arose out of the alleged mistakes in the deed, which was recorded March 6, 2020.

claim, not an affirmative defense to that claim. In fact, the statute of limitations is not discussed or even mentioned. Therefore, *Slack* cannot be used to contradict the conclusion the Plaintiff's claims are barred by the statute of limitations.

The other case cited by Plaintiff in his motion, *Fuller-Ahrens Partnership v. S.C. Dept. of Highways and Pub. Trans.*, 311 S.C. 177, 427 S.E.2d 920 (Ct.App.1993), is controlling for three reasons. First, like the Plaintiff's claims here, the terms of the deed dictated the outcome of the claims in *Fuller-Ahrens*. Second, like the plaintiffs in *Fuller-Ahrens*, Plaintiff here could have pulled the deed and would have determined there was a mistake on its face. Finally, *Fuller-Ahrens* is a statute of limitations case.

First, *Fuller-Ahrens* arose out of an inverse condemnation case. The plaintiff alleged that the Department of Transportation installed a drainage pipe on their land. The Department had recorded a deed from Fuller-Ahrens' predecessor in interest showing the drainage pipe.

Second, had the plaintiffs in *Fuller-Ahrens* read the deed, they would have known the extent of the drainage on their property as set forth in the deed. *Fuller-Ahrens*, 311 S.C. at 180, 427 S.E.2d at 922 ("These plans and the notations thereon must be read with the deed."). Similarly, here, Plaintiff, had he read the deed, would have discovered the deficiencies on its face.

Finally, *Fuller-Ahrens* is a statute of limitations case, unlike *Slack*. In dismissing the claim based on the *expiration of the statute of limitations*, the Court of Appeals held "the filing of these instruments provided a record sufficient 'to impart notice,' albeit constructive notice, to Fuller-Ahrens **of the deed and its contents....**" *Fuller-Ahrens*, 311 S.C. at 181, 427 S.E.2d at 922 (emphasis added). The Court did not address the

merits of the Plaintiff's claims – i.e., whether the Department of Transportation was liable for inverse condemnation. Rather, the Court focused on *whether the plaintiff's claim was timely*. Because the deed was filed of record, the Court of Appeals determined the plaintiff's claims were time-barred. Therefore, the Court here properly determined that Plaintiff's claims against the Lawyer are properly barred by the applicable statute of limitations.

Finally, the Order for dismissal is clearly a dismissal with prejudice. The Court did not dismiss for a reason that can be corrected by re-pleading. Plaintiff wants to plead additional, specific negligence in January, February, and March 2020, but nothing can change the fact that the deed was recorded March 6, 2020, and Plaintiff's constructive notice began that day, and Plaintiff failed to file a complaint timely.

CONCLUSION

For the reasons set forth above, the Court should deny Plaintiff's Motion to Alter or Amend.

s/R. Bruce Wallace

R. Bruce Wallace, SC Bar No. 11653
MAYNARD NEXSEN, PC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, SC 29402
843.577.9440

bwallace@maynardnexsen.com

Attorneys for Defendants
SONIA M. RAYMOND and
RAYMOND LAW FIRM, P.A.

October 5, 2023

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	15 TH JUDICIAL CIRCUIT
 Nicholas F. Wilson,	)	
	)	Case No: 2023-CP-26-02475
	)	
Plaintiff,	)	
vs.	)	
	)	NOTICE OF MOTION AND
	)	MOTION TO AMEND VERIFIED
	)	COMPLAINT
Janet P. Gochenour; Janet P. Gochenour Trustee;	)	
James B. Parker; James B. Parker, Sr.; Mary Ann	)	
Parker; Kenneth Gregory Moore; R&G Corp.,	)	
d/b/a Century 21 The Harrelson Group; Patton	)	
Development SC, LLC; Mortgage Electronic	)	
Registration Systems, Inc.; Sonia M. Raymond;	)	
Raymond Law Firm, P.A.;	)	
	)	
Defendants.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Plaintiff respectfully move before presiding Judge of the 15th Judicial Circuit for an order granting Plaintiff under Rule 15, SCRCP, to file the attached proposed Amended Verified Complaint. Grounds in support of this motion include the following:

“Rule 15, SCRCP, provides that the complaint may only be amended by leave of the court and ‘leave to amend shall be freely given when justice requires and does not prejudice any other party.’” *Twelfth RMA Partners, L.P. v. National Safe Corp.*, 335 S.C. 635, 641, 518 S.E.2d 44, 47 (1999). “A motion to amend is within the sound discretion of the trial judge and the opposing party has the burden of establishing prejudice.” *Id.* (citing *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 431 S.E.2d 587 (1993)).

In Skydive Myrtle Beach v. Horry Cty., 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019), our Supreme Court held, “A circuit court does not have ‘discretion’ to dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a).”. On September 8, 2023, this court granted two separate motions to dismiss the Plaintiff’s Verified Complaint without considering or addressing “whether to allow leave to amend under Rule 15(a).”

The Supreme Court in Skydive further stated, a “complaint is not subject to dismissal with prejudice unless it appears to a certainty that no relief can be granted under any set of facts that can be proved in support of its allegations.” Id. at 592-593 (citing Spence v. Spence, 368 S.C. 106, 129, 628 S.E.2d 869, 881 (2006)).

As set forth in the proposed Amended Verified Complaint at Para. 43 and in Exhibits 4 and 5 to the same, Plaintiff has produced written correspondence from Defendant Sonia Raymond to establish that she did not provide him with a copy of the deed from the March 6, 2020 property closing until she sent it to him by regular USPS mail on May 7, 2020 (Exhibit 5). Defendant Raymond has purportedly provided Plaintiff with her entire file related to her representation of him (475 pages), however, Exhibits 4 and 5 to the proposed Amended Verified Complaint were not included.

Plaintiff filed this action on April 19, 2023. Therefore, a 3-year statute of limitations would not be a bar to any of his claims.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests an order permitting him to file the attached proposed Amended Verified Complaint, and its accompanying Exhibits 4 to 6 to supplement the three other exhibits already in the record.

WESLEY D. FEW, LLC

s/Wes Few/

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

December 5, 2023
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	15 TH JUDICIAL CIRCUIT
Nicholas F. Wilson,	)	
	)	Case No: 2023-CP-26-02475
	)	
Plaintiff,	)	
vs.	)	AMENDED SUMMONS FOR
	)	AMENDED VERIFIED
	)	COMPLAINT
Janet P. Gochenour; Janet P. Gochenour Trustee;	)	
James B. Parker; James B. Parker, Sr.; Mary Ann	)	
Parker; Daniel Parker as the Personal	)	
Representative of the Estate of Ramon Parker;	)	
Kenneth Gregory Moore; R&G Corp., d/b/a	)	
Century 21 The Harrelson Group; Patton	)	
Development SC, LLC; Flagstar Bank, N.A.;	)	
Sonia M. Raymond; Raymond Law Firm, P.A.;	)	
	)	
Defendants.	)	

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Verified Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber, at his office at Post Office Box 9398, Greenville, South Carolina 29604, within thirty days (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for all relief demanded in the Complaint.

WESLEY D. FEW, LLC

s/Wes Few/

Wesley D. Few, S.C. Bar No. 15565
 Post Office Box 9398
 Greenville, South Carolina 29604
 (864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
 Dec. 5, 2023

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	15 TH JUDICIAL CIRCUIT
 Nicholas F. Wilson,	)	
	)	Case No: 2023-CP-26-02475
	)	
Plaintiff,	)	
vs.	)	VERIFIED AMENDED COMPLAINT
	)	FOR DECLARATORY JUDGMENTS,
Janet P. Gochenour; Janet P. Gochenour Trustee;	)	SPECIFIC PERFORMANCE,
James B. Parker; James B. Parker, Sr.; Mary Ann	)	AND DAMAGES
Parker; Daniel Parker as the Personal	)	(jury trial demanded)
Representative of the Estate of Ramon Parker;	)	
Kenneth Gregory Moore; R&G Corp., d/b/a	)	
Century 21 The Harrelson Group; Patton	)	
Development SC, LLC; Flagstar Bank, N.A.;	)	
Sonia M. Raymond; Raymond Law Firm, P.A.;	)	
	)	
Defendants.	)	
	)	

Plaintiff Nicholas F. Wilson (“Plaintiff”) alleges for his Complaint as against the Defendants identified above (hereafter collectively “Defendants”), as follows:

1. Plaintiff is a resident of Horry County, South Carolina.
2. This lawsuit claims priority to and relates to that certain *Lis Pendens* No. 2023-LP-26-00335, filed March 31, 2023.
3. This Complaint incorporates by reference the above-identified *Lis Pendens* and all attachments.
4. Defendant Janet P. Gochenour, a/k/a Janet T. Gochenour, a/k/a Janet P. Gochenour, Trustee (hereafter “Janet” or “Defendant Janet”), is on information and belief, is a resident of Horry County, South Carolina, and was the seller of the property that is the subject of this action to the Plaintiff, which sale occurred on or about March 6, 2020.

5. Defendant James Parker, a/k/a James Parker, a/k/a Jim Parker (hereafter “James Parker”), is on information and belief, a resident of Horry County, South Carolina.

6. Defendant Daniel Parker as the Personal Representative of Estate of Ramon Parker, is on information and belief, is a resident of Horry County, South Carolina.

7. Defendant Mary Ann Parker (hereafter “Mary Ann Parker”), is on information and belief, is a resident of Horry County, South Carolina.

8. Defendant Kenneth Gregory Moore (hereafter “Kenny Moore”), is on information and belief, is a resident of Horry County, South Carolina.

9. Defendant R&G Corp., d/b/a Century 21 The Harrelson Group, is a South Carolina Corporation (hereinafter “C21 Harrelson”), on information and belief, doing business in Horry County, South Carolina.

10. Margaret McBride is the broker-in-charge for C21 Harrelson.

11. Kenny Moore is a licensed real estate agent (South Carolina Real Estate Commission License No. 112423; Buyer’s Agent License Number/LLR Code 6517) with C21 Harrelson, and a REALTOR®.

12. Defendant Patton Development SC, LLC (hereinafter “Patton” or “Patton Development”), on information and belief, is a South Carolina Limited Liability Company doing business in Horry County, South Carolina.

13. On information and belief, Defendant Flagstar Bank, N.A. (“Flagstar”) is a corporation organized and existing under the laws of the state of Michigan with its principal place of business in Michigan.

14. Flagstar is named as the party in interest for a mortgage purporting to exist on the Property.

15. Flagstar, on information and belief, is expected to claim an interest in the Property by virtue of that mortgage recorded on March 6, 2020, in the records of the Clerk of Court for Horry County in book 6188 at page 1316.

16. Defendant Sonia M. Raymond (hereafter “Sonia Raymond”), on information and belief, is a resident of Horry County, South Carolina, and a licensed practicing attorney in this state.

17. Defendant Raymond Law Firm, P.A. (hereinafter “Raymond Law Firm”), is a professional association organized and existing in accordance with the laws of the state of South Carolina, with offices in and doing business in Horry County.

18. On information and belief, Sonia Raymond, is the owner of Raymond Law Firm.

19. Defendant Sonia Raymond and Defendant Raymond Law Firm may hereafter be referred to collectively as “Plaintiff’s Closing Attorney.”

VENUE AND JURISDICTION

20. Venue and jurisdiction in this Court are proper because the Property is located entirely within Horry County, South Carolina, and the events giving rise to the claims occurred in this County.

ADDITIONAL FACTUAL ALLEGATIONS

21. On January 22, 2020, Plaintiff submitted a written offer to purchase the property as advertised by C21 Harrelson as 4708 Highway 90, Conway, South Carolina 29526, also described as “Tax Map No. 36201010001 plus additional acreage,” for a purchase price of \$480,000.00.

22. On January 23, 2020, Plaintiff and Defendant Janet executed that certain Addendum to Contract providing specifically as follows: “Seller shall have the property

surveyed, including the additional acreage listed as being included in the sale to reach no less than 8 acres and recorded as part of this parcel confirming total acreage. Seller to include the deed of the driveway as part of the sale.” (hereafter the “Property”).

23. On or about January 23, 2020, Plaintiff and Defendant Janet amended the Contract to increase the Earnest Money required from \$3,000.00 to \$10,000.00, and also agreed upon a Purchase Price of \$465,000.00.

24. On or about January 29, 2020, Plaintiff and Defendant Janet executed that certain Addendum to Contract providing specifically as follows: “At closing, Seller will pay Buyer’s Transaction costs not to exceed \$10,000. Buyer is responsible for any Buyer’s transaction costs exceeding this amount.”

25. At least as early as Jan. 30, 2020, the Original Survey requested from Janet and, on information and belief her brother Jim Parker, to be prepared by Kenneth D. Jordan (P.L.S. No. 21936, hereafter “Jordan” or “Surveyor”) showing Plaintiff being conveyed Tracts A, B, C, and D, consisting of 8.24 acres in total, was prepared and available to one or more Defendants.

26. At least as early as Feb. 2, 2020, the specific metes and bounds of the land to be conveyed to the Plaintiff were known to Janet, Jim Parker, and to Kenny Moore and C21 Harrelson, by virtue of that certain electronic copy of the Original Survey then in the possession of Kenny Moore, and provided to Plaintiff.

27. On or about March 5, 2020, Plaintiff and Defendant Janet executed that certain Addendum to Contract providing specifically as follows: “The buyer and the seller agree to extend the closing date to March 6, 2020.”

28. The above-described documents constitute the Contract between Plaintiff and Janet (hereafter “Contract”).

29. At least as early as Jan. 23, 2020, the land to be conveyed to the Plaintiff was known to Janet and to Kenny Moore and C21 Harrelson, and, on information and belief, also to Jim Parker.

30. On Jan. 30, 2020, Plaintiff (as Client) and Defendant Kenny Moore, a/k/a Ken Moore and C21 Harrelson (as Agent) executed that certain Buyer Representation Agreement.

31. By virtue of the Buyer Representation Agreement, Kenny Moore's and C21 Harrelson's obligations to the Plaintiff, included but were not necessarily limited to: **"1. A fiduciary duty of loyalty, utmost care, integrity, and honesty in all dealings with the buyer."**

32. By virtue of the Buyer Representation Agreement, Kenny Moore's and C21 Harrelson's obligations to the Plaintiff, included but were not necessarily limited to: **"2. A duty to obey all lawful instructions from the buyer within the scope of authority."**

33. By virtue of the Buyer Representation Agreement, Kenny Moore's and C21 Harrelson's obligations to the Plaintiff, included but were not necessarily limited to: **"3. A duty not to disclose confidential information that may weaken the buyer's bargaining position."**

34. By virtue of the Buyer Representation Agreement, Kenny Moore's and C21 Harrelson's obligations to the Plaintiff, included but were not necessarily limited to: **"4. Utilize professional knowledge and skills to locate real property that is available to purchase and suitable for client."**

35. On Jan. 22, 2020, Plaintiff and Defendant Janet and Defendant C21 Harrelson executed that certain Dual Agency Agreement, as provided for on LLR's form known as Rev. 10/04.

36. Many, if not all, of the above documents were signed by Plaintiff using C21 Harrelson's dotloop system, enabling the Plaintiff to e-sign and have his signature marked with a specific date, time and unique code consisting of up to 16 alphanumeric digits.

37. As such, C21 Harrelson has an electronic record of all these documents being transmitted and executed, and a record of any third-parties to whom these documents were also provided.

38. Each of the above documents were signed by Defendant Janet by hand and no witness names were provided by any of the C21 Harrelson representatives or anyone else.

39. On or about Feb. 2, 2020, on information and belief, the originating lender provided the Original Survey to the appraiser selected pursuant to applicable law to appraise the Property for purposes of the lender's forthcoming mortgage on the Property.

40. Janet and / or Jim Parker requested Jordan modify the Original Survey at least as early as Feb. 10, 2020.

41. On information and belief, Jim Parker was involved in the communications with Jordan regarding the revised modified survey(s) he prepared after Jan. 30, 2020.

42. Plaintiff relied on the Original Survey. Plaintiff was never informed by anyone that the Original Survey was not the survey that would be recorded to show the Property he was to receive from Janet under their Contract.

43. Plaintiff never received a copy of the deed or title policy from Sonia Raymond until it was mailed to him by her office on May 7, 2020. (See attached Exhibits 4 and 5).

44. On information and belief, the Plaintiff's Closing Attorney did not obtain a complete title search until on or about March 2, 2020.

45. On information and belief, the Plaintiff's Closing Attorney and others, including but not limited to Kenny Moore, Janet and Jim Parker, then knew or should have known that Janet may not have had the legal rights at that time to convey to Plaintiff the entirety of Tracts A, B, C, and / or D, as shown on the Jan. 30, 2020 Original Survey prepared by Jordan.

46. At all times before and after Jan. 23, 2020, Plaintiff made it abundantly clear that he would not purchase the property unless he was going to be deeded the driveway.

47. Since approximately July 27, 2022, all or a portion of the property that was to be conveyed to Plaintiff by Janet has been used by Defendant Patton Development as if it were their own property, and without the permission of the Plaintiff, which was expressly denied by the Plaintiff in writing to Patton on or about Sept. 22, 2021.

48. Patton Development claims a right of way / easement interest in property that Janet was contractually obligated to convey to the Plaintiff, but failed to do so, as set forth herein. *See e.g.*, Paragraphs 58 and 60 of the Patton Counterclaim, filed May 24, 2023.

49. The Patton Property, hereafter known as Horry County PIN No. 36300000020, is now a Dollar General.

50. The noise and smell emanating from the Patton Dollar General are an ongoing nuisance to Plaintiff's use and enjoyment of enjoyment of his Property.

51. The traffic and interference with access to his own driveway have unreasonably interfered with the Plaintiff's use and enjoyment of enjoyment of his Property. (*See attached Exhibit 6*, photo of driveway interference, dated May 26, 2023).

52. In the course of constructing the Dollar General on the adjacent property, Patton has damaged or removed dozens of trees from the Plaintiff's property, specifically including the

driveway. (See attached Exhibit 6). Plaintiff has documented numerous other similar instances of interference and trespass via pictures and videos.

53. On information and belief, Patton has violated numerous set-back provisions in relation to its property adjacent to the Plaintiff's property.

54. Jim Parker is a necessary party to this action based on records showing his current and / or prior interest in the driveway property that was to be conveyed to the Plaintiff.

55. Mary Ann Parker is a necessary party to this action based on records showing her current and / or prior interest in the driveway property that was to be conveyed to the Plaintiff.

56. As argued by counsel for Patton Development, Daniel Parker as Personal Representative of the Estate of Ramon Parker is a necessary party to this action based on records showing his current and / or prior interest in the driveway property.

57. Flagstar is named as a necessary party to this action based on its anticipated claim to have a mortgage lien on the property.

58. Kenny Moore and C21 Harrelson were Dual Agents for Plaintiff and the Seller, Janet. As such, all representations made to the Plaintiff by Kenny Moore or C21 Harrelson were representations of the Seller, Janet.

1st Cause of Action
Breach of Contract

59. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

60. Janet and Plaintiff had an enforceable contract.

61. Janet breached the contract.

62. Janet's breach of the contract caused Plaintiff damages which will be proven at trial.

63. In the alternative, Janet's breach of the contract has caused Plaintiff irreparable harm, such that damages are not an adequate remedy.

64. Plaintiff is entitled to damages or specific performance of the contract as against Janet.

2nd Cause of Action
Interference with Contract

65. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

66. On information and belief, Jim Parker and / or Mary Ann Parker were aware of the contract between Janet and Plaintiff.

67. On information and belief, Jim Parker and / or Mary Ann Parker intentionally interfered with the contract between Janet and Plaintiff, and caused Janet to breach.

68. These Defendants' interference and breach of the contract caused Plaintiff damages which will be proven at trial.

69. Plaintiff is entitled to damages and punitive damages against these Defendants.

3rd Cause of Action
Breach of Fiduciary Duty / Loyalty / Buyer Representation Agreement

70. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

71. C21 Harrelson and Kenny Moore owed Plaintiff duties, including but not limited to as set forth in the Buyers Representation Agreement.

72. C21 Harrelson and Kenny Moore had a special relationship of trust and confidence with the Plaintiff.

73. Plaintiff placed special trust and confidence in C21 Harrelson and Kenny Moore.

74. C21 Harrelson and Kenny Moore breached their duties to Plaintiff as set forth herein.

75. These Defendants' breach of duties owed to the Plaintiff caused damages which will be proven at trial.

76. Plaintiff is entitled to damages and punitive damages against these Defendants for their reckless and wanton conduct, and deliberate indifference to his rights. .

4th Cause of Action
Breach of Dual Agency Agreement

77. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

78. C21 Harrelson and Kenny Moore owed Plaintiff duties, including but not limited to as set forth in the Dual Agency Agreement, executed on or about Jan. 22, 2023.

79. C21 Harrelson and Kenny Moore breached their duties to Plaintiff as set forth herein.

80. These Defendants' breach(es) of duties owed to the Plaintiff caused damages which will be proven at trial.

81. Plaintiff is entitled to an award of damages against these Defendants to put him in a position he would be in but for their conduct.

5th Cause of Action
Negligence *Per Se*

82. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

83. C21 Harrelson and Kenny Moore owed Plaintiff duties under S.C. Code Ann. § 40-57-10 *et seq.*, including but not limited to §§'s 40-57-135, 40-57-350, and 40-57-370.

84. C21 Harrelson and Kenny Moore breached their statutory duties to Plaintiff as set forth herein.

85. These Defendants' breach of statutory duties owed to the Plaintiff caused damages which will be proven at trial.

86. Plaintiff is entitled to damages and punitive damages against these Defendants.

6th Cause of Action

Breach of Fiduciary Duty / Legal Malpractice

87. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

88. Plaintiff's Closing Attorney was selected for him by Kenny Moore and C21 Harrelson.

89. Plaintiff's Closing Attorney owed Plaintiff duties.

90. Plaintiff's Closing Attorney had a special relationship of trust and confidence with the Plaintiff.

91. Plaintiff placed special trust and confidence in Plaintiff's Closing Attorney.

92. Plaintiff's Closing Attorney breached their duties to Plaintiff as set forth herein.

93. Plaintiff's Closing Attorney's breach(es) of duties owed caused Plaintiff damages which will be proven at trial, including but not limited to failing to ensure that he received the property as identified in the Jan. 23, 2020 Addendum and as shown on the Original Survey.

94. Plaintiff's Closing Attorney additionally failed to advise him that he was not receiving a deed to the property identified and described in the Jan. 23, 2020 Addendum and as shown on the Original Survey.

95. Plaintiff is entitled to damages and punitive damages against Plaintiff's Closing Attorney for their reckless and wanton conduct, and deliberate indifference to his rights.

EXPERT AFFIDAVIT

96. Pursuant to S.C. CODE ANN. § 15-36-100(B), because this Complaint is being filed when there is a good faith basis to believe the expiration of the statute of limitations is imminent or that the Defendants may argue that the statute of limitations may expire, it is filed without an affidavit by expert licensed by the Supreme Court of the State of South Carolina specifying at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. Plaintiff intends to file an Amended Complaint with an expert affidavit within forty-five (45) days.

7th Cause of Action**Fraud**

97. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

98. Janet, Kenny Moore and C21 Harrelson represented and continued to represent to Plaintiff that he would be the owner of the property as described in the Jan. 23, 2023 Addendum and in the Original Survey.

99. These representations were material.

100. These representations were false.

101. Janet knew the representations were false.

102. Kenny Moore and C21 Harrelson, on information and belief, either knew the representations were false when they made them or should have known and acted in reckless disregard of Plaintiff's rights.

103. Janet, Kenny Moore and C21 Harrelson intended that the Plaintiff rely on their representations.

104. Plaintiff had no idea he would ever receive anything less than what was shown on the Original Survey and described in the Jan. 23, 2020 Addendum.

105. Plaintiff relied on the representations of Janet, Kenny Moore and C21 Harrelson.

106. Plaintiff had every right to rely on the representations of Janet, Kenny Moore and C21 Harrelson.

107. Plaintiff's reliance on these representations caused him damages, specifically in that he did not receive title to the land he was entitled to under the Contract.

108. Plaintiff is entitled to an award of actual and punitive damages.

8th Cause of Action
Constructive Fraud

109. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

110. Janet knew or should have known the material representations were false.

111. Kenny Moore and C21 Harrelson should have known the material representations were false and acted in reckless disregard of Plaintiff's rights.

112. Janet, Kenny Moore and C21 Harrelson intended that the Plaintiff rely on their representations.

113. Plaintiff is entitled to an award of actual and punitive damages.

9th Cause of Action
Breach of Contract Accompanied by Fraudulent Act

114. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

115. Janet had a fraudulent intent with respect to the terms of the Contract with Plaintiff.

116. On information and belief, such fraudulent intent was developed before formation of the Contract.

117. Such fraudulent intent was developed and acted upon after formation of the Contract.

118. Janet, by herself and / or through one or more of her agents, falsely represented to Plaintiff that he would be getting title to the property as shown on the Original Survey and described in the Jan. 23, 2020 Addendum.

119. Janet did not convey the property required to be conveyed to Plaintiff by their Contract.

120. Plaintiff is entitled to an award of actual and punitive damages.

10th Cause of Action
Declaratory Judgment

121. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

122. Flagstar is expected to and may claim an interest in property that Janet was contractually obligated to convey to the Plaintiff, but failed to do so, as set forth herein.

123. Janet and Plaintiff had an enforceable contract.

124. By virtue of the fraudulent representations set forth herein, the Plaintiff did not receive title to the driveway, specifically Tract D, as shown on the Original Survey, and Mary Ann Parker, James Parker and the Estate of Ramon Parker benefitted by the same.

