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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
COMMONWEALTH LAND TITLE)
INSURANCE COMPANY,)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2007-CP-23-3706

Plaintiff,)

ENTERED COMPUTER

vs.)

ORDER GRANTING
DEFENDANT WILLIAM C. HOOD, ESQ.'S
MOTION FOR SUMMARY JUDGMENT

JAMES TERRY LAWS, ESQ., WILLIAM)
C. HOOD, ESQ., AND JILL COX, AS)
PERSONAL REPRESENTATIVE OF)
THE ESTATE OF JOHN A. COX,)

FILED CLERK OF COURT
WILLIAM C. HOOD, ESQ.
GREENVILLE, S.C.
2008 SEP 11 AM 9:26

Defendants.)

WILLIAM C. HOOD, ESQ.,)

Third-Party Plaintiff,)

vs.)

JILL COX, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF JOHN A. COX,)

Third-Party Defendant.)

This matter is before the Court on the motion of Defendant and Third-Party Plaintiff William C. Hood, Esq. ("Hood") for summary judgment on all claims alleged against Hood in Plaintiff's Second Amended Complaint. The Court heard Hood's Motion on July 17, 2008, at 2:00 p.m. For the reasons stated below, Hood's Motion for Summary Judgment is hereby GRANTED.

FINDINGS OF FACT

Because this is a Motion for Summary Judgment, all facts summarized below are presented in the light most favorable to Plaintiff, the non-moving party.

JTH #1

This case arises out of a transaction (the "Transaction") for the sale of a parcel of land on Highway 25 in Greenville County, South Carolina (hereinafter referenced as "the Property"). Defendant John A. Cox ("Cox") entered into a contract for the sale of the Property to Jon Heard and James Heard (the "Heards"). The Heards retained Defendant J. Terry Laws, Esq. ("Laws") to represent them in the closing of the sale of the Property. In connection with their purchase of the Property, the Heards obtained a loan from the Bank of Travelers Rest, and as part of the loan process, the Heards obtained a policy of title insurance from Plaintiff Commonwealth Land Title Insurance Company ("Commonwealth").

The Property was part of a larger parcel of land that previously had been owned entirely by Cox. The larger parcel was subject to a mortgage to American Federal Bank ("the American Federal Mortgage"), as well as several other mortgages. Because of repeated subdivisions of Cox's Highway 25 land holdings and because multiple mortgages attached to the Property at various times, the title status of the Property was confusing.

In preparing for the closing of the sale of the Property to the Heards, Cox retained Hood to prepare the deed transferring the Property. Hood's only role in the in the Transaction was preparing the deed transferring the Property from Cox to the Heards, and Hood billed Cox \$100 for his work. (See January 24 Letter, as defined below). Hood did not represent Commonwealth or the Heards in the sale of the Property, as conceded by Commonwealth's counsel at the hearing on Hood's Motion for Summary Judgment. (See Deposition of William C. Hood, pp. 14-16) (hereinafter "Hood Deposition") (noting that Hood was retained by Cox and that Hood knew Laws was handling the closing).

In connection with Hood's preparing the deed, Hood drafted a letter to Laws dated January 24, 2002 (the "January 24 Letter"). In the January 24 Letter, Hood stated that the Property had been

encumbered by several mortgages, but that Hood paid off these encumbrances when he closed previous transactions involving the Property. The January 24 Letter further stated that Hood "would record [satisfaction affidavits for the mortgages] if the mortgages [were] still open." (See January 24 Letter). Attached to the January 24 Letter in the facsimile transmission were several documents, including a copy of the deed and an unexecuted affidavit stating that the American Federal Mortgage was satisfied.¹ Shortly after drafting and faxing the January 24 Letter, Hood further reviewed the title status of the Property, at which time he realized that the American Federal Mortgage still encumbered the Property. Accordingly, on January 25, 2002, Hood attempted to fax a second letter to Laws (the "January 25 Letter") stating that "[Hood] did not pay [the American Federal Mortgage] off but [Hood] got a release of a portion of the property [that was previously sold by Cox]." (See January 25 Letter). In the January 25 Letter, Hood reported to Laws that the American Federal Mortgage still bound the Property to be sold by Cox to the Heards. (See January 25 Letter).

