

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NO. 2012-CP-42-0213

Magdalene Ratcliff

Herman E. Peeler and David S. Parker

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Alexander Hray, Jr., Esq.	Attorney for: <input type="checkbox"/> Plaintiff	<input checked="" type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order Statement of Judgment by the Court:

ORDER INFORMATION

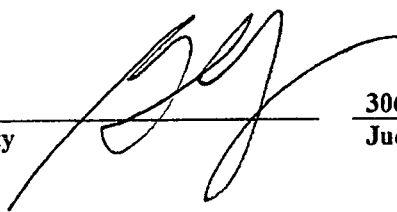
This order ends does not end the case.
Additional Information for the Clerk :

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

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

Gordon G. Cooper, Master-in-Equity



3065
Judge Code

9-05-2013
Date

For Clerk of Court Office Use Only

This judgment was entered on the 5 day of Sept, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 5 day of Sept, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Samuel Frank Adams, Esq.
1082 Boiling Springs Road
Spartanburg, SC 29303

Alexander Hray, Jr., Esq.
389 Esat Henry Street, Suite 107
Spartanburg, SC 29302

ATTORNEY FOR PLAINTIFF(S)

ATTORNEY FOR DEFENDANT(S)

M. Hope Blackley
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1

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

Multiple horizontal lines for additional information.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2012-CP-42-00213

Magdalene Ratcliff,)
)
Plaintiff,)
vs.)
)
Herman E. Peeler and David)
S. Parker,)
)
Defendants.)
_____)

ORDER

The foregoing civil action was referred to me by Order of Clerk of Court for Spartanburg County, South Carolina filed of record on February 4, 2013 and came before me for a trial on the merits on June 18, 2013. The record reflects that the Plaintiff filed her Summons and Complaint on January 19, 2012 and the Defendant, Herman E. Peeler (herein "Peeler") in response filed his Summons, Answer and Counterclaim and Lis Pendens on March 20, 2012. The Defendant, David S. Parker (herein "Parker") has failed to file responsive pleadings and is therefore in default. The parties have been properly joined in this action and the court has jurisdiction over the parties and the matter in controversy.

The issues to resolve in this civil action pertain to the rights of the Plaintiff and Peeler with respect ownership of a certain parcel of real estate the property located in Spartanburg County, South Carolina are fully described in Exhibit "A" attached hereto and made a part of this order (the "Property") as well as certain ancillary rights related to the Property.

Based upon the testimonial and documentary evidence presented at the trial I hereby make the following,

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FINDINGS OF FACT

1. The Property had at one time been owned by Parker.
2. A building (the "Improvements") had been located upon the Property and, while the Property was owned by Parker, the same had been leased to, and occupied by, the Plaintiff.
3. While being leased to Plaintiff by Parker the Plaintiff used the Property and the Improvements thereon as a daycare facility.
4. Parker failed to pay federal income taxes and a federal tax lien, or liens, (the "Tax Liens") was filed as to Parker.
5. The United States Internal Revenue Service ("IRS"), pursuant to its rights under the Tax Liens, auctioned the Property for sale (the "Tax Sale").
6. The Tax Sale was conducted on February 6, 2009 and the Plaintiff was the successful bidder at the Tax Sale having bid the sum of One Hundred Four Thousand Seven Hundred Ninety-five and 12/100 Dollars (\$104,795.12) (the "Bid").
7. On the date of the Tax Sale, after making the successful Bid, the Plaintiff paid to the IRS the sum of Thirty Thousand and No/100 Dollars (\$30,000.00) as a deposit (the "Deposit") on the Bid as was required by the IRS.
8. The sale notice for the Tax Sale provided that the successful bidder, Plaintiff, had to comply with the bid by March 27, 2009 by paying the balance due thereon; otherwise, the Deposit would be forfeited.
9. The balance due on the Bid was the sum of Seventy Four Thousand Seven Hundred Ninety-five and 12/100 Dollars (\$74,795.12) (the "Balance") and Plaintiff did

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not have sufficient funds to pay the Balance and, Plaintiff was also unable to obtain a loan for the Balance due to insufficient creditworthiness.

10. The Plaintiff, along with her husband José Ratcliff (herein "José"), initiated contact with Peeler to assist in the resolution of Plaintiff's financial dilemma.

11. Prior to the Tax Sale Peeler, Plaintiff and José were mutual acquaintances, and friends and Peeler and José were also co-workers.

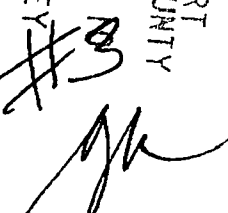
12. Other than as set forth in this Order, Plaintiff and Peeler did not enter into a written agreement concerning their respective rights and obligations regarding the Property.