125. As a result of the fraud perpetuated on the Plaintiff, Mary Ann Parker, James Parker and the Estate of Ramon Parker and / or others remained as owners or maintained ownership rights in the driveway in contradiction of the Contract between Plaintiff and Janet.

126. But for the fraudulent representations relied upon by Plaintiff, Mary Ann Parker, James Parker and the Estate of Ramon Parker would not have any legal rights to accept, on information and belief, valuable consideration from Patton Development for its access to and use of the Plaintiff's driveway.

127. But for the fraudulent representations relied upon by Plaintiff, Flagstar would have a mortgage on the Plaintiff's property, including the driveway.

128. Based upon the undisputed facts as set forth herein and in the public record, under S.C. Code § 15-53-10 *et seq.*, the Uniform Declaratory Judgments Act, Plaintiff is entitled to an order from this Court declaring his ownership of the driveway.

129. Such order / declaration shall be recorded in the RMC office for Horry County.

11th Cause of Action

S.C. Unfair Trade Practices Act ("UTPA"), S.C. Code Ann. § 39-5-10 *et seq.*

130. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

131. Kenny Moore and C21 Harrelson misled Plaintiff to believe he would be treated as a client and beneficiary of the fiduciary duties owed to same.

132. Kenny Moore and C21 Harrelson, by their actions and by their offering of documents and representations to the Plaintiff as set forth herein, deceived Plaintiff to his detriment.

133. The actions of Kenny Moore and C21 Harrelson violate the UTPA, as well as the statute governing Real Estate Brokers, Brokers-in-Charge, Salespersons, and Property Managers, S.C. Code Ann. 40-57-5 *et seq.*

134. These deceptive and misleading actions of Kenny Moore and C21 Harrelson are capable of repetition and / or, on information and belief, have been repeated and if they are not enjoined from same, will continue to be repeated.

135. The actions of Kenny Moore and C21 Harrelson were, on information and belief, willing and knowingly perpetrated.

136. The actions of Kenny Moore and C21 Harrelson caused Plaintiff damages, as will be proven at trial.

137. Plaintiff is entitled to an award of actual damages, treble damages and costs and attorneys' fees, as mandated by the UTPA.

12th Cause of Action
Civil Conspiracy

138. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

139. Unbeknownst and not disclosed to Plaintiff, Defendants Kenny Moore and C21 Harrelson had a pre-existing and conflicting agency relationship with, *inter alia*, James Parker.

140. On information and belief, Defendants Kenny Moore, C21 Harrelson and James Parker were in communications with Patton about the sale of the properties that are not known as the Patton Dollar General before the Plaintiff entered into his agency relationship with Defendants Kenny Moore and C21 Harrelson.

141. On information and belief, one or more of these Defendants (above-named) combined for the purpose of harming the Plaintiff.

142. On information and belief, one or more of these Defendants committed an unlawful act or a lawful act by unlawful means.

143. On information and belief, one or more of these Defendants combined together in the commission of an overt act in furtherance of their agreement to harm the Plaintiff.

144. These acts of these Defendants caused Plaintiff damages which were a reasonably foreseeable result of their conduct in depriving Plaintiff of his exclusive rights in the driveway.

145. Plaintiff is entitled to an award of actual damages and punitive damages as against these Defendants.

13th Cause of Action

Trespass / Continuing Trespass to Property

146. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

147. Patton knew Plaintiff was the owner of Tracts A, B, and C, as shown on Exhibit 1 to the Plaintiff's Verified Complaint.

148. At least as early as September 22, 2021, Patton knew from its communications with the Plaintiff that Plaintiff claimed exclusive rights in the driveway (Tract D).

149. At that time, Patton sought to negotiate with the Plaintiff for "shared access."

150. Patton knew they needed Plaintiff's permission, but failed to obtain it.

151. In an email dated September 22, 2021, Patton stated, "If you do not wish to work with us, then we have the option to enter our site at other locations."

152. Patton did not enter the Dollar General site "at other locations."

153. Patton achieved all, if not a vast majority, of its access to the Dollar General property for construction purposes by entering the site using the driveway (Tract D).

154. Patton and its agents voluntarily entered onto the driveway and made use of it as its own, causing damage to the property and the trees and shrubs on the driveway property.

155. Patton's entry onto the driveway was without the Plaintiff's permission.

156. On information and belief, Patton would not have sought to acquire any rights in the subject Dollar General property if they were not going to be able to access the property using the Plaintiff's driveway (Tract D), for purposes of constructing the Dollar General.

157. Patton's trespass was willful, wanton and in reckless disregard of the Plaintiff's rights.

158. Plaintiff is entitled to an award of actual damages and punitive damages as against Patton. Plaintiff is entitled to a temporary and permanent injunction preventing Patton from further use of his property, including the driveway (Tract D).

14th Cause of Action
Constructive Trespass to Property

159. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

160. Patton knew Plaintiff was the owner of Tracts A, B, and C, as shown on Exhibit 1 to the Plaintiff's Verified Complaint.

161. At least as early as September 22, 2021, Patton knew from its communications with the Plaintiff that Plaintiff claimed exclusive rights in the driveway (Tract D), pursuant to a breached contract with Janet Gochenour.

162. Plaintiff is entitled to an award of actual damages and punitive damages as against Patton. Plaintiff is also entitled to a temporary and permanent injunction preventing Patton from further use of his property, including the driveway (Tract D).

15th Cause of Action
Nuisance

163. Plaintiff re-alleges each and every allegation of the preceding Paragraphs as if set forth herein verbatim.

164. Patton has unreasonably interfered with the Plaintiff's use and enjoyment of his property.

165. Patton knew its activities would cause an unreasonable interference with the Plaintiff's use and enjoyment of his property.

166. Patton knew its activities would cause an unreasonable interference with the Plaintiff's use and enjoyment of his property, including but not limited to the driveway (Tract D).

167. Patton's interference with the Plaintiff's use and enjoyment of his property was willful, wanton and in reckless disregard of the Plaintiff's rights.

168. Plaintiff is entitled to an award of actual damages and punitive damages as against Patton. Plaintiff is also entitled to a temporary and permanent injunction preventing Patton from further unreasonable interference with his use and enjoyment of his property, including the driveway (Tract D), and further including excessive and continuous noise and smell emanating from the Patton Dollar General.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, consequential damages, exemplary damages, punitive damages, for the costs of this action, reasonable attorneys' fees and costs, injunctive relief as set forth herein, for relief allowed as damages under state law, and for such other and further relief as this Court deems just and proper under the circumstances to be presented at trial.

The Plaintiff requests a jury trial for all claims and issues asserted in this action, excepting those portions of Cause of Action numbers 1, 7, 8, 9 and 10, which can be established on the existing court record and relate to injunctive relief for Plaintiff.

WESLEY D. FEW, LLC

s/Wes Few/

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

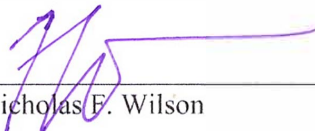
Greenville, South Carolina
Dec. 5, 2023

Table of Exhibits

- Ex 1 – Original Survey, prepared and provided by seller, Jan. 30, 2020;
- Ex 2 – Original Survey as shown on lender’s March 4, 2020 Appraisal (with invoice);
- Ex 3 – Contract and all Addenda (as identified in Complaint at Paras. 21 to 28); and
- Ex 4 – March 6, 2020 letter from Sonia Raymond to Plaintiff (deed comes later);
- Ex 5 – May 7, 2020 letter from Sonia Raymond to Plaintiff; and
- Ex 6 – May 26, 2023 – example picture of trespass / damage to property by Patton;

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONPLEAS
	)	
COUNTY OF HORRY	)	15 TH JUDICIAL CIRCUIT
Nicholas F. Wilson,	)	
	)	
Plaintiff,	)	Case No: 2023-CP-26-02475
vs.	)	
	)	
Janet P. Gochenour; Janet P. Gochenour	)	
Trustee; James B. Parker; James B. Parker, Sr.;	)	AMENDED COMPLAINT
Mary Ann Parker; Kenneth Gregory Moore;	)	VERIFICATION
R&G Corp., d/b/a Century 21 The Harrelson	)	BY DECLARATION
Group; Patton Development SC, LLC;	)	
Flagstar Bank, N.A.; Sonia M. Raymond;	)	
Raymond Law Firm, P.A.; and Daniel Parker	)	
as Personal Representative of the Estate of	)	
Ramon Parker	)	
Defendants.	)	

I, **Nicholas F. Wilson**, the Plaintiff herein, have read the foregoing Verified Complaint and know the contents thereof, and hereby verify that the allegations in the same are true of my own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters I believe them to be true.

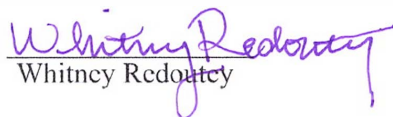


 Nicholas F. Wilson

Conway, South Carolina

Dec. 5 2023

Certification in Lieu of Affidavit. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

Witnessed by: 
 Whitney Redoutcy

Sonia M. Raymond, Esquire
Licensed in SC and CA

4201 Carolina Exchange Dr., Suite 102
Myrtle Beach, SC 29579

Mailing Address:
PO Box 51710
Myrtle Beach, SC 29579

Telephone: (843) 584-8154
Facsimile: (888) 537-8435
sonia@raymondlawfirm.com

March 6, 2020

Nicholas F. Wilson

4708 Hwy 90
Conway, SC 29526

Re: Purchase of 4708 Hwy 90, Conway, SC, 29526
Our file # 05192.001

Dear Nicholas:

Enclosed please find your closing documents for the above-referenced transaction. Your original Deed and Final Title Policy will be forwarded to you as soon as we receive the same from the Courthouse.

It was a pleasure working with you and if we can be of any assistance to you in the future, please do not hesitate to contact this office.

Yours truly,

RAYMOND LAW FIRM, P.A.

Sonia M. Raymond
Enclosures

Seller Initials

Buyers Initials

RAYMOND LAW FIRM, P.A.

Sonia M. Raymond, Esquire
Licensed in SC and CA

4201 Carolina Exchange Dr., Suite 102
Myrtle Beach, SC 29579

Mailing Address:
PO Box 51710
Myrtle Beach, SC 29579

Telephone: (843) 584-8154
Facsimile: (888) 537-8435
sonia@raymondlawfirm.com

May 7, 2020

Nicholas F. Wilson
4708 Hwy 90
Conway, SC 29526

Re: Purchase of 4708 Hwy 90, Conway, SC, 29526
Our file # 05192.001

Dear Mr. Wilson:

Enclosed please find your original Deed and Owner's Title Policy for the purchase of the above stated property.

It was a pleasure working with you and if we can be of any assistance to you in the future, please do not hesitate to contact this office.

Yours truly,

RAYMOND LAW FIRM, P.A.

Lauren Jennings
Legal Assistant

Enclosures

ELECTRONICALLY FILED - 2023 Dec 05 6:14 PM - HORRY - COMMON PLEAS - CASE#2023CP2602475

Raymond Law Firm, P.A.
P.O. Box 51710
Myrtle Beach, SC 29577

2023 DEC 05 6:14 PM - Horry - COMMON PLEAS - CASE#2023CP2602475

Nicholas F. Wilson
4708 Hwy 90
Conway SC 29526-9632

37

954





Exhibit 6
to Plaintiff's Amended
Verified Complaint

ELECTRONICALLY FILED - 2023 Dec 05 6:14 PM - Horry - COMMON PLEAS - CASE#2023CP2602475

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	15 TH JUDICIAL CIRCUIT

Nicholas F. Wilson,	)	
	)	Case No: 2023-CP-26-02475
Plaintiff,	)	

vs.

**PLAINTIFF’S REPLY IN SUPPORT OF
MOTION TO ALTER OR AMEND
ORDER FILED SEPT. 8, 2023**

Janet P. Gochenour; Janet P. Gochenour Trustee;	)
James B. Parker; James B. Parker, Sr.; Mary Ann	)
Parker; Kenneth Gregory Moore; R&G Corp.,	)
d/b/a Century 21 The Harrelson Group; Patton	)
Development SC, LLC; Mortgage Electronic	)
Registration Systems, Inc.; Sonia M. Raymond;	)
Raymond Law Firm, P.A.;	)
	)
Defendants.	)

Plaintiff herein respectfully submits this Reply in Support of his Motion to Alter or Amend Under Rule 59, filed Sept. 18, 2023. Defendants Sonia Raymond and Raymond Law Firm filed their opposition to the Plaintiff’s Rule 59 motion on Oct. 5, 2023.

In their opposition, Defendant Sonia Raymond argues Slack v. James is distinguishable for several reasons, including primarily that it is not a “legal malpractice” case. Id. at 2-3 (citing Slack v. James, 364 S.C. 609, 612, 614 S.E.2d 636, 637 (2005)). Counsel to Defendant Raymond acknowledges that portion of Slack v. James which speaks to the practical issues relating to “constructive notice,” of publicly filed documents, noting in their response, “it would be unreasonable to expect a purchaser to research the title before entering into a contract.” Id. (citing Slack, 614 S.E.2d at 639 (which states, “Further, given the speedy nature of residential real estate contracts today, it is not feasible to expect a buyer to be able to research the title of the property they are buying before entering into a contract.”))). Similarly, Plaintiff here had all the

more reason not “research the title of the property [he was] buying [after] ~~before~~ entering into a contract,” and closing on the property with the services of a licensed real estate attorney.

Here, Plaintiff had hired Defendant Raymond to prepare the closing documents and the deed in accordance with his contract with Defendant Janet Gochenour. In reality, Defendant Raymond did not even prepare the deed. Instead, another local attorney, Mr. Inabnit, Esquire, prepared it, and it even appears from the closing documents that Plaintiff paid \$320.00 for Mr. Inabnit to draft the deed.

As shown in Defendant Raymond’s correspondence dated March 6, 2020 (attached to the proposed Amended Verified Complaint as Exhibit 4), she admits she did not provide Plaintiff with a copy of the deed at the closing (or immediately thereafter). Further, Defendant Raymond’s correspondence dated May 7, 2020 (attached to the proposed Amended Verified Complaint as Exhibit 5) acknowledges she did not attempt to provide the Plaintiff with a copy of the deed until May 7, 2020, when she sent him the letter attached to the Plaintiff’s Motion to Amend as proposed Exhibit 5 to the Amended Complaint. These letters were not included in Defendant Sonia Raymond’s 475 pages of informal “discovery,” provided to Plaintiff by email on May 25, 2023 via a system link referenced as “SendThisFile”.

Defendants in their opposition to the Plaintiff’s Rule 59 Motion also fail to acknowledge that this case involves claims 6-8 for fraud, constructive fraud and breach of contract accompanied by a fraudulent act, all of which were enabled by the conduct Defendant Raymond as Plaintiff’s closing attorney.

Counsel to Defendant Raymond presumably had not been made aware of his client's correspondence dated March 6, 2020 and May 7, 2020 (Exhibits 4 and 5 to proposed Amended Complaint), when it was argued, "Like the Plaintiffs in *Watts*, Plaintiff [Nicholas F. Wilson] closed his eyes and did not read the deed." *Id.* at 3.

Defendant Raymond also confuses and/or conflates actual notice, *e.g.*, Plaintiff "closed his eyes" with "constructive notice," which is nowhere mentioned in the Court's Sept. 8, 2023 order.

Next, Defendant Raymond argues, "like the plaintiffs in *Fuller-Ahrens*, Plaintiff here could have pulled the deed and would have determined there was a mistake on its face." *Id.* at 4 (citing *Fuller-Ahrens Partnership v. S.C. Dept. of Highways and Pub. Trans.*, 311 S.C. 177, 427 S.E.2d 920 (Ct. App. 1993)). This is not true or accurate. As shown in Defendant Raymond's letter dated March 6, 2020, she knew her office had not provided Plaintiff a "copy" of the deed at closing. (Exhibit 4 to Amended Verified Complaint, stating, "Your original Deed and Final Title Policy will be forwarded to you as soon as we receive the same from the Courthouse."). Still further, Defendant Raymond had a duty to explain to the Plaintiff the contents of the deed and to ensure it was consistent with his contract with the seller, Defendant Janet Gochenour. However, as noted above, this duty was delegated to Mr. Inabnit's office.

Next in attempting to rely upon *Fuller-Ahrens*, Defendants argue, "Because the deed was filed of record, the Court of Appeals determined the plaintiff's claims were time-barred." *Id.* at 5 (apparently citing back to *Fuller-Ahrens*, 427 S.E.2d at 922). However, those are not the facts of this case. In this case, the deed was not recorded until on or after March 6, 2020, and the record shows Plaintiff did not receive a copy of the deed or an explanation of why it deviated greatly

from the contract with Defendant Gochenour and the plat relied upon by the Plaintiff (and the lender, Flagstar Bank, N.A.) at and prior to the closing. See Exhibits 1 and 2 to Verified Complaint, filed April 19, 2023).

Plaintiff herein incorporates by reference his Motion to Amend Complaint, filed Dec. 5, 2023, and its accompanying Exhibits 1-4, wherein Exhibits 2-4 of the Motion are proposed Exhibits 4 to 6 to the proposed Amended Verified Complaint. These documents were also filed Dec. 5, 2023, and all such documents are already of record in this case.

For all the reasons set forth herein and in the documents and filings of record incorporated herein, Plaintiff respectfully requests an order altering and amending the order / judgment entered on Sept. 8, 2023, and permitting all of his previously dismissed claims to remain in the case.

WESLEY D. FEW, LLC

s/Wes Few/

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
Dec. 6, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Nicholas F. Wilson,	)	Civil Action No.: 2023CP2602475
	)	
Plaintiff,	)	
	)	
v.	)	
	)	DEFENDANTS KENNETH GREGORY
Janet P. Gochenour; Janet P. Gouchenour	)	MOORE AND R&G CORP D/B/A
Trustee; James B. Parker, James B. Parker,	)	CENTURY 21 THE HARRELSON
Sr.; Mary Ann Parker, Kenneth Gregory	)	GROUP'S MOTION TO DISMISS
Moore; R&G Corp. d/b/a Century 21 The	)	
Harrelson Group; Patton Development SC,	)	
LLC; Mortgage Electronic Registration	)	
Systems, Inc., Sonia M. Raymond,	)	
Raymond Law Firm, P.A.,	)	
	)	
Defendants.	)	
	)	

TO: WESLEY D. FEW, ESQUIRE, COUNSEL FOR PLAINTIFF:

Defendants Kenneth Gregory Moore and R&G Corp. d/b/a Century 21 The Harrelson Group (hereinafter collectively “Defendants”), by and through their undersigned counsel, respectfully moves this Court pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for an Order dismissing Plaintiff Nicholas F. Wilson’s (“Plaintiff”) claims asserted against them.

The grounds for this motion are that Plaintiff’s Complaint fails to state a viable claim because Plaintiff’s alleged causes of action against Defendants are all time-barred. This is evidenced and supported by prior rulings from the Court that have become the “law of the case.” On September 8, 2023, the Court granted motions to dismiss from Codefendants Janet P. Gochenour, Sonia M. Raymond, and Raymond Law Firm, P.A. Plaintiff moved the Court to reconsider its Order granting these Codefendant’s motions to dismiss. On February 7, 2024, the

Court denied Plaintiff's motion to reconsider. These rulings, that Plaintiff's claims against Janet P. Gochenour, Sonia M. Raymond, and Raymond Law Firm, P.A. are time-barred by the Statute of Limitations have become the "law of the case." Plaintiff's alleged causes of action asserted against Defendants are identical to those the Court found time-barred. Accordingly, the alleged causes of action asserted against Defendants are likewise time-barred, and Defendants are entitled to dismissal.

Because this motion is a dispositive motion, consultation with opposing counsel pursuant to Rule 11, SCRCP is not necessary; however, the undersigned certifies that he did consult with Plaintiff's counsel to request that Plaintiff voluntarily dismiss these claims prior to the filing of this Motion.

This Motion will be based on the pleadings to date and may be supported by additional affidavits, memoranda, briefs and evidence which may be received and/or required by the Court.

Accordingly, for the reasons stated above, Defendant respectfully requests that this Court grant its Motion to Dismiss and award such other and further relief it deems just and proper.

[Signature Page to Follow]

Respectfully submitted,
COLLINS & LACY, P.C.

By: s/Luke Richardson
Claude T. Prevost, III, Esquire
S.C. Bar Number: 74343
cprevost@collinsandlacy.com
J. Lucas Richardson, Esquire
S.C. Bar Number: 103745
lrichardson@collinsandlacy.com
Post Office Box 12487
Columbia, SC 29211
803-255-0490 (voice)
803.771.4484 (fax)

ATTORNEYS FOR DEFENDANTS R&G
CORP. D/B/A CENTURY 21 THE
HARRELSON GROUP AND KENNETH
GREGORY MOORE

**DEFENDANTS KENNETH GREGORY
MOORE AND R&G CORP D/B/A
CENTURY 21 THE HARRELSON
GROUP'S MOTION TO DISMISS**

February 7, 2024
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF Horry

Nicholas F Wilson

Plaintiff,

vs.

James B Parker & Mary Ann Parker

Defendant.

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2023-CP-26-02475

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: <u>919 Waterton Ave</u> Phone: <u>843 992 4861</u> Fax _____ E-mail: _____ Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: <u>Dismissal</u> Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/ ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☒ Defendant <u>James B Parker</u> Date submitted: <u>2-14</u> FILED Horry County 2024 FEB 14 P 2:12 PNEE ELVIS CLERK OF COURT HORRY COUNTY, SC			
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____, 20____	
CLERK'S VERIFICATION Collected by: <u>LB</u> Date Filed: <u>2/14</u> , 20 <u>24</u> ☒ MOTION FEE COLLECTED: \$ <u>25</u> ☐ CONTESTED - AMOUNT DUE: \$ _____ PAID			

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Nicholas F. Wilson

Plaintiff,

v.

Janel P. Gochenour; Janet P Gochenour
Trustee; James B. Parker; James B. Parker,
Sr.; Mary Ann Parker; Kenneth Gregory Moore;
R&G Corp. d/b/a Century 21 The Harrelson Group;
Patton Development SC, LLC; Mortgage
Electronic Registration Systems, Inc.; Sonia M.
Raymond, Raymond Law Firm, P.A.
Defendants.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT;

Civil Action No: 2023CP2602475

DEFENDANTS JAMES B. PARKER AND
MARY ANN PARKER'S MOTION
TO DISMISS

FILED
HORRY COUNTY
2024 FEB 14 P 2:12
JESSE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

TO: WESLEY D. FEW, ESQUIRE, COUNSEL FOR the PLAINTIFF

Defendants James B. Parker and Mary Ann Parker (hereinafter "Movants"), respectfully moves this Court pursuant to Rule 12 (b)(6) of the South Carolina Rules of Civil Procedure for an Order dismissing Plaintiff Nicholas F. Wilson's (hereinafter "Plaintiff") claims asserted against them, and in support hereof respectfully shows as follows.

Plaintiff's Complaint fails to state a viable claim because Plaintiffs's alleged causes of action against Movants are all time-barred. This is evidenced and supported by rulings from this Court that have become the "law of the case." On September 8, 2023, the Court granted motions to dismiss filed by Codefendants Janet P. Gochenour, Sonia M. Raymond, and Raymond Law Firm, P.A. Plaintiff moved for the Court to reconsider its Order granting the Codefendants' motions to dismiss. February 7, 2024, the Court denied the motion to reconsider. These decisions holding that Plaintiff's claims against Janet P. Gochenour, Sonia M. Raymond and Raymond Law Firm, P.A. are time-barred by the statute of limitations have become the "law of the case" and are equally applicable to Movants. Plaintiff's alleged causes of action against Movants are legally indistinguishable from those the Court found time-barred.

Accordingly, the alleged causes of action asserted against Movants are likewise time-barred, and Movants are entitled to dismissal.

Because this motion is a dispositive motion, consultation with opposing counsel pursuant to Rule 11, SCRCP is unnecessary. However, the undersigned certifies that they, through their son-in-law acting on their behalf, did consult with Plaintiff's counsel to request that Plaintiff voluntarily dismiss these claims prior to the filing of this Motion.

Accordingly, for the reasons stated above, Movants respectfully request that this Court grant their Motion to Dismiss and award such other and further relief as it deems just and proper.

Respectfully submitted,

By: James B. Parker

James B. Parker
919 Waterton Avenue
Myrtle Beach, SC 29579
Theparkers53@yahoo.com
(843)992-4861

By: Mary Ann Parker

Mary Ann Parker
919 Waterton Avenue
Myrtle Beach, SC 29579
(843)992-4861

FILED
HORRY COUNTY
2024 FEB 14 P 2:12
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	15 TH JUDICIAL CIRCUIT
 Nicholas F. Wilson,	)	
	)	Case No: 2023-CP-26-02475
	)	
Plaintiff,	)	
vs.	)	
	)	PLAINTIF'S MEMORANDUM IN
Janet P. Gochenour; Janet P. Gochenour Trustee;	)	SUPPORT OF MOTION TO AMEND
James B. Parker; James B. Parker, Sr.; Mary Ann	)	UNDER RULE 15(a)
Parker; Kenneth Gregory Moore; R&G Corp.,	)	
d/b/a Century 21 The Harrelson Group; Patton	)	
Development SC, LLC; Mortgage Electronic	)	
Registration Systems, Inc.; Sonia M. Raymond;	)	
Raymond Law Firm, P.A.;	)	
	)	
Defendants.	)	
	)	

Plaintiff Nick Wilson herein respectfully submits this Memorandum in Support of his Motion to Amend, filed Dec. 5, 2023. As set forth below, based on Rule 15(a) and South Carolina Supreme Court precedent, Plaintiff must be allowed to amend his complaint with the Amended Verified Complaint, as attached to the motion filed on Dec. 5, 2023, before his Complaint can be dismissed with prejudice.