Laws denies receiving the January 25 Letter. However, Laws' file produced through discovery in this case contained the fax cover sheet for the January 25 Letter, which bears a fax transmission stamp from Hood's office dated January 25, 2002. Hood identified the coversheet, and further testified that he personally prepared the coversheet. (See Hood Deposition, pp. 31, 57-58, and 132-137.) Additionally, in a letter that Laws' counsel sent to Hood's counsel with the intent that it constitute Laws' response to Hood's Requests for Admissions, Laws' counsel admitted that the cover sheet was found in Laws' file. (See June 5, 2008, Letter from Stewart to Atkinson). Because this Court is obligated to view the facts in the light most favorable to Commonwealth for purposes of this Summary Judgment Motion, the Court assumes that Laws received only the January 25 fax cover sheet, and not the January 25 Letter.

¹ No party has presented any evidence that the affidavit include in the facsimile transmission containing the

Hood was not an approved attorney for Commonwealth; therefore, he was not allowed to make any certifications of title pursuant to Commonwealth's guidelines. Because Laws was the only approved attorney for Commonwealth in the Transaction, he was the only attorney allowed to certify title to Commonwealth. (See Deposition of Mark Hershberger, Commonwealth's 30(b)(6) deponent, pp. 72-74) (hereinafter "Hershberger Deposition"). Commonwealth, through its 30(b)(6) designee, has admitted that Laws served as Commonwealth's agent for the purposes of issuing a title insurance policy for the Property. (See Hershberger Deposition, pp. 17-18, and 20) (noting authority of agents for issuance of policy and conceding that Laws acted as Commonwealth's agent for the Transaction).

Hood believed that the January 24 Letter clearly anticipated further communication from Laws, if Laws expected Hood to take any action on encumbrances upon the Property. Specifically, the January 24 Letter stated that Hood had paid the American Federal Mortgage but that he was unsure whether the American Federal Mortgage (as well as a Carolina First Mortgage) had ever been satisfied of record. (See Hood Deposition, pp. 21-25). Further, Hood stated that he would record satisfactions, "if in fact they [were] still open." (See January 24 Letter). Hood's January 24 Letter demonstrates that he had not reviewed the title status at the Register of Deed's Office, because he states uncertainty as to whether mortgages had been satisfied. Further, his statement that he would take action on mortgages "if they [were] still open" indicates that Hood expected Laws to communicate with him further if Laws expected Hood to take further action. (See Hood Deposition, pp. 21-25.) Hood testified that no communication occurred between Hood and Laws prior to the closing on the Property, other than the January 24 Letter and the January 25 Letter, both of which were transmitted by Hood to Laws by fax only. (Hood Deposition, pp. 17-19). Laws denied being able to recall exactly what communication with Hood occurred prior to the closing; however, he

January 24 Letter was ever executed by Hood.

recalled receiving Hood's January 24 Letter. (Deposition of Terry Laws, pp. 77-78) (hereinafter "Laws Deposition").

Laws closed the sale of the Property on or after February 1, 2002. He did not satisfy the American Federal Mortgage, and Cox accepted payment at the closing without satisfying such mortgage. Further, Laws did not report the American Federal Mortgage to Commonwealth; therefore, Commonwealth did not exclude the American Federal Mortgage from the title insurance policies that Travelers Rest Title issued for the Property.

Eventually, Cox defaulted on the American Federal Mortgage, which had been assumed by Central Carolina Bank ("CCB") before the February 1, 2002, closing on the Property. CCB initiated foreclosure proceedings in 2004, and Laws reported a claim to Commonwealth. Commonwealth then satisfied the American Federal Mortgage, and assumed CCB's rights under the American Federal Mortgage.

PROCEDURAL HISTORY

Commonwealth filed suit against Laws and Cox in this action on June 12, 2007. Because Commonwealth satisfied the American Federal Mortgage on behalf of the Heards, it asserted claims on its own behalf, but it also asserted claims on behalf of the Heards through subrogation. Commonwealth amended its Complaint to add Hood as a party on August 28, 2007. Commonwealth further amended its pleadings on December 17, 2007, to change Cox's identification to the Estate of John A. Cox. All of Commonwealth's claims against Hood are alleged in the "Second Claim for Relief" in Plaintiff's Second Amended Complaint. In the Second Claim for Relief, Commonwealth asserts claims against Hood for "legal malpractice and negligence."

Hood timely answered and asserted a third-party claim and a cross-claim against the Estate of John A. Cox. Hood is currently litigating the timeliness of his claims against the Estate of John A.

Cox in the Probate Court for Anderson County.

