

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Circuit Court

Benjamin H. Culbertson, Circuit Court Judge
Case No. 2008-CP-22-00834

RECEIVED

APR 09 2012

S.C. Supreme Court

TRINITY INVESTMENTS, LLC,

Respondent,

v.

MARINA VENTURES, INC. and PIONEER PROPERTIES, INC.,

Petitioners

Revised APPENDIX

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Attorney for Respondent

Attorneys for Petitioners

Pursuant to South Carolina Appellate Court Rule 242(e), Petitioners submit the following materials as the Appendix accompanying their Petition for Writ of Certiorari:

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 08-CP-22-0834

Trinity Investments, LLC
Respondent,

v.

Marina Ventures, Inc., and Pioneer Properties, Inc.
Appellant

RECORD ON APPEAL

Dated: *March 10, 2010*

G. Turner Perrow, Esquire
Tidelands Law
606 Front Street
Georgetown, SC 29440
(843) 546-2900
South Carolina Bar #640598

Attorney for Appellant

Pursuant to Rule 209 South Carolina Appellate Court Rules, Appellant submits the following Record on Appeal.

I. ORDERS

1.	Formal Discharge Order 5/29/09	1
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STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-22-00834

BS

Trinity Investments, LLC,)
)
Plaintiff,)

vs.)

Marina Ventures, Inc. and)
Pioneer Properties, Inc.)
)
Defendant.)

ORDER DISCHARGING RECEIVER

FILED
2009 JUN -5 PM 1:04
CLERK OF COURT

This matter is before me pursuant to a Motion for Discharge of the Receiver filed the by Plaintiff. It appears that Johnnie J. Young, the court-appointed Receiver for Pioneer Properties, Inc. and Marina Ventures, Inc. has faithfully executed his duties as Receiver under the Order of this Court dated November 7, 2008. It further appears from the Receiver's Report dated March 25, 2009, that the Receiver has conveyed the real property, contents, and equipment to Trinity Investments, LLC, in consideration of the balance of the indebtedness owed by Pioneer Properties, Inc. and Marina Ventures, Inc. and cancellation thereof. It appears that the Receiver has followed the prior Orders of the Court in all respects and that he should be discharged.

IT IS, THEREFORE

ORDERED, that the court-appointed Receiver, Johnnie J. Young has fully executed his duties and has acted in accordance with the Order of Appointment. It is further,

ORDERED, that the Receiver is discharged; and

IT IS SO ORDERED.

May 29, 2009

Benjamin H. Culbertson
Benjamin H. Culbertson, Presiding Judge
Court of Common Pleas

Trinity Investments, LLC
PLAINTIFF(S)

Marina Ventures, Inc., et al.
DEFENDANT(S)

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 CLOWN COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
 GEORGETOWN COUNTY, S.C.
 2009 MAY 27 A 8:36 PM
 ANNA Y. WHITE
 CLERK OF COURT

IT IS ORDERED AND ADJUDGED: See attached order. (Formal order to follow) Statement of Judgment by the Court:

*Motion For Discharge of Receiver is granted.
(Attorney Laura M. Moyer is to prepare order).*

Dated at Georgetown, South Carolina, this 22nd day of May, 2009.

Benjamin H. Culbertson

**Benjamin H. Culbertson
PRESIDING JUDGE**

This judgment was entered on the 27th day of May, 2009, and a copy mailed first class this 27th day of May, 2009 to attorneys of record or to parties (when appearing pro se) as follows:

Laura M. Moyer
Robert W. Maring
ATTORNEY(S) FOR THE PLAINTIFF(S)

None
ATTORNEY(S) FOR THE DEFENDANT(S)

Barbara Small & Depert
CLERK OF COURT

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2008CP2200834

Trinity Investments LLC vs. Marina Ventures Inc

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:

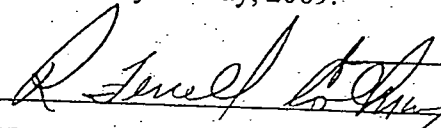
IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Real Property: Case Continued until June 22, 2009 term

FILED
GEORGETOWN COUNTY, S.C.
2009 MAY 27 P. 1:29 PM
ALMA Y. WHITE
CLERK OF COURT

Dated at Georgetown, South Carolina, this 26th day of May, 2009.

Court Reporter: Brenda Babb


PRESIDING JUDGE - Honorable R. Ferrell Cothran Jr.

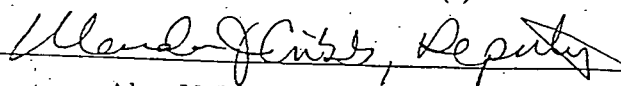
This judgment was entered on the ^{27th} day of May, 2009, and a copy mailed first class this ^{27th} day of May, 2009, to attorneys of record or to parties (when appearing pro se) as follows:

Laura Mitchum Moyer Maring Law Firm, PA
P.O. Box 478 Georgetown, SC 29442
Robert W Maring Post Office Box 478
Georgetown, SC 29442

Marina Ventures Inc C/O Julie Parker Green,
Owner ,
Pioneer Properties Inc C/O Julie Parker Green,
Owner ,

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)


Alma Y. White - Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 Trinity Investments, LLC,)
)
 Plaintiff,)
 vs.)
)
 Pioneer Properties, Inc., and Marina,)
 Ventures, Inc.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTEENTH JUDICIAL CIRCUIT
 CASE No. 08-CP-22-00834

ORDER DENYING MOTION FOR RECONSIDERATION

2009 APR -6 AM 9:36
 CLARA J. WHITE
 CLERK OF COURT
 15th JUDICIAL CIRCUIT, S.C.

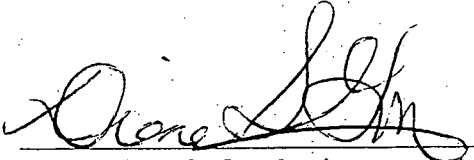
This matter came before this Court by way of Defendant's motion to reconsider brought forth pursuant to South Carolina Rules of Civil Procedure 59. The Order Appointing a Receiver was filed November 18, 2008. The motion to reconsider was served on the Court on March 24, 2009.

Further, notice by publication was completed on December 18, 2008. The motion to reconsider is outside the 10 days given to make such a motion by South Carolina Rules of Civil Procedure 59(b).

The individual who submitted this motion is the purported sole owner of the Defendants. The Defendants are South Carolina corporations and accordingly must be represented by counsel in the Circuit Court. Renaissance Enterprises, Inc., V. Summit Teleservices, 334 S.C. 649, 515 S.E.2d 257 (1999).

Because the Defendant's motion does not raise any novel issues for the Court's consideration, the motion is untimely, and the motion was made by an unrepresented individual on behalf of a corporation, the Defendant's motion to reconsider is denied.

AND IT IS SO ORDERED!


 Judge Diane S. Goodstein
 First Judicial Circuit

March 26, 2009

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Kenneth L. Mitchum,
Respondent.

Opinion No. 26514
Submitted June 3, 2008 – Filed June 30, 2008

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel,
and Ericka M. Williams, Assistant Disciplinary
Counsel, both of Columbia; for Office of
Disciplinary Counsel

Kenneth L. Mitchum, of Georgetown, pro se.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21, RLDE, Rule 413, SCACR. In the Agreement, respondent admits misconduct and consents to the imposition of a public reprimand or a definite suspension not to exceed two years pursuant to Rule 7(b), RLDE, Rule 413, SCACR. We accept the agreement and suspend respondent from the practice of law in this state for nine months. The facts, as set forth in the Agreement, are as follows.

FACTS

Respondent admits the following with regard to his representation of a client:

1. Respondent filed suit on behalf of the client, but took no further action thereafter, resulting in the case being dismissed. Respondent failed to notify the client that the case had been dismissed and failed to restore the case within the time period set forth in Rule 40, SCRCP.
2. Respondent falsely represented to the client he had filed suit on her behalf in another matter. When he eventually filed the suit, he failed to effect

service on the defendants despite representing to the client that he had done so.

3. In a matter before the State Board of Education, respondent failed to notify the client of the Board's decision to suspend her teaching certificate. The client did not learn of the suspension until after the period for appeal had expired. In this same matter, respondent recommended the client file suit against the Board and thereafter assured her he had filed such a suit on her behalf when in fact he never filed the suit.
4. Respondent assisted the client in receiving a loan and signed as guarantor of the loan. When the client refused to make further payments on the loan, respondent satisfied the loan.
5. Respondent failed to keep the client reasonably informed of the status of her cases and failed to promptly comply with the client's reasonable requests for information.

Law

Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (a lawyer shall provide competent representation, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation, to a client); Rule 1.2 (a lawyer shall abide by a client's decisions concerning the objectives of representation and consult with the client as to the means by which they are to be pursued); Rule 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); Rule 1.4 (a lawyer shall consult with a client about the client's case, keep the client reasonably informed about the case and promptly respond to reasonable requests for information); Rule 1.8(e) (a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter and a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client); and Rule 8.4(a) (it is professional misconduct for a lawyer to violate the Rules of Professional Conduct). Respondent also admits that he has violated Rule 7 (a)(1) of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, by violating the Rules of Professional Conduct.

Conclusion

We find a nine month suspension is the appropriate sanction for respondent's misconduct. Accordingly, we accept the Agreement for Discipline by Consent and suspend respondent from the practice of law for nine months. Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR.

DEFINITE SUSPENSION.

TOAL, C.J., MOORE, WALLER, PLEICONES and BEATTY, JJ., concur.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 Trinity Investments, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Marina Ventures, Inc. and)
 Pioneer Properties,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE NO. 2008-CP-22-00834

MOTION AND ORDER FOR
 APPOINTMENT OF A RECEIVER

FILED
 GEORGETOWN COUNTY, S.C.
 2008 NOV 18 AM 11:15
 ALAN J. WHITE
 CLERK OF COURT

It appears that it is necessary and proper that Johnnie J. Young be appointed as Receiver for the Defendants. It further appears that Johnnie J. Young has consented to serve as Receiver for the Defendants. It is, therefore

ORDERED, that Johnnie J. Young is appointed as Receiver for the above-named Defendants.

IT IS SO ORDERED.

~~October~~ ^{Nov} 7, 2008

Benjamin H. Culbertson
 D. GOODSTEIN Benjamin H. Culbertson, Presiding Judge
 Court of Common Pleas

I so move:

Laura M. Moyer
 Laura M. Moyer
 Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2008-CP-22-00834

Trinity Investments, LLC,)
)
Plaintiff,)
)
vs.)
)
Marina Ventures, Inc. and)
Pioneer Properties,)
)
Defendants.)

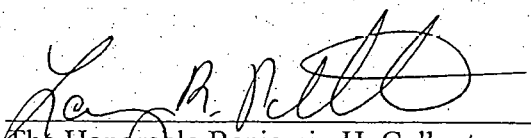
MOTION AND ORDER FOR
SUBSTITUTION OF COUNSEL

FILED
GEORGETOWN COUNTY, S.C.
2008 NOV 17 PM 4:06
ALMA Y. WHITE
CLERK OF COURT

This matter came before the court upon the below motion of the Maring Law Firm, P.A., attorneys for Plaintiff Trinity Investments, LLC, for an Order substituting Laura M. Moyer of the Maring Law Firm, P.A., as attorney of record for Plaintiff Trinity Investments, LLC.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Laura M. Moyer of the Maring Law Firm, P.A., be substituted for the Mitchum Law Firm, P.A. as the attorney of record for Plaintiff Trinity Investments, LLC.

IT IS SO ORDERED.


The Honorable Benjamin H. Culbertson
Fifteenth Judicial Circuit *Larry R. Patterson*

November
October 11, 2008
Georgetown, SC

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
NORTH COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2003 CP - 22 - 681

Trinity Investments LLC

Pioneer Properties Inc
et. al.

PLAINTIFF(S)

DEFENDANT(S)

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 _____

2005 JUN 16 1:31 PM
CLERK

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

Order to follow per Atty Mitchum.

dated at Georgetown, South Carolina, this 15 day of June, 2005.

[Signature]
PRESIDING JUDGE

This judgment was entered on the 16 day of June, 2005, and a copy mailed first class this 16 day of June, 2005 to attorneys of record or to parties (when appearing pro se) as follows:

Trinity Investments LLC

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
NORTH E COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2003 CP-22-681

Trinity Investments
LLC

Pioneer Properties
Inc. et al.

PLAINTIFF(S)

DEFENDANT(S)

2005 APR 12 PM 4:05
CLERK OF COURT

HECK 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 _____

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

Continued till 6-13-05.

Entered at Georgetown, South Carolina, this 12TH day of April, 20 05

[Signature]
PRESIDING JUDGE

Judgment was entered on the 12 day of April, 20 05, and a copy mailed first class this 12 day of April, 20 05 to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth L. Mitabum

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
Appx

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2003 CP - 22 - 681

Trinity Investments

Pioneer Properties, Inc

PLAINTIFF(S)

DEFENDANT(S)

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.
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- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____

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

Continued til 4-11-05, Defendant deceased documents to follow.

Dated at Georgetown, South Carolina, this 7 day of February, 2005.

Paul W. [Signature]
PRESIDING JUDGE

This judgment was entered on the 9 day of Feb, 2005, and a copy mailed first class this 10 day of Feb, 2005 to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth L. Mitchum

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

13
Appx Wanda J. Childs, Deputy
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

PROBATE COURT

IN THE MATTER OF WALTER F GREEN

CASE NUMBER 2004ES2600699

FIDUCIARY LETTERS

PERSONAL REPRESENTATIVE

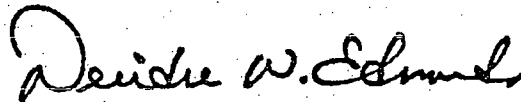
On the 24th day of MAY , 2004, JULIE PARKER GREEN

was appointed and qualified as Fiduciary of the above matter by this Court,
with all the authority granted to a fiduciary by law.

NOW, THEREFORE, LETTERS are issued as evidence of such appointment,
qualification, and authority of the above fiduciary(ies) to do and to perform
all acts which may be authorized by law.

RESTRICTIONS:

Executed this 24th day of MAY , 2004.



Deirdre W. Edmonds
Probate Court Judge

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2001-CP-22-080

Carolina First Bank,)
)
Plaintiff,)
)
vs.)
)
Pioneer Properties, Inc.,)
et al.,)
)
Defendants.)

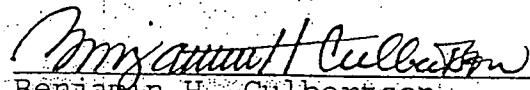
ORDER OF DISMISSAL WITHOUT
PREJUDICE

FILED
GEORGETOWN COUNTY
MAY -6 AM 10:23
CLERK OF COURT

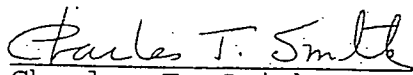
THIS MATTER is before the Court upon motion of the Plaintiff for a voluntary nonsuit. The Plaintiff desires to discontinue this action and no counterclaim or cross-claim has been pled. NOW, THEREFORE, it is

ORDERED that this action be and the same is hereby dismissed without prejudice and the Clerk of Court is directed to cancel the Lis Pendens filed herein.

DONE AND ORDERED at Georgetown, South Carolina, this 6th day of May, 2002.


Benjamin H. Culbertson
Master in Equity for
Georgetown County

I SO MOVE:


Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440
Attorney for the Plaintiff

NOTICE OF INTENT TO APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No: 2008-CP-22-0834

Pioneer Properties, Inc. and Marina Ventures, Inc.Appellants,

v.

Trinity Investments, LLC.....Respondent.

NOTICE OF APPEAL

Pioneer Properties, Inc. and Marina Ventures, Inc. appeals the Order of the Honorable Benjamin H. Culbertson, dated May 29, 2009.

June 26, 2009

G. Turner Perrow
G. Turner Perrow
606 Front Street
Georgetown, South Carolina 29440
(843) 546-2900
Attorney for Appellants

ALMA Y. WHITE
CLERK OF COURT

2009 JUN 26 PM 1:22

FILED
GEORGETOWN COUNTY, S.C.

Other Counsel of Record:

Laura M. Moyer, Esquire
Post Office Box 478
Georgetown, SC 29442
Attorney for Respondent
(843) 545-9544

MARIBEL V JAMES. MARING LAW FIRM, P.A.
P.O. BOX 478
GEORGETOWN SC 29442-0478

08-0834

FILED
CLERK OF COURT

2009 MAY 15 PM 2:04

FILED
CLERK OF COURT

AFFIDAVIT OF PUBLICATION

The Post and Courier

State of South Carolina

County of Charleston

Personally appeared before me the undersigned advertising clerk of the above indicated newspaper published in the city of Charleston, county and state aforesaid, who, being duly sworn, says that the advertisement of

(copy attached)

appeared in the issues of said newspaper on the following day(s):

05/10/09 Sun PC
05/10/09 Sun CNW

at a cost of \$120.81
Account# 205684
Order# 96883
P.O. Number:

Subscribed and sworn to before

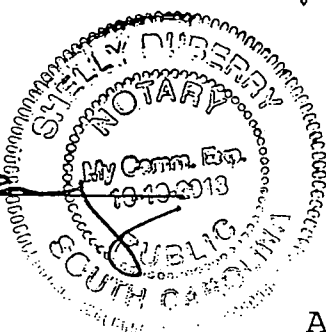
me this 12th day

of May

A.D. 2009

Beirba Leding
advertising clerk

Shelly D. Berry
NOTARY PUBLIC, SC
My commission expires



STATE OF SOUTH CAROLINA, COUNTY OF GEORGETOWN, IN THE COURT OF COMMON PLEAS, FIFTEENTH JUDICIAL CIRCUIT, CASE NO.: 2008-CP-22-00834, NOTICE OF HEARING
Trinity Investments, LLC
Plaintiff
vs
Marina Ventures, Inc. and Pioneer Properties, Inc.
Defendant
TO THE ABOVE NAMED DEFENDANTS NOTICE IS HEREBY GIVEN that Plaintiff will move for the discharge of the receiver in the matter of Trinity Investments, LLC vs Marina Ventures, Inc. and Pioneer Properties, Civil Action No.: 2008-CP-22-00834, at 9:30 A.M. on May 22, 2009 in the Georgetown County Courthouse located at 715 Prince Street, Georgetown, South Carolina. Dated this 6th day of May, 2009 at Georgetown, South Carolina.
MARING LAW FIRM
P.A.
Laura M. Moyer
1120 Highmarket Street
P.O. Box 478
Georgetown, SC
29442-0478
Telephone: (843) 545-7544
Attorney for Plaintiff
AD #96883

COUNTY OF GEORGETOWN

434

IN THE COURT OF COMMON PLEAS

Trinity Investments, LLC

Plaintiff

CASE NO.

2008-CP-22-00834

v.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Marina Ventures, Inc. And Pioneer Properties, Inc

Defendant.

Plaintiff's Attorney: Laura M. Moyer, Bar No. 75107 Address: Post Office Box 478 Georgetown, SC 29442 phone: (843) 545-9544 fax: (843) 545-9735 e-mail: lm@robertmaringlaw.com other:	Defendant's Attorney: , Ba r No. Address: phone: 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: Motion for Discharge of Receiver
 Estimated Time Needed: 30 minutes 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.

Laura M. Moyer
 Signature of Attorney for Plaintiff / Defendant
 Date submitted: May 5, 2009

SECTION III: Motion Fee
 PAID - AMOUNT: \$25.00
 EXEMPT: Rule to Show Cause in Child or Spousal Support
 (check reason) 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, SCRPC)
 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:

FILED
 GEORGETOWN COUNTY, S.C.
 ALMA Y. WHITE
 CLERK OF COURT
 2009 MAY -5 PM 2:25

JUDGE'S SECTION
 Motion Fee to be paid upon filing of the attached order.
 Other: _____
 JUDGE: _____
 CODE: _____ Date: _____

CLERK'S VERIFICATION
 Collected by: *[Signature]* Date Filed: 05/5/09
 MOTION FEE COLLECTED: 25.00
 CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-22-00834

Trinity Investments, LLC,)
)
Plaintiff,)

vs.)

Marina Ventures, Inc. and)
Pioneer Properties, Inc.,)
)
Defendants.)

MOTION FOR
DISCHARGE OF RECEIVER

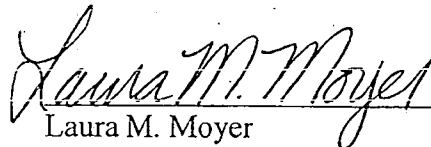
FILED
GEORGETOWN COUNTY, S.C.
2009 MAY -5 PM 2:25
ALMA Y. WHITE
CLERK OF COURT

TO: THE DEFEDANTS MARINA VENTURES, INC. AND
PIONEER PROPERTIES, INC.

PLEASE TAKE NOTICE that Plaintiff, through its undersigned attorney will move before the Presiding Judge on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order discharging the Receiver for Marina Ventures, Inc. and Pioneer Properties, Inc.

This motion is made on grounds of the report of the Receiver, Johnnie J. Young, that he has transferred the assets of said Defendants to its largest creditor Trinity Investments, LLC.

MARING LAW FIRM, P.A.



Laura M. Moyer
Attorney for the Plaintiff
1130 Highmarket Street
Post Office Box 478
Georgetown, SC 29442
Telephone: (843) 545-9544
Facsimile: (843) 545-9735

Georgetown, SC
May 5, 2009

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ~~COLLETON~~ ^{Georgetown})
)
 TRINITY INVESTMENTS, LLC)
)
 Plaintiff,)
)
 vs.)
)
 PIONEER PROPERTIES, INC.)
 And MARINA VENTURES, INC.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 08-CP-22-834

MOTION FOR RECONSIDERATION

TO THE PLAINTIFF AND PLAINTIFF'S COUNSEL:

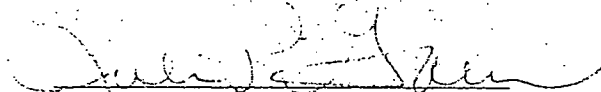
YOU WILL PLEASE TAKE NOTICE that the Defendant hereby moves before this Court for an Order setting aside, or in the alternative to amending, the Order Appointing a Receiver filed November 18, 2008 in this case, on the grounds that the Defendant corporations are solely owned by Julie Parker Green, the Movant herein, and have filed an Answer and Counterclaim in this matter against the Plaintiff on August 6, 2008, but have never been served with the action or the said Order. Despite submitting an affidavit to the Court to the contrary, The Plaintiff and Plaintiff's counsel knew where to serve the Defendants, spoke to the Movant, and then proceeded to purportedly serve the action by publication.