13. Due to Plaintiff's inability to obtain funding for the Balance, Peeler, using his credit, negotiated and obtained a loan (the "Loan") from Woodruff Federal Savings and Loan Association ("Lender") in the sum of Seventy Thousand and No/100 Dollars (\$70,000.00).

14. The closing (the "Closing") of the Loan was handled through Magnolia Title Agency ("Magnolia") in Spartanburg, South Carolina at which Wesley Stoddard, Esq. serving as closing attorney ("Attorney") and the Closing occurred on April 2, 2009.

15. At, or prior to the closing of the Loan, Parker quitclaimed his interest in the Property to Peeler by executing and delivering to the Attorney a Quitclaim Deed (the "Quitclaim") which was recorded in Deed Book 93-P, at Page 199 in the Office of the Register of Deeds for Spartanburg County.

16. Both Plaintiff and Peeler were present at, and during, the Closing as was Attorney.

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17. At Closing Plaintiff, by written agreement (the "Assignment"), assigned all of her interest in the Bid to Peeler and the Assignment was recorded in Deed Book 99-X, at Page 880 in the Office of the Register of Deeds for Spartanburg County, South Carolina.

18. The Loan note, mortgage and other Loan documents made in favor of Lender were made solely by Peeler.

19. At the Closing Plaintiff paid no more than Nine Thousand and No/100 Dollars (\$9,000.00) towards the balance due as reflected on the Closing settlement statement which funds were combined with funds paid by Peeler as had been alleged in Plaintiff's Complaint.

20. At the Closing evidence that the Property was covered with property and casualty insurance was delivered to the Attorney and Magnolia by an Accord Binder (the "Binder") issued by Dan Fishner Insurance Agency and written by Scottsdale Insurance Company (the "Insurance") on which the named insured was ABC Learning Center, Magdalene Dupree (Plaintiff).

21. The Lender and Peeler were listed on the Binder as additional insureds.

22. At, or soon after, Closing, Magnolia forwarded the Balance of the Bid to the IRS transmitted by cover letter dated April 2, 2009 with instructions to prepare the tax deed from the IRS in the name of Peeler and to forward the original deed to Magnolia.

23. Subsequent to Closing Plaintiff continued to occupy the Property and operate the same as a daycare center and neither Peeler, nor any other party, occupied any portion of the Property.

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24. Plaintiff and Peeler testified consistently that while Plaintiff was occupying the Property the Plaintiff was to pay the Loan payment to the Lender, pay for insurance premiums, real estate taxes and all other Property related expenses.

25. On November 12, 2010, in contravention with instructions of Magnolia, a deed (the "Plaintiff's Deed") for the Property from the IRS to Plaintiff (incorrectly identified thereon as Magdalene "Ratliff") was recorded in the Office of the Register of Deeds for Spartanburg County in Deed Book 97-G, at Page 814.

26. In October 2010 the Improvements on the Property were totally destroyed by fire (the "Fire") and Plaintiff ceased occupying the Property.

27. After the Fire the Plaintiff ceased making any payments on the Loan although Loan payments continued become due.

28. The failure of the Plaintiff to make Loan payments have caused Peeler's credit rating to be adversely affected.

29. As evidenced by that certain letter for the Lender to Peeler dated November 29, 2010 the real estate taxes due on the Property for the year 2009 were not paid and Peeler was require to reimburse that Lender in the sum of Five Thousand Seven Hundred Sixty-six and 73/Dollars (\$5,766.73) for the taxes that Plaintiff failed to pay.

30. As a result of the Fire and resulting destruction of the Improvements a claim check (the "Check") was issued by TAPCO Underwriters, Inc., check number 181421, dated April 13, 2011 in the sum of One Hundred Fifty Thousand and No. 00 Dollars (\$150,000.00), made payable only to Plaintiff and Lender.

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31. The Check was endorsed by the Lender and put in the possession of the Plaintiff; however, the Check was never negotiated and therefore was not used to pay off the Loan.

32. A stop payment order was issued with respect to the Check and a replacement check ("Second Check") was issued, once again payable only to Plaintiff and Lender.

33. The Second Check was negotiated and a portion of the proceeds therefrom were used that payoff the then balance due on the Loan, being the sum of Sixty-nine Thousand Seven Hundred and 03/100 Dollars (\$69,700.03) and Plaintiff retained the balance of the Second Check proceeds being the sum Eighty Thousand Two Hundred Ninety-nine and 97/100 Dollars (\$80,299.97) ("Insurance Proceeds").

34. Both the Plaintiff and Peeler have expended funds to clear the Fire debris from the Property, the Plaintiff having spent One Thousand Five Hundred and No/100 Dollars (\$1,500.00).