On May 8, 2008, Hood moved for summary judgment with respect to Commonwealth's claims against him. On July 14, 2008, Commonwealth submitted its Brief in Opposition to Hood's Motion for Summary Judgment, and attached to that brief as exhibits: (1) the January 24 Letter (with an unexecuted affidavit included with the January 24 Letter in the January 25, 2002, fax transmission to Laws); (2) the January 25 Letter; (3) excerpts from the deposition of Hood; and (4) excerpts from the deposition of Laws. Commonwealth did not present any expert testimony, affidavits or opinions supporting its claims against Hood.

CONCLUSIONS OF LAW

Hood is entitled to summary judgment pursuant to Rule 56, SCRPC, with respect to Commonwealth's claims against him, because there is no genuine issue of material fact related to Hood's alleged liability to Commonwealth. Hood is entitled to judgment as a matter of law when the facts before the Court are viewed in the light most favorable to Commonwealth. *See* Rule 56, SCRPC; *see also* *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 285, 543 S.E.2d 563, 566 (Ct. App. 2001) (interpreting standard in summary judgment motions).

This Court shall consider separately Commonwealth's claims for legal malpractice and negligence/negligent misrepresentation. In its Brief in Opposition to Hood's Motion for Summary Judgment, Commonwealth appeared to change from the negligence theory asserted in its pleadings to a negligent misrepresentation theory. Accordingly, Commonwealth's negligence/negligent misrepresentation claims shall be considered together.

A. Legal Malpractice Claim

"To prevail in a legal malpractice claim, the plaintiff must satisfy the following four elements: (1) the existence of an attorney-client relationship; (2) breach of duty by the attorney; (3)

damage to the client; and (4) proximate causation of [the] client's damage by the breach." *Smith v. Hastie*, 367 S.C. 410, 417, 626 S.E.2d 13, 17 (Cl. App. 2005), quoting *Holy Loch Distributors, Inc. v. Hitchcock*, 340 S.C. 20, 26, 531 S.E.2d 282, 285 (2000). Commonwealth's legal malpractice claim against Hood fails because Hood did not have an attorney-client relationship with either Commonwealth or the Heards, and also because Commonwealth has not proved by expert testimony any breach by Hood of a duty of care.

Laws served as the attorney for the Heards at the closing, and Hood represented Cox, to the extent that Hood drafted the deed transferring the Property from Cox to the Heards. Neither Commonwealth nor any of the other parties have presented any evidence demonstrating that an attorney-client relationship ever existed between Hood and Commonwealth, or between Hood and the Heards. In fact, Commonwealth has not contended that an attorney-client relationship existed between Hood and Commonwealth or between Hood and the Heards. Because Commonwealth thus cannot meet the first element of its legal malpractice claim, Hood is entitled to summary judgment on such claim.

Hood is also entitled to summary judgment on Commonwealth's legal malpractice claim because Commonwealth has not established any professional duty owed by Hood to the Heards or to Commonwealth. "An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. Without such a duty, there can be no actionable negligence." *Rogers v. S.C. Dep't of Parole and Cmty. Corr.*, 320 S.C. 253, 255, 464 S.E.2d 330, 332 (1995). By logical extension, without a duty of care owed by an attorney in a legal malpractice action, there can be no professional negligence. As noted above, Commonwealth has failed to establish an actionable duty in this case through expert testimony, even though Rule 702, SCRE, requires testimony from an expert qualified through knowledge, skill, experience, training or

education where scientific, technical or other specialized knowledge is required to assist the trier of fact in understanding the evidence or issues. Duties of care owed by attorneys to laypersons are clearly outside the scope of knowledge of jurors, and must be established through competent expert testimony. Because Commonwealth has not produced such expert testimony, it has failed to identify a duty sufficient to survive Hood's Motion for Summary Judgment.

B. Negligence/Negligent Misrepresentation Claim

The negligence claim pled in Commonwealth's Second Amended Complaint appears to be based on a common law theory of negligence, with respect to which Commonwealth asserted (1) the existence of a duty owed by Hood to Commonwealth (or the Heards); (2) breach of the duty; (3) that the breach was the actual and proximate cause of Commonwealth's injury; and (4) that Commonwealth suffered an injury or damages. *See Doe v. Marion*, 373 S.C. 390, 400, 645 S.E.2d 245, 250 (2007) (outlining elements of negligence actions); *see also* Commonwealth's Second Amended Complaint. This common law negligence claim against Hood fails, however, because Commonwealth has not identified a duty sufficient to subject Hood to common law negligence liability.