The Movant will show the Court that the Movant is the sole owner of the Defendants, which are the owners of the property described in the Complaint, by virtue of the Will of Walter F. Green filed in his estate in Horry County, South Carolina. The Movant would show unto the Court that collection under the Notes and Mortgages described in the Complaint is barred by the applicable statutes of limitations. The

obligations under the said Notes and Mortgages were accelerated in 2001 and were fully due and payable at that time, by Order of this Court in case number 01-CP-22-080. More than six (6) years has passed since then. The aforesaid Walter F. Green died in 2004, and the Plaintiff's claims, if any, were not asserted properly in his estate. The Plaintiff filed a previous foreclosure in this Court in 2005 which was dismissed under SCRPC Rule (40)j, and more than three (3) years has passed since then.

The Movant is therefore informed and believes that the Plaintiff's notes and mortgages are null and void, and that this Court should rescind the Order appointing the Plaintiff's principal receiver.

Respectfully submitted:



Julie Parker Green, Sole Owner of
The Defendants

Georgetown, South Carolina
March 20, 2009

STATE OF SOUTH CAROLINA)

} AFFIDAVIT OF PUBLICATION

COUNTY OF GEORGETOWN)

Personally appeared before me M. P. Swenson who, being duly sworn, says that she is the Publisher of Coastal Observer, a weekly newspaper of general circulation in the County of Georgetown, State of South Carolina; and that the attached legal notice appeared in its issue(s) of 12/18/08

ORDER FOR PUBLICATION of a and Appointment of a Receiver State of South Carolina, County of Georgetown in the Court of Common Pleas Fifteenth Judicial Circuit Case No. 2008-CP-22-00834 Trinity Investments, LLC, Plaintiff vs Marina Ventures, Inc. and Pioneer Properties, Defendant This matter is before me pursuant to a Motion to Permit Publication of Appointment of a Receiver filed by Plaintiff in the legal notices section of the Coastal Observer. It appears that it is necessary and proper that Public Notice of Appointment of a Receiver for the Defendants be given by publication once in the Coastal Observer of the appointment of Johnnie L. Young as Receiver for the Defendants. It further appears and I so find that the Coastal Observer is a newspaper of general circulation within Georgetown County and is a proper newspaper for publication of same and giving public notice of the appointment. It is, therefore ORDERED that the attached Notice of Appointment of a Receiver be published once in the Coastal Observer, a newspaper of general circulation in Georgetown County, and IT IS SO ORDERED. Allison Renee Lee, Presiding Judge Court of Common Pleas September 24, 2008

M. P. Swenson

Witness

SWORN to before me this 18th day of December, 2008

Betty T. Burdette (L.S.)
Notary Public in and for S.C.

BETTY T. BURDETTE
Notary Public
State of South Carolina
Commission Expires Sept. 29, 2018

ALISON L. WHITE
CLERK OF COURT

2008 DEC 23 PM 12:12

FILED
GEORGETOWN COUNTY, S.C.

Trinity Investments, LLC
 Plaintiff

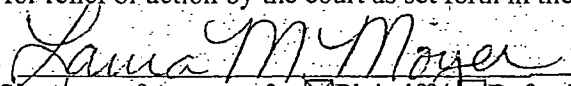
v.

Marina Ventures, Inc. And Pioneer Properties
 Defendant.

CASE NO.
2008-CP-22-884

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

FILED
GEORGETOWN COUNTY, S.C.
2008 NOV 18 AM 11:17
ALLEN WHITE
CLERK OF COURT

Plaintiff's Attorney: Laura M. Moyer, Bar No. 75107 Address: Post Office Box 478 Georgetown, SC 29442 phone: (843) 545-9544 fax: (843) 545-9735 e-mail: lm@robertmaringlaw.com other:	Defendant's Attorney: _____, Bar No. _____ Address: phone: _____ fax: _____ e-mail: _____ other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Order for Publication Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> 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 <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	November 18, 2008 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: _____ <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> 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: _____ <input checked="" type="checkbox"/> Other: Order for Publication	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE: _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____	Date Filed: _____
<input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

Trinity Investments, LLC

Plaintiff

CASE NO.

2008-CP-22-00834

v.

Marina Ventures, Inc. And Pioneer Properties

Defendant.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

FILED
GEORGETOWN COUNTY, S.C.
2008 NOV 18 AM 11:15
ANITA Y. WHITE
CLERK OF COURT

Plaintiff's Attorney: Laura M. Moyer, Bar No. 75107 Address: Post Office Box 478 Georgetown, SC 29442 phone: (843)545-9544 fax: (843)545-9735 e-mail: lm@robertmaringlaw.com other:	Defendant's Attorney: , Bar No. Address: phone: fax: e-mail: other:
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- 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)

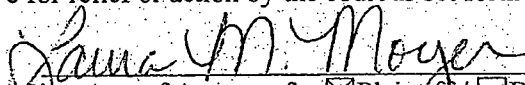
SECTION I: Hearing Information

Nature of Motion: Appointment of Receiver
 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

November 18, 2008
 Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: 25.00
 EXEMPT: Rule to Show Cause in Child or Spousal Support
 (check reason) 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, SCRPC)
 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

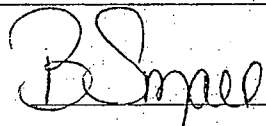
- Motion Fee to be paid upon filing of the attached order.
 Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by:


 B. Smee

Date Filed: 11/18/08

- MOTION FEE COLLECTED: 25.00
 CONTESTED - AMOUNT DUE:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

Trinity Investments, LLC,)
)
Plaintiff,)

vs.)

Marina Ventures, Inc. and)
Pioneer Properties,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-22-00834

FILED
GEORGETOWN COUNTY, S.C.
2008 NOV 18 AM 11:17
ALLEN V. WHITE
CLERK OF COURT

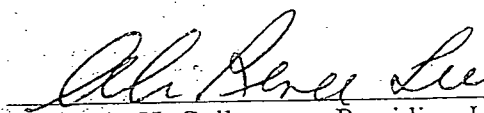
ORDER FOR PUBLICATION OF A
AND APPOINTMENT OF A RECEIVER

This matter is before me pursuant to a Motion to Permit Publication of Appointment of a Receiver filed the by Plaintiff in the legal notices section of the Coastal Observer. It appears that it is necessary and proper that Public Notice of Appointment of a Receiver for the Defendants be given by publication once in the Coastal Observer of the appointment of Johnnie J. Young as Receiver for the Defendants. It further appears and I so find that the Coastal Observer is a newspaper of general circulation within Georgetown County and is a proper newspaper for publication of same and giving public notice of the appointment. It is, therefore

ORDERED, that the attached Notice of Appointment of a Receiver be published once in the Coastal Observer, a newspaper of general circulation in Georgetown County, and

IT IS SO ORDERED.

September 24, 2008


Benjamin H. Culbertson, Presiding Judge
Court of Common Pleas

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-22-00834

Trinity Investments, LLC,)
Plaintiff,)
vs.)
Marina Ventures, Inc. and)
Pioneer Properties,)
Defendants.)

NOTICE OF APPOINTMENT OF
A RECEIVER

FILED
GEORGETOWN COUNTY, S.C.
2008 NOV 18 AM 11:15
ALMA Y. WHITE
CLERK OF COURT

NOTICE is hereby given that pursuant to the Order of The Honorable Diane S. Goodstein, Presiding Judge of the Court of Common Pleas, Johnnie J. Young has been appointed as receiver for Marina Ventures, Inc. and Pioneer Properties.

November 12, 2008

MARING LAW FIRM, P.A.
Laura M. Moyer
Laura M. Moyer
Attorney for the Plaintiff
1130 Highmarket Street
Post Office Box 478
Georgetown, SC 29442
(843) 545-9544

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2008-CP-22-00834

Trinity Investments, LLC,)
Plaintiff,)

vs.)

Marina Ventures, Inc. and)
Pioneer Properties,)
Defendant.)

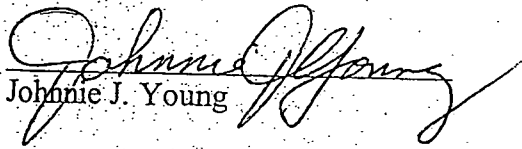
CONSENT TO SERVE AS RECEIVER

FILED
GEORGETOWN COUNTY S.C.
2008 NOV 18 AM 11:15
ALMA Y. WHITE
CLERK OF COURT

I, Johnnie J. Young, of Georgetown, South Carolina hereby consent to serve as the receiver for Marina Ventures, Inc. and Pioneer Properties.

Georgetown, SC
October 17, 2008

I consent:


Johnnie J. Young

COUNTY OF COLLETON)

CASE NO. 08-CP-22-834

TRINITY INVESTMENTS, LLC)

Plaintiff,)

vs.)

ANSWER AND COUNTERCLAIM

PIONEER PROPERTIES, INC.)
And MARINA VENTURES, INC.,)

Defendants.)

FILED
HARRIS COUNTY, S.C.
2008 AUG - 6 PM 3: 05
ALINA Y. WHITE
CLERK OF COURT

The sole owner of the Defendants, Julie Parker Green, answering the Plaintiff's Complaint, states as follows:

FOR A FIRST DEFENSE

ONE: All of the allegations of the Plaintiff's Complaint are hereby denied unless hereinafter specifically admitted.

TWO: The Julie Parker Green ("Green") is the sole owner of the Defendants, which are the owners of the property described in the Complaint, by virtue of the Will of Walter F. Green filed in his estate in Horry County, South Carolina.

THREE: The Plaintiff's Complaint fails to state a cause of action and should be dismissed.

FOUR: The Plaintiff's request to be appointed receiver should be denied.

FOR A SECOND DEFENSE

FIVE: The allegations of the above paragraphs are incorporated herein and made part hereof as if set forth verbatim.

SCANNED

property described in the Complaint have been sold at tax sale to two (2) individuals who are not parties to this action and who are indispensable to the resolution thereof. Green is the only person with an interest in redeeming the property back into the names of the Defendants, which she owns, and has until later this year to do so.

SEVEN: The Defendants are therefore informed and believe that the relief requested by the Plaintiff should be denied.

FOR A THIRD DEFENSE
AND BY WAY OF COUNTERCLAIM

EIGHT: The allegations of the above paragraphs are incorporated herein and made part hereof as if set forth verbatim.

NINE: The Defendants would show unto the Court that collection under the Notes and Mortgages described in the Complaint is barred by the applicable statutes of limitations.

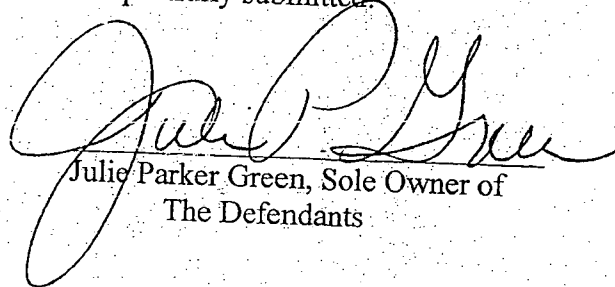
TEN: The obligations under the said Notes and Mortgages were accelerated in 2001 and were fully due and payable at that time, by Order of this Court in case number 01-CP-22-080. More than six (6) years has passed since then.

ELEVEN: The aforesaid Walter F. Green died in 2004 and the Plaintiff's claims, if any, were not asserted properly in his estate. The Plaintiff filed a previous foreclosure in this Court in 2005 which was dismissed under Rule (40)j, and more than one year, and more than three (3) years has passed since then.

TWELVE: The Defendants are informed and believe that the Plaintiff's notes and mortgages are null and void, and that this Court should so declare and Order their removal from the public records

WHEREFORE, the Defendants pray that the relief requested by the Plaintiff be denied, that the Plaintiffs' Complaint be dismissed with prejudice, for the relief requested in the Counterclaim, and for such other and further relief as the Court deems just and proper.

Respectfully submitted:



Julie Parker Green, Sole Owner of
The Defendants

Georgetown, South Carolina
August 1, 2008

Trinity Investments, LLC
Plaintiff

vs.

Marina Ventures, Inc. and
Pioneer Properties, Inc.,
Defendants.

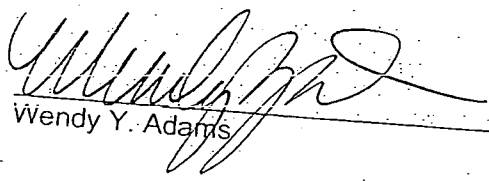
AFFIDAVIT

FILED
JUN 20 PM 4:44
CLERK OF COURT
ANDREWS COUNTY, S.C.

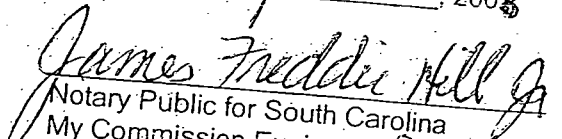
Personally appeared before me the undersigned who after being duly sworn deposes and says:

1. She is a principal in the Plaintiff;
2. The Plaintiff owns and holds title to a note and mortgage encumbering the real property described as Exhibit A attached hereto.
3. The registered agent for service of process, director, officer and shareholder of the Defendants has been deceased for several years and the real property has been deteriorating. No successor officer, director, or other official has come forward to administer the assets of the Defendants. The assets have deteriorated and are in danger of further deterioration and further disrepair.
4. The Defendants have filed for bankruptcy and have discharged therefrom several years ago.
5. The Plaintiff is owed in excess of \$400,000.00 on its mortgage and note.
6. Johnnie J. Young is a fit and proper person to serve as the Receiver for the assets of the Defendants.

Herein the Deponent Sayeth Not:


Wendy Y. Adams

Sworn to before me this the 8th
day of May, 2008


Notary Public for South Carolina
My Commission Expires: 08-19-09

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 Trinity Investments, LLC,)
 Plaintiff,)
)
 vs.)
)
 Marina Ventures, Inc. and)
 Pioneer Properties, Inc.,)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 CASE NO. _____

2008CP22-834

COMPLAINT FOR
 APPOINTMENT OF RECEIVER IN
 INSOLVENCY

FILED
 GEORGETOWN COUNTY, S.C.
 2008 JUN 20 PM 4:37
 ALMA Y. WHITE
 CLERK OF COURT

The Plaintiff would allege as follows:

1. The Plaintiff is a limited liability corporation organized and existing pursuant to the laws of the State of South Carolina and does business in Georgetown County, S.C.
2. The Defendants are corporations organized and existing pursuant to the laws of the State of South Carolina.
3. The Defendants are insolvent corporations and have been discharged from all unsecured indebtedness pursuant to the previous orders of the United States Bankruptcy Court and that all mortgages remain as liens and encumbrances to the assets encumbered thereby.
4. It appears that the registered agent for the service of process is deceased and no appointment has been made for a success registered agent.
5. The assets remaining consist of two (2) parcels of improved real estate which are deteriorating rapidly.
6. The Plaintiff alleges that Johnnie J. Young is an individual fully capable of disposing of said assets to satisfy the mortgage indebtedness.
7. The Plaintiff is informed and believes that Johnnie J. Young should be appointed as receiver for the assets and should be empowered to sell same at public or private sale as the receiver deems necessary and expedient.
8. The Plaintiff is informed and believes the receiver should make a return to this Court advising it of the final disposition of the action.


#1
 10/1

Plaintiff is informed and believes that Notice by Publication should be given of the appointment of the receiver in the Coastal Observer a newspaper of general circulation within Georgetown County, S.C.

Wherefore, the Plaintiff prays as follows:

- A. That the Defendants be adjudicated as insolvent;
- B. That some suitable person be appointed as Receiver for the real property at are the only remaining assets of the Defendants;
- C. That Johnnie J. Young is a suitable and proper person to serve as Receiver with full power and authority to sell said assets at public or private sale and liquidate all other assets, if any, and to execute such deeds, powers of sale or such other documents or instruments as may be necessary to carry out the power and authority granted to the Receiver;
- D. That notice of this appointment be published in the Coastal Observer, a newspaper of general circulation within Georgetown County, S.C.
- E. That the proceeds of said sales, unless same is made to a creditor for the balance due or less than the amount due to the first mortgage holder.
- F. For such other and further relief as this court may deem just and proper.

~~May 17~~ June 20, 2008


Kenneth L. Mitchum, Esq.
Mitchum Law Firm, PA
PO Box 436
Georgetown, SC 29442
(843) 527-3434

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

Trinity Investments, LLC,
Plaintiff,

vs.

Marina Ventures, Inc. and
Pioneer Properties, Inc.,
Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.

NON JURY RECEIVERSHIP

2008CP22-834

SUMMONS

ALMA Y. WHITE
CLERK OF COURT

2008 JUN 20 PM 4:37

FILED
GEORGETOWN COUNTY, S.C.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, 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 131 Orange Street, Georgetown, S.C. 29440, within thirty (30) days after the service hereof in which to serve its Answer to said Complaint, exclusive of the date of service, and if you fail to Answer the Complaint within the times aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default may be rendered against you for the relief demanded in the Complaint.

June 20, 2008

Kenneth L. Mitchum

Kenneth L. Mitchum
Attorney for the Plaintiff
PO Box 436
Georgetown, SC 29442
(843) 527-3434

TRINITY INVESTMENTS LLC

Plaintiff(s)

CIVIL ACTION COVERSHEET

2008 -CP-22

vs. MARINA VENTURES INC. AND PIONEER PROPERTIES INC.

2008 Cp 22 . 834

Defendant(s)

(Please Print)

Submitted By: Kenneth L. Mitchum

SC Bar #: 4013

Telephone #: 843-527-3434

Address: PO Box 436 Georgetown SC 29442

Fax #: 843-546-0577

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Administrative Law Judge (980), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex/Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Sexual Predator (510)

FILED JUN 20 2008 ALM... CLERK... RECEIVERSHIP

Submitting Party Signature: Kenneth L. Mitchum

Date: 6-20-08

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC; Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
CASE NO.:
(Non-Jury) Mortgage Foreclosure

Trinity Investments, LLC of Georgetown,
Plaintiff,

03 CP22 681

Vs.

Pioneer Properties, Inc., Marina Ventures, Inc.
Walter F. Green, Michael C. Thompson, Patty A.
Burnette, H T Hackney Co., South Carolina
Department of Revenue and South Carolina
Employment Security Commission,
Defendants.

LIS PENDENS

FILED
CLERK OF COURT

2003 SEP - 2 PM 3:50

GEORGETOWN COUNTY, S.C.

TO: The Defendants

NOTICE IS HEREBY GIVEN that an action has been commenced or will be commenced against the Defendants which is an action for foreclosure of a mortgage or mortgages given by Pioneer Properties, Inc. and Marina Ventures, Inc. to Carolina First Bank who subsequently assigned same to the Plaintiff herein. The real property encumbered by said mortgages and the subject of this action are described on Exhibit A attached hereto and incorporated herein by reference and made a part and parcel hereof.

Sept 2, 2003

Kenneth L. Mitchum

Kenneth L. Mitchum
Attorney for the Plaintiff
PO Box 436
Georgetown, SC 29442
843-527-3434

EXHIBIT A
(Lis Pendens)

All that certain piece, parcel or lot of land situate, lying and being in Tax District Number 1, County of Georgetown, State of South Carolina, shown and designated as Parcel A on a plat of a survey and division of Tract Number Three (3) of the Williams Furniture Company Subdivision located in Tax District Number One (1), Georgetown County, South Carolina, survey for Larry Howell by Samuel M. Harper, R.L.S., dated May 1, 1991, duly recorded in the Office of the Register of Deeds for Georgetown County in Plat Book 14 at Page 159. Said Tract A measuring and containing 0.60 acres and butting and bounding as follows: To the North a distance of 196.42 feet on a 66 foot right-of-way designated "U.S. Highway 17-A"; to the East a distance of 100.2 feet by lands now or formerly of David A. and Laura L. Howard; to the South a distance of 183.38 feet by Parcel C as shown on said plat; to the West a distance of 138 feet by Parcel B as shown on said plat; all of which will more fully and at large appear by reference to the aforementioned plat which is hereby made, pro tanto, a part and parcel hereof.

This being the same premises conveyed to Pioneer Properties, Inc. by Deed of Walter F. Green, dated April 30, 1998 and recorded May 1, 1998 in the Office of the Register of Deeds for Georgetown County in Deed Book 866 at Page 80.

PROPERTY ADDRESS: U.S. Highway 17A, Georgetown, South Carolina 29440
TMS # 01-0426-17.01.01

All that certain piece, parcel or tract of land situate, lying and being in the County of Georgetown, State of South Carolina, containing 1.0 Acres, more or less, being shown and delineated on "Plat Of A Lot In The North Santee Section Surveyed For Walter F. Green", dated February 13, 1996, prepared by J. Luckey Sanders, R.L.S., and recorded in the Office of the Register of Deeds for Georgetown County in Plat Book 15 at Page 787.

Being the same property conveyed to Marina Ventures, Inc., by Deed of Walter F. Green, dated April 30, 1998 and recorded May 1, 1998, in Deed Book 866, Page 76 in the Office of the Register of Deeds for Georgetown County.

PROPERTY ADDRESS: U.S. Highway 17, Georgetown, South Carolina
TMS # 01-0206-35.02.00

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
CASE NO.:
(Non-Jury) Mortgage Foreclosure

Trinity Investments, LLC of Georgetown,
Plaintiff,

Vs.

Pioneer Properties, Inc., Marina Ventures, Inc.
Walter F. Green, Michael C. Thompson, Patty A.
Burnette, H T Hackney Co., South Carolina
Department of Revenue and South Carolina
Employment Security Commission,
Defendants.

03 CP22 681

SUMMONS

FILED
GEORGETOWN COUNTY, S.C.
2003 SEP - 2 PM 3:20
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to Answer the Complaint in this Action, a copy of which is herewith attached and served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at his office at 131 Orange Street, Georgetown, South Carolina, within thirty (30) days after service hereof upon you, exclusive of the day of such service; and should you fail to answer said Complaint within the time aforesaid, the Plaintiff herein will apply to the Court for the relief demanded in said Complaint.