PROCEDURAL HISTORY

Since the filing of the Plaintiff's Motion to Amend under Rule 15(a), the Court issued an order denying Plaintiff's Motion for Reconsideration / to Alter or Amend Under Rule 59, filed on Sept. 18, 2023. The Form 4 order denying Plaintiff's Rule 59 Motion was entered on Feb. 17, 2024, and states as follows:

Plaintiff's Motion to Alter or Amend Order Filed Sept. 8, 2023, is DENIED.

This motion is decided on the contents of plaintiff's motion, prior arguments and memorandums of the parties, and letter dated January 29, 2024, from plaintiff's lawyer, without oral arguments.

Id. at 1 of 3 (attached here as Exhibit 1).

The Sept. 8, 2023 Form 4 order, which was the subject of the Plaintiff's Sept. 18, 2023 Rule 59 Motion stated as follows:

Defendant, Raymond Law Firm's Motion to Dismiss is GRANTED. Plaintiff's action is barred by the Statute of Limitations. Plaintiff's Motion/Dismiss and Summary Judgment is DENIED.

Defendant, Janet P Gochenour's Motion/Dismiss is GRANTED. Plaintiff's action is barred by the Statute of Limitations.

Plaintiff's Motion/Dismiss or Strike Counterclaim is GRANTED. Defendant Parker's counterclaim is dismissed.

Defendant, Janet P Gochenour's Motion/Dismiss crossclaim of defendant MERS is CONTINUED.

Id. at 1 of 3 (attached here as Exhibit 2).

Neither of these orders cites any legal authority. Neither order specifies whether or not the dismissal is with or without prejudice.

As shown in Exhibit 3, the transcript for the Sept. 7, 2023 hearing on the Defendants' various Motions to Dismiss, the Court was aware of Plaintiff's plans to amend his pleadings, specifically with respect to Patton Development SC, LLC. *Id.* at 26 of 35, lines 5-7 (stating, "Well, given the uncertainty of the pleadings and the posture of the case at this point in time, I'm going to deny that motion."). If Plaintiff had any reason to believe his other claims would be ordered dismissed on statute of limitations grounds in view of his initial Verified Complaint

allegations, *inter alia*, at Para. 43,¹ it would have been made clear at the hearing on Sept. 7, 2023 that the Plaintiff would also amend, as necessary, to more specifically plead facts to show he was not provided with notice of any harm or injury related to his ownership of the subject property within three years of the filing of this action on April 19, 2023.

In fact, as is specifically set forth in the Amended Verified Complaint at ¶ 43, Plaintiff's attorney, Defendant Sonia M. Raymond, Esquire and the Raymond Law Firm, P.A., did not even mail him a copy of the subject deed until May 7, 2020. (Exhibit 5 to proposed Amended Verified Complaint). Accordingly, even if it were assumed Plaintiff was put on notice on May 7, 2020 of the fact that his actual deed differed substantially and materially from the deed that would have been consistent with the Contract with Defendant Janet Gochenour, he still would have until May 20, 2023 to file this action.

ARGUMENT

I. It is Unclear if Plaintiff's Complaint is Dismissed With / Without Prejudice.

In *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585, 592 (2019), our Supreme Court stated as follows regarding dismissal of a complaint under Rule 12(b)(6), "Under Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief

¹ In ¶ 43, Plaintiff alleged under oath, "Plaintiff was never informed by anyone that the Original Survey was not the survey that would be recorded to show the Property he was to receive from Janet under their Contract."

can be granted. As we will explain, Spence supports this principle.” Id. at 592 (underline emphasis added).

Each of the Form 4 orders dismissing Plaintiff’s claims state, “This order does not end the case.” Id. at 1 of 3. The stated grounds for dismissing the Plaintiff’s claims is the statute of limitations. However, whether or not the statute of limitations bars a claim is, at a minimum, a jury issue in this instance. Dean v. Ruscon Corp., 321 S.C. 360, 366, 468 S.E.2d 645, 647 (1996) (in addressing a statute of limitations question, stating, “[w]hen the trial court rules on a directed verdict motion, it must view the evidence as well as all favorable inferences in the light most favorable to the non-moving party, and if more than one reasonable inference can be drawn from the testimony, the case should be submitted to the jury.”) (citing Santee Portland Cement Co. v. Daniel Int’l Corp., 384 S..2d 693 (1989) (overruled on other grounds)).

In Dean v. Ruscon, the Supreme Court analyzed the statute of limitations issue based on evidence in the record, found the statute was tolled for eight (8) days, Id. at 647, and concluded, “there was no question of fact for the jury to decide because the only reasonable conclusion supported by the evidence is that Dean's lawsuit accrued in November 1984, and by filing her lawsuit in April 1991, she was barred by the six year statute of limitations.” Id. Accordingly, Dean v. Ruscon also supports Plaintiff’s position here, which has since been made clear again in Skydive, namely that “the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted.” Id. at 592. See also Adkins v. I’on, 439 S.C. 568, 581, 889 S.E.2d 537, 544 (2023) (stating, “Specifically,

the question of when a plaintiff discovered, or should have discovered the alleged harm is for the jury to decide because it is an objective question.”).ⁱ

Accordingly, the Plaintiff’s Complaint(s) cannot be dismissed absent an analysis of whether or not either one of his Verified Complaints sets forth a question of fact as to when the statute of limitations began to run.

II. Plaintiff has a Right to Amend His Complaint.

South Carolina courts have long recognized the need to decide disputes on the merits. As noted by the U.S. Supreme Court in *Foman v. Davis*, 371 U.S. 178, 83 S.Ct. 227 (1962), the Rules of Civil Procedure “reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.” *Id.* (quoting *Conley v. Gibson*, 355 U.S. 41, 48 (1957)). This same concept is also embodied in very recent South Carolina Supreme Court case law. See e.g., *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019) (stating, “plaintiff is entitled to litigate the validity of [his] original pleading without having to convince the trial court of the merits of its underlying claim.”

In ruling on a 12(b)(6) motion, the only issue before the Court is whether the pleading states a claim. *Skydive*, 826 S.E.2d at 588 (stating, “[a]t the Rule 12 stage, therefore, the first decision for the trial court is to decide only whether the pleading states a claim.”). The Court “does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” *Id.* (quoting *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) (citing 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1356 (1990)). Rule 12(b)(6) merely permits the trial court to address the sufficiency of a pleading

stating a claim and does not serve as a vehicle for addressing the underlying merits. *Skydive*, 826 S.E.2d at 587. Accordingly, “a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 127 S.Ct. 1955, 1965 (2007).

In *Skydive*, the South Carolina Supreme Court confirmed Rule 15(a), SCRCP, secures a plaintiff’s right to amend a complaint before it is dismissed. *Id.* It further held the trial court committed reversible error “by failing even to consider allowing [Plaintiff] to amend its complaint.” *Id.* (citing *Patton v. Miller*, 420 S.C. 471, 804 S.E.2d 252 (2017)).

Before the order denying the Plaintiff’s Motion under Rule 59 was entered, on Dec. 5, 2023, Plaintiff filed a motion to amend his complaint, pursuant to Rule 15(a), SCRCP. Attached to the motion was the proposed Amended Verified Complaint and three new exhibits, showing that the closing attorney defendant and law firm had not provided Plaintiff with a copy of his deed until on or after May 7, 2020. The proposed Amended Verified Complaint details evidence from the Defendants’ own files that shows, at a minimum, a factual dispute as to when the Statute of Limitations would begin to run on the Plaintiff’s claims.

“‘Rule 15(a) is substantially the same as the Federal Rule’ Rule 15(a), SCRCP notes, and the Supreme Court of the United States has referred to the Rule’s ‘freely given’ provision as a ‘mandate’ that ‘is to be heeded.’ *Patton v. Miller*, 420 S.C. 471, 804 S.E.2d 252 (2017) (quoting *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L.Ed.2d 222, 226 (1962)).

The timing of a motion to amend is also supported by the Plaintiff’s filings here, as the South Carolina Supreme Court stated in *Skydive*, “Ordinarily, therefore, the time for requesting

leave to amend to correct a Rule 12(b)(6) pleading defect is after the trial court has determined the original pleading was deficient.” *Skydive*, 826 S.E.2d at 588 (underline emphasis added). By filing a motion to amend after the Court indicated it would grant Defendants’ 12(b)(6) motion, Plaintiff followed the procedure contemplated by the Supreme Court.

Further, this Court has never ruled on the Plaintiff’s Motion to Amend his Complaint. As the Supreme Court held in *Patton*, a trial court’s failure to exercise its discretion under Rule 15(a) is itself an abuse of discretion. In this case, even though the proposed amended complaint offers additional factual allegations as well as evidentiary support for the claims asserted and sufficiently states a claim under any 12(b)(6) analysis, the Court has thus far effectively refused to consider the Plaintiff’s Motion to Amend. Pursuant to the Supreme Court’s holding in *Patton*, this refusal constitutes an abuse of discretion which would require reversal on appeal. *See Patton* (“Under Rule 15(a), the circuit court should have considered whether the defendants were prejudiced by the amendment, or whether there was some other substantial reason to deny it”).

Plaintiff respectfully it should be allowed.

CONCLUSION

For the reasons stated herein, Plaintiff respectfully submits there is no reason to deny his proposed amendment, and, therefore, requests his Motion to Amend to enter his Amended Verified Complaint be granted.

[signature on next page]

Respectfully Submitted,

WESLEY D. FEW, LLC

s/Wes Few/
Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
Feb. 23, 2024

ⁱ The South Carolina Supreme Court in Adkins v. I'on further stated as follows:

The presence of conflicting testimony regarding the time discovery should have occurred necessarily requires the jury's resolution. Brown v. Finger, 240 S.C. 102, 113, 124 S.E.2d 781, 786 (1962) ("The burden of establishing the bar of the statute of limitations rests upon the one interposing it...and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide.") (internal citations omitted). In the case at bar, the jury was presented with a host of conflicting evidence as to when Homeowners should have, by the exercise of reasonable diligence, discovered the facts giving rise to their claims.

Id. at 544.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2602475

Nicholas F Wilson
PLAINTIFF(S)

Janet P Gochenour et al
DEFENDANT(S)

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.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

Plaintiff's Motion to Alter or Amend Order Filed Sept. 8, 2023, is DENIED.

This motion is decided on the contents of plaintiff's motion, prior arguments and memorandums of the parties, and letter dated January 29, 2024, from plaintiff's lawyer, without oral arguments.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/07/2024 .

James B Parker for James B Parker
James B Parker, Sr
Mary Ann Parker for Mary Ann Parker
Flagstar Bank NA
James B Parker for James B Parker
Mary Ann Parker for Mary Ann Parker

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Nicholas F Wilson VS Janet P Gochenour , defendant, et al
Case Number: 2023CP2602475
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2024-02-07 10:54:24 page 3 of 3

ELECTRONICALLY FILED - 2024 Feb 07 12:48 PM - HORRY - COMMON PLEAS - CASE#2023CP2602475
ELECTRONICALLY FILED - 2024 Feb 23 6:10 PM - HORRY - COMMON PLEAS - CASE#2023CP2602475

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP2602475

Nicholas F Wilson
 PLAINTIFF(S)

Janet P Gochenour et al
 DEFENDANT(S)

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.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

Defendant, Raymond Law Firm's Motion to Dismiss is GRANTED. Plaintiff's action is barred by the Statute of Limitations.

Plaintiff's Motion/Dismiss and Summary Judgment is DENIED.

Defendant, Janet P Gochenour's Motion/Dismiss is GRANTED. Plaintiff's action is barred by the Statute of Limitations.

Plaintiff's Motion/Dismiss or Strike Counterclaim is GRANTED. Defendant Parker's counterclaim is dismissed.

Defendant, Janet P Gochenour's Motion/Dismiss crossclaim of defendant MERS is CONTINUED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/07/2023 .

James B Parker for James B Parker
 James B Parker, Sr
 Mary Ann Parker for Mary Ann Parker
 James B Parker for James B Parker
 Mary Ann Parker for Mary Ann Parker

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Horry Common Pleas

Case Caption: Nicholas F Wilson VS Janet P Gochenour , defendant, et al
Case Number: 2023CP2602475
Type: Order/Electronic Form 4

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2023-09-07 16:29:13 page 3 of 3

ELECTRONICALLY FILED - 2023 Sep 08 8:14 AM - HORRY - COMMON PLEAS - CASE#2023CP2602475
ELECTRONICALLY FILED - 2024 Feb 23 6:10 PM - HORRY - COMMON PLEAS - CASE#2023CP2602475

State of South Carolina) In the Court of Common Pleas
) Fifteenth Judicial Circuit
 County of Horry) Case No. 2023-CP-26-02475

Nicholas F. Wilson,)
)
 Plaintiff,)
)
 -vs-) Transcript of Record
)
)
 Janet P. Gochenour; Janet P.)
 Gochenour Trustee; James B.)
 Parker; James B. Parker, Sr.;)
 Mary Ann Parker; Kenneth)
 Gregory Moore; R&G Corp., d/b/a)
 Century 21 The Harrelson Group;)
 Patton Development SC, LLC;)
 Mortgage Electronic)
 Registration Systems, Inc.;)
 Sonia M. Raymond; Raymond Law)
 Firm, P.A.;)
)
 Defendants.)
)

September 7, 2023
 Via WebEx

B E F O R E:

The Honorable Benjamin H. Culbertson, Judge

A P P E A R A N C E S:

(SEE NEXT PAGE)

Proceedings taken down electronically

Transcribed by:
 Krystal J. Smith
 Official Circuit Court Reporter III

A P P E A R A N C E S:

Wesley Few, Esquire
Attorney for the Plaintiff

William J. Luse, Esquire
Attorney for the Defendant Janet P. Gochenour

Blake Williams, Esquire
Attorney for the Defendant Mortgage Electronic
Registration Systems, Inc.

Luke Richardson, Esquire
Attorney for the Defendant Kenneth Gregory Moore and
The Harrelson Group

R. Bruce Wallace, Esquire
Attorney for the Defendant Sonia M. Raymond and The
Raymond Law Firm, P.A.

Alexander Hray, Esquire
Attorney for the Defendant Patton Development SC, LLC

James B. Parker
Self-represented defendant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Motion to Dismiss Defendant Raymond Law Firm.....	6
Motion to Dismiss and for Summary Judgment.....	21
Motion to Dismiss by Defendant Gochenour.....	25
Motion to Dismiss or Strike Counterclaim.....	29
Motion to Dismiss Cross-Claim.....	32
Rulings.....	33
Court Reporter Certification.....	35

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
------------	--------------------	------------	------------

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said
[inaudible]		unable to hear or understand due to
		audio volume or quality/interference

1 SEPTEMBER 7, 2023

2 (WHEREUPON, the proceedings began via WebEx.)

3 THE COURT: All right. Is there -- is this everyone?

4 All right. Hearing nothing, I'm assuming it is everyone.

5 This is 2023-CP-26-02475, Nicholas F. Wilson versus Janet
6 P. Gochenour and others. According to my roster, the matter
7 is before the Court on a motion to dismiss by the defendant,
8 Raymond Law Firm, P.A.; a motion to dismiss and for summary
9 judgment by Nicholas F. Wilson; a motion to dismiss and for
10 summary judgment by Janet -- the defendant, Janet P.
11 Gochenour; a motion to dismiss or strike the counterclaim or
12 for more definite statement by the plaintiff, Nicholas F.
13 Wilson; a motion to dismiss by the defendant, Janet P.
14 Gochenour.

15 All right. I need everybody -- you're going to need to
16 state your name and the capacity in which you're appearing.

17 Let's start, Mr. Williams.

18 MR. WILLIAMS: Thank you, Your Honor. I'm here on behalf
19 of the named defendant as MERS, Mortgage Electronic
20 Registration Systems. And as I've told Mr. Few, the proper
21 party defendant is Flagstar Bank. They're the assignee of the
22 -- and the current mortgage holder.

23 THE COURT: Mr. Parker?

24 MR. PARKER: Yes, sir, Your Honor.

25 THE COURT: Are you represented by an attorney?

1 MR. PARKER: No, sir, I am not, Your Honor.

2 THE COURT: Okay. All right. Mr. Luse?

3 MR. LUSE: William Luse, representing Janet P. Gochenour
4 and her estate.

5 THE COURT: Mr. Richardson?

6 MR. RICHARDSON: Yes, Your Honor. Representing Ken Moore
7 and the Harrelson group.

8 THE COURT: All right. Mr. Wallace?

9 MR. WALLACE: Yes, Your Honor. Representing Sonia M.
10 Raymond and the Raymond Law Firm, P.A.

11 THE COURT: Mr. Few?

12 MR. FEW: Your Honor, I represent the plaintiff, Nicholas
13 Wilson.

14 THE COURT: All right. I guess we'll just take these in
15 the order or -- order they appear on the roster. First one is
16 the motion to dismiss the defendant, Raymond Law Firm, P.A.
17 All right. Whose motion is that?

18 MR. WALLACE: Your Honor, that's mine. Bruce Wallace.

19 THE COURT: All right. Let me hear from you.

20 MR. WALLACE: Thank you, Your Honor. I'll try to be
21 brief with the facts as they pertain to my client. My client,
22 Sonia Raymond, and her law firm have been sued by Nicholas
23 Wilson over a closing related to property purchased by Mr.
24 Wilson from Ms. -- and I apologize for the mispronunciation of
25 her name -- Janet Gochenour or Gochenour.

1 The complaint alleges essentially this, Your Honor, that
2 Mr. Wilson contracted with Ms. Gochenour for purchase of
3 several parcels. The complaint says that those parcels were
4 shown on an unrecorded plat on which Mr. Wilson relied. The
5 parties amended the contract several times, including one time
6 to change the description of the property to include eight-
7 plus acres.

8 THE COURT: I apologize. I apologize for stopping you.
9 Mr. Hray has just raised his hand that says he's participating
10 in this as well. He just -- just did it. Let me make him in.
11 We'll need to start all over.

12 MR. FEW: Your Honor, I believe that my client was
13 wanting to listen in. I don't know if they raised their
14 hands.

15 THE COURT: If they're an attendee, they can listen.
16 They can still hear it.

17 MR. FEW: Okay.

18 THE COURT: They just won't be in the courtroom.

19 MR. FEW: Very well.

20 THE COURT: Mr. Hray, are you there?

21 MR. HRAY: I'm here, Your Honor.

22 THE COURT: All right. I need your video. Okay.

23 MR. HRAY: There you go.

24 THE COURT: All right. Mr. Hray, you're appearing in
25 what capacity?

1 MR. HRAY: I represent the defendant, Patton Development
2 SC, LLC.

3 THE COURT: All right. Mr. Wallace, go ahead.

4 MR. WALLACE: Thank you, Your Honor. As I was saying,
5 the real estate contract for the purchase of property was
6 amended several times, as alleged in the complaint.

7 The complaint alleges that the contract included what is
8 kind of -- is sort of known amongst the parties as Tract D,
9 which is a driveway. The plaintiff alleges that everyone knew
10 the plaintiff was -- was buying Tract D. In fact, the -- the
11 complaint alleges that he would not have closed unless he was
12 deeded the driveway.

13 The complaint alleges that the contract closed on March
14 6th, 2020, and that date is important, Your Honor, for
15 purposes of our motion today. March 6th, 2020, was the date
16 the transaction was closed. The recorded deed, according to
17 the complaint, does not include title to the driveway or Tract
18 D. So you have a contract to purchase several parcels,
19 including Tract D. You have a deed provided to -- excuse me
20 -- recorded that does not include Tract D.

21 The complaint was filed on April 19th, 2023. The
22 complaint claims that my clients as the lawyers for the
23 plaintiff failed to ensure he received title identified in the
24 contract or in the unrecorded plat. The expert affidavit
25 provided pursuant to 15-36-100 and the complaint alleged that

1 the lawyers failed to explain that the plaintiff was not going
2 to receive title to the property identified in the contract
3 and the unrecorded plat survey specifically titled Tract D,
4 and those were all allegations in the complaint, Your Honor.
5 We've cited them in our brief, specifically paragraph by
6 paragraph.

7 Our argument is -- is fairly straightforward, Your Honor.
8 The statute of limitations bars the plaintiff's claims against
9 Sonia Raymond and the Raymond Law Firm. As the Court is I'm
10 sure aware and heard dozens of times, the statute of
11 limitations for attorney malpractice is three years. That's
12 based on 15-35-350, Subsection 5. As I said a minute ago, the
13 complaint was filed on April 19th, 2023.

14 So if the plaintiff knew or should have known of the
15 malpractice before April 19th, 2020, then the claim is time
16 barred. The complaint alleges the transaction was closed on
17 March 6th, 2020, which, of course, is before April 19th, 2020.
18 Plaintiff claims that the recorded deed reveals that the
19 plaintiff did not receive title to the driveway.

20 THE COURT: All right.

21 MR. WALLACE: Your Honor, our argument then is fairly
22 simple after that. The plaintiff knew or should have known as
23 soon as the deed was recorded that he didn't get the property
24 he contracted for, and that a claim for malpractice exists.

25 The plaintiff's attorney in the affidavit, which is

1 considered part of the complaint under the statutory rules of
2 15-36-100, actually says it's plainly obvious the deed did not
3 convey the contracted-for property, and the complaint arises
4 out of the deed -- out of the fact that the deed varied from
5 the allegations of the con -- the alleged content of the
6 contract.

7 So it requires a look at the discovery rule for statute
8 of limitations. Statutes of limitations begin to run when a
9 plaintiff knew or should have known of the alleged negligence.

10 It's an objective test, as the Court knows, which focuses
11 on whether the plaintiff acquired knowledge to put him on
12 inquiry of a claim against his attorney, but it doesn't have
13 to be a full-blown theory, just inquiry notice. And under our
14 law with the discovery rule involving recorded instruments,
15 plaintiff is on constructive notice of the contents of
16 documents filed in conformity with applicable law.

17 That's the *Fuller-Ahrens Partnership* case we cited, 311
18 S.C. 177. That's in our brief. It's also *Berry v. McLeod*,
19 which *Berry v. McLeod*, Your Honor, was a 1997 case handled by
20 the Court of Appeals or by the Supreme Court, and they said
21 the statute of limitations began when -- at that time it was a
22 public bond. When the public bond documents were filed, the
23 statute of limitations for anything arising out of the public
24 bond documents began to run, even if the plaintiffs didn't
25 have a full-blown theory of any malfeasance or nonfeasance.

1 Similarly, here, the plaintiff's claims began the day the
2 deed was filed for any claims arising out of the deed being
3 the wrong deed or being inconsistent with the contract or
4 inconsistent with the unrecorded plat, as alleged in the
5 complaint.

6 And so that's essentially our argument, Your Honor.
7 March 6th, 2020, contract was closed, deed recorded. The case
8 -- the cause of action arose at that point, and the case was
9 not filed until more than three years later. As a result,
10 it's time barred.

11 THE COURT: All right. Thank you.

12 Mr. Williams, any argument one way or the other on this
13 motion?

14 MR. WILLIAMS: I'm going to defer to Mr. Few. It's --
15 he's plaintiff's counsel. I've just got the lender. We're a
16 co-defendant.

17 THE COURT: All right. Mr. Parker, any argument on this
18 motion?

19 MR. PARKER: No, Your Honor.

20 THE COURT: All right. Mr. Luse, any argument on this
21 motion?

22 MR. LUSE: Not on this motion.

23 THE COURT: All right. Mr. Richardson, any argument on
24 this motion?

25 MR. RICHARDSON: No, Your Honor.

1 THE COURT: All right. Mr. Hray, any argument on this
2 motion?

3 MR. HRAY: No, Your Honor.

4 THE COURT: All right. Mr. Few, let me hear from you.

5 MR. FEW: Thank you, Your Honor. May it please the
6 Court.

7 I'm certainly aware of the three-year statute of
8 limitations, and the arguments that we're making here on
9 behalf of -- in opposition to the motion by who we've referred
10 to as the law firm defendants represented by Mr. Wallace would
11 be substantially identical to the arguments that we'll be
12 making in opposition to a motion to dismiss filed by the
13 seller, represented by Mr. Luse. Janet Gochenour is what I
14 heard her say. So, Your Honor -- and I hope you have a copy
15 of the memorandum that we filed.

16 The problem with Mr. Wallace's argument is that he is
17 extrapolating from the discovery rule that every time a
18 closing occurs that every party to that closing is put on
19 sufficient notice that they have a claim. And so,
20 essentially, what they're saying is that my client should have
21 known that the contract was breached on March the 6th of 2020.
22 Well, he didn't get the deed until May of 2020.

23 And, Your Honor, we have a verified complaint in this
24 matter, and in that -- I'm going to refer to my motion. Your
25 Honor, the discovery rule, as Mr. Wallace said, is whether you

1 knew or should have known. Respectfully, any case regarding a
2 public bond is -- is not relevant to what's happened here.
3 That would presumably be something related to putting the
4 public on notice if they had a claim related to a bond.

5 Here we had a private transaction between my client and
6 Mrs. Gochenour, which we call the seller defendants. We
7 weren't quite sure who she was. We knew her name, but there's
8 several parcels involved, and one of the parcels was under the
9 name of the trustee and that's why we have the multiple named
10 parties.

11 So, Your Honor, the discovery rule is what is key here.
12 And even if we didn't have a verified complaint, we would be
13 looking at only the allegations in the complaint. And as set
14 forth in our memorandum, citing *Flateau v. Harrelson* 584 --
15 413, 415, Court of Appeals, a motion to dismiss should not be
16 granted if facts alleged and inferences reasonably deductible
17 therefrom would entitle the plaintiff to relief on any theory
18 of the case.