Further, Commonwealth never identified an expert to testify regarding any duties owed by Hood to Commonwealth or the Heards. Although Commonwealth's Second Amended Complaint appears to argue that facsimile communication was an improper means of transmitting information between attorneys, what constitutes proper means of communication between attorneys is outside the scope of lay knowledge. Under Rule 701(e), SCRE, laypersons cannot provide opinion testimony regarding matters requiring "special knowledge, skill, experience or training." *Id.* This generally means that lay opinion becomes inadmissible when it ventures "beyond the realm of common experience." *Certain Underwriters at Lloyds. London v. Sinkovich*, 232 F.3d 200, 203 (4th Cir.

2000); see also *State v. Ellis*, 345 S.C. 175, 547 S.E.2d 490 (2001). Only a qualified expert may provide an opinion regarding what constitutes proper means of communication between legal professionals, and Commonwealth has identified no such expert. Accordingly, Hood is entitled to summary judgment on Commonwealth's claims for common law negligence.

In its summary judgment opposition brief presented to the Court on July 14, 2008, Commonwealth for the first time argued that Hood is liable to Commonwealth or the Heards because Hood allegedly breached a duty created by Section 552 of the Restatement (Second) of Torts, which the American Law Institute has entitled "Information Negligently Supplied for the Guidance of Others." Commonwealth's Brief cited the four elements of common law negligence stated above and asserted that South Carolina's Supreme Court recognized and adopted Section 552 in its entirety in *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 489 S.E.2d 470 (1997). While the South Carolina Supreme Court did recognize a duty as outlined by Section 552 in *ML-Lee*, it did so with respect to claims for negligent misrepresentation, rather than common law negligence.

The *ML-Lee* Court's decision comports with the plain language of Section 552, which states:

One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

Restatement (Second) of Torts §552(1). The elements for negligent misrepresentation in South Carolina are thus nearly identical to those for a claim under Section 552. By way of comparison, to prove a case for negligent misrepresentation under South Carolina's common law, a plaintiff must prove the following elements:

- (1) the defendant made a false representation to the plaintiff;
- (2) the defendant had a pecuniary interest in making the statement;
- (3) the defendant

owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied the representation; and (6) the plaintiff suffered a pecuniary loss as a result of his reliance upon the representation.

West v. Gladney, 341 S.C. 127, 133-34, 533 S.E.2d 334, 337 (Ct. App. 2000). This comparison reveals that Restatement §552 simply reiterates the grounds for negligent misrepresentation claims in South Carolina.

Commonwealth has not asserted an actionable claim against Hood for negligent misrepresentation. Commonwealth has not pled the six elements required for a negligent misrepresentation claim against Hood in any of its complaints in this action, and Commonwealth did not move at the hearing on Hood's Motion for Summary Judgment to amend Commonwealth's Second Amended Complaint to supplement its purported claim for negligent misrepresentation. "To state a claim for negligent misrepresentation, a plaintiff must allege [the six elements outline in *West, supra*]." *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 105, 439 S.E.2d 283, 284-85 (Ct. App. 1993). At the hearing, Commonwealth's counsel asserted that Commonwealth's Second Amended Complaint was sufficient to state a claim for negligent misrepresentation. However, Commonwealth's Second Amended Complaint does not even allege all six required elements for negligent misrepresentation, because it does not allege that Commonwealth or the Hcards justifiably relied on any representation by Hood, and because it fails to reference any pecuniary interest that Hood held in the subject transaction.² Although courts are required to construe pleadings so "as to do substantial justice to all parties," courts should "not, however, write into the pleadings allegations and defenses that are not presented." *Unisun Ins. v. Hawkins*, 342 S.C. 537, 541-42, 537 S.E.2d 559,

² Hood did not move to challenge Commonwealth's Second Amended Complaint under Rule 12(b)(6), SCRPC, at the initial pleading stage, because Commonwealth's Second Amended Complaint did not purport to state a claim for negligent misrepresentation. The Second Amended Complaint entitled its claim "negligence" and it stated the four elements required to state a claim for common law negligence.

561 (Ct. App. 2000), citing *Davis v. Montieth*, 289 S.C. 176, 345 S.E.2d 724 (1986). In the present case, Commonwealth has not asserted facts or allegations sufficient to meet the required elements for the tort of negligent misrepresentation as required under Rule 8, SCRPC. Commonwealth has not stated all of the required elements for a negligent misrepresentation claim in its Second Amended Complaint; therefore, Hood is entitled to judgment as a matter of law on Commonwealth's attempted claim for negligent misrepresentation.