Dated at Georgetown, South Carolina, this 2nd day of Sept, 2003.

By: Kenneth L. Mitchum
Kenneth L. Mitchum
Attorney for the Plaintiff
PO Box 436
Georgetown, SC 29442
(803) 527-3434

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
CASE NO.:
(Non-Jury) Mortgage Foreclosure

Trinity Investments, LLC of Georgetown,
Plaintiff,

Vs.

Pioneer Properties, Inc., Marina Ventures, Inc.
Walter F. Green, Michael C. Thompson, Patty A.
Burnette, H T Hackney Co., South Carolina
Department of Revenue and South Carolina
Employment Security Commission,
Defendants.

03 CP22 681

COMPLAINT

ALVIN F. WATKINS
CLERK OF COURT

2003 SEP -2 PM 3:20

FILED
GEORGETOWN COUNTY, S.C.

The Plaintiff above-named, complaining of the Defendants above-named,

1. The Plaintiff is a limited liability company organized and existing pursuant to the laws of the State of South Carolina.

2. Upon information and belief, the Defendants, Pioneer Properties, Inc. and Marina Ventures, Inc. are corporations organized and existing under the laws of the State of South Carolina. The Defendant, Walter F. Green, is a citizen and resident of the County of Georgetown, State of South Carolina. The Defendants, Michael C. Thompson and Patty A. Burnette, are citizens and residents of the County of Horry, State of South Carolina.

3. This is an action to foreclose security interests on real property and personal property located in Georgetown County. This Court has jurisdiction of the parties and subject matter of this proceeding.

4. Heretofore on or about the 20th day of January, 2000, Pioneer Properties, Inc. made, executed and delivered to the Carolina First Bank its Note in writing, a copy of which is attached hereto and incorporated herein, wherein and whereby it promised to

pay to the order of Carolina First Bank the principal sum of Two Hundred Ninety-Five Thousand and 00/100 (\$295,000.00) Dollars, together with interest at the rate of Nine and One-Half (9.500%) percent per annum; said principal and interest due in consecutive monthly installments of Three Thousand One Hundred Seventeen and 48/100 (\$3,117.48) Dollars on the 5th day of each month beginning March, 2000 and continuing until the entire indebtedness is paid in full. Carolina First Bank thereafter assigned said Note to the Plaintiff herein for good and valuable consideration. Said assignment is evidenced by that certain Assignment of Mortgage dated June 24, 2003 which was recorded in the Office of the Register of Deeds for Georgetown County on July 9, 2003 in Mortgage Book 2087 at Page 132.

5. In order to better secure the payment of the said Note and debt, the said Pioneer Properties, Inc. did execute and deliver on the 20th day of January, 2000, unto Carolina First Bank, its successors and assigns, its mortgage of real estate and security agreement covering the following described property:

All that certain piece, parcel or lot of land situate, lying and being in Tax District Number 1, County of Georgetown, State of South Carolina, shown and designated as Parcel A on a plat of a survey and division of Tract Number Three (3) of the Williams Furniture Company Subdivision located in Tax District Number One (1), Georgetown County, South Carolina, Survey for Larry Howell by Samuel M. Harper, R.L.S., dated May 1, 1991, duly recorded in the Office of the Register of Deeds for Georgetown County in Plat Book 14 at Page 159. Said Tract A measuring and containing 0.60 acres and butting and bounding as follows: To the North a distance of 196.42 feet on a 66-foot right-of-way designated "U.S. Highway 17-A"; to the East a distance of 100.2 feet by lands now or formerly of David A. and Laura L. Howard; to the South a distance of 183.38 feet by Parcel C as shown on said plat; to the West a distance of 138 feet by Parcel B as shown on said plat; all of which will more fully and at large appear by reference to the aforementioned plat which is incorporated herein by reference and made a part and parcel hereof.

This being the same premises conveyed to Pioneer Properties, Inc. by Deed of Walter F. Green, dated April 30, 1998 and recorded May 1, 1998 in the Office of the Register of Deeds for Georgetown County in Deed Book 866 at Page 80.

6. On the 20th day of January, 2000, the said Mortgage was recorded in the Office of the Register of Deeds for Georgetown County in Mortgage Book 1303 at Page 118. Carolina First Bank thereafter assigned the aforesaid Mortgage to the Plaintiff herein named, for good and valuable consideration. Said assignment is evidenced by that certain Assignment of Mortgage dated June 24, 2003 which was recorded in the Office of the Register of Deeds for Georgetown County in Mortgage Book 2087 at Page 132.

7. In order to better secure the payment of the same Note and debt, the Defendant, Pioneer Properties, Inc., executed and delivered a Security Agreement dated January 20, 2000, granting Carolina First Bank a security interest in all inventory held by Pioneer Properties, Inc. and all equipment held by Pioneer Properties, Inc. Carolina First Bank thereafter assigned the aforesaid Security Agreement to the Plaintiff herein named, for good and valuable consideration. Said assignment is evidenced by that certain Assignment of Mortgage dated June 24, 2003 which was recorded in the Office of the Register of Deeds for Georgetown County in Mortgage Book 2087 at Page 132.

8. As an inducement to Carolina First Bank to extend credit to Pioneer Properties, Inc., Walter F. Green made, executed and delivered to the Plaintiff his certain Guaranty dated January 20, 2000, in writing, a copy of which is attached hereto and incorporated herein. Carolina First Bank thereafter assigned the aforesaid Guaranty to the Plaintiff herein named, for good and valuable consideration. Said assignment is evidenced by that certain Assignment of Mortgage dated June 24, 2003 which was recorded in the Office of the Register of Deeds for Georgetown County in Mortgage Book 2087 at Page 132.

9. Heretofore on or about the 20th day of January, 2000, Marina Ventures, Inc. made, executed and delivered to the Carolina First Bank its Note in writing, a copy of which is attached hereto and incorporated herein, wherein and whereby it promised to pay to the order of Carolina First Bank the principal sum of Eighty-Five Thousand Seven Hundred Ninety-Two and 87/100 (\$85,792.87) Dollars, together with interest at the rate of Nine and One-Half (9.500%) percent per annum; said principal and interest due in consecutive monthly installments of Nine Hundred Six and 63/100 (\$906.63) Dollars on the 5th day of each month beginning March, 2000, and continuing until the entire indebtedness is paid in full. Carolina First Bank thereafter assigned the aforesaid Note to the Plaintiff herein named, for good and valuable consideration. Said assignment is evidenced by that certain Assignment of Mortgage dated June 24, 2003 which was recorded in the Office of the Register of Deeds for Georgetown County in Mortgage Book 2088 at Page 256.

10. In order to better secure the payment of the said Note and debt, the said Marina Ventures, Inc. did execute and deliver on the 20th day of January, 2000, unto Carolina First Bank, its successors and assigns, its mortgage of real estate and security agreement covering the following described property:

All that certain piece, parcel or tract of land situate, lying and being in the County of Georgetown, State of South Carolina, containing 1.0 Acres, more or less, being shown and delineated on "Plat Of A In The North Santee Section Surveyed For Walter F. Green", dated February 13, 1996, prepared by J. Luckey Sanders, R.L.S., and recorded in the Office of the Register of Deeds for Georgetown County in Plat Book 15 at Page 787.

Being the same property conveyed to Marina Ventures, Inc. by Deed of Walter F. Green, dated April 30, 1998 and recorded May 1, 1998 in the Office of the Register of Deeds for Georgetown County in Deed Book 866 at Page 76.

11. On the 20th day of January, 2000, the said Mortgage was recorded in the Office of the Register of Deeds for Georgetown County in Mortgage Book 1303 at Page 122. Carolina First Bank thereafter assigned the aforesaid Mortgage and Security Agreement to the Plaintiff herein named, for good and valuable consideration. Said assignment is evidenced by that certain Assignment of Mortgage dated June 24, 2003 which was recorded in the Office of the Register of Deeds for Georgetown County in Mortgage Book 2088 at Page 256.

12. As an inducement to Carolina First Bank to extend credit to Marina Ventures, Inc., Walter F. Green made, executed and delivered to the Carolina First Bank his certain Guaranty, dated January 20, 2000, in writing, a copy of which is attached hereto and incorporated herein. Carolina First Bank thereafter assigned the aforesaid Guaranty to the Plaintiff herein named, for good and valuable consideration. Said assignment is evidenced by that certain Assignment of Mortgage dated June 24, 2003 which was recorded in the Office of the Register of Deeds for Georgetown County in Mortgage Book 2088 at Page 256.

13. As a further inducement to Carolina First Bank to extend credit to Pioneer Properties, Inc. and Marina Ventures, Inc., Pioneer Properties, Inc., Marina Ventures, Inc. and Walter F. Green made, executed and delivered to the Carolina First Bank an Agreement of Cross Collateralization and Cross Default dated January 20, 2000. The agreement provides in part that a default under either of the loans mentioned above will constitute a default under both loans and thereby entitling Carolina First Bank to call remedies for both loans. Carolina First Bank thereafter assigned the aforesaid Agreement of Cross Collateralization and Cross Default to the Plaintiff herein named, for good and

valuable consideration. Said assignment is evidenced by that certain Assignment of Mortgage dated June 24, 2003 which was recorded in the Office of the Register of Deeds for Georgetown County in Mortgage Book 2087 at Page 132 and Mortgage Book 2088 at Page 256.

14. The conditions of said Notes and Mortgages have been broken and the Plaintiff elects to, and does hereby declare the entire balance of said indebtedness due and payable.

15. There is due on said Notes and Mortgages, as of July 31, 2003, the sum of Four Hundred Eight-Two Thousand Six Hundred Thirteen and 13/100 (\$482,613.13) Dollars, together with interest from and after the date hereof; and also the amount incurred as the costs and disbursements of this action, including attorney's fees.

16. The Defendants Michael C. Thompson and Patty A. Burnette are made parties to this action because they may have or claim a lien upon the property by virtue of that certain Second Mortgage of Real Estate given by Walter F. Green, individually, and Marina Ventures, Inc. to Michael C. Thompson and Patty A. Burnette, dated January 20, 2000 and recorded January 20, 2000 in the Office of the Register of Deeds for Georgetown County in Mortgage Book 1303 at Page 128, in the original principal amount of \$30,000.00.

17. The Defendants, Michael C. Thompson and Patty A. Burnette, are made parties to this action because they have or claim a lien upon the property by virtue of that certain Second Mortgage of Real estate given by Walter F. Green, individually, and Pioneer Properties, Inc. to Michael C. Thompson and Patty A. Burnette, dated January 20, 2000 and recorded January 20, 2000 in the Office of the Register of Decds for

Georgetown County in Mortgage Book 1303 at Page 135, in the original principal amount of \$30,000.00.

18. The Defendant, H T Hackney Co., is made a party to this action because it may have or claim an interest in the premises by reason of its judgment against Marina Ventures, Inc., dba Value Mart 2, dated January 4, 2000 and recorded in the Office of the Clerk of Court for Georgetown County on January 7, 2000 (#99-CP-22-545) in the amount of \$7,293.37.

19. The Defendant, H T Hackney Co., is made a party to this action because it may have or claim an interest in the premises by reason of its judgment against Pioneer Properties, Inc., dba Value Mart 2, and Walter Green, dated January 4, 2000 and recorded in the Office of the Clerk of Court for Georgetown County on January 7, 2000 (#99-CP-22-549) in the amount of \$8,156.99.

20. The Defendant, South Carolina Department of Revenue, is made a part to this action because it may have or claim an interest in the premises by reason of a tax lien against Pioneer Properties, Inc., in the amount of \$512.12, dated the 30th day of March 2000, and filed in the Office of the Register of Deeds for Georgetown County on the 11th day April, 2000 (#00-MS-22-420).

21. The Defendant, South Carolina Employment Security Commission, is made a party to this action because it may have or claim an interest in the premises by reason of a tax execution against Pioneer Properties, Inc., T/A Value Mart I #329738, 1461 Saints Delight Road, Georgetown, SC 29440, in the amount of \$162.43, filed in the Office of the Register of Deeds for Georgetown County on the 4th day of December, 2000 (#00-MS-22-905).

22. The Defendant, South Carolina Department of Revenue, in this action because it may have or claim an interest in the premises by reason of a deed of trust executed by Marina Ventures, Inc., in the amount of \$2,142.72, dated the 16th day of January, 2001, and filed in the Office of the Register of Deeds for Georgetown County, South Carolina, on the 16th day of January, 2001 (#01-MS-22-143).

WHEREFORE, Plaintiff prays judgment:

1. That a receiver be appointed in accordance with the provisions of the Mortgage.
2. That the amounts due upon said Notes and Mortgages held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.
3. That the said Plaintiff have judgement against Pioneer Properties, Inc., Marina Ventures, Inc., and Walter F. Green for the amount so found to be due and owing thereof, together with a reasonable sum as attorney's fees, and for the costs of this action.
4. That the real property and personal property securing the debt owed to the Plaintiff be sold under the direction of this Court and that the equity of redemption be barred.
5. That the proceeds of sale be applied as follows:
 - a. First, to the costs and expenses of the within action and said sale.
 - b. Second, to the payment and discharge of the amounts due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid.
 - c. Third, the surplus, if any, be distributed according to law.
6. For such other and further relief as may be just and proper.

Kenneth L. Mitchum

Kenneth L. Mitchum
Attorney for Plaintiff
PO Box 436
Georgetown, SC 29442
843 527-3434

Sept. 2, 2003

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

CAROLINA FIRST BANK,)
Plaintiff,)

vs.)

PIONEER PROPERTIES, INC., MARINA)
VENTURES, INC., WALTER F. GREEN,)
MICHAEL C. THOMPSON, PATTY A.)
BURNETTE, H.T. HACKNEY CO.,)
S.C. DEPARTMENT OF REVENUE,)
and S.C. EMPLOYMENT SECURITY)
COMMISSION,)

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.:01-CP-22-080

ANSWER
(JURY TRIAL DEMANDED)

FILED
2001 MAR 16 PM 1:53
ALMA Y. WHITE
CLERK OF COURT

The Defendants Pioneer Properties, Inc., Marina Ventures, Inc., and Walter F. Green (hereinafter called "the Defendants"), answering the Complaint of the Plaintiffs above-named, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE

ONE: All of the allegations of the Plaintiff's Complaint are hereby denied unless hereinafter specifically admitted.

TWO: The Defendants admit the allegations of paragraphs one (1) through thirteen (13).

THREE: The Defendants are without sufficient information to admit or deny the allegations of paragraphs fourteen (14) and sixteen (16) through twenty-two (22).

FOUR: The Defendants deny the allegations of paragraph fifteen (15), being the remainder of the Complaint.

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FOR A SECOND DEFENSE

(Estoppel)

FIVE: The allegations of the above paragraphs are incorporated herein and made part hereof as if set forth verbatim.

SIX: The Defendant would show unto the Court that the Plaintiff requested that the Defendant Walter F. Green reduce his debt to the Plaintiff by selling a third store in the Pee Dee area for a loss and paying down the debt owed by Walter F. Green and his companies. Plaintiff assured the Defendants that upon the sale of the Pee Dee store and redistribution of the debt against the other stores, the Plaintiff would lend Defendants sufficient funds to pay off the judgments and liens of approximately \$60,000.00 referenced in the Complaint and to pay the S.C. DHEC testing fees of approximately \$15,000.00, in order that the Defendants could resume gasoline sales at the stores.

SEVEN: The Plaintiff failed to lend the funds described above, such that the Defendants could not produce sufficient cash flow to pay the debts to the Plaintiff. The Defendants are informed and believe that the Plaintiff is estopped from seeking the relief requested in the Complaint.

FOR A THIRD DEFENSE

(Setoff)

2 EIGHT: The allegations of the above paragraphs are incorporated herein and made part hereof as if set forth verbatim.

NINE: Should the Court find that the Plaintiff is entitled to relief, the Defendants would show unto the Court that, as a result of the failure of the Plaintiff to lend the sums agreed upon, the Defendants were unable to produce income sufficient to pay the Plaintiff debt, such that the Defendants are entitled to a setoff for the income which would have resulted from the sale of gasoline at the Defendants' stores.

TEN: The said Defendants are informed and believe that the relief requested by the Plaintiff

should be denied.

WHEREFORE, the Defendant prays that the relief requested by the Plaintiffs be denied, that the Plaintiffs' Complaint be dismissed with prejudice, or for setoff, and for such other and further relief as the Court deems just and proper.

Respectfully submitted:



M. LEE ROBERTSON, JR., Esquire
Attorney for the Defendant
1002 Anna Knapp Blvd.
Post Office Box 2110
Mt. Pleasant, SC 29465
(843) 884-1444
(843) 849-0209 Fax

Mount Pleasant, South Carolina
March 9, 2001

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2001CP22020

Carolina First Bank,)
Plaintiff,)
vs.)

Foreclosure
Non-Jury
SUMMONS

Pioneer Properties, Inc.,)
Marina Ventures, Inc., Walter)
F. Green, Michael C.)
Thompson, Patty A. Burnette,)
H T Hackney Co., South)
Carolina Department of)
Revenue and South Carolina)
Employment Security)
Commission,)
Defendants.)

FILED
GEORGETOWN COUNTY, S.C.
2001 FEB - 6 AM 10:26
ALMA Y. WHITE
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the Plaintiff or its attorney, Charles T. Smith, at his office, 1112 Highmarket Street, Georgetown, South Carolina, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney, if signed by your

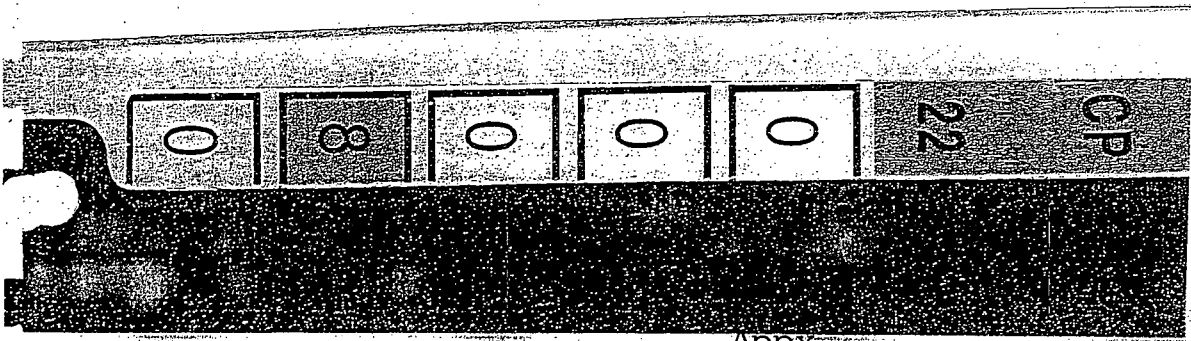


Attorney

Charles T. Smith
Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440
(843) 546-6131
Attorney for the Plaintiff

February 6, 2001

Page 2 of 2



Appx

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2001CP22080

Carolina First Bank,)
)
Plaintiff,)
)
vs.)

Foreclosure
Non-Jury

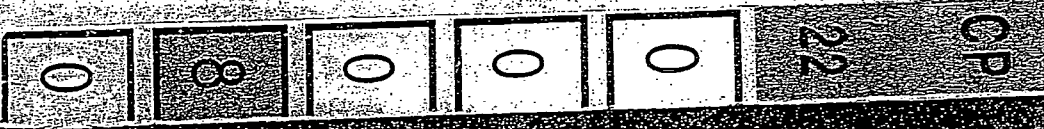
COMPLAINT

Pioneer Properties, Inc.,)
Marina Ventures, Inc., Walter)
F. Green, Michael C.)
Thompson, Patty A. Burnette,)
H T Hackney Co., South)
Carolina Department of)
Revenue and South Carolina)
Employment Security)
Commission,)
)
Defendants.)

FILED
GEORGETOWN COUNTY, S.C.
2001 FEB -6 AM 10:26
ALPHA Y WHITE
CLERK OF COURT

The Plaintiff above named, complaining of the Defendants above named, alleges:

1. The Plaintiff is a corporation duly organized and existing under the laws of the State of South Carolina.
2. Upon information and belief, the Defendants Pioneer Properties, Inc. and Marina Ventures, Inc. are corporations organized and existing under the laws of the State of South Carolina. The Defendant Walter F. Green is a citizen and resident of the County of Georgetown, State of South Carolina. The Defendants Michael C. Thompson and Patty A. Burnette are citizens and residents of the County of Horry, State of South Carolina.
3. This is an action to foreclose security interests on real property and personal property located in Georgetown County. This Court has jurisdiction of the parties and subject matter of this

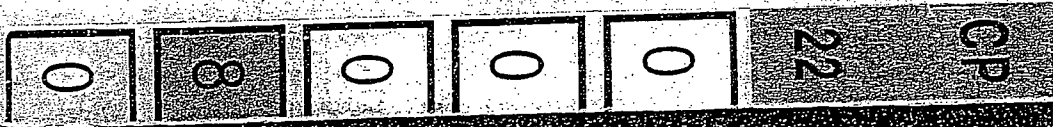


proceeding

4. Heretofore on or about the 20th day of January, 2000, Pioneer Properties, Inc. made, executed and delivered to the Carolina First Bank its Note in writing, a copy of which is attached hereto and incorporated herein, wherein and whereby it promised to pay to the order of Carolina First Bank the principal sum of Two Hundred Ninety-Five Thousand and 00/100 (\$295,000.00) Dollars, together with interest at the rate of Nine and One-Half (9.500%) percent per annum; said principal and interest due in consecutive monthly installments of Three Thousand One Hundred Seventeen and 48/100 (\$3,117.48) on the 5th day of each month beginning March, 2000 and continuing until the entire indebtedness is paid in full.