19 The next case is *Patterson v. Witter*. This is on page 2
20 of our memorandum filed earlier today, Your Honor, which I
21 imagine everyone here that's a practicing attorney would be
22 familiar with. That in the light most favorable to the
23 plaintiff with every doubt resolved in his favor, the
24 complaint states a valid claim for relief.

25 Your Honor, I've also, in an abundance of caution, made a

1 reference to the *Baughman v. AT&T* case and the *Skydive* case.

2 I don't really need to go there. *Baughman* just speaks to the
3 fact that we have the right to conduct discovery.

4 But really, the issue is settled, Your Honor, if you just
5 look at the complaint. And if I could, I'll share my screen.
6 This is an 80-page document that I sent out that -- to
7 everybody that has combined all of the things that I thought
8 we might need here today, so that I might wouldn't have to
9 bounce around and be even more awkward.

10 Your Honor, on paragraph 22, we refer to the amendment,
11 and you'll see here that several things were required. The
12 seller was supposed to have the property surveyed, which they
13 did. My client was provided with what we call the original
14 survey in the -- by the real estate agent, Mr. Ken Moore,
15 shortly after the amendment here was signed on January 23rd.
16 The original contract was signed on January 22nd. Your Honor,
17 this says also that he shall receive no less than eight acres.
18 Well, he did receive less than eight acres. And it also says
19 seller to include the deed of the driveway as part of the
20 sale.

21 So, Your Honor, I think what has happened here is the
22 seller didn't have the ability to convey these things because
23 her brother, Mr. Parker, owned the three parcels in front of
24 him, in front of the property that was being sold to my
25 client. But in any event, paragraph 22 is just showing us

1 that there was this rather specific amendment.

2 And in response to that, the first survey that was
3 provided, the only survey that was provided to my client prior
4 to him going down and seeing the recorded -- the recorded
5 survey years afterwards is this original survey that's in our
6 pleadings, and I can show it to the Court here when we get
7 there in a moment. Your Honor, then, also -- and this is in
8 our motion. We say plaintiff relied on the original survey.
9 That's all he had. That's all he was provided by the real
10 estate agent or his attorney.

11 And, Your Honor, it's very telling here that the closing
12 agent operated under a dual-agency agreement, but yet the
13 closing attorney knew that they needed to get another closing
14 attorney to draft the deed. What we've since learned from the
15 discovery that we've been provided is that another local
16 attorney drafted the deed. There's no indication in the file
17 that Sonia Raymond even reviewed the deed to see if it
18 complied with the provisions in the contract, because she
19 relied on the seller's closing attorney, Mr. Davis Inabinet,
20 to draft the deed in his client's interest. He drafted a deed
21 that was in his client's interest and contrary to my client's
22 interest, because my client didn't get the property that he
23 contracted for.

24 Paragraph 43, verified complaint, plaintiff was never
25 informed by anyone that the original survey was not the survey

1 that would be recorded to show the property that he was to
2 receive from Janet under their contract. Mr. Wallace neglects
3 to refer to this paragraph in his memorandum that was filed
4 with the Court, which was for the purpose of saying that the
5 allegations in the complaint are not sufficient, but not only
6 are they sufficient to raise a material issue of fact about
7 when Nick Wilson was put on notice that -- that he had gotten
8 a really, really bad deal, and then the people that had a
9 fiduciary duty to look out for him and to tell him this did
10 not do that.

11 Mr. Wallace's argument also, Your Honor, assumes -- and
12 we don't disagree. Under a typical closing, if the plaintiff
13 -- if the -- the attorney gives his own client or her own
14 client a copy of the deed and a copy of the survey, then he
15 would be put on notice of those things, but that didn't happen
16 and that's what's laid out in our memorandum as well.

17 So if those things had occurred, Mr. Wallace would have a
18 really good argument, but they didn't. And we -- we've
19 alleged that they didn't, and we've alleged under oath that
20 they didn't.

21 And then, Your Honor, on paragraph 46 -- I don't want to
22 go through the whole complaint, but these are the things we
23 referred to in our memorandum. We -- we say that at all times
24 before and after January 23rd, plaintiff made it abundantly
25 clear he would not purchase the property unless he was going

1 to be deeded the driveway. The real estate agent knew this,
2 Your Honor. And in discovery, we'll get into the fact that
3 the real estate agent had another contract with other members
4 of the seller's family, including Mr. Parker, to sell a larger
5 tract of land that was adjacent to or in the area, which was
6 not ever disclosed to my client and obviously created a
7 conflict of interest, Your Honor.

8 So our response -- and I'm happy to go into anything
9 else. I think I've covered all the things. But here, Your
10 Honor, the -- at the closing, my client just did not receive
11 information that would put him on notice.

12 And when we got the file materials from Sonia Raymond --
13 and I don't want to get too far outside the pleadings, but at
14 page 301 and 303, by example, there are transmittal letters
15 where she sends out checks to the seller's attorney and to the
16 closing agent. There's nothing in her file to indicate that
17 she gave my client the deed or explained the deed or that she
18 gave him a copy of the recorded survey.

19 And, Your Honor, if I may, I'm going to go to page 4 of
20 my PDF here. Oh, I'm sorry. I'm so bad at this.

21 This is the original survey, Your Honor, that my client
22 relied upon. Coincidentally, Your Honor, Mr. Williams'
23 client, Flagstar Bank, who used to be a client of mine years
24 and years ago, by the way, their survey that they relied on in
25 making the loan is this survey and not the -- the document

1 that was ultimately prepared after this never disclosed to my
2 client.

3 And as you can see, the -- the -- the solid lines, Your
4 Honor, that I'm trying to highlight here, that refers to Tract
5 D, and Tract D is 0.49 acres. And then the other tracts are
6 down here to below. There's A, there's B, and there's C, and
7 those things add up to 8.24 acres. I'm really sorry.

8 Now, this that you're looking at now that looks like the
9 state of Florida, something like a panhandle or Oklahoma, that
10 is the survey that was relied upon by the appraiser, who
11 subsequently passed that on to the lender that approved the
12 loan. This is all they had to review it. And you can see
13 I've highlighted that, Your Honor, to show that the driveway
14 was deeded. And that's about a 30-foot tract, 30 feet wide
15 and a little over 700 feet long, according to the original
16 survey, which is the only survey my client ever had.

17 And, Your Honor, that -- this was on our *lis pendens*, and
18 that kind of gets into a later argument that it turns out that
19 the Patton people that bought the property in front of my
20 client did not get the driveway, nor did they have any rights
21 in the driveway, but I don't want to get ahead of myself.

22 Our argument is simply that my client is, under oath,
23 stating that no one ever told him this, that people that had a
24 duty to inform him of these things did not tell him these
25 things, did not tell him of a conflict of interest and -- and,

1 therefore, he was not put on notice of the fact that he had a
2 claim until -- the date that he received the deed was sometime
3 in May, and he didn't see the actual -- he never was given a
4 copy of the recorded plat from any of the defendants. He had
5 to go and get it on his own years later. And --

6 THE COURT: All right. Anything else?

7 MR. FEW: That's all, Your Honor, with respect to that
8 first motion, and that's pretty much my --

9 THE COURT: All right.

10 MR. FEW: -- argument on the third motion.

11 THE COURT: Mr. Wallace, anything in reply? Wait a
12 minute. You're muted. All right.

13 MR. WALLACE: Yes, Your Honor.

14 THE COURT: Anything in reply?

15 MR. WALLACE: Yes, sir. Everything that Mr. Few stated
16 in regards to what the plaintiff wasn't told as alleged in the
17 complaint may be true and, in fact, the Court has to take it
18 as true for purposes of this motion, but it sidesteps the
19 argument, which was the deed referenced throughout the
20 complaint, which was recorded, and that --

21 THE COURT: Yeah, but he said his client never got the
22 complaint [sic] until May. You've got to send the complaint
23 to the Register of Deeds, get it recorded and, oftentimes, the
24 plaintiff doesn't get the deed until months after the closing.

25 MR. WALLACE: And that might be true --

1 THE COURT: Do you have anything that shows that the
2 plaintiff had access to that deed on the date of closing?

3 MR. WALLACE: The law doesn't require that, Your Honor.
4 Looking at the *Aherns Partnership* case we cited -- and I'll --
5 if you'll give me a second to pull that up, I'll quote it for
6 you. The mere filing --

7 THE COURT: That dealt with -- that dealt with a real
8 estate closing?

9 MR. WALLACE: Yes, sir. And here's the quote.

10 The Patterson's deed and the other documents, as required
11 by statute, were filed as an affidavit of the -- this was
12 involving a deed that gave notice of an encroachment by the
13 Department of Transportation -- as an affidavit of the
14 Department's assistant maintenance engineer suggests is in the
15 Department's offices. So there's a deed that references
16 documents in the Department of Transportation's offices.

17 The Court then says the filing of these instruments
18 provided a record sufficient to, quote, impart notice, albeit
19 constructive notice, to the plaintiff of the deed and its
20 contents, including the deed's reference to the Department's
21 plans, just as though such transaction was recorded in the
22 county where the land is situated.

23 So the -- the operative date is not the receipt of the
24 recorded deed by the plaintiff. It's the date of recording of
25 the deed, which was March 6th.

1 THE COURT: What is that case?

2 MR. WALLACE: That is the *Fuller-Ahrens Partnership*
3 *versus South Carolina Department of Highways*, 311 S.C. 177.
4 It's a Supreme Court case from 1993 cited in our brief as
5 well, Your Honor.

6 THE COURT: Okay. All right. Well, I'll need to take
7 this under advisement, take a look at that *Ahrens* case and see
8 what it says the beginning date is. Okay?

9 MR. WALLACE: Yes, Your Honor.

10 THE COURT: See if it's applicable.

11 All right. Now, we've got a motion to dismiss and for
12 summary judgment by the plaintiff, Nicholas Wilson.

13 MR. FEW: Thank you, Your Honor.

14 We filed a *lis pendens* before we filed the complaint.
15 The *lis pendens* refers to the original survey that I was just
16 referring to when we did the share screen.

17 Subsequent to my client purchasing the property, Mr.
18 Hray's client, Patton Development South Carolina LLC I think
19 is the name, purchased the property between my client's -- the
20 bulk of my client's property in Highway 90 and began put --
21 and then have now started putting a Dollar General there.

22 And, Your Honor, they were named on the *lis pendens* in an
23 abundance of caution, but it turns out that Mr. Hray has
24 advised me that they didn't take title to any portion of the
25 30-foot strip, the 700 feet by 30-foot existing driveway, in

1 other words, Tract D. They knew that they didn't have any
2 rights to Tract D and -- and, Your Honor, it's telling that
3 the absurdity of all of this is that the -- the seller to my
4 set to my client and the Parkers who owned the property to the
5 front are -- were still getting a tax notice of about \$4.89
6 because they're still shown as having some rights in this
7 driveway. And --

8 THE COURT: I apologize for interrupting, but -- but what
9 are you asking in this motion?

10 MR. FEW: I'm asking for a dismissal of Patton's
11 counterclaim, Your Honor. They have a counterclaim for
12 slander of title, and we've laid it out in our -- our motion,
13 which was filed June the 6th, Your Honor. We've laid out the
14 specifics of why that is -- specifically, that they say that
15 they don't have any claim to the 30-foot driveway that we
16 claim.

17 So what we're seeking in the lawsuit is to right the
18 wrong, whereby my client will ultimately receive Tract D, the
19 0.49 acres that pushes her up to 8.24 acres that she
20 contracted for and that she should have received -- that he
21 should have received. I apologize. And --

22 THE COURT: Okay. Hold for a second. We've lost Mr.
23 Parker's video.

24 Mr. Parker? Mr. Parker, are you still there? Mr.
25 Parker? Mr. Parker?

1 Can anybody see or hear Mr. Parker?

2 MR. HRAY: No.

3 MR. LUSE: No, Your Honor.

4 THE COURT: Let me ask you, Mr. Few, does this -- does
5 this motion involve Mr. Parker or is it just Mr. Hray's
6 client?

7 MR. FEW: Not directly I don't believe it does, Your
8 Honor, and I would defer to --

9 THE COURT: Well, I mean, I don't need "I don't believe."
10 I've got to have yes, it does, or no, it doesn't. As I
11 understand your argument, your argument is you want to dismiss
12 Mr. Hray's counterclaim for slander of title because his
13 client doesn't have title to the property that you're -- that
14 he claims was slandered. Is that correct?

15 MR. FEW: That's right, Your Honor. The scope of our *lis*
16 *pendens* is Tracts A, B, C, and D. There's no dispute that he
17 doesn't have any claim to Tracts A, B, and C, and then I also
18 think there's no dispute that Mr. Hray can answer that, as
19 I've read his memorandum. We are in agreement that he -- he
20 makes no claim to any portion of Tract D, the 30 foot,
21 approximately 712-foot-long existing driveway.

22 THE COURT: All right. Mr. Wallace, any argument
23 regarding that motion?

24 MR. WALLACE: None from the defendant, Sonia Raymond, and
25 the Raymond Law Firm, Your Honor.

1 THE COURT: All right. Mr. Luse?

2 MR. LUSE: Not on this motion, no.

3 THE COURT: All right. Mr. Williams?

4 MR. WILLIAMS: Not on this one.

5 THE COURT: All right. Mr. Richardson?

6 MR. RICHARDSON: Not on this motion, Your Honor.

7 THE COURT: All right. Mr. Hray, let me hear from you.

8 MR. HRAY: Yes, Your Honor.

9 Well, the whole crux of our counter -- our counterclaim
10 is that a legal action was filed against my client that he's
11 had to respond to legally where there is -- we have no
12 interest whatsoever in the land in dispute. That puts a cloud
13 on our title because it makes it look as though there is some
14 sort of question.

15 But it looks like from the motion itself that the
16 plaintiff is saying we don't have any claim to Patton
17 Development's property, so we should be dismissed. I don't
18 know why we're even involved in this case. If that's the
19 case, we should just be dismissed, but we're having to defend
20 a case when --

21 THE COURT: As I understand, your -- your counterclaim
22 alleges slander of title.

23 MR. HRAY: Yes, Your Honor.

24 THE COURT: Is that correct?

25 MR. HRAY: Yes, Your Honor.

1 THE COURT: All right. Now, are you saying that they
2 slandered title to property owned by your client?

3 MR. HRAY: It puts a cloud to our title because they
4 filed a case. It makes the public think there's some sort --
5 something wrong with our title because we're named in a *lis*
6 *pendens* in a complaint involving real estate.

7 THE COURT: It would be just the property named in the
8 *lis pendens*.

9 MR. HRAY: Well, I don't know why we're a part of this
10 case then. If we're not part of that property in the *lis* --
11 in the *lis pendens*, we shouldn't be named parties at all.
12 What's he trying to accomplish? If we're not -- we don't -- I
13 don't see why.

14 THE COURT: Mr. Few, why do you name Mr. Hray's clients?

15 MR. FEW: Your Honor, I think at the time of doing this,
16 we were under the impression that -- that they had been deeded
17 the driveway that we were supposed to have been deeded. Since
18 that time, Your Honor, the construction of this Dollar General
19 has resulted in a trespass to my client's property and -- and
20 so I frankly anticipate amending to add, at a minimum, a
21 trespass claim against them.

22 So to the extent they've been wrongly joined, we would
23 just put that out there for the Court that -- that they've
24 torn up the property and -- and these things have happened as
25 a part of the ongoing construction. And with all these

1 parties and with the issue that's up with Mr. Williams and
2 MERS and Flagstar, I wanted to keep the amendments to the
3 pleadings to a minimum to the extent I could, but I believe I
4 --

5 THE COURT: Well, given the uncertainty of the pleadings
6 and the posture of the case at this point in time, I'm going
7 to deny that motion.

8 All right. Now, Defendant Gochenour's motion to dismiss
9 and for summary judgment. Whose motion is that?

10 MR. LUSE: That is mine, Your Honor. We just filed a
11 motion to dismiss. That's my motion.

12 THE COURT: All right. Let me hear from you, Mr. Luse.

13 MR. LUSE: Thank you.

14 In the complaint that was filed, there are multiple
15 causes of action. And this is the complaint filed on April
16 19th, 2023, derived from the March 6th, 2020, closing, which
17 our main motion consists of it's past the statute of
18 limitations, but we were only named in a breach of contract,
19 interference with a contract, fraud, constructive fraud,
20 breach of contract accompanied by a fraudulent act, and South
21 Carolina unfair and deceptive trade practice, not all of the
22 other causes of action, including the alleged malpractice.

23 So we're only speaking to our six causes of action, but
24 all of them have a three-year statute of limitations. And
25 similar to what has already been argued, the buyer would have

1 had notice of the real estate he was buying at the time of the
2 closing. The deed was recorded on March the 6th.

3 We agree with the case cited, the *Fuller-Ahrens* case
4 previously cited. Clearly, the interference with a contract,
5 fraud, constructive fraud, breach of contract accompanied with
6 fraud, and South Carolina unfair and deceptive are three-year
7 statute of limitations. A breach of contract is also a three-
8 year statute of limitations.

9 There is a -- a statute under 15-35-30, which wasn't
10 pled, that involves real estate where you can get up to 20
11 years. That doesn't apply to this defendant because that
12 would involve a mortgage. There is no mortgage of real estate
13 between my client, the seller, and the buyer. The buyer would
14 have one between him and his bank, and it would also have to
15 include a signing of a sealed instrument and a -- a standard
16 real estate contract with a realtor is not a document signed
17 under seal. So either one of those provisions, which they
18 would have to have, would not be applicable, and so it would
19 revert to the three-year statute of limitations.

20 And in any real estate closing -- I don't want to belabor
21 the point here, but there were real estate closing attorneys
22 in there. They would advise the buyer of his rights. They
23 would explain, you know, not only the promissory note and the
24 terms of the mortgage, but the property that was being bought.
25 The deed would explain the exact property that was being

1 bought, and it's recorded. He would have notice when it's
2 recorded with the registered deed.

3 And -- and a real estate closing, like when I bought my
4 house, I mean, they -- they go through and it's a metes and
5 bounds. I mean, they read you're buying from this point of
6 the land to this point in the land, and so he would have
7 notice in a closing. They would explain the metes and bounds
8 of your property line, just like in any other real estate
9 closing.

10 And so that would be notice on the day of the closing,
11 which was March the 6th, 2020, and we believe the complaint
12 being filed on April the 19th, 2023, would be past the statute
13 of limitations.

14 THE COURT: All right. Mr. Wallace, any argument on this
15 motion?

16 MR. WALLACE: No, Your Honor.

17 THE COURT: All right. Mr. Williams?

18 MR. WILLIAMS: No, Your Honor.

19 THE COURT: Mr. Parker?

20 MR. PARKER: No, Your Honor.

21 THE COURT: Mr. Richardson?

22 MR. RICHARDSON: No, Your honor.

23 THE COURT: Mr. Hray?

24 MR. HRAY: No, Your Honor.

25 THE COURT: All right. Mr. Few, any arguments other than

1 a -- don't re-argue what you argued for Mr. -- in opposition
2 to Mr. Wallace's, but if you've got anything that is different
3 that pertains to this one, let me hear from you.

4 MR. FEW: Your Honor, I just want to clarify. There was
5 some -- I think Mr. Luse was mistaken, and we mentioned this
6 in our memo. We only bring claims 1, 7, 8, 9, and 10 against
7 his client. We are not suing his client for interference with
8 the contract because she was the party to the contract that
9 was interfered with. We're also not suing her under the
10 Unfair Trade Practices Act.

11 Your Honor, I agree with what Mr. Luse was saying. I
12 would just change the word "would" to "should." They should
13 have explained all those things to my client. They had a duty
14 to do that under Rule 1.4, which is mentioned also in our
15 memorandum for -- as to communicate with your client regarding
16 the material aspects of the representation. Those things just
17 weren't done, and that's why the statute did not begin to run
18 on March the 6th, as the defendants have alleged.

19 THE COURT: Mr. Luse, anything in reply?

20 MR. LUSE: Nothing in reply.

21 THE COURT: All right. I'll need to take a look at the
22 *Ahrens* case and see what it says.

23 Next, plaintiff's motion to dismiss or strike
24 counterclaim filed June 27th. What is that, Mr. Few?

25 MR. FEW: Thank you, Your Honor. May it please the

1 Court.

2 Again, Mr. Parker, who's here on the -- on the call, they
3 filed a nine-page handwritten response, and at the very tail
4 it poses itself as a counterclaim, but I can't find a
5 counterclaim in there. The only thing I see is an affirmative
6 defense, and I just wanted the record to be clear that we
7 didn't go into default for not answering anything that was
8 supposed to be a counterclaim.

9 Their pleading, Your Honor, was filed on June the 21st of
10 2023, if you wanted to pull it up. Our motion, I think just
11 -- we -- I wouldn't know -- I didn't know what to respond to
12 and, therefore, I didn't want it to go un-responded to and
13 that's why we filed this motion, Your Honor, and/or for a more
14 definite statement.

15 So I don't know if Mr. Parker has a counterclaim that he
16 intended to file and would like to replead it or, I think, it
17 looks to me like they were just pleading one affirmative
18 defense, Your Honor.

19 THE COURT: All right. Mr. Parker? Oh, first, let me
20 ask you, is there any other defendants other than Mr. Parker
21 that has an argument regarding this motion?

22 MR. WALLACE: No, Your Honor.

23 MR. LUSE: No.

24 THE COURT: All right. Mr. Parker, let me hear from you.

25 MR. PARKER: Your Honor, I have no objection to

1 dismissing my claim of a counterclaim because I was in error,
2 but I do have a few comments I'd like to make regarding
3 Attorney Few's comments regarding the original survey, as he
4 referred to, also the title to the land of Tract D, which you
5 referred to, and the fact that the present ownership and
6 former ownership of that Tract D has never changed hands. So
7 if I could, it'll only take a few minutes.

8 THE COURT: So we're just here on motions. This is not a
9 trial of the case. This is -- you don't present your
10 evidence. You can argue against a motion or in support of a
11 motion that you filed.

12 MR. PARKER: I was only going to comment, Your Honor, on
13 some statements that Attorney Few made regarding --

14 THE COURT: Let me ask you this. Why do you -- why do
15 you want to comment on those statements?

16 MR. PARKER: Because what they -- what he referred to is
17 not totally true in the ownership and that so-called original
18 survey.

19 THE COURT: Well, then you can present that at trial when
20 we -- when you try the case.

21 MR. PARKER: Okay, Your Honor.

22 THE COURT: When the case goes to trial.

23 MR. PARKER: Thank you.

24 THE COURT: Okay?

25 MR. PARKER: Thank you, sir.

1 THE COURT: All right.

2 All right. Next, defendant Gochenour's motion to
3 dismiss. Whose motion is that?

4 MR. LUCE: Well, that would have been mine, and we
5 already argued that.

6 THE COURT: What was --

7 MR. WILLIAMS: You also filed a motion to dismiss my
8 cross-claim for declaratory judgment. I think that's the one.

9 MR. LUSE: Okay. I wasn't aware that was up today, but
10 --

11 THE COURT: All right. So this is a motion to dismiss
12 the cross-claim by who?

13 MR. WILLIAMS: MERS, Mortgage Electronic Registration
14 Systems.

15 THE COURT: All right. Mr. Luse, let me hear from you.

16 MR. LUSE: Your Honor, well, since the Court is taking
17 the first one under advisement, we can continue this one, if
18 it's okay with the Court.

19 THE COURT: Well, Mr. Williams?

20 MR. WILLIAMS: That's fine. I mean, whatever you do with
21 Mr. Few's complaint and that motion probably will impact our
22 declaratory judgment claim. It's pretty straightforward. It
23 says if Mr. Wilson was supposed to get more property, well,
24 our mortgage was supposed to cover everything in his property.
25 So we just want that to be declared that it covers the

1 additional tract.

2 THE COURT: Okay.

3 MR. WILLIAMS: So that was the basis of that motion, and
4 we didn't know anything about the lawsuit until -- we didn't
5 know anything about this dispute until we got served with the
6 lawsuit. So I think there's two --

7 THE COURT: All right.

8 MR. WILLIAMS: -- reasons for denying that motion.

9 THE COURT: All right. Well, I'll go ahead and I'll
10 continue that motion then.

11 Does anybody else have anything else? That's all I've
12 got on my roster. Is that everything? All right.

13 MR. FEW: Nothing else.

14 THE COURT: So the motion to dismiss MERS' cross-claim
15 has been continued.

16 Motion to dismiss Mr. Parker's counterclaim is granted.

17 The motion to dismiss brought by Ms. Gochenour and
18 Raymond Law firm is taken under advisement.

19 The motion to dismiss and for summary judgment regarding
20 Mr. Hray's client is denied.

21 All right. Has that got everything?

22 MR. LUSE: Yes, Your Honor.

23 MR. FEW: Thank you, Your Honor.

24 MR. WALLACE: Yes, Your Honor. Thank you.

25 MR. WILLIAMS: Thanks, Judge.

1 THE COURT: Thank you.

2 MR. PARKER: Well, thank you very much.

3 MR. RICHARDSON: Thank you, Your Honor.

4 MR. HRAY: Thank you, Your Honor.

5 THE COURT: Thank you.

6 (WHEREUPON, the proceedings ended.)

7

8 --- END REQUESTED TRANSCRIPT ---

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

State of South Carolina	)	
	)	Certificate
County of Florence	)	

I, the undersigned, Krystal J. Smith, notary public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 34, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 7th day of September, 2023, to the best of my ability based upon the audio/video provided.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

s/ Krystal J. Smith

Court Reporter

Florence, South Carolina

January 26, 2024

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
15TH JUDICIAL CIRCUIT

Nicholas F. Wilson,

Case No: 2023-CP-26-02475

Plaintiff,

vs.

**NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND, AND /
OR RELIEF FROM JUDGMENT OF
ORDER FILED FEB. 17, 2024**

Janet P. Gochenour; Janet P. Gochenour Trustee;
James B. Parker; James B. Parker, Sr.; Mary Ann
Parker; Kenneth Gregory Moore; R&G Corp.,
d/b/a Century 21 The Harrelson Group; Patton
Development SC, LLC; Mortgage Electronic
Registration Systems, Inc.; Sonia M. Raymond;
Raymond Law Firm, P.A.;

Defendants.

**TO: THE HONORABLE BENJAMIN H. CULBERTSON, 15TH CIRCUIT JUDGE;
BRUCE WALLACE, ESQ., COUNSEL TO SONIA M. RAYMOND, ESQUIRE AND
RAYMOND LAW FIRM, P.A.; AND WILLIAM LUSE, ESQ., COUNSEL TO JANET P.
GOCHENOUR; JANET P. GOCHENOUR TRUSTEE:**

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Plaintiff Nick Wilson will respectfully move before The Honorable Benjamin H. Culbertson (presiding Judge of the 15th Judicial Circuit at hearings on Sept. 7, 2023) within ten (10) days from the date hereof or as soon thereafter as counsel may be heard under S.C. R. Civ. P. Rules 59(e) and /or 60(a) for an order clarifying, altering and / or amending the order denying Plaintiff's Motion to Alter or Amend under Rule 59, filed Feb. 17, 2024. The subject order provided, as follows:

Plaintiff's Motion to Alter or Amend Order Filed Sept. 8, 2023, is DENIED.

This motion is decided on the contents of plaintiff's motion, prior arguments and memorandums of the parties, and letter dated January 29, 2024, from plaintiff's lawyer, without oral arguments.

Id. at 1.

In *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 180, 826 S.E.2d 585, 592 (2019), our Supreme Court stated, “Under Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted. As we will explain, *Spence* supports this principle.” *Id.* at 592 (underline emphasis added). The Supreme Court in *Skydive* further stated:

Similarly, a plaintiff who chooses to replead is practically prevented from doing so when the dismissal order is with prejudice because the time for appeal will not be tolled unless the plaintiff files a Rule 59(e) motion addressing the merits of the Rule 12(b)(6) ruling. If *Skydive* either believed it had no basis on which to file such a Rule 59(e) motion, or simply preferred to replead instead, it was unable to litigate a motion to amend.

Thus, the circuit court erred not only in refusing to consider the request to amend, but also in effectively preventing *Skydive* from litigating a post-ruling motion to amend by immediately dismissing the claims "with prejudice."

Id. at 588.

Still further, precedent from our courts establishes that the “Statute of Limitations” is a question for the jury. *See e.g., Dean v. Ruscon Corp.*, 321 S.C. 360, 366, 468 S.E.2d 645, 647 (1996) (in addressing a statute of limitations question, stating, “[w]hen the trial court rules on a directed verdict motion, it must view the evidence as well as all favorable inferences in the light most favorable to the non-moving party, and if more than one reasonable inference can be drawn from the testimony, the case should be submitted to the jury.”) (citing *Santee Portland Cement Co. v. Daniel Int’l Corp.*, 384 S..2d 693 (1989) (overruled on other grounds)).

In *Dean v. Ruscon*, the Supreme Court analyzed the statute of limitations issue based on evidence in the record, found the statute was tolled for eight (8) days, *Id.* at 647, and concluded, “there was no question of fact for the jury to decide because the only reasonable conclusion

supported by the evidence is that Dean's lawsuit accrued in November 1984, and by filing her lawsuit in April 1991, she was barred by the six year statute of limitations.” Id. Accordingly, Dean v. Ruscon also supports Plaintiff’s position here, which has since been made clear again in Skydive. Id. at 592. See also Adkins v. I’on, 439 S.C. 568, 581, 889 S.E.2d 537, 544 (2023) (stating, “Specifically, the question of when a plaintiff discovered, or should have discovered the alleged harm is for the jury to decide because it is an objective question.”).ⁱ

Because neither of the Sept. 8, 2023 nor the Feb. 17, 2024 orders dismissing certain of Plaintiff’s claims under Rule 12(b) specify whether the dismissal(s) are with or without prejudice, Plaintiff respectfully seeks clarity via this motion. Specifically, Plaintiff seeks a clarification consistent with the provisions set forth in Skydive above and other authoritiesⁱⁱ whereby Rule 12(b)(2) and (6) dismissals are to be without prejudice, “unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted.” Id. at 592.

[signature on next page]

Respectfully Submitted,

WESLEY D. FEW, LLC

s/Wes Few/

Wesley D. Few, S.C. Bar No. 15565
Post Office Box 9398
Greenville, South Carolina 29604
(864) 527-5907 | wes@wesleyfew.com

ATTORNEYS FOR PLAINTIFF

Greenville, South Carolina
February 27, 2024

ⁱ The South Carolina Supreme Court in Adkins v. I'on further stated as follows:

The presence of conflicting testimony regarding the time discovery should have occurred necessarily requires the jury's resolution. Brown v. Finger, 240 S.C. 102, 113, 124 S.E.2d 781, 786 (1962) ("The burden of establishing the bar of the statute of limitations rests upon the one interposing it...and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide.") (internal citations omitted). In the case at bar, the jury was presented with a host of conflicting evidence as to when Homeowners should have, by the exercise of reasonable diligence, discovered the facts giving rise to their claims.

Id. at 544.

ⁱⁱ In Alterna Tax Asset Grp. v. York Cty., 434 S.C. 328, 334, 863 S.E.2d 465, 468 (Ct. App. 2021), the Court of Appeals stated, "trial courts should not dismiss pleadings with prejudice at the 12(b) stage without allowing the pleader to amend its complaint (unless amendment would be futile)." Id. (citing Skydive). In addition, Rule 41(a), SCRCP, provides: "Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice."

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

IN THE COURT OF
COMMON PLEAS
15th Judicial Circuit

Benjamin H. Culbertson, Circuit Court Judge
H. Steven DeBerry, IV, Circuit Court Judge

CASE NO.: 2023-CP-26-02475

Nicholas Wilson,

Appellant,

v.

Janet P. Gochenour; Janet P. Gochenour Trustee; James B. Parker;

James B. Parker, Sr.; Mary Ann Parker; Kenneth Gregory Moore; R&G Corp., d/b/a

Century 21 The Harrelson Group; Patton Development SC, LLC; Flagstar Bank, N.A.;

Sonia M. Raymond; and Raymond Law Firm, P.A.,

Respondents.

NOTICE OF APPEAL

Appellant Nicholas Wilson, hereby gives notice of appeal of the orders and judgments entered by this Court, identified as follows: (i) Form 4 Order Dismissing Certain Claims under Rule 12(b)(6) based on the Statute of Limitations (filed Sept. 8, 2023); (ii) Form 4 Order Denying Plaintiff's [Rule 59(e)] Motion to Alter or Amend Order Filed Sept. 8, 2023 (filed Feb. 17, 2024); and (iii) Order Denying Plaintiff's Motion to Amend Complaint (filed March 12, 2024).

The undersigned counsel certifies that this appeal is timely filed within 30 days of receipt of notice of the order(s) and / or judgments identified above.

Appellant's undersigned counsel is already in possession of the transcript from the Sept. 7, 2023 hearing related to the Sept. 8, 2023 Order identified above at (i). There was no hearing related to the order identified above at (ii). Accordingly, the undersigned will advise the Court upon receipt of the transcript from the Feb. 26, 2024 hearing that relates to the order identified above at (iii).

WESLEY D. FEW, LLC

/s/Wesley D. Few

Wesley D. Few, S.C. Bar No. 15565

Post Office Box 9398

Greenville, South Carolina 29604

(864) 527-5906 | wes@wesleyfew.com

ATTORNEYS FOR APPELLANTS

Greenville, South Carolina
March 15, 2024

Parties and Counsel:

William James Luse - bill@getlusenow.com
Law Office of William J. Luse
917 Broadway Street
Myrtle Beach SC 29577
843-839-4795

Counsel to Defendants / Respondents Janet P. Gochenour; Janet P. Gochenour Trustee;

James B. Parker (pro se); James B. Parker, Sr.(pro se); Mary Ann Parker (pro se);
919 Waterton Avenue
Myrtle Beach SC 29579

Claude Townsend Prevost, III - cprevost@collinsandlacy.com
Joseph Lucas Richardson - lrichardson@collinsandlacy.com
Collins & Lacy, PC
P.O. Box 12487 (29211)
1330 Lady Street
Columbia SC 29201
803-256-2660

Counsel to Defendants / Respondents Kenneth Gregory Moore and R&G Corp., d/b/a Century 21
The Harrelson Group;

Alexander Hray - lex@lexhray.com
389 E. Henry Street., Suite 107
Spartanburg SC 29302
864-342-1111

Counsel to Defendant / Respondent Patton Development SC, LLC;

Matthew Douglas Patterson - matt.patterson@nelsonmullins.com
Blake T. Williams - blake.williams@nelsonmullins.com
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street, 17th Floor (29201)
P.O. Box 11070
Columbia SC 29201
803-799-2000

Counsel to Defendant / Respondent Flagstar Bank, N.A.;

Rhett Douglas Ricard - RRicard@maynardnexsen.com
Robert Bruce Wallace - BWallace@maynardnexsen.com
Maynard Nexsen
205 King Street, Suite 400
P.O. Box 486 (29402)
Charleston SC 29401
843-577-9440

Counsel to Defendants / Respondents Sonia M. Raymond and Raymond Law Firm, P.A.

State of South Carolina) In the Court of Common Pleas
) Fifteenth Judicial Circuit
County of Horry) Case No. 2023-CP-26-02475

Nicholas F. Wilson,)
)
) Plaintiff,)
)
-vs-) Transcript of Record
)
)
Janet P. Gochenour; Janet P.)
Gochenour Trustee; James B.)
Parker; James B. Parker, Sr.;)
Mary Ann Parker; Kenneth)
Gregory Moore; R&G Corp., d/b/a)
Century 21 The Harrelson Group;)
Patton Development SC, LLC;)
Mortgage Electronic)
Registration Systems, Inc.;)
Sonia M. Raymond; Raymond Law)
Firm, P.A.;)
)
) Defendants.)
)

September 7, 2023
Via WebEx

B E F O R E:

The Honorable Benjamin H. Culbertson, Judge

A P P E A R A N C E S:

(SEE NEXT PAGE)

Proceedings taken down electronically

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter III

A P P E A R A N C E S:

Wesley Few, Esquire
Attorney for the Plaintiff

William J. Luse, Esquire
Attorney for the Defendant Janet P. Gochenour

Blake Williams, Esquire
Attorney for the Defendant Mortgage Electronic
Registration Systems, Inc.

Luke Richardson, Esquire
Attorney for the Defendant Kenneth Gregory Moore and
The Harrelson Group

R. Bruce Wallace, Esquire
Attorney for the Defendant Sonia M. Raymond and The
Raymond Law Firm, P.A.

Alexander Hray, Esquire
Attorney for the Defendant Patton Development SC, LLC

James B. Parker
Self-represented defendant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Motion to Dismiss Defendant Raymond Law Firm.....	6
Motion to Dismiss and for Summary Judgment.....	21
Motion to Dismiss by Defendant Gochenour.....	25
Motion to Dismiss or Strike Counterclaim.....	29
Motion to Dismiss Cross-Claim.....	32
Rulings.....	33
Court Reporter Certification.....	35

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
------------	--------------------	------------	------------

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said
[inaudible]		unable to hear or understand due to
		audio volume or quality/interference

1 SEPTEMBER 7, 2023

2 (WHEREUPON, the proceedings began via WebEx.)

3 THE COURT: All right. Is there -- is this everyone?
4 All right. Hearing nothing, I'm assuming it is everyone.

5 This is 2023-CP-26-02475, Nicholas F. Wilson versus Janet
6 P. Gochenour and others. According to my roster, the matter
7 is before the Court on a motion to dismiss by the defendant,
8 Raymond Law Firm, P.A.; a motion to dismiss and for summary
9 judgment by Nicholas F. Wilson; a motion to dismiss and for
10 summary judgment by Janet -- the defendant, Janet P.
11 Gochenour; a motion to dismiss or strike the counterclaim or
12 for more definite statement by the plaintiff, Nicholas F.
13 Wilson; a motion to dismiss by the defendant, Janet P.
14 Gochenour.

15 All right. I need everybody -- you're going to need to
16 state your name and the capacity in which you're appearing.

17 Let's start, Mr. Williams.

18 MR. WILLIAMS: Thank you, Your Honor. I'm here on behalf
19 of the named defendant as MERS, Mortgage Electronic
20 Registration Systems. And as I've told Mr. Few, the proper
21 party defendant is Flagstar Bank. They're the assignee of the
22 -- and the current mortgage holder.

23 THE COURT: Mr. Parker?

24 MR. PARKER: Yes, sir, Your Honor.

25 THE COURT: Are you represented by an attorney?

1 MR. PARKER: No, sir, I am not, Your Honor.

2 THE COURT: Okay. All right. Mr. Luse?

3 MR. LUSE: William Luse, representing Janet P. Gochenour
4 and her estate.

5 THE COURT: Mr. Richardson?

6 MR. RICHARDSON: Yes, Your Honor. Representing Ken Moore
7 and the Harrelson group.

8 THE COURT: All right. Mr. Wallace?

9 MR. WALLACE: Yes, Your Honor. Representing Sonia M.
10 Raymond and the Raymond Law Firm, P.A.

11 THE COURT: Mr. Few?

12 MR. FEW: Your Honor, I represent the plaintiff, Nicholas
13 Wilson.

14 THE COURT: All right. I guess we'll just take these in
15 the order or -- order they appear on the roster. First one is
16 the motion to dismiss the defendant, Raymond Law Firm, P.A.
17 All right. Whose motion is that?

18 MR. WALLACE: Your Honor, that's mine. Bruce Wallace.

19 THE COURT: All right. Let me hear from you.

20 MR. WALLACE: Thank you, Your Honor. I'll try to be
21 brief with the facts as they pertain to my client. My client,
22 Sonia Raymond, and her law firm have been sued by Nicholas
23 Wilson over a closing related to property purchased by Mr.
24 Wilson from Ms. -- and I apologize for the mispronunciation of
25 her name -- Janet Gochenour or Gochenour.

1 The complaint alleges essentially this, Your Honor, that
2 Mr. Wilson contracted with Ms. Gochenour for purchase of
3 several parcels. The complaint says that those parcels were
4 shown on an unrecorded plat on which Mr. Wilson relied. The
5 parties amended the contract several times, including one time
6 to change the description of the property to include eight-
7 plus acres.

8 THE COURT: I apologize. I apologize for stopping you.
9 Mr. Hray has just raised his hand that says he's participating
10 in this as well. He just -- just did it. Let me make him in.
11 We'll need to start all over.

12 MR. FEW: Your Honor, I believe that my client was
13 wanting to listen in. I don't know if they raised their
14 hands.

15 THE COURT: If they're an attendee, they can listen.
16 They can still hear it.

17 MR. FEW: Okay.

18 THE COURT: They just won't be in the courtroom.

19 MR. FEW: Very well.

20 THE COURT: Mr. Hray, are you there?

21 MR. HRAY: I'm here, Your Honor.

22 THE COURT: All right. I need your video. Okay.

23 MR. HRAY: There you go.

24 THE COURT: All right. Mr. Hray, you're appearing in
25 what capacity?

1 MR. HRAY: I represent the defendant, Patton Development
2 SC, LLC.

3 THE COURT: All right. Mr. Wallace, go ahead.

4 MR. WALLACE: Thank you, Your Honor. As I was saying,
5 the real estate contract for the purchase of property was
6 amended several times, as alleged in the complaint.

7 The complaint alleges that the contract included what is
8 kind of -- is sort of known amongst the parties as Tract D,
9 which is a driveway. The plaintiff alleges that everyone knew
10 the plaintiff was -- was buying Tract D. In fact, the -- the
11 complaint alleges that he would not have closed unless he was
12 deeded the driveway.

13 The complaint alleges that the contract closed on March
14 6th, 2020, and that date is important, Your Honor, for
15 purposes of our motion today. March 6th, 2020, was the date
16 the transaction was closed. The recorded deed, according to
17 the complaint, does not include title to the driveway or Tract
18 D. So you have a contract to purchase several parcels,
19 including Tract D. You have a deed provided to -- excuse me
20 -- recorded that does not include Tract D.

21 The complaint was filed on April 19th, 2023. The
22 complaint claims that my clients as the lawyers for the
23 plaintiff failed to ensure he received title identified in the
24 contract or in the unrecorded plat. The expert affidavit
25 provided pursuant to 15-36-100 and the complaint alleged that

1 the lawyers failed to explain that the plaintiff was not going
2 to receive title to the property identified in the contract
3 and the unrecorded plat survey specifically titled Tract D,
4 and those were all allegations in the complaint, Your Honor.
5 We've cited them in our brief, specifically paragraph by
6 paragraph.

7 Our argument is -- is fairly straightforward, Your Honor.
8 The statute of limitations bars the plaintiff's claims against
9 Sonia Raymond and the Raymond Law Firm. As the Court is I'm
10 sure aware and heard dozens of times, the statute of
11 limitations for attorney malpractice is three years. That's
12 based on 15-35-350, Subsection 5. As I said a minute ago, the
13 complaint was filed on April 19th, 2023.

14 So if the plaintiff knew or should have known of the
15 malpractice before April 19th, 2020, then the claim is time
16 barred. The complaint alleges the transaction was closed on
17 March 6th, 2020, which, of course, is before April 19th, 2020.
18 Plaintiff claims that the recorded deed reveals that the
19 plaintiff did not receive title to the driveway.

20 THE COURT: All right.

21 MR. WALLACE: Your Honor, our argument then is fairly
22 simple after that. The plaintiff knew or should have known as
23 soon as the deed was recorded that he didn't get the property
24 he contracted for, and that a claim for malpractice exists.

25 The plaintiff's attorney in the affidavit, which is

1 considered part of the complaint under the statutory rules of
2 15-36-100, actually says it's plainly obvious the deed did not
3 convey the contracted-for property, and the complaint arises
4 out of the deed -- out of the fact that the deed varied from
5 the allegations of the con -- the alleged content of the
6 contract.

7 So it requires a look at the discovery rule for statute
8 of limitations. Statutes of limitations begin to run when a
9 plaintiff knew or should have known of the alleged negligence.

10 It's an objective test, as the Court knows, which focuses
11 on whether the plaintiff acquired knowledge to put him on
12 inquiry of a claim against his attorney, but it doesn't have
13 to be a full-blown theory, just inquiry notice. And under our
14 law with the discovery rule involving recorded instruments,
15 plaintiff is on constructive notice of the contents of
16 documents filed in conformity with applicable law.

17 That's the *Fuller-Ahrens Partnership* case we cited, 311
18 S.C. 177. That's in our brief. It's also *Berry v. McLeod*,
19 which *Berry v. McLeod*, Your Honor, was a 1997 case handled by
20 the Court of Appeals or by the Supreme Court, and they said
21 the statute of limitations began when -- at that time it was a
22 public bond. When the public bond documents were filed, the
23 statute of limitations for anything arising out of the public
24 bond documents began to run, even if the plaintiffs didn't
25 have a full-blown theory of any malfeasance or nonfeasance.

1 Similarly, here, the plaintiff's claims began the day the
2 deed was filed for any claims arising out of the deed being
3 the wrong deed or being inconsistent with the contract or
4 inconsistent with the unrecorded plat, as alleged in the
5 complaint.

6 And so that's essentially our argument, Your Honor.
7 March 6th, 2020, contract was closed, deed recorded. The case
8 -- the cause of action arose at that point, and the case was
9 not filed until more than three years later. As a result,
10 it's time barred.

11 THE COURT: All right. Thank you.

12 Mr. Williams, any argument one way or the other on this
13 motion?

14 MR. WILLIAMS: I'm going to defer to Mr. Few. It's --
15 he's plaintiff's counsel. I've just got the lender. We're a
16 co-defendant.

17 THE COURT: All right. Mr. Parker, any argument on this
18 motion?

19 MR. PARKER: No, Your Honor.

20 THE COURT: All right. Mr. Luse, any argument on this
21 motion?

22 MR. LUSE: Not on this motion.

23 THE COURT: All right. Mr. Richardson, any argument on
24 this motion?

25 MR. RICHARDSON: No, Your Honor.

1 THE COURT: All right. Mr. Hray, any argument on this
2 motion?

3 MR. HRAY: No, Your Honor.

4 THE COURT: All right. Mr. Few, let me hear from you.

5 MR. FEW: Thank you, Your Honor. May it please the
6 Court.

7 I'm certainly aware of the three-year statute of
8 limitations, and the arguments that we're making here on
9 behalf of -- in opposition to the motion by who we've referred
10 to as the law firm defendants represented by Mr. Wallace would
11 be substantially identical to the arguments that we'll be
12 making in opposition to a motion to dismiss filed by the
13 seller, represented by Mr. Luse. Janet Gochenour is what I
14 heard her say. So, Your Honor -- and I hope you have a copy
15 of the memorandum that we filed.

16 The problem with Mr. Wallace's argument is that he is
17 extrapolating from the discovery rule that every time a
18 closing occurs that every party to that closing is put on
19 sufficient notice that they have a claim. And so,
20 essentially, what they're saying is that my client should have
21 known that the contract was breached on March the 6th of 2020.
22 Well, he didn't get the deed until May of 2020.

23 And, Your Honor, we have a verified complaint in this
24 matter, and in that -- I'm going to refer to my motion. Your
25 Honor, the discovery rule, as Mr. Wallace said, is whether you

1 knew or should have known. Respectfully, any case regarding a
2 public bond is -- is not relevant to what's happened here.
3 That would presumably be something related to putting the
4 public on notice if they had a claim related to a bond.

5 Here we had a private transaction between my client and
6 Mrs. Gochenour, which we call the seller defendants. We
7 weren't quite sure who she was. We knew her name, but there's
8 several parcels involved, and one of the parcels was under the
9 name of the trustee and that's why we have the multiple named
10 parties.

11 So, Your Honor, the discovery rule is what is key here.
12 And even if we didn't have a verified complaint, we would be
13 looking at only the allegations in the complaint. And as set
14 forth in our memorandum, citing *Fleteau v. Harrelson* 584 --
15 413, 415, Court of Appeals, a motion to dismiss should not be
16 granted if facts alleged and inferences reasonably deductible
17 therefrom would entitle the plaintiff to relief on any theory
18 of the case.

19 The next case is *Patterson v. Witter*. This is on page 2
20 of our memorandum filed earlier today, Your Honor, which I
21 imagine everyone here that's a practicing attorney would be
22 familiar with. That in the light most favorable to the
23 plaintiff with every doubt resolved in his favor, the
24 complaint states a valid claim for relief.

25 Your Honor, I've also, in an abundance of caution, made a

1 reference to the *Baughman v. AT&T* case and the *Skydive* case.

2 I don't really need to go there. *Baughman* just speaks to the
3 fact that we have the right to conduct discovery.

4 But really, the issue is settled, Your Honor, if you just
5 look at the complaint. And if I could, I'll share my screen.
6 This is an 80-page document that I sent out that -- to
7 everybody that has combined all of the things that I thought
8 we might need here today, so that I might wouldn't have to
9 bounce around and be even more awkward.

10 Your Honor, on paragraph 22, we refer to the amendment,
11 and you'll see here that several things were required. The
12 seller was supposed to have the property surveyed, which they
13 did. My client was provided with what we call the original
14 survey in the -- by the real estate agent, Mr. Ken Moore,
15 shortly after the amendment here was signed on January 23rd.
16 The original contract was signed on January 22nd. Your Honor,
17 this says also that he shall receive no less than eight acres.
18 Well, he did receive less than eight acres. And it also says
19 seller to include the deed of the driveway as part of the
20 sale.

21 So, Your Honor, I think what has happened here is the
22 seller didn't have the ability to convey these things because
23 her brother, Mr. Parker, owned the three parcels in front of
24 him, in front of the property that was being sold to my
25 client. But in any event, paragraph 22 is just showing us

1 that there was this rather specific amendment.

2 And in response to that, the first survey that was
3 provided, the only survey that was provided to my client prior
4 to him going down and seeing the recorded -- the recorded
5 survey years afterwards is this original survey that's in our
6 pleadings, and I can show it to the Court here when we get
7 there in a moment. Your Honor, then, also -- and this is in
8 our motion. We say plaintiff relied on the original survey.
9 That's all he had. That's all he was provided by the real
10 estate agent or his attorney.

11 And, Your Honor, it's very telling here that the closing
12 agent operated under a dual-agency agreement, but yet the
13 closing attorney knew that they needed to get another closing
14 attorney to draft the deed. What we've since learned from the
15 discovery that we've been provided is that another local
16 attorney drafted the deed. There's no indication in the file
17 that Sonia Raymond even reviewed the deed to see if it
18 complied with the provisions in the contract, because she
19 relied on the seller's closing attorney, Mr. Davis Inabinet,
20 to draft the deed in his client's interest. He drafted a deed
21 that was in his client's interest and contrary to my client's
22 interest, because my client didn't get the property that he
23 contracted for.

24 Paragraph 43, verified complaint, plaintiff was never
25 informed by anyone that the original survey was not the survey

1 that would be recorded to show the property that he was to
2 receive from Janet under their contract. Mr. Wallace neglects
3 to refer to this paragraph in his memorandum that was filed
4 with the Court, which was for the purpose of saying that the
5 allegations in the complaint are not sufficient, but not only
6 are they sufficient to raise a material issue of fact about
7 when Nick Wilson was put on notice that -- that he had gotten
8 a really, really bad deal, and then the people that had a
9 fiduciary duty to look out for him and to tell him this did
10 not do that.