35. The Plaintiff paid the Spartanburg County Real Estate Taxes assessed against the Property for tax year 2011 in the sum of Two Thousand Four Hundred Fifty-four and 88/100 Dollars (\$2,454.88); however, Plaintiff did not occupy the property during any of that year due to the destruction of the Improvements on the Property in 2010.

Bases upon the facts as found I hereby make the following,

CONCLUSIONS OF LAW

1. All the rights to the Plaintiff in the title to the Property were legally, and effectively assigned to Peeler by the Assignment.

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2. The payments made by Peeler towards the acquisition of the Property at the time of the Closing together with the detriment assumed by Peeler in incurring the debt on the Loan and placing his credit at risk in obtaining the Loan constituted sufficient consideration to support the Assignment. Valuable consideration to support a contract may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.

McPeters v. Yeargin Constr. Co., Inc., 290 S.C. 327, 350 S.E.2d 208 (Ct.App.1986).

3. That by the Plaintiff occupying and making use to the Property Peeler was entitled to rental therefor from the Plaintiff and the payment of the monthly installments due on the Loan, the property taxes and insurance premiums constituted rental for the Plaintiff's occupancy of the Property. From the evidence presented it is the finding of the court that the parties had entered into an oral agreement for a lease the Property from Peeler to Plaintiff on these terms being in effect a triple net lease.

4. From the evidence presented I find that Peeler was to have been a loss payee on the Insurance and in fact had been identified on the Binder as a loss payee. As the owner of the Property, Peeler was, and is, entitled to the Insurance Proceeds (net of the amount due to the Lender to pay off the Loan) in the sum of Eighty Thousand Two Hundred Ninety-nine and 97/100 Dollars (\$80,299.97). Peeler is further entitled to reimbursement for the 2009 taxes in the sum of Five Thousand Seven Hundred Sixty-six and 73/100 Dollars (\$5,766.73) which were Plaintiff's obligation to pay. Therefore, the sum due to Peeler from the Plaintiff is the sum of Eighty-six Thousand Sixty-six and 70/100 Dollars (\$86,066.70).

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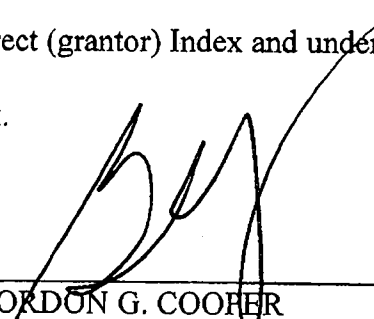
5. In equity the Plaintiff is entitled to credit against the sums due to Peeler for the Deposit paid [Thirty Thousand and No/100 Dollars (\$30,000.00)], the amount paid at Closing [Nine Thousand and No/100 Dollars (\$9,000.00)], the amount she paid for the cleanup of the Property after the Fire [One Thousand Five Hundred and No/100 Dollars (\$1,500.00)], and the amount paid for 2011 Real Estate Taxes [Two Thousand Four Hundred Fifty-four and 88/100 Dollars (\$2,454.88)] for a total credit of Forty-two ~~Thousand Nine Hundred Fifty-four and 88/100 Dollars (\$42,954.88).~~

Therefore, based on the facts and law I declare that the Plaintiff's Deed from the IRS was improperly made and the same is null and void and Peeler is the sole owner of fee simple title to the Property;

That Plaintiff pay to Peeler the sum of Forty-three Thousand One Hundred Eleven and 82/100 Dollars (\$43,111.82) representing the net sum due Peeler and that, failing to make payment, Peeler shall have judgment against Plaintiff in the sum of Forty-three Thousand One Hundred Eleven and 82/100 Dollars (\$43,111.82);

That this Order be filed in the Office of the Register of Deeds for Spartanburg County, South Carolina and I direct the said Registrar to index this Order under the names of Magdalene Ratcliff in the Direct (grantor) Index and under the name of Herman E. Peeler in the Indirect (grantee) Index.

IT IS SO ORDERED.



GORDON G. COOPER
MASTER IN EQUITY FOR SPARTANBURG
COUNTY

September 5, 2013
Spartanburg, South Carolina

A CERTIFIED COPY
M. Hope Blackley
CLERK OF COURT
SPARTANBURG COUNTY
BY: [Signature]
DATED 9-5-13

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EXHIBIT "A"

All that certain piece parcel or tract of land lying, being and situate in the County of Spartanburg, State of South Carolina in Beech Springs Township, approximately 3/4 mile east of the town of Lyman and is known as Lot Numbers 92 and 93 on a plat of H. S. Brockman dated October 14, 1944 and recorded in Plat Book 18 at Page 219 in the Office of the Register of Deeds for Spartanburg County, South Carolina.

Address: 200 S. Craft St., Wellford SCE 29301

Tax Map Number: 5 16-09 076.00

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