5. In order to better secure the payment of the said Note and debt, the said Pioneer Properties, Inc. did execute and deliver on the 20th day of January, 2000, unto Carolina First Bank, its successors and assigns, its mortgage of real estate and security agreement covering the following described property:

ALL that certain piece, parcel or lot of land situate, lying and being in Tax District Number 1, County of Georgetown, State of South Carolina, shown and designated as Parcel A on a plat of a survey and division of Tract Number Three (3) of the Williams Furniture Company Subdivision located in Tax District Number One (1), Georgetown County, South Carolina, survey for Larry Howell by Samuel M. Harper, R.L.S., dated May 1, 1991, duly recorded in the Office of the Clerk of Court for Georgetown County in Plat Book 14 at page 159. Said Tract A measuring and containing 0.60 acres and butting and bounding as follows: To the North a distance of 196.42 feet on a 66 foot right-of-way designated "U.S. Highway 17-A"; to the East a distance of 100.2 feet by lands now or formerly of David A. and Laura L. Howard; to the South a distance of 183.38 feet by Parcel C as shown on said plat; to the West a distance of 138 feet by Parcel B as shown on said plat; all of which will more fully and at large appear by reference to the aforementioned plat which is



hereby made, pro tanto, a part and parcel hereof.

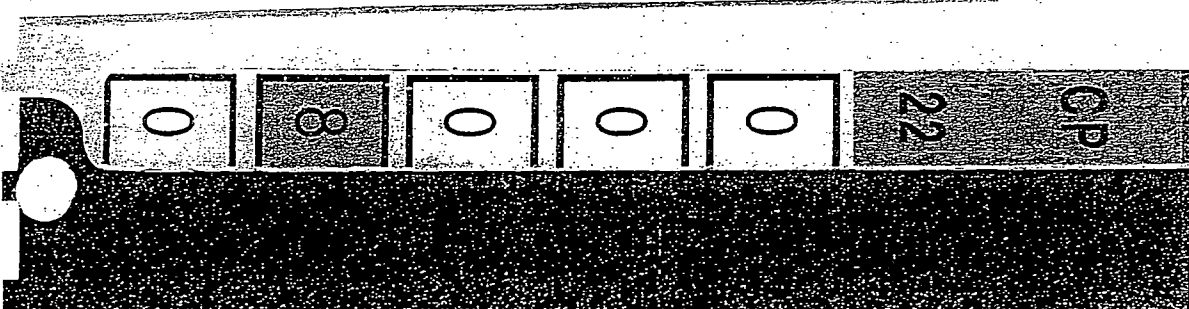
This being the same premises conveyed to Pioneer Properties, Inc. by deed of Walter F. Green dated April 30, 1998 and recorded May 1, 1998 in Deed Book 866, page 80 of the RMC Office for Georgetown County.

6. On the 20th day of January, 2000, the said Mortgage was recorded in the office of the Clerk of Court for Georgetown County in Mortgage Book 1303 at Page 118.

7. In order to better secure the payment of the same Note and debt, the Defendant Pioneer Properties, Inc. executed and delivered a Security Agreement dated January 20, 2000, granting Carolina First Bank a security interest in all inventory held by Pioneer Properties, Inc. and all equipment held by Pioneer Properties, Inc.

8. As an inducement to Carolina First Bank to extend credit to Pioneer Properties, Inc., Walter F. Green made, executed and delivered to the Plaintiff his certain Guaranty dated January 20, 2000, in writing, a copy of which is attached hereto and incorporated herein.

9. Heretofore on or about the 20th day of January, 2000, Marina Ventures, Inc. made, executed and delivered to the Carolina First Bank its Note in writing, a copy of which is attached hereto and incorporated herein, wherein and whereby it promised to pay to the order of Carolina First Bank the principal sum of Eighty-Five Thousand Seven Hundred Ninety-Two and 87/100 (\$85,792.87) Dollars, together with interest at the rate of Nine and One-Half (9.500%) percent per annum; said principal and interest due in consecutive monthly installments of Nine Hundred Six and 63/100 (\$906.63) on



the 5th day of each month beginning March, 2000 and continuing until the entire indebtedness is paid in full.

10. In order to better secure the payment of the said Note and debt, the said Marina Ventures, Inc. did execute and deliver on the 20th day of January, 2000, unto Carolina First Bank, its successors and assigns, its mortgage of real estate and security agreement covering the following described property:

ALL that certain piece, parcel or tract of land situate, lying and being in the County of Georgetown, State of South Carolina, containing 1.0 Acres, more or less, being shown and delineated on "Plat Of A Lot In The North Santee Section Surveyed For Walter F. Green", dated February 13, 1996, prepared by J. Luckey Sanders, R.L.S. and recorded in the office of the R.M.C. in Georgetown County in Plat Book 15 at Page 787.

Being the same property conveyed to Marina Ventures, Inc. by deed of Walter F. Green dated April 30, 1998 and recorded May 1, 1998 in Deed Book 866, page 76 of the RMC Office for Georgetown County.

11. On the 20th day of January, 2000, the said Mortgage was recorded in the office of the Clerk of Court for Georgetown County in Mortgage Book 1303 at Page 122.

12. As an inducement to Carolina First Bank to extend credit to Marina Ventures, Inc., Walter F. Green made, executed and delivered to the Plaintiff his certain Guaranty dated January 20, 2000, in writing, a copy of which is attached hereto and incorporated herein.

13. As a further inducement to Carolina First Bank to extend credit to Pioneer Properties, Inc. and Marina Ventures, Inc., Pioneer Properties, Inc., Marina Ventures, Inc. and Walter F. Green made, executed and delivered to the Plaintiff an Agreement of Cross Collateralization and Cross Default dated January 20, 2000, in



A copy of which is attached hereto and incorporated herein. The agreement provides in part that a default under either of the loans mentioned above will constitute a default under both loans and thereby entitling Carolina First Bank to call remedies for both loans.

14. The conditions of said Notes and Mortgages have been broken and the Plaintiff elects to, and does hereby declare the entire balance of said indebtedness due and payable.

15. There is due on said Notes and Mortgages, as of February 5, 2001 the sum of Three Hundred Ninety Thousand Forty-Six and 51/100 (\$390,046.51) Dollars, together with interest; and also the amount incurred as the costs and disbursements of this action, including attorney's fees.

16. The Defendants Michael C. Thompson and Patty A. Burnette are made parties to this action because they may have or claim a lien upon the property by virtue of that certain Second Mortgage of Real Estate given by Walter F. Green, Individually, and Marina Ventures, Inc. to Michael C. Thompson and Patty A. Burnette dated January 20, 2000 and recorded January 20, 2000 in the office of the R.O.D. for Georgetown County in Mortgage Book 1303 at Page 128, in the original principal amount of \$30,000.00.

17. The Defendants Michael C. Thompson and Patty A. Burnette are made parties to this action because they may have or claim a lien upon the property by virtue of that certain Second Mortgage of Real Estate given by Walter F. Green, Individually, and Pioneer Properties, Inc. to Michael C. Thompson and Patty A. Burnette dated



January 20, 2000 and recorded January 20, 2000 in the office of the R.O.D. for Georgetown County in Mortgage Book 1303 at Page 135, in the original principal amount of \$30,000.00.

18. The Defendant H T Hackney Co. is made a party to this action because it may have or claim an interest in the premises by reason of its judgment against Marina Ventures, Inc., dba Value Mart 2 dated January 4, 2000, and recorded in the office of the Clerk of Court for Georgetown County on January 7, 2000 (#99-CP-22-545) in the amount of \$7,293.37.

19. The Defendant H T Hackney Co. is made a party to this action because it may have or claim an interest in the premises by reason of its judgment against Pioneer Properties, Inc., dba Value Mart 1 and Walter Green dated January 4, 2000, and recorded in the office of the Clerk of Court for Georgetown County on January 7, 2000 (#99-CP-22-549) in the amount of \$8,156.99.

20. The Defendant South Carolina Department of Revenue is made a party to this action because it may have or claim an interest in the premises by reason of a tax lien against Pioneer Properties Inc., in the amount of \$512.12 dated the 30th day of March, 2000, and filed in the office of the R.O.D. for Georgetown County on the 11th day of April, 2000 (#00-MS-22-420).

21. The Defendant South Carolina Employment Security Commission is made a party to this action because it may have or claim an interest in the premises by reason of a tax execution against Pioneer Properties Inc. T/A Value Mart I #329738, 1461 Saints Delight Road, Georgetown, SC 29440, in the amount of \$162.43

dated the 27th day of November, 2000, and filed in the office of the R.O.D. for Georgetown County on the 4th day of December, 2000 (#00-MS-22-905).

22. The Defendant South Carolina Department of Revenue is made a party to this action because it may have or claim an interest in the premises by reason of a tax lien against Marina Ventures Inc., in the amount of \$2,142.72 dated the 16th day of January, 2001, and filed in the office of the R.O.D. for Georgetown County on the 26th day of January, 2001 (#01-MS-22-143).

WHEREFORE, Plaintiff prays judgment:

1. That a receiver be appointed in accordance with the provisions of the Mortgage.
2. That the amounts due upon said Notes and Mortgages held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.
3. That the said Plaintiff have judgment against Pioneer Properties, Inc., Marina Ventures, Inc. and Walter F. Green for the amount so found to be due and owing thereof, together with a reasonable sum as attorney's fees, and for the costs of this action.
4. That the real property and personal property securing the debt owed to the Plaintiff be sold under the direction of this Court and that the equity of redemption be barred.
5. That the proceeds of sale be applied as follows:
 - a. First, to the costs and expenses of the within

Second, to the payment and discharge of the amounts due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid.

Third, the surplus, if any, be distributed according to law.

6. For such other and further relief as may be just and proper.

Charles T. Smith

Charles T. Smith
Grimes & Smith
1112 Highmarket Street
Georgetown, SC 29440
(843) 546-6131
Attorney for the Plaintiff

February 6, 2001

FILED
MAR 1 2001
OFFICE OF THE CLERK
COURT OF COMMON PLEAS
GEORGETOWN, SOUTH CAROLINA

NOTICE OF CASE SCHEDULING

May 06, 2009

STATE OF SOUTH CAROLINA

Case 2008CP2200834 - Trinity Investments LLC VS Marina Ventures Inc , defendant, et al has been added to the following Court

Roster:
Roster ID: 30 - Non Jury Docket for 5/26/09, Judge Ralph F. Cothran, Jr Presiding

This case has been assigned as priority 24 of 25 cases scheduled for the court period of 5/26/2009 through 5/26/2009

****REMINDER**** Non Jury Docket for 5/26/09 is published on the web www.georgetowncountysc.org and you have at least one case on this docket. Judge Ferrell Cothran Jr., Presiding. Roster meeting will be in courtroom #2 (Old Law Library) Tuesday, May 26, 2009 @ 9:30 am, on the 2nd floor of Georgetown County Courthouse.

Please respond with the estimated time for trial and if there are any changes in the status of your case.

Wanda J. Cribb
Common Pleas Court Coordinatore 843-545-3041 or Barry Small 843-545-3042 email: bsmall@georgetowncountysc.org also fax 843-545-3003.

Mail Notice To:
Marina Ventures Inc C/O Julie Parker Green, Owner

Court Info:
Common Pleas P. O. Box 479 129 Screven Street, Room 221 Georgetown, SC 29442-9442

If you have any questions regarding the scheduling of this case, please contact the courts at:

(843)545-3041

Respectfully,

Alma Y. White
Clerk of Court

Need Defendants
Address for
mailing purposes or
email address.

Not aware of Docket
appx
So called Courthouse

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN) 08-CP-22-0834

Trinity Investments, LLC,)

)

)

Plaintiff,)

)

vs.)

)

Marina Ventures, Inc., and)

Pioneer Properties, Inc.,)

)

)

Defendants.)

Transcript of Record

Hearing

May 22, 2009

B E F O R E :

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

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

Robert W. Maring, Esquire
Laura Mitchum Moyer, Esquire
Attorneys for Plaintiff

Grace L. Hurley, CVR-CM
Circuit Court Reporter

- 1 P-1 Reporter of Receiver
- 2 P-2 Quitclaim deed filed in Book 1188 at page 269
- 3 P-3 Quitclaim deed filed in Book 1188 at page 274
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Trinity v. Marina, et al.

1 (On the record, May 22, 2009.)

2 THE COURT: Trinity Investments, 2008-CP-22-834,
3 Trinity Investments versus Marina Ventures.

4 All right, this is case number 2008-CP-22-834, Trinity
5 Investments, LLC, versus Marina Ventures, Inc., and Pioneer
6 Properties, Inc. The matter is before the Court on a motion
7 to discharge a receiver. Present at the call of the case,
8 Robert Maring and Laura Moyer as attorney for the Plaintiff.
9 The Defendant is not present. Sir, your name?

10 MR. GREEN: Your Honor, my name is Walter Green.

11 THE COURT: Walter Green?

12 MR. GREEN: Yes.

13 THE COURT: All right.

14 MR. GREEN: Walter Jeffrey Dillon Green is my full
15 name.

16 THE COURT: Okay, and as I told you, Mr. Green, you
17 said you were appearing on behalf of?

18 MR. GREEN: Julie Parker Green.

19 THE COURT: All right, who is the sole owner of Marina
20 Ventures, Inc., and Pioneer Properties, Inc.

21 MR. GREEN: Yes, Your Honor.

22 THE COURT: All right, as I explained to you I'm
23 assuming, correct me if I'm wrong, but do you have a law
24 degree?

25 MR. GREEN: No.

1 THE COURT: All right, are you admitted to practice
2 law in South Carolina?

3 MR. GREEN: No, Your Honor.

4 THE COURT: All right, because these are corporations
5 the law mandates that only attorneys can appear on behalf of
6 corporations in court proceedings and because there is a
7 restriction against the unauthorized practice of law you can't
8 appear on behalf of those Defendants; okay?

9 MR. GREEN: Yes, Your Honor.

10 THE COURT: All right, thank you very much.

11 All right, Mr. Maring, let me hear from you or Ms. Moyer,
12 okay.

13 MS. MOYER: That's fine, Your Honor.

14 Your Honor, this action was filed in 2008. Mr. Walter
15 Green is the registered agent, not this Walter Green, but who
16 had been deceased since 2004, I believe. He was the
17 registered agent. No registered agent has replaced him. No
18 officers have stepped forward. We've run publication that the
19 receiver has been appointed. The receiver has transferred the
20 assets which were these two properties to Trinity Investments,
21 LLC, who own - who had mortgages and notes that they had
22 purchased from Carolina First just before Marina Ventures and
23 Pioneer Properties went into bankruptcy.

24 THE COURT: All right.

25 MS. MOYER: These were the only assets that were not

Trinity v. Marina, et al.

1 dealt with in the bankruptcy proceeding. They were secured
2 mortgages. So, at this time he's transferred to Trinity
3 Investments and just requests that the Court relieve him of
4 his obligation as receiver, and I believe, Your Honor, that
5 that would dispose of this action.

6 THE COURT: All right, the receiver is Mr. Young?

7 MS. MOYER: Yes, Your Honor.

8 THE COURT: Johnnie J. Young? Okay.

9 MS. MOYER: I have a written report of the receiver
10 and copies of the deeds as well.

11 THE COURT: All right, you want to - let's put the
12 report of the receiver we'll put as Plaintiff's Exhibit One,
13 quitclaim deed filed in Book 1188 at page 269 will be
14 Plaintiff's Exhibit Two, quitclaim deed filed in Book 1188 at
15 page 274 will be Plaintiff's Exhibit Three, okay?

16 All right, any opposition?

17 MS. MOYER: Not that I'm aware of. We also ran
18 publication of this hearing for notice.

19 THE COURT: All right, I will grant your motion.

20 MS. MOYER: Thank you, Your Honor.

21 THE COURT: Do you all need an order or will a Form 4
22 suffice or do you all want to prepare an order or does it -
23 I'll do whatever you all want to do.

24 MS. MOYER: I'll prepare an order and get it to you.

25 THE COURT: Okay, thank you.

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MR. MARING: Thank you, Your Honor.

THE COURT: Thank you.

MR. GREEN: Thank you.

(Adjourned.)

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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, 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 hearing held in the case of Trinity Investments, LLC versus Marina Ventures, Inc., and Pioneer Properties, held in the Court of Common Pleas for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on May 22, 2009.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Grace L. Hurley, CVR-CM
Official Reporter

August 21, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That **Johnnie J. Young as Receiver for Marina Ventures, Inc.**, hereinafter referred to as the Grantor, in consideration of the sum of Five and 00/100 Dollars (\$5.00) and cancellation of debt to the Grantors in hand paid at and before the sealing of these presents by the Grantee, (the receipt whereof is hereby acknowledged), has remised, released and forever quitclaimed and does remise, release and forever quitclaim to **Trinity Investments, LLC**, hereinafter referred to as the Grantee, his successors and assigns forever, the real property together with all improvements thereon. Also included in this conveyance is all personal property located on the subject premises including but not limited to the contents and equipment. The real property is more fully described as:

All that certain piece, parcel or tract of land situate, lying and being in the County of Georgetown, State of South Carolina, containing 1.0 Acres, more or less, being shown and delineated on "Plat Of A Lot In the North Santee Section Surveyed For Walter F. Green," dated February 13, 1996, prepared by J. Luckey Sanders, R.L.S., and recorded in the Office of the Register of Deeds for Georgetown County in Plat Book 15 at Page 787.

This being the same property conveyed to Marina Ventures, Inc. by Deed of Walter F. Green, dated April 30, 1998 and recorded May 1, 1998 in Deed Book 866 at Page 76 in the Office of the Register of Deeds for Georgetown County.

PROPERTY ADDRESS: U.S. Highway 17, Georgetown, South Carolina
TMS# 01-0206-35.02.00 *1428 Hawkins Street*
Grantors Address: Georgetown, SC 29440

TOGETHER with all and Singular the Rights, Members, Hereditaments, Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the Grantee hereinabove named, and his Heirs and Assigns forever.

WITNESS the Grantors' hands and seals on this the 25th day of March, in the year of our Lord Two Thousand and Nine.

GEORGETOWN COUNTY PARCEL # 1-206-35.2
SPE

200900025538
Filed for Record in
GEORGETOWN SC
WANDA PREVATTE
03-25-2009 At 04:01 PM
DEED 11.00
STATE TAX .00
COUNTY TAX .00
Book 1188 Page 274 - 278
EXEMPT

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

Laura M. Moyer
1st Witness

Annette M. Powers
2nd Witness (Notary)

Johnnie J. Young (L.S.)
Johnnie J. Young
Receiver for Marina Ventures, Inc.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public for the State of South Carolina do hereby certify that *Johnnie J. Young, Marina Ventures, Inc.*, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this 25th day of March, 2009.

Annette M. Powers
Notary Public for South Carolina
My Commission Expires: 6/01/10

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF GEORGETOWN)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at U.S. Highway 17, Georgetown, SC, bearing Georgetown County Tax Map Number 01-0206-35-02-00, was transferred by Johnnie J. Young as Receiver for Marina Ventures, Inc. to Trinity Investments, LLC on March 25, 2009.

3. Check one of the following: The deed is
(a) _____ subject to the deed recording fee as a transfer for consideration paid or to be in money or money's worth.
(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) x exempt from the deed recording fee because (See Information section of affidavit):
Exemption number 13
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

- (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____
(b) _____ The fee is computed on the fair market value of the realty which is _____
(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is: _____

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$ _____
(b) Place the amount listed in item 5 above here: -0-
(if no amount is listed, place zero here.)
(c) Subtract Line 6(b) from Line 6(a) and place result here \$ _____

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is _____

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Receiver for Pioneer Properties, Inc.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

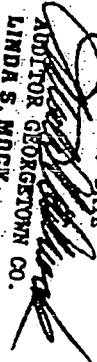
Sworn to before me this 25th
Day of March, 2009
Annette M. Powers
Notary Public for S.C.
My Commission Expires: 6/01/10

Johnnie J. Young
Johnnie J. Young
Receiver for Marina Ventures, Inc.

Instrument Book Page
20090025538 1188 278

8:116 Morning

20090025538
Filed for Record in
GEORGETOWN SC
MANDY PREVATTE - EXEMPT
03-25-2009 At 04:01 pm
DEED 11.00
STATE TAX .00
COUNTY TAX .00
Book 1188 Page 274 - 278
Wanda S. Prevatte

RECORD THIS DATE

AUDITOR GEORGETOWN CO.
LINDA S. MOCK

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

200900025537
Filed for Record in
GEORGETOWN SC
WANDA PREVATTE
QUITCLAIM DEED EXEMPT
DEED 11.00
STATE TAX .00
COUNTY TAX .00
Book 1188 Page 269 - 273

KNOW ALL MEN BY THESE PRESENTS:

That **Johnnie J. Young as Receiver for Pioneer Properties, Inc.**, hereinafter referred to as the Grantor, in consideration of the sum of Five and 00/100 Dollars (\$5.00) and cancellation of debt to the Grantors in hand paid at and before the sealing of these presents by the Grantee, (the receipt whereof is hereby acknowledged), has remised, released and forever quitclaimed and does remise, release and forever quitclaim to **Trinity Investments, LLC**, hereinafter referred to as the Grantee, his successors and assigns forever, the real property together with all improvements thereon. Also included in this conveyance is all personal property located on the subject premises including but not limited to the contents and equipment. The real property is more fully described as:

All that certain piece, parcel or lot of land situate, lying and being in Tax District Number 1, County of Georgetown, State of South Carolina, shown and designated as Parcel A on a plat of a survey and division of Tract Number Three (3) of the Williams Furniture Company Subdivision located in Tax District Number One (1), Georgetown County, South Carolina, surveyed for Larry Howell by Samuel M. Harper, R.L.S., dated May 1, 1991, duly recorded in the Office of the Register of Deeds for Georgetown County in Plat Book 14 at Page 159. Said Tract A measuring and containing 0.60 acres and butting and bounding as follows: To the North a distance of 196.42 feet on a 66 foot right-of-way designated "U.S. Highway 17-A"; to the East a distance of 100.2 feet by lands now or formerly of David A. And Laura L. Howard; to the South a distance of 183.38 feet by Parcel C as shown on said plat; all of which will more fully and at large appear by reference to the aforementioned plat which is hereby made, *pro tanto*, a part and parcel hereof.

This being the same premises conveyed to Pioneer Properties, Inc. by a Deed of Walter F. Green, dated April 30, 1998 and recorded May 1, 1998 in the Office of the Register of Deeds for Georgetown County in Deed Book 866 at Page 80.