11 Mr. Wallace's argument also, Your Honor, assumes -- and
12 we don't disagree. Under a typical closing, if the plaintiff
13 -- if the -- the attorney gives his own client or her own
14 client a copy of the deed and a copy of the survey, then he
15 would be put on notice of those things, but that didn't happen
16 and that's what's laid out in our memorandum as well.

17 So if those things had occurred, Mr. Wallace would have a
18 really good argument, but they didn't. And we -- we've
19 alleged that they didn't, and we've alleged under oath that
20 they didn't.

21 And then, Your Honor, on paragraph 46 -- I don't want to
22 go through the whole complaint, but these are the things we
23 referred to in our memorandum. We -- we say that at all times
24 before and after January 23rd, plaintiff made it abundantly
25 clear he would not purchase the property unless he was going

1 to be deeded the driveway. The real estate agent knew this,
2 Your Honor. And in discovery, we'll get into the fact that
3 the real estate agent had another contract with other members
4 of the seller's family, including Mr. Parker, to sell a larger
5 tract of land that was adjacent to or in the area, which was
6 not ever disclosed to my client and obviously created a
7 conflict of interest, Your Honor.

8 So our response -- and I'm happy to go into anything
9 else. I think I've covered all the things. But here, Your
10 Honor, the -- at the closing, my client just did not receive
11 information that would put him on notice.

12 And when we got the file materials from Sonia Raymond --
13 and I don't want to get too far outside the pleadings, but at
14 page 301 and 303, by example, there are transmittal letters
15 where she sends out checks to the seller's attorney and to the
16 closing agent. There's nothing in her file to indicate that
17 she gave my client the deed or explained the deed or that she
18 gave him a copy of the recorded survey.

19 And, Your Honor, if I may, I'm going to go to page 4 of
20 my PDF here. Oh, I'm sorry. I'm so bad at this.

21 This is the original survey, Your Honor, that my client
22 relied upon. Coincidentally, Your Honor, Mr. Williams'
23 client, Flagstar Bank, who used to be a client of mine years
24 and years ago, by the way, their survey that they relied on in
25 making the loan is this survey and not the -- the document

1 that was ultimately prepared after this never disclosed to my
2 client.

3 And as you can see, the -- the -- the solid lines, Your
4 Honor, that I'm trying to highlight here, that refers to Tract
5 D, and Tract D is 0.49 acres. And then the other tracts are
6 down here to below. There's A, there's B, and there's C, and
7 those things add up to 8.24 acres. I'm really sorry.

8 Now, this that you're looking at now that looks like the
9 state of Florida, something like a panhandle or Oklahoma, that
10 is the survey that was relied upon by the appraiser, who
11 subsequently passed that on to the lender that approved the
12 loan. This is all they had to review it. And you can see
13 I've highlighted that, Your Honor, to show that the driveway
14 was deeded. And that's about a 30-foot tract, 30 feet wide
15 and a little over 700 feet long, according to the original
16 survey, which is the only survey my client ever had.

17 And, Your Honor, that -- this was on our *lis pendens*, and
18 that kind of gets into a later argument that it turns out that
19 the Patton people that bought the property in front of my
20 client did not get the driveway, nor did they have any rights
21 in the driveway, but I don't want to get ahead of myself.

22 Our argument is simply that my client is, under oath,
23 stating that no one ever told him this, that people that had a
24 duty to inform him of these things did not tell him these
25 things, did not tell him of a conflict of interest and -- and,

1 therefore, he was not put on notice of the fact that he had a
2 claim until -- the date that he received the deed was sometime
3 in May, and he didn't see the actual -- he never was given a
4 copy of the recorded plat from any of the defendants. He had
5 to go and get it on his own years later. And --

6 THE COURT: All right. Anything else?

7 MR. FEW: That's all, Your Honor, with respect to that
8 first motion, and that's pretty much my --

9 THE COURT: All right.

10 MR. FEW: -- argument on the third motion.

11 THE COURT: Mr. Wallace, anything in reply? Wait a
12 minute. You're muted. All right.

13 MR. WALLACE: Yes, Your Honor.

14 THE COURT: Anything in reply?

15 MR. WALLACE: Yes, sir. Everything that Mr. Few stated
16 in regards to what the plaintiff wasn't told as alleged in the
17 complaint may be true and, in fact, the Court has to take it
18 as true for purposes of this motion, but it sidesteps the
19 argument, which was the deed referenced throughout the
20 complaint, which was recorded, and that --

21 THE COURT: Yeah, but he said his client never got the
22 complaint [sic] until May. You've got to send the complaint
23 to the Register of Deeds, get it recorded and, oftentimes, the
24 plaintiff doesn't get the deed until months after the closing.

25 MR. WALLACE: And that might be true --

1 THE COURT: Do you have anything that shows that the
2 plaintiff had access to that deed on the date of closing?

3 MR. WALLACE: The law doesn't require that, Your Honor.
4 Looking at the *Aherns Partnership* case we cited -- and I'll --
5 if you'll give me a second to pull that up, I'll quote it for
6 you. The mere filing --

7 THE COURT: That dealt with -- that dealt with a real
8 estate closing?

9 MR. WALLACE: Yes, sir. And here's the quote.

10 The Patterson's deed and the other documents, as required
11 by statute, were filed as an affidavit of the -- this was
12 involving a deed that gave notice of an encroachment by the
13 Department of Transportation -- as an affidavit of the
14 Department's assistant maintenance engineer suggests is in the
15 Department's offices. So there's a deed that references
16 documents in the Department of Transportation's offices.

17 The Court then says the filing of these instruments
18 provided a record sufficient to, quote, impart notice, albeit
19 constructive notice, to the plaintiff of the deed and its
20 contents, including the deed's reference to the Department's
21 plans, just as though such transaction was recorded in the
22 county where the land is situated.

23 So the -- the operative date is not the receipt of the
24 recorded deed by the plaintiff. It's the date of recording of
25 the deed, which was March 6th.

1 THE COURT: What is that case?

2 MR. WALLACE: That is the *Fuller-Ahrens Partnership*
3 *versus South Carolina Department of Highways*, 311 S.C. 177.
4 It's a Supreme Court case from 1993 cited in our brief as
5 well, Your Honor.

6 THE COURT: Okay. All right. Well, I'll need to take
7 this under advisement, take a look at that *Ahrens* case and see
8 what it says the beginning date is. Okay?

9 MR. WALLACE: Yes, Your Honor.

10 THE COURT: See if it's applicable.

11 All right. Now, we've got a motion to dismiss and for
12 summary judgment by the plaintiff, Nicholas Wilson.

13 MR. FEW: Thank you, Your Honor.

14 We filed a *lis pendens* before we filed the complaint.
15 The *lis pendens* refers to the original survey that I was just
16 referring to when we did the share screen.

17 Subsequent to my client purchasing the property, Mr.
18 Hray's client, Patton Development South Carolina LLC I think
19 is the name, purchased the property between my client's -- the
20 bulk of my client's property in Highway 90 and began put --
21 and then have now started putting a Dollar General there.

22 And, Your Honor, they were named on the *lis pendens* in an
23 abundance of caution, but it turns out that Mr. Hray has
24 advised me that they didn't take title to any portion of the
25 30-foot strip, the 700 feet by 30-foot existing driveway, in

1 other words, Tract D. They knew that they didn't have any
2 rights to Tract D and -- and, Your Honor, it's telling that
3 the absurdity of all of this is that the -- the seller to my
4 set to my client and the Parkers who owned the property to the
5 front are -- were still getting a tax notice of about \$4.89
6 because they're still shown as having some rights in this
7 driveway. And --

8 THE COURT: I apologize for interrupting, but -- but what
9 are you asking in this motion?

10 MR. FEW: I'm asking for a dismissal of Patton's
11 counterclaim, Your Honor. They have a counterclaim for
12 slander of title, and we've laid it out in our -- our motion,
13 which was filed June the 6th, Your Honor. We've laid out the
14 specifics of why that is -- specifically, that they say that
15 they don't have any claim to the 30-foot driveway that we
16 claim.

17 So what we're seeking in the lawsuit is to right the
18 wrong, whereby my client will ultimately receive Tract D, the
19 0.49 acres that pushes her up to 8.24 acres that she
20 contracted for and that she should have received -- that he
21 should have received. I apologize. And --

22 THE COURT: Okay. Hold for a second. We've lost Mr.
23 Parker's video.

24 Mr. Parker? Mr. Parker, are you still there? Mr.
25 Parker? Mr. Parker?

1 Can anybody see or hear Mr. Parker?

2 MR. HRAY: No.

3 MR. LUSE: No, Your Honor.

4 THE COURT: Let me ask you, Mr. Few, does this -- does
5 this motion involve Mr. Parker or is it just Mr. Hray's
6 client?

7 MR. FEW: Not directly I don't believe it does, Your
8 Honor, and I would defer to --

9 THE COURT: Well, I mean, I don't need "I don't believe."
10 I've got to have yes, it does, or no, it doesn't. As I
11 understand your argument, your argument is you want to dismiss
12 Mr. Hray's counterclaim for slander of title because his
13 client doesn't have title to the property that you're -- that
14 he claims was slandered. Is that correct?

15 MR. FEW: That's right, Your Honor. The scope of our *lis*
16 *pendens* is Tracts A, B, C, and D. There's no dispute that he
17 doesn't have any claim to Tracts A, B, and C, and then I also
18 think there's no dispute that Mr. Hray can answer that, as
19 I've read his memorandum. We are in agreement that he -- he
20 makes no claim to any portion of Tract D, the 30 foot,
21 approximately 712-foot-long existing driveway.

22 THE COURT: All right. Mr. Wallace, any argument
23 regarding that motion?

24 MR. WALLACE: None from the defendant, Sonia Raymond, and
25 the Raymond Law Firm, Your Honor.

1 THE COURT: All right. Mr. Luse?

2 MR. LUSE: Not on this motion, no.

3 THE COURT: All right. Mr. Williams?

4 MR. WILLIAMS: Not on this one.

5 THE COURT: All right. Mr. Richardson?

6 MR. RICHARDSON: Not on this motion, Your Honor.

7 THE COURT: All right. Mr. Hray, let me hear from you.

8 MR. HRAY: Yes, Your Honor.

9 Well, the whole crux of our counter -- our counterclaim
10 is that a legal action was filed against my client that he's
11 had to respond to legally where there is -- we have no
12 interest whatsoever in the land in dispute. That puts a cloud
13 on our title because it makes it look as though there is some
14 sort of question.

15 But it looks like from the motion itself that the
16 plaintiff is saying we don't have any claim to Patton
17 Development's property, so we should be dismissed. I don't
18 know why we're even involved in this case. If that's the
19 case, we should just be dismissed, but we're having to defend
20 a case when --

21 THE COURT: As I understand, your -- your counterclaim
22 alleges slander of title.

23 MR. HRAY: Yes, Your Honor.

24 THE COURT: Is that correct?

25 MR. HRAY: Yes, Your Honor.

1 THE COURT: All right. Now, are you saying that they
2 slandered title to property owned by your client?

3 MR. HRAY: It puts a cloud to our title because they
4 filed a case. It makes the public think there's some sort --
5 something wrong with our title because we're named in a *lis*
6 *pendens* in a complaint involving real estate.

7 THE COURT: It would be just the property named in the
8 *lis pendens*.

9 MR. HRAY: Well, I don't know why we're a part of this
10 case then. If we're not part of that property in the *lis* --
11 in the *lis pendens*, we shouldn't be named parties at all.
12 What's he trying to accomplish? If we're not -- we don't -- I
13 don't see why.

14 THE COURT: Mr. Few, why do you name Mr. Hray's clients?

15 MR. FEW: Your Honor, I think at the time of doing this,
16 we were under the impression that -- that they had been deeded
17 the driveway that we were supposed to have been deeded. Since
18 that time, Your Honor, the construction of this Dollar General
19 has resulted in a trespass to my client's property and -- and
20 so I frankly anticipate amending to add, at a minimum, a
21 trespass claim against them.

22 So to the extent they've been wrongly joined, we would
23 just put that out there for the Court that -- that they've
24 torn up the property and -- and these things have happened as
25 a part of the ongoing construction. And with all these

1 parties and with the issue that's up with Mr. Williams and
2 MERS and Flagstar, I wanted to keep the amendments to the
3 pleadings to a minimum to the extent I could, but I believe I
4 --

5 THE COURT: Well, given the uncertainty of the pleadings
6 and the posture of the case at this point in time, I'm going
7 to deny that motion.

8 All right. Now, Defendant Gochenour's motion to dismiss
9 and for summary judgment. Whose motion is that?

10 MR. LUSE: That is mine, Your Honor. We just filed a
11 motion to dismiss. That's my motion.

12 THE COURT: All right. Let me hear from you, Mr. Luse.

13 MR. LUSE: Thank you.

14 In the complaint that was filed, there are multiple
15 causes of action. And this is the complaint filed on April
16 19th, 2023, derived from the March 6th, 2020, closing, which
17 our main motion consists of it's past the statute of
18 limitations, but we were only named in a breach of contract,
19 interference with a contract, fraud, constructive fraud,
20 breach of contract accompanied by a fraudulent act, and South
21 Carolina unfair and deceptive trade practice, not all of the
22 other causes of action, including the alleged malpractice.

23 So we're only speaking to our six causes of action, but
24 all of them have a three-year statute of limitations. And
25 similar to what has already been argued, the buyer would have

1 had notice of the real estate he was buying at the time of the
2 closing. The deed was recorded on March the 6th.

3 We agree with the case cited, the *Fuller-Ahrens* case
4 previously cited. Clearly, the interference with a contract,
5 fraud, constructive fraud, breach of contract accompanied with
6 fraud, and South Carolina unfair and deceptive are three-year
7 statute of limitations. A breach of contract is also a three-
8 year statute of limitations.

9 There is a -- a statute under 15-35-30, which wasn't
10 pled, that involves real estate where you can get up to 20
11 years. That doesn't apply to this defendant because that
12 would involve a mortgage. There is no mortgage of real estate
13 between my client, the seller, and the buyer. The buyer would
14 have one between him and his bank, and it would also have to
15 include a signing of a sealed instrument and a -- a standard
16 real estate contract with a realtor is not a document signed
17 under seal. So either one of those provisions, which they
18 would have to have, would not be applicable, and so it would
19 revert to the three-year statute of limitations.

20 And in any real estate closing -- I don't want to belabor
21 the point here, but there were real estate closing attorneys
22 in there. They would advise the buyer of his rights. They
23 would explain, you know, not only the promissory note and the
24 terms of the mortgage, but the property that was being bought.
25 The deed would explain the exact property that was being

1 bought, and it's recorded. He would have notice when it's
2 recorded with the registered deed.

3 And -- and a real estate closing, like when I bought my
4 house, I mean, they -- they go through and it's a metes and
5 bounds. I mean, they read you're buying from this point of
6 the land to this point in the land, and so he would have
7 notice in a closing. They would explain the metes and bounds
8 of your property line, just like in any other real estate
9 closing.

10 And so that would be notice on the day of the closing,
11 which was March the 6th, 2020, and we believe the complaint
12 being filed on April the 19th, 2023, would be past the statute
13 of limitations.

14 THE COURT: All right. Mr. Wallace, any argument on this
15 motion?

16 MR. WALLACE: No, Your Honor.

17 THE COURT: All right. Mr. Williams?

18 MR. WILLIAMS: No, Your Honor.

19 THE COURT: Mr. Parker?

20 MR. PARKER: No, Your Honor.

21 THE COURT: Mr. Richardson?

22 MR. RICHARDSON: No, Your honor.

23 THE COURT: Mr. Hray?

24 MR. HRAY: No, Your Honor.

25 THE COURT: All right. Mr. Few, any arguments other than

1 a -- don't re-argue what you argued for Mr. -- in opposition
2 to Mr. Wallace's, but if you've got anything that is different
3 that pertains to this one, let me hear from you.

4 MR. FEW: Your Honor, I just want to clarify. There was
5 some -- I think Mr. Luse was mistaken, and we mentioned this
6 in our memo. We only bring claims 1, 7, 8, 9, and 10 against
7 his client. We are not suing his client for interference with
8 the contract because she was the party to the contract that
9 was interfered with. We're also not suing her under the
10 Unfair Trade Practices Act.

11 Your Honor, I agree with what Mr. Luse was saying. I
12 would just change the word "would" to "should." They should
13 have explained all those things to my client. They had a duty
14 to do that under Rule 1.4, which is mentioned also in our
15 memorandum for -- as to communicate with your client regarding
16 the material aspects of the representation. Those things just
17 weren't done, and that's why the statute did not begin to run
18 on March the 6th, as the defendants have alleged.

19 THE COURT: Mr. Luse, anything in reply?

20 MR. LUSE: Nothing in reply.

21 THE COURT: All right. I'll need to take a look at the
22 *Ahrens* case and see what it says.

23 Next, plaintiff's motion to dismiss or strike
24 counterclaim filed June 27th. What is that, Mr. Few?

25 MR. FEW: Thank you, Your Honor. May it please the

1 Court.

2 Again, Mr. Parker, who's here on the -- on the call, they
3 filed a nine-page handwritten response, and at the very tail
4 it poses itself as a counterclaim, but I can't find a
5 counterclaim in there. The only thing I see is an affirmative
6 defense, and I just wanted the record to be clear that we
7 didn't go into default for not answering anything that was
8 supposed to be a counterclaim.

9 Their pleading, Your Honor, was filed on June the 21st of
10 2023, if you wanted to pull it up. Our motion, I think just
11 -- we -- I wouldn't know -- I didn't know what to respond to
12 and, therefore, I didn't want it to go un-responded to and
13 that's why we filed this motion, Your Honor, and/or for a more
14 definite statement.

15 So I don't know if Mr. Parker has a counterclaim that he
16 intended to file and would like to replead it or, I think, it
17 looks to me like they were just pleading one affirmative
18 defense, Your Honor.

19 THE COURT: All right. Mr. Parker? Oh, first, let me
20 ask you, is there any other defendants other than Mr. Parker
21 that has an argument regarding this motion?

22 MR. WALLACE: No, Your Honor.

23 MR. LUSE: No.

24 THE COURT: All right. Mr. Parker, let me hear from you.

25 MR. PARKER: Your Honor, I have no objection to

1 dismissing my claim of a counterclaim because I was in error,
2 but I do have a few comments I'd like to make regarding
3 Attorney Few's comments regarding the original survey, as he
4 referred to, also the title to the land of Tract D, which you
5 referred to, and the fact that the present ownership and
6 former ownership of that Tract D has never changed hands. So
7 if I could, it'll only take a few minutes.

8 THE COURT: So we're just here on motions. This is not a
9 trial of the case. This is -- you don't present your
10 evidence. You can argue against a motion or in support of a
11 motion that you filed.

12 MR. PARKER: I was only going to comment, Your Honor, on
13 some statements that Attorney Few made regarding --

14 THE COURT: Let me ask you this. Why do you -- why do
15 you want to comment on those statements?

16 MR. PARKER: Because what they -- what he referred to is
17 not totally true in the ownership and that so-called original
18 survey.

19 THE COURT: Well, then you can present that at trial when
20 we -- when you try the case.

21 MR. PARKER: Okay, Your Honor.

22 THE COURT: When the case goes to trial.

23 MR. PARKER: Thank you.

24 THE COURT: Okay?

25 MR. PARKER: Thank you, sir.

1 THE COURT: All right.

2 All right. Next, defendant Gochenour's motion to
3 dismiss. Whose motion is that?

4 MR. LUCE: Well, that would have been mine, and we
5 already argued that.

6 THE COURT: What was --

7 MR. WILLIAMS: You also filed a motion to dismiss my
8 cross-claim for declaratory judgment. I think that's the one.

9 MR. LUSE: Okay. I wasn't aware that was up today, but
10 --

11 THE COURT: All right. So this is a motion to dismiss
12 the cross-claim by who?

13 MR. WILLIAMS: MERS, Mortgage Electronic Registration
14 Systems.

15 THE COURT: All right. Mr. Luse, let me hear from you.

16 MR. LUSE: Your Honor, well, since the Court is taking
17 the first one under advisement, we can continue this one, if
18 it's okay with the Court.

19 THE COURT: Well, Mr. Williams?

20 MR. WILLIAMS: That's fine. I mean, whatever you do with
21 Mr. Few's complaint and that motion probably will impact our
22 declaratory judgment claim. It's pretty straightforward. It
23 says if Mr. Wilson was supposed to get more property, well,
24 our mortgage was supposed to cover everything in his property.
25 So we just want that to be declared that it covers the

1 additional tract.

2 THE COURT: Okay.

3 MR. WILLIAMS: So that was the basis of that motion, and
4 we didn't know anything about the lawsuit until -- we didn't
5 know anything about this dispute until we got served with the
6 lawsuit. So I think there's two --

7 THE COURT: All right.

8 MR. WILLIAMS: -- reasons for denying that motion.

9 THE COURT: All right. Well, I'll go ahead and I'll
10 continue that motion then.

11 Does anybody else have anything else? That's all I've
12 got on my roster. Is that everything? All right.

13 MR. FEW: Nothing else.

14 THE COURT: So the motion to dismiss MERS' cross-claim
15 has been continued.

16 Motion to dismiss Mr. Parker's counterclaim is granted.

17 The motion to dismiss brought by Ms. Gochenour and
18 Raymond Law firm is taken under advisement.

19 The motion to dismiss and for summary judgment regarding
20 Mr. Hray's client is denied.

21 All right. Has that got everything?

22 MR. LUSE: Yes, Your Honor.

23 MR. FEW: Thank you, Your Honor.

24 MR. WALLACE: Yes, Your Honor. Thank you.

25 MR. WILLIAMS: Thanks, Judge.

1 THE COURT: Thank you.

2 MR. PARKER: Well, thank you very much.

3 MR. RICHARDSON: Thank you, Your Honor.

4 MR. HRAY: Thank you, Your Honor.

5 THE COURT: Thank you.

6 (WHEREUPON, the proceedings ended.)

7

8 --- END REQUESTED TRANSCRIPT ---

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF HORRY) COURT OF COMMON PLEAS NONJURY

3
4 NICHOLAS F. WILSON,) TRANSCRIPT
5 PLAINTIFF,) OF
6 vs.) RECORD
7 JANET P. GOCHENOUR; JANET P. GOCHENOUR)
8 TRUSTEE; JAMES B. PARKER; JAMES B.)
9 PARKER, SR.; MARY ANN PARKER, KENNETH)
10 GREGORY MOORE, R&G CORP., D/B/A CENTURY)
11 21 THE HARRELSON GROUP; PATTON)
12 DEVELOPMENT SC, LLC; MORTGAGE) 2023-CP-26-2475
13 ELECTRONIC REGISTRATION SYSTEMS,)
14 INC.; SONIA M. RAYMOND; RAYMOND LAW)
15 FIRM, P.A.,)
16 DEFENDANTS.)

17
18
19
20
21
22
23
24
25
February 26th, 2024

B E F O R E:

THE HONORABLE H. STEVEN DeBERRY, IV, JUDGE

1 A P P E A R A N C E S :

2 WESLEY D. FEW
3 ESQ.
4 Attorney for the Plaintiff

5 WILLIAM J. LUSE
6 ESQ.
7 Attorney for the Defendants Janet P. Gochenour and
8 Janet P. Gochenour Trustee

9 JOSEPH LUCAS RICHARDSON
10 ESQ.
11 Attorney for the Defendants Kenneth Gregory Moore,
12 R&G Corp., and Century 21 The Harrelson Group

13 ALEXANDER HRAY, JR
14 ESQ.
15 Attorney for the Defendant Patton Development SC, LLC
16

17 ROBERT BRUCE WALLACE
18 ESQ.
19 Attorney for the Defendants Sonia M. Raymond and
20 Raymond Law Firm, PA
21

22 Transcribed by Pamela E. Green, from
23 WebEx
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

(WHEREUPON, there were no exhibits marked or
testimony taken during this hearing.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE COURT: Okay.

UNIDENTIFIED SPEAKER: Good morning.

THE COURT: We're here on -- my Document Number's 7 but it's 23-CP-26-2475, Nicholas Wilson versus Janet Gochenour maybe. I'm not sure.

But I see several attorneys here and please just let me know if we -- if there's anybody else that we may need to add that we might not realize.

MR. FEW: Your Honor, Wes Few. I'm here on behalf of the plaintiff. These are my motions that I think are Number 7 and 8 on the revised roster.

I don't see Bruce Wallace. He represents the closing attorney defendants. I see Mr. Luse. I see -- Luke Richardson represents the real estate brokers. Mr. Hray is on for Patton Property.

THE COURT: All right. I see Mr. Wallace. I'm gonna get him in here right now. Hang on one second.

MR. WALLACE: Morning, Your Honor.

THE COURT: Good morning. Sorry, sorry for the confusion.

We have everybody now?

MR. FEW: I think this is everybody but the pro se parties, Your Honor.

1 THE COURT: All right. Do you have a -- can you tell
2 me who they are?

3 MR. FEW: James and Mary Ann Parker.

4 THE COURT: Okay. Hang on one second.

5 (Pause.)

6 THE COURT: I don't see them.

7 MR. FEW: They may not be joining, Your Honor. I
8 don't know.

9 THE COURT: They're not here.

10 I'll ask the -- Madam Clerk, do you know -- have,
11 have your -- has your office or anybody around the
12 courthouse heard or seen anything from the Parkers?

13 THE CLERK: No, Your Honor.

14 THE COURT: All right. And I, I just got a message
15 from Mr. Walker.

16 Does that ring a bell?

17 MR. FEW: No, Your Honor, and I, I don't believe --
18 and I mean it would be up to them to have an opinion. But
19 I don't think either one of these motions relates to the
20 Parkers.