Even if Commonwealth had properly pleaded a claim for negligent misrepresentation, which this Court finds that Commonwealth has not done, Hood would still be entitled to summary judgment on such a claim. As stated above, a successful claim of negligent misrepresentation requires that the plaintiff prove six elements. See *West v. Gladney*, 341 S.C. 127, 133-34, 533 S.E.2d 334, 337 (Ct. App. 2000) (stating elements required for a negligent misrepresentation claim). Hood is also entitled to summary judgment on Commonwealth's purported cause of action for negligent

⁶¹⁴ Misrepresentation because Commonwealth has failed to present evidence sufficient to create a factual issue for the required element of justifiable reliance.

Any reliance in this case on Hood's representations with respect to the Property would have been received and relied upon by Laws, as Commonwealth's and the Heards' agent for title insurance. Commonwealth, through its 30(b)(6) designee, has admitted that Laws served as Commonwealth's agent for purposes of the issuance of title insurance policies. By virtue of serving as the Heards' attorney and title insurance agent, Laws also served as an agent for the Heards in the Transaction. Based on agency principles, Laws' actions are therefore imputable to Commonwealth and the Heards. Accordingly, whether Commonwealth and its insureds, the Heards, justifiably relied on Hood's alleged representations depends upon whether Laws justifiably relied on said representations.

In considering the date for the alleged justifiable reliance in this case, the pertinent date is the date that the alleged reliance caused harm to Commonwealth and the Heards. Commonwealth and the Heards did not suffer any damage until the closing transferring the Property, which occurred on or about February 1, 2002. Accordingly, such date is the date of any claimed justifiable reliance in this case.

At the hearing on this motion, Commonwealth's counsel argued that justifiable reliance is always a fact issue to be determined by a jury; however, *Hit Products Corp. v. Anchor Financial Corp.*, 111 F. Supp. 2d 723 (D.S.C. 1999), demonstrates that South Carolina courts may properly determine such issue as a matter of law. In *Hit Products*, the district court interpreted South Carolina law as allowing a finding of justified reliance "in a negligent misrepresentation claim 'only if the relationship of the parties is such that the defendant occupies a superior position to the plaintiff with respect to knowledge of the truth of the statement made.'" *Id.* at 727, quoting *Harrington v. Mikell*, 321 S.C. 518, 522, 469 S.E.2d 627, 629 (Cl. App. 1996). After stating the standard for justifiable reliance, the *Hit Products* court granted the defendant bank summary judgment on a negligent misrepresentation claim based on the bank's representations concerning the financial condition of a distributor of the plaintiff's products. The court determined that the plaintiff did not justifiably rely on the bank's representations, because the plaintiff had superior knowledge of the distributor's financial condition due to the plaintiff's extensive financial dealings with the distributor. *Id.*

Commonwealth's justified reliance argument fails as a matter of law with respect to Hood for several reasons.³ First, Commonwealth's own 30(b)(6) deponent, Mark Herschberger, testified that Commonwealth's policies, as expressed in company manuals, required Commonwealth's approved attorneys and title agents, rather than sellers' attorneys, to report any defects to title, including

³ As mentioned above, this Court must view the facts in the light most favorable to the non-moving party;

mortgages. Further, according to Commonwealth's own written policies, Commonwealth's approved attorneys, rather than sellers' attorneys, were required by Commonwealth to ensure that satisfactions were obtained to resolve defects. (See Commonwealth Manual for Approved Attorneys, pp. 4-5) (noting obligation to report or resolve defects); (see also Hershberger Deposition, pp. 74, and 126-127) (noting that mortgage prevents marketable title and that approved attorneys have duty to verify that insured is receiving marketable title). Hershberger also testified that if the satisfaction could not be obtained by Commonwealth approved attorneys, Commonwealth, through its title insurance agents, was required to except the defect from title coverage. (Hershberger Deposition, p. 123). One of five statutorily-allowed actions must have been taken to satisfy the American Federal Mortgage, and Hershberger testified that Hood's statements in the January 24 Letter do not provide sufficient assurance of satisfaction for Commonwealth to deem the mortgage legally satisfied. (See Hershberger Deposition, pp. 115-119). Accordingly, based on Commonwealth's own policies, Commonwealth should not have insured the Property without excepting the American Federal Mortgage. Commonwealth's own written policies and procedures demonstrate that Commonwealth was not justified in relying on the January 24 Letter to issue title insurance for the Property which did not except the American Federal Mortgage from coverage.