PROPERTY ADDRESS: U.S. Highway 17A, Georgetown, South Carolina 29440
TMS# 01-0426-17.01.01
Grantee's Address: 1428 Hawkins Street
Georgetown, SC 29440

TOGETHER with all and Singular the Rights, Members, Hereditaments, Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the Grantee hereinabove named, and his Heirs and Assigns forever.

GEORGETOWN COUNTY PARCEL # 1-426-17.1.1
SPE

WITNESS the Grantors' hands and seals on this the 25 day of March, in the year of our Lord Two Thousand and Nine.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

Laura M. Moyer
1st Witness

Annette M. Powers
2nd Witness (Notary)

Johnnie J. Young (L.S.)
Johnnie J. Young
Receiver for Pioneer Properties, Inc.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public for the State of South Carolina do hereby certify that *Johnnie J. Young, Receiver for Pioneer Properties, Inc.*, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this 25th day of March, 2009.

Annette M. Powers
Notary Public for South CAROLINA
My Commission Expires: 6/01/10

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF GEORGETOWN)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at U.S. Highway 17A, Georgetown, SC, bearing Georgetown County Tax Map Number 01-0426-17.01.01, was transferred by Johannie J. Young as Receiver for Pioneer Properties, Inc. to Trinity Investments, LLC on March 25, 2009.
3. Check one of the following: The deed is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) exempt from the deed recording fee because (See Information section of affidavit)
Exemption number 13
(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____
 - (b) _____ The fee is computed on the fair market value of the realty which is _____
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is: _____
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: \$ _____
 - (b) Place the amount listed in item 5 above here: -0-
 - (if no amount is listed, place zero here.)
 - (c) Subtract Line 6(b) from Line 6(a) and place result here \$ _____
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is _____
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Receiver for Pioneer Properties, Inc.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Sworn to before me this 25th
Day of March, 2009
Cherette M. Powers
Notary Public for S.C.
My Commission Expires: 6/01/10

Johannie J. Young
Johannie J. Young
Receiver for Pioneer Properties, Inc.

Instrument Book Page
200900025537 1188 273

Baile Waring

200900025537
Filed for Record in
GEORGETOWN SC EXEMPT
NANDA PREVATTE
03-23-2009 AC 04:01 pm
DEED 11.00
STATE TAX .00
COUNTY TAX
Book 1188 Page 248 - 273
Nanda P. Prevatte

RECORD THIS DATE

AUDITOR GEORGETOWN CO.
LINDA S. MOCK

STATE OF SOUTH CAROLINA)
) ASSIGNMENT OF MORTGAGE
COUNTY OF GEORGETOWN)

FOR VALUE RECEIVED, Carolina First Bank does hereby assign, transfer and set over unto Trinity Investments, LLC of Georgetown, whose address is 131 Orange Street, Georgetown, South Carolina, the Mortgage of Marina Ventures, Inc. dated and recorded January 20, 2000 in Mortgage Book 1303 at Page 122 in the Office of the Register of Deeds for Georgetown County and the debt secured by the Mortgage evidenced by the Promissory Note of even date in the original principal sum of \$95,792.87. This assignment also includes the Security Agreement of Marina Ventures, Inc., the Guaranty of Walter F. Green and the Agreement of Cross Collateralization and Cross Default of Pioneer Properties, Inc., Marina Ventures, Inc. and Walter F. Green, all dated January 20, 2000. This Assignment is without recourse or warranty of any kind except Carolina First Bank warrants that it is the lawful owner and holder of the debt and mortgage designated above and that it has good right to sell, transfer and assign the same.

DATED this 24th day of June, 2003,
In the presence of:

Jam M. Jawn
Rhonda C Knight

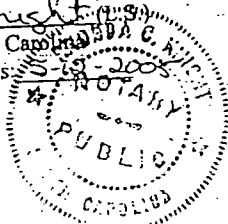
CAROLINA FIRST BANK
by: [Signature]
its: Assistant Vice President

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF GREENVILLE)

PERSONALLY APPEARED BEFORE ME the undersigned witness, who, being duly sworn, deposes and said that (s)he saw Carolina First Bank sign, seal and deliver the foregoing Assignment of Mortgage and that (s)he, with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me
this 24th day of June, 2003

Jam M. Jawn

Rhonda C Knight
Notary Public for South Carolina
My Commission Expires 5-19-2005


40172 Mitchum
000012920 02:36:53PM
RECORDED 07/10/2003
BK:02088 Pg:00256 Pages:1
Fee:6.00 State:0.00
County:0.00
Georgetown County, SC
Register of Deeds

Wanda J. Ornette

FILED

MAR 18 2003

Mark Hammond 2
SECRETARY OF STATE

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

NOV 12 2009

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA
SECRETARY OF STATE (PRINT CLEARLY IN BLACK INK)

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to Sections 33-44-202 and 33-44-203 of the 1976 South Carolina Code of Laws, as amended.

1. The name of the limited liability company which complies with Section 33-44-105 of the South Carolina Code of 1976, as amended is Trinity Investments, LLC of Georgetown

2. The address of the initial designated office of the Limited Liability Company in South Carolina is

131 Orange Street

Street Address

Georgetown, SC

City

29440

Zip Code

3. The initial agent for service of process of the Limited Liability Company is

KENNETH L. MITCHEM

Name

Kenneth L. Mitchem
Signature

and the street address in South Carolina for this initial agent for service of process is

131 Orange Street

Street Address

Georgetown SC

City

29440

Zip Code

4. The name and address of each organizer is

(a) Kenneth L. Mitchem

Name

131 Orange Street

Street Address

Georgetown

City

SC

29440

State

Zip Code

(b) _____
Name

Street Address

City

State

Zip Code

(Add additional lines if necessary)

5. Check this box only if the company is to be a term company. If so, provide the term specified: December 31, 2050

03-015755CC

Trinity Investments, LLC of Georgetown

Name of Limited Liability Company

6. Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, specify the name and address of each initial manager:

(a) JOHNNIE J. YOUNG
 Name
2413 TOPSAW ROAD GEORGETOWN
 Street Address City
SC 29440
 State Zip Code

(b) _____
 Name

 Street Address City

 State Zip Code

(c) _____
 Name

 Street Address City

 State Zip Code

(d) _____
 Name

 Street Address City

 State Zip Code

(Add additional lines if necessary)

7. Check this box only if one or more of the members of the company are to be liable for its debts and obligations under section 33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members.

Trinity Investments, LLC of Georgetown

Name of Limited Liability Company

8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time:

9. Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement.

10. Signature of each organizer

Kenneth L. Mitchell

Date March 14, 2003

(Add Additional lines if necessary)

FILING INSTRUCTIONS

1. File two copies of this form, the original and either a duplicate original or a conformed copy.
2. If space on this form is not sufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this using a computer disk which will allow for expansion of the space on the form.
3. This form must be accompanied by the filing fee of \$110.00 payable to the Secretary of State.
Return to: Secretary of State
P.O. Box 11350
Columbia, SC. 29211
4. The first annual report for a Limited Liability Company must be delivered to the Secretary of State between January first and April first of the calendar year after which the Limited Liability Company was organized or the foreign company was first authorized to transact business in South Carolina. Subsequent annual reports must be delivered to the Secretary of State on or before the fifteenth day of the fourth month following the close of the limited liability company's taxable year.

NOTE

THE FILING OF THIS DOCUMENT DOES NOT, IN AND OF ITSELF, PROVIDE AN EXCLUSIVE RIGHT TO USE THIS CORPORATE NAME OR IN CONNECTION WITH ANY PRODUCT OR SERVICE. USE OF A NAME AS A TRADEMARK OR SERVICE MARK WILL REQUIRE FURTHER CLEARANCE AND REGISTRATION AND BE AFFECTED BY PRIOR USE OF THE MARK. FOR MORE INFORMATION, CONTACT THE TRADEMARKS DIVISION OF THE SECRETARY OF STATE'S OFFICE AT (803) 734-1728.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

Case N. 2008-CP-22-0834

Trinity Investments, LLC Respondent,

v.

Marina Ventures, Inc., and Pioneer Properties, Inc. Appellants.

APPENDIX TO RECORD ON APPEAL

Robert W. Maring
Maring Law Firm, P.A.
1130 Highmarket Street
P.O. Box 478
Georgetown, SC 29442-0478
(843) 545-9544
Attorney for Respondent

G. Turner Perrow, Esquire
Tidelands Law
606 Front Street
Georgetown, SC 29440
(843) 546-2900
Attorney for Appellants

Pursuant to Rule 212 South Carolina Appellate Court Rules, Respondent submits the following as an Appendix to the Record on Appeal:

EXHIBITS

1.	E-mail from Julie Parker Green to Judge J. Michael Baxley dated May 18, 2009	81
2.	E-mail from Law Clerk for J. Michael Baxley to Julie Parker Green dated May 18, 2009	82
3.	E-mail from Law Clerk for Benjamin H. Culbertson to Julie Parker Green dated May 18, 2009	83

Laura Moyer

From: jtgreen@coastal.edu
Sent: Monday, May 18, 2009 1:26 PM
To: jbaxleylc@sccourts.org
Cc: lm@robertmaringlaw.com
Subject: CASE NO 2008-CP-22-00834

Dear Judge Baxley,

I am sending this e-mail, requesting a continuence on a court date that is scheduled for May 22,2009 in Georgetown County. My son was verbally informed of this court date by the clerk of court on Friday May 15,2009 at 1:00 PM. I have not received any paper work regarding this case. I will be out of town this week, Therefore I am requesting a continuence in this case to allow me time to take care of out of town business and to seek legal representation regarding this matter. Thank you for your time.

Yours Truly,
Julie Parker Green

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Version: 9.0.725 / Virus Database: 270.14.130/2607 - Release Date: 01/11/10 02:35:00

Laura Moyer

From: Baxley, J. Michael Law Clerk (Carlie Wilcox) [JBaxleyLC@sccourts.org]
Sent: Monday, May 18, 2009 1:38 PM
To: 'jtgreen@coastal.edu'
Cc: lm@robertmaringlaw.com; Culbertson, Benjamin H. Law Clerk (James Moore)
Subject: RE: CASE NO 2008-CP-22-00834

Ms. Green, Judge Culbertson will be handling the motions docket in Georgetown this week. Therefore, I am referring your request to Judge Culbertson's law clerk, James Moore.
-Carli

Carli Jo Wilcox
Law Clerk to the Honorable J. Michael Baxley Circuit Court of the Fourth Judicial Circuit
531 E. Carolina Avenue
Hartsville, South Carolina 29550
Telephone: 843.383.4114
Fax: 843.383.4116
jbaxleylc@sccourts.org

-----Original Message-----

From: jtgreen@coastal.edu [mailto:jtgreen@coastal.edu]
Sent: Monday, May 18, 2009 1:26 PM
To: Baxley, J. Michael Law Clerk (Carlie Wilcox)
Cc: lm@robertmaringlaw.com
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Version: 9.0.725 / Virus Database: 270.14.130/2607 - Release Date: 01/11/10 02:35:00

82

Laura Moyer

From: Culbertson, Benjamin H. Law Clerk (James Moore) [BCulbertsonlc@sccourts.org]
Sent: Monday, May 18, 2009 2:13 PM
To: jtgreen@coastal.edu; lm@robertmaringlaw.com
Subject: FW: CASE NO 2008-CP-22-00834

Ms. Green,

This case cannot be continued at this late date. The file reflects that this lawsuit was filed last June, therefore, ample opportunity has been provided to hire an attorney.

Regards,

James Moore

James B. Moore, III
Law Clerk to the Honorable Benjamin H. Culbertson Fifteenth Judicial Circuit
129 Screven St.
Post Office Box 421270
Georgetown, SC 29442
Office: 843-545-3032
Fax: 843-545-3282

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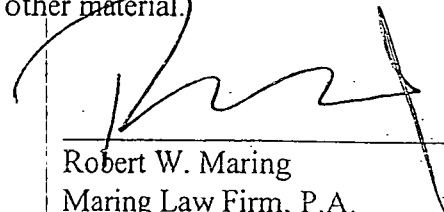
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Version: 9.0.725 / Virus Database: 270.14.130/2607 - Release Date: 01/11/10 02:35:00

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 9, 2010



Robert W. Maring
Maring Law Firm, P.A.
1130 Highmarket Street
P.O. Box 478
Georgetown, SC 29442-0478
(843) 545-9544
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 08-CP-22-0834

Trinity Investments, LLC

Respondent,

v.

Marina Ventures, Inc., and Pioneer Properties, Inc.

Appellant.

FINAL BRIEF OF APPELLANT

Dated: March 10, 2010

G. Turner Perrow, Esquire
Tidelands Law
606 Front Street
Georgetown, SC 29440
(843) 546-2900
South Carolina Bar #640598

Attorney for Appellant

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STATEMENT OF ISSUES ON APPEAL

1. There being no pending suit involving Appellant's property, the lower court had no jurisdiction to appoint a receiver and by doing so, committed reversible error.
2. Respondent and its assignor's failure to prosecute proper remedy for nine years created laches which barred receivership and any further equitable proceeding.
3. Where Respondent's equitable petition alleged insufficient facts to appoint receiver, by granting it, the Circuit Court erred.
4. Having once dismissed foreclosure action on the same subject in the same Circuit Court, Respondent's second dismissal of foreclosure action on the same subject in the same court operates as an adverse adjudication upon the merits barring any further proceeding. Having once dismissed foreclosure action on the same subject in the Circuit Court, subsequent dismissal operates as an adverse adjudication upon the merits.
5. Court's failure to value real property placed in receiver's hands, coupled with its failure to require the receiver to be bonded voids the appointment of the receiver.
6. The appointment of the party actively engaged in securing the receivership the lower Court grossly abused its discretion.
7. Where evidentiary record contains no proof of service, no affidavit to support publication, disregard of statutory requirements of publication, no reply to counterclaim and no affidavit of default, order of appointment of receiver and all subsequent enabling orders are void as a matter of law.
8. Presumption of payment by debtor arises from Creditors' repeated abandonment of foreclosure proceedings over a nine year period.

STATEMENT OF THE CASE

On 9/26/97, Appellant's testator purchased two parcels of improved real estate for \$200,000.00, and then organized two LLCs, named Pioneer properties, Inc. and Marina Ventures, Inc. The testator deeded one parcel to each LLC in exchange for stock. Each parcel contained a convenience store and gas station located in Georgetown County.

In order to obtain limited credit, the testator mortgaged both properties to Carolina First Bank. On February 6, 2001, Carolina First Bank sued to foreclose the mortgages; Testator defended by Answer of Attorney M. Lee Robertson alleging defenses of estoppel and set off, (Exhibit #29, p. 46) (Exhibit #30, p. 49) On May 6, 2002, Respondent's assignor, the Bank, moved under Rule 41 SCRCF for dismissal of the foreclosure without prejudice and the Master in Equity dismissed it. (Exhibit #12, p. 13)

On June 24, 2003, Carolina First Bank assigned these mortgages "... without recourse or warranty of any kind..." to Trinity Investments, an LLC organized by Johnnie J. Young and on September 2, 2003, Respondent sued to foreclose. (Exhibit #34, p. 77), (Exhibit #28, p. 34)

On June 16, 2005, Respondent's attorney moved before Circuit Judge Breeden the case be stricken under Rule 40(j). In the Form 4, "Judgment in a Civil Case", Judge Breeden recorded "Order to follow per Attorney Mitchum". (Exhibit #8, p. 9) The Circuit Court dismissed the foreclosure. There is no record of any order prepared by Attorney Mitchum.

On June 3, 2008, the Supreme Court indefinitely suspended Respondent's attorney. (Exhibit #5, p. 5) On June 20, 2008, Respondent's attorney filed Summons and Complaint requesting Johnnie J. Young be appointed Receiver. (Exhibit #25, p. 30 and 26, p. 32) The complaint alleged Appellant was insolvent and Johnnie J. Young was "... an

individual fully capable of disposing ... of two parcels of improved real estate ... to satisfy the mortgage indebtedness." No foreclosure action was pending. Appellant, testator's beneficiary, pro se, defended by answer and counterclaim; no Reply to the counterclaim was filed. (Exhibit #23, p. 26)

On November 17, 2008, the daughter of former counsel Mitchum, Laura Mitchum Moyer, Esq. was substituted as counsel. (Exhibit #7, p. 8) On November 18, 2008, she filed a Motion and Order for the Appointment of a Receiver and an Order of Publication. (Exhibit #20, p. 23), (Exhibit #21, p. 24) No statutory affidavit to support publication was filed pursuant to §15-9-710 [Code of Laws of South Carolina (as amended)].

The Court's file includes a consent to serve as Receiver by Johnnie J. Young dated October 17, 2008, a Motion and Order for Appointment signed by Circuit Judge Goodstein on November 7, 2008, and a Notice of Appointment of Receiver signed by Respondent's counsel November 12, 2008. (Exhibit #22, p. 25), (Exhibit #21, p. 24). The Court's record does not include notice of hearing of the Appointment of Johnnie J. Young as Receiver, nor does the file reflect service of any of the foregoing upon Appellant.

On December 18, 2008, Notice of the Motion for Appointment was published in a newspaper in Georgetown County. (Exhibit #17, p. 20)

Appellant filed a Motion for Reconsideration March 24, 2009 pointing out Appellant had never been served and the Motion reiterated the defenses set forth in Appellant's unanswered counterclaim. (Exhibit #16, p. 18) On March 25, 2009, Johnnie J. Young, as Receiver executed two quit claim deeds (Exhibit #33, p. 67) to the parcels of Real Estate to himself as Trinity Investments, LLC. On March 26, 2009, Judge Goodstein denied Appellant's Motion for Reconsideration. (Exhibit #4, p. 4) On May 5, 2009, Respondent moved to discharge the Receiver. (Exhibit #15, p. 16) Notice of the Motion

was published in the Post and Courier, a newspaper in general circulation in Charleston County. (Exhibit #14, p. 15) On May 18, 2009, Appellant requested a continuance to seek legal representation from Circuit Judge Baxley; the request was denied. On May 22, 2009, Respondent's counsel sought the Receiver's discharge before Circuit Judge Culbertson. Appellant was represented by a layman, pro se. The Court held his representation barred as an "... unauthorized practice of law." [Exhibit #32, Page 63, page 4 line 4-8] The Court did not allow Appellant to obtain counsel. Respondent's counsel did not bring the Answer and Counterclaim to the Court's attention. Instead Respondent's counsel requested the Court approve the transfer of the Real Estate parcels by Johnnie J. Young, Receiver to Johnnie J. Young, as Trinity Investments, LLC. [Exhibit #32, p. 64, page 5 line 2-5] The Court discharged the Receiver by Form 4 order, ignoring the fact that the case was scheduled for the non-jury term on May 26, 2009, just four days later. (Exhibit #2, p. 2), (Exhibit #31, p. 59) Appellant's counsel with Appellant appeared before Circuit Judge Cothran the 1st day of the term on May 26, 2009. Respondent's counsel was present. Respondent's counsel represented to the Court the case was over and should be dismissed. Appellant's counsel refuted this assertion. The Circuit Court refused to dismiss the case and scheduled the case for non jury trial for June 22, 2009 and the matter was continued until June 22, 2009. (Exhibit #3, p. 3) On June 5, 2009 Respondent's attorney filed an Order attempting to end the equitable proceeding. This order was not served on the Appellant before or after it was submitted and signed. (Exhibit #15, p. 16) This appeal followed June 26, 2009. (Exhibit #13, p. 14)

ARGUMENTS

Introduction

This appeal arises from Respondent's attempt to seize real estate and improvements belonging to Appellant by commencing a stand alone receivership. This appeal involves a nine year period in which the legal entities of the parties changed several times. Appellant began as Mortgagor, then became sole beneficiary, then became Appellant. Respondent began as Mortgagee, became Assignee, then became Receiver before becoming Respondent.

Scope Of Review

An action to appoint a receiver and to foreclose a mortgage is an action in equity, and as such, the Court of Appeals may find facts in accordance with its own view of the preponderance of the evidence. First Palmetto Bank, FSB v. Patel, 543 SE2d 241, 344 SC 179, (SC App. 2001), BB&T of SC v. Kidwell, 565 SE2d 316, 350 SC 382 (2002).

The power to appoint a receiver arises from the Court of Equity and should be exercised with caution. In Re: Citizens Exchange Bank of Denmark, 139 SE 135, 140 SC 471 (1927).

Extraordinary remedy of receiver does not lie in favor of one who has an adequate remedy. Nathan v. Steinmeyer, 35 SE 133, 57 SC 386 (1900); Parker Produce Inc. v. Mercer, 145 SE2d 237, 221 Ga. 449 (1965); Murphy v. Murphy, 134 SE2d 148, 261 NC 95 (1964)

I. **There being no pending suit involving Appellant's property, the lower court had no jurisdiction to appoint a receiver and by doing so, committed reversible error.**

When bank and its assignee failed to obtain foreclosure judgment to seize debtor's real estate, their subsequent attempt to do so by stand alone, ancillary proceeding should be denied as a matter of law.

Summons and complaint for appointment is insufficient to give the Circuit Court jurisdiction. The lower court had no authority to appoint respondent in this action since the Summons and Complaint were not reinforced by pending action against the Appellant corporation. Porter v. Brown, 146 S.E. 810, 159 SC 151 (1929). Hall v. McLuckey, 60 SE2d 280, 135 W.Va. 595 (1950); Nolan v. Guardian Coal Co., 194 SE 347, 119 W.Va. 545 (1937).

II. Court's failure to value real property placed in Receiver's hands coupled with its failure to require bond from the appointee voided the appointment.

Discretion exists in a court with respect to administration of property and receivership, but the exercise of such discretion is subject to constitutional limitations. N.C.R. Company v. Burns, 60 SE2d 615, 217 SC 310 (1950) Order appointing receiver in action for liquidation held void for failure to contain clause fixing value of property placed in receiver's hands. Truesdell v. Johnson, 142 SE 343, 144 SC 188 (1928) Court has no authority to authorize a receiver to sell assets in his custody without receiving value therefore. N.E Factor and Discount Co. v Mortgage Investments, Inc. of Ga., 193 SE2d 221 107 Ga. App. 705 (1963).

It is the usually and better practice to require bonds from receivers, but it is not essential. Dilling v. Baker, 21 SC 334 (1884).