21 The first motion is between really my client and Mr.
22 Hray's client and then the second motion to amend the
23 complaint to add a second verified complaint we don't
24 believe has any impact on any, any -- impact on the
25 Parkers at all.

1 THE COURT: All right. Well, let's move forward
2 then. It sounds like -- oh, hang on one second.

3 Let me put Mr. Walker in. It sounds, it sounds like
4 he's here on behalf of somebody but he doesn't need to---

5 MR. FEW: Oh, if he's with Nelson Mullins, he may be
6 on behalf of the mortgage company. I think that Mr. Blake
7 Williams said that somebody else would be on. I, I don't
8 recall the name. So, my apologies on that. I forgot that
9 the mortgage company was involved as well.

10 THE COURT: Okay. And I apologize. We're running --
11 one of our computers went down this morning and I'm trying
12 to -- our system's been -- I don't know what the right
13 word is. But, anyway, I'm working in the law clerk's
14 office.

15 MR. FEW: Well, Your Honor, we've, we've done our
16 work to save the carbon footprint by having this by WebEx
17 as Horry is quite remote from many of us.

18 THE COURT: It sounds---

19 MR. FEW: With the exception of Mr. Luse, I think
20 everybody else would be traveling quite a ways.

21 THE COURT: Yeah, you know, and I tell you what, I,
22 I -- I'm a fan, to be honest with you. It's got to save
23 everybody a ton of time and money. Sometimes there's just
24 some glitches. But anyway.

25 So let's -- I'll be happy to hear from you, Mr. Few.

1 It looks like -- I think we got everybody here now.

2 MR. FEW: Thank you, Your Honor.

3 May it please the Court.

4 I'm West Few on behalf of the plaintiff, Nick Wilson.

5 Nick Wilson is -- I'll give you a brief background,

6 Your Honor.

7 He is a practicing attorney. I believe he went to
8 Duke Law School. He was working in Charlotte, North
9 Carolina for one of the big firms and then, in, in 2020,
10 he started looking into buying a piece of property in his
11 hometown of Horry County and he landed on this particular
12 piece of property out on Highway 90 that involved all of
13 these parties.

14 The Patton parties, which are the subject of this
15 first motion for relief from default, which is where I
16 made a mistake to not file on time and I've set forth the
17 reasons for that, Your Honor, in our motion that was filed
18 December 1st.

19 So, without getting -- I, I think that's sufficient
20 background really for this first motion, Your Honor.

21 We filed a lis pendens on the property. The, the
22 simplest way I think I can describe this, Your Honor, is
23 my client had a contract for the property. It was several
24 different parcels. One or more of which may of required
25 an additional survey. Certainly the, the closing was

1 gonna require a survey.

2 The contract was entered into I believe on
3 January 22nd of 2020. On January 23rd of 2020, there
4 was a specific amendment to the contract that said that my
5 client would get the deed to the driveway and that the,
6 the property he would get would be in excess of 8 acres.
7 And, subsequent to that, a survey was done that identified
8 Tracts A, B, C, and D wherein Tract D was the driveway,
9 which was about a 710 or 12-foot strip by 30 feet wide.

10 well, at the closing, he did not get the driveway
11 and, at the closing, he also did not get a copy of the
12 deed. This was in the middle of COVID. I don't know if
13 that's the reason why he didn't.

14 But as a part of our next motion, we've attached
15 letters from the closing attorney dated on the date of
16 closing and dated May the 7th of 2020 wherein she mails
17 him a copy of the recorded deed. He never had a copy of
18 the recorded deed until some time after May the 7th of
19 2020.

20 Subsequent to his purchase of the property, Patton
21 properties or the Patton parties, I'll just call them
22 Patton, Patton Development, SC, LLC, purchased the tract
23 in front of that which would be adjacent to the driveway
24 and they started construction of a Dollar General, Your
25 Honor.

1 When we filed this action on April 19th, which is
2 the day that the lis pendens was filed of 2023, which is
3 more than three years after the closing on the property,
4 but less than three years from the date that the closing
5 attorney mailed him a copy of the deed, which was the only
6 time that he would of been put on notice notwithstanding
7 the fact that no one ever told him he was not getting the
8 8.24 acres that was shown in the survey that we have
9 attached to our pleadings -- and, by the way, Your Honor,
10 the mortgage company underwrote this loan based on that
11 survey.

12 So, the mortgage company underwrote this loan based
13 on my client getting exactly what he thought he was
14 getting, which he did not get. He did not get the deed to
15 the driveway. That's what the bulk of the lawsuit is
16 about.

17 So, Mr. Hray, on behalf of Patton, his client, filed
18 a counterclaim for slander of title and we filed a motion
19 to dismiss that, which was denied on September 8th
20 following the September 7th hearing before Judge
21 Culbertson, and then, as set forth in our brief motion,
22 Your Honor, we make reference to the opt -- to the
23 operative case which I've cited as Sundown Operating
24 versus Intedge, and that is 681 S.E.2d 885, 888 (2009).

25 This is -- it states that the Court considers the

1 timing of the motion for relief, whether the defendant has
2 a meritorious defense, and the degree of prejudice to the
3 plaintiff.

4 Your Honor, in the transcript of the hearing which we
5 filed as a part of our memorandum on Friday, it was
6 specifically noted that my client was contemplating an
7 amendment to the pleadings in this case and specifically
8 with respect to the Patton Properties. Mr. Hray very
9 correctly pointed out that they didn't own any of the
10 properties by virtue of their subsequent purchase of the
11 adjacent property that would have any conflict with our
12 lis pendens and which my comment was well, then we have no
13 dispute because the lis pendens does not read on your
14 property so to speak.

15 In addition, Your Honor, as we've cited in our, in
16 our -- all of our pleadings -- I mean all of your motions,
17 statements made in pleadings are absolutely privileged.
18 So, they have no claim at all simply because all we did
19 was file a lis pendens, which they did not like, and, and
20 I think the Pond Place Partners case state -- from 1995
21 stands for the proposition that a pleading in and of
22 itself, particularly a lis pendens describing property,
23 could never be the subject of any action including a, a
24 counterclaim for slander of title.

25 Your Honor, asking for sympathy a little bit because,

1 in November of last year as set forth in our motion on
2 Page 3, I had two jury trials. One that went forward from
3 the 14th to the 16th in Federal Court and another one
4 that was gonna go forward as a date certain. This was the
5 second time it's been a date certain on November 27th,
6 which many of you may note, note is the Monday after
7 Thanksgiving.

8 So, I was completely tied up as a solo practice
9 preparing for and trying the federal case and then
10 preparing for the other matter that got continued on the
11 27th, and as we set forth in our motion, we filed a timely
12 answer to what we believe is a moot counterclaim of Patton
13 because, in our subsequent amended complaint, amended
14 verified complaint that's the subject of the next motion,
15 we do the very thing that I said we were gonna do on
16 September 7th is we bring claims for trespass and I
17 can't remember the other one, Your Honor.

18 But they, they damaged our property and we've
19 included Exhibit 6 to the new proposed amended verified
20 complaint that shows the, the tearing down of the trees
21 and so forth on the driveway strip that my client is
22 entitled to own once the contract that he entered into is
23 finally clarified and, and, and that matter is solved.

24 So, in any event, the client had interest in the
25 30-foot strip and Patton came in and used it as if it was

1 their own and as shown in the picture, Your Honor.

2 So, as to the timing, we filed an answer as soon as
3 we could. As to meritorious defense, we maintain that any
4 Court, Your Honor, could dismiss this slander of title
5 counterclaim sua sponte regardless of the timing of
6 motions or appeals by my client because it is privileged
7 under Pond Place. And, as to prejudice, there's been no
8 prejudice to Patton properties.

9 They are now in the case for the claims that we
10 intended to have them in the case for and it's very early
11 in the case. In fact, Your Honor, other than informal
12 discovery, there has been no discovery -- there's been
13 discovery served I believe. But there's been no responses
14 to any discovery in this case.

15 So that's, that's all I have on the first motion,
16 Your Honor. We would respectfully request that, under
17 Sundown, that this is a mere entry of default, not a en --
18 entry of judgment of default. We're early on in the case.

19 I haven't really spoken about the settlement
20 negotiations but that's set forth in our memo. We both
21 exchanged non monetary settlement offers. My settlement
22 counter was that they just give us the documents that
23 we're gonna get anyway and we didn't get a response.

24 And so, in the midst of those settlement
25 conversations, they filed an affidavit of default and then

1 we filed an answer as soon as we could.

2 THE COURT: Okay. who would like to respond?

3 Just let me know.

4 MR. LUSE: Your Honor, it's William Luse. I'll jump
5 in real quick. We represent Jenny Gochenour. We're not a
6 party of interest in this first motion.

7 THE COURT: Okay. well, is that -- does anybody
8 oppose the first motion?

9 MR. FEW: Mr. Hray may.

10 THE COURT: Mr. Hray.

11 MR. FEW: He looks like he's muted, Your Honor.

12 THE COURT: He is. You got to unmute yourself. It's
13 down at the bottom.

14 MR. HRAY: I got it.

15 THE COURT: Okay. We can hear you now.

16 MR. HRAY: All right. Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 MR. HRAY: My understanding of the Court rule with
19 respect to relief from default is there's a threshold
20 requirement that there's an explanation for the default
21 for why that, that occurred.

22 The timeline of the case, as been noted, there was a
23 motion to dismiss that was filed and that was denied. The
24 order denying that motion was on September the 8th of last
25 year. That was done by Judge Culbertson.

1 And according to my calculations with that denial,
2 the answer would of been due, or reply to my counterclaim,
3 by October the 9th of 2023.

4 If I'd been asked for an extension, I don't know if I
5 would of given one or not, but, under the rules, I'm only
6 allowed to give additional, additional 30 days to, to file
7 responsive pleadings and that would of put the maximum
8 time limit to respond of November the 8th of 2023. The
9 affidavit of default that I filed was on November the
10 17th, which was more than two months later.

11 In the motion that was filed by Mr. Few, on Page 3 of
12 his motion, he details, I assume, a reason he had not
13 filed timely and he relates back to the federal trial that
14 he was involved in in November the 14th and the
15 16th of last year. He doesn't indicate any situations
16 that would of prevented him from filing an answer timely
17 from the time he was, was -- it became due until it was
18 past due.

19 So, I don't think he's set forth any explanation of
20 why he is not filed a timely answer within the timeframe
21 allowed. So, on that basis alone it should be dismissed
22 as far as his motion to allow a, a late answer.

23 It's -- with respect to any negotiations, after
24 the -- his motion was denied in September. I did, in
25 fact, send a email to Mr. Few that I offered that we would

1 drop the counterclaim if he would let my client out of the
2 case. The only reply I got to that was requests for some
3 documents from D.O.T. concerning our project.

4 I didn't read that as an, as an acceptance or
5 counteroffer to my proposal and still don't think that was
6 a, a settlement offer. And even if it was, I don't think
7 that affects whether or not he's required to file an
8 answer to my counterclaim and the fact that he wanted to
9 amend his pleadings, that was done many months later and
10 that's (sic) also didn't affect my counterclaim.

11 So, I would ask the Court to go ahead and enter
12 judgment for default from this case cause I don't think
13 there's been any explanation of why, during the timeframe
14 he was allowed to file an answer on his client's behalf,
15 why he didn't do it.

16 THE COURT: Anybody else that, that has any
17 opposition to this first motion that would like to be
18 heard?

19 (WHEREUPON, there was no response.)

20 THE COURT: All right. Mr. Few, being, being your
21 motion, be happy to hear any follow-up you may have.

22 MR. FEW: Yes, Your Honor. Briefly.

23 Mr. Hray cites a legal concept of us providing an
24 explanation, which we believe we've done. His client has
25 not put before the Court any case law in support of that.

1 Your Honor, these are rather complex pleadings being
2 that it is a real estate case and Mortgage Electronic
3 Registrations Systems, which you may be familiar with, is
4 MERS, was initially named in the case. They then have
5 been substituted by Flagstar, which is the lender of
6 record.

7 They -- we were -- I was waiting to get some things
8 done by the renaming of MERS and I was trying to avoid
9 having to have just multiple, multiple motions to amend.

10 As to the negotiations, negotiations are a reason for
11 a party to -- not to be held in default. I haven't cited
12 any case law to that. But that's just part of how we fit
13 within the Sundance case.

14 I don't dispute that I missed the, the answer filing
15 deadline. But that was done also with the understanding
16 that, on September 7th, we had already made it clear
17 that we were gonna amend our pleadings, specifically with
18 respect to the Patton parties, to bring the trespass claim
19 and the other claims against them, Your Honor. And so
20 really those are all the reasons.

21 I would also say that our, our request was not, I
22 don't think, for D.O.T. only. We, we wanted all of their
23 communications with the sellers so that we could ascertain
24 what we intend to ascertain in the lawsuit, which is who
25 knew what and when they knew it. And I don't want to get

1 afar from the pleadings. But we have since discovered
2 that the real estate agent had a contract with the Parkers
3 that was never disclosed to us.

4 So, he had an interest in selling their adjacent
5 property at the time that he sold this property to us,
6 which we believe will no doubt be resolved by anybody
7 looking at it reasonably as a conflict of interest.

8 So, that's all I have, Your Honor. I fully
9 acknowledge I did not answer in a timely matter. But even
10 if my motion were to be denied, the next step is not a
11 default judgment on a claim that, that also does not exist
12 for the reasons that we've stated under Pond Place
13 Partners and the absolute privilege of a pleading.

14 That's all I have, Your Honor.

15 THE COURT: All right. Thank you.

16 All right. So shall we move on to the motion to
17 alter or amend the pleadings?

18 MR. FEW: Please.

19 THE COURT: Okay.

20 MR. FEW: So, Your Honor, as, as you've heard from
21 the arguments on the earlier -- the, the motion that we
22 just concluded, we knew that we were gonna amend our
23 pleading with respect to some of the parties since the
24 ruling came out on the first motion -- on the motions to
25 dismiss that were filed by Mr. Wallace's clients, the real

1 estate attorneys, and Mr. Luse I believe was the
2 beneficiary of that as well.

3 On December 1st we filed a motion to amend to add a
4 second verified complaint, which more specifically sets
5 forth the facts that I recited earlier, namely that the
6 closing attorney, Ms. Raymond, never told my client he was
7 not getting the driveway at the closing and, in fact,
8 discovery will show, Your Honor, that another local
9 attorney actually drafted the deed. She did not even
10 draft the deed. She let the seller's attorney draft the
11 deed.

12 Now, whether or not that's customary matters not.
13 But she had an obligation to my client to make sure that
14 he got what he received pursuant to his contract and he
15 did not, Your Honor.

16 He got 7.75 acres instead of 8.24 acres and these are
17 things that are laid out on the survey. It's in the
18 record. We've highlighted the driveway. He was suppose
19 to own the driveway. He did not own the driveway.

20 My position is that the initial complaint was
21 sufficient in that, in Paragraph 43, we alleged, under
22 oath, that no one ever told my client that he was not
23 getting the driveway. Well, that was not sufficient for
24 the arguments on September 7th as shown in the order
25 that came out on September 8th.

1 So, we amended primarily, Your Honor, to add -- and I
2 may have recited that paragraph wrong. But in our amended
3 complaint at Paragraph 43, we state more specifically
4 plaintiff never received a copy of the deed or title
5 policy from Sonia Raymond until it was mailed to him by
6 her office on May the 7th of 2020. See attached Exhibits
7 4 and 5 and we attach her correspondents, Your Honor, that
8 shows that he did not get the deed and that they did not
9 send it to him until then.

10 And so the Court, as we've noted in our motion and
11 our memoranda that we filed, I wanted Your Honor to be
12 aware of what had transpired. I didn't want to come
13 before the Court and, and have Your Honor think that there
14 was nothing before the Court but this motion.

15 There has been an order that does not specify if our
16 claims are dismissed without prejudice or with prejudice.
17 And, Your Honor, it, it is our position, as we have set
18 forth in everything that we filed since September the 7th,
19 that that order does not abide by the Skydive case that
20 the Supreme Court decided in 2019, which we've cited
21 throughout our pleadings, that says the, the trial court
22 does not have discretion to dismiss a case on a motion to
23 dismiss unless they go through the analysis and state that
24 any amendments to the pleadings would be futile and would
25 not save the plaintiff's ability to replead their case.

1 So, under Skydive, Your Honor, that's the basis for
2 our motion to amend. The amendment also included the --
3 adding the trespass claim, that, that -- the claims that
4 we intended to plead against Patton properties, which was
5 a trespass and a constructive trespass I believe. That's
6 14 and 15.

7 So, Your Honor, under Rule 15, everyone is aware.
8 Amendment's should be freely given as we have cited, and,
9 and I -- it's always been my practice, Your Honor, to, to
10 let the Court know when they do and do not have
11 discretion. I hope the Court appreciates that. I have
12 been told that sometimes they do but maybe they don't.

13 But that's what the Skydive case says and, and we're
14 all here to follow the instructions of our Supreme Court
15 and you -- Your Honor, really what this boils down to, and
16 it -- and this is not an issue before you. But the, the
17 way that the case has been dismissed right now, we're gon'
18 be subject to a premature appeal.

19 The case is gonna get delayed for a significant time
20 period. We believe, very strongly, that it's gonna get
21 sent back down if, for nothing else, then -- but to comply
22 with Skydive and that's what we're asking the Court to do
23 now.

24 We believe that our new allegations make it very
25 clear that my client was never put on notice of the harm

1 that he suffered by not obtaining title to the driveway
2 and any arguments that anyone has to the contrary that he
3 was made aware of that by way of actual notice, which is
4 what he was entitled to prior to May the 7th of 2020, I
5 welcome them to be put on the record.

6 what the Court has relied upon apparently, it's hard
7 to tell because we have two very vague Form 4 orders with
8 no cases cited, is Mr. Wallace took the position at the
9 September 7th -- and this is on Page 20, that the
10 operative date is not the receipt of the deed by the
11 plaintiff. It's the date of the recording of the deed,
12 which was March the 6th.

13 well, Your Honor, if that ends up being the holding
14 of this Court, then we are saying that every person that
15 hires an attorney to handle a closing for them is then
16 under an affirmative obligation to go behind that attorney
17 and get a copy of the recorded deed that they should of
18 been given at the closing. Now, why he wasn't given a
19 copy of it I don't know but he was not.

20 And so, Your Honor, the facts before the Court are
21 that my client had no notice, nothing to inform him that,
22 that he did not get the 8.24 acres that he relied upon
23 pursuant to the survey that was given him by the
24 closing -- by his real estate agent that said this is what
25 you're gonna get and he never saw any different survey

1 until long after the fact, the earliest of which would of
2 been May the 7th of 2020.

3 And, Your Honor, for those reasons, it's, it's an
4 unusual situation. But we would ask that the Court enter
5 our amended pleading. The parties are not prejudiced.
6 They will, no doubt, all file the same motion to dismiss
7 that two parts -- two of the defendant parties have
8 already filed. I think, in fact, everyone is pretty much
9 done that at this point.

10 They've now filed a new motion to dismiss to, to get
11 the same benefit that the closing attorney and the --
12 Mr. Luse's client, the seller, Ms., Ms. Gochenour I
13 believe has received.

14 So, Your Honor, we submitted our memorandum and,
15 again, it, it -- I don't know what more I can say other
16 than that what the Skydive case -- the directions that we
17 are all given under the Skydive case as to how to handle
18 this situation, which, I believe, are properly rooted in
19 judicial economy and the Court realizing that we don't
20 need a bunch of premature appeals overwhelming the staff
21 attorneys at the Court of Appeals. And that if a case is
22 gonna go up on appeal, it needs to go up on a complete
23 record.

24 And, for those reasons, Your Honor, we would
25 respectfully ask that the Court enter our motion to amend

1 that was filed December 5th and allow us to put, not our
2 first, but our second under oath pleading before the Court
3 to be analyzed as to whether or not these claims should be
4 dismissed pursuant to the Statute of Limitations and
5 that's all I have, Your Honor.

6 Thank you very much.

7 THE COURT: Yes, sir.

8 And who, who would like to respond or in what order?

9 MR. FEW: Your Honor, I just realized and I'm so
10 sorry. I left my phone upstairs. I'm at my mother's
11 helping take care of her.

12 My client's probably wanted to log in to this and
13 they've probably been texting me. It would be Nick Wilson
14 and maybe Whitney. I don't know if they're in the waiting
15 room or not. I am so sorry.

16 THE COURT: That's okay. Hang on one second.

17 Was there another one other than Mr. Wilson?

18 MR. FEW: Nick, what -- are you the only -- is there
19 only -- are you the only one logging in or is Whitney with
20 you or in another place?

21 (WHEREUPON, there was no audible response.)

22 MR. FEW: I don't know if he can hear me. He's on.
23 He's, he's the client. So that's fine, Your Honor. Thank
24 you very much.

25 THE COURT: All right. Mr. Luse, would you like to

1 respond or who or -- just let me know who wants to
2 respond.

3 All right. You're on mute I believe.

4 MR. LUSE: I can go ahead and go first if that's
5 okay.

6 THE COURT: Yes, sir, be happy to hear from you.

7 MR. LUSE: Bill Luse for Janet Gochenour, the seller.

8 Your Honor, this is now been litigated for the third
9 time and by that I mean we filed a motion to dismiss which
10 was granted on a Statute of Limitations argument. The
11 closing was on March 6th, 2020, and the complaint was not
12 filed until April 19th, 2023.

13 The Court granted that motion to dismiss the
14 plaintiff's complaint. They then filed a motion to
15 reconsider and their motion to reconsider was denied. And
16 now, instead of filing an appeal, they're filing a motion
17 to amend the complaint and avoid on appeal.

18 At the closing, the Court should consider it's buyer
19 beware. There were closing attorneys and they would get
20 settlement documents including a metes and bounds, a HUD
21 statement. They would be able to ask the closing
22 attorneys any questions they wanted.

23 Further, Mr. Wilson is a sophisticated buyer, an
24 attorney, and the case law -- the deed, you would have
25 constructive and actual notice at the time of the closing

1 and that's what the Court found. And that's why it --
2 this case was dismissed. And then again the plaintiff's
3 motion was denied to re -- to reopen the case.

4 So, I would just say that, if there's any remedy at
5 all, the plaintiff should file an appeal and not be
6 allowed to amend the complaint and start the process over
7 again. And we are prejudiced by the continued cost and
8 litigation. And even though sometimes a plaintiff has a
9 right to amend the complaint, they don't when the Statute
10 of Limitations has run.

11 THE COURT: All right.

12 All right. Anybody, anybody else?

13 MR. WALLACE: Your Honor, Bruce Wallace for Defendant
14 Sonia Raymond and the Raymond Law Firm.

15 THE COURT: All right.

16 MR. WALLACE: Thank you, Your Honor.

17 Mr. Luse is right. This is the third time we've had
18 to address this issue of the Statute of Limitations.
19 Judge Culbertson addressed these specific arrangements,
20 included Mr. Few's argument that he should be allowed to
21 amend his complaint, in the motion to reconsider.

22 I didn't flood the Court with a bunch of documents
23 that have already been filed. But in his motion to
24 reconsider, the plaintiffs specifically requested Judge
25 Culbertson allow the plaintiff to amend his complaint to

1 avoid a dismissal with prejudice. The Court denied that
2 by order, excuse me, by order dated earlier this month and
3 the -- in his motion to amend before this Court, plaintiff
4 specifically mentions Judge Culbertson's orders.

5 Wes has done a great job for his client, Your Honor.
6 But, but simply what he's asking this Court to do, what
7 he's asking you to do, is look at Judge Culbertson's
8 orders and make a determination of what they say despite
9 Judge Culbertson's order being filed of record and denying
10 every relief that Wes's client has sought.

11 And so, in this regard Your Honor, the proper remedy,
12 as Mr. Luse said, is appeal. The law is clear. Case law
13 after case law has said that one circuit judge can not
14 rule on another Circuit Court's order, another circuit
15 judge's order, and that's what's Mr. Few is asking you to
16 do.

17 He's say gonna say judge, because it's not clear what
18 Judge Culbertson did despite Mr. Few asking in his motion
19 to reconsider that he be allowed to amend his complaint,
20 and that motion was denied, he's saying judge, you should
21 allow me to amend, allow my client to amend. That would
22 be tantamount to you reversing Judge Culbertson's already
23 filed orders.

24 Judge, there's simply no remedy, excuse me, no
25 procedure allowed for that. The sole remedy is appeal and

1 it's not a -- let's see. It's not a premature appeal,
2 Your Honor.

3 It's an appeal of an order that denied -- that
4 dismissed the claim that was barred by the Statute of
5 Limitations. Sometimes that happens and those cases get
6 appealed and the Court of Appeals will have to address all
7 the things that Mr. Few is concerned is wrong with Judge
8 Culbertson's order. But that's for the Court of Appeals,
9 Your Honor, and not for this Court.

10 And so I'd submit, Your Honor, you actually don't
11 have any discretion here. You have to deny the motion to
12 amend at least as to Sonia Raymond, the Raymond Law Firm,
13 and Mr. Luse's clients because we clearly filed our
14 motions some time ago and clearly got an order on those
15 motions and Mr. Few's attempts to clarify that order was
16 similarly denied.

17 So, Your Honor, we'd ask that you simply deny the
18 motion. Let Mr. Few pursue his remedies on appeal and let
19 the Court of Appeals speak. If he's right, the Court of
20 Appeals will reverse the order and we'll be back down here
21 at the appropriate time. But, if he's wrong, which
22 obviously I believe he's wrong, the Court of Appeals will
23 affirm Judge Culbertson and this case will be fully and
24 finally ended for my client as it should of been already.