Hershberger's testimony as Commonwealth's 30(b)(6) designee constitutes an admission on Commonwealth's behalf that Commonwealth's reliance on the January 24 Letter was not justified. See Rule 30(b)(6), SCRCP. Accordingly, no material factual issue exists as to whether Commonwealth's reliance on the January 24 Letter was justified with respect to Commonwealth's claims against Hood. In fact, Hershberger's testimony probably constitutes proper expert testimony (subject to Hershberger's qualification by this Court as an expert) proving that Commonwealth's

therefore, the Court must assume that Laws never received the January 25 Letter.

alleged reliance upon the January 24 Letter was not justified, and this expert testimony has not been contested through any admissible evidence presented by Commonwealth.

Second, in a claim for negligent misrepresentation, “[t]here is no liability for casual statements, representations as to a matter of law, or matters which [the] plaintiff could ascertain on his own in the exercise of due diligence.” *Harrington v. Mikell*, 321 S.C. 518, 522, 469 S.E.2d 627, 629 (Ct. App. 1996), quoting *AMA Mgmt. Corp. v. Strasburger*, 309 S.C. 213, 223, 420 S.E.2d 868, 874 (Ct. App. 1992). “Reliance can be justified only if the relationship of the parties is such that the defendant occupies a superior position to the plaintiff with respect to knowledge of the truth of the statement made.” *Id.*, citing *O.C. Gruber v. Santee Frozen Foods, Inc.*, 309 S.C. 13, 419 S.E.2d 795 (Ct. App. 1992). As noted above and, Commonwealth, through its agent, had actual knowledge of the American Federal Mortgage due to the agent’s title search, and the January 24 Letter clearly indicates that Hood performed no title search. Hood did not have superior knowledge of the status of the Property’s title on the date of the closing; therefore, Commonwealth was not justified in relying on the January 24 Letter in closing the Transaction.

Third, “there can be no reasonable reliance on a misstatement if the plaintiff knows the truth of the matter.” *Id.*, citing *O.C. Gruber, supra*, 309 S.C. at 20, 419 S.E.2d at 800. In this case, Commonwealth, through its agent, performed an actual title search, while Hood’s statements regarding title status in the January 24 Letter were based on memory. (Hood Deposition, pp. 23-24). Further, through an agent, Commonwealth knew of the American Federal Mortgage, and, at the time of closing knew that there was not a legal satisfaction of record. Commonwealth’s own 30(b)(6) testimony demonstrates that Commonwealth knew (or at the very least its agent knew) that the American Federal Mortgage existed, and the January 24 Letter was not sufficient to establish a justified reliance on the alleged satisfaction of the American Federal Mortgage, because the January

24 Letter was not one of the five statutorily-allowed methods of satisfaction outlined in Hershberger's testimony.

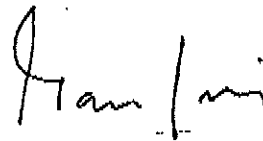
Because Commonwealth has failed to create an issue of material of fact with regard to the justifiable reliance element of its purported negligent misrepresentation action, Hood is entitled to judgment as a matter of law on the negligent misrepresentation cause of action.

For these reasons, Defendant William C. Hood, Esq.'s Motion for Summary Judgment is hereby GRANTED. Hood is granted summary judgment on all claims presented against him by Commonwealth. Accordingly, this Court orders an entry of judgment for Hood on Commonwealth's claims against Hood, and this Order constitutes a final judgment on all of Commonwealth's claims against Hood, pursuant to Rule 54(b), SCRPC. This Court expressly finds that there is no just reason for delaying final judgment on Commonwealth's claims against Hood, due to the expense associated with Hood's continued involvement in this litigation and Hood's need for finality on Commonwealth's claims in order to resolve Hood's claims against the Estate of John A. Cox.

IT IS SO ORDERED.

August 27, 2008

Greenville, South Carolina



D. Garrison Hill
Resident Judge, Thirteenth Judicial Circuit

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2007CP2303706

Commonwealth Land Title Insurance Company vs. James Terry Laws

CHECK ONE:

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

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

- SEE ATTACHED ORDER -

2008 SEP 11 AM 9:26
CLERK OF COURT
PAUL B. WICKENSIMER
COURT HOUSE
GREENVILLE, SC

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - D. GARRISON HILL

This judgment was entered on the 9/11/08, and a copy mailed first class this 9/11/08, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCPP APP-24/TORM 4

Paul B. Wickensimer - Clerk of Court