III. Where evidentiary records contains no proof of service, no affidavit to support publication, no reply to counterclaim and no affidavit of default, order of appointment of receiver and all subsequent enabling orders are void as a matter of law.

The Appellants filed an Answer and Counterclaim on August 6, 2008. (Exhibit #23, p. 26) There was no motion to strike the Appellant's Answer and Counterclaim. The

Counterclaim presents multiple meritorious defenses to the Respondent's equitable proceeding. The Court denied the Appellants any opportunity to be heard in the case and disposed of the matter by way of motion less than a week before the case was scheduled for the non-jury roster. (Exhibit #1, p. 1, Exhibit #2, p. 2 and Exhibit #31, p. 59)

Due process mandates personal service unless an adverse party "...cannot after due diligence be found with the state and (a) that fact appears by affidavit to the satisfaction of the court or judge thereof or that the adverse party is a proper party to an action relating to real property in this state, such court...may grant the moving party and order that service be made by publication..." §15-9-710 [Code of Laws of South Carolina (as amended)].

"In any action or proceeding in this state in which the defendant is a corporation created by or organized under the laws of this State, when no officer or agent thereof upon whom service of process can be made can, after due diligence, be found in this State and this is made to appear by affidavit, process may be served upon the corporation by publication. §15-9-730 [Code of Laws of South Carolina (as amended)].

These sections must be strictly construed because service by publication is in derogation of the common law. Tenney vs. American Pipe NSF Co., 96 F 919 (1899) Both sections apply to the fact in this equitable proceedings and both require an affidavit. Respondent's counsel supplied no affidavits to support any of the Orders of Publication she obtained. The lower courts did not have jurisdiction due to the absence of the affidavit.

Assuming *argundo*, no affidavit is deemed necessary, Respondent's counsel failed to comply with §15-9-740 [Code of Laws of South Carolina (as amended)] "the Order of Publication shall direct the publication be made in *one newspaper ...* and for such length of time as may be deemed reasonable *not less than once a week for three weeks.*"

Respondent's counsel attempted to serve Appellant by publishing notices once each in two different newspapers in two counties, one of which was not even the county where the subject property was located. (Exhibit #14, p. 15 and #17, p. 20)

The court denied Appellant any opportunity to be heard.

IV. When Respondent's equitable petition alleged insufficient facts to appoint receiver, by granting it, the Circuit Court erred.

Complaint alleging insolvency provided no ground for appointment of receiver, and by doing so, the lower court committed error of law. Allegations that Appellants were insolvent, without more, were insufficient to state cause of action for appointment of receiver. Virginia-Carolina Chemical Company v. Hunter, 66 SE 177, 84 SC 214, (1909). Insurance Center, Inc. v. Hamilton, 129 SE2d 801, 218 Ga. 597 (1977). Mere insolvency alone, is not a ground for the appointment of a receiver. Petition which failed to allege facts showing right of Respondent or any other party would be prejudiced in any way, unless receiver were appointed, failed to state a cause of action for appointment. Bower v. Certainteed Products Corp., 119 SE2d 5, 216 Ga. 646 (1961).

Parties are judicially bound by their pleadings unless withdrawn, altered, or stricken by amendment. Allegations and statements contained in pleadings are conclusive against the pleader. Postal v. Mann, 418 SE2d 322, 308 SC 385 (1992).

No rents and profits from the property being in jeopardy, by appointing a receiver, the lower court committed a manifest abuse of discretion. Both commercial properties were vacant and no rents and profits were subject to misappropriation that would prejudice Respondent.

V. Having once dismissed foreclosure action on the same subject in the same Circuit Court, Respondent's second dismissal of foreclosure action on the same

subject in the same court operates as an adverse adjudication upon the merits barring any further proceeding.

On May 6, 2002, Respondent's Assignor, the bank, moved under Rule 41 SCRCF for dismissal without prejudice. (Exhibit #12, p. 13) The case was not dismissed because of any payment or other action by Mortgagor. As the bank's assignee, Respondent's rights and obligations are incidental too, and depend upon, those created by its assignor, the bank, in formal documents and by acts and conduct.

An assignee of an overdue mortgage takes it subject to existing defenses. Ives v. Rutland, 133 SE 539, 135 SC 173 (1926). An innocent assignee for value of a mortgage takes it subject to *equities* (emphasis added) existing between mortgagor and mortgagee. Patterson v. Rabb, 17 SE 463, 38 SC 138 (1893). A mortgagor is not estopped to set up the defense of payment against an assignee. Woodrow v. Fredrick, 131 SE 598, 133 SC 431 (1926).

On June 16, 2005, Respondent's attorney moved before Circuit Judge Breeden the case be stricken under Rule 40(j). (Exhibit #8, p. 9) In the Form 4, "Judgment in a Civil Case", Judge Breeden records: Order to follow per Attorney Mitchum. (Exhibit #8, p. 9) There is no record of any order by Attorney Mitchum nor was the case ever restored.

Rule 41 SCRCF provides "... a notice of dismissal operates as adjudication upon the merits when filed by a plaintiff who has once dismissed in any Court in of the United States or of any State an action based on or including the same claim."

VI. Respondent and assignor's failure to prosecute proper remedy for nine years gives rise to laches barring receivership.

The principle of "laches" is an equitable statute of limitations. White v. Hornsby, 179 SE 671, 176 SC 36 (1935). The statute of limitations does not apply to proceedings

in courts of equity, it applies to actions at common law. Where laches are sought to bar a claim, for a shorter time than provided by the state of limitations for actions at law, a court of equity may find the shorter time sufficient to constitute laches and bar recovery. Treadaway v. Smith, 479 SE2d 849, 325 SC 367 (S.C. App. 1996); Blackwell v. Ryan, 21 SC 112 (1884). Smith v. Smith, 1 McMull Eq. 126 (1841).

Laches generally connote undue lapse of time, negligence, and opportunity to have acted sooner. When all three factors are shown, equity bars recovery. Romainon v. Poulos, 124 SE2d 611, 240 SC 13 (1962). Whether or not recovery is defeated depends on the facts and circumstances of each case. Atlantic Life Insurance Co. v. Rowland, 22 F2d 126 (C.C.A.S.C. 1927). The evidentiary record satisfies the first criteria – knowledge. Drawn by his attorney, Mitchum, Respondent obtained assignment of the note and mortgage from the bank for an unknown discount “... without recourse or warranty of any kind ...” (Exhibit #34, p. 77) Georgetown County public record documents notice to Respondent and his attorney, Mitchum, of the bank-assignor’s foreclosure February 6, 2001. (Exhibit #30, p. 49) Aware assignor had accelerated the debt by Notice of Default, two months later, Respondent commenced foreclosure, (Exhibit #28, p. 34) thus Respondent cannot deny knowledge of fact upon which Appellant bases the defense of laches. Appellant’s testator went into default; then and there, Respondent’s counsel, as moving party, was under a duty to take affirmative action. Inexplicably, and negligently, Respondent’s Counsel took no action for seven months. On March 24, 2004, testator died and on May 24, 2004, Appellant, his sole beneficiary, timely and diligently, was appointed Personal Representative. (Exhibit #11, p. 12) Then and there, Respondent’s Counsel, as moving party, was under a duty to move to have Appellant bonded in an amount equal to any alleged indebtedness. Inexplicably and negligently, Respondent’s

counsel took no action. If application for bond was denied by the Probate Court, then and there, Respondent's Counsel was under a duty to move the appointment of an appointee selected by Respondent to be appointed administrator in Georgetown County where the subject real property is located. Inexplicably and negligently, Respondent's counsel took no action for nine months. The circuit court inquired the status of the case at the February 7, 2005 calendar call; Respondent's Counsel acknowledged awareness of testator's death. (Exhibit #10, p. 11) Inexplicably and negligently, Respondent took no action, and instead sought continuance based upon the death. (Exhibit #10, p. 11) The circuit court inquired the status of the case at the April 12, 2005 calendar call. Inexplicably and negligently, Respondent moved to continue, however the Circuit Court imposed a one month deadline in response. (Exhibit #9, p. 10) Inexplicably and negligently, Respondent took no action for 30 days, and on June 15, 2005, Circuit Judge Breeden dismissed Respondent's action under Rule 40(j) SCRPC and ordered Respondent's counsel to provide him with a proposed explanatory order. (Exhibit #8, p. 9) Inexplicably and negligently, Respondent took no action and thirty-six months later, on June 30, 2008, Respondent's Counsel was indefinitely suspended by the Supreme Court. (Exhibit #5, p. 5)

When there is a reason or situation that demands assertion, failure to assert the known right, laches arise. Ex Parte Stokes, 182 SE2d 306, 256 SC 260 (1971)

The undisputed facts document material prejudice to Appellant from Respondent's negligence.

The mortgagor's first answer alleged the bank induced him to sell certain real property that was free and clear of any liens and encumbrances, to pay the bank. (Exhibit #29, p. 46) In return, the bank promised to lend the mortgagor enough money to purchase inventory. The mortgagor's answer further alleged the bank's failure to loan the funds

caused the mortgagor to lose income equal to his indebtedness to the bank. (Exhibit #29, p. 46) As a result of Respondent's silence and inaction delay, Appellant had no reason or necessity to obtain this crucial evidence before it became unavailable. In either foreclosure, a moving party was under an affirmative duty to prove the indebtedness. Had Respondent served, or made notice of his intent to seize the property during the previous four years, Appellant would have had opportunity to defend. Appellant now has no means to reconstruct the payment history of her testator. Loss of this evidence has materially prejudiced Appellant. Fretwell v. Neal, 11 Rich. Eq. 359, (1859). Great lapse of time held strongly to support a defense not only in supplying lost property, but also in raising the presumption no wrong was committed.

VII. By appointing the party actively engaged in securing the receivership the lower Court grossly abused its discretion.

No one ordinarily may be appointed receiver whose personal interest would substantially conflict with his unbiased judgment and duties as receiver and this rule of impartiality holds good in selecting counsel for the receiver, that no one ordinarily may be appointed attorney for receiver whose personal interest would substantially conflict with his unbiased judgment and duties as attorney for the receiver. Lowder v. All Star Mills, 309 SE2d 193, 309 N.C. 695 (1983). Penn Mutual Life v. Cudd, 172 SE 787, 172 SC 88 (1934).

The primary purpose of a receivership is to place the assets in the custody of an impartial, unbiased person. In this case, the true identity of the receiver was never revealed to the Court. It was never disclosed the receiver was the father of the Wendy Y. Adams who signed an affidavit attached to the Complaint. (Exhibit #24, p. 29) It was never disclosed that Johnnie J. Young, the Receiver, was also the managing member of

the Respondent Trinity Investments, LLC. (Exhibit #35, p. 78] The Complaint requested the Receiver be appointed with "full power and authority to sell said assets at public or private sale." (Exhibit #25, p. 30) In the present case, the receiver acted in his own interests. The receiver transferred the subject properties to his own company on his own authority without regard to the Appellant's rights and then sought to be discharged. (Exhibit #33, p. 67)

Generally a receiver is prohibited from dealing with receivership property or funds to his own benefit. Rinehart v. Ireland, 199 SE 871, 120 W. Va. 599 (1938).

Property in the hands of a receiver is in *custodia legis*; possession of the property by receiver is possession of the Court which appointed him. Bates v. SCN Bank, 313 SE2d 361, 280 SC 599 (1984).

Receiver's sale of realty is a judicial sale, subject to confirmation of court, and order directing sale and advertisement thereof should state definitely time and place wherein bids are received. Hannon v. Mechanics Bldg., et al., 180 SE 873, 177 SC 153 (1935).


VIII. Presumption of payment by debtor arises from Creditors' repeated abandonment of foreclosure proceedings over a nine year period.

Where a mortgagor has been permitted to remain in possession, after a length of nine years, the mortgage will be presumed to have been discharged by payment, unless circumstances can be shown sufficiently strong to repel the presumption, such as payment of interest, a promise to pay, or an acknowledgment by the mortgagor that the mortgage is still existing. Wilson v. Watkins, 28 U.S. 43, 3 Pet. 43, 7 L.Ed. 596 (U.S.C. 1930).

CONCLUSION

Appellant requests the court cancel all actions taken by the Receiver and by its decision hold that any further attempt in equity and in law by Respondent to seize Appellant's property be barred.

Dated: March 10, 2010



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2009131452

Trinity Investments, LLC Respondent

v.

Marina Ventures, Inc. and Pioneer Properties, Inc. Appellants

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

1. DID THE TRIAL COURT COMMIT REVERSIBLE ERROR BY THE APPOINTMENT OF THE RECEIVER, WHERE THE GOVERNING STATUTE GAVE THE TRIAL COURT SUBJECT MATTER JURISDICTION TO APPOINT A RECEIVER AND WHERE APPELLANTS FAILED TO RAISE THE ISSUE TO THE COURT?
2. DID THE COURT'S FAILURE TO VALUE REAL PROPERTY PLACED IN THE RECEIVER'S HANDS AND ITS FAILURE TO REQUIRE A BOND VOID THE APPOINTMENT OF THE RECEIVER WHERE APPELLANTS FAILED TO RAISE THE ISSUE TO THE COURT?
3. ARE ALL ENABLING ORDERS VOID AS A MATTER OF LAW DUE TO ALLEGED DEFECTS IN SERVICE WHERE THE APPELLANTS MADE A GENERAL APPEARANCE AND A VOLUNTARY SUBMISSION TO THE JURISDICTION OF THE COURT AND WHERE APPELLANTS FAILED TO RAISE THE ISSUE TO THE COURT?
4. DID THE TRIAL COURT ERR IN NOT DISMISSING THE ACTION FOR FAILING TO ALLEGE SUFFICIENT FACTS TO APPOINT A RECEIVER BY THE RESPONDENT, WHERE APPELLANTS FAILED TO PRESERVE THE ISSUE FOR APPELLATE REVIEW AND FAILED TO HIRE COUNSEL FOR APPELLANTS' CORPORATIONS?
5. DID THE TRIAL COURT ERR IN FAILING TO DISMISS THE ACTION PURSUANT TO THE TWO DISMISSAL RULE WHERE APPELLANTS FAILED TO RAISE THE ISSUE TO THE COURT?
6. DID THE TRIAL COURT ERR IN FAILING TO DISMISS THE ACTION UNDER THE DOCTRINE OF LACHES WHERE THE APPELLANTS FAILED TO RAISE THE ISSUE TO THE COURT AND WHERE THE GOVERNING STATUTE PROVIDES FOR A TWENTY YEAR STATUTE OF LIMITATION ON MORTGAGES?
7. DID THE TRIAL COURT ERR IN APPOINTING THE RECEIVER WHERE THE APPELLANTS FAILED TO RAISE THE ISSUE TO THE COURT?
8. DID THE TRIAL COURT ERR IN FAILING TO DISMISS THE ACTION ON THE PRESUMPTION OF PAYMENT WHERE THE APPELLANTS FAILED TO RAISE THE ISSUE TO THE COURT AND WHERE THE ENABLING STATUTE PROVIDES FOR A TWENTY YEAR STATUTE OF LIMITATION?

STATEMENT OF THE CASE

The Appellants are corporations registered with the South Carolina Secretary of State with Walter F. Green as the Registered Agent. Walter F. Green has been deceased since 2004.

On June 20, 2008, Respondent's attorney filed a Summons and Complaint requesting that Johnnie J. Young be appointed Receiver. On June 30, 2008, the Supreme Court suspended the Respondent's attorney for nine (9) months. Notice of the Suspension and Notice of Appointment of the Trustee were published once a week for three weeks in the Georgetown Times, a newspaper of general circulation in Georgetown County. On August 6, 2008, Julie Parker Green, the sole owner of the Appellant corporations filed a *Pro Se* Answer and Counterclaim. These pleadings were never served on the former counsel of the Respondent, the Trustee for the former counsel of the Respondent, or the new counsel for the Respondent.

Laura M. Moyer of Maring Law Firm, P.A., was substituted as Counsel in the case by Order of the Honorable Larry R. Patterson, dated November 12, 2008, and filed on November 17, 2008.

On November 18, 2008, a Motion and Order for Appointment of Receiver, Consent to Serve as a Receiver, and Notice of Appointment of Receiver were filed with the Court. On December 18, 2008, the Notice of Appointment of the Receiver was published in the Coastal Observer pursuant to an Order of Publication signed by the Honorable Alison Renee Lee and filed on November 18, 2008. On March 24, 2009, the sole owner of the corporation, Julie Parker Green, filed a *Pro Se* motion for reconsideration of the appointment of the Receiver. Respondent was never served with a Motion for Reconsideration or Notice of a Motion for Reconsideration. The Honorable Diane S. Goodstein dismissed the motion for reconsideration

on the grounds that the motion was not timely made and that Mrs. Green, as a non-lawyer, could not represent the corporations in the Circuit Court.

On May 5, 2009, the Respondent moved for the discharge of the Receiver. The Clerk of Court for Georgetown County sent notice of the hearing to the Respondent and the Appellants for the hearing date of May 22, 2009. The Respondent published a Notice of Hearing in the Post and Courier, a newspaper of general circulation in Charleston and Georgetown Counties.

Neither the Appellants nor Julie Parker Green formally requested a continuance to seek legal representation. The Appellants sent an e-mail to the Honorable Michael Baxley requesting a continuance. Judge Baxley referred the e-mail to the Honorable Benjamin Culbertson. Judge Culbertson then denied the informal request for a continuance. No formal Motion for a Continuance was filed. (Appendix, pp. 81-84.)

On May 22, 2009, Respondent's counsel sought the Receiver's discharge before the Honorable Benjamin Culbertson. Walter Jeffrey Dillon Green, a non-lawyer, represented to the Court that he was appearing on behalf of Julie Parker Green, the sole owner of the Appellant corporations. The Court informed Mr. Green "because these are corporations the law mandates that only attorneys can appear on behalf of corporations and court proceedings and because there is a restriction against the unauthorized practice of law you can't appear on behalf of those defendants..." (R. p. 63, lines 4-8.) No request for a continuance was made to the Court to give the Appellant corporations an opportunity to obtain counsel.

At the hearing, the Receiver's report as well as quit-claim deeds transferring real property owned by the Appellant corporations to Trinity Investments, LLC, the Appellants' only secured creditor, in the amount of \$766,006.02, were offered as exhibits. (R. p. 64).

The Court by its Order dated May 29, 2009, approved the actions of the Receiver and discharged him from his duties. (R. p. 1). The Order Discharging the Receiver was filed on June 5, 2009. No motion for reconsideration or any other post-trial motions were filed in regards to the final order dated May 29, 2009, by the Appellants or Mrs. Green, the sole shareholder.

The Appellants' counsel states that he appeared on behalf of the corporations at a roster call on May 26, 2009. It should be duly noted that this was the first time that the Appellant corporations were represented by an attorney. Appellants' counsel did not file a notice of appearance, a motion for reconsideration, or any other post-trial motions even though he was representing the corporations.

The only action taken by the Appellants' attorney was to file this appeal.

ARGUMENTS

STANDARD OF REVIEW

An action to appoint a receiver is an action in equity and as such, the Court of Appeals may find facts in accordance with its own view of the preponderance of the evidence. *First Palmetto Bank v. Patel*, 344 S.C. 179, 543 S.E.2d 241 (S.C. App. 2001). However, the Court "should not ignore the findings of the trial judge . . ." *Historic Charleston Holdings, LLC v. Mallon*, 365 S.C. 524, 533, 617 S.E.2d 388, 392 (Ct. App. 2005). Furthermore, an Appellate Court cannot hear and determine issues not properly raised at trial. *Pelican Building Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993).

This standard of review is applicable to all issues in this case.

I. THE COURT HAD SUBJECT MATTER JURISDICTION TO APPOINT A RECEIVER.

The question of subject matter jurisdiction raised by the Appellants is without merit. Our Courts have on numerous occasions stated that a Court has subject matter jurisdiction if there is

“the power to hear and determine cases of the general class to which the proceedings in question belong.” *Cecil Dove v. Gold Kist Inc.*, 314 S.C. 235, 442 S.E.2d 598. A further definition of Subject Matter jurisdiction was stated by our Supreme Court in *Atlanta Skin and Cancer Clinic, P.C. v. Hallmark General Partners, Inc.*, 320 S.C. 113, 463 S.E.2d. 600 (S.C. 1999). There the Court favorably quoted Black's Law Dictionary that Subject matter jurisdiction “refers to court's power to hear and determine cases of the general class or category to which proceedings in question belong. . . . Black's Law Dictionary 1425 (6th Ed 1990).

Our Circuit Courts have been vested with jurisdiction for the appointment of Receivership under South Carolina Code of Laws §15-65-10. The present matter involves corporations that are insolvent or in imminent danger of insolvency as set forth in the Complaint. Pursuant to §15-65-10(4) the Court is empowered to appoint a receiver: “When a corporation has been dissolved, insolvent or in imminent danger of insolvency or has forfeited its corporate rights . . .”

From the four corners of the complaint it calls for a winding up of the corporate affairs of two corporations with their only assets consisting of two parcels of property that have been deteriorating rapidly and are heavily mortgaged. Moreover, the complaint asserts that the receiver should dispose of the corporate assets to satisfy the mortgage indebtedness of the property.

II. THE COURT DID NOT COMMIT REVERSIBLE ERROR BY NOT REQUIRING A BOND AND BY FAILING TO VALUE THE REAL PROPERTY.

The issues set forth by the Appellants in the above argument are raised for the first time on appeal and thus cannot be considered by the Court of Appeals. Our Courts “have adhered to the rule that where an issue has not been ruled upon by the trial judge nor raised in post-trial motion, such issue may not be considered on appeal.” *Pelican Building Centers of Horry-*

Georgetown, Inc. v. Dutton, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). South Carolina does not have a plain error rule for appeals. *State v. Santiago*, 370 S.C. 153, 163, 634 S.E.2d 23, 29 (Ct. App. 2006) (citation omitted). Thus, it is the litigant's duty to bring to the trial court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error. *South Carolina Department of Transportation v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007).

Assuming for the sake of argument that this issue has been properly preserved for the review, the Appellants' arguments are without merit.