25 Thank you.

1 THE COURT: Thank you, sir.

2 Anybody else would like to oppose the motion?

3 (WHEREUPON, there was no response.)

4 THE COURT: All right. Mr. Few, anything in
5 follow-up?

6 MR. FEW: Your Honor, I would note that none of my
7 esteemed opposing counsel have cited any legal authority
8 in response to our motion. I was reminded by Mr. Luse's
9 comment that the Statute of Limitations was the basis of
10 the dismissal.

11 In our memorandum in support, we've cited the
12 principal that is undisputed. I'm fairly certain that
13 whether or not the Statute of Limitations applies to bar a
14 claim is a question of fact for the jury. There's
15 countless cases on that. We cited one or two of them.

16 In fact, in my jury trial on November 14th to
17 16th, the defense counsel put the Statute of Limitations
18 in front of the jury and got jury charges on it and they
19 lost. So, the statute -- the, the application of the
20 Statute of Limitations is simply a question of fact in, in
21 their affirmative defenses that needs to be litigated in
22 this case, Your Honor.

23 My client was put in the position of having to use
24 the tools that were available to them to keep this case
25 where we believe it belongs in the trial court at least

1 until there's a fully developed record.

2 And so, Your Honor, I would also note that we filed
3 the motion to amend on December 5th I believe it was and
4 we made the Court specifically aware of it and Mr. Wallace
5 is right.

6 We advised the Court, on September 7th,
7 September 8th, September 18th, and then again in
8 December, that if our -- my client's case is gonna be
9 thrown out on a motion to dismiss, certain things have to
10 be done. The Court can not just dismiss a claim and not
11 follow the requirements that are set forth in the Skydive
12 case to explain why it is that there is no possible way
13 that the plaintiff could replead any part of these claims
14 and have the case continue in the trial courts without
15 being ping ponged back and forth.

16 So, Your Honor, for all of those reasons, we would
17 request that the, the motion to amend be granted in its
18 entirety and, and these parties can, as I said before,
19 file their motions to dismiss and they will be heard with
20 the difference being that the specific fact that's in the
21 record right now is that my client's attorney never sent
22 him a copy of the deed or otherwise told him that he was
23 not getting title to the driveway until some time on or
24 after May the 7th of 2020, which is less than three years
25 from April 19th of 2023, which means that the claim is

1 not subject to being barred by the Statute of Limitations.

2 THE COURT: All right. But, as I understand it,
3 Judge Culbertson's already ruled and dismissed the case
4 based on violation of the Statute of Limitations.

5 Is that right?

6 UNIDENTIFIED SPEAKER: That's correct, Your Honor.

7 MR. FEW: That's correct.

8 THE COURT: All right. Well, I will certainly take a
9 look at everything that's been filed and the orders that
10 are in the record and I will, I will get an answer to both
11 of these motions as soon as possible. What I'll probably
12 do is just enter Form 4s.

13 But if I -- if that is the case, and either side
14 wants to propose a more formal order, then certainly I'll
15 consider anything that's proposed thereafter to replace
16 the Form 4 with.

17 Okay.

18 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

19 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

20 UNIDENTIFIED SPEAKER: Thank you.

21 THE COURT: I hope, I hope each of you have a good
22 day. Thank you so much.

23 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

24 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Horry County, South Carolina, on the 26th day of February, 2024.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

April 2nd, 2024



PAMELA E. GREEN, Court Reporter



Nicholas Wilson <nfwilson1990@gmail.com>

Mortgage Fraud Case Loan #505261253

5 messages

Nicholas Wilson <nfwilson1990@gmail.com>

Thu, Jul 22, 2021 at 6:37 PM

To: amanda.nasiadko@flagstar.com

Cc: Whitney Redoutey <whitney.redoutey@gmail.com>

Hi Amanda,

Thank you for taking the time to speak with me this afternoon regarding the fraudulent and other unsavory activities that undermined the whole process of coming to live in this house.

For the record, I am still living here and intend to use rescission as a last resort. I reserve the right to pursue any and all forms of relief whether in equity or at law. What we have here is a glaring example of prima facie fraud, with a heavy burden of proof in the form of a rebuttable presumption of fraud that will be impossible for the counterparties to sustain in the face of the undisputed facts. There will be nothing to litigate and what little factual determinations may be left to a jury would compel any defendant to settle.

Please find attached a copy of the signed and dated addendum, the two different surveys, and an annotated copy of the appraisal report. The appraisal report is rich with details showing the appraiser's reasonable reliance on the dummy survey attached thereto purporting to depict 8.24 acres and a single contiguous parcel inclusive of the driveway. The as-advertised and agreed-upon private arrangement is what makes the property unique and therein lies its value; it is why I paid above asking and above appraised value (out-of-pocket). This survey is dated January 30, 2020, and is consistent with all documented correspondence leading up to, including, and subsequent to the closing date. This is the same survey that was provided in an email from the dual-agent representing both buyer and seller stating that it would be the official survey to be recorded on the closing date with a subject line "Official Survey".

The addendum states in no uncertain terms that we were to be sold the deed to the driveway and no less than 8 acres, the same having been demonstrated by a satisfactory survey, and is signed by both buyer and seller. This addendum supersedes an earlier initial draft, never signed, which was proffered to us (and executed) by seller via dual-agent, in what appears to be seller's own hand. This draft was rejected by us on account of its lack of specificity. We believe this fact is important to us, as it is revelatory of the overt considerations that guided the negotiations and were clearly articulated and understood by all parties involved. That executed addendum and the draft addendum are both attached. Note the executed addendum was signed contemporaneously with the purchase and sale agreement on the same form of contract.

Until last week, we never saw or knew about the existence of the second survey, the one that was actually recorded. I can't help but point out that the second survey was recorded the very day before our closing date, which was extended at the last minute for reasons that were unclear to us and poorly articulated by the realtor and his wife (in a conflicting manner). That much is apparent from the addendum to extend, which was signed "retroactively" two days after the originally-scheduled closing date had passed. I wonder if it was a lawyer that actually recorded the survey, as required by well-known judicial guidelines issued by the Supreme Court of South Carolina and applicable to every transfer of residential property in this buyer-friendly state.

It will only get more interesting as we look behind the curtain of this overtly fraudulent and conspiratorial scheme, which transpired behind smiles and hearty assurances. For instance, there is a phantom buyer that we would like to subpoena in order to discuss his involvement in the bidding war we navigated with an alpaca farmer from up north who laid down a cash offer less than one week after the property was listed and the day before we saw it. We are told there are numerous hand-written letters that he delivered to the 89-year old seller and at least one he allegedly delivered in person, by hand, during the outset of a global pandemic.

We have all of this in writing and we are working on a more robust and legally operative timeline of events with annotations to support our myriad legal claims. Happy to discuss further.

I can be reached at 910-520-5304 or by response to this email.

Whitney, copied, is my girlfriend, and she has been involved throughout this process. I ask that you please keep her copied on any correspondence, as we are working on this together. She is authorized by me to discuss this matter and speak on my behalf when I am not available or whenever may otherwise be convenient.

Best,
-Nick

Nick Wilson, Esq.

5 attachments

-  **Conway Appraisal with notes.pdf**
6562K
-  **survey 1.pdf**
274K
-  **Survey 2.pdf**
441K
-  **Addendum To Agreement To Buy And Sell Real Estate (2).pdf**
79K
-  **Draft Addendum.pdf**
2400K

Amanda A Nasiadko <Amanda.Nasiadko@flagstar.com>
To: Nicholas Wilson <nfwilson1990@gmail.com>
Cc: Whitney Redoutey <whitney.redoutey@gmail.com>

Mon, Jul 26, 2021 at 10:14 AM

Good morning Mr. Wilson,

I just wanted to keep you in the loop. This information has been passed along to our legal department. From what I was told they will review and respond within 5-7 days. As soon as I hear back from them I will get in touch with you!



Amanda Nasiadko
Sr. Fraud Investigator
MFIU Department
Office: (248) 312-5604
Fax: (888) 702-2493
[5151 Corporate Drive • Troy, MI 48098](https://www.flagstar.com)
Amanda.Nasiadko@flagstar.com

From: Nicholas Wilson <nfwilson1990@gmail.com>
Sent: Thursday, July 22, 2021 6:37 PM
To: Amanda A Nasiadko <Amanda.Nasiadko@flagstar.com>
Cc: Whitney Redoutey <whitney.redoutey@gmail.com>
Subject: [EXTERNAL] Mortgage Fraud Case Loan #505261253

Flagstar External Security Warning: Please make sure you trust this source before clicking links or opening attachments. If you believe this is a phishing email, please click on the Abuse button. If you're using a mobile device, forward to abuse@flagstar.com.

[Quoted text hidden]

This e-mail may contain data that is confidential, proprietary or non-public personal information, as that term is defined in the Gramm-Leach-Bliley Act (collectively, Confidential Information). The Confidential Information is disclosed conditioned upon your agreement that you will treat it confidentially and in accordance with applicable law, ensure that such data isn't used or disclosed except for the limited purpose for which it's being provided and will notify and cooperate with us regarding any requested or unauthorized disclosure or use of any Confidential Information.

By accepting and reviewing the Confidential information, you agree to indemnify us against any losses or expenses, including attorney's fees that we may incur as a result of any unauthorized use or disclosure of this data due to your acts or omissions. If a party other than the intended recipient receives this e-mail, he or she is requested to instantly notify us of the erroneous delivery and return to us all data so delivered.

 **image002.jpg**
4K

Amanda A Nasiadko <Amanda.Nasiadko@flagstar.com>
To: Nicholas Wilson <nfwilson1990@gmail.com>
Cc: Whitney Redoutey <whitney.redoutey@gmail.com>

Tue, Aug 3, 2021 at 2:51 PM

Good Afternoon Mr. Wilson,

I just received an email from our legal department. They indicated you would need to go after the seller directly considering that the addendum to the purchase agreement clearly states the sale of the subject property would include the driveway. They also indicated the seller would need to make a claim though the title company that completed the transaction as well.

It does not appear they are able to do anything regarding the issue directly.

[Quoted text hidden]

[Quoted text hidden]

 **image005.jpg**
4K

Nicholas Wilson <nfwilson1990@gmail.com>
To: Amanda A Nasiadko <Amanda.Nasiadko@flagstar.com>
Cc: Whitney Redoutey <whitney.redoutey@gmail.com>

Mon, Sep 6, 2021 at 6:42 AM

Hi Amanda,

Hope you have been well since last we spoke. By way of update, I have spent considerable time, effort, and money investigating my situation, and I am doing my best to achieve a suitable outcome for FSB and myself. To that end, grateful if you could send me the below-listed documents or direct me to the appropriate department or someone who can. Given the material differences between what was actually recorded in connection with the closing vs. the documents provided to me (that induced me to take out a mortgage and purchase this property), I would like to compare my files with what was submitted to FSB. This may provide some clarity as to whodunnit. I would also like to better familiarize myself with the documents/agreements touching on my mortgage in any way or otherwise governing the process of its origination, acceptance, closing, and/or assignment. That should help me determine whether Revolution Mortgage (the Originating Lender, may also d/b/a T2 Financial) was more concerned with underwriting a quality mortgage or simply processing my loan and collecting their fee.

-Any and all "Wholesale Lending Broker Purchase Agreement(s)" or other similar agreement(s) between FSB and Originating Lender or any agent or counterparty thereof, which were in effect during Q1 and covered the

origination, acceptance, closing and/or sale of mortgage loans generally as between FSB and Originating Lender, and which covered the origination, acceptance, closing, and/or initial assignment of my mortgage specifically;

- Any conditional approval(s) issued with respect to my mortgage, including without limitation any conditions or stipulations for final approval of the loan, and any supporting documentation, representations, or certifications submitted to FSB by Originating Lender or otherwise in the possession of FSB regarding compliance with any such conditions or stipulations and/or any other similar or related documents concerning my mortgage;
- The final approval letter from FSB to Originating Lender and/or any other similar documents concerning my mortgage or the origination, acceptance, closing, and/or initial assignment thereof;
- To the extent not covered above, I would also like a copy of each document in the Closing Package and any and all other "Mortgage Loan Documents" and similar documents that are or were or should be in the possession of FSB related to my mortgage loan and the origination, acceptance, closing, and/or initial assignment thereof, including without limitation W-2s, credit reports, income and employment, etc., and any and all other documents or materials creating, evidencing, or securing my mortgage, which are required to be maintained or prepared by Originating Lender and/or FSB and/or any third party which may provide such documents or materials to or on behalf of Originating Lender and/or FSB; and
- Any agency guidelines or other similar documents or materials in effect during Q1 2020 that covered my mortgage and/or the origination, closing, acceptance, and/or assignment thereof.

Lastly, I have sent a couple of letters to the seller at her address as listed on the county records (2015 Hazlette Loop, Conway, SC 29526). It is less than a mile from me, so I also drove by hoping to pay her a visit in person and discuss these issues. It does not appear that anyone lives there, although we were told during the closing process that she has properties in other states where she may live from time to time, especially during the warmer months. We were told by Kenny, the real estate agent, that she is 89 years old, so all correspondence during the closing process was thru Kenny, which seemed very reasonable at the time due to Covid and her age (we first saw the property January 20, 2020 and closed March 6, 2020). As such, we were never given seller's phone number or email address. I will let you know ASAP if we hear back from her.

One other thing: per your previous email it looks like FSB legal says that seller should make a claim thru the title insurance company. Was that meant to say me as buyer should make a claim on title insurance? Want to make sure I'm not missing something.

Please let me know if you have any questions for me or if there is anything I can do to help mitigate the situation for FSB. I will continue the process meanwhile of getting to the bottom of this and will make sure to keep FSB apprised of material developments.

Many thanks,

Nick AKA Loan Number 505261253

[Quoted text hidden]

--

Nick Wilson

Nicholas Wilson <nfwilson1990@gmail.com>
To: jhoffsher@gmail.com

Thu, Sep 9, 2021 at 8:34 AM

starting to take some baby steps

[Quoted text hidden]

--

Nick Wilson

Duke University School of Law
Juris Doctor, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	15 TH JUDICIAL CIRCUIT
 Nicholas F. Wilson,	)	
	)	Case No: 2023-CP-26-2475
	)	
Plaintiff,	)	
vs.	)	
	)	EXPERT AFFIDAVIT
	)	S.C. CODE ANN. § 15-36-100
Janet P. Gochenour; Janet P. Gochenour Trustee;	)	
James B. Parker; James B. Parker, Sr.; Mary Ann	)	
Parker; Kenneth Gregory Moore; R&G Corp.,	)	
d/b/a Century 21 The Harrelson Group; Patton	)	
Development SC, LLC; Mortgage Electronic	)	
Registration Systems, Inc.; Sonia M. Raymond;	)	
Raymond Law Firm, P.A.;	)	
	)	
Defendants.	)	
	)	

Personally appeared before me Erin Culbertson, who being duly sworn, deposes and says as follows:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I do not have personal knowledge of the facts of this case; however, I have studied documents produced to me by counsel for Nicholas F. Wilson ("Wilson").

2. I am an attorney licensed to practice law in South Carolina and North Carolina, as well as the federal court of South Carolina. My resume is attached, outlining my legal experience.

3. I was retained by counsel for Wilson to review materials and offer a preliminary opinion regarding claims for liability against attorney Sonia M. Raymond in connection with Ms. Raymond's dealings with Wilson as the purchaser of real property located a 4708 South Carolina 90, Conway, SC 29526 (the "Property").

4. In my professional opinion, a South Carolina court would conclude that Raymond Law Firm, P.A. (the "Firm"), and Ms. Raymond substantially deviated from the standard of care in connection with a real estate closing.

5. My opinion is based on the following factual and legal conclusions I have drawn from the facts as alleged in the Verified Complaint and as shown in the relevant documents.

6. I understand the following to be true:

a. Wilson entered into an Agreement/Contract: To Buy and Sell Real Estate (Residential/Condo) with Janet Gochenour ("Gochenour") on January 22, 2020 (the "Agreement").

b. The Agreement described the property to be conveyed from Gochenour to Wilson as 4708 Highway 90, Conway, SC 29526, bearing Horry County Tax Map # 36201010001 plus additional acreage.

c. The following day, on January 23, 2020, the parties entered into an Addendum/Amendment to the Agreement (the "First Amendment"), which required Gochenour to have the Property surveyed. Additionally the First Amendment specified that the Property must include at least eight (8) acres and include a fee-simple conveyance of the driveway used to access the Property from S.C. Highway 90 (the "Driveway").

d. Gochenour procured a survey of the Property as agreed. This survey is attached as Exhibit 1 to the Verified Complaint and referred to as the "Original Survey." The Original Survey, dated January 30, 2020, describes the Driveway as a 50' Shared Private Drive and further indicates that the existing 30' access road (created by a Right-of-Way/Easement recorded in the Horry County ROD Office in Book 607, at Page 687) was to be abandoned and replaced with the 50' Shared Private Drive. Wilson received, reviewed, and approved the

Original Survey, with the expectation that this Original Survey would be the basis for the conveyance of the Property at closing.

e. Subsequently, Gochenour procured a revised survey of the Property, dated February 10, 2020 (the "Revised Survey"), which deleted the description of the Driveway as a 50' Shared Private Drive, and instead referred to the Driveway as "Existing 30' Right of Way Easement," referencing the easement recording information above.

f. Wilson never received, reviewed, or approved the Revised Survey.

g. Wilson's lender procured an appraisal on the Property based upon the information contained in the Original Survey.

h. Wilson had no relationship with Ms. Raymond prior to the closing on the Property and was referred to her by his real estate agents.

i. On March 6, 2020, Wilson closed on the Property. The deed from Gochenour to Wilson conveyed the Property as described in the Revised Survey, not the Original Survey. Wilson was not given fee-simple title to the Driveway, as required by and bargained for in the Agreement, but only an easement.

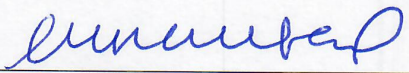
j. At the closing, Wilson was not shown a copy of the deed conveying the Property, the Revised Survey, or the legal description attached to his mortgage. Because Wilson was unaware of the existence of the Revised Survey, he had no reason to believe he needed to further verify the conveyance of the Property to him.

7. In my professional opinion, based on the facts set forth above and applicable law, the Firm and Ms. Raymond deviated from the standard of care in connection with a real estate closing in the following ways:

- a. The Firm and Ms. Raymond failed to ensure that the deed from Gochenour to Wilson conveyed the Property as required by and bargained for in the Agreement.
- b. The Firm and Ms. Raymond failed to provide Wilson with the Revised Survey.
- c. The Firm and Ms. Raymond failed to explain to Wilson that his interest in the Driveway was only that of an easement, not fee simple.

8. In my professional opinion, based on the facts set forth above and applicable law, the Firm and Ms. Raymond proximately caused damages to Wilson.

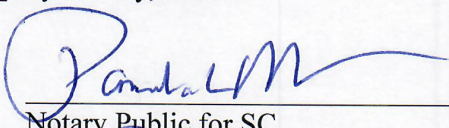
9. The opinions stated herein are necessarily dependent on the accuracy of the facts as set forth in Paragraph 6 above. I reserve the right to change or modify my opinions should additional or different facts come to my attention, and/or if I become aware of existing or future legal precedent that may affect the opinions I have set forth herein.


Erin Culbertson (SC Bar # 68271)

STATE OF SOUTH CAROLINA)
) Acknowledgment
COUNTY OF GREENVILLE)

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that Erin Culbertson personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 5 day of May, 2023.


Notary Public for SC
Print: Pamela L. Martin
My commission expires: 12/7/31

Erin Culbertson
10 Williams St.
Greenville, SC 29601
(864) 370-8222 (p) (864) 370-8227 (f)
erin@palmettolawfirm.com

CAREER EXPERIENCE

Culbertson Andrighetti, LLC, Attorney/Partner
August 2007 to present

Nelson & Culbertson, LLC, Attorney/Partner
August 2000 to August 2007

AREAS OF EXPERTISE

Real Estate Transactions (commercial and residential)
Real Estate Litigation (including landlord-tenant disputes, commercial and residential)
Banking Law, Foreclosures, Collections (both creditor and debtor)
Business Transactions and Litigation

EDUCATION

University of South Carolina School of Law, 1997-2000
Juris Doctor, 2000

Furman University, 1993-1997
Bachelor of Arts in English and Latin, 1997

Christ Church Episcopal School, 1980-1992

PROFESSIONAL LICENSES AND ASSOCIATIONS

South Carolina Bar Association, admitted in 2000
North Carolina Bar Association, admitted in 2006
Member, North Carolina State Bar, Greenville Bar Association, American Land Title Association, Palmetto Land Title Association, Greater Greenville Association of Realtors
Admitted to practice in all courts in South Carolina and North Carolina

COMMUNITY AND LEGAL SERVICE

Current Member, South Carolina Bar Association Ethics Advisory Committee
Current Member, 13th Judicial Circuit Resolution of Fee Disputes Board
Current Ethics Attorney, Greater Greenville Association of Realtors
Member, Greenville 2040 Steering Committee

Former Member, Palmetto Land Title Association Board of Directors
St. Andrew's Episcopal Church, Senior Warden 2021-2023
Greenville County Redevelopment Authority, 2010-2012
City of Greenville Board of Zoning Appeals, 2008-2010 (chair 2009-2010)
Volunteer, South Carolina Bar Association Pro Bono Program
Frequent speaker on legal real estate matters

WESLEY D. FEW, LLC

Attorney at Law

P.O. Box 9398, Greenville, South Carolina 29604

wes@wesleyfew.com | O: 864-527-5906

January 29, 2024

The Honorable Benjamin H. Culbertson

P.O. Box 479

401 Cleland St.

Georgetown, SC 29442

BCulbertsonSC@sccourts.org

RE: Nicholas F. Wilson v. Janet P. Gochenour et al, 2023-CP-26-02475
Receipt of Hearing Transcript
Motion to Alter or Amend, filed Sept. 18, 2023
Our File No.: 00334-001

Dear Judge Culbertson,

I represent the Plaintiff in the above-captioned action. Plaintiff has a pending Motion to Alter or Amend under Rule 59(e), filed Sept. 18, 2023, before your Honor. The motion relates to the order issued by Your Honor on Sept. 8, 2023, based on a Webex motion hearing on Sept. 7, 2023.

Attached is the transcript of the hearing before Your Honor on Sept. 7, 2023 in the above-referenced case. We received this last week. It is Plaintiff's position that his Rule 59 Motion to Alter or Amend (filed Sept. 18, 2023) and his Reply in Support of the same (filed Dec. 6, 2023) address all the issues set forth in the arguments of counsel at the hearing, as shown in this transcript. Specifically, Plaintiff's filings have distinguished the Fuller Ahrens¹ case on its facts. As shown in the transcript at pages 10, 21, and 27, this is the case defense counsel relied on at the hearing. The instrument in Fuller Ahrens was recorded in 1956. The lawsuit involved a partnership created 30 years later in 1986. This case is not cited in the Sept. 8, 2023 order for which the subject Motion to Alter or Amend relates.

Plaintiff does not plan to provide any further briefings to Your Honor's chambers, based on this transcript, unless requested to do so.

There are a few other developments Plaintiff wanted to bring to the Court's attention, as a part of our respectful request made herein for a decision on the pending Motion to Alter or Amend:

¹ Fuller-Ahrens Partnership v. S.C. Dept. of H'ways and Pub. Trans., 311 S.C. 177, 180, 427 S.E.2d 920, 922 (Ct. App. 1993),

- Plaintiff's Motion to Amend his Verified Complaint, filed Dec. 5, 2023, has been set for a hearing on Feb. 26, 2024 at 9:30 a.m. via Webex before The Honorable H. Stephen DeBerry, IV;
- The Clerk issued a Notice of ADR on Jan. 10, 2024;
- The lender filed a foreclosure action on Jan. 23, 2024, Case No. 2024-CP-26-00567 and the *Lis Pendens* is at 2024-LP-26-00058;

We have attached a copy of the roster for the Feb. 26, 2024 hearings.

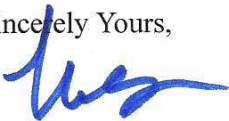
With respect to the recently filed foreclosure action, the lender also has a claim in this case for declaratory judgment to reform their mortgage. This claim is consistent with the Plaintiff's claims in this action. The pending foreclosure action is for a 7.75 acres of property, whereas Plaintiff's contract amendment dated Jan. 23, 2020 specifically bargained for the driveway (Tract D) to be included, and total acreage to be over 8 acres. The lender's survey relied upon to make the loan includes only the "original survey" provided to Plaintiff showing Tracts A, B, C, and D for a total of 8.24 acres. Plaintiff believes the mortgage foreclosure cannot go forward to completion until the mortgage reformation issue is resolved. Otherwise, we could get inconsistent rulings.

For all these reasons, Plaintiff is respectfully requesting a decision from Your Honor's chambers on the Motion to Alter or Amend so this case (and other related cases) can move forward.

Please let us know if the Court needs anything further from the Plaintiff or any of the other parties related to the Motion to Alter or Amend filed by the Plaintiff on Sept. 18, 2023.

With warm regards, I remain

Sincerely Yours,



Wesley D. Few

Enclosures

CC: All counsel of record and *pro se* parties (via email only):
 Bruce Wallace, Esq.
 Denise A. Leclerc, Esq.;
 Rhett D. Ricard, Esq.;
 Alexander Hray, Esq.;
 Claude Prevost, Esq.;
 J. Lucas Richardson, Esq.;
 Matt Patterson, Esq.;
 Blake Williams, Esq.;
 William Luse, Esq.;

Mary Ann Parker (pro se)
James Parker (pro se)

Attachments:

Hearing Transcript, Sept. 7, 2023;
Horry County CPNJ Motions Roster for Feb. 26, 2024;