The failure of the Court to request a fixation of value on the property is not reversible error. Our Supreme Court has held that "Where an error is made in fixing the value of the property in the order appointing a receiver, the circuit judge has power to correct such error. *Allen v. Cooley*, 53 S.C. 414, 31 S.E. 636 (1898). In the present case, the Appellants never gave the Circuit Court the opportunity to fix said error.

Our South Carolina Supreme Court has held in *Dewalt v Kinard*, 19 S.C. 286, 1883 WL 4886 (1883) that "It is not necessary that a plaintiff should give bond to entitle him to the appointment of a receiver . . ."

III. APPELLANTS ARGUE THAT THE EVIDENTIARY RECORD CONTAINS NO PROOF OF SERVICE, NO AFFIDAVIT TO SUPPORT PUBLICATION, NO REPLY TO COUNTERCLAIM AND NO AFFIDAVIT OF DEFAULT AND THEREFORE TAKES THE POSITION THAT THE ORDER OF APPOINTMENT OF RECEIVER AND ALL SUBSEQUENT ORDERS ARE VOID AS A MATTER OF LAW.

The issues set forth by the Appellants in the above argument are raised for the first time on appeal and thus cannot be considered by the Court of Appeals. Our Courts "have adhered to the rule that where an issue has not been ruled upon by the trial judge nor raised in post-trial motion, such issue may not be considered on appeal." *Pelican Building Centers of Horry-*

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Again assuming that this issue was preserved, it is undisputed that Julie Parker Green filed an answer and counterclaim on behalf of the corporations as its sole owner with the Clerk of Court for Georgetown County on or about August 6, 2008. It is also undisputed that Julie Parker Green subsequently filed a motion for reconsideration of the appointment of a receiver. The Court in its order dismissing the motion for reconsideration advised Mrs. Green that she could not represent the corporation and needed to hire an attorney to represent the corporations. At the hearing to discharge the receiver, Mrs. Green attempted to have her son represent her at the hearing. This individual did not have a license to practice law.

Any defect or irregularity in service of process is waived by defendants' general appearance. *Strickland v. Consolidated Energy Products Co.*, 274 S.E. 554, 265 S.E.2d 682 (1980). The Court in *Strickland* went on to hold that a "general appearance to be a voluntary submission to the jurisdiction of the court." *Id.* at 555. In the present action, it is undisputed that Julie Parker Green submitted herself as sole owner and shareholder of the Defendants to the jurisdiction of the Court.

Julie Parker Green filed a counterclaim with her answer on behalf of the corporations but the same was never served. The Clerk of Court's file also indicates that there is no summons attached to the counterclaim.

The Appellants' arguments of insufficient service of process fails because of the actions of the sole owner of the Appellants. In this case, the sole owner, although practicing law without a license, has bound the corporations by the filing of an answer in the Clerk's file, filing a motion for reconsideration, and appearing *Pro Se* before the Court. This issue has been discussed in the treatise 8 A.L.R. 5Th 653 §17 *Effect of corporation's appearance through nonattorney*. This treatise states that courts have held or recognized that a corporation which appeared improperly through an agent other than an attorney could not avoid the results of a proceeding by alleging the impropriety of its own appearance, the appearance would be deemed to bind the corporation. Citing *Scandia-Down Corp. v Euroquilt, Inc.* (1985, CA7 Ill) 772 F2d 1423, 227 USPQ 138, 3 FR Serv 3d 195, cert den 475 US 1147, 90 L Ed 2d 346, 106 S Ct 1801, 229 USPQ 560; *United States v Priority Products, Inc.*, (1985) 9 CIT 391, 615 F. Supp. 593.

It is undisputed that the sole owner of the corporations had actual knowledge and was in possession of the summons and complaint because she, although practicing law without a license, filed a responsive pleading, motions and made appearances. Our Courts have held that the principal object of service of process is to give notice to the defendant corporation of the proceedings against it. *Burris Chemical, Inc. v. Daniel Construction Co.* 251 S.C.483, 163 S.E.2d 618 (1968).

IV. COMPLAINT ALLEGED SUFFICIENT FACTS TO APPOINT A RECEIVER.

The issues set forth by the Appellants regarding the failure to allege facts sufficient to appoint a receiver is raised for the first time on appeal and thus cannot be considered by the Court of Appeals. Our Courts "have adhered to the rule that where an issue has not been ruled upon by the trial judge nor raised in post-trial motion, such issue may not be considered on appeal." *Pelican Building Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). South Carolina does not have a plain error rule for appeals. *State v.*

Santiago, 370 S.C. 153, 163, 634 S.E.2d 23, 29 (Ct. App. 2006) (citation omitted). Thus, it is the litigant's duty to bring to the trial court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error. *South Carolina Department of Transportation v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007).

The Appellants had numerous opportunities to obtain legal counsel throughout the process and move to dismiss the complaint on the grounds that it did not allege facts sufficient to form a cause of action and to object to the appointment of the receiver. They failed to pursue either until this appeal was filed.

V. THE TWO DISMISSAL RULE IS INAPPLICABLE TO THIS ACTION.

The issues set forth by the Appellants regarding the two dismissal rule is raised for the first time on appeal and thus cannot be considered by the Court of Appeals. Our Courts "have adhered to the rule that where an issue has not been ruled upon by the trial judge nor raised in post-trial motion, such issue may not be considered on appeal." *Pelican Building Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). South Carolina does not have a plain error rule for appeals. *State v. Santiago*, 370 S.C. 153, 163, 634 S.E.2d 23, 29 (Ct. App. 2006) (citation omitted). Thus, it is the litigant's duty to bring to the trial court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error. *South Carolina Department of Transportation v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007).

Even if the Court considered applying the two dismissal rule, it is not applicable to the facts of this case. In order for the two dismissal rule to apply, the cases must be dismissed by the same plaintiff. In the present action, the Appellants are relying on the two dismissal rule as defined under Rule 41 of the South Carolina Rules of Civil Procedure. The rule specifically

states that dismissals are without prejudice “except that a notice of dismissal operates as an adjudication upon the merits when filed by a *plaintiff* who has once dismissed in any court of the United States or of any state an action based on or including the same claim.” (Emphasis Added.)

Here, it is undisputed that there have not been two dismissals from the same plaintiff. At best there has been one dismissal by Carolina First Bank, an entity that is not a part of this action, and one by the Respondent.

The argument that an assignee of a mortgage takes it subject to existing defenses does impact this case. At the time the mortgage was purchased by the Respondent, there was no defense available to the Appellants under Rule 41 or the two dismissal rule.

VI. THE LACHES ARGUMENT FAILS DUE TO THE STATUTE OF LIMITATIONS ON FORECLOSURE OF MORTGAGES.

The issues set forth by the Appellants regarding laches is raised for the first time on appeal and thus cannot be considered by the Court of Appeals. Our Courts “have adhered to the rule that where an issue has not been ruled upon by the trial judge nor raised in post-trial motion, such issue may not be considered on appeal.” *Pelican Building Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). South Carolina does not have a plain error rule for appeals. *State v. Santiago*, 370 S.C. 153, 163, 634 S.E.2d 23, 29 (Ct. App. 2006) (citation omitted). Thus, it is the litigant's duty to bring to the trial court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error. *South Carolina Department of Transportation v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007).

The Appellants' interpretation of laches in *Tredaway v. Smith*, 325 S.C. 367, 479 S.E.2d 849 is incorrect. The Court in *Tredaway* defined laches as “neglect for an unreasonable and

unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been” *Id.* at 856 *done. Hallums v. Hallums*, 296 S.C. 195, 371 S.E.2d 525 (1988). If the defense of laches is applicable, whether a claim is barred is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches. *Id.* However, the statute of limitations, rather than laches, is applicable to a legal as opposed to an equitable claim. *Edens v. Edens*, 312 S.C. 488, 435 S.E.2d 851 (1993). Therefore, laches does not operate to bar a legal claim when the applicable statute of limitations has not run. *Id.*

South Carolina Code of Laws §15-3-520(a) provides that the limitation for an action secured by a mortgage is twenty years. It is undisputed in this case that there is a valid mortgage on the properties in question. The Appellants concede in their brief that the earliest time in which to start the clock on a limitation of action would have been February 6, 2001.

VII. THE COURT DID NOT ABUSE ITS DISCRETION IN APPOINTING THE RECEIVER.

The issues set forth by the Appellants regarding the appointment of a receiver is raised for the first time on appeal and thus cannot be considered by the Court of Appeals. Our Courts “have adhered to the rule that where an issue has not been ruled upon by the trial judge nor raised in post-trial motion, such issue may not be considered on appeal.” *Pelican Building Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). South Carolina does not have a plain error rule for appeals. *State v. Santiago*, 370 S.C. 153, 163, 634 S.E.2d 23, 29 (Ct. App. 2006) (citation omitted). Thus, it is the litigant's duty to bring to the trial court's attention any perceived error, and the failure to do so amounts to a waiver of the

alleged error. *South Carolina Department of Transportation v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007).

Arguing that the Appellants preserved this argument, there is no evidence presented that would suggest that the appointment of the receiver would amount to an abuse of discretion. Our Courts have held that where there is no showing of any facts making it not for the best interest of all creditors, and no statutory authority forbidding the appointment, it is not an abuse of discretion to appoint a creditor as a receiver. *Ex parte Planters Bank*, 122 S.C. 241, 115 S.E. 299 (1922).

While it is unusual for a creditor to be named receiver, it should not be set aside when it is not objected to by any party. Our Supreme Court held in *Penn Mutual Life Insurance Co. v. Cudd*, 172 S.C. 88, 172 S.E. 787, that the mere fact that a person is a party to the suit does not absolutely disqualify him. The Court in *Penn* went on to recognize that “Our examination of the decisions from other jurisdictions has shown that even when a party to the litigation in which a receivership is declared is appointed a receiver, it has been a party who was a creditor.” *Id.* at 788.

VIII. ARGUMENT OF PRESUMPTION OF PAYMENT FAILS.

The issues set forth by the Appellants regarding the appointment of a receiver is raised for the first time on appeal and thus cannot be considered by the Court of Appeals. Our Courts “have adhered to the rule that where an issue has not been ruled upon by the trial judge nor raised in post-trial motion, such issue may not be considered on appeal.” *Pelican Building Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). South Carolina does not have a plain error rule for appeals. *State v. Santiago*, 370 S.C. 153, 163, 634 S.E.2d 23, 29 (Ct. App. 2006) (citation omitted). Thus, it is the litigant's duty to bring to the

trial court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error. *South Carolina Department of Transportation v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007).

While South Carolina law recognizes a presumption of payment applicable to mortgages, the presumption begins after the expiration of the twenty year statute.

South Carolina Jurisprudence Action/Debt §8 states:

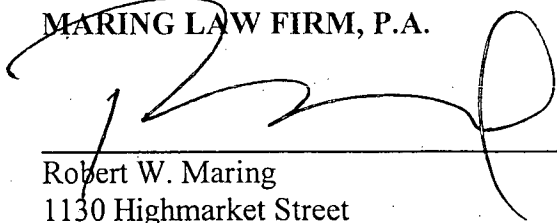
South Carolina law also recognized a presumption, applicable to bonds and other sealed instruments, such as notes, bills of exchange or other negotiable paper, mortgages, deeds of trust or statutory liens, and to judgments, that payment or performance had been made if no demand had been made for 20 or more years. The presumption was one of fact, based on public policy and necessity, which not only barred recovery but extinguished the debt. After 20 years, the cause of action no longer existed unless the defendant made "a distinct admission of a subsisting legal obligation of the debt, unaccompanied by any conduct or expression indicative of an unwillingness to pay." Such an admission had to be of the character required to resist a debt barred by the statute of limitations, such as a written admission under oath in a bankruptcy proceeding or a renewal of execution by a plaintiff after 20 years without objection by a defendant who had been served with a summons for renewal.

CONCLUSION

Based on the above, Respondent respectfully requests that this Court affirm the findings of the trial Court as to each issue presented on appeal.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

Case No. 2008-CP-22-0834

Trinity Investments, LLC Respondent,

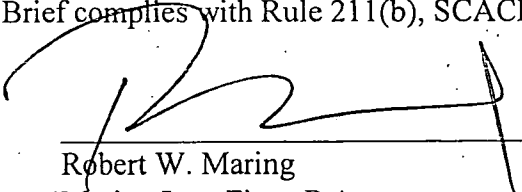
v.

Marina Ventures, Inc., and Pioneer Properties, Inc. Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

March 9, 2010



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 08-CP-22-0834.

Trinity Investments, LLC

Respondent

v.

Marina Ventures, Inc., and Pioneer Properties, Inc.

Appellant

FINAL REPLY BRIEF

Dated: May ____, 2010

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INTRODUCTION

The legal authorities cited in Respondent's initial brief fail to address the particular issues of this case.

REPLY TO RESPONDENT'S MISSTATEMENT OF ISSUES ON APPEAL

Respondent seeks to transform Section 16-55-30 [Code of Laws of South Carolina (as amended)] by christening it "the governing statute". Our General Assembly did not intend to create a new cause of action or abolish due process by its enactment. It expressly conforms to the settled case law of South Carolina cited in Appellant's Argument #1. All of its provisions clearly refer to the necessity of a pending action: "(1) Before Judgment ... (2), (3) After Judgment ... (4) Dissolution ..., Insolvency" Both refer to the necessity of a prior former adjudication – insolvency means one that is judicially ascertained which then grounds a the Court's jurisdiction. Smalley v. Chisenhall, 18 So. 739, 740, 108 Ala. 683; Delaware L.W. and R. Co. v. Oxford Iron Co. 33 N.J. Eq. (6 Stew) 192, 195.

REPLY TO RESPONDENT'S MISSTATEMENT OF THE CASE

The opening paragraph of Respondent's case statement emphasizes the year Appellant's father died in hopes this court will not consider Respondent's intentional or negligent failure to comply with due process. The second paragraph omits any reference to the basis of Respondent's claim, his assigned mortgage, and makes no attempt to provide this Court with an explanation for Respondent's conduct since he obtained the mortgage by assignment, June 24, 2003. Nor does Respondent's statement explain why Respondent failed to plead or advise the Circuit Court judges that Johnnie J. Young was Appellant's principal creditor and that if appointed, a routine surety bond would be

obtained. Instead, Respondent criticizes the pro se appellant for failing to notify a Trustee, of her Answer and Counterclaim. The pro se appellant's recording of the Answer and Counterclaim in the Court file expressly notified Respondent. Assuming arguendo, an attorney isn't "notified" by the public record of his own case file, Respondent's statement makes no attempt to establish prejudice as a result of her failure to formerly serve the Answer and Counterclaim upon the trustee. Gardener v. SC Department of Revenue, 577 SE2d 190, 353 S.C. 1 (Rehearing Denied) (2003) Upon succeeding the Trustee November 17, 2008, Respondent's new attorney was under a duty to inspect the Court's file.

The third paragraph makes no attempt to explain to this court how the Appellant's principal creditor was appointed receiver without bond the same day the motion was filed, nor does Respondent's brief explain to the Court, why the Notice of Appointment was published in a one day a week newspaper located in the coastal community of Pawleys Island and primarily distributed in only one region of Georgetown County – Waccamaw Neck, since the preceding Notice of Respondent's Counsel's suspension had been published in the Georgetown Times, the only Georgetown County newspaper with a general circulation to every area of the county since 1798. Furthermore, it doesn't explain to the Court why the Notice of Final Discharge was published in a Charleston County newspaper, and not in Georgetown County where the subject real estate is located.

Appellant did retain counsel for the May 26, 2009 Common Pleas non-jury roster call who appeared on the Appellant's behalf. The case was continued by Judge R. Ferrell Cothran until the June 22, 2009 term. At the next roster call, appellant's attorney learned the case had been ended by Order Discharging Receiver filed on June 5, 2009.

Having gained possession of all of Appellant's property without any impartial judicial scrutiny or fiduciary bond, Respondent's quit claim deed alleging indebtedness of \$766,006.02 rings hollow when compared with the evidentiary record. By stating this amount as consideration, Respondent, for the first time, alleges \$766,006.02 as Appellant's indebtedness. Court documents of the bankruptcy court in Columbia reveals this as false. This issue is discussed in reply to Argument IV.

REPLY TO RESPONDENT'S STANDARD OF REVIEW

Respondent's first case, First Palmetto Bank v. Patel, 344 SC 179, 543 SE2d 241 (Ct.App. 2001), The facts of the case are dissimilar from the facts of the case before the Court. The decision in Patel turned on the erroneous cancellation of a mortgage by a bank employee and the prejudicial effect of the cancellation in the foreclosure. Otherwise, the case supports Appellant's position. In Patel, the court held: "An action to foreclose a real estate mortgage is one in equity. As such, this court may find facts in accordance with its own view of the preponderance of the evidence.

Respondent's next case, Historic Charleston Holdings, LLC vs. Mallon, 365 SC 524, 617 SE2d 388 (Ct.App. 2005), involved causes of action for dissolution, injunctive relief, and declaratory judgment between contending members of multiple limited liability companies. Neither the law nor the facts lend any support to Respondent's position in this case. Where the findings of the trial judge do not reflect the preponderance of the evidence, the court may find facts in accordance with its own view of the preponderance of the evidence.

The third case cited by Respondent, Pelican Building Centers vs. Dutton, 311 SC 56, 427 S.E.2d 673 (1993), arose out of an oral agreement between a home builder and his buyer as an action to enforce a Mechanics Lien. After the jury's verdict was rendered, the

trial judge granted additur and the appeal concerned his decision to do so. It was reversed. In no way, does this procedural decision lend any support to Respondent's position in this case.

REPLY TO ARGUMENTS

I. Reply to First Argument

The first case cited by Respondent, Dove vs. Gold Kist, Inc., 314 SC 235, 442 S.E.2d 598 (1994), arises from a workers' compensation case heard before the single commissioner in Lexington County, appealed to the Richland County Circuit Court. The appeal construed §42-17-60 [Code of Laws of South Carolina (as amended)], "Either party ... may appeal from the decision of the Commission to the Court of Common Pleas of the county in which the alleged action happened, or in which the employer resides or has his principal office." Concerning jurisdiction, the court held: "The statute grants the Court of Common Pleas throughout the state subject matter jurisdiction to hear appeals from the orders of the South Carolina Workers' Compensation Commission (emphasis added)." The case does not directly, or indirectly lend support to Respondent's position concerning §15-65-30 [Code of Laws of South Carolina (as amended)].

The second case cited by Respondent, Atlanta Skin Cancer vs. Hallmark, 320 S.C. 113, 463 S.E.2d 600 (1995), "presents the novel question of the liability of a lending institution under the South Carolina Uniform Securities Act when it loans money to service capital for an investment promoted by the fraudulent acts of others." Neither the law considered in this case, nor the arcane facts arising from it lend support to Respondent's position concerning §15-60-30 [Code of Laws of South Carolina (as amended)].

II. Reply to Second Argument

The first case cited by Respondent, Pelican Building Centers vs. Dutton, 311 SC 56, 427 S.E.2d 673 (1993), arose out of an oral agreement between a home builder and his buyer as an action to enforce a Mechanics Lien. After the jury's verdict was rendered, the trial judge granted additur and the appeal concerned his decision to do so. It was reversed. In no way, does this procedural decision lend any support to Respondent's position in this case. Legal ethics mandated the trial court require the adverse party be bonded.

The second case cited by Respondent was a murder case, State vs. Santiago, 370 SC 153, 634 SE2d 23 (Ct.App. 2006). The defendant's conviction for murder and possession of a firearm during the commission of a violent crime was affirmed. In the 31-page opinion, the plain error rule was considered in the context of a Jackson vs. Denno hearing prior to trial. Neither the law considered in this case nor the facts the case, arose from, lend support to Respondent.

The third case, SC DOT v First Carolina, 372 SC 295, 641 SE2d 903 (2007) was a condemnation action in which the jury was asked to determine the value of 8 acres by special verdict. The Supreme Court upheld the trial court's choice of verdict. In the present non-jury case, Respondent presented no evidence of the value of the property, or of the amount of any alleged debt. Neither the law arising from this case nor the factual situation support Respondent.

In deciding the case, the reasoning of the Court concerning issue preservation supports Appellant. The trial court ruled SCDOT had waived its objection to the special verdict form. "There are 4 basic requirements to preserving issues at trial for appellate review: (1) raised to, and ruled upon by the trial court; (2) raised by Appellant, (3) raised in a timely manner, (4) raised to the trial Court with sufficient specificity """. He held that

SCDOT made a timely objection to the case of the special verdict form. Although SCDOT did not phrase its objection in the exact terms used in the issues on appeal ... SCDOT provided a meaningful objection with sufficient specificity to allow the trial court to rule on the same issue.” State v. Russell, 345 S.C. 128, 134, 46 SE2d 202,204 (Ct. App 2001) holding that a party need not use the exact name of a legal doctrine in order to preserve an argument, “it must be clear that the argument has been presented on that ground ... DOT’s statement was not a concession to the use of the form, but simply a response to the court’s question ...” However, in this case the Appellant timely and with sufficient specificity raised meritorious defenses in her Answer and Counterclaim filed with court. Neither Respondent, nor the trial court, ever addressed or ruled on any of the Appellant’s claims or defenses.

The fourth case cited by Respondent is Allen vs. Cooley, 60 S.C. 353, 38 S.E. 622 (1901). This case supports Appellant’s VII argument, a crucial issue in this case. This case highlights the importance of the appointment of impartial persons to oversee receiverships and negates the validity of appointments of any interested person, particularly when that person is not bonded or required by the Court to file a legal accounting. The case arose from a partnership dissolution between a farmer and a storekeeper. The lower court concluded certain assets had been disposed of fraudulently, deposed the temporary receiver, and appointed the Master in Equity of Abbeville County as receiver. Our Supreme Court affirmed the findings of fact and conclusions of law of the lower court but ordered another person to be appointed receiver.

The last case cited by Respondent, DeWalt v. Kinard, 33 S.C. 522 (1890), despite its age, is perhaps the most factually similar case to this case. DeWalt held a mortgage upon certain real estate signed by one of two brothers named Kinard. Apparently, DeWalt

had some knowledge that the other brother claimed a one-half interest in the mortgaged property, and he had not signed the mortgage, DeWalt brought an action at law against the brother who had signed the mortgage and the other brother to dispose them of the property. The case was submitted to the jury as a mixed question of law and fact. The decision construed the action as the same as, if not, a mortgage foreclosure. The brother who had not signed the mortgage appealed. The Supreme Court set aside the jury verdict and reversed the lower court's construction of the complaint

III. Reply to Argument III

Strickland v. Consolidated Energy Products, 274 SC 554, 265 SE(2d) 682 (1980) involved a products liability claim that went into default in the hands of an attorney who "... promptly communicated a request for an extension to Respondent's counsel ... who delayed in acting upon the request." The Court held the delay "... was sufficient ... under the present facts, to mislead ... and render his neglect to answer excusable." It involved two attorneys and not an attorney and a layman, as in the present case. The Court may note that none of Respondent's successive attorneys ever notified Mrs. Green or brought the filed answer to the attention of successive Circuit Court jurists. This case supports Appellant's third argument, particularly given our Supreme Court's recent rule change enlarging the responsibility of attorneys toward pro se litigants.

The next case cited by Respondent, Scandia Down Corp. v. Euroquilt Inc. 771 F2d 1423 (7th Cir. 1985) arises from the 7th Circuit and arose involved from a dispute between a California Corporation and a New Jersey Corporation, the issue being trademark infringement. Since the holding doesn't arise from the fourth circuit and the factual situation has no resemblance to this case, it lends no support to Respondent.

Mrs. Julie P. Green, the sole stock holder of Marina Ventures Inc. and Pioneer Properties Inc. answered and timely filed the answer to this action. That the answer is a matter of record in this case cannot be disputed. Nor was her answer ever dismissed by an appropriate order of the Circuit Court, based upon the defense now raised by Respondent *nunc pro tunc*. Her answer is for the benefit of all stockholders, thus it is not improper for her to present defenses which are common to all stockholders as well as herself. Willheim v. Murchison 206 F. Supp. 733, 6 Fr Serv 2d 427; app. Dismd (CA 2 NY 312 F2d 399) (1962 SDNY); U.S. v. Priority Products, Inc., 9 CIT 392, 615 F.Supp. 593 (1985).

The last case cited by Respondent, Burris Chemical Inc., v. Daniel Const. Co., 21 SC 483, 163 SE2d 618 (1968) arose from the lower court's denial of a corporate Defendant's Motion to quash service pursuant to §10-421 [Code of Laws of South Carolina (as amended)] Service of Process on a Corporation. The Appellate court held a general superintendent supervising 15 workers on a construction project costing \$600,000 qualified as Defendant's agent for service of process and that Defendant's mobile trailer and equipment met the ownership requirements of §10-421 [Code of Laws of South Carolina (as amended)]. In the case before this Court, Mrs. Green was never personally served in Horry County, where she was on the public record as the Personal Representative, nor by publication, in Georgetown County, where the property is located and the case pending.

U.S. v. Priority Products, 615 F.Supp 93 (1985) involved a government suit to recover penalties from importation of bark tea into Portland Oregon in the Court of International Trade. This Court is governed by its own unique and unusual rules of procedure. Neither the law arising from the appeal, nor the factual situation presented support Respondent.

The failure to address the answer is consistent with the indirect and evasive conduct documented by failures to properly give notice to as well as serve Appellant in advance of all hearings in this case.

IV. Reply to Argument IV

Respondent's complaint pleads no factual information to support it; instead, it contains only allegations of an unproven insolvency coupled with conclusory language.

On September 4, 2001, Walter F. Green, through Attorney Michael F. Drose, filed bankruptcy alleging loss of \$157,000 due to misconduct by Respondent's assignor, Carolina First Bank. In response, the bank certified its secured lien as \$97,958 resulting in a \$50,042 credit, or set off, in favor of Appellant's testator in addition to cancellation of the mortgage. Neither party pursued the issue and on December 23, 2002, after payment of all unsecured debts, Walter F. Green, Appellant's testator, was honorably discharged in possession of the real estate subject to Carolina Bank's mortgage.

Thereafter, Carolina Bank took no action and on June 24, 2003 without recourse assigned the mortgage to Respondent. On September 2, 2003 the Respondent filed for foreclosure and on June 16, 2005 moved the case be dismissed for a second time. On June 20, 2008 Respondent's Counsel alleged Appellant was insolvent, devoid of factual proof and sought the appointment of Carolina Bank's Assignee as receiver; there was no action to support the appointment of receiver pending.

The appointment of a Receiver is a drastic remedy, to be exercised with great circumspection. It should never be based upon an unverified pleading, devoid of supporting facts, framed by conclusory language.

V. Reply to Argument V

An assignment without recourse means the assignee has the same rights and has incurred the same liabilities its assignor possessed. Respondent holds the assignment subject to any defense the mortgagor might have against Carolina Bank. In the case before this court, the assignee is identical to Carolina Bank. Respondent may not evade Rule 41 by claiming a different identity. The identity of the holder of the mortgage with, or without, assignment, remains the same. i.e. only the holder of the mortgage could ever be plaintiff. The case brought by the holder of the mortgage has been dismissed twice. Rule 41 SCRPC is operative.

VI. Reply to Argument VI

The next case cited by Respondent, Hallums v. Hallums, 296 SC 195, 371 SE2d 525 (1988) involved the issue of whether a mother can recover retroactive child support from the father once the child reaches majority. The Supreme Court reversed the award and applied the defense of laches to the action. This case supports Appellant's position.

Edens v. Edens, 312 SC 488, 43 SE2d 81 (1993) involved a claim in the Probate Court held barred by laches. The Circuit Court reversed the decision and awarded a monetary amount. On appeal, the Supreme Court disallowed the award and remanded the case to the Probate Court's original jurisdiction to make the award. Neither the law arising from the appeal, nor the present factual situation support Respondent.

VII. Reply to Argument VII

In Penn Mutual Life Ins. Co. v. Cudd, 172, SC 88, 172 SE 787 (1934) the Supreme Court considered the lower court's appointment of the debtor as receiver over the objection of two corporate creditors. The Court and disallowed the appointment. The decision supports Appellant and is adverse to Respondent's position. The case arose from

very similar facts, i.e. at the appointment hearing the integrity, honesty, and experience of the debtor were supported by multiple witness and the prior record of the receivership documented disinterest and inaction. Two second creditors objected, each by respective real estate mortgages. The debtor would not even have been sole receiver, but only co-receiver with another. Despite all this supportive evidence, the Supreme Court rejected the appointment.

Allen vs. Cooley, 60 S.C. 353, 38 S.E. 622 (1901) also supports Appellant. It highlights the importance of the appointment of impartial persons to oversee receiverships and negates the appointment of any interested person, particularly when the person is not bonded or required to file a legal accounting. Allen arose from a partnership dissolution between a farmer and a storekeeper. The lower court concluded certain assets had been disposed of fraudulently, deposed the temporary receiver, and appointed the Master in Equity of Abbeville County as receiver. Our Supreme Court affirmed the findings of fact and conclusions of law of the lower court but ordered another person to be appointed receiver.

VIII. Reply to Argument VIII

Respondent repeats his well-worn syllabus' buttressed by the citation of an incomplete treatise as an argument. It is axiomatic that statutory and case law are the only basis of precedent – not treatises.

A mortgagor is not estopped to set up the defense of payment against an assignee. Woodrow v. Fredrick, 131 S.E. 598, 133 S.C. 431 (1926).

CONCLUSION

The evidentiary record documents Respondent's disdain for due process from start to finish. Based upon the evidentiary record and the Respondent's brief, the only explanation is necessity is the mother of invention. Absent a claim substantiated by fact, procedural technicality is a formidable weapon when wielded by an experienced adversary. A pro se litigant, handicapped by a corporate legal principle, designed to protect multiple shareholders, became the victim to be rescued by due process – Absent die process, how can issue preservation be relevant? The only reasonable conclusion it – it isn't. Issue preservation was created to protect forthright litigants and the courts from prolonged and expensive adjudication of spurious claims. Issue preservation was not created to bar, discourage, or suppress a meritorious claim as Appellant now before you. Lacking legal foundation, the lower court's decision should be reversed and Respondent's case be dismissed, once and for all.

Dated: May _____, 2010.

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South Carolina Bar #640598
Counsel for Appellant

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Trinity Investments, LLC, Respondent,

v.

Marina Ventures, Inc. and
Pioneer Properties, Inc., Appellants.

Appeal From Georgetown County
Benjamin H. Culbertson, Circuit Court Judge

Unpublished Opinion No. 2011-UP-587
Heard October 31, 2011 – Filed December 21, 2011

AFFIRMED

Franklin D. Beattie, Jr. and G. Turner Perrow, Jr., of
Georgetown, for Appellants.

Laura Mitchum Moyer and Robert Wade Maring, of
Georgetown, for Respondent.

PER CURIAM: Marina Ventures, Inc. and Pioneer Properties, Inc. appeal the appointment of a receiver to sell property in satisfaction of a mortgage, arguing (1) the circuit court lacked subject matter jurisdiction to

appoint a receiver; (2) even if the circuit court had subject matter jurisdiction, the appointment was improper; (3) laches and adverse adjudication bar the appointment of a receiver; and (4) a presumption of payment arises from the creditors' repeated abandonment of a foreclosure action. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the circuit court had subject matter jurisdiction to appoint a receiver: S.C. Code Ann. § 15-65-10(4) (2005) (providing the circuit court may appoint a receiver "when a corporation has been dissolved, is insolvent, or in imminent danger of insolvency . . ."); S.C. Code Ann. § 15-65-10(1) (2005) (providing the circuit court may appoint a receiver before judgment when the applicant shows the property is in "danger of being lost or materially injured or impaired" and the applicant has a right to that property in the possession of an adverse party).

2. As to the remaining issues: Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) (holding issues and arguments are only preserved for review when they are raised to and ruled on by the circuit court); S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (holding issues not raised to and ruled upon by the circuit court are not preserved for appellate review); S.C. Dep't of Transp. v. M & T Enter., 379 S.C. 645, 658-59, 667 S.E.2d 7, 15 (Ct. App. 2008) ("Without an initial ruling by the . . . [circuit] court, a reviewing court simply would not be able to evaluate whether the . . . [circuit] court committed error."); Knight v. Waggoner, 359 S.C. 492, 496, 597 S.E.2d 894, 896 (Ct. App. 2004) (finding arguments made for first time on appeal are not preserved for review).

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

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AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 08-CP-22-.0834

Trinity Investments, LLC.....Respondent

v.

Marina Ventures, Inc., and Pioneer Properties, Inc. Appellants

PETITION FOR REHEARING

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Attorneys for Appellants

Other Counsel of Record:
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1130 Highmarket Street
PO Box 478
Georgetown, SC 29442-0478
Attorney for Respondent

January 5, 2012

PETITION FOR REHEARING

You will please take notice the Appellants by and through the undersigned attorney, does hereby Petition for Rehearing in order to finally decide Appellant's appeal to this court upon the following grounds pursuant to Rule 240(i) SCACR.

1. By ignoring the lower court's lack of subject matter jurisdiction due to the absence of any underlying judgment, finding of fact, or record evidence establishing Appellant's debt to Respondent, the Court of Appeals committed error of law.

2. By relying upon statutory language assuming corporate dissolution or insolvency to justify its decision, the Court of Appeals committed error of law, no finding of dissolution or insolvency having been made by the lower court.

3. No finding that any real property was in danger of being lost, materially injured or impaired having been made by the lower court, by relying upon this statutory language which requires such findings as precondition to appointment of a receiver to justify its decision, the Court of Appeals committed an error of law.

4. By implementing the Rule of Preclusion to justify its decision, the Court of Appeals denied Appellant's constitutional right to due process guaranteed by the 5th and 14th amendments of the U.S. Constitution.

FRANKLIN D. BEATTIE, ESQ
G. TURNER PERROW, ESQ

Franklin D. Beattie

By:

Dated: January 5, 2012

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
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Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 08-CP-22-.0834

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Marina Ventures, Inc., and Pioneer Properties, Inc. Appellants

MEMORANDUM OF LAW

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Attorney for Respondent

January 5, 2012

MEMORANDUM OF LAW

Personal jurisdiction over a corporate defendant cannot be obtained under South Carolina law from the filing of an Answer by a lay person. In South Carolina a corporation must appear through an attorney licensed to practice in South Carolina. The Answer and Counterclaim signed by the owner could not grant the court personal jurisdiction as a matter of law.

The cases cited by Respondent to this court to justify personal jurisdiction flatly do not stand for that. In Scandia, the Court expressly said corporations *cannot appear through non-lawyers*. Only when a corporation and its non-lawyer representative are both named as parties to the suit could the non-lawyer properly appear pro se. That is *not true* in this case. In United States v. Priority Products, Inc., the corporation stopped paying its lawyer so no one was at trial to speak for it. After losing in trial, represented by a lay person, the Corporation hired a new lawyer who sought a new trial upon the ground that the Corporation had not been represented at trial. The court correctly noted that a corporation cannot appear in a case and then after creating its own hardship try to take advantage of that. It is *not* a case where the court said the non-lawyer effected an appearance by the corporation. In Trinity, the corporation was *never* represented by a lawyer before the judge signed off on the self dealing. Scandia Down Corp. v. Euroquilt, Inc., (1985, CA 7, Ill), 772 F2d 1423, 227 USPQ 138, 3 FR Serv. 3rd 195, Cert. Den. 475 US 1147, 90 L.Ed. 2nd 346, 106 S.Ct. 1801, 229 USPQ 560; United States v. Priority Products, Inc., (1985) 9 CIT 391, 615 F.Supp. 593. (See Respondent's Brief, page 8).

The Appellants filed an Answer and Counterclaim on August 6, 2008. (Exhibit #23, p. 26). There was no motion to strike the Appellant's Answer and Counterclaim. The Counterclaim presents multiple meritorious defenses to the Respondent's equitable proceeding. The Court denied the Appellants any opportunity to be heard in the case and disposed of the matter by way of motion less than a week before the case was scheduled for the non-jury roster. (Exhibit #1, p. 1, Exhibit #2, p. 2 and Exhibit#31, p. 59)

Due process mandates personal service unless an adverse party "...cannot after due diligence be found with the state and (a) that fact appears by affidavit to the satisfaction of the court or judge thereof or that the adverse party is a proper party to an action relating to real property in this state, such court... may grant the moving party and order that service be made by publication..." § 15-9-710 [Code of Laws of South Carolina (as amended)].

"In any action or proceeding in this state in which the defendant is a corporation created by or organized under the laws of this State, when no officer or agent thereof upon whom service of process can be made can, after due diligence, be found in this State and this is made to appear by affidavit, process may be served upon the corporation by publication. §15-9-730 [Code of Laws of South Carolina (as amended)].

These sections must be strictly construed because service by publication is in derogation of the common law. Tenney vs. American Pipe NSF Co., 96 F 919 (1899) Both sections apply to the fact in this equitable proceedings and both require an affidavit. Respondent's counsel supplied no affidavits to support any of the Orders of Publication she obtained. The lower courts did not have jurisdiction due to the absence of the affidavit.

Assuming arguendo, no affidavit is deemed necessary, Respondent's counsel failed to comply with §15-9-740 [Code of Laws of South Carolina (as amended)] "the Order of Publication shall direct the publication be made in one newspaper ... and for such length of time as may be deemed reasonable not less than once a week for three weeks."

Respondent's counsel attempted to serve Appellant by publishing notices once each in two different newspapers in two counties, one of which was not even the county where the subject property was located. (Exhibit #14, p. 15 and #17, p. 20)

The court denied Appellant any opportunity to be heard.

FRANKLIN D. BEATTIE, ESQ
G. TURNER PERROW, ESQ



By:

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(843) 546-2900
South Carolina Bar #640698

Attorneys for Appellants


Dated: January 5, 2012

**CERTIFICATE OF SERVICE BY MAILING
BY REGULAR MAIL**

I, Franklin D. Beattie, do hereby certify that I have, served all parties/counsel in this action with a copy of the pleading(s) herein below specified in the above styled case by mailing a copy of same, with adequate postage prepaid, by depositing copies in a United States Postal Mail Box in a properly addressed envelope with prepaid postage addressed to the following address(es):

Pleadings: Petition for Rehearing

Counsel/Party Served: Robert W. Maring, Esq.
Maring Law Firm, P.A.
1130 Highmarket Street
PO Box 478
Georgetown, SC 29442-0478
Attorney for Respondent



Franklin D. Beattie, Esq.

Dated: January 5, 2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

Case N. 2009131452

Trinity Investments, LLC.....Respondent,

v.

Marina Ventures, Inc., and Pioneer Properties, Inc. Appellants.

RETURN TO PETITION FOR REHEARING

Comes now, the undersigned, attorney for the Respondents, who would request that this Court deny the Appellants' Petition for Rehearing. This Return is based on the following grounds:

1. Pursuant to South Carolina Appellate Court Rule 221 (a) *inter alia*, "Petitions for Rehearing must be actually received by the Appellate Court no later than Fifteen (15) days after the filing of the opinion, order, judgment, or decree of the Court." Respondents would show that the Petition for Rehearing filed by the Appellants was not received by the Court within Fifteen (15) days after the filing of the opinion of the Court. The opinion was filed December 21, 2011, and the Petition for Rehearing was received by the Court on January 9, 2012. This petition for rehearing should be dismissed for the Appellants' failure to file the Petition for Rehearing within the time required by Rule 221(a). Appellants have also failed to

provide any excuse or request for an extension of time and no extraordinary circumstances have been provided to the Court.

2. Appellants' first ground states that this Court ignored the lower Court's lack of subject matter jurisdiction because they now claim that there was no evidence of any underlying judgment or debt. The Appellants' argument fails to acknowledge that the complaint was accompanied by an affidavit of the Respondent, which is part of the record on appeal that states "that the Plaintiff (Respondent) is owed in excess of \$400,000.00 on its mortgage and note." This matter was considered and addressed by the Court in oral arguments by counsel and the lower court was presented evidence of an underlying debt in which to support its decision.

3. Appellants' second ground states that there was no finding of dissolution or insolvency having been made by the lower court. Again, the Appellants' argument fails to acknowledge the contents of the affidavit attached to the complaint that states "the Defendants (Appellants) have filed for bankruptcy and have been discharged therefrom several years ago." Again, this matter was considered and addressed by the Court in oral arguments by counsel and the lower court was presented evidence of insolvency in which to support its decision.

4. Appellants' third ground states that there was no evidence to support that any real property was in danger or being lost, materially injured or impaired. The Appellants' argument fails to acknowledge that the complaint was accompanied by an affidavit of the Respondent, which is part of the record on appeal that states "that the registered agent for service of process, director, officer and shareholder of the Defendants (Appellants) has been deceased for several years and the real property has been deteriorating. No successor officer, director, or other official has come forward to administer the assets of the Defendants (Appellants). The assets have deteriorated and are in danger of further deterioration and further disrepair." Again,

this matter was considered and addressed by the Court in oral arguments by counsel and the lower court was presented evidence that the real property was in danger of being lost, materially injured or impaired, which support its decision.

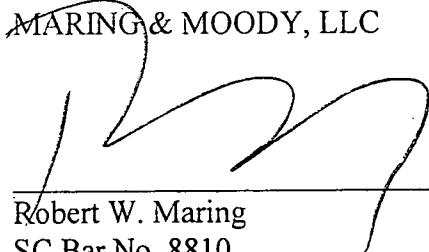
4. Respondent is unaware of any implementation, by this Court, of the Rule of Preclusion to justify its decision. This Court reviewed the record for this case and determined that the Appellants, acting without the benefit of an attorney, had filed an Answer with the Clerk of Court, filed a Motion for Reconsideration of the Order Appointing the Receiver, and attempted to represent the corporation throughout the pendency of the case. Furthermore, in the Order dated March 26, 2009, Judge Dianne S. Goodstein wrote, "the individual who submitted this motion is the purported sole owner of the Defendants (Appellants). The Defendants (Appellants) are South Carolina Corporations and accordingly must be represented by counsel in the Circuit Court. *Renaissance Enterprises, Inc. v. Summit Teleservices*, 334 S.C. 649. 515 S.E. 2d 257 (1999). Because the Defendant's Motion does not raise any novel issues for the Court's consideration, the motion is untimely, and the motion was made by an unrepresented individual on behalf of a corporation, the Defendant's motion to reconsider is denied."

The actions of the sole shareholder bind the appellant, including any argument of insufficiency of process or any other arguments that claim that due process and equal protection were denied.

SIGNATURE PAGE TO FOLLOW

Respectfully submitted,

MARING & MOODY, LLC



Robert W. Maring
SC Bar No. 8810
Maring & Moody, LLC
1130 Highmarket Street
P.O. Box 478
Georgetown, SC 29442-0478
(843) 545-9544
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

Case No. 2009131452

Trinity Investments, LLC Respondent,

v.

Marina Ventures, Inc., and Pioneer Properties, Inc. Appellants.

CERTIFICATE OF SERVICE

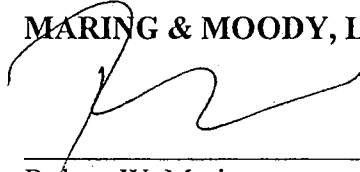
I do hereby certify that I have served all parties/counsel in this action with a copy of the Return to the Appellants' Petition for Rehearing by placing a copy in the U.S. Mail, First Class Postage prepaid, on the 10th day of February, 2012, addressed as follows:

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Attorney for Respondent

The South Carolina Court of Appeals

Trinity Investments, LLC.,

Respondent,

v.

Marina Ventures, Inc. and Pioneer
Properties, Inc.,

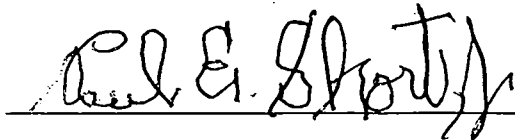
Appellants.

The Honorable Benjamin H. Culbertson
Georgetown County
Trial Court Case No. 2008-CP-22-00834


ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.



J. Short



J. Williams



J. Geathers

Columbia, South Carolina

cc: Franklin D. Beattie, Jr, Esquire
G. Turner Perrow, Jr, Esquire
Laura Mitchum Moyer, Esquire
Robert Wade Maring, Esquire

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App

FILED
March 2, 2012